

The Effectiveness of Copyright Law No. 28 of 2014 in the Prevention of Copyright Infringement

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Abstract. Copyright piracy has become a culture in Indonesia resulting in huge losses for creators and creative industries. In Indonesia, regulations relating to the protection of intellectual property rights have been in place for a long time. The development of laws and regulations governing intellectual property rights began in the 1840s. However, the latest Copyright Act, Law No. 28 of 2014, has sparked much debate. This law is considered ineffective due to normative defects, such as adhering to copyright crimes, reducing or eliminating the responsibility of the apparatus or officials involved, and marginalising the rights of creators, resulting in low deterrent effect. The purpose of this article is to see how effectively the Copyright Act No. 28 of 2014 prevents copyright infringement. The results show that copyright is subject to the declaratory principle as intellectual property rights arise automatically after the creation. The frequent alternation of delicts gives the impression that Lawmakers do not have a history of copyright law. The purpose of the law is to ensure not only justice, but also compliance with the law. All laws will become ineffective if not enforced. So it is not just about the protection of citizens, it is also about citizens' compliance with the law. Law No. Article 28 contributes only to the protection of the personal rights of citizens; it does not guarantee the protection of the public rights of citizens.

Keywords: Copyright, Law No. 28 Of 2014, Complaint Delict, Effectiveness, Legal Compliance

Introduction

Copyright piracy has become a culture and caused enormous losses to creators and the creative industry in Indonesia. According to the results of research from the Book Publishers Association (IKAPI), it shows that the losses experienced by 11 publishers in Indonesia reached Rp 116.06 billion in 2019. Distribution of counterfeit books has become easier thanks to online marketing. In addition, if publishers have to report each case of book hijacking on their own, then their time will be entirely taken to make a report.

In the music industry, losses due to music piracy reach Rp4.5 trillion a year. Along with the rise of music piracy and technological advances, record companies and consumers began to use live or streaming services to record and enjoy music. On-demand streaming services, such as Spotify and Netflix with thousands of collections of music tracks, movies, podcasts, or TV series that are all officially guaranteed to influence the decrease in music and movie piracy. In addition, the blocking of pirated sites is the cause of this significant decline.

In Indonesia, rules related to the protection of intellectual property rights have existed for a long time. The history of the development of laws and rules relating to intellectual property rights has existed since the 1840s.

In 1844, the Dutch Colonial Government passed the first law on the defense of intellectual property rights. A few years later the Dutch colonial government then enacted two laws governing trademarks and copyright, notably the Trademark Act of 1885, the Patents Act of 1910, and the Copyright Act of 1912. In addition, since 1888, when it was still named the Dutch East Indies, Indonesia has been a member of the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works.

At the beginning of independence, the Copyright Law and the Dutch Legacy Law were declared to remain in force, but the Patent Law was considered contrary to the Indonesian government so it was revoked. In the Dutch Patent Act, a patent application can be filed in Batavia, which is then renamed Jakarta, but must be examined in Octrooiraad, the Netherlands.

Then, on October 11, 1961, the government issued Law Number 21 of 1961 concerning Corporate Trademarks and Trademarks. This Act is intended to replace the Trademark Act abandoned by the Dutch colonial government.

On May 10, 1979, through Presidential Decree No. 24 of 1979, the Indonesian government ratified the Paris Convention (Paris Convention for the Protection of Industrial Property). The Paris Convention is a revision of the Stockholm Convention done in 1967.

On September 19, 1987, as an amendment to Law Number 12 of 1982 regulating copyright, the government passed Law Number 7 of 1987. In the explanation of Law Number 7 of 1987 it is stated that the amendment to Law Number 12 of 1982 was made because copyright infringement continued to increase and posed a threat to the public order and hampered individual creativity.

On 28 August 1992, the government issued Law 19 of 1992 on Trademarks (the 1992 Trademark Law), which entered into force on 1 April 1993. The new Act replaces the Trademark Act of 1961. On 15 April 1994, the government signed the Uruguay Round Final Act, incorporating the TRIPS AGREEMENT.

Three years later, in 1997, the government amended the Copyright Act 1987, the Patent Act 1989, and the Trademark Act 1992. Copyright Law No. 12 of 1997 was the first copyright law after the TRIPS Agreement, with various improvements and amendments. Improvements to this law include protection of inventions that are unknown to the inventor, exemption from copyright infringement, term of copyright protection, civil rights, and provisions of the Civil Servant Investigator (PPNS). Meanwhile, the addition of changes in this law is regarding the rules of copyright licenses.

In 2002, Copyright Law Number 12 of 1997 was amended to Law Number 19 of 2002 concerning Copyright which was later amended to Law Number 28 of 2014 because Indonesian intellectual property and intellectual ability require legal protection for fair business competition.

The Copyright Act No. 28 of 2014 caused much debate. This law is considered ineffective because it has normative weaknesses, namely adhering to complaints of copyright crimes (Sudjana, 2022), reducing or removing the responsibilities held by the apparatus or officials concerned, marginalising the rights of creators, resulting in a low deterrence effect, ordinary delicts in the Copyright Act 2002 are considered to offer stronger protection. In addition, the use of copyright over songs and music on the internet is not specifically regulated in Indonesia's copyright law, which includes the Copyright Law No. 28 of 2014, Government Regulation No. 56 of 2021, and the Regulation of the Minister of Law and Human Rights.

The purpose of this article is to examine the effectiveness of the Copyright Law Number 28 of 2014 in preventing copyright infringement.

Methods

Methodology plays an important role in the advancement of knowledge because it serves a variety of purposes, including enhancing the ability of scientists to conduct or conduct more effective, complete studies, and with greater opportunities to uncover previously unknown information.

This research uses normative legal methods. Normative Legal Research is legal research conducted by examining literature material or secondary data. According to Peter Mehmet Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues at hand". In legal research of this type, often law is conceived as what is written in legislation or law is conceived as a rule or norm that is a benchmark of human behavior that is considered appropriate". Therefore, this study was conducted with reference to primary and secondary legal materials which include: a) the Criminal Code (KUHP); b) the Civil Code (KUHPer); c) Auteurswet 1912 Staatsblad Number 600 of 1912; d) Law Number 6 of 1982 concerning Copyright; e) Law Number 7 of 1987 concerning Amendments to Law Number 6 of 1982 concerning Copyright; f) Law Number 12 of 1997 concerning Amendments to Law Number 6 of 1982 concerning Copyright as Amended by Law Number 7 of 1987; g) Law Number 19 of 2002 concerning Copyright; h) Law Number 28 of 2014 concerning Copyright. While the secondary legal materials used are books, journals, and writings that explain the primary legal materials and legal concepts related to the issues discussed. The approach used is a legislative approach and a conceptual approach. The legal material will be analyzed qualitatively and descriptively. . This means that legal materials are collected and sorted for further study and analysis of the content, so that a degree of alignment, conformity of norms, and the delivery of new normative ideas can be found.

Results and Discussion

Copyright Concept

Copyright is an important legal right and one of the human rights mentioned in the UN International Covenant and the Universal Declaration of Human Rights. Anything created by someone who enriches human minds and emotions is a cultural masterpiece worth protecting. Cultural works do not include tools or technologies that directly support a way of life that makes life or work more comfortable.

Article 1 Number 1 of the Copyright Law 2014 defines copyright as follows: "Copyright is the exclusive right of the creator that arises automatically based on the declaratory principle after a creation is realized in tangible form without prejudice to restrictions in accordance with statutory provisions."

Copyright is an exclusive right, which means having supremacy over others. As intellectual property rights develop when a creator's idea is poured into a form of scientific, artistic, or literary expression, copyright is also subject to a declaratory principle. What is protected by copyright is the expression of a concept, not the idea itself.

The declaratory principle in copyright indicates that copyright is the exclusive right of the creator that arises automatically after the creation. This direct protection is realized by the granting of exclusive rights which are only intended for the creator, so that no other party can take advantage of these rights without the permission of the creator. While the declaratory principle is a system that does not require registration (the term of registration is the same as the term of registration in the former copyright law). In other words, even though the creator does not record his creation, the creator still has direct protection when the creation is finished, namely the right to control so that no one can use his rights without the permission of the creator.

On the other hand, the government through the Minister of Law and Human Rights also organizes the recording of creations. The usefulness of this handbook is primarily to facilitate proof in the event of a copyright dispute. In other words, while registration alone does not create copyright protection, it makes it easier for the person who registers to establish that he or she is a "holder" of copyright. In reality, parties who are not in good faith often utilize the copyright registration system established by the Copyright Act to claim an invention as their personal property. This fact has given rise to debate about the provisions that allow a creation to be registered for official copyright status.

Declarative principles differ from constitutive principles in patent rights. In the constitutive principle, the right to an intellectual property can only be determined if the prospective holder of the right registers it with the Ministry of Law and Human Rights of the Republic of Indonesia. These rights are granted hierarchically by the state to the owners and holders of intellectual property rights. As is the case with patents, the state grants a patent to the inventor of a technological innovation for a predetermined period of time, allowing the inventor to carry out the invention himself or authorizing a third party to do so.

Concept of Delik Complaint and Ordinary Delik

Significant substance changes in Law No. 28 of 2014 is related to the transition from ordinary delicts to complaints delicts. The main differences in the two delicts are as follows: "Complaints are criminal offences that can only be prosecuted if there are complaints from people who are harmed. While ordinary delicts are criminal offences that can be prosecuted without the need for a complaint. "Based on this understanding, it can be concluded that the request to process criminal events that include delicts of complaints can only be followed up by the authorities (in this case the government represented by the police, prosecutors, and judges) if it is preceded by a complaint from the party who feels disadvantaged, while the request to process incident criminal acts that include ordinary delicts can be followed up by the authorities without having to be preceded by a complaint.

When looking at the history of copyright law, Indonesia has exchanged delicts several times, from ordinary delicts to complaints delicts and vice versa. The evolution of delict changes in the Copyright Act is as follows:

1. Auteurswet 1912 Staatsblad Number 600 of 1912 uses complaints.
2. Law Number 6 of 1982 concerning Copyright. Article 45: Crimes as referred to in Article 444 cannot be prosecuted except for complaints from copyright holders.
3. Law Number 7 of 1987 concerning Amendments to Law Number 6 of 1982 concerning Copyright. Article I Number 17 in paragraph 1 stipulates that copyright infringement is

now an ordinary crime due to the deletion of the provisions of Article 45 of Law Number 6 of 1982.

4. Law Number 12 of 1997 concerning Amendments to Law Number 6 of 1982 concerning Copyright as Amended by Law Number 7 of 1987. This law governs ordinary delicts.
5. Law of the Republic of Indonesia Number 19 of 2002 concerning Copyright Infringement of copyright is common delict.
6. Law Number 28 of 2014 concerning Copyright; Article 120 states that the criminal offence as referred to in this Law is a complaint.

From the changes in delicts that have occurred many times shows the impression that the government and Parliament, as lawmakers, do not understand the history of copyright legislation. In addition, there is the impression that the government does not have a correct understanding of copyright protection.

The purpose of an Act is to ensure justice, but also compliance with the law. Without legal compliance, all laws made become ineffective. So it is not just the protection of citizens, but also citizens' compliance with the Law itself. Law No. 28 only contributes to the protection of the private rights of citizens, but does not guarantee the protection of the public rights of citizens by increasing awareness and legal compliance.

One of the reasons for the conversion of ordinary delicts into complaints in Law No. 28 of 2014 is that law enforcement officials will not be able to determine whether there has been a copyright crime only by comparing goods resulting from copyright infringement with the original creation. Only the creator or copyright holder can be more certain which work is original and which work is not original or imitation of the original work, so as to immediately report the infringement of the exclusive right to his creation.

The reason for such a change in complaint delays does not indicate which priorities are correct in enforcing the law. In this case, it should be a system that must be improved in order to enforce the law in accordance with applicable regulations, and not legislation following the inability of law enforcement officials. The effectiveness and efficiency of a law must describe the reality of society, whether it is in accordance with the law or not.

Law enforcement in terms of the Copyright Act cannot depend only on the individual creator himself. According to Friedman, there are other factors that become a functional unit that determine the success of law enforcement in addition to legislation (legal system). The factors of the legal system are the legal structure, legal substance, and legal culture. The application of complaint delicts in Law no. 28 of 2014 to cases in the field of copyright is identical to reducing / eliminating the duties which are the obligations of the relevant officers, especially imposing a culture of compliance with the law. This means that the concept of complaint delict is irrelevant to copyright enforcement, because copyright crimes have many characteristics that better match ordinary delicts than complaint delicts.

Copyright infringement is related to community compliance with applicable law. Legal compliance is a legal culture that must be embedded in law. There are several theories concerning the culture of Legal Compliance, such as the theory of legal protection, the theory of law enforcement, the theory of the legal system, and the theory of legal compliance

Theory of Legal Protection

The role of law in society is to bring together and coordinate often conflicting interests. In order for a conflict of interest to be reduced, the law must be able to enter it. To regulate the rights and obligations of legal subjects, legal protection is made as a tool or method. The law also serves as a defence tool for those who are protected by it.

In line with that, Satjito Rahardjo said that legal protection is an effort to defend one's interests by giving him the human right to act in the framework of his interests". Meanwhile, according to Phillipus M. Hadjon provides legal protection for the people as a preventive and repressive government action. Preventive legal protection aims to prevent disputes, which directs government actions to be cautious in discretionary decision making, and repressive protection aims to resolve disputes, including their handling in judicial institutions.

Law Enforcement Theory

The term "law enforcement" can also mean the enforcement process by law enforcement officials or by others who have an interest in it in accordance with their respective legal rights and

obligations. The investigation, arrest, detention, trial of the accused, and sentencing of convicted persons are all under the auspices of criminal law enforcement.

Soerjono Soekanto emphasizes that law enforcement is a process of unifying values expressed in principles and attitudes that are firmly together as a series of final stages of value translation to build, maintain, and uphold social harmony. According to Soerjono Soekanto, there are five factors that affect law enforcement in general: the law itself, law enforcement officials, facilities, society, and culture. These five factors are inseparable because they are at the heart of enforcement; they are also barometers of enforcement effectiveness.

The actual implementation of criminal law by law enforcement officials is known as criminal law enforcement. In other terms, the application of criminal law is known as criminal law enforcement. Law enforcement, then, is a system that requires standards and conventions of balance with actual human behavior. These regulations then serve as standards or guidance for acceptable or appropriate conduct. The behavior or attitude of these acts seeks to create, maintain and maintain peace.

On the basis of how the phrase "criminal law" is understood, Moeljatno provides additional details by stating that law enforcement is a component of the broader legal system in force in a country and sets certain standards and guidelines, including: Identification of prohibited acts and accompanied by threats or consequences to violators, such as certain criminal acts.

- a. Identify the circumstances in which the punishment that has been threatened may be applied to those who violate this prohibition.
- b. Analyze possible methods for enforcing sentences against suspects suspected of violating the rules.

The main issues of copyright enforcement are culture and paradigms. With regard to cultural issues, the traditional view that has not been completely lost is that a creation is considered by society as a shared property, and despite the recognition of individual rights to a creation, the form emphasizes the moral aspect of the creation itself. copyright rather than its economic value. Moreover, there is a social culture (which is closely related to religious teachings) that let alone our creation, our body is God's and not ours. Another culture that influences copyright infringement is the desire to obtain something, for example trade benefits in an easy way and justify all means

Legal System Theory

According to the theory of the legal system Lawrence M. Friedman, law as the legal system of a social system, includes three components, namely:

1. Substance: Law is a system of rules, norms, and patterns of real human behavior, including products produced by people in the legal system, including.
2. The structure of the Law is a framework, a part that survives, a part that gives shape and limits to the law enforcement agencies as a whole. In Indonesia, the legal system is composed by law enforcement agencies such as lawyers, police, prosecutors, and judges.
3. Legal Culture is the atmosphere of social systems and forces that determine how society uses, avoids, or misapplies the law.

If you look at the theory of the legal system Lawrence M. Friedman, there are several factors that cause the ineffective implementation of Article 120 of Law Number 28 of 2014. These factors are as follows:

1. Legal substance factor. Article 120 of Law Number 28 of 2014 categorizes the entire series of criminal acts in this law as harassment complaints. As a result, the investigator is no longer authorized to conduct an investigation without being challenged by the creator or a party receiving rights from the creator.
2. Legal structure. Article 120 of Law Number 28 of 2014 makes copyright piracy a complaint offense, resulting in the slow performance of law enforcement in eradicating copyright piracy.
3. The legal culture factor. The ineffectiveness of combating piracy is also due to the habits of people who pragmatically obtain economic benefits by hijacking the works of others.

Theory of Legal Compliance

Legal compliance is the awareness of the benefits of the law that gives birth to a form of community "loyalty" to the legal values imposed in living together which is manifested in the form

of behavior that is actually compliant with the legal values themselves that can be seen and felt by fellow members of the community.

Legal awareness is the awareness or value that humans have about existing laws or laws that are expected to exist. In reality, what is more emphasized is the values related to the legal function, not the legal assessment of certain events in the society concerned.

According to Soerjono and Salman, the nature of legal compliance has three factors that cause citizens to obey the law, namely as follows: a. compliance, b. identification, and c. internalization.

Compliance "An overt acceptance induced by expectation of rewards and an attempt to avoid possible punishment – not by any conviction in the desirability of the enforced rule. Power of the influencing agent is based on „means-control” and, as a consequence, the influenced person conforms only under supervision ". (A complicity based on the expectation of a reward and efforts to avoid punishment or sanctions that may be imposed if someone violates the provisions of the law. This compliance is based on the control of those in power rather than the belief in the legal purpose of the country concerned.

Identification "An acceptance of a rule is not because of its intrinsic value and appeal but because of a person's desire to maintain membership in a group or relationship with the agent. The source of power is the attractiveness of the relationship which the people enjoy with the group or agent, and his conformity with the rule will be dependent upon the salience of these relationships" (" Acceptance of rules is not because of their intrinsic value and attractiveness, but because of a person's desire to maintain membership in the group or relationship with agents. The source of power is the attractiveness of the relationships that people enjoy with groups or agents, and their conformity to the rules will depend on the significance of these relationships. ")

Occurs when adherence to the rule of law exists not because of its intrinsic value, but to maintain group membership and good relations with those authorized to apply the rule of law. The benefits derived from this relationship attract people to be obedient, so compliance is based on the benefits of interaction.

Internalization,: "The acceptance by an individual of a rule or behavior because he finds its content intrinsically rewarding... the content is congruent with a person's values either because his values are changed and adapted to the inevitable". ("Acceptance by an individual of a regulation or behavior because he finds the content intrinsically useful... the content is in accordance with one's values both because the values change and are adjusted to the inevitable).

At this point, one follows the rule of law because it is intrinsically advantageous. The content of these rules is in accordance with the values of the person concerned, or because he or she changed the values to which he or she originally adhered. The end result of this process is an intrinsically motivated conformity.

Conclusion

Legal structure related to Law No. 28 of 2014 concerning Copyright still has problems with the consistency of law enforcement (especially investigators, especially Investigators of Civil Servants) who have performed their functions but have not been effective due to internal and external constraints. The Copyright Law has normative weaknesses in terms of the substance of the law because it embraces the use of complaints in copyright crimes, which causes enforcement to be longer. Meanwhile, in terms of legal culture, society has not fully appreciated the creations of others, as evidenced by the increasing piracy of copyrighted works and the way of thinking that considers intellectual property, including copyright, only has a social function, even though the fact that this is an individual right with economic value. Consequently, the application of the Friedman Law System on the Effectiveness of Counteracting the Hijacking of Copyright Works becomes ineffective.

Suggestions

Law Number 28 of 2014 concerning Criminal Acts (Delik Complaint) needs to be reviewed in order to be able to return to the usual delicts as the previous Copyright Law (Law No. 19 of 2002), so that the investigation process can be completed faster because complaints from the harmed party are not required. Meanwhile, intensive legal counseling is needed to increase people's understanding of the importance of shame culture and guilt feelings if it violates the law, so that a culture that values the creation of other parties appears.

References

- Amiruddin & Asikin H. Z. (2018) *Introduction to Legal Research Methods*. Jakarta: PT. Raja Grafindo Persada.
- Hanafi, A. (2018). The Urgency of Common Delik Changes to Delik Complaints and their Relevance to Copyright Protection and Law Enforcement. *Acts: Journal of Law* 1(2)
- Antaraneews.com. (2013). Loss due to music piracy Rp 4.5 trillion a year https://www.antaraneews.com/berita/375286/k_losses-akibat-pajak-musik-rp45-trillion-a-year. Retrieved on September 8, 2022.
- Christiano, B.E. (2021). Implications of Delik Changes in Law Number 28 of 2014 concerning Copyright Against Deterrence Effect of Academic Book Hijacking Practices in Indonesia. *Padjadjaran Law Review*, 9(1).
- Ginting, E. R. (2012). *Copyright Law of Indonesia Analysis of Theory and Practice*. Bandung: Citra Aditya Bakti.
- Husen, H. M. (1990). *Crime and Law Enforcement in Indonesia*. Jakarta: Rineka Cipta.
- Hasikawai, Y.H., (2022). *The Legal Implications of Shifting Crimes from Regular Delicacy to Complaint Delicacy in the Copyright Law in Review of the Protection of Copyright Holders*. Thesis. Master's Programme in Law. Universitas Muhammadiyah Malang.
- Jamba, P. (2022). Analysis of the Application of Delik Complaints in Copyright Law to Counteract Copyright Crimes in Indonesia. *Journal of the Light of Justice*, 3.
- Kompas.com. (2016). *Netflix Proves to Reduce Piracy, In Indonesia It's Blocked*. https://tekno.kompas.com/read/2016/01/28/10160067/Netflix.Terbukti.Mengur_Reduced_Piracy.Di.Indonesia.Diblok?page=all. Retrieved on September 8, 2022.
- Kominfo.go.id., (2020). In 10 Months, the Impossible Streaming Audience Decreased 55 Percent. https://www.kominfo.go.id/content/detail/27915/dalam-10-bulan-penonton-streaming-bajakan-menurun-55-persen/0/sorotan_media. Retrieved on September 8, 2022.
- Katadata.co.id. (2022). *History of Intellectual Property Protection in Indonesia*. Retrieved on September 8, 2022. <https://katadata.co.id/agungjatmiko/ekonopedia/626785547e086/sejarah-perlindung-kekayaan-intelek-di-indonesia>. Retrieved on September 8, 2022.
- Lamintang, P.A.F., (1997). *Fundamentals of Indonesian Criminal Law*. Bandung: Image of Aditya Bakti.
- Lawrence M. F. (1975). *The Legal System: A Social Science Perspective*. New York: Russel Sage Foundation.
- Maronie (2022). *Be Aware Of And Comply With The Law*. In <https://www.zriefmaronie.blospot.com>. Accessed May 20, 2022.
- Moeljatno. (1993). *Fundamentals of Criminal Law*. Surabaya: Putra Harsa.
- Morris, K.A., Juliana, C. Bryan, E., and Rahaditya. (2021). Consumer Protection Is Pirated Books Online. National Seminar on Research Results and Community Service 2021 Development of the National Economy through Digital Innovation of Research Results and Community Service Jakarta, October 21, 2021.
- Marzuki, P. M. (2010). *Legal Research*. Jakarta: Kencana Prenada.
- Phillipus M. H. (1987). *Legal Protection for Indonesian People*. Surabaya: PT. Bina Sains,
- Silfiani, D. (2022). Indonesian Legal Protection for Song Commercialization and Music Copyrights in Digital Platforms. *Journal Of Law*. Volume 9 Number 2 Year 2022 DOI: <https://doi.org/10.22304/pjih.v9n2.a1>
- Soekanto, S. (2007). *Introduction to Legal Research*. Jakarta: University of Indonesia.
- Soekanto, S., & Mamudji, S. (2001). Normative legal research a brief review. Jakarta: PT. Raja Grafindo.
- Soerjono, S. (1983), *Factors Affecting Law Enforcement*, Jakarta: UI Pres,
- Soerjono, S. (2011) *Factors Affecting Law Enforcement*, Rajawali Pers. Jakarta: UI Press.
- Sudjana, S. (2022). Efektivitas Penanggulangan Pembajakan Karya Cipta dalam Perspektif Sistem Hukum. *Res Nullius Law Journal*, 4(1), 77-99.
- Susilo, A. B., & Suseno, J. J. B. (2019). Renewal of Criminal Law Politics Relating to Justice Based On Justice. *Walisono Law Review (Walrev)*, 2(2), 157-174.