

Law Enforcement Effectiveness on Copyright Piracy: Case of Indonesia



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ABSTRACT: Piracy, which is still a phenomenon in society, has even grown so rapidly that it has become a trend to produce and enjoy your own pirated films. learn how Indonesian law addresses cyber piracy of national films and how national film copyright protection works. The research method used in this article is doctrinal legal research. The legal rules used to reduce copyright piracy are in the form of the Copyright Law, Information and Electronic Transactions Law, Regulations of the Ministry of Law and Human Rights, and Regulations of the Minister of Communication and Information which are repressive, namely civil, administrative and criminal as well as preventive in nature. Law enforcement in Indonesia is still not effective because the level of public awareness and legal compliance is still not optimal, which is the main factor in the success of legal regulations.

KEYWORDS: Law Enforcement, effectiveness, copyright piracy

INTRODUCTION

Indonesia received the worst score, namely 8.5 out of 10 points, compared to 11 other Asian countries regarding copyright protection in a survey conducted by the Hong Kong-based Political and Economic Risk Consultancy (PERC). A score of 0 (zero) is the best score, which is occupied in first place by Singapore with a score of 1.5, followed by Japan with a score of 2.1, Hong Kong with a score of 2.8, Taiwan with a score of 3.8, and South Korea with a score of 4.1. At the other end of the scale, Vietnam ranked second worst after Indonesia with a score of 8.4, China with a score of 7.9, the Philippines with a score of 6.8, India with a score of 6.5, Thailand with a score of 6.1, and Malaysia with a score of 5.8 ("Perlindungan Hak Cipta, Indonesia Terburuk Di Asia," 2010). Copyright protection relates to the crime of digital piracy, which refers to the illegal copying, downloading, or sharing of digital products, such as music, software, computer games, films, electronic books, and other copyrighted materials (Koay et al., 2020). Although only viewed as a legal issue, digital piracy has proven to be an important source of technological and strategic innovation for both existing industry players and new entrants (Choi & Perez, 2007).

Although several authors discuss film piracy and sales movements in two consumer samples in China (Bai & Waldfogel, 2012), they do not discuss law enforcement. Apart from that, some authors discuss the study of the process by which technology and the piracy community have stimulated innovation and the creation of pirate business models as well as legitimate business models (Choi & Perez, 2007), which is different from writing this article because this article focuses on law enforcement and its effectiveness against copyright piracy.

Before discussing further about law enforcement, we should know in advance about what work is. Work is the result of creation or human intellectual thought that must be protected. Protection of someone's work is the protection of intangible objects such as inventions, literary, artistic works, names, and so on which are used in trade. Originally, copyright protection began in the United Kingdom in the 16th to 17th centuries by protecting the rights of book authors. Through the British Empire, book printing in England must obtain the author's permission before being reproduced and sold. This concept gives creators the legitimacy to manage the licensing of their works. In Intellectual Property, Lindsey (2003) introduces four principles in protecting a person's interests and the interests of society, namely:

1. Principle of Justice. A creator who produces a work based on his intellectual ability deserves to receive compensation in the form of material or non-material, such as a sense of security because he is protected and recognized for his work. The law

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protects creators in the form of a power to act in the context of their interests, which is called a right. The reason for attaching rights to intellectual property is creation based on intellectual ability.

2. **Economic Principles.** Intellectual Property expressed to the general public in various forms has benefits and economic value and is useful for human life. The existence of economic value in intellectual property is a form of wealth for its owner. Creators gain benefits from ownership of their work, for example in the form of royalty payments for playing the music and songs they create.
3. **Cultural Principles.** The growth and development of science, art, and literature are very significant for the improvement of the standard of living, civilization, and human dignity. Apart from that, it will provide benefits, for society, nation, and state. Recognition of human creations, works, and initiatives carried out within the Intellectual Property system is expected to be able to generate enthusiasm and interest to encourage the birth of new creations.
4. **Social Principles.** The law does not regulate human interests as individuals who stand alone apart from other human beings, but the law regulates human interests as members of society. So, humans with other humans are bound in the bonds of one society. The intellectual property system in protecting creators, should not be solely bound by the bonds of one society. The intellectual property system in protecting creators, may not be given solely to fulfill the interests of the individual or association or unit, but based on the balance of individual and community interests. This form of balance can be seen in the provisions on social functions and mandatory licenses in the Indonesian Copyright Law.

Then, these principles are supported by reward theory which argues that creators or inventors must be protected as appreciation for their efforts. This is a form of public appreciation for personal achievements. A thinker, writer, musician, or inventor should be rewarded, especially those who enjoy the benefits of what is produced. This award is an encouragement for everyone to excel in creating creative works that are beneficial to society. Meanwhile, the recovery theory says that without sacrifice in the form of hard work, time, and money, one creator or one inventor cannot possibly create a work of art. Therefore, it can be justified if the creator can restore the situation as it was before he created a work of art (Arifardhani, 2020).

Currently, Indonesia has a legal umbrella for copyright protection in the form of Law Number 28 of 2014 concerning Copyright (Copyright Law) which defines copyright as the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in real form without reduce the restrictions by the provisions of the legislation. According to (Freddy Haris et al., 2020) the exclusive rights of the creator can be interpreted as arising when the following conditions are met:

1. *Fixed*, Ideas must be realized first in a real form that can be captured by the five senses.
2. *Form*, requires a certain form of creation.
3. *Original*, requires that the creation be something original, not plagiarized, and has never existed before.

Copyright does not protect ideas but rather the form of those ideas. This is because everyone may have the same idea but the realization of the idea is different. Juridically, this is regulated in Article 41 of the Copyright Law which states that works that are not protected include:

1. Works that have not been realized in a tangible form;
2. Any ideas, procedures, systems, methods, concepts, principles, findings, or data even if expressed, stated, depicted, explained, or incorporated in a Work; And
3. Tools, objects, or products created to solve technical problems or whose form is only intended for functional needs.

The creator as the creator of a work has exclusive rights in the form of moral rights and economic rights. Moral rights are the rights of creators to be involved in all the management of their creations. Meanwhile, economic rights are the rights to commercialize or utilize a work, such as publishing, duplicating, translating, adapting, distributing, renting, and so on.

One work that is classified as having copyright is an audiovisual work. Audiovisual works are creations in the form of moving images with sound, such as films, television media broadcasts, video recordings, and so on. Films are one of the works whose copyrights are often violated in the cyber world. In this context, the violations of film works that will be discussed are violations committed by illegal Indonesian websites against films made in Indonesia. Based on data from Tempo media, there were around 2,300 pirated film sites in 2020 (Nurhayati, 2020).

The large number of film piracy sites has certainly affected the country's film industry. The moral rights and economic rights of the film creator are not fulfilled due to online film piracy. Indeed, these illegal sites have been suppressed by the government through the Ministry of Communication and Information of the Republic of Indonesia, but the fact is that today there are still many pirated film sites circulating and providing Indonesian films. Of course, the effectiveness of copyright protection still needs to be optimized to create a conducive climate for film creators.

Apart from violating the Copyright Law, Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Information and Electronic Transactions, hereinafter referred to as the ITE Law, also plays an important role. Article 25 of the ITE

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Law provides reasons for intellectual works in the form of digital documents or digital transmissions as objects that are also protected by the rules of the Copyright Law. Apart from that, this regulation also provides more specific detailed rules regarding rights and obligations for sending/distributing and receiving information in the form of digital data via the internet network. The existence of copyright in the digital era makes the Copyright Law interrelated with the ITE Law.

Copyright infringement has two main characteristics. The first feature is that there is an element of intent without the right to make an announcement, copy it, or give permission for that matter. Second, there is an element of intentionality in exhibiting, distributing, or selling to the general public a copyrighted work that is still protected by the author's copyright. The existence of the Copyright Law and ITE Law as the basis for protecting copyright, especially in the current digital era, has not been able to completely eradicate piracy activities in Indonesia. Piracy activity continues to be a phenomenon in society and is even increasing to the point where it has become a trend in itself for producing and enjoying pirated films. A series of irresponsible film piracy activities may arise as a result of pressure from economic factors that promise profits for several related parties and may also be caused by a legal culture in society that has not yet run optimally.

Based on this background, the author will focus on the legal regulations in Indonesia regarding copyright piracy in the cyber sphere and how the effectiveness of law enforcement for copyrights of national film works.

DISCUSSION

Legal Rules in Indonesia Concerning Copyright Piracy in Cyberspace

The act of duplicating, downloading data containing film works, and then spreading them is very easy to do through internet access. This is the development of national film piracy. The development of crime needs to be accompanied by the development of national law as an effort to protect society and combat crime. Legal protection can be interpreted as an effort bestowed on a particular legal subject by the state through the establishment of a series of statutory regulations which will be enforced as state law complete with the existence of sanctions that function as threats and are expected to be able to bring about a "deterrence effect" for the perpetrators. Legal protection in the form of positive law will guarantee certainty, usefulness, and legal justice as intended by the law. In general, the legal protection provided by the government through legal shields in the form of regulations will have two functions at once, namely repressive and preventive.

Criminal law policy, which comprises reasoned efforts to combat crime to attain national goals, primarily community protection and community welfare, is a crucial component of social policy, law enforcement policy, and criminal policy. According to Sudarto, the goal of legal politics, also known as legal policy, is to create sound laws that are appropriate for the time, the situation, and the state's policies. The laws created by these bodies are then expected to be used to express what is contained in society and to accomplish what is desired (Rayan Al Qabooli & Setiyono, 2022).

It is hoped that the criminal sanctions contained in the Copyright Law and these regulations will provide a deterrent effect for perpetrators of film piracy via the internet. This is expected to reduce cases of piracy committed by the people of Indonesia. Apart from that, the government has also taken preventive steps by establishing Regulation of the Minister of Law and Human Rights Number 14 of 2015 concerning the Implementation of Closure of Content and/or User Access Rights for Violations of Copyright and/or Related Rights in Electronic Systems as well as Regulation of the Minister of Communications and Information Technology Number 26 of 2015 concerning Implementation of Closing Content and/or User Access Rights Violations of Copyright and/or Related Rights in Electronic Systems. The regulation aims to provide more optimal protection of copyrights and/or related rights in electronic systems. In Article 15, it is explained that content and/or user access rights that violate copyright and/or related rights will be closed and announced on the official website of the ministry that handles government affairs in the field of communications and information technology. It is hoped that the threat of criminal sanctions contained in these regulations will provide a deterrent effect for potential perpetrators of film piracy via the Internet. Thus, it is expected to reduce piracy cases committed by Indonesian people.

In addition to these two rules, because the media used is internet-based or applications that use the internet, the ITE Law also poses a threat to perpetrators of film piracy through digital media. Law Number 11 of 2008 concerning Electronic Information and Transactions protects creators or copyright holders in this matter precisely in the provisions contained in Article 32 Paragraph (1). This article is aimed at someone with an intentional intention to take action to change, add, reduce, destroy, delete, hide, and send data from a data source to data recipients of electronic information in the form of one or a set of electronic data, including but not limited to voice writing, pictures, maps, plans, photos, electronic data interchange, electronic mail, telegrams, text and others and/or personal documents in the form of electronic information that is created, forwarded, sent, received or stored in analog, digital, electromagnetic, optical form or the like, private property or public property.

Some of the regulations explained above were deliberately formed by the government with various provisions in them that do not only contain preventive measures. The existence of the regulations as explained above of course also brings repressive

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efforts in the form of enforcing sanctions provisions which are regulated as the final protection for copyright holders by actually imposing penalties on perpetrators who have been proven to have committed copyright violations based on the decisions of Commercial Court judges. In more detail, repressive measures for violators of copyright law provisions can be taken through three types of law, namely civil, administrative, and criminal law..

Administrative efforts can be taken by copyright holders through reporting to the Director General of Intellectual Property. Before submitting a complaint/report to the Directorate General of Intellectual Property, creators or copyright holders should first give a subpoena/warning to the perpetrators who are suspected of committing copyright infringement. The violation referred to here is a violation with the aim of commercialization to obtain economic rights from a work that is not the copyright, but the copyright belongs to the copyright holder which is still legal and valid. Reports are submitted in writing using good and correct Indonesian to the Director General of Intellectual Property. The report must contain at least the identity of the complainant, proof of copyright, the address of the violating site/account, the type of infringing content, and the type of violation. Attached with a photocopy of the reporter's identity, a photocopy of proof of copyright ownership or related documents, and the report must be provided in hardcopy non-electronic form addressed to the Directorate General of Intellectual Property Rights. Administrative sanctions that will be imposed on copyright violators, especially in film piracy activities, usually refer to applicable laws and regulations, which can be in the form of fines, suspensions up to revocation of certificates and/or business licenses, temporary suspension of administrative services, and possibly closing sites, or closing perpetrator's social media account (Daniel et al., 2016).

Apart from the explanation above, there is a branch of forensic science that is relevant to proving cyber crimes, namely computer forensics. Computer forensics has a significant role in criminal acts of illegal access to electronic devices because it is one of the tools in criminal procedural law where information can be used to guarantee the authenticity of an electronic document or electronic document so that it can be detected. accepted as evidence in court (Hardianto et al., 2023). If the perpetrator of the crime is proven in court, repressive measures can be taken, namely by punishing the perpetrator. Punishment is the last option that is expected to be used as a law enforcement tool and create a deterrent effect on other actors

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Sociologically, Law Number 11 of 2008 Concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions is needed by the public to control the various activities they engage in while interacting in cyberspace. A guideline to safeguard net users' interests in accessing different types of information is necessary given the dynamics of information globalization. The provisions of Law Number 11 of 2008 concerning Information and Electronic Transactions, as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, are consistent with universally accepted religious, moral, and ethical ideals, enabling the information society to recognize, accept, and apply cyber law (including the international legal instruments that regulate it). The fundamental legal issue that frequently presents a practical barrier to law enforcement in the fight against global crime, including cybercrime, is a matter of jurisdiction. The issue of ambiguity surrounding the decision of jurisdiction in cyberspace is one that even legal professionals themselves admit to. According to Tien S. Saefullah, whereas communication and multimedia information are of a worldwide nature, a country's jurisdiction that is recognized by international law in the traditional sense is based on geographical and temporal bounds (Mansur, 2005).

Measuring the efficiency of a law cannot be separated from people's behavior toward awareness and compliance with the law (Heryani, 2012). The two factors of people's behavior are often put together in a wrong understanding, even though both have different meanings. Legal awareness refers to the awareness or values a person has regarding the existence of law, the function of law in society, and the importance of law. However, legal awareness does not guarantee that people will always obey the law.

These are some of the opinions of legal sociologists in understanding what is meant by legal awareness. Furthermore, the meaning of legal obedience and its difference from legal awareness that has been discussed previously is as follows. Legal obedience based on quantity can be categorized into three types, namely (Heryani, 2012, p. 192): a. Obedience is Compliance, obedience to a rule based on fear of being sanctioned if you violate the rule in question; b. Obedience is identification, and obedience to a rule that is based on fear of damaging good relationships with other people if you do not comply with the rule. c. Obedience is internalization, obedience to a rule is based on conformity between the internal values one believes in and the rule.

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compliance based on quantity can be categorized into three types, namely: a. Obedience is Compliance, obedience to a rule based on fear of being sanctioned if you violate the relevant rule; b. Obedience is identification, and obedience to a rule that is based on fear of damaging good relationships with other people if you do not comply with the rule. c. Obedience is internalization, obedience to a rule is based on conformity between the internal values one believes in and the rule.

So it can be concluded that the difference between legal awareness and legal obedience lies in the difference in the meaning of the two. Legal awareness refers to people's knowledge of applicable legal rules and individual decisions to comply or not comply with regulations. Meanwhile, legal compliance refers to people's behavior in following regulations as a result of various social and individual factors that influence their behavior. These factors may include fear of sanctions, fear of damaging good relationships with others, or the belief that obeying regulations is the right thing to do.

A large number of film piracy occurs not only in Indonesia but also in China and the United States, where students in China are similar to those in the United States, the consumption of paid films is replaced by unpaid films, this happens because most of it occurs due to the large number of pirated literature (Bai & Waldfogel, 2012). The low efficiency of policies related to law enforcement can be influenced by several factors, including relatively small fines imposed on perpetrators, lengthy court processes, and the small possibility of the perpetrator being caught (Seror & Portnov, 2020).

Apart from this, according to Lowry (2017) there are internal factors related to individual motivation in stealing various digital content, namely: 1) outcome expectations (consideration of rewards, perceived risks, and perceived sanctions), (2) social learning (positive and negative social influences and piracy habits), (3) self-efficacy and self-regulation (perceived behavioral control and low self-control), and (4) moral disengagement (morality, immorality, and neutralization).

To be a valid law, an element of coercion must exist in a rule. Therefore, the existence of an element of coercion is always related to the effectiveness of a provision in a statutory regulation. Many questions regarding the effectiveness of legal regulations highlight the threat of sanctions provided for in these regulations. So, it can be concluded that one of the factors that causes the ineffectiveness of legal regulations is the threat of coercion is not severe enough or because of other factors such as lack of socialization and communication about sanctions in these rules to the community (Heryani, 2012).

Due to limited infrastructure and facilities, law enforcement efforts to combat cybercrime are not yet at their best. Tools are a necessity for law enforcement in the fight against cybercrime because these crimes are characterized by the employment of both material and virtual tools in their commission. When the technology is used effectively, the time and location of cybercrimes can be determined; consequently, telematics analysis is required to find this crime. Onno W. Purbo noted that the approach truly depends on the application and network topology utilized to investigate, detect, and address this crime. Certain applications are available in backtrack and gnacktrack. This demonstrates the significance of having proper tools and resources for the pursuit of justice. The smooth operation of law enforcement is impossible without specific equipment or resources. These resources or facilities include among other things, qualified and educated human resources, effective management, enough tools and resources, and so forth. Law enforcement cannot succeed in its objectives if these conditions are not met (Rayan Al Qabooli & Setiyono, 2022).

Finally, the role of the community in choosing the attitudes of everyday behavior is very important in shaping the habits, trends, and patterns of social behavior in society. There is no effective legal regulation without support and efforts from society to enforce it. Legal awareness and obedience for every individual in society is a very important element in achieving the desired legal effectiveness.

On the other hand, legal regulations that do not follow the spirit of the nation, culture, or values that develop in society will not be effective, regardless of the purpose of their formation and the content of the articles. This can happen in the implementation of the Copyright Law in Indonesia. Even in the scope of the Internet of Things, it is assisted by the existence of the ITE Law, and Regulation of the Minister of Law and Human Rights Number 14 of 2015 concerning the Implementation of Closure of Content and/or User Access Rights for Violations of Copyright and/or Related Rights in Electronic Systems as well as Regulation of the Minister of Communication and Informatics Number 26 of 2015 concerning the Implementation of Closing Content and/or User Access Rights for Violations of Copyright and/or Related Rights in Electronic Systems regarding closing/blocking access rights and/or content that is suspected of violating Copyright. Even though the articles accommodate the need for copyright protection in Indonesia, piracy behavior is still widespread in society. Sociological factors of society, such as culture, social norms, values, and behavioral habits, play an important role in this matter. Legal norms have not been able to carry out their purpose as a tool of social engineering, as stated by Roscoe Pound and Mochtar Kusumaatmadja. Substantially good legal regulations will not be effective if they are not following the spirit of the nation, culture, or values that grow and develop in society.

Piracy is a problem that has been rooted for a long time, even before the presence of the Copyright Law in society. The presence of the Copyright Law by the government may be intended to overcome this problem. This is because the creative

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works sector, which also includes film creation, really requires the role of the state to intervene to create a balance between the interests of copyright holders and the interests of society (Supramono, 2010, p. 3). However, the Copyright Law, which is relatively new to the routine of Indonesian society, requires extra effort so that its existence can be optimally and effectively useful. Apart from strengthening law enforcement, the government also needs to build public awareness and legal compliance. The synergy between the existence of good legal rules and community behavior plays an important role in creating effective legal protection for copyright of film literary works

Efforts that can be made to change people's behavior can be carried out through persuasive steps such as providing education to the public through advertisements on television, social media that invites the public to watch legally, or by conducting campaigns with Indonesian filmmakers to make films. short stories that insert values capable of instilling an anti-piracy spirit, as well as a culture of respecting the works of the nation's children (Noviandy, 2016, p. 7). These efforts are made to build a synergy between the existence of existing legal regulations and people's behavior. So that legal protection for the copyrights of national film literary works can be realized logically and will not become a mere utopian legal ideal. In addition to this, the law that lives in society or moral norms (living law) is very influential on people's behavior in reducing criminal acts related to copyright piracy (Christianto, 2020).

CONCLUSION

The legal protection system for copyright owners, especially for copyright owners of film and literary works in Indonesia, has been guaranteed by a set of regulations which are a tool for the government to make efforts to prevent and take action against perpetrators of copyright violations in the world of Indonesian cinema. Law Number 28 of 2014 concerning Copyright, Law Number 11 of 2008 Juncto Law Number 19 of 2016 concerning Information and Electronic Transactions, Regulation of the Minister of Law and Human Rights Number 14 of 2015 concerning Implementation of Closure of Content and/or User Access Rights Violations of Copyright and/or Related Rights in Electronic Systems as well as Regulation of the Minister of Communication and Informatics Number 26 of 2015 concerning the Implementation of Closure of Content and/or User Access Rights for Violations of Copyright and/or Related Rights in Electronic Systems, provides a preventive role with the threat of sanctions stated in the provisions of the applicable legal regulations. It is hoped that this system will be able to provide a deterrent effect for potential perpetrators of copyright infringement and prevent copyright infringement from occurring in the world of Indonesian cinema..

To date, copyright regulations for Indonesian films have not been effective in dealing with piracy activities which continue to increase throughout the country, even with the development of increasingly sophisticated modes and media for film distribution, including through social media platforms and private messaging service provider applications. Community awareness and obedience to law are the main factors in the success of legal regulations. People must choose to behave appropriately so that existing habits, trends, and patterns of social behavior can be formed. Even though the existing legal regulations are very good, without support and efforts from the community, they will not be effective in enforcing legal compliance. Legal regulations that do not follow the spirit of the nation, culture, or values that exist in society will not be effective, even though their aims are very good. However, adaptation must take into account the original values that have long been rooted in Indonesia. The government must strengthen law enforcement and build public awareness and legal compliance with persuasive steps, such as involving Indonesian filmmakers to socialize the anti-piracy spirit and appreciate the work of the nation's children. With synergy between existing legal regulations and appropriate community behavior, copyright protection for national literary and film works is not impossible to achieve..

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