

THE EFFECTIVENESS OF COMPLAINT OFFENSE (*KLACHTDELICT*) ON COPYRIGHT INFRINGEMENT

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Abstract

With a broad scope of Copyright in Indonesia, its regulation must develop progressively following human behavior development, including overcoming the offense against it. This writing presents the effectiveness of applying complaint offense and factors that affect its effectiveness. This research uses the empirical juridical approach. This study found that the complaint offense does not necessarily prohibit law enforcement officials from initiating investigations without any complaint, at least until the case is filed. A synergy between the state and individuals (creators) will suppress the number of copyright infringements in Indonesia. Based on the widespread practice of piracy in society, the factor inhibiting the effectiveness of law enforcement lies in the lack of understanding of the concept of copyright protection. Law enforcement can only take action against copyright offenders by confirming the embodiment between the expression of the complainant's copyrighted work and the alleged one. Copyright Law enforcement still needs the presence of practical means and adequate infrastructure to minimize basic reporting errors due to misrecognizing the characteristics of copyright infringement.

Keywords: *complaint offense; creator; copyright infringement.*

Abstrak

Dengan cakupan Hak Cipta yang luas di Indonesia, pengaturan tentangnya harus berkembang secara progresif mengikuti perkembangan perilaku manusia, termasuk mengatasi pelanggaran terhadapnya. Tulisan ini memaparkan efektivitas penerapan delik aduan dan faktor-faktor yang mempengaruhi efektivitasnya. Penelitian ini menggunakan pendekatan yuridis empiris. Studi ini menemukan bahwa delik aduan tidak serta merta melarang aparat penegak hukum memulai penyelidikan tanpa adanya pengaduan, setidaknya sampai gelar perkara dilakukan. Sinergi antara negara dan individu (pencipta) akan menekan angka pelanggaran hak cipta di Indonesia. Berdasarkan maraknya praktik pembajakan di masyarakat, faktor penghambat efektivitas penegakan hukum terletak pada kurangnya pemahaman tentang konsep perlindungan hak cipta. Penegak hukum hanya dapat menindak pelanggar hak cipta dengan menegaskan perwujudan antara ekspresi karya berhak cipta pelapor dan yang diduga. Penegakan hukum Hak Cipta masih membutuhkan adanya sarana praktis dan infrastruktur yang memadai untuk meminimalkan kesalahan pelaporan dasar karena salah mengenali karakteristik pelanggaran hak cipta.

Kata-kata Kunci: *delik aduan; pencipta; pelanggaran hak cipta.*

Introduction

The fast-paced development of technology and information requires increased protection and legal certainty guarantees for creators, copyright holders, and attorneys.¹ The progress of the times can no longer be avoided.² This means that the development of technology, information, and communication can never be separated from the Creator's copyrighted work.³ So it takes the existence of law as a tool to balance people's lives. It conforms to the legal development theory initiated by Mochtar Kusumaatmadja, in which all community behavior may be developed and regulated through law.⁴

Intellectual property rights are derived from artistic practices and human thought, which are conveyed to the public in different ways, have advantages, encourage human life development, and have economic value.⁵ As a property right, Intellectual Property Rights arise from the work, initiative, or human copyrights. In other words, Intellectual Property Rights arise based on the existence of the human intellect.⁶ Generally, intellectual property rights are concerned with the protection of commercially valuable ideas and knowledge.⁷ The concept of Intellectual Property Rights usually includes more information regarding the various forms of Intellectual Property Rights, such as copyrights, trademarks, patents, industrial designs, integrated circuit layout designs, trade secrets, and new varieties of plants.⁸ Copyright has a particular position compared with other intellectual property rights incorporated into industrial property rights because the copyrights have a broader scope. After all, it

¹ Lailana Rafianti, "Sejarah Dan Politik Hukum Hak Cipta," *Jurnal Bina Mulia Hukum* 2, no. 2, 2018: P. 269, <https://doi.org/10.23920/jbmh.v2n2.21>.

² Fitri Pratiwi Rasyid, "Kajian Relevansi Delik Aduan Pada Implementasi Undang-Undang Hak Cipta," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 32, no. 2, 2020: P. 213, <https://doi.org/10.22146/jmh.51060>.

³ Law Number 28 of 2014 concerning Copyright (General Elucidation of Law Number 28 of 2014 concerning Copyright, Supplement to the State Gazette of the Republic of Indonesia Number 5599).

⁴ Mochtar Kusumaatmadja, H.R. Otje Salman, and Eddy Damian, 2013, *Konsep-Konsep Hukum Dalam Pembangunan (Kumpulan Karya Tulis)*, Alumni, Bandung, P. 88.

⁵ Darwance, Yokotani, and Wenni Anggita, "Dasar-Dasar Pemikiran Perlindungan Hak Kekayaan Intelektual," *PROGRESIF: Jurnal Hukum* 15, no. 2, 2020: P. 195, <https://doi.org/10.33019/progresif.v15i2.1998>.

⁶ Sulasi Rongiyati, "Pelindungan Hukum Hak Kekayaan Intelektual Pada Produk Ekonomi Kreatif (*Protection of Intellectual Property Rights on Creative Economic Products*)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 9, no. 1, June 1, 2017: P. 42, <https://doi.org/10.22212/jnh.v9i1.1001>.

⁷ Tim Lindsey et al., 2004, *Hak Kekayaan Intelektual: Suatu Pengantar*, Alumni, Bandung, P. 3.

⁸ Candra Irawan, 2011, *Politik Hukum Hak Kekayaan Intelektual Indonesia: Kritik Terhadap WTO/TRIPs Agreement Dan Upaya Membangun Hukum Kekayaan Intelektual Demi Kepentingan Nasional*, Mandar Maju, Bandung, P. 43.

includes science, art, and literature and is in the form of immaterial rights. These, namely, rights, cannot be seen and touched but can be owned.⁹

In copyright, there are two areas of legal protection, which include economic and moral rights. Economic rights are the right to receive economic rewards for duty by engaging in various practices specified by the author in law provisions. Economic rights are the right to receive economic rewards for duty by engaging in various practices specified by the author in law provisions.¹⁰ Meanwhile, moral rights, such as the right to credit, are the right to be attributed.¹¹ The copyright is associated with internet content: films, software, databases, literary works, science, books, pictures/photography, music, and other forms. However, the reality is that there are often copyright violations in people's lives.¹²

Fitzgerald's theory of legal protection explains that legislation seeks to coordinate and combine different interests in society because protecting particular interests can only be achieved by restricting others' interests.¹³ The law and state aim to create order and stability.¹⁴ People (without discrimination) can seek justice by filing petitions, appeals, and litigation between criminal, civil, and disciplinary courts and being heard in a free and fair legal process that follows procedural law that provides a detailed investigation. A fair and honest judge must act objectively to obtain a reasonable and proper verdict.¹⁵

The application of the theory can be identified in the Copyright Law of 2014. One of them is the complaint offense in Article 120. The creators have been freed and given the right to submit reports alleging wrongdoing in their creations to decide the next legal steps. In former regulation, the Copyright Law of 2002 stipulated that a criminal act against copyrights is an ordinary delict, not a compliant offense.¹⁶ This change raises new problems regarding handling copyright infringement, especially during the current digital development.

The results of the author's interview with Mr. Achmad Iqbal Taufiq, as Head of the Legal Considerations and Litigation Section of the Director-General of

⁹ Hanafi Amrani, "Urgensi Perubahan Delik Biasa Menjadi Delik Aduan Dan Relevansinya Terhadap Perlindungan Dan Penegakan Hak Cipta," *Undang: Jurnal Hukum* 1, no. 2, 2018: P. 351 <https://doi.org/10.22437/ujh.1.2.347-362>.

¹⁰ Ibid, P. 353.

¹¹ Hanafi

¹² Rasyid, P 213.

¹³ Rita Teresia, "Perlindungan Hukum Hak Cipta Terhadap Pemilik Lagu Atas Perbuatan Pengunduhan Lagu Melalui Situs Tanpa Bayar Di Internet," *JOM Fakultas Hukum* II, no. 2, 2015: P. 5, <https://media.neliti.com/media/publications/34376-ID-perlindungan-hukum-hak-cipta-tehadap-ppemilik-lagu-atas-perbuatan-pengunduhan-la.pdf>.

¹⁴ Satya Arinanto, 2009, *Memahami Hukum Dari Kontruksi Sampai Implementasi*, ed. Ninuk Triyanti, Rajagrafindo Persada, Jakarta, P. 11.

¹⁵ Article 12 of Law Number 39 Year 1999 concerning Human Rights.

¹⁶ Ari Wibowo, "Justifikasi Hukum Pidana Terhadap Kebijakan Kriminalisasi Pelanggaran Hak Cipta, Serta Perumusan Kualifikasi Yuridis Dan Jenis Deliknya," *Jurnal Hukum Ius Quia Iustum* 22, no. 1, 2015: P. 70, <https://doi.org/10.20885/iustum.vol22.iss1.art3>.

Intellectual Property, said there is still an urgency to understand copyright infringement by the Creator. One time, the Director-General of Intellectuals rejected a book writer's report claiming that another party infringed his work. The reporter claimed that a computer program worked by another party has similarities with his book. The rejection is based on the different forms of produced copyright works. Books and computer programs fall in different manifestations. A thing that can be considered copyright infringement is if it has the same idea and forms of expression between the previous and the following working products.

The idea that copyright is a civil right has given the Creator an absolute right (prerogative) to defend their copyright. Thus, the status of the delict is changed from an ordinary to a complaint offense. Only the Creator, copyright holder, representative attorney, and other entitled party can file a complaints offense in positive Indonesian law.¹⁷ Therefore, state apparatus such as the police cannot follow up on a case, as in ordinary offenses. As the owner of the civil rights, the Creator has the right to allow or prohibit other parties from using their work. What kind of action is it to take against the parties suspected of violating their rights, whether filing a report to law enforcement officials as a criminal case or as a civil cases through the procedure for claiming compensation?¹⁸ only the copyright holder consideration for doing it. Therefore, the compliant offense conceptually creates a harmonious mindset by putting copyright as a civil right.¹⁹

However, the internet has essential characteristics that can affect law enforcement, including no geographic boundaries, anonymity on the internet, and the ability to escape surveillance.²⁰ The emergence of problems regarding the lack of understanding of copyright infringement creates new conflicts over copyright protection effectiveness. Is it appropriate for copyright infringement to remain a complaint offense considering the limitation of creator understanding upon the characteristic of copyright infringement?

In the previous research entitled "Implementation of Complaints in Copyright Infringement on T-Shirts Issued by Jogger Based on Law Number 28 of 2014 concerning Copyright," Wendy and I Ketut Westra discuss legal protection for T-shirt copyright owners Shirt Jogger, as well as analyzes how the application of complaint offenses cannot run properly in cases of trademark copyright infringement. One factor is that the Indonesian culture and mindset

¹⁷ Yati Nurhayati, *Pergeseran Delik Pelanggaran Hak Cipta Dalam Undang-Undang Hak Cipta Nomor 28 Tahun 2014*, ed. Irfani Irfani (Banjarmasin: Universitas Islam Kalimantan Muhammad Arsyad Al-Banjary Banjarmasin Dewan, 2019), P. 51, <http://eprints.uniska-bjm.ac.id/198/>.

¹⁸ Trias Palupi Kurnianingrum, "Materi Baru Dalam Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta (The New Material on Copyright Act Number 28 Year 2014)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 6, no. 1, 2015: P. 100, <https://doi.org/10.22212/jnh.v6i1.249>.

¹⁹ O.K. Saidin, 2010, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, Rajagrafindo Persada, Jakarta, P. 48.

²⁰ Yusran Isnaini, 2009, *Hak Cipta Dan Tantangannya Di Era Cyber Space*, Cet. 2, Ghalia Indonesia, Bogor, P. 25.

still think creation is not an individual right but a collective right. They assume that the application of the complaint offense is still experiencing problems.²¹

Another article, "Analysis of the Application of Complaint Offenses in the Copyright Law to Overcome Copyright Crimes in Indonesia," was written by Padrisan Jamba. This article discusses the copyright law amendment regarding offenses, from ordinary offenses to complaint offenses. It revealed that in its application, the complaint offense on copyright infringement still has shortcomings, with no explicit mention of the party entitled to make a complaint.²²

Article with the title: "Study on the Relevance of Complaints on the Implementation of Copyright Laws" by Fitri Pratiwi Rasyid, in her writings, considers that the application of complaint offenses is irrelevant to be applied to provide legal protection for copyrights or works because it hampers the performance of the apparatus. It considers that enforcement officers must be free to act against a law violation.²³

Methods

This research is carried out in an empirical-juridical manner, a legal research method that examines applicable legal provisions and what happens in reality in society or research conducted on the actual situation that occurs in society, intending to find facts that are used as research data. Then, the data is analyzed to identify problems that ultimately lead to problem-solving.²⁴ In empirical research, the data studied are based on facts related to the problems in the research.²⁵ The data collection technique used is library research and observation, which is carried out related to the problems in the research. The data sources consist of primary data sources, namely laws and regulations, tertiary data sources containing scientific writings such as books and journals, and related electronic sources. This research is descriptive-analytical, which is making systematic sensing of facts.²⁶ The data analysis is carried out using a qualitative study, a method of data analysis using a

²¹ Wendy dan Iketut Westra, Penerapan Delik Aduan Dalam Pelanggaran Hak Cipta Pada T-Shirt Yang Dikeluarkan Joger Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta, *Jurnal Kertha Semaya*, Vol. 8 No. 2 Universitas Udayana, Tahun 2020, hlm. 45-62

²² Padrisan Jamba, Analisis Penerapan Delik Aduan Dalam Uu Hak Cipta Untuk Menanggulangi Tindak Pidana Hak Cipta Di Indonesia, *Jurnal Cahya Keadilan*, Vol 3. No. 1 ISSN: 2339-1693, Universitas Putera Batam, Tahun 2019, hlm 32-49.

²³ Fitri Pratiwi Rasyid, Kajian Relevansi Delik Aduan Pada Implementasi Undangundang Hak Cipta, *Departemen Hukum Perdata, Fakultas Hukum, Universitas Hasanuddin*, Tahun 2019, hlm 213-226.

²⁴ Bambang Waluyo, 2002, *Penelitian Hukum Dalam Praktek*, 1st ed. Sinar Grafika, Jakarta, hlm. 15-16.

²⁵ Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilam* 7, no. 1, 2020: P. 20–33, <https://doi.org/10.14710/gk.7.1.20-33>.

²⁶ Ronny Hanitjo Soemitro, 1990 *Metodologi Penelitian Hukum Dan Jurimetri*, Cet. 4, Ghalia Indonesia, Jakarta, hlm. 22.

phenomenological explanation method (narrative; sentences) based on data and facts collected previously.

Results and Discussion

Effectiveness of the Application of Offense Complaints

In its application, there are at least three reasons why complaint offenses in the copyright regime are considered entirely appropriate due to ordinary offenses' several weaknesses.²⁷ *Firstly*, in conducting legal processes, law enforcement officials find difficulties in determining whether copyright infringement has occurred if they did not compare the original work with the infringed on. As a result, law enforcement authorities find it impossible to take action without receiving a report from a creator or a copyright holder who believes that the infringement has compromised their exclusive rights. *Secondly*, in court, law enforcement authorities find it impossible to decide if an entity has obtained authorization from the creator to replicate or publicize a work if there has been no previous lawsuit from the creator or copyright holder. *Thirdly*, if law enforcement officials have processed a copyright infringement case, the creator or copyright holder will lose the opportunity to choose a legal settlement outside the court, for example, compensation or peace. Therefore, the settlement was pursued peacefully outside the court. However, because copyright crime is an ordinary crime, generally, law enforcement officials who are aware of copyright infringement continue to proceed with the criminal law process even though there has been a peace agreement between the copyright holder and their offender. This condition, of course, will complicate the position of the parties who have agreed to reconcile previously.²⁸

A complaint offense is a type of offense that requires a complaint from a victim or party who feels aggrieved to continue the legal process. Whereas in ordinary offenses, law enforcers can take legal action against an offense, even without a party's complaint. The creator's legal arrangement with the suspect falls under civil law (*privaatrechtelijk*). So complaint offense is more precise if a passive system is used. The ordinary offense in the Copyright Law of 2002 provides that law enforcement can be implemented without direct consent or claim by a person who feels aggrieved by an illegal act, but rather is turned over by law enforcement authorities, where the execution is to law enforcement tools to determine whether and to what degree. Criminal assaults against copyright are carried out by prioritizing the public interest.²⁹

As an integral part of the legal science, criminal law uses individual interest as a base to determine an act as a crime or offense. If a person's freedom violates

²⁷ Abdul Gani Abdullah and Dkk, 2008, "Kajian Tim Naskah Akademik Rancangan Undang Undang Tentang Cipta (Perubahan UU No. 19 Tahun 2002)", Departemen Hukum dan HAM RI, Jakarta.

²⁸ Nurhayati, *Ibid*, P. 54.

²⁹ Wirjono Prodjodikoro, 1986, *Asas-Asas Hukum Pidana Di Indonesia*, Eresco, Bandung, P. 81.

another person's freedom, then, in that case, the criminal law imposes sanctions on the violators. Private interest is the reason for the existence of the law itself, ensuring that others' freedom is not exercised arbitrarily. Based on its history, criminal law originated from private law, which later developed into public criminal law, which subsequently placed the power to conduct the law in the state's hands (ruler) to create public order. In its development, every citizen's private interests become public interests that are then handed over to the state to be upheld.³⁰

There is still a private aspect of that the state cannot fully enforce without consent from a victim or aggrieved party. The nature of a complaint offense in criminal law demonstrates this. The phrase public and private criminal law shows that the separation between public and private law is based on the protected interest (private law protecting private interests and public law protecting public interests) becomes irrelevant. According to Hans Kelsen, the real difference between public and private law does not lie in the substantive legal norms (material law) but procedural law norms (formal law).³¹ It should be remembered that the public interest is the private interest of every citizen, so there is no public interest without private interests.

Even though private and public law originated from individual interests, the complaint offense and the common offense sharpen the difference between the two. A. Zainal Abidin Farid said that the complaint offense is created by the state where the prosecution of a criminal act depends on the complaint of the injured or the interested party. This statement is an assumption on a premise based on reality in society. It is common for victims or those who have been harmed for various reasons they think the suspect does not need to be prosecuted in front of a district court. Suing in court does not benefit them, or they feel that there is not much harm, while the state's interests are also irrelevant.³² As a complaint offense based on private interests, it does not mean that it does not have public interests to fulfilled. If it does not exist, there will be a contradiction with the statement that the public interest consists of citizens' private interests.

As explained above, private interest subjectively assesses whether a party has been harmed or otherwise. The existence of a complaint offense shows that the state has accommodated every citizen's private interests so that if a creator feels harmed, they are protected by this particular criminal regulation. It is different from an ordinary offense where the priority of protection does not lie in the aggrieved/interested parties' private interests but in every citizen's private interest, referred to as the public interest.³³

³⁰ Andi Sofyan and Nur Azisa, 2016, *Buku Ajar: Hukum Pidana*, ed. Kadarudin, Pustaka Pena Pers, Makassar, P. 7-8.

³¹ Hans Kelsen, 2018, *Teori Umum Hukum Dan Negara*, Cetakan X, Nusamedia, Bandung, P. 295.

³² Zainal Abidin Farid, 2014, *Hukum Pidana 1*, Sinar Grafika, Jakarta, P. 383.

³³ *Ibid*, Rasyid, P. 216.

From the enforcement aspect, it is said that the state has enforced the complaint offense based on the complaint of the aggrieved or interested party. Offenses are usually carried out directly by the state without requiring a complaint. However, R. Soesilo believes the complaint is needed for the prosecution and not for the investigation, which means the police may initiate an investigation before any complaint is filed. Based on this doctrine, the related government agencies have the authority to conduct investigations of an alleged copyright violation. For this reason, it is possible that in the future, the agencies may send a letter of recommendation or report, either digitally or in writing, to the creator based on an investigation that the government has carried out to protect both private/individual and public interest. The creator or copyright holder can decide their further action upon the recommendation. This plan may be colouring the implementation of the complaint offense and creating synergy between the state and citizens in suppressing the number of copyright violations in Indonesia, leading to the effectiveness of copyright law.

From the aspect of the impact caused by a criminal act, the common offense may cause a collective impact, where the community feels unrest even though they are not the victim of the crime. For example, article 336 of the Criminal Code on thievery is an ordinary offense; even if thievery happened in one house, the community would feel the fear arising from the crime.

Interestingly, Law Number 28 of 2014 regarding Copyright places the entire series of criminal acts in this law as complaint offenses. With a broader scope of copyright crimes and heavier punishment, it is hoped that better protection will be provided, better than its predecessor.³⁴

The ASEAN Economic Community (MEA) has made foreign copyright works easily enter other MEA member countries. Some ASEAN countries have also applied complaint offenses against copyright infringement: Malaysia through the Copyright Act 1987 and Thailand with the Copyright Act No. 2537. Suppose the Indonesian government keeps copyright infringement as a common offense. In that case, it gives advantages to a foreign creator who felt violated by copyright infringement happened in Indonesia, that they do not have to come and report the crime in Indonesia, since the official will act upon any violence without their consent. On the other hand, an Indonesian creator who feels violated in one of the two countries will not be fully protected since they were implementing the complaint offense, which means that law enforcement officials can take action against any copyright offense after the victim files a report.³⁵

³⁴ Nurkhamid Widi Nugroho and Sri Endah Wahyuningsih, "Efektifitas Pelaksanaan Pasal 120 Undang-Undang Nomor 28 Tahun 2014 Dalam Memberantas Tindak Pidana Hak Cipta Di Kota Semarang," *Jurnal Hukum Khaira Ummah* 13, no. 1, 2018: P. 13, <http://jurnal.unissula.ac.id/index.php/jhku/article/view/2578>.

³⁵ Ari Juliano Gema, "Tindak Pidana Hak Cipta: Lebih Baik Delik Biasa Atau Delik Aduan," Blogspot, 2008, <http://arijuliano.blogspot.com/2008/02/tindak-pidana-hak-cipta-lebih-baik.html>.

Another factor that becomes the basis for changing the type of offense of copyright infringement is Indonesian participation in the World Trade Organization (WTO), which enforces the TRIP Agreement where one of its provisions asserts intellectual property rights as a private right.³⁶ Consequently, Indonesia is bound by the TRIP Agreement provisions, including intellectual property rights and exclusive civil rights. The complaint offense is deemed more appropriate for criminal proceedings against copyright infringement.³⁷

Further, articles 54 and 55 of Law no. 28 of 2014 give protection from any copyright violation through internet media. The provisions are detailed by the Joint Regulation between the Ministry of Law and Human Rights (No. 14 of 2015) and the Ministry of Communication and Information Affairs (No. 26 of 2015) regarding the closure of content and/or copyright offender access rights and/or other rights related to the internet system. Since the regulation applies the complaint offenses, every creator, copyright holder, attorney, or other rights holder who feels that their work is suspected of being infringed by another party has the right to report the allegation to the Director-General of Intellectual Property. According to Mr. Achmad Iqbal Taufiq, the Head of the Legal Considerations and Litigation Section, there is a reporting procedure that needs to be followed. Firstly, the aggrieved party has the right to complain or report to the Civil Servant Investigator (PPNS) of the Directorate General of KI by stating which website it is and making a list. Secondly, the Directorate General of KI will take digital forensic action by sending experts sworn in and understanding information and technology. Then, the case title is carried out. If the reported website has been proven to commit copyright infringement, the Director-General of KI will send a letter of recommendation to the Ministry of Communication and Information (KOMINFO) as the authoritative agency.

Factors Affecting the Effectiveness of the Application of Offense Complaints

According to Lawrence M. Friedman, as part of the social system, law consists of three aspects.³⁸ *Firstly*, the legal substance, including regulations, habits, pattern, human norms and traditions, and product of law created by individuals in the legal system, such as legislation and court. *Secondly*, the legal structure is a framework, a part that endures, a section that shapes and limits all law enforcement agencies. The justice framework in Indonesia and law enforcers include police, advocates/attorneys, prosecutors, and judges; *Thirdly*, legal culture is a collection of principles and social factors that govern how the law is applied, avoided, or abused by society.

³⁶ Achmad Zen Umar Purba, 2016, *Perjanjian TRIPs Dan Beberapa Isu Strategis*, Alumni, Bandung, P. 16.

³⁷ Academic Paper on the Draft Law on Copyright 2013.

³⁸ Lawrence M Friedman, 1975, *The Legal System: A Social Science Perspective*, Russel Sage Foundation, New York, P. 29, <https://muse.jhu.edu/book/38415>.

Based on the legal system by Lawrence M. Friedman, several factors cause the ineffectiveness of the implementation of Article 120 of Law no. 28 of 2014. These factors consist of the following:³⁹ *Firstly*, the legal substance factor. The normative issue says that Article 120 of Law Number 28 of 2014, which puts the whole series of criminal acts in this law, is categorized as a complaint offense. It means the investigator has no authority to proceed investigation without a complaint from the creator or copyright holder. *Secondly* is the legal structure factor. Article 120 of Law no. 28/2014 contains a provision that copyright crime is a complaint offense that this results in slow law enforcement and performance in eradicating copyright crimes. *Thirdly* is the legal culture factor. People's habit of obtaining economic benefits quickly through shortcuts by committing to copyright infringement has resulted in ineffectiveness in eradicating copyright crimes.

Related to the rejection of the copyright infringement report by the Director-General of Intellectual, it may be concluded that the creator's understanding is still relatively low. This condition contributes to the slow enforcement of copyright law in Indonesia even though the number of copyright registration arises. The Intellectual Property of Directorate General notes that there has been an increase in copyright applicants. The data are taken from the Directorate General of Intellectual Property 2019 annual book report, which is stated in the table below:

Table 1.

Data on Application for Registration of Intellectual Property Rights in Indonesia 2015 - 2019

Number	Time	Registration Application
1.	2015	6.154
2.	2016	7.553
3.	2017	19.220
4.	2018	35.105
5.	2019	48.069
	Total of Registration Application	116.101

Source: 2019 Annual Report of the Directorate General of Intellectual Property

According to national copyright law article 1 number 1 of Law No. 28 of 2014, "Copyright is an exclusive right of the author vested automatically based on the declaratory principle..."it means that to acquire the rights, the creator or author does not have to register or record their works to the authorized institution, as affirmed by article 64 paragraph (2) of the Law. However, when protecting personal interests, a creator should be mindful of the need to file the copyright to strengthen their position as the rights holder. Because, once they enter the commercial realm, they would be vulnerable to lawsuits or disputes. There are

³⁹ Nugroho and Wahyuningsih, *Op. cit.* P.16.

some benefits of copyright recordation, such as:³⁷ a) Anticipating the use of copyrighted works without permission by other parties; b) Anticipate future disputes with copyright holders; c) This tool requests the cancelation of creation by other parties without rights.

According to Soerjono Soekanto, the effectiveness of law can be determined by five factors:⁴⁰ law and regulations factors, law enforcement officers factors, law enforcement supporting facilities, community/society factors, and cultural factors. The legal culture have become the biggest challenge in copyright protection in Indonesia. Indonesia is included in the "priority watchlist country" by the United States.⁴¹ The theory of legal effectiveness by Soerjono Soekanto is closely related to the theory by Romli Atmasasmita, where the factors that impede law enforcement efficacy do not just exist in the behavioural mindset of law enforcement officers, but instead in the socialization of the law, which is often omitted.⁴²

Hans Kelsen stated that effectiveness is a condition of validity, not a reason for validity. The validity of a norm.⁴³ Effectiveness describes society's reality, whether they have obeyed the law. However, the effectiveness must be measured in a valid legal order based on necessity, not reality.⁴⁴ Based on the author's opinion, the existing effectiveness level may be used as a baseline for further improvement in law enforcement.

Copyright Infringement

Copyright infringement occurs when it is found that another party outside the Creator is doing something that should be the according to the creators of the copyright holder's exclusive right. Copyright violations fall into three categories, namely as follows: a) Direct violation can be in the form of producing by imitating the original work, b) violation based on authority can be violation based on authority, imposes accountability on parties deemed to have the authority, c) indirect violation, the offender should know that the act is a violation.

Copyright infringement can be classified into two main parts: copyright infringement from a civilian aspect and copyright violation from a criminal aspect. Copyright infringement from a criminal aspect means that a violation of the law that can impact the state's interests, while copyright infringement from a civil aspect means that there is a violation of the law, which results in losses to individual Copyright holders.⁴⁵

⁴⁰ Soerjono Soekanto, 2008, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Rajagrafindo Persada, Jakarta, P. 8.

⁴¹ Syafrinaldi, 2006, *Hukum Tentang Perlindungan Hak Milik Intelektual Dalam Menghadapi Era Globalisasi*, UIR Press, Riau, P. 37.

⁴² Romli Atmasasmita, 2001, *Reformasi Hukum, Hak Asasi Manusia & Penegakan Hukum*, Mandar Maju, Bandung, P. 55.

⁴³ Kelsen, P. 237-238.

⁴⁴ Rasyid, P. 222.

⁴⁵ Henry Soelistyo, 2011, *Hak Cipta Tanpa Hak Moral*, 1st ed. Rajawali Pers, Jakarta, hlm. 23.

In the privilege that every Intellectual Property Rights holder has, it is appropriate if the criminalization of Intellectual Property Rights violations is possible only as a complaint offense, because to sue or not to sue is the prerogative of the right owner. By making this offense an ordinary offense, the police's authority or PPNS investigation initiative, which should have remained in the public domain, has entered the private sphere. It also means interference with the copyright holder's privileges, because regardless of whether he feels harmed or objected to, the police are still authorized and even must take action against any acts suspected of fulfilling the elements of copyright infringement.⁴⁶

However, the Creator is also required to understand legal protection, where the copyright consists of the scope of protection of arts, literature, and science. Then, the protection provided is automatic and not only protects ideas. It means that the work that has not been realized in a tangible form where the benefits can be felt is not entitled to be protected by law. Here, several elements must be understood by the Creator regarding the criminal provisions of the offense of complaint, where every alleged violation of copyright that is entitled to be protected by law is: firstly, if every person without the right commits a rights violation; secondly, commits economic rights violations; and thirdly, specifically for commercial use, punishment is carried out. In connection with this, it is also required that the Creator must pay attention to the conformity of the expression that is manifested must be the same as the work of the creation (for example, if the work is a computer program, the alleged copyright violation is also required to be a computer program). Every copyright infringement is always directly related to imitating the form of expression of ideas from an existing work. Thus, taking someone else's idea and putting it in a new material form is not copyright infringement. However, copying someone else's idea by taking a substantial part of an idea's expression is a copyright infringement that, without rights, has reproduced and reproduced creation.⁴⁷

In the case of a complaint offense, it means that the government gives the broadest possible freedom to the Creator to choose his legal remedies to be carried out, either filing a lawsuit to the Commercial Court or reporting allegations of copyright infringement to the authorities. If using a criminal instrument, then based on Article 1 paragraph (1) of the Criminal Code, a person must fulfill the following three things; namely, there is a specific criminal norm, a criminal norm based on law, and said criminal norm must have come into force before the violation. However, if it is related to an application of offense, this will be divided into two main elements, namely:⁴⁸ a) Subjective main elements, namely the basic principles of criminal law, states "there is no punishment if there is no mistake., b) A primary

⁴⁶ Nurhayati, hlm. 38.

⁴⁷ Elyta Ras Ginting, 2012, *Hukum Hak Cipta Indonesia Analisis Teori Dan Praktik*, Citra Aditya, Bandung, P. 198.

⁴⁸ Nurhayati, P. 58.

objective element is dividing the elements into three definitions—first, human actions in act and omission. The act is active or positive action. Meanwhile, exclusion is either a stagnant condition or a hostile act. In other sentences, it is either let go or silent. Second, due to human action, such as eliminating, destroying, and endangering the interests defended by law, such as life, body, and freedom.

Authors can also use civil law instruments in enforcing copyright law based on Law no. 28 of 2014. A civil case can be imposed based actions against the law. Going against these rules is a violation of other people's rights. Downloading or otherwise commercializing someone else's copyright data is considered a violation of the copyright holder's economic rights since the copyright holder has the sole right to use the economic rights found in the copyright.⁴⁹ Then, a breakthrough in copyright protection by Law no. 28 of 2014 is through alternative dispute resolution, arbitration, or litigation. This provision emphasizes that if a copyright dispute occurs, it must first attempt to solve the case by mediation before pursuing criminal charges.⁵⁰ Likewise, when one of the parties is outside the country, the copyright dispute settlement accommodates through mediation before making criminal charges.⁵¹

The Copyright Law's criminal provisions function as an *ultimum remedium*, which means that the criminal law must be used as a last resort in law enforcement.⁵² Article 105 of the Copyright Law states "the right to file a civil suit for infringement of copyright and/or related rights does not reduce the rights of the creator and/or the owner of related rights to sue criminally." A case's settlement can be resolved primarily through several channels such as arbitration, negotiation, mediation, civil, or administrative law. After resolving the demands for compensation through one of those legal action, then as a last resort, only the party who feels aggrieved can file a criminal charge.

Conclusion

Changing an ordinary offense into a complaint offense has positively impacted Indonesia's copyright concept by giving the creator complete freedom over his/her creations. However, according to R. Soesilo, the complaint offense was based on limited regulation of prosecution, but it did not mean that the state could not initiate an investigation. It is hoped that there will be synergy between the state and the people, especially authors, to overcome the phenomenon of copyright

⁴⁹ *Ibid*, P. 60.

⁵⁰ Article 95 Paragraph (1) of Law Number 28 Year 2014 concerning Copyright: "Copyright Dispute Resolution can be Made through Alternative Dispute Resolution, Arbitration, Or Court"

⁵¹ Article 95 Paragraph (4) of Law Number 28 Year 2014 concerning copyright: "Apart from copyright infringement and / or related rights in the form of piracy, as long as the disputing parties are known to exist and / or are in the territory of the Republic of Indonesia."

⁵² Jan Rummelink, 2003, *Hukum Pidana: Komentar Atas Pasal-Pasal Terpenting Dari Kitab Undang-Undang Hukum Pidana Belanda Dan Padanannya Dalam Kitab Undang-Undang Hukum Pidana Indonesia*, Gramedia Pustaka Utama, Jakarta, P. 14-15.

infringement, especially those on the internet. However, the state has provided a straightforward platform and protection for creators to then be able to file complaints about suspected copyright infringements that have occurred. With the change of an ordinary offense into a complaint offense, it is hoped that everything can be more explicit and more accessible in court evidence because the plaintiff is the creator who feels aggrieved. However, the complaint offense's application does not entirely protect the creator as the exclusive rights holder. The creator's lack of knowledge and awareness of copyright infringement forms and elements has become a problem that slows down the effectiveness of copyright protection in Indonesia. Although it can be said that the application of the complaint offense is by copyright in the form of individual ownership, however, the role of the government is to improve facilities and infrastructure to make it more accessible, especially for creators to report, and avoid basic mistakes such as copyright violation misunderstanding.

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