
Integration In Copyright Regulation Enforcement – A Study from Indonesia

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Abstract

In 2015, Indonesia was still considered one of the dire states to protect intellectual property rights. Frequently, Indonesia failed to escape from Priority Watch List. According to USTR, the cause of the high violation regarding copyright in this country was the piracy of optical discs of music, films, and devices. The Business Software Alliance (BSA) reported that software piracy in Indonesia had reached 88%, potentially losing about \$ 157 million in 2003. It means the result percentage above was placed Indonesia as the fourth hijacking country in the world and the third in the Asia Pacific. Since 1999, this country cannot move out from the top fourth position of the country with the highest level of piracy. In responding to the reports, Indonesia provided a legal device, namely new copyright of regulation. The regulations unequivocally stated in Article No. 112 that copyright was a criminal act or complaint offence. Then, it said that UUHC regulation No. 28/2014 was better to give space to resolve disputes with an effective dispute resolution through mediation and arbitration. These advances positively impact creators, copyright holders, and related rights owners to work and be creative and productive in producing the copyrighted works.

Keywords: Regulation, Copyrights, Enforcement, Criminal.

INTRODUCTION

Since 2019, United States Trade Representative (USTR) has become a Priority Watch List. Hence, Indonesia is mentioned as one of the countries mainly supervised by copyright protection, equal to Chinese, Russian, Algeria, Argentina, Canada, Chile, India, Israel, Pakistan, Thailand, and Venezuela, while last year remained on the Priority Watch List. Every April, the USTR makes a stated list to access supervision against trading partners worldwide regarding protection and regulation enforcement. The first level is on the list priority foreign country shows the level problem of piracy towards the severed copyright; hence it can be subject to trade penalty. The second level is the priority watch list. The country on the list shows the higher copyright piracy to get special supervision by United States. The third level is the watch list, which includes countries still violating copyright violation and privacy, relatively lighter than the priority watch list. The state who entered on this list will be supervised.¹ Indonesia's occupancy in the main list of United States supervision accordance with the opinion of International Intellectual Property Alliance (IIPA) to USTR the last February, because the purpose of IIPA is to protect and enforce related to Intellectual Property Rights, which is the role of Intellectual Property Rights still weak in Indonesia. Criminal regulation enforcement has a minimum scale in intellectual property, whereas Indonesia has ratified five international conventions in intellectual property rights, namely:

1. Paris Convention for the Protection of Industrial Property and Convention Establishing the World Intellectual Property Organization (Presidential Decree No. 15/1997 about the changes of Presidential Decree No. 24/1979);
2. Proprietary Cooperation Treaty (PCT) and regulation under the PCT (President Decree No. 16/1997);
3. Trademark Regulation Treaty (President Decree No. 17/1997);
4. Berne Convention for the Protection of Literary and Artistic Works (President Decree No. 18/1997);

¹ Anissa Margrit, 'USTR: RI Masih Jadi Pelanggar Hak Kekayaan Intelektual Terbesar -', 08-05. 06.18 WIB, (Jakarta, 2013) <<https://ekonomi.bisnis.com/read/20130508/12/12920/ustr-ri-masih-jadi-pelanggar-hak-kekayaan-intelektual-terbesar>> [accessed 13 January 2022].

5. WIPO Copyright Treaty (President decision No. 19/1997);

Property is sufficient enough and does not conflict with conditions as required in the TRIPS Agreement. The regulation rules include No. 30/2002 about copyright, No. 29/2000 about the protection of plant variety, No. 30/2000 about trade secret, No. 31/2000 about industrial design, No. 32/2000 about Integrated Circuit Layout Design, No. 14/2001 about Proprietary, No. 15/2001 about the mark.

The Republic of Indonesia offers a country with cultural diversity, a variety of art, and Islands. Overall, this is followed by ethnicities and religious diversity, representing the potential of a protected country. The wealth of art and culture are not only used for art and culture but also to improve trading and industrial skills through the property rights of the creator. Thus, a wealth of art and culture is protecting; it can improve welfare for its creator society and nation. That is why the existence of regulation No. 19/2002 emphasizes copyright position also affirms and clarifies the rights. It does intellectual works related to Indonesia that guarantee clarity protection.²

Indonesia have 30.000 varieties of plants.³ Nevertheless, the plant has to be protected and cultivated to be preserved, so it makes regulation No. 29 in 2000 concerning the protection of plant variety to give a sturdy fundamental regulation that encourages the creation of the best plant type belonging to Indonesia.

Indonesia is a developing state in trade, music, and food. In Indonesia, there is competition in the world of business. In Indonesia, the field of trade is increasingly competing. Proprietary is compensation for exclusive rights granted by the state. The original inventor must reveal his findings. Inventors want to save the secret of works; there is the secret problem of Indonesia in some separate rules. Indonesia investors give the regulation protection against trade secrets following the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) as an annex of the agreement. It establishes the World Trade Organization as ratified by Indonesia in Regulation No. 30/2000.⁴ Although it is a secret that protection encourages the birth of new findings, it still gets excellent protection in possession and mastery or utilization by the original owner. Knowledge builds economics in Indonesia's industry became an important set. The higher the economic score of intellectual works produced by creative people and innovative work in the industry, the more competition on business becomes unhealthy. The Right of Design Industry applies if one person signs the registration (Article 12 No. 31/2000). There is a sufficient reason to suppress various acts of plagiarism, piracy, or imitation of industrial design through industrial design registration.⁵

Industry progress can compete for the scope of national and international business to push a creative and socially innovative integrated layout design as part of the intellectual property rights system.⁶ Indonesia ratifies an agreement establishing the world trade organization, which includes the agreement on trade-related aspects of intellectual property rights. It needs to organize the integrated layout design provisions by forming the design regulation No.32/2000.

Concerning the globalization age of society from middle class or low class, most citizens who work in technology bring comfort and progress to people's lives. The regulation about proprietary needs to be protected and appreciated by granting a proprietary to their owners. This purpose from the proprietary giving the

² Abdul Gani Abdullah, 'LAPORAN TIM NASKAH AKADEMIK RANCANGAN UNDANG UNDANG TENTANG CIPTA', *DEPARTEMEN HUKUM DAN HAM RI BADAN PEMBINAAN HUKUM NASIONAL TAHUN 2008*, 19, 2008, 27 <<https://www.bphn.go.id/data/documents/cipta.pdf>>.

³ Ika, 'Ribuan Tanaman Herbal Di Indonesia Belum Dimanfaatkan Secara Optimal', *17-01, 13.22 WIB* (Yogyakarta, 2017), pp. 1–2 <<https://www.ugm.ac.id/id/berita/13165-ribuan-tanaman-herbal-di-indonesia-belum-dimanfaatkan-secara-optimal>>.

⁴ Regina Natalie Theixar and I Gusti Ngurah Wairocana, 'SUBJEK HUKUM RAHASIA DAGANG DITINJAU DARI UNDANG-UNDANG RAHASIA DAGANG , TRIPS', *Kekhususan Hukum Bisnis Fakultas Hukum*, 1–13 <<file:///C:/Users/MY-COMP/Downloads/47452-1033-102362-1-10-20190318.pdf>>.

⁵ Nadia Am Badar, 'Penjelasan Mengenai Desain Industri Di Indonesia', *16 -05, 2017* <<https://ambadar.co.id/knowledge-base/penjelasan-mengenai-desain-industri-di-indonesia/>>.

⁶ Indonesia, 'UU 32 Tahun 2000 Tentang Desain Tata Letak Sirkuit Terpadu', *09-11, 2019* <<https://www.jogloabang.com/pustaka/uu-32-2000-desain-letak-sirkuit-terpadu>>.

protection legally, to avoid people with bad intentions who deliberately claim the work belongs to the producer based on the regulation No.14/2001 about proprietary.⁷

The whole industry in Indonesia requires a mark to avoid counterfeiting and imitation. The rise of counterfeit goods in Indonesian marketing fields is sufficiently worrying. An award of works for the creator of Indonesia is still deficient. An award must give to the creator for appreciation of their work because it requires fees, energy, and time. Therefore, there needs a Regulation No. 15/2001, which give from the state to the owners as marks list in the general register of marks for a certain period by using their marks or giving permission to another side to use them.⁸ Besides, those regulations were government regulation No. 29/2004 on high-tech production facilities for optical discs.

Despite any regulation about protecting Rights on the Intellectual Wealth (Intellectual Property Rights), in 2015, Indonesia was assumed as one of the wrong states in protecting Intellectual Property Rights. Indonesia fails to exit from the priority watch list. Due to the higher number of copyright violations, such as piracy of optical discs of music, movies, and software. Especially in 2003, the software of Indonesia reached 88%, with a potential loss of about US\$157 million. It places Indonesia as the fourth hijacker state and number three in the Asian Pacific. Since 1999, this state cannot move out from the fourth position of state with higher hijackers' level.

Several sour notes in copyright undermine Indonesia's image in trade and investment activities. Both of them need to lift the country out of the economic crisis. Priority status watches the list, which affects the psychology in the international business rule. However, there is nothing direct impact as long as Indonesia does not enter the priority foreign country. Generally, Unity States (US) and developed countries will give Intellectual Property Rights protection as an absolute requirement that its trading partners must fulfill. If it ignores, the US will raise partner countries' status to a foreign priority watch list and impose a trade penalty. The partners ever give for Ukraine with canceling the export of Ukraine to US which is worth US\$75 million.

The lack of Intellectual Property Rights protection is not only threatening trade and the national infestation climate. In the case of rampant software piracy, this also harms the national Information Technology (IT) industry. BSA study and IDC in 2003 concludes IT industry in Indonesia which potentially contributes revenue of about US \$2.4 billion until 2006 that able to reduce the rate of piracy from 88% to 78%.

Indonesia has not been optimally capable of protecting intellectual wealth rights. The problem increases the violation in Indonesia, such as the hijacking of optical discs of music, movie, and software. Indonesia has provided a legal device called a new copyright regulation governing criminal provisions. This study focused on criminal regulation enforcement on integrated copyright in Indonesia.

Several researchers relate to the copyright are Akhmad and Taufik (2014) on efforts of copyright infringement regulation Number 28 of 2014 on copyright.⁹ They state that the enforcement of intellectual property rights violating copyright is very concerning, especially piracy of copyrighted works in music. Violations of music copyright works are carried out through various media; CD, VCD, DVD, and MP3. It is due to the dominant economic factor caused by the dominant economic factor. This study's results were expected to prevent violations of copyright works after changes to copyright regulation No. 12/2002, which was replaced by Regulation No. 28/2014 concerning Copyright.

Considering the study of Akhmad and Taufik, the study remained focused on the legal violation and regulation enforcement of copyright efforts which results in piracy prevention are still not maximal. In contrast, this study focused on integrated copyright regulation enforcement in Indonesia. On the other hand, this study also aimed to know and understand the enforcement of criminal acts on copyrights that are integrated in Indonesia.

⁷ Alifia Devi Erfamiati, 'PERLINDUNGAN HUKUM TERHADAP PEMEGANG HAK PROPRIETARY DITINJAU DARI UU NO 14 TAHUN 2001 TENTANG HAK PROPRIETARY', *Hukum*, 3.2 (2021), 79–84 <file:///C:/Users/MY-COMP/Downloads/443-Article Text-1174-1-10-20210707.pdf>.

⁸ Enny Mirfa, 'PERLINDUNGAN HUKUM TERHADAP MEREK TERDAFTAR', *Hukum*, 11.1 (2016), 65–77 <<https://media.neliti.com/media/publications/240363-perlindungan-hukum-terhadap-merek-terdaf-3c929252.pdf>>.

⁹ Akhmad Munawar and Taufik Effendy, 'UPAYA PENEGAKAN HUKUM PELANGGARAN HAK CIPTA MENURUT UNDANG-UNDANG NOMOR 28 TAHUN 2014', *Hukum*, 8.2 (2016), 125–37 <<https://doi.org/http://dx.doi.org/10.31602/al-adl.v8i2.453>>.

REVIEW LITERATURE

The Copyright and its Scope in Indonesia

According to the Directorate General Intellectual Property of the Ministry of Regulation and Human Rights R.I, the copyright is the creator's exclusive right, which arises automatically based on declarative principles after creation is realized in simple form without reducing restrictions following the provisions of the regulations and regulations.¹⁰ According to the Directorate General Intellectual Property of the Ministry of Regulation and Human Rights R.I, the copyright is the creator's exclusive right, which arises automatically based on declarative principles after creation is realized in simple form without reducing restrictions following the provisions of the regulations and regulations.

Creators as the copyright owner or the part which achieves that right from the creator further rights of the parties receiving the rights are called Copyright. According to Rooseno, a work is created by someone but manifested and worked by another person. However, under the leadership and supervisor of design, the creator is the one who designed the creation.¹¹

The legal criminal acts of copyrights that Indonesia integrated are renewal and adjustments of establishing regulation in Indonesia. Combining the regulations of criminal acts in copyright can make adjustments in Indonesia. According to Hanafi, technology developments faster cannot deny in Indonesia. The progress achieved through science and technology affects criminal regulation.¹² Furthermore, the crime is increasingly complex demands a review of the classification of cases.

METHODOLOGY

This study enforced copyright regulations by using a qualitative approach. Furthermore, this study conducted empirical sociology of regulation research. This research viewed a correlation between society and regulation to reveal the regulation's enactment in society. The explanations were loaded with analytical descriptive stated in writing or oral form and actual behavior,¹³ to show an appropriate criminal regulation in Indonesia. The data were obtained from studies concerning copyright and criminal regulation. The studies were from research articles and books.

RESULTS

The Regulation of Copyrights Dispute Resolution in Indonesia

Copyright was an exclusive right of the creator automatically based on declarative principle after a creation realized in simple form without reducing restrictions following the provisions of the regulations and regulations (Article 1(1) UUHC regulation No. 28/2014). There were two things in copyright, including creator and creation. In UUHC regulation No.28, the creator's meaning called someone or several people who individually or together resulted in a distinctive creation. While every creation resulted from works in science, art, and literature was generated by inspiration, ability, mind, imagination, dexterity, skill, or expertise expressed in natural form.

The regulation of copyright No.28/2014 changed to No. 19/2002. The amendment against copyright regulation means giving the creator and copyright holder more protection. Knowing in new UUHC regulation contained the improvements and gave more protection for the creator. The copyrights holder and the rights owner related to answering the information and technology development, which contained some Articles on new copyright regulations (UUHC regulation No. 28/2014). UUHC regulation No. 28/2014 also gave regulation protection to the creator, copyrights holder, and the Rights owner; overall, legal protection was intended as legal protection in criminal and civil.

¹⁰ Republik Indonesia, 'Hak Cipta', 21-01, 2019 <<https://www.dgip.go.id/menu-utama/hak-cipta/pengenalan>> [accessed 17 January 2022].

¹¹ Rooseno Harjowidigdo, *Mengenal Hak Cipta Indonesia: Beserta Peraturan Pelaksanaannya* (Jakarta: Pustaka Sinar Harapan, 1994).

¹² Hanafi Amrani, *Politik Pembaruan Hukum Pidana*, 1st edn (Yogyakarta: UII Press, 2019).

¹³ Sri Mamudji, *Metode Penelitian Dan Penulisan Hukum*, 1st edn (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005).

The appropriate form of regulation protection criminally or civilly have regulated by UUHC regulation No. 28/2014, based on chapter XIV about dispute resolution in Article 95(1), which stated that copyright dispute resolution could be made through alternative dispute resolution, arbitration, or court. Based on Article 95(1), copyright dispute resolution efforts can be made through alternative dispute resolution and arbitration before going to court; this Article was new inroads in UUHC regulation No. 28/2014. Besides, the settlement of copyrights which the side had located abroad, accommodated the provisions of its settlement in Article 95(4), as follow.

"Apart from the violation of copyrights rights related to piracy forms, the parties of the dispute that existed and were located in the territory of the Unitary State of the Republic of Indonesia must resolve the dispute through mediation before making the criminal charges."

Every creator, the copyright holder, and the rights owners can file a damages regulation suit through the Commercial Court for copyright infringement or products. The provisions on indemnity were mentioned in article 99(1) UUHC regulation No.28/2014, the creators, copyright holders, and related rights owners will sign the compensation form according to the provisions article 99(2) as follow.

"The damages claimed as referred to the clause (1), which has been requested to surrender all or side of the income earned from the holding of lectures, scientific meetings, performance, or exhibition of works that were the result of copyright infringement or related with rights products."

Besides, the creator, the copyrights holder, and related to the rights owners, according to article 99(3) of UUHC regulation No.28/2014 was explained that the injunction requested to the commercial court as follows.

- a. Request the confiscation of the creation by the announcement or doubling, and the doubling device used to produce the creation resulting from copyright infringement and related rights products.
- b. Cease the activities of announcements, distribution, communication, and multiplication of creations that were the result of violations of copyright and related rights products.

Others mentioned that dispute resolution through alternative dispute resolution and arbitrate; creators, copyright holders, and related rights owners who feel aggrieved also request a determination. While the court, the commercial court may issue temporary determinations to prevent the entry of goods suspected of copyright infringement or related rights to the trade; withdrawing from circulation and confiscate and storing as evidence related to the violation of copyright or related rights; securing evidence and prevent its disappearance by the offender, and stopping violations to prevented more significant losses.

The application process of determination in the court submission to the chief of the commercial court in the jurisdiction, where the discovery of goods allegedly resulted in copyright or related rights violations. Enhancement based on article 105 UUHC regulation No. 28/2014 mentioned that the rights submission to civil regulation suit for copyright infringement and the right not related reducing the right of the creator and the owner of the right related to prosecuting criminally. Besides, every side concern against creations had been recorded, and then it proposed a regulation suit of the cancellation of the list creation in general through the commercial court. The regulation suit, as intended, had directed to the creator and the registered copyright holder.

The Criminal Provisions of Copyrights in Indonesia

Criminal provisions were included in every regulation in Indonesia; this criminal provision was intended to determine the perpetrators of regulation violations. The criminal provisions contained in the regulation were *Ultimum Remedium* existed as one of the principles contained a criminal regulation that said that criminal regulation should be used as a last chance in Indonesia. It means if a case can be resolved through other channels (family, negotiation, mediation, civil, or administrative regulation) must be preceded. The criminal activity was an act of a particular situation by the regulation declared a forbidden. Therefore, physical and moral punishment occurred, even the plunder of some wealth for the perpetrator.

The criminal act in copyright was a series of prohibited acts by regulation concerning the processing and utilization, and ownership of works in the field of Science, Technology, and literary art was human intellectual property. Furthermore, the meaning of copyright was an exclusive right of the creator who arises automatically based on the principle of declaration after creation had realized in reality without reducing restrictions according to the regulations and regulations. The creator was one of several persons who stood alone or

collectively produced a distinctive and personal. At the same time, creation resulted from work created in Science, Art, and Literature have made for inspiration, ability, thought, imagination, talent, skill, or exaltation expressed in a simple form. Also, the copyright holder was the creator and, as the copyright owner, the party who received the right legally further rights from the party who received the requests legally.

Moral right is the rights perpetually attached to the creators who still do not include their name on the copy. The relation to the use of creation and public uses a pseudonym and changing creation following the propriety in society. The changes of the title or sub-title of creation and defending the rights in creation distortion event. The mutilation of a creation or a thing of self-respect also reputation.

On the other hand, economic rights are the exclusive right of the creator or copyright holder to obtain economic benefits for their creation: the publication and multiplication of creation in all forms, translation of creation, arrangement, adapting or transforming of creation, distribution of creation, the performance of creation, the announcement of creation, communication of creation and rental of creation, by requiring any person who will exercise the economic right to the first obtained permission from the creator or copyright holder, while to prohibiting any person performed the doubling and commercial was using of the work without the first obtaining permission from the creator or copyright holder.

UUHC regulation No. 28/2014 organized about the criminal provisions, based on XVII UUHC regulation chapter, there are at least 8 Articles governing criminal provisions, while in UUHC regulation No. 19/2002 (old REGULATIONHC), only one Article governing criminal provisions, namely the Article 72. That 8 (eight) Article arranged about criminal in 112 up to Article 119, in 8 (eight), those arranged criminals of imprisonment and criminal of fines. According to UUHC regulation No.28/2014, imprisonment was described as maximum imprisonment of 10 (ten) years. While in old UUHC regulation No. 19/2002 stated that maximum imprisonment of 7 (seven) years. While for Criminal of Fines according to UUHC regulation No. 28 of 2014 determined; at most 4,000,000,000.00 (four billion rupiahs), while in the old UUHC regulation No.19 of 2002, the Criminal Fine Provisions have at most 1,500,000,000.00 (one billion five hundred million rupiahs).

Based on the definition above, it can be said UUHC regulation No.28/2014 more detail about providing legal protection both criminally and civilly against the creator, copyright owner, and related rights owner. UUHC regulation No. 28/2014 had been suitable, giving space for resolving disputes by tracking effectively through the mediation-arbitration process. Indeed, the advances in UUHC regulation No. 28/2014 positively impact creators, copyright holders, and related rights owners always to work, create, and be productive in creating new copyrights.

DISCUSSION

The Copyright Regulation Enforcement Policy in Indonesia

Policy or criminal politics was efforts to prevent and fight crime at once, both using penalty and non-penalty efforts. Penalty policy, as a whole, through stages consisting of formulation (legislative policy), an application (judicative policy), and execution (administrative policy).¹⁴ Marc Ancle, as quoted by Raharjo, referred to criminal politics or penalty policy, both of them were science as well as an art that has a practical purpose of better formulating the favorable legal regulations, it used as a guideline of both made regulations, courts as regulation-absorbers and the organizers or implementers of the court decisions,¹⁵ while Sudarto stated that criminal regulation policy has seen from a political point of regulation: Efforts realized good rule-following circumstances and situations at some point. The state policy through bodies was authorized to establish the desired regulations were expected used what had contained in society and achieved what has aspired.¹⁶

The brief word said that politics or criminal policy made or examined a good criminal regulation of rule, which done effectively. Raharjo quoted A. Mulder stated that the criminal regulation was policy line determines the applicable criminal provisions need to be changed or updated to prevent criminal acts of how to investigate,

¹⁴ Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Penanggulangan Kejahatan*, 1st edn (Bandung: Citra Aditya Bakti, 2001).

¹⁵ Trisno Raharjo, *Kebijakan Legislatif Dalam Pengaturan Hak Kekayaan Intelektual Dengan Sarana Penalty*, 1st edn (Yogyakarta: Kantor Hukum Trisno Raharjo, 2006).

¹⁶ Raharjo.

prosecute, justice and criminal conduct must carry out. In the broader structure, criminal politics or criminal policy contains in social policy.

In that scheme, the goal intended to integrate welfare and a defense social. It means the last purpose was always in the fulfillment of welfare and protection for all people. In Sudarto's opinion, in criminal politics, the person who made judgments and selections of the alternatives faced.¹⁷ There were two great alternatives in criminal politics: policy through penalty policy or non-penalty. Both of those policies have one big aim: protecting and improving the community's welfare. Then, prevention and countermeasures of crime must be done with an integrated approach; there must be a balance between penalty and non-penalty means. Non-penalty means more preventive, so they were often seen as strategic policies, considering penalty facilities have many limitations. As for the policy strategy of the prevention of crime according to PBB congress, broadly speaking as follows:

1. Eliminate the factors of causative or conditions that cause crime.
2. Crime prevention and criminal judiciary have taken integral policy/ systemic (do not fragmentary and simplistic).
3. Improvement of the quality of regulation enforcement, the quality of institutions, and the organization's management system/ data management.
4. Gave a priority to certain types of crime was potential.
5. Composed of several "guidelines," "basic principles," "rules," "Standard Minimum Rules (SMR)."
6. Enhance international cooperation. Given that the stages of criminal politics included the formulation stage, the role of the legislature to draft a legal regulation became crucial because of the weak enforcement of the regulation, among others. It was also due to a complicated rule. Integrality strategy so that penalty policy and non-penalty policy. Penalty policy, as mentioned at the beginning, implements a structure of the interlocked application, which focuses on the formulation stage (legislative policy), application (judicial policy), and execution (executive/administrative policy).

Achieving maximal function must be maximal in the stages that cannot serve well. For example, the legal regulation's legislative role becomes crucial in the formulation stages. The weakness of regulation enforcement, among others, was due to the complicated rules. In the criminal of regulation, the penalty policy was repressive. The penalty policy prioritized countermeasures, which means accentuating after a criminal offense. The penalty policy efforts further provided an understanding of the function of prosecution in the fight against crime.

One of the weaknesses in applying a penalty policy is that it will erase "*Kausa*" in a criminal act. Repressive acts focused only on "reiterate" rather than "discourage." As mentioned at the beginning of the discussion, non-penalty policies were more preventive; hence they were often seen as strategic—non-penalty policy more focused on preventing criminal acts/preventive. In violation of Intellectual Property Rights had used penalty policy formulations, which proved ineffective. The punishment of sip as a criminal act (offender) was not merely a countermeasure for crimes committed by those suspected; the philosophy of fostering regulation breakers embraced by Indonesia was reintegrating offenders of public regulation, better known as correctional. However, in reality, ex-convicts were systematically inhibited from reintegrating into society's natural life. Regulations and policies precisely inhibit the re-integration of former prisoners into the community. Thus, the philosophy of correctional prisoners was just an empty slogan, which produces repeat offenders who come back to prison revivals. If viewed from the macro criminal politics perspective, then policy tackling crime used means outside the criminal regulation or non-penalty policy with the most strategic policy. There was no denying that repressive measures contained a preventive. However, it realized that the actual invention was in the form of maximum efforts not occurred criminal acts or other efforts to eliminate "*kausa*" or the cause of criminal acts.

The violations in Intellectual Property Rights tend unconsciously by the offender. The lack of knowledge about Intellectual Property Rights regulations, both from the community and regulation enforcement officials, was a different obstacle in establishing regulation. Such as the copyrights, someone who made something without a license, the website of a famous singer contained song and lyrics, photo and album cover from those singers. Some events always happened; a website had become the critical part from modern life need the whole faster activities. However, in the negative part, the presence of the internet can facilitate the occurrence of violations in the field of Intellectual Property Rights, especially copyright issues.

¹⁷ Sudarto, *Hukum Pidana Dan Perkembangan Masyarakat Kajian Terhadap Pembaharuan Hukum Pidana* (Bandung: Sinar Baru, 1983).

Efforts of penalty policy will not enough overcome those issues. There was a movement by those acts of one and other suspects. It needs to integrate penalty policy and non-penalty policy to overcome those problems. Efforts in the non-penalty policy give a creative place and appreciation, for example, holding certain events/races to stimulate someone's creativity to avoid plagiarism. Inside it can enter about definition about regulations of Intellectual Property Rights. Another way was convening counseling in the field of Intellectual Property Rights through the various good media for the general public or the regulation enforcement officers themselves. Penalty policy efforts in countering criminal acts Intellectual Property Rights in the previous discussion which need to integrate penalty policy efforts with non-penalty policy efforts to overcome the problem of rampant violations Intellectual Property Rights in Indonesia.

The Investigation and Criminal its Liability

Some penalty policies had become a highlight about enforcement, from the investigation, until criminal responsibility. Except investigators of the State Police of the Republic of Indonesia and a whole REGULATION Intellectual Property Rights Regulations, the investigators in this research recognized civil investigators' existence. The confident State Police of the Republic of Indonesia in the department responsible through Intellectual Property Rights observed that the rule legislation gave a special authority as investigators referred to in regulations No. 8/1981 about criminal act regulation. There was authority from an investigator broadly in REGULATION Intellectual Property Rights organized, such as examining the proper complaint with the criminal act related Intellectual Property Rights; examining person or legal entity did a criminal act Intellectual Property Rights based on complaint or statements depends on the type of complaint asking the information, did an examination in the particular place of proofed devices from the relevant part regarding with the criminal act in Intellectual Property Rights concerning; examining the accounting, note and other documents regarding the criminal acts related Intellectual Property Rights.¹⁸

According to Purba, an effective Civil Service Investigator (PPNS) did an investigator in the field of violation Intellectual Property Rights. The role of PPNS submitted more effectively in the result investigator to the public prosecutor, not through the Police. Purba's opinions on two things, first, as a discourse on increased regulation enforcement efforts. The whole opinion of Purba which based on needed calculation in the reform era; this day, Police were very needed by society for any problems related to life, in general, the most extensive scale example: banking problems corruption. Second, it was in line with implementing the correct concept of statehood, where the Police were in control of state security affairs, no longer like in the past when the Police were complementary.¹⁹

Furthermore, the minimum and maximum are only on REGULATION copyright implemented Intellectual Property Rights. While in the other REGULATION Intellectual Property Rights, maximum criminal limits on imprisonment or criminal fines. The application of maximum and minimum limits will provide one certainty. However, if the minimum number of copyright infringement reached 1 billion, it was considered burdensome and unlikely adequate. The data shows that the length of imprisonment or the number of fines in each regulation was not equalizing. Considering the length of imprisonment or the magnitude of the fine has no rational basis for argument. In addition, it signified that there was no harmonization of the formulation of criminals in this Intellectual Property Rights Regulation.

Complaint offense type used in REGULATION Intellectual Property Rights except for REGULATION Protection of plant varieties and copyright regulation, all impose complaint offense. The imposition of complaints or ordinary complaint offenses has different consequences. Ordinary complaint offense differs from implementing their criminal code depending on complaints from parties harmed by a criminal act. There was an underlying rational basis to determine complaint offenses. Trisno Raharjo offered the two primary considerations related to community losses; if a citizen harmed with the Intellectual Property Rights violations act, it was an ordinary complaint offense, while if community losses; it were not the big deal of complaint offense.

Regulation enforcement capabilities; the difficulty of regulation enforcement in tackling Intellectual Property Rights crimes categorized as ordinary complaint offenses proactively handles the violation of Intellectual

¹⁸ Republik Indonesia, *Hukum Acara Pidana* (Jakarta: Hukum Acara Pidana, 1981), LXVI, 191–204 <<https://link.springer.com/article/10.1007/BF00305621>>.

¹⁹ A. Zen Umar Purba, 'Perlindungan Dan Penegakan Hukum HaKI', 20-11 (Makassar, Indonesia: acara Pelatihan Teknis Fungsional Peningkatan Profesionalisme di Pusdiklat Mahkamah Agung RI, 2001), p. 5.

Property Rights.²⁰ Purba emphasized that ordinary complaint offenses properly applied in Intellectual Property Rights regulation regarding this problem. He stated there were three reasons: complaint offense, according to Intellectual Property Rights was the private right. Only the rights-holder knows whether or not there are violations/criminal offenses against his intellectual work. In some cases, the parties disputed concerning Intellectual Property Rights can reconcile, but in the meantime, the case reports by the police will alleged criminal acts by one side, which cannot revoke.²¹

Commonly, complaint offenses often become boomerang because every part includes an author part hope to do an act “cleaning” against criminal act without complaint; this was boomerang for our self. In the discourse above, the government evaluated the effectiveness of implementing both types of complaint offenses. Remembering in 8 (eight) years was goes. Those evaluation results can determine whether proper complaint offense type in Intellectual Property Rights protection was complaint offense or ordinary complaint offense. Furthermore, complaint offense qualification from the seventh regulations of Intellectual Property Rights, only the variety protection clearly states that the criminal acts regulated were crimes. While in the regulation, one of the criminal acts qualified as a violation, nothing of the criminal has qualified. The absence of qualification in Intellectual Property Rights regulations will result in problems related to the application of probation and assistance, *concurrent*, expired prosecution, and criminal execution.²² However, if regulation changes of the Criminal Code had agreed, it would not have any meaning. However, as long there were the rules about crime and violation in Criminal Code, crime and violation are essential, considering the implementation of criminal regulation in regulation Intellectual Property Rights related to the stem of the General Criminal Regulation stipulated in Criminal Code.

The criminal responsibility of regulation Intellectual Property Rights which lists corporate or legal entities can be liable for violations of this Intellectual Property Rights. In comparison, Intellectual Property Rights violations were possible by a corporation or legal entity. It was primarily related to industrial property rights such as proprietary, brands, industrial designs. The wearer mainly was a legal entity in the form of a company; it was very likely that the legal entity or corporation violated the Intellectual Property Rights provisions. Although on the practice, who responsible was a person or management in those legal entities, however, the formulations of criminal responsibility of the legal body become essential. Because whenever it did with humans, however, he did was on the corporation's name. Raharjo suggested three forms of the corporation responsible: only the management, only corporation, or management and its corporation responsible at once.

CONCLUSION

At least, there are 8 Articles organized about criminal provisions, while in regulation No. 19/2002 (old regulation). The Article arranges on criminal provisions only found in Article 72. In 8 (eight), those Articles organize about provisions of fines and prison. According to UUHC regulation No. 28/2014, the provisions prison mentions; maximum imprisonment of 10 (ten) years. At the same time, the old Regulation (Regulation No.19/2002) mentions that the prison sentence is a maximum of 7 (seven) years. As for criminal fines, according to UUHC regulation No. 28/2014 determines; at most Rp 4,000,000,000.00 (four billion rupiahs), while in old UUHC regulation No.19/2002, the criminal provisions of the fine are at most 1,500,000,000.00 (one billion five hundred million rupiahs). This regulation expressly states in Article 120 that the Copyright Crime is a complaint offense. The advances in UUHC regulation No. 28/2014 positively impact the Creator, the copyrights holder, and the rights owner relate to work and be creative and productive in creating the new copyright work.

The analysis in this study had resulted that many criminal enforcement acts of copyright had been integrated in Indonesia, especially in the prevention of criminal act, piracy, criminal, and copyright-related issues solved by criminal UUHC regulation No. 28/2014 positively impacts the creators, copyright holders, and rights owners related to their creation.

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²⁰ Raharjo.

²¹ Raharjo.

²² Raharjo.

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