

Obstacles To Enforcement Of Book Copyright Law In Indonesia Based On The Legal Structure, Legal Substance, And Legal Culture

Wahyu Suwarni

State Polytechnic of Creative Media (POLIMEDIA KREATIF)
Jakarta, Indonesia
wahyusuwarni@polimedia.ac.id

Abstract: The purpose of this study was to determine the constraints of copyright law enforcement, especially in books in a legal structure, legal substance and legal culture. The research method used is a normative juridical method, which comes from Copyright Act Number 28 of 2014. Through the study approach of Lawrence M. Friedmen's theory shows that the constraints of legal structure lie in the control of legal structures which generally require law enforcement procedures, such as civil procedures and criminal and administrative procedures. Whereas the substance of the legal constraints briefly changes the terms of registration {Copyright Act Number 19 of 2002 article 1 no. (13)} becomes a recording {Act Number 28 Year 2014 article 1 No. (19) on Copyright} indicates that there is no certainty law to guarantee legal protection, especially for copyrighted works that are not registered with the institution of copyright. While the legal, cultural constraints, people tend to choose cheaper goods, therefore if there is a choice between original and pirated goods, then the public will tend to choose pirated goods that are cheaper regarding price, including local books and imported books.

Keywords: Copyright, Books, Legal Structure, Legal Substance, and Legal Culture

1. Introduction

The state based on the provisions of the Law gives specificity and privileges to Intellectual Property Rights following with procedures and conditions that must be fulfilled [1]. By their nature rights in Intellectual Property Rights can be classified into two, namely Economic Rights and Moral Rights. Economic rights are the right to benefit from intellectual property. Furthermore according to Muhammad, Economic Rights because IPR is an object that can be valued with money. The economic rights are in the form of profits in the amount of money that is obtained because of the use by other parties based on the license. Economic rights are taken into account because IPR can be used by other parties in industry or trade that bring profit [2]. Intellectual Property Rights are divided into two parts, namely Copyright and Industrial Property Rights. In the Copyright Act, number 28 of 2014 article 1 states that Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after work is manifested in a tangible form without reducing restrictions following the provisions of the legislation. The period of copyright protection is up to 70 years [3]. In the previous law, the protection was only up to 50 years [4]. Although some laws and regulations provide protection to the creators, the reality is that the practice of copyright infringement is still widespread. Piracy is done by printing the book in question without changing the form of writing and others including the quality of paper, but there are also those that change certain parts, such as changes in letters (fonts), paper quality, print quality and so on. One type of criminal act of copyright is piracy of printed books in bulk. According to Hinduja, copyright piracy is the same as theft or robbery [5]. In other words, all acts of piracy are considered the same as theft and theft of intellectual work of others because in copyright there is a concept of property rights. In Indonesia, book piracy is mostly done in big cities such as Jakarta, Surabaya, and Yogyakarta. The target of piracy of this book is rampant in reference books, dictionaries, and popular textbooks [6]. Another form of Copyright violation is the

sale of electronic books (e-books) illegally, among others in the form of retrieval, printing, conversion, part or all of the work of other people in any way without the author's permission / Copyright holder, contrary to the Law or violate the agreement. Talking about taking/downloading in the Copyright Act [3] can be categorized as copyright infringement, because of the act of downloading e-book copyrights through the internet if the purpose is to be disseminated or for commercial purposes, including copyright infringement. Saidin explained that the threat of selling electronic books illegally, as well as criminal acts through computer programs, is a negative impact of advances in science and technology that are used against the law [7]. Violations of copyright, especially in books, still occur and even tend to be more alarming, many people in the community don't appreciate or don't care about the existence of a paper that has been created by someone. The purpose of this study was to determine the constraints of copyright law enforcement, especially in books in Legal Structure, Legal Substance, and Legal Culture.

2. Theoretical Background

Lawrence M. Friedman describes the theory of legal systems which divide into three parts [8], namely legal structure, a legal substance, and legal culture. In the legislation the legal structure consists of the Police, Prosecutors' Office, Courts and Criminal Executing Bodies (Lapas). Regarding the legal structure in Lawrence M. Friedman's theory states that a structural system determines whether or not the law is implemented properly. The second theory of Lawrence M. Friedman states that legal substance determines whether or not a law can be implemented. The substance also means that the products produced by people who are in the legal system include the decisions they make, the new rules they compile. In addition, the substance of the law contains living law, not only the rules in the law books. Also, the laws that live in the community can be used as a reference in building a just law. Lawrence M Friedman's third theory, namely legal culture considers that human attitudes toward law are born through a

system of beliefs, values, thoughts, and hopes that develop into one in it. In fact, through the beliefs, values, and opinions of the person justifying the actions they take. Sykes & Matza revealed that the act of rationalizing this deviation was also carried out as a form of self-defense so that one could avoid the moral sanctions he got after making these deviations. Rationalization is not only interpreted as an act of justification, but this process is followed by reasonable or rational reasons for the wrongdoing [9]. Friedman further explained that legal culture is an atmosphere of social thought and social power that determines how the law is used, avoided, or misused. Thus, the higher the legal awareness of the community will create a good legal culture and can change people's mindsets about the law so far [8].

3. Materials and Methods

The normative juridical research method is a research method that refers to legal norms contained in laws and regulations so that the approach used here is a statute approach. In normative juridical research that is used refers to the source of legal material, namely research on positive legal norms and becomes the main reference material in this study [10]. Meanwhile, according to Marzuki, legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand. Therefore, legal research is research within the framework of know-how in law [11]. The research methodology uses literature, which is a method that is carried out by analyzing written materials or existing literature. In legal research, Jonathan explained that the data obtained from library materials included primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials consist of basic norms, legislation, jurisprudence, and treaties. Secondary legal materials are legal materials that explain primary legal materials, such as the results of research, papers, books, magazines, and so on. Tertiary legal materials are legal materials that explain primary and secondary legal materials, such as dictionaries, encyclopedias or indices [12]: primary legal material, namely Law Number 28 of 2014 concerning copyright. Secondary legal materials consist of guidebooks on copyright, the development of doctrines and theories, history, and philosophical foundations, journals and online news related to copyright. The theory used in this study is Lawrence M. Friedman's theory.

4. Discussion

Legal Structure Constraints

The constraints of legal structure lie in the control of the legal structure which generally requires law enforcement procedures, in principle having equality in various countries including [13]:

1. Civil Procedure Courts for cases of Intellectual Property Rights are included in civil court jurisdiction. Also, intellectual property rights disputes can be brought before a court that decides from illegal actions (District Court, Appellate Court, and Supreme Court). The party that can file a claim for violation of IPR is the holder of Intellectual Property Rights and in the case of joint ownership of one of the rights holders, an exclusive license holder, while the ordinary license holder requires the existence of a power of attorney from the right holder.
2. Criminal and Administrative Procedure, which is a violation of Intellectual Property Rights which is done

intentionally as a criminal offense in a Copyright is an ordinary crime in the form of complaint offense. The use of criminal law as an instrument to combat violations depends on the specificity of rights in IPR. Criminal sanctions imposed in the form of imprisonment or fines do not refund the loss of the Copyright holder. On this basis, the Government needs to make a Government Regulation that reinforces and supports the Copyright Act so that it can further optimize criminal provisions, including maximum criminal and maximum penalties.

In addition, according to Shabrina et.al., the lack of clarity in law enforcement over copyright can motivate piracy activities in the country to grow continuously [14]. However in fact the law enforcers have tried their best to be able to apply the rules and resolve issues related to Intellectual Property Right.

Legal Substance Constraints

In the Copyright Act, Number 19 of 2002 article 1 number (13) defines the application as: "Application is the Application for registration of a Work submitted by the applicant to the Directorate General." Whereas in the new Copyright Law (Law Number 28 of 2014) article 1 number (19): "Application is the application for recording the work by the applicant to the Minister." Based on the two laws, the change in the term registration into a recording indicates that there is no legal certainty to guarantee legal protection, especially for copyrighted works that are not registered with the institution of copyright. Also, the use of the term registration changed with the recording term implies the absence of legal affirmation or forcing things in the process of obtaining rights to the work of the copyright. This will make it difficult to identify the dispute resolution process, and others claim more to worry about the work being vulnerable. Provisions regarding technology control facilities, in Act Number 28 of 2014, are contained in Article 52 and Article 53, read in full:

Article 52: "Everyone is prohibited damage, destroy, eliminate, or make it function control means are used as protective technology or product Creation Related Rights as well as the safety of Copyright or related rights, except for national defense and security interests, as well as other reasons in accordance with the provisions of laws invitation, or agreed otherwise."

Article 53: "(1) Work or related rights products that use the means of production and / or storage of data based on information technology and / or high-tech, shall comply with the rules of licensing and production requirements set by the relevant authorities. (2) Further provisions on the means of production and / or storage of data based on information technology and / or high technology referred to in paragraph (1) is regulated by the Government. "However, Article 52 only mentions defense and security interests, and other reasons are following regulatory provisions or "other agreed." Plus Article 52 and Article 53 which regulate information technology and communication forms and the concept of control can be interpreted broadly. In contrast to the United States Section 1201 of the DMCA / Digital Millennium Copyright Act of 1998 [15] the contents are more complete and comprehensive, which includes a set of activities that are excluded from the prohibition of damaging,

destroying or not functioning the technological means of control of a work. The exceptions were given to libraries, archives, and non-profit educational institutions, government activities related to law enforcement and intelligence, research in the context of reverse engineering, encryption, and security testing, and protection of minors and personal data.

Read more: "The six additional exceptions are as follows:

1. Nonprofit library, archive and educational institution exception (section 1201(d)). The prohibition on the act of circumvention of access control measures is subject to an exception that permits nonprofit libraries, archives and educational institutions to circumvent solely for the purpose of making a good faith determination as to whether they wish to obtain authorized access to the work.
2. Reverse engineering (section 1201(f)). This exception permits circumvention, and the development of technological means for such circumvention, by a person who has lawfully obtained a right to use a copy of a computer program for the sole purpose of identifying and analyzing elements of the program necessary to achieve interoperability with other programs, to the extent that such acts are permitted under copyright law.
3. Encryption research (section 1201(g)). An exception for encryption research permits circumvention of access control measures, and the development of the technological means to do so, in order to identify flaws and vulnerabilities of encryption technologies.
4. Protection of minors (section 1201(h)). This exception allows a court applying the prohibition to a component or part to consider the necessity for its incorporation in technology that prevents access of minors to material on the Internet.
5. Personal privacy (section 1201(i)). This exception permits circumvention when the technological measure, or the work it protects, is capable of collecting or disseminating personally identifying information about the online activities of a natural person.
6. Security testing (section 1201(j)). This exception permits circumvention of access control measures, and the development of technological means for such circumvention, for the purpose of testing the security of a computer, computer system or computer network, with the authorization of its owner or operator."

In Article 47 of Act No. 28 of 2014 states that libraries and nonprofit archives as institutions are permitted to duplicate reprographic works that are copyrighted for education and research. Full Article 47 reads:

"Article 47 Each library or archives which are not for commercial purposes may make one (1) copy of the work or part of a work without permission of the Author or the Copyright Holder by:

- a. Unauthorized reproduction is reprographic paper that has been done Announcement, summarized, or summarized to meet the demand of a person with a condition:
 1. The library or archives ensure that such copies will only be used for educational or research purposes;
 2. Cloning is conducted separately and if done repeatedly, the multiplication must be unrelated events; and

3. No license offered by the Institute of Collective Management of the library or archives in connection with the duplicated parts.
- b. copying is done for maintenance, replacement copies required, or replacement copy in case the copy is lost, damaged, or destroyed from the permanent collection in the library or other archives with the following requirements:
 1. The library or archives is not possible to obtain a copy under reasonable conditions; or
 2. The copying is done separately or if it is done repeatedly, making of the copy must be an unrelated incident.
- c. the making of copies for the purpose of communication or information exchange between libraries, inter-institutional archives, as well as between libraries and archives.

However, the provisions in Article 47 of the Copyright Act do not mention libraries and archive institutions from the prohibition of damaging, destroying or not functioning technological control facilities that may be needed for educational and research activities. The absence of exceptions makes Act No. 28 of 2014 limit the social functions of copyright and related rights in Indonesia. Act No. 28 of 2014 should also include similar exceptions so that the benefits can be enjoyed by society.

Legal Culture Constraints

Shabrina et.al. said that the causes of book piracy in Indonesia. Starting from the high price of original books, the uneven distribution of books, to the scarcity of books sought by the community [14]. Thus it can be concluded that communities tend to choose cheaper goods, and therefore if there is a choice between original and pirated goods, then the public will tend to choose pirated goods that are cheaper regarding price, not least in the book. Pirated book consumers prefer to buy pirated books, which is because pirated books have low prices. The condition of the high price of books and the scarcity of books described by Shabrina above also occur in imported books, where the official price of imported books is quite expensive, so book consumers, especially students and the public, generally cannot afford books. For students, the imported book is the main thing as a lecture reference. To overcome this, buyers usually look for flea markets that are already half-used. The problem is that the book sought is not available at the flea market because it has just appeared. In this situation, the producers who are "naughty" will try to profit by illegal means, namely by piracy of books sought by the community or in best-seller books. Still related to price, if prospective customers buy books at online bookstores, the shipping costs that must be borne by the buyer will cause reluctance for buyers to order the books they need because they have to guarantee the costs, while the price of the book is quite high according to the size of the buyer. In such a situation, of course, the buyer will turn to the free market to find the desired book. Apart from price, access to pirated books is effortless. As contained in Article 5 of the Copyright Act No. 28 of 2014, moral rights are inherently inherent rights to the creator. By buying an original book, we as consumers respect the moral rights of a creator (book writer). Conversely, someone who is not sensitive to moral problems will be more likely to use pirated books. The perpetrators

who are not sensitive to this moral problem, according to Sykes & Matza, will rationalize their actions so that the rules of prevailing norms become loose [9], in this case, the use of pirated books carried out by someone can occur due to flexibility in norm values contained in society. In other words, because many people also buy and read pirated books consumption of pirated books is ordinariness. Similiar with that, Kusmawan explained that someone who is not sensitive to moral problems can be categorized into 3 factors, namely the first factor that motivates someone to photocopy a reference book refers to the perception that photocopying the entire book without commercializing it is not copyright infringement, or can if photocopying for educational purposes is not infringing copyright. This can be caused by the provisions of Article 15 paragraph 1 of the Copyright Act that provide less explanation about the size that can be said not to harm the reasonable interests of the creator. The second reason is if the original book is not published again and the third is the price of the book is too expensive. [6] The low level of public understanding of the meaning and function of Copyright evidenced by the assumption of some people as quoted by detik.com editor [16], that copyright infringement is an affair of law enforcement officials only, the public does not need to report when they see book piracy or become victims, namely writers whose books are hijacked.

Solution

Regarding the enforcement of copyright law against the legal structure, namely the need for integrated law enforcement from elements of the legal structure also involves copyright holders, to increase the effectiveness of law enforcement against perpetrators of criminal acts of copyright. Substantially the law in Law No. 28 of 2014 concerning copyright should be emphasized by requiring the creator in his registration, in the sense that the obligation to register is not just to protect his works, but also to provide legal certainty to the creator, copyright holder, and holder — related rights. Suggestions for the legal constraints of this law are through counseling / enlightening copyright law persuasively and continuously. The Author has the right to report to the Police of the Republic of Indonesia in the event of a violation committed by a party that is not entitled to the work of the copyright. This is in accordance with Article 105 of the Copyright Act which stipulates that the right to file a civil suit for copyright infringement and / or related rights does not reduce the rights of the author and / or the rights owner concerned to criminal prosecution. Thus, in accordance with the Copyright Act Article 120, the criminal act of Copyright is a complaint of offense, meaning that an offense of copyright can only be prosecuted if it is complained of by someone who feels disadvantaged (the Author) because it is personal, that is there must be a complaint from the party harmed so that in its implementation the author must actively report and may not remain silent or don't care to see violations of his work (book). Publishers should sell books that are not too expensive even if it is possible for five to ten years later the book to become open access so that it is easily accessible for all people. Other than that, Copyright socialization must be carried out for all relevant parties, such as law enforcement officers, students, the public (readers), writers and equally important among the press because through the power of media efforts to realize the importance of copyright will be

relatively more straightforward to materialize. Thus, a collaboration between the community, government, writers, and the publishing industry was created to change the culture of the people who used to buy pirated books and make them aware of the efforts of writers and publishers.

5. Conclusion

In enforcing copyright law according to Law No. 28 of 2014 using Lawrence M. Friedman's theory describes the theory of legal systems that divide into three parts, namely Legal Structure, Legal Substance, and Legal Culture. The constraints of the legal structure lie in the control of the legal structure, in general, requiring law enforcement procedures, including civil procedures and criminal and administrative procedures. Meanwhile, legal substance constraints, in brief, there is a change in the registration term {Copyright Act Number 19 of 2002 article 1 number (13)} becomes a recording {Law Number 28 Year 2014 article 1 number (19)} indicates that there is no legal certainty to guarantee legal protection, especially for copyrighted works that are not registered with the institution of copyright. Also, the use of the term registration changed with the recording term implies the absence of legal affirmation or forcing things in the process of obtaining rights to the work of the copyright. This will make it difficult to identify the dispute resolution process, and more worrying about the work is vulnerable to claims by others. Finally, the legal culture constraints, people tend to choose cheaper goods, therefore if there is a choice between original and pirated goods, then the public will tend to choose pirated goods that are cheaper regarding price, not least in local books and books import.

References

- [1] S. Sembiring, Intellectual Property Rights in Various Legislation (In Indonesian), YramaWidya, Bandung, 2006.
- [2] A. K. Muhammad, Economic Law Study of Intellectual Property Rights (In Indonesian), Citra Aditya Bakti, Bandung, 2007.
- [3] Republic of Indonesia, "Act Number 28 of 2014 concerning Copyright," Indonesia: State Gazette, 2014.
- [4] Republic of Indonesia, "Act Number 19 of 2002 concerning Copyright," Indonesia: State Gazette, 2002.
- [5] S. Hinduja, "Neutralization Theory and Online Software Piracy: An Empirical Analysis," Ethics and Information Technology Journal, IX (3), pp 187-204, 2007.
- [6] D. Kusmawan, "Copyright Protection of Books (In Indonesian)" Jurnal Perspektif, XIX (2), pp. 137-143, 2014.
- [7] O. K. Saidin. Legal Aspects of Intellectual Property Rights (Intellectual Property Rights), PT RajaGrafindo Persada, Jakarta, 2010.

- [8] L. M. Friedman, *The Legal System; A Social Science Perspective (In Indonesian)*, Translator: M. Khozim, NusaMedia, Bandung, 2009.
- [9] G. M. Sykes, dan D. Matza, "Techniques of Neutralization: A Theory of Delinquency". *American Sociological Review*, XXII (6), pp 666, 1957.
- [10] S. Soekanto, *Principles of Legal Sociology (In Indonesian)*, PT Raja Grafindo Persada, Jakarta, 2005.
- [11] P. M. Marzuki, *Legal Research (In Indonesian)*, Kencana Prenada Media Group, Jakarta, 2009.
- [12] S. Jonathan, *Quantitative and Qualitative Research Methods (In Indonesian)*, Graha Ilmu, Yogyakarta, 2006.
- [13] R.J.P. Nasution, *Interface of Intellectual Property Law and IPR Competition / Abuse Law (In Indonesian)*, Raja Grafindo Perkasa, Jakarta, 2013.
- [14] L. Shabrina, et.al., "Implementation of Copyright Protection Books Based Under Act Number 28 Year 2014 (In Indonesian)". *Diponegoro Law Journal*, VI (2), pp 1-15, 2017.
- [15] United States, "The Digital Millennium Copyright Act (DMCA)," United States: U.S. Copyright Office Summary, page 5-6, 1998.
- [16] Editor of Detik.com, "Many People Are Still Reluctant to Report Book Piracy (In Indonesian)" (online) available at <http://inet.detik.com/read/2015/10/21/124957/1471182/398/banyak-orang-masih-enggan-la-porkan-pembajakan-buku> (Accessed: December, 30, 2018).

Author Profile

Wahyu Suwarni received a Bachelor of Social Sciences Criminology Study Program from the University of Indonesia, Depok, Indonesia in 2010. She is a Master of Law graduate from Trisakti University, Jakarta, Indonesia, in 2016. Currently a Lecturer at the State Polytechnic of Creative Media (POLIMEDIA KREATIF), Jakarta, Indonesia.