



# Analysis of Criminal Policy Against the Spread of Pirated Films Online (Study in the Bandar Lampung Region)

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## Abstract

The development of information and communication technology makes piracy in the field of Copyright as land to take advantage of it and make Indonesia as a haven for the plowing so that the holders of intellectual property rights are harmed many despite tight control on it. The problem in this thesis is How the policies used to combat the spread of plowing movie works online as well as What are the factors inhibiting the copyright protection efforts in the dissemination of plowing movies online by law enforcement and related parties. This study uses the approach of juridical normative and empirical. This type of data consists of primary and secondary data. Analysis of data using qualitative analysis. Based on the results of research and discussion it can be concluded that have three stages there are the first stage is formulation stage, then application stage and the last is execution stage. There are several things that factor inhibitors such as law enforcement is limited to the parties who served in the police and in court both judges and investigators as well as in terms of legal factors, cultural factors, factors means and facilities as well as the factor of public awareness of the low level of public knowledge about IPR.

**Keywords:** Analysis; Criminal Policy; Plowing Movies; On line.

## A. Introduction

The process of globalization gave birth to a phenomenon that changed the conventional communication model by giving birth to a reality in the virtual world (virtual reality) which is known today as the internet. The internet is developing so rapidly as a culture of modern society, it is said to be a culture because through the internet various activities of the cyber community such as thinking, creating, and acting can be expressed in it, anytime and anywhere. Its presence has formed a separate world known as cyberspace or pseudo world, which is a computer-based communication world that offers a new virtual reality (indirect and not real). The use of internet technology cannot be denied that it has had a negative impact that is no less than the positive benefits that exist.<sup>1</sup>In connection with the evolving cyber crime, the government has implemented a policy with the issuance of Law No.11 of 2008 concerning Electronic Information and Transactions (UU ITE) which was enacted on April 21, 2008. The ITE Law is the first legal umbrella. which specifically regulates cyber law in Indonesia.

The substance / material regulated in the ITE Law is related to issues of jurisdiction, protection of personal rights, principles of e-commerce trade, principles of unfair business competition and consumer protection, principles of intellectual property rights (HaKI) and

<sup>1</sup><http://www.pintarkomputer.org/> 2015/03 / sej directions-internet-developments-in-the-world.html, accessed on 23 November 2015. At 21.21 WIB

international law and principles Cybercrime. The law examines cyber cases from several perspectives comprehensively and specifically, the focus is on all activities carried out in cyberspace such as gambling, pornography, threats, insults and defamation through the internet as well as computer access without permission by other parties (cracking) and make it look like an authentic document (phishing).

The development of information and communication technology has made piracy in the field of copyright a land to take advantage of this and make Indonesia a haven for pirates so that many Intellectual Property Rights holders are harmed. This was stated by the Directorate General of Intellectual Property Rights in the relationship between humans and between countries which is something that cannot be denied, Intellectual Property Rights are something that cannot be separated in an industrial society or that is going there. Its existence always follows the dynamics of development itself, as well as the Indonesian people and nation who inevitably touch and are directly involved.<sup>2</sup>

The combination of technology, namely the internet and entertainment, namely films, means that people rack their brains to consume these films for free or with the intention of trading these films below the prices available in cinemas.<sup>3</sup>By pirating films screened in cinemas supported by the help of recording devices which are of more and more types, piracy of films in cinemas often occurs even though the cinema has monitored to reduce the piracy. The combination of technology, namely the internet and entertainment, namely film, makes people rack their brains to consume the film for free or with the intention of trading the film below the price in cinemas. By pirating films screened in theaters supported by the help of recording devices which are of more and more types, piracy of films in theaters often occurs even though there has been supervision from the cinema to reduce the piracy.

Indonesian people often want things that are cheap and easy to obtain without considering the economic impact of these creators. Like movies, movies are often pirated and freely traded at low prices and modest quality, but for the middle and lower class, it is enough to be entertainment as long as it is cheap and not out of date. Many free movie sites circulate like ganool, hnmovies, your short stories, download new movies, download movies and more. Ganool site receives visits from the user 146,853 / day, hnmovies sites 74,807 / day, short story sites 65,335 / day, new movie download sites 24,825 / day and downloads 7,169 movies / day. That there are a lot of visits every day from the site's users only to view / download movies that have just been uploaded by the site providers. Indeed, these sites basically provide pirated films for free to download, but they take advantage of the results of advertisements that are clicked from each visitor to download these free movies. From rank 1, namelywww.ganool.com can get money from the ad as much as \$ 938 / day if the exchange rate in Indonesia as much as Rp. 11,256,000 (eleven million two hundred and fifty-six rupiah) in an exchange rate of Rp. 12,000 / dollar.<sup>4</sup>

Law Number 28 of 2014 concerning Copyright, especially in Article 4, namely Copyright is an exclusive right consisting of moral rights and economic rights. The exclusive rights referred to in Article 4 are rights reserved only for the Author, so that no other party can take advantage of these rights without the author's permission. Copyright holders who are not creators only have a part of the exclusive rights in the form of economic rights.<sup>5</sup>The economic argument for copyright law protection is to provide incentives for creativity and innovation. Rights owners have important powers to allow anyone to reproduce material copyrights in order to gain profits on the market. This is an increased incentive for innovation, with broad social benefits

<sup>2</sup>Saidin. Legal Aspects of Intellectual Property Rights. Revised edition, Publisher PT Raja Grafindo Persada, Jakarta 1997, p. 9.

<sup>3</sup>Danrivanto.Budhijantoo.LegalTelecomunicasi broadcasting & regulatory & information technology. Adi Tama's Reflika. Bandung. 2010.hlm.230.

<sup>4</sup><http://www.alex.com> accessed on March 4, 2018, at 14.57 WIB.

<sup>5</sup>Suyud Margono, 2010, Indonesian Copyright Law, Ghalia Indonesia, Bogor, p. 28.

for realizing fostering copyright-related industries within the framework of trade in goods and services on the market.<sup>6</sup>Pirates who upload (upload) file links to the internet have committed piracy by violating copyright because they have reproduced and broadcast films without the permission of the copyright holder so law enforcement must be implemented. Likewise, the Indonesian people are still less aware of the importance of respecting the creations of others by not committing violations that can result in enormous losses not only for the creators or rights holders but also for the state. The Copyright Law clearly regulates the rights owned by the creator, but in reality the enforcement of this Law is not in line with what was expected.

## **B. Research Methods**

The approach to the problem in this study uses a normative juridical approach and an empirical juridical approach. The normative juridical approach is a problem approach based on statutory regulations, theories, and concepts related to the problems to be studied. This approach is carried out by observing and studying principles, norms, rules, which are closely related to the writing of this research. The author uses a juridical normative and juridical empirical research method approach, empirical data in this study is in the form of several criminal policies against the spread of pirated films online. The data in this thesis research is obtained through two sources, namely primary data and secondary data. Collection data in The preparation of this thesis is carried out using literature study and field studies. The data that has been compiled are then analyzed normatively, namely comparing the data obtained with the rule of law. The method used in data analysis is qualitative analysis, namely describing the data in a quality manner in the form of regular, sequential, logical, non-overlapping and effective sentences to facilitate data interpretation and analysis.

## **C. Results and Discussion**

### **1. Policies Used For Overcome The Actions of Spreading Pirated Films Online**

Talking about the purpose of criminal policy which is the purpose of criminal law is the protection of the community, to achieve the main goals known as:

- a. The Happiness of the Community
- b. A variety of healthy and refreshing cultures
- c. Public welfare
- d. To achieve balance

Law enforcement of copyright is usually carried out by copyright holders in civil law but there is also a side of criminal law Criminal sanctions are generally imposed for serious fraudulent activities, but now it is increasingly common in other cases criminal sanctions for copyright infringement in the Law Number 28 of 2014 concerning Copyright, in Indonesia, in general, the minimum imprisonment of one month and a maximum of seven years may be accompanied or not accompanied by a fine of at least Rp. 1,000,000, - (one million rupiah) and a maximum of Rp. 5,000,000,000, - (five billion rupiah) while the work or goods that are the result of a criminal act of copyright and the tools used to commit the crime.

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<sup>6</sup>*Ibid.*, p. 7.

As part of the criminal policy, efforts to combat crime through this criminal law policy are also part of law enforcement policies and as a policy, of course in its implementation must go through the stages of policy enforcement, namely:

- a. Formulation stage, namely the stage of criminal law enforcement in abstracto by the legislative body. This stage can also be called the legislative policy stage.
- b. Application Stage, namely the stage of implementing criminal law by law enforcement officials starting from the police to court. This second stage can also be called the judicial policy stage.
- c. Execution Stage, namely the stage of implementing criminal law in a concrete manner by the criminal executing apparatus. This stage can be called the Executive or Administrative policy stage.<sup>7</sup>

The three stages mentioned above, are deliberately planned efforts to achieve the goal, which when linked with this research is aimed at tackling crimes against Copyright. Furthermore, it needs to be explained that in criminal law policy, apart from using a rational approach, it must also use a value approach, an economic approach and a humanistic (human) approach.

## **2. Penal Policy**

Talking about criminal law policy means starting from the concept of Modern Criminal Science. Modern Criminal Science consists of 3 components, namely Criminology, Criminal Law and Penal Policy. He stated that Penal Policy is a science as well as an art which ultimately has a practical objective to enable positive legal regulations to be better formulated and to provide guidance not only to legislators but also to courts implementing laws and also administrators or executors of judicial decisions.

A criminal politics that uses a criminal law policy must be an effort or steps that are made deliberately and consciously, so that choosing and determining what actions are criminal acts or what sanctions should be used or imposed on whom, must really have considered All factors that support the functioning of criminal law in reality, in other words, must take a rational policy approach.

## **3. Non-Criminal Law (Non Penal Policy) Policy**

Criminal policy, as a rational effort to tackle crime, does not only use penal means (criminal law) but also non-penal means (outside of criminal law). Based on Hoefangels' scheme regarding Criminal Policy, it can be stated that what is included in the Non Penal Group is Influencing view of society or crime and punishment (mass media) and also prevention without punishment.

Efforts to control crime are penalized more in the direction or in the nature of being repressive (eradication / oppression) after the crime occurs. On the other hand, the non-penal effort focuses more on the preventive nature of prevention / oppression before the crime occurs. That is, the main objective of non-penal measures is to deal with the factors conducive to the occurrence of crime, as well as to improve certain social conditions, but that do not directly have a preventive effect on crime. In the end, in order to compensate for the possibility of being limited and the possibility of a deficiency in penal means, it is felt necessary to take advantage of these non-penal measures in an effort to combat crimes.

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<sup>7</sup>Muladi and Barda Nawawi Arief, Theory and Policy of Criminal Law, PT.Alumni, Bandung, 2010, p. 3-14.

Law Number 28 of 2014 concerning Copyright, regulates the types of cases related to copyright crimes which investigators need to carry out, as regulated in Articles 112 to Article 120, namely as follows:

- a. Without the right to conduct commercial use, a work;
- b. Without the right to violate the economic right to commercial use of a work;
- c. Without the right and / or without the author's permission or the copyright holder violates the economic rights of the creator;
- d. Doing a form of piracy, of a work;
- e. Managing a trading place in all its forms that knowingly and deliberately allows the sale and / or duplication of goods resulting from a violation of Copyright and / or Related Rights in the place where the trade is managed;
- f. Without the consent of the person being photographed or their heirs, undertake Commercial Use, Reproduction, Announcement, Distribution, or Communication of Portraits for the purpose of advertising or advertising for Commercial Use in both electronic and non-electronic media;
- g. Collective Management Institutions that do not have an operational permit from the Minister carry out activities to withdraw Royalties.<sup>8</sup>

#### **4. Inhibiting Factors of Copyright Protection Efforts in Online Distribution of Pirated Films by Law Enforcers and Related Parties.**

There are several factors inhibiting Copyright protection efforts in the distribution of pirated films online, such as:

- a. Law enforcer  
The purpose of law enforcement here is limited to the parties serving in the Police and in the Court, both judges and PPNS.
- b. Legal and Regulatory Factors  
Put more emphasis on the laws and regulations, if there is a violation and the rules are not clear then law enforcement will be hampered. This Copyright Law in the community. This socialization seems to be not optimal because many people in the community do not seem to understand and are not ready to implement it as a manifestation of our positive law and there are still many violations that are still ongoing in society.
- c. Culture Factor
- d. For the perpetrators of criminal acts or the pirates in this case, the situation which drags on without any action, will increasingly create an attitude that piracy is a common thing and is no longer an act that violates the law. For this reason, online piracy is increasingly happening in Indonesia and in the city of Bandar Lampung
- e. Facility and Facilities Factor  
The reason that only Police officers and / or several prosecutors were sent was due to funding problems. In addition, if there is a Police who is involved in a HAKI training, it is not sent from a special team on IPR, but from other units, as a result the ability to distinguish the authentic characteristics of an original Copyright product is relatively lacking.
- f. Public Legal Awareness Factors

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<sup>8</sup>Interview with Ikhlas Nawawi, Wasidik Polda Lampung at Polda Lampung Office, on Tuesday, January 8, 2019.

According to Novarianto, there are two main things that affect this protection when viewed by the enforcement of Copyright so that it creates an attitude of indifference to the consequences of violations, both directly and indirectly, even though the violation occurs in front of the eyes.<sup>9</sup>

#### D. Conclusion

Based on the results of the research and discussion that has been described, the conclusions in this study are as follows:

- a. As part of the criminal policy, efforts to combat crime through criminal law policies are also part of law enforcement policies and as a policy, of course, in its implementation, it must go through the stages of policy enforcement, namely: In the formulation stage, lawmakers carry out value-selecting activities. -values that are in accordance with the current and future circumstances and situation, then set forth in the section of Law Number 28 of 2014 concerning Copyright which explains the desire to protect Copyright by including including criminal provisions as an effort to achieve results good copyright laws. At the application stage, describes the stages from the point of view of the community, namely; The low level of public knowledge, as well as the attitude of the community that tends a priori towards law enforcement officers in charge of upholding and implementing laws and regulations that have been made by the makers of the Law on the Police, the Attorney General's Office, the Court up to conviction or more precisely is called with the criminal law enforcement system (law enforcement). Then for the execution stage, the criminal executing apparatus is tasked with enforcing these laws and regulations (in this case the criminal provisions in Law Number 28 of 2014 concerning Copyright) through the application of crimes that have been stipulated in court decisions.
- b. There are several factors inhibiting Copyright protection efforts in the distribution of pirated films online, such as:
  - 1) Law enforcement means law enforcement here is limited to the parties serving in the Police and in the Court, both judges and PNS.
  - 2) Laws and Legislation Put more emphasis on statutory regulations, if there is a violation and the regulations are unclear then law enforcement will be hampered.

#### Reference

- Choi, D. Y., & Perez, A. (2007). Online piracy, innovation, and legitimate business models. *Technovation*, 27(4), 168–178. doi:10.1016/j.technovation.2006.09.004
- Coomber, R., Moyle, L., Belackova, V., Decorte, T., Hakkarainen, P., Hathaway, A., ... Werse, B. (2018). The burgeoning recognition and accommodation of the social supply of drugs in international criminal justice systems: An eleven-nation comparative overview. *International Journal of Drug Policy*, 58, 93–103. doi:10.1016/j.drugpo.2018.05.010

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<sup>9</sup>Interview with Novarianto, legal service officer at the Regional Office of Law and Human Rights in Bandar Lampung, on Tuesday, January 8, 2019

- Danrivanto.Budhijanto.2010, Hukum Telekomunikasi penyiaran & teknologi informasi regulasi &konvegasi.
- Di Salvatore, J. (2018). Does criminal violence spread? Contagion and counter-contagion mechanisms of piracy. *Political Geography*, 66, 14–33. doi:10.1016/j.polgeo.2018.07.004
- Grolleau, G., Mzoughi, N., & Sutan, A. (2008). Please do not pirate it, you will rob the poor! An experimental investigation on the effect of charitable donations on piracy. *The Journal of Socio-Economics*, 37(6), 2417–2426. doi:10.1016/j.socec.2008.02.001
- Kazemian, L., & Farrington, D. P. (2018). Advancing knowledge about residual criminal careers: A follow-up to age 56 from the Cambridge study in delinquent development. *Journal of Criminal Justice*, 57, 1–10. doi:10.1016/j.jcrimjus.2018.03.001
- Lee, J. F. (2018). Purchase, pirate, publicize: Private-network music sharing and market album sales. *Information Economics and Policy*, 42, 35–55. doi:10.1016/j.infoecopol.2018.01.001
- Muladi dan Barda Nawawi Arief, 2010, *Teori-Teori dan Kebijakan Hukum Pidana*, PT. Alumni: Bandung.
- Saidin.1997, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*. Edisi revisi, Penerbit P.T. Raja Grafindo Persada: Jakarta.
- Sezneva, O. (2012). The pirates of Nevskii Prospekt: Intellectual property, piracy and institutional diffusion in Russia. *Poetics*, 40(2), 150–166. doi:10.1016/j.poetic.2012.02.005
- Sezneva, O. (2012). The pirates of Nevskii Prospekt: Intellectual property, piracy and institutional diffusion in Russia. *Poetics*, 40(2), 150–166. doi:10.1016/j.poetic.2012.02.005
- Spadon, G., Scabora, L. C., Oliveira, P. H., Araujo, M. V. S., Machado, B. B., Sousa, E. P. M., ... Rodrigues-Jr, J. F. (2017). Behavioral Characterization of Criminality Spread in Cities. *Procedia Computer Science*, 108, 2537–2541. doi:10.1016/j.procs.2017.05.118
- Suyud Margono, 2010, *Hukum Hak Cipta Indonesia*, Ghalia Indonesia, Bogor.
- Tang, G. H. (2010). Is administrative enforcement the answer? Copyright protection in the digital era. *Computer Law & Security Review*, 26(4), 406–417. doi:10.1016/j.clsr.2010.05.006
- Tomczyk, Ł. (2019). The practice of downloading copyrighted files among adolescents. Correlations between piracy and other risky and protective behaviours online and offline. *Technology in Society*. doi:10.1016/j.techsoc.2019.05.001