

Political Renewal of Copyright Protection Law in the Problem of Copyright Infringement (Multi-Dimensional Law Narrative)

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Abstract. *Copyright is a high reality of various values, including economic value, this is because copyright that is born from copyright, taste, and intention is able to color the development of human life through objects born from the copyright process. But in its development various copyrights are not noticed in this country. The rise of piracy of song copyrights, for example, can only be economically profitable for the perpetrators of song copyright piracy, while not many creators can seek justice for it. This is increasingly unfair with Article 112 to Article 119 of Act No. 28 of 2014 changing a copyright offense into a complaint offense which further marginalizes the rights of the creator of a copyrighted work in this country. Therefore, it is necessary to have a joint discussion regarding the development of legal politics of creator protection related to copyright offenses that occur. Relevant updates can be made through changes to the complaint offense in the Invite-Act No. 28 of 2014 becomes a general criminal offense. So it is hoped that criminal offenses against copyright can be handled without having to complain from the copyright owner first so that copyright protection can be optimally implemented, this will be able to improve civilization for the better due to the protection of the economic aspect of copyright through criminal sanctions imposed firm.*

Keywords: Copyright; Legal; Politics; Protection.

1. INTRODUCTION

The development of science and technology and global trade encourage the development of Intellectual Property Rights in Indonesia. At first, the issue of Intellectual Property Rights is very simple, it only concerns the demand for absolute control and use of something that has been found or created with his energy and intellectual abilities, then extends to the question of who has the right to be the owner of a work if the raw material comes from another party. , etc.¹ This is reflected in the granting of exclusive rights, granting exclusive rights to Intellectual Property Rights

¹Ari Wibowo *Justifikasi Hukum Pidana terhadap Kebijakan Kriminalisasi Pelanggaran Hak Cipta, serta Perumusan Kualifikasi Yuridis dan Jenis Deliknya* Jurnal Hukum IUS QUIA IUSTUM NO. 1 VOL. 22 January 2015, p. 54 - 75

holders based on 3 (three) reasons, namely social reasons, economic reasons and reasons for benefit.² Even now it has become more complex because it is entered by various interests, such as economic and political interests.

Intellectual Property Rights above can generally be grouped into two kinds of rights. First, Copyright which includes copyright and other rights related to copyright. Second, Industrial Property Rights which include Patents, Marks and Geographical Indications, Plant Varieties, Industrial Designs, Layout Designs of Integrated Circuits, and Trade Secrets. One form of Intellectual Property Rights which has the broadest scope of protected objects, because it includes science, art and literature (art and literary) as well as computer programs is Copyright. Therefore, copyright infringement in the fields of science, art and literature is, in principle, a criminal act as is the violation of other people's property rights in general.³

Copyright as a part of the field of Intellectual Property Rights is also affected by the harmonization of the law. In practice, the harmonization of copyright has been amended 4 times Starting from the Act No. 6 of 1982 concerning Copyrights as amended by Act No. 7 of 1987, which later amended by Act No. 12 of 1997. Then it was changed again with Act No. 19 of 2002 on Copyright, and finally with Act No. 28 of 2014 about Copyright. With the aim of protecting the rights of the creators as well as related rights holders.⁴

The birth of Copyright begins with an idea or ideas. The idea arises from creative thinking, using the intellectual intelligence and emotional intelligence possessed by the Creator or Inventor specifically (exclusive) which is then realized in the form of creation or invention. Creations or inventions are material property rights (tangible), on top of the material property rights are attached immaterial property rights (intangible)⁵ with that Copyright is defined as a special right for creators to copy or reproduce their own works or give permission to other parties⁶ where currently there are a lot of other people's works that are recognized as their own, of course this is very contrary to the rule of law.

In Copyright, rights are divided into two major groups, namely moral rights and economic rights. Then the moral rights and economic rights can still be divided into various kinds of rights. In accordance with Article 5 of Act No. 24 of 2014 concerning Copyright, moral rights are rights that are eternally attached to the creator to:

- a. Continue to include or not include his/her name on the Copy in connection with the public use of his/her creation;
- b. Using his real name or pseudonym;
- c. Changing his creation in accordance with the propriety in society;

²Jhon D Mittelstaedt & Robert A Mittelstaedt, (1997), *the Protection of intellectual Property: Issues of Origination and Ownership*. Journal of Public Policy and Marketing. 16 1: Abi/inform Global, p. 15

³ A Mashdurohatus, (2012), *Problematika Perlindungan Hak Cipta di Indonesia* - Yustisia Jurnal Hukum, p.72

⁴ Ignatius Haryanto, (2014), *Misguided Intellectual Property*, Jakarta: Gramedia, p. 43

⁵ Saidin, OK, (2015), *Aspek Hukum Hak Kekayaan Intelektual*, Jakarta: PT. RajaGrafindo Persada

⁶ AB Susilo, (2018), *Buku Saku Penggolongan Hak Kekayaan Intelektual*, LPPM UNNES, p.4.

- d. Change the title and sub-title of the creation; and
- e. Defend their rights in the event of a distortion of creation, mutilation of creation, modification

Article 8 of Act No. 28 of 2014 concerning Copyright, Economic Rights are the exclusive rights of creators or copyright holders to obtain economic benefits on the creation. The existence of Articles 5 and 8 of Act No. 24 of 2014 concerning copyright, it can be concluded as follows: Economic rights are the rights to obtain economic benefits from a work of creation, while moral rights are rights attached to the creator that cannot be removed even though the creation has been transferred to another party unless the author has willed or in accordance with the provisions of the legislation after the creator dies⁷

The protection of the rights mentioned above is very important to be enforced by law, because nowadays along with the development of advanced technology, people have forgotten about the concept of respecting one's rights behind a work. One example is downloading a copyrighted work using the internet and making copies for profit, plagiarizing someone else's work for academic purposes or selling pirated CDs without the permission of the creator or copyright holder.⁸ These loopholes are often exploited by parties who want to make big profits in an easy way with little cost, without thinking about the losses of other parties, which in this case are the creators or inventors and of course the state as well.⁹ Infringement of copyright basically can also be categorized as a crime that can harm a creator or inventor.

This means that the occurrence of criminal acts in the field of copyright can result in losses for creators and copyright holders, therefore legal action is needed, then Article 120 of Act No. 28 of 2014 expressly stipulates that all criminal acts regulated in the Act are complaint offense.¹⁰ This means that all criminal acts from Article 112 to Article 119 of this Law constitute a complaint offense. The renewal of criminal law can be seen as changing the offense which was originally an ordinary offense into a complaint offense as law enforcement in the field of copyright¹¹.

2. RESEARCH METHODS

This research is juridical/normative studies, which collected the data from literature resources. The issue to be discussed in this paper is related to how to enforce the implementation of the Act No. 28 of 2014 regarding Copyright in eradicating criminal acts related to copyright.

⁷ Article 5 paragraph (2) and Article 8 of Act No. 28 of 2014 concerning Copyright

⁸Miryansyah, (2016), *Analisis Hukum Terhadap Tindak Pidana Hak Cipta (Di Tinjau Dari Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta)*, p. 2

⁹Padrisan Jamba, Analisis Penerapan Delik Aduan Dalam Undang-undang Hak Cipta Untuk Menanggulangi Tindak Pidana Hak Cipta Di Indonesia, *Jurnal Cahaya Keadilan*. Vol 3. No. 1 ISSN: 2339-1693

¹⁰ Article 120 of Act No. 28 of 2014

¹¹ A Chuasanga, Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, *Jurnal Daulat Hukum*, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>

3. RESULT AND DISCUSSION

3.1. Implementation of the Eradication of Crime Against Copyrights Based on Act No. 28 of 2014 concerning Copyrights

Copyright which is part of intellectual property rights has become an interesting topic to study. It is undeniable that currently there are many copyright violations that occur, especially in cyberspace (internet) with the intent to benefit oneself or others. The context for self-benefit In accordance with article 378 of the Criminal Code "whosoever with the intent to benefit" *himself or another person unlawfully, by using a false name or false dignity, by deceit, or a series of lies, to move other people to hand over something to him, or to give debts or write off debts*" This has indirectly caused economic losses, not only for the creators but also for the country. Therefore, many creators feel disadvantaged because of the low commitment of the Government, protection of a work arises automatically since the work is manifested in a tangible form and registered with Directorate General of Intellectual Property Rights. Because of the registration of the work that can be used as initial evidence in court if a dispute arises in the future against the work. According to Agus Sarjono in the Minutes of the Special Committee Meeting of the Draft Law on Copyrights, he stated that the regulation of copyright is included in the field of civil law, because it involves ownership of rights which in its use carry out civil law, agreements so that law enforcement is actually more there. If it is made a crime, there is no profit for the creator of the enforcement of criminal law. According to him, it is better to be civil, namely to compensate for the losses suffered by the creator¹² Agus Sarjono puts more emphasis on copyright as a matter of civil law, but in fact copyright infringement is also a criminal offense, in principle criminal law is the ultimum remidium. Ultimum remidium means that criminal law is the ultimate weapon or the last means used to solve a legal problem¹³

The example above states that copyright infringement is also a criminal matter, because from an editorial point of view it is an infringement, the perpetrator committing the infringement had bad intentions against the law. According to Barda Nawawi Arief as quoted by Trisno Raharjo, the determination of an offense as an ordinary offense or a complaint offense is a matter of policy, thus there are many factors to consider and alternatives to choose from. So it is not solely related to the nature or prominent private interests, thus private interests are not the only factor that must be considered¹⁴ The academic text also explains that based on practice in society, the application of ordinary offenses for criminal acts in the field of Copyright in Act No. 19 of 2002 concerning Copyright is felt to be inappropriate on the grounds that copyright is an exclusive civil right. So ideally, copyright infringement is a complaint offense because the one who knows best about counterfeiting a work is the creator himself.¹⁵ Due to Indonesia became a member and legally participated in TRIPs, through the ratification of the WTO Agreement with Act No. 7 of 1994¹⁶ Hereby,

¹² Minutes of the Special Committee Meeting on the Draft Copyright Law, 1st Meeting of the Special Committee, 21 May 2014, p. 21

¹³ Eddy O.S Hiariej, (2014), *Prinsip-Prinsip Hukum Pidana*, Cahaya Atma Pustaka, Yogyakarta, p. 26-27.

¹⁴ Trisno Raharjo, (2006), *Kebijakan Legislatif dalam Pengaturan Hak Kekayaan Intelektual dengan Sarana Penal*, First Edition, Yogyakarta: Kantor Hukum Trisno Raharjo, p.77

¹⁵ Academic Paper of the Draft Law on Copyright, 2013, p. 25

¹⁶ Achmad Zen Umar Purba. (2016), *Perjanjian dan Beberapa Isu Strategis*, Alumni, Print- 2, p 16

Indonesia is bound by all provisions of the TRIPs Agreement, including the provision that intellectual property rights are private rights. The status of private rights becomes relevant if in criminal matters, as in Indonesia, the violation is categorized as a complaint offense.¹⁷

Then in Article 120 of Act No. 28 of 2014 it is expressly regulated that all criminal acts regulated in the Law are complaint offenses.¹⁸ This means that all criminal acts from Article 112 to Article 119 of this Law constitute a complaint offense. According to Ismu Gunaidi and Jonaedi Efendi, ordinary offenses or in the terms of the Criminal Investigation Unit are pure crimes, namely all criminal acts that occur, the process cannot be stopped for reasons that can be understood in the complaint offense.¹⁹ So it is not possible for the parties to dismiss the case unless it turns into a complaint offense. The author can withdraw the claim within 3 months after the complaint is made,²⁰ and can choose the process of resolving the case as to what will be taken. So whether it's an ordinary offense or a complaint, the police will continue to protect and supervise, this task is not hindered by the determination of the complaint offense. In addition, there is also the Directorate General of Intellectual Property Rights which also has the task of supervising and investigating. If these two institutions are maximal in carrying out their duties, surely the authority of law enforcement exists and remains authoritative in the eyes of all the people. However, enforcement is returned to the choice of the victim.

The point is that the basis for consideration of changing a copyright offense to a complaint offense is that Indonesia is a participating country that has ratified the WTO which applies TRIPs as a source of law in which there is a stipulation that intellectual property rights are private rights. This statement of private rights becomes relevant to the criminal law, namely the complaint offense, which according to Achmad Zen Umar Purba, is actually not enough, because the determination of the complaint offense is not only based on this consideration, but also other considerations that lead to why this offense was chosen, namely first, who knows about a creation is the creator himself, second, it is difficult to find original evidence of a creation, third,²¹.

3.2. New Materials and Criminal Law Updates in Act No. 28 of 2014

As what has been explained above that the material for replacing a law can only be made if there are changes that result in the systematics and material of the law have changed by more than 50% (fifty percent).²² previously in the Copyright Act No. 19 of 2002 does not describe the protection of economic rights and moral rights for creators and related rights holders regarding the use of copyright, these related rights are multimedia facilities to respond to developments in information and communication technology, piracy problems, complaint material offenses, and so on.

¹⁷ Ibid.

¹⁸ Article 120 of Act No. 28 of 2014

¹⁹ Ismu Gunaidi & Jonaedi Efendi, (2014), *Cepat dan Mudah Memahami Hukum Pidana*, Jakarta: Kencana Prenadamedia Group, p. 59

²⁰ Article 75 of the Criminal Code

²¹ Dhimas Putra Ramadhan. (2017). *Kebijakan Legislatif Perubahan Pengaturan Pelanggaran Hak Cipta sebagai Delik Aduan pada Undang-Undang Nomor 28 Tahun 2014 Ditinjau dari Perlindungan Hak-Hak Pencipta atau Pemegang Hak Cipta*. Skripsi Universitas Islam Indonesia, p. 2017

²² Results of a Working Visit on the Draft Copyright Law in East Kalimantan Province, 15-17 May 2014.

1. Protection Reform Against the Economic Rights of the Creators and/or Copyright Owners

In the Copyright Act No. 28 of 2014 mentions in detail the substance of the author's economic rights, namely the rights of: Publishing Works; Reproduction of Works in all its forms; Translation of Works; Adaptation, Arrangement, or Transformation of Works; Distribution of Works or copies thereof; Creation Show; Announcement of Works; Creative Communications; and Leasing Works. Whereas previously in the Copyright Act No.19/2002, the substance of the creator's economic rights was only mentioned: the right to announce and reproduce the work. Article 9 Paragraph (1) of Act No. 28 of 2014 stipulates that the Creator or copyright holder as referred to in Article 8 has economic rights to:

- a. Publishing creations;
- b. Reproduction of creation in all its forms;
- c. Creation translation;
- d. Adaptation, arrangement or
- e. transformation of creation;
- f. Distribution of works or copies thereof
- g. Creation show;
- h. Announcement of creation
- i. Creation communication, and
- j. Creation rental

Copyright protection in Copyright Act No. 28 of 2014 was carried out with a longer period than the protection period in Copyright Act No. 19 of 2002, namely as long as the age of the creator is added to 70 years after the creator's death (Article 59 Paragraph (1) of the New Copyright Law) and specifically regarding works of applied art, copyright protection is valid for 25 years from the time it was first made announcement (Article 59 Paragraph (2) of the New Copyright Law).

2. Update Criminal Law 28 of 2014

In Article 120 Invite-Act No. 28 of 2014 states that "Criminal acts as referred to in the Act"-This law is a complaint offense". Criminal acts included in Act No. 28 of 2014 are as referred to in:

a. Article 112 :

Every person without the right to do as referred to in article 7 paragraph (3), removes, changes, and damages management information and copyright electronic information owned by the copyright holder, and/or article 52, namely eliminating, destroying, destroying, or making unauthorized functions as a control facility that is used to protect the work as well as to protect the work, for commercial use, shall be punished with a maximum imprisonment of 2 years and/or a maximum fine of IDR300,000,000.00. The expiration date of the violation of this article according to article 78 of the Criminal Code is after 6 years. For those who are not yet 18 years old, the expiration date, namely the 6-year grace period, is reduced to one third.

b. Article 113 :

- 1) Anyone who unlawfully violates economic rights as referred to in Article 9 paragraph (1) letter i for Commercial Use shall be punished with imprisonment for a maximum of 1 (one) year and/or a fine of a maximum of IDR 100,000,000 (one hundred million rupiah).). In article 9 letter i the copyright holder or creator has the economic right to lease the work. The expiration date of the violation of this article according to article 78 of the Criminal Code is after 6 years. For those who are not yet 18 years old, the expiration date, namely the 6 year grace period, is reduced to one third
- 2) Any person who without rights and/or without permission of the creator or Copyright holder violates the economic rights of the author as referred to in article 9 paragraph (1) letter c, letter d, letter f, and/or letter h for Commercial Use shall be subject to imprisonment for a maximum of 3 (three) years and/or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah). In article 9 paragraph (1) letter c, namely the right of the creator or copyright holder to carry out the translation of the work, letter d is the right to adapt, arrange, or transform the work, and letter f, regulates the right of the creator or copyright holder to hold a performance. The expiration date of the violation of this article according to article 78 of the Criminal Code is after 1 year.
- 3) Any person who without rights and/or without permission of the creator or Copyright holder violates the economic rights of the creator as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for Commercial Use shall be subject to criminal sanctions with imprisonment for a maximum of 4 (four) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah). In article 9 paragraph (1) letter a, which regulates the right of the creator or copyright holder to publish the work, letter b, regulates the right of the creator or copyright holder to reproduce the work in all its forms, letter e, regulates the rights of the creator or the copyright holder to distribute the work or copies thereof, and the letter g, namely regulating the rights of the creator or copyright holder to make an announcement of the creation. The expiration date of the violation of this article according to article 78 of the Criminal Code is after 12 years. For those who are not yet 18 years old, the expiration date, namely the 12-year grace period, is reduced to one third.
- 4) Anyone who fulfills the elements as referred to in paragraph (3) which is committed in the form of piracy, shall be sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of IDR 4,000,000,000.00 (four billion rupiah). The expiration date of the violation of this article according to article 78 of the Criminal Code is after 12 years. For those who are not yet 18 years old, the expiration date, namely the 12-year grace period, is reduced to one third.

c. Article 114 :

Any person who manages a trading place in all its forms who knowingly and knowingly allows the sale and/or reproduction of goods resulting from copyright infringement and/or related rights in the trading place he manages as referred to in article 10, shall

be punished with a maximum fine of IDR 100,000,000 (one hundred million rupiah). The expiration date of the violation of this article according to article 78 of the Criminal Code is after 6 years.

d. Article 115 :

Any person who without the consent of the person being photographed or his heirs performs Commercial use, Reproduction, Announcement, Distribution, or Communication of the Portrait as referred to in Article 12 for the purposes of advertising or advertising for Commercial Use, both in electronic and non-electronic media, shall be subject to criminal sanction with a maximum fine of IDR 500,000,000.00 (five hundred million rupiah). The expiration date of the violation of this article according to article 78 of the Criminal Code is after 6 years.

e. Article 116 :

- 1) Any person who unlawfully violates the economic rights as referred to in Article 23 paragraph (2) letter e for Commercial Use shall be sentenced to a maximum imprisonment of 1 (one) year and/or a maximum fine of IDR 100,000,000 (one hundred million rupiah).). Article 23 paragraph (2) letter e regulates the economic rights of performing performers which include the right to perform, grant permits, or prohibit other parties from leasing the fixation of the performance or its copies to the public.
- 2) Any person who unlawfully violates the economic rights as referred to in Article 23 paragraph (2) letter a, letter b, and/or letter f, for Commercial Use shall be punished with imprisonment for a maximum of 3 (three) years and/or a criminal fine. a maximum fine of IDR 500,000,000.00 (five hundred million rupiah). Article 23 paragraph (2) letter a, letter b, and letter f, which regulates the economic rights of performers which include the right to implement, grant permits, or prohibit other parties from broadcasting or communicating on the performances of performers, fixing the performances have not been fixed, and provide for the fixation of performances that can be accessed by the public. The expiration date of the violation of this article according to article 78 of the Criminal Code is after 6 years.
- 3) Any person who unlawfully violates the economic rights as referred to in Article 23 paragraph (2) letter c, and/or letter d for Commercial Use shall be sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 1.000.000.000,00 (one billion rupiah). Article 23 paragraph (2) letters c and d regulates the economic rights of performing performers which include the right to implement, grant permits, or prohibit other parties from duplicating the fixation of their performances in any way or form, and distributing the fixations or copies thereof. The expiration date of the violation of this article according to article 78 of the Criminal Code is after 12 years.

f. Article 117 :

- 1) Any person who intentionally and without rights violates the economic rights as referred to in Article 24 paragraph (2) letter c for Commercial Use shall be sentenced to a maximum imprisonment of 1 (one) year and/or a maximum fine of IDR 100,000,000 (one hundred million rupiah). Article 24 paragraph (2) letter c regulates the economic rights of Phonogram Producers which include the right to implement, grant permits, or prohibit other parties from leasing to the public a copy of the phonogram. The expiration date of the violation of this article according to article 78 of the Criminal Code is after 6 years.
- 2) Any person who intentionally and without rights violates the economic rights as referred to in Article 24 paragraph (2) letter a, letter b, and/or letter d for Commercial Use, shall be sentenced to a maximum imprisonment of 4 (four) years and/or or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah). Article 24 paragraph (2) letter a, letter b, and letter d, regulates the economic rights of a phonogram producer which includes the right to carry out, grant permits, or prohibit other parties from duplicating the phonogram in any way or form, distributing the original phonogram or copies thereof, and making publicly accessible wired or wireless phonograms available. The expiration date of the violation of this article according to article 78 of the Criminal Code is after 12 years.

g. Chapter 118 :

- 1) Any person who intentionally and without rights violates the economic rights as referred to in Article 25 paragraph (2) letter a, letter b, letter c, and/or letter d for Commercial Use, shall be sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah). Article 25 paragraph (2) letter a, letter b, letter c, and letter d regulates the economic rights of broadcasting institutions which include the right to self-execute, grant permits, or prohibit other parties from rebroadcasting, broadcast communications, broadcast fixation, and/or broadcast fixation doubling. The expiration date of the violation of this article according to article 78 of the Criminal Code is after 12 years.
- 2) Everyone who fulfills the elements as referred to in Article 25 paragraph (2) letter d committed with the intention of Piracy shall be sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of IDR 4,000,000,000.00 (four billion rupiah).). The expiration date of the violation of this article according to article 78 of the Criminal Code is after 12 years.

h. Chapter 119 :

Any Collective Management Institution that does not have an operational permit from the Minister as referred to in Article 88 paragraph (3) and conducts Royalty withdrawal activities shall be subject to a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah). The expiration date of the violation of this article according to article 78 of the Criminal Code is after 12 years. Article 95 paragraph (4) of Act No. 28 of 2014 states that in addition to infringement of

Copyright 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 Unitary State of the Republic of Indonesia, they must first seek a settlement disputes through mediation before making criminal charges.²³

Arrangement of Copyright infringement as a complaint offense in terms of legal protection of the rights of the creator or copyright holder is deemed not to have fairly accommodated the rights of creators and copyright holders in Indonesia. In its development, Indonesia is a participating country that has ratified the trade provisions of the WTO which has imposed TRIPs as a source of law in which there is a stipulation that intellectual property rights are private rights. This statement of private rights becomes relevant to the criminal law, namely complaint offenses. From an economic perspective, changing a copyright regulation offense to a complaint offense gives the victim a choice,

Therefore, it is necessary to reform the criminal law which no longer protects the rights of capitalists but also creators who do not understand the principles of modern copyright. In line with this, Sri Endah stated that:²⁴

If what national law aspires to is the *Pancasila* legal system, then it is appropriate to study and develop criminal law that contains *Pancasila* values, meaning that criminal law is oriented to the value of the One Godhead, criminal law is oriented to just and civilized human values of criminal law based on the value of Unity, and criminal law imbued with democratic values led by wisdom in deliberation/representation and the value of social justice for all Indonesian people.

Related with Sri Endah's view above, Notonagoro stated that:²⁵

The benchmark for the practical philosophy of Indonesian national law is *Pancasila* which is an abstraction of the noble values of the Indonesian people which contains the ideals of the nation, namely a just and prosperous society both materially and spiritually, and the life of the Indonesian people as a whole.

Furthermore, in line with the various views above, Barda Nawawi stated that:

That the reform of criminal law is essentially an effort to reorient and reevaluate the socio-political, socio-philosophical, socio-cultural values that underlie and provide content for the normative and substantive contents of the aspired criminal law.

Based on the various views above, it is clear that the shift of a copyright offense to a complaint offense is very far from the spirit of protection for the creator of a work which will ultimately result in legal injustice. Copyright should no longer be a complaint offense like the western concept, but should be a special offense that can automatically be imposed on copyright owners without waiting for a complaint from

²³ Article 109 paragraph (4) letter c of Act No. 28 of 2014 concerning Copyright

²⁴Sri Endah Wahyuningsih, *Principles of Criminal Individualization in Islamic Criminal Law and Indonesian Criminal Law Reform*, UNDIP, Semarang, 2013, p. 68.

²⁵Ibid, p. 69.

the copyright owner in order to be able to realize the value of social justice for all Indonesian people in the copyright sector.

4. CONCLUSION

Based on the various explanations above, it is clear that there is a need for political reform of criminal law related to copyright offenses that better protect the creators of a copyrighted work by changing the complaint offense against a copyright offense into a special offense that can be acted upon without waiting for a complaint from the creator who is responsible for it. harmed.

5. REFERENCES

Journals:

- A Mashdurohatun, (2012), *Problematika Perlindungan Hak Cipta di Indonesia* - Yustisia Jurnal Hukum,
- A Chuasanga, Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218> ,
- Ari Wibowo *Justifikasi Hukum Pidana terhadap Kebijakan Kriminalisasi Pelanggaran Hak Cipta, serta Perumusan Kualifikasi Yuridis dan Jenis Deliknya* Jurnal Hukum IUS QUIA IUSTUM NO. 1 VOL. 22 January 2015,
- Dhimas Putra Ramadhan. (2017). *Kebijakan Legislatif Perubahan Pengaturan Pelanggaran Hak Cipta sebagai Delik Aduan pada Undang-Undang Nomor 28 Tahun 2014 Ditinjau dari Perlindungan Hak-Hak Pencipta atau Pemegang Hak Cipta*. Skripsi Univeritas Islam Indonesia,
- Jhon D Mittelstaedt & Robert A Mittelstaedt, (1997), *the Protection of intellectual Property: Issues of Orgination and Ownership*. Journal of Public Policy and Marketing. 16 1: Abi/inform Global,
- Miryansyah, (2016), *Analisis Hukum Terhadap Tindak Pidana Hak Cipta (Di Tinnjau Dari Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta)*
- Padrisan Jamba, *Analisis Penerapan Delik Aduan Dalam Undang-undang Hak Cipta Untuk Menanggulangi Tindak Pidana Hak Cipta Di Indonesia*, Jurnal Cahaya Keadilan. Vol 3. No. 1 ISSN: 2339-1693
- Salim & Erlies Septiana Nurbani, (2013), *Penerapan teori Hukum Pada Penelitian Tesis dan Disertasi*, Jakarta: PT. Raja Grafindo Persada,

Books:

- AB Susilo, (2018), *Buku Saku Penggolongan Hak Kekayaan Intelektual*, LPPM UNNES
- Achmad Zen Umar Purba. (2016), *Perjanjian dan Beberapa Isu Strategis*, Alumni, Print-2,
- Eddy O.S Hiariej, (2014), *Prinsip-Prinsip Hukum Pidana*, Cahaya Atma Pustaka, Yogyakarta
- Ignatyus Haryanto, *Sesat Pikir Kekayaan Intelektual*, Jakarta: Kepustakaan Populer Gramedia, 2014,

Ismu Gunaidi & Jonaedi Efendi, (2014), *Cepat dan Mudah Memahami Hukum Pidana*, Jakarta: Kencana Prenadamedia Group,
Pernyataan Lawrence M. Fiedman in Esmi Warassih, (2014), *Pranata Hukum: Sebuah Telaah Sosiologis*, Semarang: Pustaka Magister,
Saidin, OK, (2015), *Aspek Hukum Hak Kekayaan Intelektual*, Jakarta: PT. RajaGrafindo Persada

Satjipto Raharjo, (2000), *Ilmu Hukum*, Bandung: PT. Citra Aditya Bakti

Trisno Raharjo, (2006), *Kebijakan Legislatif dalam Pengaturan Hak Kekayaan Intelektual dengan Sarana Penal*, First Edition, Yogyakarta: Kantor Hukum Trisno Raharjo

Regulation:

Act No. 19 of 2002 concerning Copyrights

Act No. 28 of 2014 concerning Copyright

Constitution of 1945 the Republic of Indonesia

Criminal Code