

**COVERS OF MUSIC AND SONGS WITHOUT NO LICENSE
AGREEMENT OF THE CREATOR AND COPYRIGHT HOLDER
CARRIED OUT BY CORPORATE AND INDIVIDUAL BLACK
YOUTUBERS ON THE YOUTUBE CHANNEL**

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Abstract

Criminal acts such piracy, copying, covering, distributing, and arranging musical works that belong to copyright holders, associated rights holders, and performers without a license or permission cannot be dealt with solely by illegal law enforcement under the Copyright Law. Furthermore, violators of piracy, song covers, music rearrangements without the consent of the copyright owners, associated rights, and performers shall face criminal penalties under Copyright Law No. 28 of 2014. This socio-legal research method study is a study that "integrates" doctrinal studies with social studies. In this study, using the postpositivism paradigm as the foundation of reality based on experience. To provide a sense of justice and legal certainty for copyright holders, connected rights, and future performers, the author's conclusions and recommendations are that the criminal provisions in Law No. 28 of 2014 respecting Copyrights that face juridical challenges should be reformulated. Besides, in the transition phase to the application of criminal sanctions provisions in the copyright law, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning Corruption as a legal subject in terms of Non-Tax State Revenue (PNBP) and Law No. 28 of 2007 concerning General Provisions on Tax Procedures, the legal subject can be seen from the non-payment of license taxes to the state treasury as state income.

Keywords: *Music and Song Cover, License, Copyright, Piracy*

1. INTRODUCTION

Copyright is an intangible movable object, where copyright can be transferred economic rights through a written license agreement (Prabowo & Inayah, 2020). Since copyright is a form of intangible movable object and can be used as an object of fiduciary guarantee, hence legally copyright is an intangible movable object that is the property of the creator privately or personally and the copyright holder (Cahayani & Magna, 2021; Lelomali & Irianto, 2020). Therefore, it can be said that if someone else uses the creation belonging to the creator and the copyright holder is used by a third party for commercial or non-commercial purposes that is announced and communicated to the public through electronic systems without permission, it can be said to be a criminal act of copyright infringement or theft of "theft". "Intangible movable objects belonging to the creator violate religious norms, moral norms, norms of courtesy and positive legal norms (Ulinuha, 2017).

Article 55 Paragraphs (1,2,3 and 4) of Law No. 28 of 2014 concerning Copyright, where based on the results of the verification of the Minister of Law and Human Rights of the Republic of Indonesia, the Directorate General of Intellectual Property (refers to DJKI), and

the Ministry of Communication and Information Technology of the Republic of Indonesia may impose sanctions on the closure of all copyright content infringement so that the electronic system cannot be accessed. The act of theft or "theft" intentionally or unintentionally is still punishable by a criminal offence. It cannot be used as an excuse for third parties not to know copyright law, because society is bound by the fictional principle of presumption *iures de iure* law (everyone knows the law) as regulated in Article 81 of Law No. 12 of 2011 concerning the Establishment of Legislation (Hamzah, 1986). Criminal law enforcement in the Copyright Law cannot stand alone in dealing with criminal acts of criminal offenses covering songs and music, distributing, arranging music products and songs belonging to creators, copyright holders, related rights and performers without a license/permission will get four criminal sanctions, namely copyright crimes, corruption crimes, tax crimes and/or civil compensation penalties (Eddy, 2009). The author gives the name of the stigma against the perpetrators of the criminal act of violating the cover of songs and music that there is no license (does not have a license agreement) as corporate and individual black youtubers (corporate and individual black youtubers).

In addition, offenders of piracy, song covers, and music rearrangements without the consent of the copyright holder, associated rights, and performers shall face criminal penalties as outlined in Article 113 of Law No. 28 of 2014 on Copyright. Paragraph (1) "Whoever illegally infringes the economic rights specified in Article 9 is liable. Paragraph (2) Anyone who violates the economic rights of the creator as outlined in Article 9 paragraph (1) letter c; translation of creation, letter d; adapting, arranging, or transforming the work, letter f; creation show, and/or letter h; communication of creation for commercial use without the rights and/or permission of the creator or copyright holder shall be punished with imprisonment for a maximum of 3 (three) years and/or a maximum fine of Rp500 (five hundred million rupiah). Any person who violates the economic rights of the Author as outlined in Article 9 paragraph (1) letter a: publishing of work, letter b: duplication of creation in all its forms, letter e: distribution of works or copies thereof, and/or letter g: announcement of a work for Commercial Use shall be punished with a maximum prison term of four years and/or a maximum fine of one million rupiah (one billion rupiah). Paragraph (4), "Anyone who satisfies the components as referred to in paragraph (3) which is committed in the form of piracy, will be penalized with imprisonment for a maximum of 10 (ten) years and/or a fine of a maximum of Rp. 4.000.000.000.00 (four billion rupiah).

In this research, there are two primary issues: First, there is a deficiency in the execution of the imposition of criminal punishments in the copyright legislation due to a lack of attention to legal difficulties in the drafting of criminal law provisions (penal policy). The second problem is that there must be an understanding among copyright holders, related rights holders, and performers regarding the operation of law enforcement using other laws outside of relevant copyright laws, such as corruption and tax crime laws, in an effort to protect law and legal certainty. This socio-legal research method study "integrates" doctrinal studies with social studies, based on the assumption that the rule of law never operates in a vacuum against future criminal actions of song and music copyright infringement in Indonesia.

In this study, in accordance with the postpositivism paradigm, which is the experiential foundation of reality, the researchers' observations of the object of study are neutral. To provide a feeling of justice and legal certainty for copyright holders, associated rights, and

future performers, according to the author's findings and recommendations, it is important to reformulate the problematic criminal provisions in Law No. 28 of 2014 concerning Copyrights. In addition to referring to Article 94 of Law No. 28 of 2014 concerning Copyright as the execution of Article 94, the author concludes that Law No. 31 of 1999 is very significant to the transitional period leading to the application of the criminal penalties provisions in the copyright law. Law No. 20 of 2001 concerning Corruption as a legal subject from the side of the Non-Tax State Revenue (hereafter referred to as PNBPN) Law on PNBPN, and Law No. 28 of 2007 concerning General Provisions on Tax Procedures, the legal object from the side of not paying the registration fee license agreement as Non-Tax. State Revenue to the state treasury according to Article 94, by perpetrators of criminal acts of copyright infringement across the globe pursuant to Article 2 letters b and c, numbers 1 and 2, of Law No. 28 of 2014 concerning Copyright and Compensation for Unlawful Acts Civil (PMH).

2. RESEARCH METHOD

This research method study utilizing a socio-legal strategy is a study that "combines" doctrinal studies with social studies. This integration is founded on the assumption that the rule of law never operates in a vacuum against the future criminal actions of song and music copyright theft in Indonesia. In the current investigation, the postpositivism paradigm, which is the foundation of reality that is founded on experience, ensures that the researchers' observations are objective with regard to the topic of the investigation.

3. RESULT AND DISCUSSION

3.1. State Loss Value

The potential royalty value of songs from Indonesia that are played at entertainment venues abroad could reach Rp 3-4 trillion starting from August 2021. The Office of the Ministry of Law and Human Rights of the Directorate General of Intellectual Property of Indonesia Freddy Harris said Indonesia had not been able to withdraw it. because it collided with song and music data. The management of the collection of royalties based in Hong Kong refused to disburse because it did not want to fall to parties who were not entitled to it, since our Indonesian musicians have no data. Therefore, the Ministry of Law and Human Rights issued Government Regulation Number 56 of 2021, one of which emphasized the obligation to create a music data center. The credibility of the management of the National Collective Management Institute is questioned by Indonesian performers and by the government. As a result, Indonesian musicians do not have music data through the National Collective Management Institute. Thus, the state finally tried to step in to help them by preparing a budget of Rp 100 - 200 billion. In order to avoid mutual tug of war between LMKNI institutions, for the next few years the government will control such in Singapore. The economic calculation is that the state spent Rp. 200 billion to attract foreign exchange of Rp. 3 trillion, and perhaps the current value is Rp 4 trillion. However, the state does not take any profit from this case.

The implementation of the digital service system at the Directorate General of Intellectual Property has succeeded in reducing the chance of corruption by up to 99%. Therefore, during the pandemic, the performance of the institution he leads is actually more

productive, so that the achievement of Non-Tax State Income is actually higher than the target. In 2017, the Indonesian Recording Industry Association released the loss of performers and the state due to copyright piracy related to royalties reaching Rp 17,5 trillion. The loss of the music industry as a result of physical piracy of songs and music is Rp 3,5 trillion, digital piracy is Rp 14 trillion. Meanwhile, state losses in the non-tax state revenue sector in physical piracy, state losses of Rp 450 billion and digital piracy of Rp 1,4 billion.

3.2. CL Regulations in Indonesia

Illegal law enforcement under the Copyright Law cannot stand alone in dealing with criminal conduct such as piracy, copying, covering, distributing, and arranging music items and songs belonging to copyright holders, associated rights, and performers without a license/permission. Article 99 describes the civil punishments that may be imposed. (1) Authors, Copyright Holders, or Related Rights owners may submit a claim for compensation with the Commercial Court for infringement of Copyright or Related Rights items. (2) The demand for compensation referred to in paragraph (1) may take the form of a request to relinquish all or a portion of the money earned by hosting lectures, scientific meetings, performances, or exhibits of works resulting from copyright infringement or Related Rights goods. In addition to the litigation referred to in paragraph (1), the Author, Copyright Holder, or Related Rights owner may seek a provisional decision or an interlocutory decision to the Commercial Court to: (a) request the seizure of the Works for which an Announcement or Reproduction is made, and/or the Reproduction tool used to make Works resulting from Copyright infringement and Related Rights goods; and/or (b) cease Announcement, Distribution, Censorship, or Censorship (a) request the confiscation of the Works by Announcement or Reproduction, as well as the Reproduction tools used to create the Works as a result of Copyright infringement and Related Rights products; and/or (b) cease Announcement, Distribution, Communication, and/or Reproduction activities as a result of Copyright infringement and Related Rights products (Makawimbang, 2014).

Furthermore, criminal consequences will be imposed on offenders of piracy, song covers, music re-arrangements without the authorization of the copyright holder, associated rights, and performers, as specified in Article 113. (1) Paragraph "Every individual who infringes economic rights as referred to in Article 113 paragraph (1) for Commercial Use will be condemned to a maximum imprisonment of one year and/or a maximum fine of Rp. 100.000.000 (one hundred million rupiah). (2) Any person who 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 without rights and/or without permission of the Author or Copyright holder shall be sentenced to a maximum imprisonment of 3 (three) years and/or a maximum fine of Rp. 500.000.000.00 (five hundred million rupiah). (3) Any person who violates the economic rights of the Author as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for Commercial Use without rights and/or without permission of the Author or Copyright holder is sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1.000.000.000.00 (one billion rupiah). paragraph four, "Anyone who satisfies the requirements referred to in paragraph (3) and commits piracy will be penalized with imprisonment for a maximum of 10 (ten) years and/or a fine of Rp. 4.000.000.000.00 (four billion rupiah). However, the basis of civil and criminal law as a legal foundation for copyright proprietors, associated rights holders, and performers seeking legal justice in the

case of a copyright infringement is still challenged with patterns and legal systems that are judged complicated and difficult to apply.

In the implementation of copyright law, sometimes investigators, prosecutors and judges do not share one view in interpreting the regulation of criminal and civil sanctions from the objective of the copyright law, which always ends in disappointment experienced by copyright holders, related rights and rights of performers (Islamic, 2002). Perpetrators of piracy and perpetrators of music and song covers walk free as if they feel innocent. Currently, what is in the sharp spotlight by copyright inmates, related rights and performers is dealing with wild song covers on YouTube and other social media facilities, which take place so freely, that it seems that the copyright law is unable to stem the activity of covering songs and music wildly and immorally. As a result, many singers, musicians, songwriters convey their complaints to the government and law enforcement officials, however, their complaints are only heard without concrete follow-up. In particular, the police institution does not have the legal right to conduct free investigations into the perpetrators of the crime of piracy or the perpetrators of song covers without permission because the regulation of copyright laws, copyright criminal cases are no longer a general offense but a complaint offense. Hence, by changing the status of a general offense to a complaint offense, limiting the scope of the police in carrying out legal processes, without any mediation efforts between the complainant and the reported party at the agency facilities of the Directorate General of Intellectual Property (hereinafter referred to as DJKI) of the Ministry of Law and Human Rights of the Republic of Indonesia or the Intellectual Property Rights mediator team, cannot take criminal action. This is an obstacle for copyright holders, related rights and performers to carry out criminal law efforts in Indonesia, without any mediation effort between the complainant and the reported party at the facilities of the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights of the Republic of Indonesia or the Intellectual Property Rights mediator team, no criminal action can be taken.

Economically, the perpetrators of the large-scale criminal act of piracy were carried out by companies with strong financial strength, making it very easy for them to play immoral and immoral strategies to deal with problems, minimize the rights of copyright holders (songwriters), binding rights (phonogram producers-broadcasters), and performers (singers-musicians-songwriters). Moreover, Indonesian YouTubers who create content for their own music songs without revealing the names of the songwriters and music composers are infringing on their moral rights and committing a license violation that is punishable because it harms them economically.

One of the things that YouTubers are passionate about is making music covers and songs sung by non-original singers and musicians, so that they gain support and get millions of subscribers, likes and is watched by millions of people around the world. From the results of making content covering songs and music, many YouTubers earn a lot of rupiah from YouTube, the results of which are transferred directly from YouTube to the account of the account owner who creates song and music cover content.

3.3. AdSense YouTube

Requirements Before Registering for YouTube AdSense YouTube AdSense is one of the most promising sources of income, it's no wonder that almost all Youtubers activate AdSense ads on their videos. The author is of the opinion that YouTube is a forum and a means and a

place to provide digital means to publish the works of YouTubers for the purpose that the work is watched by many people through digital means, where from the results of the broadcast of the products of YouTubers to YouTube, advertisements will be included as commercial for accounts that get millions of subscribers from all over the world.

Adsence is a Google-organized advertising cooperation program through internet media in which the owner of a website or blog would get money in the form of profit sharing from Google for each advertisement clicked by site visitors, also known as the pay per click (PPC) system or pay per click (Aqar, 2018; Chandra, 2022). Whatever the type and form of youtube regulation, it is clear from a legal point of view, youtubers who create music and song cover content can be said to be a crime against the economic rights of copyright holders, related rights and performers as regulated in Article 113 Paragraph (2) letter c, d, f, and h, which threatens the perpetrators of translating works, adapting, arranging or transforming works or copies, performances of works and communication of works without permission from the holder of the copyright, related rights and performers, can be subject to imprisonment for as long as a maximum of three years and a maximum fine of Rp500 million rupiah.

It is clear that criminal sanctions against music and song cover actors without permission can be carried out through criminal and civil efforts, because YouTubers are clear in creating song cover content intentionally and with the intention to seek commercial profit, not just for fun. Because, youtube regulations are clear, that any youtuber will get economic value for accounts that meet the requirements, because the price of 1000 youtube subscribers is worth R13 thousand rupiah. As we can see on the Sosil Blate youtube channel, YouTuber Atta Hahallintar with 20 thousand subscribers will earn USD \$ 16.2 thousand to USD \$ 258.6 thousand or equivalent to Rp3.6 billion more per month from the results of creating content on the YouTube channel. This shows that Indonesian YouTubers actually benefit economically from the creation of content uploaded on the YouTube channel, therefore there are economic rights of copyright holders, related rights and performers who must pay license rights to them in accordance with with the agreed value and amount of money given.

Reformulation of the legal system, in structuring the formulation, application and execution of Law No. 28 of 2014 concerning Copyright is very necessary to ensure legal certainty to avoid juridical problems in the implementation of UUHC. Because, the application of criminal provisions in UUHC is the final step in seeking justice for performers to get legal justice to defend their economic and moral rights against copyrighted works of songs and music in Indonesia. UUHC reformulation, as a means to provide clear legal protection through criminal provisions, in addition to being able to use and function the involvement of other laws to help enforce the criminal law of Copyright Law in Indonesia. Execution can be interpreted as the implementation of a decision from the final implementation of the enforcement of the criminal provisions in UUHC or the final result. Because, in its application, there is space outside the UUHC that can be included in the context of enforcing criminal law. The economic impact of copyright infringement is not only detrimental to performers in Indonesia, but also to the state's finances. In the future, it is hoped that criminal law enforcement will not be solely focused on the implementation of the UUHC, but will also utilize the Corruption Crime Act, which can involve law enforcement agencies such as the police, prosecutors, and the Corruption Eradication Commission (KPK) in combating piracy in Indonesia. According to data issued by ASIRI in

2017, state damages due to criminal acts of piracy in Indonesia were Rp 1,75 trillion, while economic losses reached Rp 17,5 trillion. In order to improve criminal law enforcement in the context of implementing the UUHC, the Anti-Corruption Law must be supplemented by the Anti-Corruption Law as a method of supporting criminal law enforcement. In the General Provisions of Article 1 Number (1) of Law No. 17 of 2003 concerning State Finance, it is stated that "State Finance" refers to all monetary-valuable rights and liabilities of the state, as well as everything in the form of money or goods that may be acquired, which made state property for the purpose of carrying out these rights and obligations.

Article 1 point-1 of Law No. 17 of 2003 on State Finance defines "State Finance" as "all rights and obligations of the state that can be valued in money, as well as everything in the form of money or goods that can be made state property in connection with the implementation of these rights and obligations." Basically, the Corruption Law emphasizes that corruption is not only identical and attached to the positions of civil servants and state administrators, it is also attached to the receipts and expenditures of State budget (APBN) or Regionl Budget (APBD) funds and Non-Tax State Revenues (PNBP).

Article 1 point-22 of Law No. 1 of 2004 concerning the State Treasury defines state financial losses as "lack of money, securities, and goods, which are real and definite in amount as a result of unlawful acts, either intentionally or negligently". In criminal law theory, this definition includes "material offenses" according to the Constitutional Court's decision above because it requires state losses "which are really real and definite in amount" as a result of an act that is prohibited and must be proven before a court hearing. This means that in relation to the potential loss of state finances on PPN and PNBP receipts of Rp. 1.75 trillion rupiah, the Corruption Law can be used to make efforts to shape law enforcement on the implementation of UUHC. With a clear explanation and definition of the meaning of "state finances: in the provisions of the State Treasury Law and the State Finance Law, it means that the evasion and or non-payment of VAT and PNBP taxes by Yuser and/or officials of the Ministry of Justice and Human Rights Director General of the Indonesian Ministry of Law and Human Rights can be carried out using the Anti-Corruption Law approach.

In addition, the strategy for implementing the concept of "state financial losses" in accordance with the terminology of Law No. 17 of 2003 is as follows: Loss or diminution of state rights and obligations that are quantifiable in monetary terms or in the form of goods that can be used as state property in relation to the execution of rights and obligations as a result of illegal acts that result in the loss or reduction of state rights and obligations. Meanwhile, "state financial losses" refers to the loss or reduction of state financial revenues and/or expenditures. For instance, the decrease in the state or regional revenue sector, Non-Tax State Revenue (PNBP), levies, and state business revenues. In this case, the state lost Rp. 1,75 trillion in the VAT and PNBP tax sectors due to the criminal act of copyright infringement in music and songs.

Article 6 paragraph (a) of the Republic of Indonesia Government Regulation No. 28 of 2019 on Non-Tax State Revenue Types and Rates Applicable to the Ministry of Law and Human Rights is based on the following: (4) Changes in data and changes in the name and/or address of the creator, copyright holder, owner of the related rights product, and/or recipient of rights are subject to a tariff of Rp. 0.00 if they are submitted without the applicant's fault. Paragraph (5) Additional provisions regarding the requirements and procedures for imposing

tariffs, as outlined in paragraphs (1) to (4), shall be outlined in a regulation issued by the Minister of Law and Human Rights, with the approval of the Minister of Finance. In summary, with respect to all licensing agreements relating to intellectual property rights, as outlined in Article 83, Paragraph 1 of Law No. 28 of 2014, it is evident that there are lost state rights, as perpetrators of criminal acts of copyright infringement are averse to registering use licenses. The copyright belongs to the minister. This is what causes potential state losses to emerge.

Article 18 Paragraph (1) letter-b of the Corruption Crime Law stipulates an additional penalty in the form of "payment of replacement money" in the amount of the property obtained from perpetrators of corruption, copyright piracy, in order to recover state financial losses (asset recovery) totaling Rp 1,75 trillion rupiah. Include the convict's company where the corruption occurred as well as the cost of replacing the stolen goods. If the copyright infringement convict fails to pay restitution within one month of the judge's decision becoming final, the prosecutor may seize and sell his property to cover the payment of restitution. This is also consistent with the decision of the Constitutional Court, as the judge will only issue a "reimbursement payment" decision if the public prosecutor demonstrates a state financial loss at a court hearing based on a BPK audit.

Real state financial losses are not required so long as evidence points to "potential state losses." The Constitutional Court (MK) Case Number: 25/PUU-XIV/2016 dated January 26, 2017 against Article 2 Paragraph (1) and Article 3 of the Corruption Law regarding the word "can" is declared to be contrary to the Constitution of 1945 and has no legal force. The decision of the Constitutional Court reclassifies corruption offenses from "formal offenses" to "material offenses" that must be proven to have caused state financial losses or damage to the state's economy as a result of acts prohibited by Article 2 Paragraph (1) and Article 3 of the Corruption Law. In its legal considerations, the Constitutional Court changed the constitutional assessment in the previous Constitutional Court Decision Number Case: 003/PUU-IV/2006, which stated that "the meaning of state financial loss or the state's economy is not an actual consequence that must occur." There is a fundamental reason for the Court "to changing the constitutional assessment because the previous assessment has repeatedly proven to create legal uncertainty and iii. In particular, the Supreme Court of the Republic of Indonesia established transitional rules for corporate corruption crimes. Since there is a legal void in the Criminal Code, a temporary regulation is required while the RKUHP is awaiting ratification. If the UUHC provisions involve corporations, this rule may be used as a supporting rule in legal proceedings against corporate criminals.

Regulation of the Supreme Court of the Republic of Indonesia No. 13 of 2016. Regarding Procedures for Handling Corporate Crime Cases; Corporate Crime;

- 1) Perma is still transitional to fill the legal vacuum. Further arrangements should be in the Criminal Code. However, the draft Criminal Code is still being discussed.
- 2) the contents of the Perma are considered to be in conflict with similar internal rules in other institutions. For example, the Indonesian Attorney General's Office already has the Attorney General's Regulation Number 28 of 2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects.
- 3) Perma only manages the problem-formal-procedural, has not set up substantial matters. Such as withdrawing corporate criminal liability, when an act can be charged to the corporation, and when an act cannot be charged to the corporation.

- 4) Perma has not touched corporations in the form of non-legal entities. The Perma is also said to not explain what corporations are legal entities and what corporations are not legal entities and how to regulate one another.
- 5) limits in determining the actions of someone who does not have the authority to make decisions but can control or influence corporate policy or in the Perma is called the "Management". This limit is considered still not clear.
- 6) there is no explanation about the difference between corporate group liability and the participation of criminal acts.
- 7) penalty given is still limited to fines. Sanctions should be added to the revocation of business licenses, legal entity status, deprivation of profits, partial or complete closure of the company, correction of the consequences of a criminal act or placing the company under custody for a maximum of three years.
- 8) The Perma does not regulate significant differences in establishing a corporation or management as a suspect/defendant.

3.4. BPK Audit

State financial losses in the VAT and Non-Tax State Revenue (PNBP) sector of Rp1,76 trillion in the goods and services sector for physical and digital music and song art products by ASIRI constitute corruption. Hence, we are not required to use UUHC to suppress illegal acts of music and song copyright piracy. This is one of the effects of the Constitutional Court (MK) Case Number: 25/PUU-XIV/2016 dated January 26, 2017 against Article 2 Paragraph (1) and Article 3 of the Corruption Law pertaining to the word "can" being declared contrary to the Constitution of 1945 and having no legal force. The decision of the Constitutional Court reclassifies corruption offenses from "formal offenses" to "material offenses" that must be proven to have caused state financial losses or damage to the state's economy as a result of acts prohibited by Article 2 Paragraph (1) and Article 3 of the Corruption Law. In its legal considerations, the Constitutional Court changed the constitutional assessment in the previous Constitutional Court Decision Number Case: 003/PUU-IV/2006, which stated that "the meaning of state financial loss or the state's economy is not an actual consequence that must occur," so that there is a fundamental reason for the Court "to changing the constitutional assessment because the previous assessment has repeatedly created legal uncertainty." Before legal action can be taken against those responsible for the theft of music and song copyrights, an audit of the Indonesian Supreme Audit Agency (BPK) must be conducted. Before a case is upgraded to the investigation phase, there must be an audit of state financial losses conducted by the Supreme Audit Agency, for every Circular Letter of the Supreme Court (SEMA) No. 4 of 2016. (BPK). This anticipates that the audit of state financial losses attributable to the BPK will serve as the basis for a suspect's pretrial determination.

Table 1 List of Music Industry Losses and State Losses in 2017

No	Income Name	LossIndustry	State Losses
1	Physical Forms of Piracy	Rp. 3,5 trillion	Rp. 350 billion
2	Digital Forms of Piracy	Rp. 14 trillion	Rp. 1,4 billion
	Total	Rp. 17,5 trillion	Rp. 1,75 trillion

As can be seen on the data above that the number of state losses is quite high, therefore if UUHC fails to make headway in the context of carrying out criminal legal actions, another law must accompany UUHC to help limit the number of criminal acts of piracy and to impose severe penalties on users who refuse to pay PNPB to the state treasury. The embezzlement of Non-Tax State Revenue funds that should have been deposited into the state treasury but not paid by the users can be categorized as a criminal act of corruption, because it has harmed the state economy and state finances. This PNPB corruption crime is one of the criminal acts and acts against the law committed by a person or corporation of criminal violators of piracy, copying and licensing with the aim of benefiting themselves or the corporation, by abusing the authority, opportunity or means attached to their position and impact on state financial losses.

Efforts to enforce criminal law related to the crime of piracy of song and music copyrights clearly have an impact on performers and the state, therefore the new UUHC has not been able to give a good influence on the rise of criminal acts of piracy of song and music copyrighted works. Therefore, in order to support UUHC, when it has not been able to answer the problem of the crime of piracy, then other laws that have room to participate in helping to eradicate the crime of piracy, the Anti-Corruption Law is a solution in order to reduce the number of piracy crimes in Indonesia. Through the police, prosecutors and the KPK, can carry out investigations and investigations into criminal acts of corruption committed by users who do not want to pay taxes on CD and DVD products and other digital means do not have to wait for complaints from victims. Because, in UUHC, the crime of piracy can be processed by criminal law, after mediating first and making a complaint. The perpetrators of criminal acts, of course, will not lose their minds, and they will certainly resolve the dispute at the mediation stage, and the scope of criminal law enforcement will be smaller.

Traditionally, the theories of punishment can generally be divided into two groups of theories, namely:

- 1) Absolute theory or retaliation theory (relative/vergeldings theory),
- 2) Relative theory or goal theory (utilitarian/doeltheorieen).

According to this absolute theory, people are punished solely for committing a crime or criminal act (*quia peccatum est*). Criminal is an absolute consequence that must exist as retribution against the perpetrator of the crime (Usman, 2011). In this regard, the new UUHC should be the end result of efforts to enforce criminal law, and be able to resolve existing criminal problems. If, at this time, the new UUHC has not been able to solve the crime of piracy, doubling and related licensing and criminal issues in protecting the rights of performers, it means that the new UUHC has not been able to realize the wishes of performers in Indonesia. While the main goal (primary) of the criminal according to this theory is "to satisfy the demands of justice" (Rumadan, 2013). Meanwhile, currently the criminal act of piracy continues to dominate the market freely, meaning that here there have been legal omissions in the aspect of criminal law. Mediators in Indonesia have a hard time getting the cooperation of artists since they cannot offer them any effective means of preventing the piracy of their work. The government only focuses on mediation efforts more on the civil aspect, while the violation of the crime of piracy is not touched at all, because the crime of piracy is a complaint offense.

Timur Priyono is one of the speakers as a musician in Indonesia, who has dozens of hits songs in Indonesia, including the song "Yang Penting Hepy" which was popularized by Jamal Mirdad. Arrange for users to pay royalties correctly and honestly. When LMK and LMK and other tools as partners work, economically there is an increase in income for the performers, but not significant. Further, he stated that the problem of criminal acts of piracy in Indonesia is that if only the civility aspect is highlighted, then piracy will never be completed. Because the hijackers will have a sense of deterrence if they have been sentenced to physical prison, and fined. If only mediation is facilitated by the Director General of Intellectual Property Rights, PPNS investigators will not complete it and the sanctions are still too soft, there are many reasons and arguments, if the negotiating hijackers also argue a lot, they always argue with efforts to pay the cheapest possible compensation to the victim. His party often experiences things like that, negotiations that have no conclusion, while economically the hijackers have paid off. Timur Priyono admits that once upon a time, one of the National Television Stations, used his song with the lyrics changed without his permission. When summoned by a legal advisor, the television only stopped the program, but they also did not want to pay royalties, even though they have often used my songs for commercial activities in the program.

The next step that must be taken by the government is that the elements of complaint offenses in Law No. 28 of 2014 concerning Copyright should be changed to ordinary offenses, so that the National Police can work optimally in handling the crime of piracy. At the very least, it can relieve the performers of the show, without any complaints from us, the police can arrest, confiscate and search the pirates of song and music copyrights in Indonesia.

Currently, in Indonesia in various regions, pirated CD and DVD products dominate the market and there is no legal action by law enforcement officials in Indonesia. This is very ironic, when the new UUHC was enacted and took effect at the beginning of 2017, only improvements to the administration of economic rights and moral rights were to collect royalties, but piracy, copying, licensing violations and song mutilations everywhere due to acts of piracy were not touched equally. This is what causes the performers to be reluctant to take legal action, because the new UUHC leads us to civil law, namely mediation, while we want to mediate with whom the hijackers are hidden in the office warehouse, while the products produced are quite large and generate considerable profits. Therefore, this has implications for the performers directly, in addition to not being considered for our dignity, the pirated CD and DVD products also do not mention and write the songwriters. In fact, in digital karaoke houses, there are also many songs that are not written by the author, this is morally detrimental and is a copyright crime. Therefore, his party agrees, in many legal practitioners, asking that the offense element in the newly revised UUHC, be returned to the original offense, so that the police have the flexibility to take criminal legal action. Only this criminal punishment can provide a deterrent effect to the perpetrators of the crime of piracy in Indonesia. The new UUHC will not be able to help provide solutions to performers, because they are not able to create the value of legal justice and economic welfare.

In Nigel Walker's view it is reductive (thereductive point of law) because the basis for criminal justification according to this theory is to reduce the frequency of crimes (Fartini, 2017). Consequently, if the new UUHC is more dominated by civil law, it is feared that the fate of performers in Indonesia will still be difficult to obtain legal justice from the aspect of criminal law, because the new UUHC does limit the space for resolving criminal acts of

piracy towards civil mediation (Suharti, 2005). Furthermore, who will mediate when the perpetrators of piracy carry out their activities covertly? It is impossible for performers in Indonesia to judge individually and must oversee the perpetrators of piracy, therefore there must have been riots with the collaborators of the hijacking companies. Because of the shift in elements of ordinary offenses into complaint offenses as a significant indicator of legal weakening criminal law in the new UUHC, the author is afraid that, in the future, the existing and future UUHC in terms of criminal law will be sterile and suspended, harming major performers.

The phenomenon of rampant criminal acts of piracy, copying, licensing violations, etc., will be the starting point for a shock to the performers in the future, if this is not addressed by the government and professional organizations that oversee the performers in Indonesia. As Emile Durkheim said, that the function of the crime is to create the possibility for the release of the emotions that are aroused or shaken by the existence of crime. While the currents in criminal law are not looking for a legal basis or justification for the crime, but trying to obtain a criminal law system that is practical and useful. As in the new UUHC, it must provide the maximum benefit for present and future performers in Indonesia.

Therefore, the implication of this new UUHC is that the policy of the formulation of criminal law must be interpreted as an effort to make and formulate a criminal law that is good and appropriate and fair for the present and the future. This means, according to the author, criminal sanctions should not be hampered by other wills, with civil mediation facilities, criminal efforts do not affect the victim's process of taking legal action in a civil manner, because civil and criminal aspects are two separate things, both mechanisms and legal procedures for the process to civil and criminal justice processes. The use of legal remedies, including criminal law as an effort to overcome social problems, including in the field of law enforcement policies in order to suppress the crime of piracy, duplication and licensing violations must be a priority in the new UUHC. Because the law works in the social sphere, the use of legal remedies is included in the part of social protection and welfare policies. According to Roeslan Saleh, the need to use criminal means and criminal law is based on the following reasons:

- 1) Whether or not criminal law is necessary does not lie in the question of the goals to be achieved, but lies in the question of how far to achieve that goal it is permissible to use coercion;
- 2) There are attempts at repair or maintenance which have no meaning at all for the condemned; and besides that there must be a reaction to the violation of norms that he has committed and cannot be left by it self;
- 3) The influence of criminal or criminal law is not solely aimed at the criminal, but also to influence people who are not evil, namely citizens who obey the norms of society;

Criminal law policy can be interpreted as acts or policies from the state (government) to use criminal law in achieving certain goals, especially in combating crime, it is important to recognize that there are numerous methods and efforts that can be made by each nation (government) in combating crime. Among the measures taken to combat crime is the implementation of a criminal law policy or criminal law politics. According to Sudarto, implementing the politics of criminal law entails holding elections to achieve the most effective criminal legislation in terms of achieving justice and efficiency. The politics of

criminal law entails efforts to implement criminal laws and regulations that are consistent with the current and future circumstances and situations. Marc Ancel argues that the concept of penal policy is both a science and an art whose ultimate purpose is to improve the formulation of positive legal regulations and to offer guidance not only to legislators but also to courts that apply the law.

The formulation stage (legislative policy), the application stage (judicial and judicial policies), and the execution stage (execution/administrative policy) are involved in the operationalization of the criminal law policy (penal policy). The formulation phase is the most strategic of the three phases of crime prevention and control through criminal law policies. Legislative policy errors and weaknesses are strategic errors that can impede efforts to prevent and combat crime during the application and implementation phases (Firdaus, n.d.). The new Copyright Law, Law No. 28 of 2014, regulates the pattern of settlement of penal mediation in piracy cases through the formulation and regulation of criminal law policies.

The third theory is the Legal System Components theory (CCC) as stated by Lawrence M. Friedman. In his book, "American Law, An Introduction", Friedman said, there are three components of the legal system, namely, legal structure, legal substance, and legal culture (Lawrence Meir Friedman & Hayden, 2017). First, the legal structure is a legal framework or series, the components that give the whole its form and boundaries. The structure of the legal system is analogous to a photograph that freezes motion. The legal structure is associated with the forum, organization, or institutions that create and enforce the law. Second, the system's legal substance, which includes rules, norms, and actual human behavior patterns. Legal substance also refers to the decisions and new rules produced by those in the legal system, i.e., the decisions they make and the new rules they create. Therefore, the legal substance is not limited to formal norms alone, but also includes social behavior patterns that will form distinct formal norms. The focus here is on living law, not just on the rules found in law books. Human attitudes toward the law and the legal system, including beliefs, values, thoughts, and expectations. In other words, legal culture is the disposition of social thought and the social forces that determine how the law is utilized, avoided, and abused. Has copyright law demonstrated its role as a tool for community revitalization, and whether copyright law has been "pro-people and pro-justice law" in practice.

Based on Friedman's theory, the protection of the creator's economic rights will be reviewed and assessed based on the institutions or institutions that play a role in implementing or enforcing the UUHC, the norms related to the protection of the creator's economic rights, as well as the attitudes, feelings, and thoughts of the community towards the rights of the economic rights of creators, especially song and music composers in Indonesia. The various economic rights of creators have been discussed above is different from the division of economic rights according to various literatures.

According to Friedman (1975), the legal system consists of three components: legal structure, legal substance, and legal culture. First, the legal structure is a legal framework or series, the components that give the whole its form and boundaries. The structure of the legal system is analogous to a photograph that freezes motion. The legal structure is associated with the forum, organization, or institutions that create and enforce the law. Second, the system's legal substance, which includes rules, norms, and actual human behavior patterns.

Legal substance also refers to the decisions and new rules produced by those in the legal system, i.e., the decisions they make and the new rules they create. Therefore, the legal substance is not limited to formal norms alone, but also includes social behavior patterns that will form distinct formal norms. The focus here is on living law, not just on the rules found in law books. Human attitudes toward the law and the legal system, including beliefs, values, thoughts, and expectations. To combat piracy in Indonesia, it is crucial to emphasize criminal law, along with other pertinent legal assistance and related regulations.

Friedman further said that there are three components in the legal system, namely, legal structure, legal substance, and legal culture. In the legal structure of the new UUHC, it is explained that legal remedies that can be taken by victims of copyright crimes can be taken through mediation by the Director General of Intellectual Property Rights, file a civil lawsuit to the Commercial Court, and take criminal legal remedies through a complaint process to the Police, the Attorney General's Office and the Attorney General's Office. General Court. In the new UUHC it is also possible, other laws can be used in order to assist the enforcement of criminal law, against the crime of piracy of song and music copyrights in Indonesia by means of the Anti-Corruption Law. In the legal substance of the new UUHC, There is also room for other laws to be used to help enforce UUHC laws relating to criminal acts of tax evasion and/or not paying taxes on physical CD and DVD products or other digital media in the PNB sector. As stated in Article 83 Paragraph (1), Law No. 20 of 2014 concerning Copyright, "The license agreement must be registered by the Minister in the general register of Copyright license agreements with a fee". Here, when the pirates enter into a licensing agreement with the performers, they should be charged a fee that is included in the PNB at the ministry. However, because the perpetrators of criminal acts have never asked for a license from songwriters and other performers, the licensing fees that should go into the state treasury in the PNB sector include physical and digital products that produce, must be taxed with Value Added Tax (VAT), that is, a tax imposed on every value added of goods or services in circulation from producers to consumers.

Ideally, every perpetrator of criminal acts of corruption, both individually and corporately in the crime of piracy of song and music creations in the non-tax revenue sector, should be punished to the maximum extent as stipulated in Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, namely "every person who with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of a position or position that can harm state financial or economy, shall be sentenced to life imprisonment or a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years and or a minimum fine of Rp. 50.000.000,00 (fifty million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah)".

Corruption crimes result in state financial losses and impede national development; therefore, they must be eradicated to establish a just and prosperous society based on Pancasila and the Constitution of 1945. national development requiring high levels of efficiency. Corruption left unchecked will be disastrous not only for the national economy but also for the nation and state as a whole. The pervasive and systematic crime of corruption is also a violation of the social and economic rights of the community; as a result, corruption can no longer be classified as an ordinary crime and has become an extraordinary crime.

Consequently, comprehensive law enforcement is essential. In order to realize the rule of law in supporting the creation of a good and optimal UUHC in eradicating the crime of piracy, the Indonesian government must establish a solid policy foundation to combat corruption in the PNPB and VAT revenue sectors.

These various policies are outlined in the laws and regulations, including the Decree of the Consultative Assembly of the Republic of Indonesia Number XI/MPR/1998 regarding Clean and Corrupt-Free State Organizers, Collusion, and Nepotism. As in Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 regarding the eradication of Corruption Crimes. Efforts must be made to ensure law enforcement in the UUHC is conducted correctly, fairly, without arbitrariness, and without power abuse. Several principles must always be present in law enforcement, including the principle of impartiality, the principle of fairness in examining and deciding (fairness), the principle of proper proceedings (procedural due process), and the principle of correctly applying the law, which safeguards and protects the rights of individuals. To eradicate the crime of piracy in Indonesia, the principle of guaranteeing freedom from all pressures and violence in the judicial process relating to the enforcement of criminal law must be upheld.

The criminal justice system as the implementation and execution of law enforcement consists of several interconnected bodies, including the police, prosecutors, courts, and correctional institutions. In Indonesia, criminal acts of corruption can be committed by parties who hold important positions in the government, such as civil servants in local government. In relation to the criminal act of corruption over the embezzlement of PNPB and VAT funds by pata yuser in corporate companies, it is necessary to promote socialization of the implementation of the Anti-Corruption Law in participating in guarding UUHC in enforcing criminal law on the rise of criminal acts of song and music piracy in Indonesia. This is an implementation of the enactment of UUHC whose implications can interact with other laws as a means of supporting and supplementing the weak enforcement of criminal law against criminal acts of piracy in the new UUHC. Since early 2017, UUHC has been operationally implemented, after Law No. 28 of 2014 began to be ratified and it took two years for the socialization stage of the new law.

From an economic and moral perspective, economically there has been an increase in the income of performers, since the emergence of the LMKN and LMK institutions as royalty collecting institutions in Indonesia. On the other hand, the new UUHC has not yet had a significant impact on the enforcement of its criminal law, this is manifested by the phenomenon of the criminal act of piracy in Indonesia still existing and rampantly controlling the domestic market for pirated CD and DVD products with a product percentage of almost 90% products pirated illegal. This is what the government should be paying attention to, because of the implementation of the new UUHC, it turns out to be more dominant in the civil aspect and leads all copyright issues to be resolved civilly through mediation, so that it hinders the enforcement of copyright criminal law today. Consequently, the Anti-Corruption Law on the embezzlement of PNPB must be acted upon firmly, because it will assist the new UUHC in enforcing its criminal law.

The Corruption Crime of embezzling PNPB and VAT receipts from the music and song sector, as outlined in UUHC, is a special crime outside of the Criminal Code, as expressly stated in Article 25 of Government Regulation Number 24 of 1960, which went into effect

on June 9, 1960, pertaining to investigations, prosecutions, and prosecutions. criminal investigation. According to the provisions of the law, every perpetrator who has been proven to have committed a corrupt act must be held accountable for his actions. Every citizen is obligated to uphold the law; however, in everyday life, there are citizens who disregard/deliberately disobey their obligations to the detriment of society; these citizens are said to violate the law because their obligations were established by law. The rule of law requires that those who break the law be held accountable for their actions.

Rational efforts to control or tackle the crime of piracy as regulated in the new UUHC are part of (criminal politics) of course not only by using penal means (criminal law), but can also use non-penal means. These non-penal efforts include sponsorship and social education in the context of developing social responsibility for citizens related to the understanding of UUHC as the main pillar of legal protection to achieve prosperity and justice for performers in Indonesia; cultivation of public mental health through moral education, religion and so on; improvement of child and adolescent welfare efforts; patrol activities and supervision of the physical and non-physical distribution of the product of song and music creations on the market continuously, all components of the performance actors, the government, police and other security forces, are an effort to prevent the crime of piracy. These efforts can cover a very broad field covering all sectors of national life. The main purpose of the non-penal effort is to improve certain social conditions, to make the perpetrators of piracy and other copyright crimes aware, because they indirectly have a preventive effect on crime. Thus, from the point of view of criminal politics, all non-penal preventive activities actually have a very strategic position, holding key positions that must be made effective and intensified.

Failure to work on this strategic position will actually have fatal consequences for efforts to combat crime, the crime of piracy of song and music creations. Therefore, a criminal policy must be able to integrate and harmonize all state activities that are organized and integrated. Thus, the main problem is to integrate and harmonize non-penal and penal political activities or policies towards suppressing or reducing potential factors that foster the crime of piracy. With this integral political approach, it is hoped that social defense planning can truly succeed and thus it is expected that the nature of the social political objectives contained in the national development plan, namely the quality of a healthy and meaningful living environment, will help performers of the arts and performers in the country. Indonesia has become a dignified human being and has experienced an increase in the degree of good and decent economic life in general and the new UUHC as a guardian angel in order to achieve a sense of justice and legal order towards prosperity and peace for performers in Indonesia.

4. CONCLUSION

It is essential to reformulate the provisions of the criminal provisions in Law No. 28 of 2014 concerning Copyrights, which have juridical problems, in order to ensure a sense of justice and legal certainty for owners of copyrights, related rights, and performers of future performances. This will help ensure that future performances will not infringe on anyone's rights. Further, in the transition phase towards the application of criminal sanctions provisions in the copyright law, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning Corruption as a legal subject in terms of Non-Tax State Revenue (PNBP) and Law No. 28 of 2007 concerning General Provisions on Tax Procedures, the legal subject can be seen from the non-payment of license taxes to the state treasury as state income.

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