

**THE CRIMINALIZATION OF COVERING MUSIC SONGS
WITHOUT PERMISSION: EXPLORING THE LEGAL
IMPLICATIONS, PIRACY, TAX LAWS,
AND ACTS OF CORRUPTION**

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Abstract

Enforcement of criminal law within the Copyright Act alone is insufficient to effectively address acts of piracy, duplication, cover songs, distribution, and management of copyrighted music and songs. Offenders without a license/permit are subject to both criminal and civil sanctions. The Criminal Law No. 28 of 2014 on Copyright also imposes criminal sanctions for pirates, cover songs, and music rearrangement without permission from copyright holders or related rights. This study identifies two main issues. Firstly, there is a weak implementation of criminal sanctions in copyright law, particularly concerning juridical aspects in the formulation of criminal law provisions (penal policy). Secondly, there is a need for understanding among copyright holders, related rights, and offenders to operationalize law enforcement by employing other relevant laws outside copyright law. The use of criminal acts of corruption and taxation can be an effective effort to protect the law and ensure legal certainty. To address these issues, this research employs a socio-legal approach, which combines doctrinal studies with social studies. This integration is based on the belief that the rule of law cannot operate in isolation when dealing with copyright piracy of songs and music in Indonesia. The post-positivism paradigm underpins this study, acknowledging the reality based on experience while maintaining the researcher's objectivity towards the subject. Empirical verification, hypothesis testing, and maintaining a clear distinction between the researcher and the object under study are emphasized throughout this research.

Keywords: *Copyright, Corruption, License, Music and song cover, Piracy*

1. INTRODUCTION

Criminal law enforcement in the Copyright Law is unable to stand alone in tackling criminal acts of piracy, copying, covering, distributing, arranging music products and songs owned on YouTube channels and other digital machine facilities copyright holders, related rights, and perpetrators who commit piracy without a license / permit will be subject to criminal and civil sanctions (Akyuwen et al., 2023). Civil sanctions that can be carried out refer to Article No. 28 of 2014 concerning Copyright Article 99 Paragraph (1) The Creator, Copyright Holder, or owner of Related Rights has the right to file a lawsuit for compensation to the Commercial Court for infringement of Copyright or Related Rights. Paragraph (2) The lawsuit for compensation as referred to in paragraph (1) may be in the form of a request to hand over all or part of the income obtained from organizing lectures, scientific meetings, performances, or exhibitions of creations that are the result of infringement of Copyright or related rights products. Paragraph (3) In addition to the lawsuit as referred to in paragraph (1), the Creator, Copyright Holder, or owner of related rights may file an application for a temporary injunction or interlocutory injunction with the Commercial Court in the form of:

- a. Requesting confiscation of the Creation which has been announced or reproduced, and the means of reproduction used to produce the Creation resulting from Copyright infringement and related rights products
- b. Stopping the Announcement, Distribution, Communication, and/or Reproduction of Creation which is the result of Copyright infringement and Related Rights products.

Furthermore, criminal sanctions for perpetrators of piracy, cover songs, rearrange music without the permission of copyright holders, related rights and perpetrators will get criminal sanctions as stipulated in Article 113 Paragraph (1) "Every person who without the right to infringe economic rights as referred to in Article 9 paragraph (1) letter i for Commercial Use shall be punished with imprisonment of 1 (one) year and/or a maximum fine of Rp 100,000,000.00 (one hundred million rupiah). Paragraph (2) Any person who, without the right and/or without the permission of the Creator or the Copyright holder, infringes the economic rights of the Creator as referred to in Article 9 paragraph (1) letter c, letter d, letter f, and/or letter h for commercial use shall be punished with a maximum imprisonment of 3 (three) years and/or a maximum fine of Rp500,000,000.00 (five hundred million rupiah). Paragraph (3), "Any Person without the right and/or without the authorization of the Creator or the Copyright holder to infringe 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 punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). Paragraph (4), "Any person who fulfills the elements as referred to in paragraph (3) by means of piracy shall be punished with imprisonment of 10 years and/or a maximum fine of Rp 4,000,000,000.00 (four billion rupiah). However, the umbrella of civil and criminal law as a juridical basis for copyright holders, related rights and perpetrators in seeking legal justice in the event of copyright crime, always faced with patterns and legal systems that are considered complicated and difficult to follow up.

In the implementation of copyright law, sometimes investigators, prosecutors and judges do not pay attention to matters relating to the regulation of criminal and civil sanctions (Hamzah, 1986; Makawimbang, 2014). The purpose of copyright law always ends in disappointment for copyright holders, related rights and the rights of artists (Sri & Puspitosari, 2020). The perpetrators of piracy and the perpetrators of free covers of music and songs seem to feel innocent. Currently, there is a great deal of scrutiny by copyright holders, associated rights and artists dealing with illegal song covers on YouTube and other social media platforms that are taking place so freely that it seems that copyright law cannot stem the continuous fraudulent and unscrupulous activities of song and music covers (Alghofiki et al., 2021). Many singers, musicians and songwriters have complained to the government and law enforcement agencies, but their complaints are only heard without any concrete follow-up. Particularly police agencies do not have the legal right to investigate freely against perpetrators of criminal acts of piracy or perpetrators of unauthorized cover songs, because the regulation of copyright law in the case of copyright crime is no longer a general offense but a complaint offense (Islamy, 1919; Soepardi, 2009). Therefore, by changing the status of the general offense into a complaint offense limits the space for the police to conduct legal proceedings, without any mediation efforts between the complainant and the reported.

Institutional facilities of the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia or a team of Intellectual Property Rights mediators, cannot conduct criminal proceedings. This is an obstacle for copyright holders, related rights and perpetrators to take criminal law in Indonesia. Another reason for the weak enforcement of criminal law in Indonesia is because economically, the perpetrators of large-scale piracy crimes are financially strong companies, so it is very easy for them to play a strategy to deal with problems in ways that are not commendable and undermine the rights of copyright holders (creators), related rights (phonogram producers-broadcasters) and performers (singers-musicians-songwriters).

Moreover, Indonesian YouTubers who create music song content at will, without mentioning the name of the songwriter and music creator, this is already a violation of moral rights and a violation of a license that can be punished, because it has harmed them economically. That, as we know, the phenomenon of Indonesian YouTubers competing with each other to create content of various types and forms of entertainment as well as formal and non-formal events, entertainment and art. One of the things that YouTubers are fond of is making covers of music and songs sung by non-original singers and musicians, so that they get support and get millions of subscribers, likes and views of millions of people around the world. From the results of creating song and music cover content, many YouTubers earn a lot of money from YouTube, the results of which are transferred directly from YouTube to the account of the account owner who created the song and music cover content. The existence of YouTube AdSense made it become one of the most promising sources of income, it's no wonder that almost all YouTubers enable AdSense ads on their videos. YouTube provides conditions before you can actually monetize, namely that the account has been verified, has 1000 subscribers, is not spamming, and the toughest is to have earned 4000 hours of viewing in the last 12 months. This means that many YouTubers are already earning income from covering music and songs owned by copyright holders, related rights, and artists, but they get nothing, YouTubers get results. Therefore, the author argues that YouTube is a place and a means and a forum that provides digital means to publish the work of YouTubers with the aim that the work is watched by many people through digital means, where the results of the broadcast of YouTuber products to YouTube will include commercial advertisements for accounts that get millions of subscribers from all over the world.

As a result of being watched by many people, serving commercial ads on YouTube content and meeting the requirements to get AdSense from YouTube. AdSense is an advertising cooperation program through internet media organized by Google, website or blog owners will get income in the form of revenue sharing from Google for each ad clicked by site visitors, known as the Pay Per Click (PPC) system or pay per click. Therefore, regardless of the type and form of YouTube regulations, what is clear from a legal perspective is that YouTubers who create content that includes music and songs can be said to be a criminal offense against the economic rights of copyright holders, related rights, and performers as stipulated in Article 113 Paragraph (2) letters c, d, f, and h, which threatens perpetrators who translate, adapt, arrange or convert creations or copies thereof, perform creations and communicate creations without the permission of copyright holders, related rights, and performers can be imprisoned for a maximum of three years and a maximum fine of IDR 500 million.

It is not surprising that criminal sanctions against the perpetrators of unauthorized music and song covers can be carried out through criminal and civil remedies, because YouTubers are clear in creating song cover content intentionally and intend to seek commercial gain, not just for fun. Because, YouTube regulations are clear, that every YouTuber will get economic value for accounts that meet the requirements, because the price of 1000 YouTube subscribers is worth IDR 13,000. Reformulation of the legal system, in structuring the formulation, application and execution of Law No. 28 of 2014 concerning Copyright is needed to ensure legal certainty in order to avoid juridical problems in the implementation of the law of copyright enforcement. Because, the application of criminal provisions in the law of copyright is the last step in seeking justice for the perpetrators to obtain legal justice to defend economic rights and moral rights to copyrighted works of songs and music in Indonesia (Samaha, 2016). Reformulation of the Copyright Law, as a means to provide clear legal protection through criminal provisions, and can use and function the involvement of other laws to assist in the enforcement of criminal law against copyright law in Indonesia. Execution can be interpreted as the implementation of the decision of the final implementation of the enforcement of criminal provisions in the law of copyright or the final result. Therefore, in its application there is space outside the law of copyright that can be included in the framework of criminal law enforcement (Soepardi, 2009). The economic impact of criminal copyright infringement is not only detrimental to the perpetrators in Indonesia, but also detrimental to state finances.

Therefore, in the future criminal law enforcement is expected not only to be fixated on the application of copyright law, but can use the Corruption Act which can involve law enforcement officials from the police, prosecutor's office, Corruption Eradication Commission in tackling piracy in Indonesia. Data from ASIRI in 2017 revealed that state losses due to piracy in Indonesia reached Rp 1.75 trillion, while economic losses due to piracy reached Rp17.5 trillion. Therefore, to optimize criminal law enforcement, in order to implement the copyright law, it must be accompanied by the Law on Corruption as a means of supporting criminal law enforcement. In the General Provisions of Article 1 Point (1) of Law No. 17 of 2003 concerning State Finance, it is explained that what is referred to as "State Finance" is; "All state rights and obligations that can be valued in money, as well as everything in the form of money and in the form of goods that can be used as state property in connection with the implementation of these rights and obligations".

Article 2 of Law No. 17 of 2013 As referred to in Article 1 number 1, State Finance includes:

- a. the right of the state to collect taxes, issue and circulate money, and make loans
- b. the state's obligation to carry out the general service tasks of state government and pay third party bills
- c. State Revenue
- d. State Expenditure
- e. Regional Revenue
- f. Regional Expenditure
- g. State regional assets managed by itself or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated in state companies/regional companies

- h. Wealth of other parties controlled by the government in the context of carrying out government duties and/or public interests
- i. Wealth of other parties obtained by using facilities provided by the government.

Based on the explanation above, the definition of "state finances" in Article 1 number 1 of Law Number 17 of 2003 concerning State Finances states, what is meant by "State Finances" is "all state rights and obligations that can be valued in money, as well as everything in the form of money and in the form of goods that can be used as state property in connection with the implementation of these rights and obligations". Basically, the Anti-Corruption Law confirms that in addition to being identical and attached to the position of civil servants and state administrators, it is also attached to the receipt and expenditure of APBN / APBD funds and non-tax state revenues.

Article 1 point 22 of Law No. 1 of 2004 on State Treasury defines state financial loss as "a shortage of money, securities, and goods, which is real and certain in amount as a result of unlawful acts, whether intentional or negligent". In criminal law theory, this definition is a "material offense" according to the Constitutional Court Decision above because it requires a "real and certain amount" of state losses as a result of a prohibited act and must be proven in court. This means that for potential state financial losses in VAT and PNBPN revenues amounting to Rp1.75 trillion, the Anti-Corruption Law can be used to make efforts to assist law enforcement against the implementation of copyright law.

Furthermore, the approach to apply the concept of "state financial losses" based on the terminology of Law No. 17 of 2003, in its implementation is as follows; loss or reduction of state rights and obligations that can be valued in money, or in the form of goods that can be used as state property in connection with the implementation of rights and obligations as a result of unlawful acts in the form of loss or reduction of state rights and obligations. The loss or reduction of state financial revenues and or expenditures can be categorized as "state financial losses". For example, a reduction in the state or regional revenue sector, Non-Tax State Revenue, levies, and income from state businesses. In this case, due to the criminal act of copyright piracy in the field of music and songs, the state lost Rp1.75 trillion in the tax sector.

In order to restore state financial losses (asset recovery) worth Rp. 1.75 trillion, Article 18 Paragraph (1) letter-b of the Corruption Crime Law stipulates an additional penalty in the form of "payment of compensation" in the amount of the value of property obtained from the proceeds of corruption in copyright piracy. This includes the company owned by the convicted person where the corruption was committed, as well as the replacement price of these goods. If the convicted copyright pirate does not pay the restitution within one month after the judge's decision is legally binding, then his property can be confiscated by the prosecutor and auctioned to cover the payment of restitution. This is also in line with the decision of the Constitutional Court that the judge will only impose a verdict of "payment of restitution" if the public prosecutor proves the existence of state financial losses before the court based on the audit of the Supreme Audit Agency. In this case, the investigators and public prosecutors need audit results regarding the certainty of the amount of state losses allegedly corrupted by the perpetrators of copyright piracy in the tax revenue sector committed by the defendant. The goal is that the judge can definitively impose a penalty of "payment of compensation" in accordance with the

amount of state financial losses proven to be corrupted. Real state financial losses are not required as long as they are supported by evidence that leads to "potential state losses".

The Constitutional Court Decision Number: 25/PUU-XIV/2016 dated January 26, 2017 on Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Law related to the word "may" was declared contrary to the 1945 Constitution and has no binding legal force. The Constitutional Court's decision places the offense of corruption no longer as a "formal offense" but a "material offense" that must be proven that there is a loss of state finances or the state economy from the prohibited acts in Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Law. The Constitutional Court changed the constitutional judgment with its legal considerations in the previous Constitutional Court Decision Case Number: 003/PUU-IV/2006 which stated that "the meaning of state financial losses or the state economy is not a result that must actually occur", so there is a fundamental reason for the Court to change the constitutional judgment because the previous judgment has repeatedly proven to cause legal uncertainty and injustice in the eradication of corruption. In particular, the Constitutional Court of the Republic of Indonesia also made transitional rules regarding corruption offenses involving corporations. Due to the legal vacuum in the Criminal Code, temporary rules are needed while waiting for the Criminal Code to be passed. If the provisions of copyright law involve corporations, then this rule can be used as a supporting rule in the legal process against corporate offenders. Supreme Court Regulation No. 13 of 2016 on the Procedure for Handling Criminal Cases by Corporations:

1. This Perma is still transitional to fill the legal vacuum. Further regulation should be in the Criminal Code. However, the Criminal Code Bill is still under discussion.
2. The content of the Perma is considered to conflict with similar internal regulations in other institutions. For example, the Attorney General's Office of the Republic of Indonesia already has Attorney General Regulation No. 28/2014 on Guidelines for Handling Criminal Cases with Corporate Legal Subjects.
3. The Perma only regulates formal-procedural matters, not substantial matters. Such as the withdrawal of corporate criminal liability, when an act can be charged to the corporation, and when an act cannot be charged to the corporation.
4. The Perma has not touched corporations that are not legal entities. The Perma is also said to not explain corporations in the form of legal entities and corporations that are not legal entities and how they are regulated by each other.
5. Limitations in determining the actions of a person who does not have the authority to make decisions but can control or influence corporate policy or in the Perma is called "Management". This limitation is still unclear.
6. There is no explanation of the difference between group corporate liability and criminal participation.
7. The sanctions given are still limited to fines. Sanctions need to be added to the revocation of business licenses, legal entity status, deprivation of profits, partial or complete closure of the company, correction of criminal acts or placement of the company under guardianship for a maximum of three years.
8. The Perma does not regulate significant differences in determining the corporation or management as a suspect/defendant.

2. RESEARCH METHODS

The loss of state finances in the sector of VAT and PNPB tax revenues of Rp. 1.76 trillion rupiah in the field of products and services for music and song artworks, both physical and digital, carried out by ASIRI is a criminal act of corruption. Thus, there is no need to use copyright law in order to suppress criminal acts of piracy of music and song copyrights. This is part of the impact of the decision of the Constitutional Court (MK) Case Number: 25/PUU-XIV/2016 dated January 26, 2017 on Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Law regarding the word "may" declared contrary to the 1945 Constitution and has no binding legal force. The Constitutional Court's decision places the offense of corruption no longer as a "formal offense" but a "material offense" that must be proven that there is a loss of state finances or the state economy from the prohibited acts in Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Law. The Constitutional Court in its legal considerations changed the constitutional considerations in the previous Constitutional Court Decision Case Number: 003/PUU-IV/2006 which stated that "the notion of loss of state finances or the state economy is not an effect that must actually occur", so there is a fundamental reason for the Court to change the constitutional considerations because the previous considerations have repeatedly proven to cause legal uncertainty and injustice in combating corruption. In order to be able to take legal action against the perpetrators of criminal acts of piracy of music and song copyrights, the Supreme Audit Agency must first conduct an audit. Thus, before the investigator of a corruption case is raised to the investigation stage, an audit of state financial losses must be carried out, which according to Supreme Court Circular Letter Number 4 of 2016 is the Supreme Audit Agency. This is to anticipate the audit of state financial losses to be used as an object of pretrial determination of suspects.

Table 1. List Of Music Industry Losses and State Losses in 2017

No.	Revenue Name	Physical Piracy	Digital Piracy
1	Industry Loss	IDR 3.5 trillion	IDR 350 billion
2	State Loss	IDR 14 trillion	IDR 1.4 billion
	Total	IDR 17.5 trillion	IDR 1.75 trillion

Due to the huge amount of state losses, there should be other laws that accompany the copyright law so as to reduce the number of criminal acts of piracy if the copyright law is not able to break through to enforce criminal law. This way can provide strict sanctions to those who do not want to deposit into the state treasury. Embezzlement of tax funds that should be deposited into the state treasury but not deposited can be categorized as a crime of corruption, because it has harmed the state economy and state finances. This corruption crime is one of the criminal acts and illegal acts committed by the government.

Any person who unlawfully commits an act of enriching himself or herself or another person or a corporation that may harm the state finances or the state economy shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp 200,000,000,000.00 (two hundred million rupiah) and a maximum of Rp 1,000,000,000,000.00 (one billion rupiah)." Based on the definition of corruption in Article 2 Paragraph (1) above, it can be seen that there are three elements of the crime of corruption, namely unlawfully:

Committing an act of enriching oneself or another person or a corporation that can harm state finances or the state economy. This means that the phrase "any person unlawfully" in the Corruption Crime Law can also be used as investigation material for the police, prosecutors, and KPK to investigate corruption crimes against non-tax state revenue funds that are not deposited by taxpayers into the state treasury. This has clearly and clearly harmed the state and harmed the state economy, so that the state has lost up to 1.75 trillion rupiah.

Criminal law enforcement efforts on criminal acts of copyright piracy of songs and music clearly have an impact on the perpetrators and the state, therefore the new copyright law has not been able to have a good effect on the rampant criminal acts of copyright piracy of songs and music. Therefore, in order to support the copyright law, when it has not been able to answer the problem of criminal piracy, then other laws that have the space to participate in helping to eradicate criminal piracy, the Corruption Act as a solution in order to reduce criminal piracy in Indonesia. Through the police, the prosecutor's office and the KPK can conduct investigations and investigations into corruption crimes committed by young people who do not want to pay taxes on CD and DVD products and other digital media without having to wait for complaints from victims. This is because, in the Copyright Law, criminal acts of piracy can be processed under criminal law, after first conducting mediation and complaints. The perpetrators will certainly not lose their minds, and will definitely settle the dispute at the mediation stage, and the space for law enforcement will be smaller.

3. RESULTS AND DISCUSSION

Based on the above, the implications of the new Copyright Law have not fully addressed the problem of piracy in Indonesia. Therefore, any legislative policy must also be a manifestation towards the achievement of these goals. Traditionally, theories of punishment can generally be divided into two groups of theories, which are:

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

According to this absolute theory, punishment is imposed solely because someone has committed a crime or criminal offense (*quia peccatum est*). Criminal punishment is an absolute consequence that must exist as retaliation against people who commit crimes. That is, the new copyright law should be the end result of criminal law enforcement efforts, and is able to resolve existing criminal problems. If the new copyright law has not been able to resolve the criminal acts of piracy, duplication and related licensing and criminal issues in protecting the rights of the perpetrators, it means that the new copyright law has not been able to realize the wishes of the perpetrators in Indonesia. Meanwhile, according to this theory, the main purpose (primary) of crime is "to satisfy the demands of justice". While currently the criminal act of piracy is still dominating the market freely, it means that there has been a legal omission in the aspect of criminal law. The perpetrators in Indonesia do not respond much to mediation efforts, because these efforts cannot provide answers or solutions to stop piracy. The government only focuses mediation efforts on the civil aspect, while the criminal act of piracy is not touched at all, because piracy is a complaint offense. The next step that must be taken by the government is that the complaint offense element in Law No. 28/2014 on Copyright must be changed

into an ordinary offense, so that the Police can work optimally in dealing with criminal acts of piracy. At the very least, this will make it easier for the perpetrators, as without a complaint from us, the police can arrest, confiscate, and search song and music copyright pirates in Indonesia. Currently, in Indonesia, in many parts of the country, pirated CDs and DVDs dominate the market and no legal action has been taken by law enforcement officials in Indonesia. It is ironic that when the new Copyright Law was passed and came into effect in early 2017, only administrative adjustments to economic rights and moral rights attracted royalties, but piracy, duplication, license infringement and the ubiquitous mutilation of songs due to piracy were not touched at all. This is why performers are reluctant to take the legal route, as the new Copyright Law leads us towards civil mediation. In that case, if the new Copyright Law focuses more on civil matters, it is feared that perpetrators in Indonesia will still find it difficult to obtain legal justice from a criminal law perspective. The new Copyright Law limits the settlement of piracy crimes to civil mediation. This raises the question of who will be the mediator when the perpetrators conduct covert activities. It is impossible for Indonesian perpetrators to judge and monitor these criminals individually with a civil mediation system.

Hence, if the new copyright law focuses more on civil matters, it is feared that perpetrators in Indonesia will still find it difficult to obtain legal justice from a criminal law perspective. The new copyright law does limit the settlement of piracy crimes to civil mediation. This raises the question of who will be the mediator when the perpetrators conduct covert activities. It is impossible for Indonesian actors to judge and monitor these criminals individually without triggering conflicts with the pirate company's accomplices. The author is concerned that, in the future, the current and future Copyright Law, particularly in terms of criminal law will become ineffective and suspended which will ultimately harm the larger community of actors. This change of the common offense element to a complaint offense is a strong indication of the weakening of the criminal law in the new copyright law.

The rampant criminal acts of piracy, copying, license violations, and so on, will undoubtedly have severe repercussions for performers if the government and professional organizations overseeing performers in Indonesia fail to address these issues. As Emile Durkheim stated, the function of the criminal is to create the possibility for the release of emotions – emotions stirred by the presence of crime. Meanwhile, schools of criminal law do not seek a legal basis or justification for punishment but aim to establish a practical and useful criminal law system. In the new Copyright Law, the primary objective should be to provide maximum benefits for performers in Indonesia, both now and in the future. We must not let the criminal sanctions outlined in the new copyright law become empty rhetoric that remains unenforced due to a legal system that prioritizes civil matters.

The implications of the criminal law formulation policy of the new Copyright Law be interpreted as an effort to create fair, appropriate, and appropriate criminal legislation for the present and the future. According to the author, criminal sanctions should not be hindered by other desires, such as civil mediation. Criminal proceedings should not prevent victims from pursuing civil remedies, as criminal and civil aspects are different entities with separate legal mechanisms and procedures. The use of legal remedies, including criminal law, to address social problems such as piracy, copying, and license infringement should be a priority in the new copyright law. Law operates in the social realm, and the use of legal remedies falls under social protection and welfare policies.

According to Roeslan Saleh, the use of criminal means and criminal law is justified by the following reasons:

1. The necessity of criminal law is not determined by the goals to be achieved but by the extent to which coercion is permissible to achieve those goals.
2. There are actions aimed at repair or maintenance that hold no meaning for the offender. Additionally, there must be a reaction to the violation of norms that cannot go unpunished.
3. The influence of criminal law is not only directed at the criminals themselves but also at law-abiding members of society to reinforce societal norms.

Considering these important reasons, the use of criminal law is necessary in addressing money laundering crimes and restoring the disrupted social fabric caused by actions contrary to the spirit of the nation and the state. When discussing the formulation of criminal law policy, it is essential to consider the object being regulated, which is the crime or *strafbaarfeit*. Simmons defines *strafbaarfeit* as behavior that is punishable, against the law, and committed by individuals capable of being held responsible. Van Hammel argues that *strafbaarfeit* refers to behavior formulated in the law, punishable by law, deserving of punishment, and committed in error. The existence of formulation elements in law and the concept of criminal responsibility are fundamental aspects of defining criminal acts.

Criminal law policy can be understood as the state's approach or governmental policy in using criminal law to achieve specific goals, particularly in combating crime. It should be acknowledged that there are various ways and efforts that each state can undertake to address crime, including through criminal law policy. Sudarto states that implementing criminal law policy involves conducting evaluations to achieve the best outcomes in terms of justice and efficiency. The politics of criminal law aims to create criminal laws and regulations that are relevant to the current and future circumstances. According to Marc Ancel, penal policy is both a science and an art with the practical objective of improving the formulation of positive law regulations, providing guidance to legislators, courts, and law enforcement agencies.

Criminal law politics also involves the policy of criminalizing and decriminalizing certain acts. In the context of the new copyright law, legal politics should prioritize the enforcement of criminal law to avoid the weakening of criminalization due to insufficient implementation of criminal law. This involves making choices regarding acts that should be classified as crimes or not, as well as determining the goals of the criminal law system in the future. If the new copyright law focuses more on civil law, the execution of criminal law may be weakened. Therefore, with the politics of criminal law, the state has the authority to define acts as crimes and utilize repressive measures against those who violate them. This is one of the essential functions of criminal law, providing a basis for the state's legitimate use of repression against individuals or groups who commit acts defined as crimes. Josep Golstein distinguishes criminal law enforcement into three parts:

1. Total enforcement: This refers to the scope of criminal law enforcement defined by substantive criminal law. Achieving total enforcement is not possible due to limitations imposed by criminal procedural law, including rules for arrest, detention, search, confiscation, and preliminary examination. Additionally, substantive criminal law itself may impose limitations, such as requiring a prior

complaint for prosecution of complaint offenses (*klacht delicten*). This limited scope is referred to as the area of no enforcement.

2. Full enforcement: After considering the limitations in the area of no enforcement, law enforcers are expected to uphold the law to the maximum extent.
3. Actual enforcement: This is considered an unrealistic expectation due to limitations in time, personnel, investigative tools, funds, and other factors. Consequently, discretion is exercised, and the remaining enforcement is referred to as actual enforcement.

The operationalization of criminal law policy, also known as penal policy, involves several stages: formulation (legislative policies), application (judicial and judicial policies), and execution (administration policies). Among these stages, the formulation stage is the most critical in preventing and addressing crime through criminal law policies. Errors or weaknesses in legislative policies can become strategic mistakes that hinder efforts to combat crime in subsequent stages.

In the context of the new Copyright Act Law No. 28 of 2014, the formulation and regulation of criminal law policies address the pattern of penal mediation for piracy cases. Piracy, as defined by the Copyright Act, refers to the illegal reproduction of works and/or related rights products and the widespread distribution of duplicated goods for economic gain, before the commission of criminal acts.

One theory relevant to criminal law is Lawrence M. Friedman's Legal System Component theory. According to Friedman, the legal system comprises three components: legal structure, legal substance, and legal culture. The legal structure refers to the framework or series of laws that shape and define the legal system. It pertains to the institutions involved in creating and enforcing the law. Legal substance encompasses the rules, norms, and patterns of human behavior within the legal system. It includes the decisions made and new rules established by individuals within the legal system. Legal culture represents people's attitudes, beliefs, values, thoughts, and expectations towards the law and the legal system.

Due to address piracy in Indonesia, it is crucial to emphasize criminal law in conjunction with related regulations. According to Friedman's theory, criminal law enforcement can be examined and studied based on the institutions involved in implementing or enforcing the copyright law, norms related to the protection of creators' economic rights, and the attitudes and thoughts of the public regarding these rights. Economic rights of creators, particularly songwriters and musicians in Indonesia, have been previously discussed. However, the distribution of economic rights varies in different literature.

The new copyright law provides legal remedies that victims of copyright crimes can pursue, such as mediation through the Director General of Intellectual Property, filing civil lawsuits in the Commercial Court, and seeking criminal remedies through the complaint process with the Police, the Attorney General's Office, and the General Court. Additionally, other laws can be utilized to assist in enforcing the copyright law, such as the Corruption Crime Law, to combat criminal acts of piracy involving copyrighted songs and music in Indonesia.

The legal substance of the new copyright law also allows for the utilization of other laws to support copyright law enforcement concerning crimes like tax evasion and non-

payment of taxes related to physical and digital products, including CDs and DVDs, in the Non-Tax State Revenue (PNBP) sector. Furthermore, the Value Added Tax (VAT) should be imposed on these products, as it is a tax levied on the added value of goods or services in circulation. Failure to pay these taxes results in substantial losses to the state's economy.

In order to eradicate corruption related to PNBP and VAT revenues and ensure the rule of law in supporting efforts to eradicate piracy, the Government of Indonesia must build a strong policy foundation. These policies are contained in laws and regulations, including the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XI/MPR/1998 on Clean and Free State Administration from Corruption, Collusion, and Nepotism, Law Number 28 of 1999 on Clean and Free State Administration from Corruption, Collusion, and Nepotism, and Law Number 31 of 1999 on the Eradication of Corruption, as amended by Law Number 20 of 2001.

Law enforcement efforts related to the copyright law must adhere to principles such as impartiality, fairness in examining and deciding cases, fair legal process, correct application of the law to protect the rights of justice seekers and the interests of society, and freedom from pressure and violence in the judicial process. The criminal justice system, which includes the police, prosecutors, courts and correctional institutions, must work together to eradicate corruption. Socialization on the enforcement of the Anti-Corruption Law needs to be carried out to address corruption, which often involves individuals who hold important positions in government and civil servants in local government.

In order to effectively enforce criminal law against rampant piracy of copyrighted songs and music in Indonesia, active participation is required to safeguard the new copyright law. The implementation of the copyright law has implications that may intersect with other laws, providing support and complementing the weak enforcement of criminal law in the new copyright law. The copyright law became operational in 2017, following the passing of Law No. 28 of 2014, and underwent two years of socialization.

From an economic and moral perspective, the income of performers has increased due to the emergence of institutions like the Collective Management Organization and Collective Management Institution in Indonesia as royalty-collecting entities. However, on the other hand, the new copyright law has not had a significant impact on criminal law enforcement. The phenomenon of piracy continues to prevail in the domestic market, with counterfeit products accounting for almost 90% of the CD and DVD products. This is a concerning issue that requires attention from the government regarding the implementation of the new copyright law, as it appears to be more focused on the civil aspect, accompanying copyright-related issues to be resolved through mediation. This hinders the enforcement of criminal law for copyright offenses.

Therefore, strict enforcement of the Corruption Law regarding the embezzlement of PNBP must be emphasized, as it can assist in enforcing criminal law under the new copyright law. Various types of corruption crimes, such as embezzlement, extortion, bribery, manipulation, illegal fees, collusion, and nepotism, can contribute to the embezzlement of PNBP and VAT funds.

The crime of embezzlement of PNBP and VAT revenues from the music and song sector, as stated in the copyright law, is a special crime outside the Criminal Code, explicitly stated in Article 25 of Government Regulation Number 24 of 1960. Perpetrators proven to have committed corruption crimes must be held accountable before the law in

accordance with the provisions of the law. Every citizen has an obligation to uphold the law, and those who violate the law must face consequences based on the rule of law.

Efforts to control piracy as stipulated in the new copyright law should not only rely on criminal law but also consider non-penal means. These non-penal efforts can include sponsorship, social education, mental health cultivation through moral and religious education, welfare initiatives for children and youth, and continuous monitoring and patrol of physical and non-physical distribution of copyrighted songs and music products in the market. These preventive efforts involve various components, such as government agencies, the police, and other security forces, aiming to prevent piracy. They cover a wide range of sectors in national life.

Non-penal preventive activities play a strategic role in criminal politics, as they aim to improve social conditions and create awareness among perpetrators of piracy and copyright crimes, indirectly preventing future offenses. It is crucial to streamline and intensify these non-penal activities, as failure to address this strategic aspect can have severe consequences for anti-piracy efforts.

To effectively tackle piracy, a criminal policy should integrate and harmonize all state activities in an organized and coordinated manner. The main challenge lies in integrating and harmonizing non-penal and penal activities or politics to suppress and reduce the factors that contribute to piracy. This integral approach is expected to lead to successful social defense planning, fulfilling the social and political objectives outlined in the national development plan, such as creating a healthy and meaningful environment. Ultimately, these efforts aim to uplift artists and performers in Indonesia, providing them with dignity, improved economic conditions, justice, legal order, and a prosperous and peaceful society.

4. CONCLUSION

Based on the descriptions above, it is evident that reformulation is necessary in the current policy formulation, application, and execution phases to improve the quality of the Copyright Laws. The current criminal provisions in the copyright law face juridical problems and have failed to address criminal acts of piracy, copying, and copyright licensing in the field of music and songs in Indonesia.

To ensure fair enforcement of criminal law against copyright piracy, a reformulation of the copyright law that addresses juridical issues should be pursued through two legal steps. Firstly, a judicial review should be submitted to the Constitutional Court of the Republic of Indonesia. Secondly, political means can be employed by submitting revisions to the copyright law through the executive and legislative branches (Government-DPR RI). This would involve rearranging the formulation of criminal provisions, synchronizing articles, adding articles that govern legal subjects entitled to file complaints, determining substitute subjects in case of death or minority, specifying time limits for complaints, establishing corporate criminal sanctions, and addressing the withdrawal of complaints and other juridical consequences. Additionally, the expiration rules in the new copyright law need clarification to provide legal certainty for criminal provisions in Articles 112 to 120, as well as addressing the asymmetry between Article 96, Paragraphs (1), (2), and (3) regarding the rules for

payment of criminal compensation compared to the provisions in copyright law No. 28 of 2014 concerning Copyright.

Legislators should pay attention to the unified principles of harmonization in the criminal law system and abide by statutory regulations as stipulated in Appendix II Sub C.3 of Law No. 12 of 2011 regarding Formation of Laws and Regulations. The formulation of criminal provisions should consider the general principles of criminal provisions in Book I of the Criminal Code, which apply to acts punishable under other laws and regulations, unless specified otherwise.

The lack of certainty in the formulation of criminal provisions and the qualifications of offenses in the copyright law No. 28 of 2014 also presents a juridical problem. Legislators have violated Appendix II Sub C.3 of Law No. 12 of 2011 number 121, which requires clear qualifications for acts punishable as offenses or crimes. These juridical issues have significantly affected the rights and well-being of performers, leading to material and immaterial losses. To achieve harmonization within the criminal system of the Copyright Law, the application of criminal provisions, particularly in article 120 "complaint offenses," should be reformulated by aligning the delict qualification with the general provisions in Book I of the Criminal Code. Failure to improve and rearrange the copyright law in terms of criminal provisions may result in prolonged juridical problems and disrupt the order of the criminal law system.

The makers of the copyright law have made mistakes in formulating criminal provisions and offense qualifications, particularly in applying the highest sanctions for copyright offenses. This inconsistency violates the principle of harmonization within the criminal system and deviates from the rules and principles of legislation formation as outlined in the general provisions of Book I of the Criminal Code. In future legislation, legislators should clearly and decisively formulate delict qualifications, similar to copyright law No. 6 of 1982 concerning the copyright, which includes the qualification of delict for criminal copyright acts.

Ideally, in the future, the copyright law should be reformulated to ensure criminal provisions serve as an effective deterrent tool, imposing severe penalties for piracy offenses. The criminal provisions should effectively prevent piracy, copying, and misuse of copyright licenses in Indonesia. The formulation of criminal provisions should function to enforce criminal law, provide social defenses, promote social welfare, and ensure social justice. The copyright law should address criminal acts of piracy while also regulating technical regulations to protect individuals in the performing arts sector. The balance between civil and criminal provisions should be achieved to implement the copyright law more efficiently and accurately, aligning with the objectives of criminal law and punishment.

Given the current condition of social hygiene and the deviant nature of consumers of pirated products, criminal law must be upheld with strict and severe sanctions. To address the weaknesses and juridical problems in the criminal provisions of the copyright law, other legal instruments outside the copyright law can effectively be utilized to suppress and eradicate piracy in Indonesia. Strengthening collective awareness among all stakeholders, including the government, law enforcement agencies, professional artists' organizations, and performers, is crucial. This will create a sense of security and alleviate fears, fostering an environment where artistic works can flourish freely and with dignity.

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