



## **Settlement through Court as A Legal Protection Effort on Creators**

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### **ABSTRACT**

This article is intended to analyze and evaluate the settlement process for copyright infringement through court. The court is as ultimum remidium in resolving legal issues if copyright infringement happens. Changes in the nature of offenses from ordinary offenses to complaint offenses have consequences in the legal enforcement process in the event of copyright infringements. The method used in this study is normative legal research. In this study, the data is in the form of secondary data supplemented by the results of interviews with parties related to the problem under the study. The result of the study shows that procedurally the mechanism for prosecution of rights and evidences as a law enforcement based on the procedural law of the district court also determines whether or not complaints are made by the creators and in making criminal charges the creators consider the aspects of legal certainty and justice.

**Keywords:** copyright, court, legal protection, expediency.



## 1. Introduction

The information technology advancement places Indonesia as part of the world community. Indonesian people can easily enjoy creative works produced by citizens in other parts of the world. Through the use of technology, there is the potential for reciprocal copyright infringements among countries. Technology is not only the instrument for human benefit but also the potential to be used to commit infringements. The United States places Indonesia as a Priority Watch List country (Office of the United States Trade Representative, 2018 Special 301 Report, 2018). This is because the impact of copyright infringements by Indonesia has been so detrimental to the order of life of the nation in economics, law and socio-cultural. The enactment of Law No.28 of 2014 concerning Copyright gives a new nuance in the protection of creator personal rights. The Copyright Act is the creative subject mainstay in the field of literary arts and knowledge. Through copyright law, state authorities give a monopolistic right to creators. Conceptually the creators are given moral and economic rights. This right can be intended to anyone committing an infringement. The fact shows that the information technology development has a significant influence on copyright infringements. The change in the nature of offense on copyright to complaint offense as regulated in Law No.28 of 2014 (Soerjono Soekanto, 2018) places the owner or right-holder position to determine if there is law enforcement. It is extremely contrast to Law No.19 of 2002 stipulating the nature of offenses for copyright infringements as an ordinary offense.

Copyright infringement can be viewed from aspects of both civilization and penal law. Their mechanism requires the law enforcement process by law enforcement officials to provide protection on creators. The judiciary process and procedure can reflect the provision of legal protection in a repressive manner by state. The change of ordinary offense to complaint offense as a part of the repressive law protection will have consequences for the criminal law enforcement process.

From the background of the problem, the problem to be examined is: How does the copyright infringement settlement process reflect the protection on copyright owners?

## 2. Methods of Research

This normative research focuses on reviewing regulations. Secondary data, the main data, are in the form of primary and secondary legal materials, completed by information from interviewees in the civil servant investigator. The data are then analyzed by using qualitative data analysis – carried out at the first by sorting all the obtained data, both secondary data and primary data. All of these data are selected in accordance with the subject matter, namely the data relating to law enforcement as the primary legal materials and also the main data, and journals, books and opinion of civil servant investigator as the secondary legal materials. All already selected data is later described and then analyzed qualitatively. Finally, the conclusion in this paper is conducted by a deductive conclusion technique.



### 3. Results of Research

#### 3.1 Law Enforcement and Legal Objectives

Law enforcement is a series of activities in the implementation of applicable legal provisions in the form of both prosecution and prevention covering all technical and administrative activities carried out by law enforcement officers to create a safe, peaceful and orderly atmosphere for strengthening legal certainty in society. This formulation is for not only taking action but also prevention. Action is carried out against those violating the provisions, while prevention is carried out before the infringement occurs or so that there is no infringement.

Conceptually, the core and meaning of law enforcement lies in the activities of harmonizing the relationships of values outlined in the solid and manifesting principles and actions as the series of final value description in order to create, maintain and preserve the peace of life (Soerjono Soekanto, 1983). The implementation of the law can take place normally and peacefully, but can also occur due to infringements. In this case the violated law must be enforced. (Antoni, 2012). From this view, it can be formulated as the re-enforcement of the violated law. In line with the last formula above, Soejono Soekanto said that law enforcement included the process of the investigation, investigation, prosecution, examination stages at the National Court hearing, legal remedies and executions.

The working of government officials institutionally is a mandate given by the Law to each of the institutions to carry out all of their duties properly and correctly. In means the government activities must be carried out responsibly, or known as 'good governance', so that the community will feel the real impact of the government system implementation, namely the creation of prosperity for the entire community. On the contrary, the 'misuse of trust', given by the Law to each of these institutions, will be able to bring the destruction of the joints of the state life, not only the government system but also the society in general. (Antoni, 2012).

Law serves as the human interest protection. In order to protect it, the law must be implemented. The law implementation can take place normally, peacefully, but can also occur due to legal infringement. In this case the violated law must be enforced. Through the law enforcement, law becomes a reality. "In enforcing the law there are three elements which must always be considered, namely legal certainty (*rechtssicherheit*), benefit (*zweckmassigkeit*) and justice (*gerechtigkeit*)." (Sudikno Mertokusumo, 2013)

Law must be implemented and enforced. Everyone expects law to be established when a concrete event happens. The law must apply the way it is; basically it is not allowed to deviate: *fiat justitia et pereat mundus* (let justice be done though the world perish). That is what is desired by legal certainty, a legal protection against arbitrary actions, meaning that someone will be able to obtain something expected in certain circumstances. The community hopes for legal certainty



because it will create more orderly community. It is the role of law to create legal certainty for public order.

On the contrary, people expect benefits in the law implementation or enforcement. Law is for human beings, so the law implementation or enforcement must provide benefits or uses for society. The implementation or enforcement should not arise anxiety in society.

### **3.2. Forms of Copyright Crimes**

Copyright is an exclusive right (monopoly rights) consisting of economic and moral rights. Moral rights are inherent rights to the creators whether to keep mentioning their name on the copy in connection with the use of Creation for public, to use his alias or guise name, to change the creation in accordance with propriety in the community and change the title of the Creation, and to maintain its rights if distortion, mutilation, modification of Creation, or something detrimental to self-respect or reputation happens (regulated in Act Article 5 to 7 on Copyright). Economic rights are regulated in Articles 8 to 19 on Copyright Act. They are the exclusive rights of the creators or the right holders in obtaining economic benefits from Creation. In the concept of intellectual property right protection, creative subjects having ideas in the field of literature or science when implementing it concretely becomes the emergence of legal protection for the creation result. The emerging rights are moral and economic rights. They will only be possessed by creative subjects expressing their ideas concretely. Based on the international property rights protection concept, other parties not related to the owner or creation are not permitted to use the creation. This means beside the owner or right-holder of the creation, others are prohibited from using moral and economic rights.

The forms of copyright infringements are regulated in Article 112, 113, 114, 115 of Copyright Act. There are 3 forms of copyright infringements concerning Act Number 28 of 2014 on Copyright. As the Act offense, they are:

1. Intentionally and without any rights announcing and reproducing a creation without permission
2. Deliberately circulating or selling to public a creation or good resulting from Copyright infringement
3. Intentionally and without any rights increasing the use for commercial purposes. Departing from the above Copyright infringements, there are 2 (two) categories of perpetrators of Copyright crimes, namely:
  - a. Main perpetrator : individual and legal entity deliberately conducting the infringements of copyright or Act prohibition
  - b. Co-perpetrator: those broadcasting, exhibiting, or selling to public the creation they know conducts the infringements of copyright or Act prohibition



### **3.3. Changes in the nature of ordinary offense to be complaint offense and the consequences**

Ordinary offense for a case can be processed without the consent of the aggrieved party or the victim. The case will still continue even though the parties have produced a dispute settlement agreement between themselves. The process can still be carried out by law enforcers despite the reconciliation settlement between parties or report revocation by the victim.

Complaint offense can only be processed if complained by the aggrieved person or party, or the victim. Therefore, law enforcers. in this case the police officers, cannot take the initiative to follow up on a case. Victims or aggrieved parties can revoke their report if they feel not being able to resolve the problem properly through litigation.

### **3.4. Criminal law enforcement on copyright infringement**

If there is an alleged copyright infringement, the Copyright Act provides an opportunity to conduct mediation. If the mediation is successful between the disputed parties, the case will be terminated. However, if the mediation cannot be agreed between by the parties, the case of copyright infringement will continue at the investigation stage.

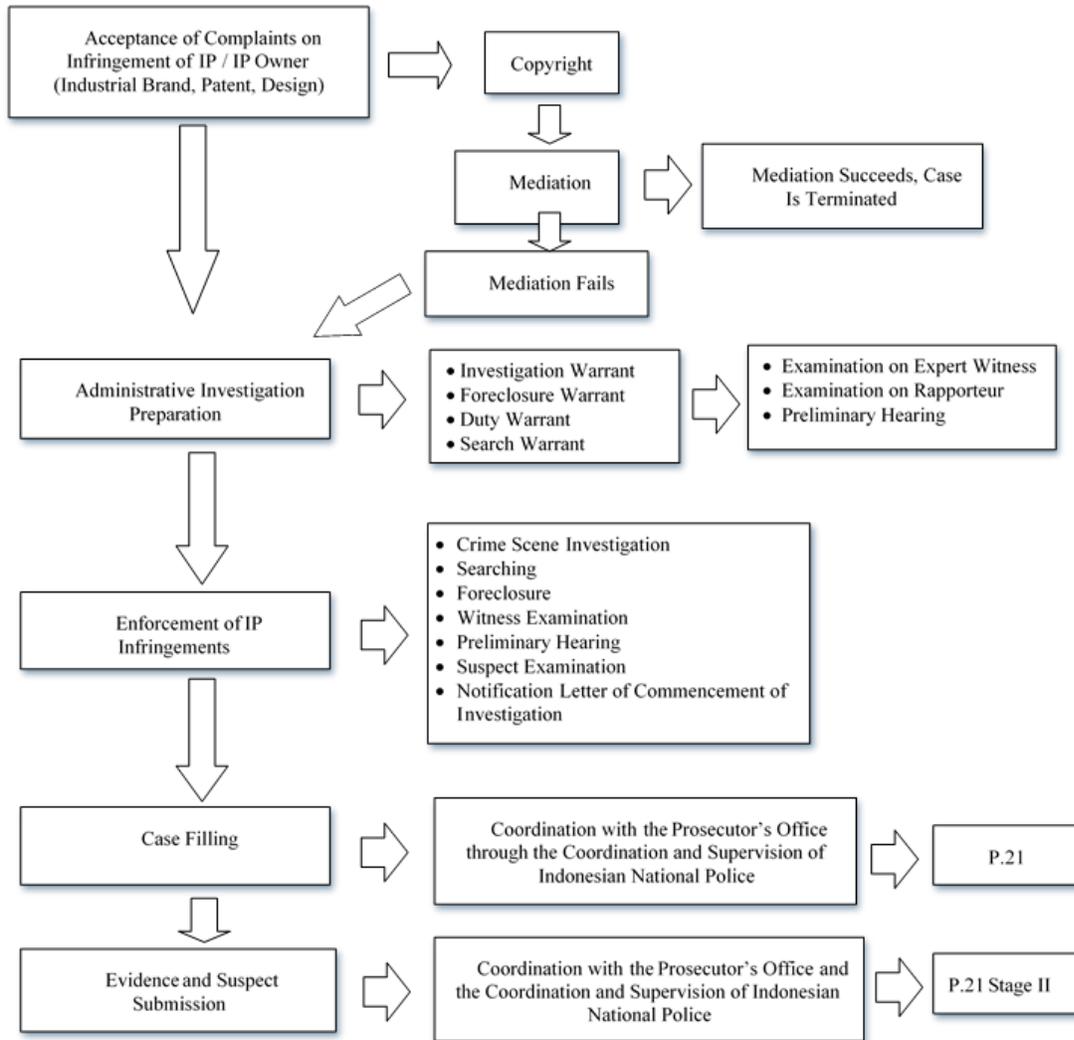
## **Investigation Process On Intellectual Property Rights Infringements**



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**Figure 1: The Investigation Process of Intellectual Property Rights Cases (Dirjen Haki, 2019)**

From this process, it can be studied that the change from ordinary offense to complaint offense has consequences to the criminal case settlement mechanism, relating to the complainant and also the verification process charged to the aggrieved party. It is very burdensome to the aggrieved party that it will affect the intention of obtaining legal certainty which becomes the essence of law enforcement in the Copyright Act.



#### 4. Conclusion

The process of resolving copyright infringement cases based on complaints of copyright infringements has consequences for the law enforcement process mechanism, from the reporting to the verdict stage. The complaint offense will bring consequences for the indictment and evidentiary mechanism depending on the aggrieved party. The lengthy procedure, the main consideration for the benefit of the aggrieved party as well as the evidentiary process imposed on the aggrieved party are the factors determining the creators' complaints. The criminal law enforcement process on the Copyright act based on complaint offenses will reflect the protection to copyright owners highly relying on the above factors.

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