

Criminal Prosecution for Audio Visual Copyright Infringement in Coastal Areas

Aries Kurniawan

Entrepreneurship Department, Faculty of Economics and Business
Universitas Muhammadiyah Gresik, Gresik Regency, East Java, Indonesia
ariesaja@umg.ac.id

Sukaris

Management Department, Faculty of Economics and Business
Universitas Muhammadiyah Gresik, Gresik Regency, East Java, Indonesia
sukaris21@umg.ac.id

Agus Prasetya

Unit Program Belajar Jarak Jauh-Universitas Terbuka (UPBJJ-UT), Indonesia
aguspratya@ecampus.ut.ac.id

Beni Dwi Komara

Entrepreneurship Department, Faculty of Economics and Business
Universitas Muhammadiyah Gresik, Gresik Regency, East Java, Indonesia
benikomara@umg.ac.id

Heri Cahyo Bagus Setiawan

Entrepreneurship Department, Faculty of Economics and Business
Universitas Muhammadiyah Gresik, Gresik Regency, East Java, Indonesia
hericbs@umg.ac.id

Abstract

Implementation of Intellectual Property Laws in South East Asia is different between parties. The research purpose isto know Prosecution of Criminal Offenders for Copyright Infringement in VCD and DVD Field in Indonesia, Singapore and Malaysia. The research used qualitative method with primary and secondary data intake. The result of the research, prosecution of criminal offenders for copyright infringement in Indonesia is different between Singapore and Malaysia. Although same in ordinary offense principle, implementation property laws in Indonesia covers broadcast, showing off, circulate, or sell creation or copyright infringement product to the public. In Malaysia, illustration of copyright infringement is wider. It is content sales, leasehold, propose to sell or rent, have for other than oneself, distribute, showing off, import to Malaysia or produce pirated video compact disk or digital video disk. In Singapore, copyright infringement in VCD and DVD means sales, leasehold, offer, distribute and showing off pirated goods. The result of the research showed implementation intellectual property laws in Indonesia far for expectations with the result that not give deterrent effect for perpetrator. This is due two things specifically substantial from criminal sanctions and civil sanctions.

Keywords: copyright, intellectual property, laws, infringement and prosecution.

1. Introduction

Relation Intellectual Property Rights (IPRs) between humans and other countries cannot be denied. IPRs are given and inherent in industrial community or the other community to be leads to it. Existence always follows community development dynamic. So as with Indonesia people did not want intersect and involved with IPRs problem.

IPRs divided in two categories that is Copyright and Industry Property Rights. While Industry Property Right covers patent, trademark, industry design, integrated circuit layout design, trade secret, and varieties of plants (Setijarto, Nugroho Amien, 1998 : 5).

In a formal juridical manner, Indonesia introduced with copyright problem in 1912, at the time of promulgation Auteurs (Wet van September 23, 1912, Staatsblad 1912 No 600) which applicable September 23, 1912 (Imam Triyono, 1976n: 65 and Disc Eddy Damian, 2002 : 138).

Furthermore, consequently from Indonesia participation as WTO (World Trade Organization) member, Indonesia has to adjust all IPRs laws and regulation with TRIP's standard (Trade Related Aspects of Intellectual Property Rights) since 1997 and renew in 2000 and 2001. Its result from international convention in IPRs field and appropriate with intellectual property law, industry design, integrated circuit layout design, trade secrets, patent and trademark.

The problem of IPRs will reach various aspects like as technology, social, culture, and the others any aspects. However, the important aspect if connected with protection effort for intellectual creation is law aspect. The law to be expected could handle any problem, which connected with IPRs. The law should give intellectual creation protection, with the result that could afford creativity people and covered IPRs.

Technology aspect is dominant factor in development and IPRs protection. Information technology growth caused the world became narrow, easily and speedy information spread around the world. In this condition, IPRs became important. It caused IPRs monopoly right constituted which can protect investment and it could divert.

The formal institution that managed IPRs in Indonesia is General Directorate of Intellectual Property Rights, which has been bellowed Ministry of Justice Law and Human Rights. Especial to managed IPRs information has formed Directorate Information and Technology has been bellowed General Directorate. This is showing that IPRs recognition in Indonesia get serious concern.

Application for registration is expected to increase because people could easy access Integral IPRs information system. Meanwhile, withthe integral law development (included IPRs law) criminal, offenders for copyright infringement can be reduced. Synergy, IPRs information system and integral law enforcement, in the end bring Indonesia nation life more civilized, which appreciate other people creation. Otherwise, active community support is the key to success in whole IPRs development.

Based on Law of Republic Indonesia Number 28, 2014 about Copyright, Copyright is the exclusive right of the creator that arise automatically based on the principle of declarative after an invention is embodied in a tangible form without prejudice to the restrictions in accordance with the provisions of the legislation.

Government has been set up about copyrights; however still found copyrights violations in community especially in Audio Visual Copyright in the form of Video Compacts Disk (VCD) and Digital Versatile Discs (DVD) field.

Based on information collected by researchers from Riau Island Regional Police and Batam-Rempang-Galang (Barelang) Sector Police, Police was conduct raids seller of pirated VCD and DVD.

In the end 2006 and early 2007 Barelang Sector Police had confiscated 8.707 chip pirated VCD and DVD in 12 (twelve) Batam region. Hereinafter, 15 (fifteen) people had been specified suspect.

In the end January 2007, Riau Island Regional Police success uncovers VCD reduplication case in Bunga Raya 28 Street Baloi Region Batam Island. In this uncover, the police hold in custody hundreds pirated VCD in various versions from porn VCD until music and film VCD.

Furthermore, the police commandeered multiplier machine that have 7-10 capacity product in one way. It produces minimal 150 VCD. The police had arrested Aheng, and one assistant encountered in location.

Pirated VCD and DVD case not only Indonesia monopoly especially in Batam, Singapore and Malaysia had encountered the same thing. In March 1, 2007, Malaysia Police arrested Singapore citizens aged 60 years old when recording Ghost Rider movie in Johor Bahru – Malaysia. For this action, this man was charged violate 41 (1) (g) section copy right law 1987 with RM 40,000 maximum fine or 10 years maximum jailed or both of them.

From various cases, problems still arise than should be solved so that this problem does not recur. An obstacle encountered is law enforcement in Indonesia still weak. This needs assessment in order to the problem of pirated can be solved. For that, we need a comparative study application of law with other countries as such Singapore and Malaysia.

2. Methods

This research on Criminal Prosecution for Audio Visual Copyright Infringement in Coastal Areas is a study with normative and empirical combination approach. Normative law research explain stipulation in legislation that valid in thecountry, wich connected with the case. And then analized with compare between prosecuted ideal value with reality in community.

Beside that the research isuse empirical combination approach that compare law decision and the rule in Law of Republic Indonesia Number 28, 2014 about Copyright and to know the factor that head off law about copyright action. Based on the object of research, both place and source of data, this research is included in the category of

field research, this field research is mainly based on research in the field or field (Kartono, 1996: 47). Observations are made directly at the location of the research site. Observations are made to understand the pattern of attitude and practice in interactions made by informants. The names of the informants written are not actual names Whereas, documentation is carried out by collecting documents that present supporting information related to the purpose of research.

Descriptive research is a study that seeks to collect information about a theme, symptom or situation according to what it is to find the broadest possible knowledge of the object of research. Descriptive research is generally carried out with the main objective, namely to systematically describe the facts and characteristics of the object or subject under study accurately. (Sukardi, 2003: 157).

Researchers use a normative juridical approach, namely a method that uses secondary data sources, namely laws and regulations, legal theories and the opinions of scholars, which are then analyzed and draw conclusions from the problems that will be used to test and review the data. the secondary. This approach method is used considering that the problems studied revolve around laws and regulations and their relation to their application in practice.

Primary data and secondary data that intake from the research in the field are collected, selected, classified, and identification to be analysed in order to get truth conclusion appropriate with the problem that we discussed. As for method, that we used to analyse this data is qualitative method. It is method of analysis that collecting, investigating data according quality, and the true, and then connected with theory from literature with the result that the answer from the problem submitted.

3. Result and Discussion

3.1. Copyright Law Enforcement Not Optimal

Batam city is an area that consist archipelago that have broad 415 Km² (41.500 ha) or same with 67 percent Singapore broad authority. It have 1,2 million population that neighbour with Singapore strait in the north, Senayang region in the south, North Bintan in the east and the west with Karimun region and Moro directly adjacent with Malaysia and Singapore neighbourhood country. In this condition, Batam became paradise to entry illegal product including pirated VCD and DVD.

Even though outstanding pirated VCD and DVD that revealed by Police not absolute came from the two country. Pirated VCD and DVD local factories also arise from Batam.

Batam region that look like scorpion shaped have 12 (twelve) region, that is Batam Kota, Batu Aji, Batu Ampar, Belakang Padang, Bengkong, Bulang, Galang, Lubuk Baja, Nongsa, Sagulung, Sei / Sungai Beduk, and Sekupang

Based on data collected by researcher, violations in the VCD and DVD fields were in the Batam Kota, Lubuk Baja, Batu Aji and Nongsa region. Besides of that, the Association of Indonesian Singers, Songwriters and Recording Music Arrangers (PAPPRI) also has its own record. According to them, the copyrighted works in the form of music that were hijacked during 2007 reached 500 million copies for CDs, MP3s and cassettes. This figure is an increase compared to 2006 which amounted to 400 million copies. As a result of the piracy, the artist and producer losses were estimated at IDR 2.5 trillion. It is truly an extraordinary number, especially after only two years.

The data reported by the National Team for Prevention of Intellectual Property Rights Violations is quite surprising. By the end of February 2008, the total state losses due to copyright infringement in DKI Jakarta Province alone reached Rp1 trillion (in the form of confiscation of 2.1 million discs of pirated films and music). Of that number, only 705 cases were submitted to the police and 346 of them are still in legal proceedings. More than half of the IPR violations occurred in the field of copyright, namely 598 cases. The most pirated copyrights are movies and music, as explain in figure 1.

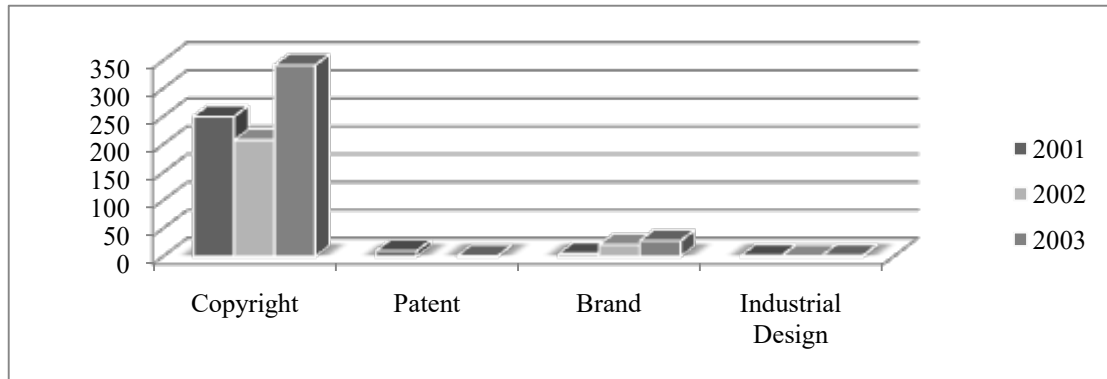


Figure 1. Number of Violation Cases

3.2. Cases of Copyright Infringement

1) Case in Indonesia

Arrest Yap Hau, pirated VCD case suspect who was arrested by Bareleng Police Department from his house at Taman Nagoya Indah Block A, Sunday (13/5/2006) at 06.00 am. Previous police have secured 23.131-pirated VCD evidence from Yap Hau thirteen stores.

2) Case in Malaysia

Three directors, include a person who is datuk title, Wednesday (18/04/06) indicted by Seksyen court in charged had 1.480 pirated Siti Nurhaliza Production (M) SdnBhd VCD. Datuk Soh Chun (52) with his brother Soh Choon Meng (46) and Sie Mee Er (44) confess not guilty from this charged.

They charged had pirated VCD entitled, "Siti Nurhaliza in Concert Royal Albert Hall, London disc 1", "Siti Nurhaliza in Concert Royal Albert Hall, London disc 2" and "Siti Nurhaliza in Concert Royal Albert Hall disc 3".

They in charged perpetrate a crime in EmpayarCanggihSdnBhd building on IKS Mukim Batu Fasa 1 Industry district, at 1.30 pm on January 17th, 2006.

They in charged contravene Seksyen 41 (1) (d) copyright law 1987 and punished contravene Seksyen 41 (1) copyright law 1987 and sentenced to infringe c 2003-A 1195. For the offense, they fined minimum RM 2.000 each piece and maximum RM.20.000 if proved guilty.

Besides pirated VCD evidence, police hold in custody multiplier machine, but they confess not guilty for charges three units of multipliers calls "stamper" that used make pirated VCD. They were charged at date, time and same place for it crimes.

3) Case in Singapore

Highway Video Pte Ltd and it director's, Teng YockPoh and Teng Kem Hong had charged violate the Copyright Act (cap 63) in 32 section and Trade Marks Act 1998 :

Infringement by importation for sale or hire

32. The copyright in a literary, dramatic, musical or artistic work is infringed by a person who, without the licence of the owner of the copyright, imports an article into Singapore for the purpose of —

- (a) Selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;
- (b) Distributing the article —
 - (i) For the purpose of trade; or
 - (ii) For any other purpose to an extent that will affect prejudicially the owner of the copyright; or
- (c) By way of trade exhibiting the article in public, where he knows, or ought reasonably to know, that the making of the article was carried out without the consent of the owner of the copyright. [Aust. 1968, s. 37].

So Teng YockPoh and Teng Kem Hong charged selling and trade offering 40 (forty) cinematographic results entitled "The Duke of Mount Deer", whose copyright is owned Television Broadcast Limited (TVB), the public company that registered in Hongkong. This violation exists in Copyright Act (cap 63), in 32 section.

The defendant was also charged with violating "Television Broadcast Limited" brands right that registered in No 152/83 in class 9, which cover 40 Video Compact Discs (VCD) (section 49 (b) of Trade Marks Act Chapter 332, 1998.

3.3. The Judge's Decision in The Case of Copyright Infringement

1) Case of Copyright Infringement in Indonesia

Yap Hau who was charged with pirated VCDs as many as 23,131 pieces of pirated VCDs from thirteen stores were sentenced to five months with ten months probation.

Public relations of the Batam District Court, Ahmad Bondan said penalty applies if the person commits a criminal offense on probation. If the defendant made a mistake, whatever it was, like hitting a person or a similar type, then the punishment penalty for the month of confinement would apply to him.

On the contrary, if the defendant did not commit any unlawful act in the probationary period, then the five-month sentence of imprisonment will not apply to him. Other than that, Yap Hau was not charged as a pirated VCDs producer, but a seller.

Bondan explained that the indictment submitted in the trial was adjusted with the official report of the examination from the police. It was no mention of evidence in the form of production machinery.

Besides the evidence, a public prosecutor also present four witness, including producers Naga Suara Sakti Company, two assistant VCDs store belonging Yap Hau and one police who took part in the raid. From here revealed the reporting party objection with Yap Hau act than traded pirated VCDs KerisPatih band, which they are the producers. Other testimony mentions, pirated VCDs in Yap Hau store has, was purchased from from Zoom 2000 belonging fugitive Aseng, not produced by one self.

2) *Case of Copyright Infringement in Malaysia*

For infringement has 1,480 pieces of pirated vcd belonging to the company Siti Norhaliza Production (M) SdnBhd, Datuk Soh Chun Seng (52) and his brother Soh Choon Meng (46) and Siew Mee Er (44), a minimum fined RM2,000 every pieces if proven guilty.

Besides pirated VCDs evidence, police secured multiplier machine, but they did not plead guilty against accusations of having three units of multipliers of stampers that used make pirated VCDs. The mistake was indicted on the same date, time and place.

For the second mistake, they violate seksyen 41 (1) (g) and seksyen 41 (1) (ii) copyright law 1987 with threat of punishment minimum fined RM4,000 every pieces and maximum fined RM40,000 every pieces.

3) *Case of Copyright Infringement in Singapore*

Teng YockPoh and Teng Kem Hong which seller and trader 40 (forty) cinematographic result entitled "The Duke of Mount Deer, that copyright belonging Television Broadcast Limited (TVB) be avowed breaking the Copyright (amendment) Bill on February 19th, 1998 and imposed a fine of each person \$20,000.

3.4. Context Setting Copyright Act in Singapore, Malaysia and Indonesia

About the perpetrators of copyright infringement, regulations in Singapore most detailed set if compared with Indonesia or Malaysia.

About live recordings performance are copyright infringement. There are most detailed in Malaysian copyright laws compared to the rules in Singapore and Indonesia.

About the authorities' authority. Among the three legislation, Malaysia copyright act No 332, 1987 explain in detail actions that are permitted by the police to investigate alleged copyright infringement cases. Details on the authority of the authority in Indonesian regulations, following the previous regulation on criminal procedural law.

Arrangement about Copyright Council. Arrangement in Malaysia and Indonesia are more detail in the respective laws. While in Indonesia, this detailed arrangement through government regulations.

4. Conclusions

Although copyright laws are subject to change and revision several times and lastly in 2002, implementation in the field is still far from expectations, so it has not provided a deterrent effect for the perpetrators of crime. This is caused by two things namely the substance of criminal or civil sanctions of copyright regulations and low knowledge of the authority about copyright.

Substantially, criminal and civil penalties, the copyright law state the longest penalty for criminal sanctions and at most for civil sanctions. Although substantially these sanctions are the same as copyright laws in Singapore and Malaysia, but the authorities of both countries are more proactive and coordinative in cracking down on copyright infringement. The proofwas from the result of a heavier copyright infringement judgment, when compared to the judgment of courts in Indonesia, especially in Batam. The lack of knowledge and coordination of the authority in Indonesiais not to be optimal in the role of civilian government investigator who assisted the police in investigating VCDs and pirated DVDs.

Although the same adhering to the usual offense, but the contextual violations in the field of copyright in Indonesia include broadcasting, displaying, distributing, or selling to the public a creation or product of infringement of copyright or related rights. In Malaysia a broader breakdown of offenses which includes sales, leases, offers for

sale or lease, owns in addition to own interest, distribution, display, importing to Malaysia or making a copy of pirated VCDs or DVDs. While in Singapore, the definition of piracy in the field of VCDs and DVDs is selling, renting, offering, distributing and displaying pirated goods.

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Biographies

Aries Kurniawan is the name of the author in this article. Born in Gresik, East Java on April 3, 1977, the author works as a permanent lecturer at the Undergraduate Entrepreneurship Study Program, Faculty of Economics and Business (FEB), University of Muhammadiyah Gresik (UMG). This graduate of S1 Management Study Program, Faculty of Economics, University of Jember is trusted as the Chairperson of the Center for Economic and Business Studies and Development (P3EB), University of Muhammadiyah Gresik (UMG) which oversees the Investment Gallery and Taxation of the Indonesia Stock Exchange. Center since 2017. Previously, a graduate of the Bachelor of Business Law Study Program at the Faculty of Law, Gadjah Mada University, pursued several professions including as a journalist at Batam Pos (a subsidiary of the Jawa Pos Group) from 1999 to 2005 ., Director of PT Hang Tuah Jaya, which engaged in retail from 2002 to 2013 and the Ad Hoc Judge of the Batam City Consumer Dispute Resolution Board (BPSK) from 2008 to 2013. The author also started his career in college as an extraordinary lecturer (LB) at Batam State Polytechnic in the field of Business Law from 2010 to 2013. And continued at the University of Muhammadiyah Gresik (UMG) from 2013 until now.

Sukaris is a lecturer at the Faculty of Economics and Business, University of Muhammadiyah Gresik, East Java, Indonesia. This college is under the supervision of the Ministry of Research, Technology and Higher Education. His last education was Masters in Management Science at Airlangga University, Surabaya, Indonesia. Currently pursuing a doctoral program in management at Airlangga University, Surabaya, Indonesia. Her research interests are in marketing, tourism and community development. Apart from teaching and researching, he is also active in community service activities, especially community empowerment.

Agus Prasetya is lecturer as FKIP-UT , has a publication with the title Meditation on Street Vendor Conflicts with the government of Madiun City.(Study: Mediation of Conflict between Street Vendors and Satpol PP. (Research Scheme - UT) Empowerment of Trustees in an effort to prevent cheating culture (Case Study: Creating professional supervisors to eliminate dishonesty in Madura) 2018 Voter Political Behavior Preferences in the context of the elections in Madiun City. (Voting Political Peripalau in the 2018 mayoral election attempt. (Study of the political behavior of voters in the elections) 2018 Social Construction of Traditional Traders in dealing with free trade (Case Study: Retail Presence, Indo March, Alfa March destroys traditional traders) 2019.

Beni Dwi Komara, born in the City of Kediri, East Java on May 29, 1976, in addition to being an active entrepreneur, the writer is also a Lecturer in the S1 Entrepreneurship Study Program at the Faculty of Economics and Business, Muhammadiyah University, Gresik. Courses that are taught include Self Management, International Business, Export-import, Business Execution, Entrepreneur Project, Economic Statistics and International Marketing.

Heri Cahyo Bagus Setiawan. The man who was born in Waru, Sidoarjo in 1990 is studying a master's degree in Management Science at Airlangga University Surabaya. have some research with a title, The Alternative Blue Ocean Strategy: How is the Strategy of Santri Coffee Industry Company In Facing Business Competition?, Contribution of Entrepreneurial Practices In Pondok Pesantren (Study on Pondok Pesantren Entrepreneur Mukmin Mandiri, Waru Sidoarjo), Business Incubator as a Driver of Growing Young Entrepreneurs: Study on Entrepreneurial Succession of Students of Muhammadiyah Gresik University, The Steep Path of MSMEs and Small Traders Surviving the Covid-19 Pandemic and the Threat of Global Economic Crisis. Currently, this father who is active in the field of religion is a lecturer in the Entrepreneurship Study Program of the University of Muhammadiyah Gresik