Criminal Law Enforcement of Book Copyright Infringement in Digital Market Places in The Ecosystem E-Commerce Through Restorative Justice

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<td>Book copyright, criminal law, enforcement.</td>
<td>Criminal law enforcement against book copyright infringement in Indonesia is still weak and has not ensured legal certainty in its protection. Justice for copyright holders is still not achieved in a restorative manner, due to not updated copyright rules in accordance with the development of digital markets in the marketplace. The purpose of this study is to analyze criminal law enforcement, legal protection and restorative justice against copyright infringement of books on Digital Market Place in Indonesia. This research method uses normative juridical type with descriptive analysis approach and empirical comparison. The results showed that criminal law enforcement against copyright infringement of books on Digital Market Place in Indonesia is categorized in the criminal 'complaint offense' which is carried out through the initial stages of receiving complaints on copyright infringement followed up with mediation in settlement efforts, and if no settlement is found then the next stage is resolved in the judicial process through case examination, investigation and investigation, the process of interception of digital evidence and its handling up to the judicial process. Legal protection of book copyright on Digital Market Place from the perspective of law enforcement is done through efforts to protect the regulatory aspects of copyright automatically copyright holders, recording system/registration of exclusive rights; moral rights and economic rights, guidance systems and internal supervision preventively through socialization of education and respressively through monitoring the market place, as well as external supervision in customs</td>
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through cooperation beacukai in tackling the sale of goods that violate copyright. Restorative Justice efforts in criminal law enforcement against copyright infringement of books on Digital Market Place is done by dispute resolution through mediation and arbitration in the commercial court. Conceptually, Restorative Justice is designed in the future with the concept of fair restitution in the recovery of repairs for damage to copyright morally and recovery of compensation for the loss of economic rights materially. As the findings of this study the concept of restitution in restorative justice is very relevant to be developed in the future in the global copyright rules along with the development of E-Commerce in the digital market.

A. Introduction

Intellectual Property Rights (IPR) have become an important part of national and international economic development. Indonesia as a developing country must be able to take appropriate steps to be able to anticipate all changes and developments as well as global trends so that national goals can be achieved. One important step that can be taken is to socialize and protect intellectual property. IPR is a right that protects the creative manifestation of human thinking. In the concept of civil law, IPR includes types of property rights that are intangible (immaterial). A material right can be classified as an IPR, if it fulfills several aspects in it, namely the usability aspect and the economic aspect. Property rights that have beneficial and economic aspects in them can be categorized as IPR. IPR as material property rights owned by a person is not a right that is safe from violations of law in the form of crime. One form of this crime is in the form of criminal acts of piracy or copyright plagiarism.

Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions in accordance with statutory provisions.1 The exclusive right that is given is a form of public appreciation and is something that is inherent in the Creator as a form of appreciation for his creativity. 2 This provision implies that the creator does not need to acknowledge that a creation belongs to the creator because with the declarative principle, the copyright is automatically granted to the creator. But in accordance with the spirit contained in Article 33 of the 1945 Constitution, Law Number 28 of 2014 concerning Copyright has a social function in the sense that it can be limited to the public interest, namely:

1. On the possibility of limiting copyright in the public/national interest by having to provide compensation to the creator;
2. By granting copyrights by the state over intangible objects in the form of traditional cultural expressions.

This mindset or understanding of Intellectual Property Rights must be distinguished from wealth that is not produced by human intellect, in other words tangible property, for example: wealth obtained from nature, such as land and or plants along with other

1Pasal 1 Ayat 1 Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta
inherited material rights. From this point of view, it seems easy to understand how Intellectual Property Right (IPR) is different from Real Property. In other words, it can be made easier to understand that intellectual property rights, such as copyrights, are intangible properties, while real property, for example: books, music cassettes, radio chairs, televisions, is tangible property.

The problem that arises is due to the nature of Intellectual Property Rights which as intangible objects facilitate Unintended Transfers, in contrast to objects that are visible. In the IPR legal system, it is known that there is communal ownership. Intellectual Property. Communal Intellectual Property (KIK) is intellectual property owned by the general public that is communal. KIK is a valuable asset that can advance a nation's economy, according to the Directorate General of Intellectual Property of the Ministry of Law and Human Rights, KIK includes:

1. Traditional cultural expressions/EBT (traditional culture expressions/TCEs), are all forms of expression of copyrighted works, either in the form of objects or intangibles, or a combination of both which shows the existence of a traditional culture which is held communally and across generations. UU no. 28 of 2014 in article 38 paragraph 1 states that these traditional cultural expressions include one or a combination of all types of arts and literary works such as music, movement and dance, prose, drama, theater, all types of fine arts and the last is traditional ceremonies. The way to protect traditional cultural expressions is by centralizing and national documentation through the Traditional Cultural Expressions Section in the Knowledge and Traditional Cultural Expressions Sub-Directorate.

2. Traditional knowledge is intellectual work in the field of science and technology which contains elements of traditional heritage characteristics that are produced, developed and maintained by certain communities or societies. This traditional knowledge results from interactions with nature and/or interpretations from interactions with the social and cultural environment as well as spiritual experiences. This traditional knowledge actually plays a very important role in improving the community's economy and is the identity and identity of the Indonesian nation.

3. Indication of origin and geographical indication (indication of origin and geographical indication), is a sign indicating the area of origin of a good and/or product which due to the geographical environment including natural factors, human factors, or a combination of the two factors, gives reputation, quality and certain characteristics of the goods and/or products produced which have the potential to be protected by Geographical Indications.

The development of science and technology has also penetrated the whole world, including Indonesia, which has also experienced the development of science and technology. Creators are competing to create new things that have never been created. Creators are made increasingly powerless by the many piracy that is done because of technological developments. The internet is one of the creations of science and technology that has developed from 1962 to the present. The history of the internet is one of the proofs that the development of science and technology is growing rapidly. The internet can be a place of education for all of us, as well as an effective and easy-to-implement means of entertainment. The Internet can also create new problems that are difficult to track and fix.
It is this development of the internet that creates problems from year to year such as hacking, carding, piracy and many more. Piracy is something that is very difficult to get rid of in today's life, people flock to seek profits by pirating other people's work to be traded and take advantage of the results of this piracy. In developed countries, they carry out security for cyberspace / the internet by forming a special agency that specifically deals with these problems.

It is clear that pirates are doing piracy and putting it on their personal websites to be traded for free but profiting from the other side. Seeing this is clear in Law Number 28 of 2014 concerning Copyright, especially in Article 4, namely Copyright is an exclusive right consisting of moral rights and economic rights. The exclusive rights referred to in Article 4 are "rights that are only intended for the Author, so that no other party can take advantage of these rights without the Author's permission. Copyright holders who are not creators only have some of the exclusive rights in the form of economic rights".

Based on the economic rights that are owned, it is possible for an creator to exploit a creation in such a way as to obtain economic benefits so that it needs to be protected adequately. Therefore, if a work is not managed in an orderly manner based on a set of legal principles, it can lead to disputes between the copyright owner and the copyright manager (holder) or other parties who violate it. For the regulation, a set of legal provisions is needed that covers all possible violations by those who are not entitled to copyright owned by someone.

The economic argument for copyright law protection is to provide incentives for creativity and innovation. Rights owners have the important power to allow anyone to reproduce material copyrights for profit in the marketplace. This is an increased incentive for innovation, with broad social benefits, for fostering copyright-related industries within the framework of trade in goods and services on the market.

Pirates who upload file links to the internet have committed acts of piracy by violating copyright because they have reproduced it without the permission of the copyright holder, so law enforcement must be implemented. Likewise, the Indonesian people are still not aware of the importance of respecting other people's creations by not committing violations that can result in enormous losses not only for creators or rights holders but also for the state.

The existence of Intellectual Property Rights which has developed into the field of business law from year to year has developed, both in terms of the increasing level of registration or recording of Intellectual Property Rights, as well as public awareness of the concept of protecting Intellectual Property Rights. Intellectual Property Rights or Intellectual Property Rights are rights that arise for the results of an intellectual creativity. Objects protected in Intellectual Property Rights are works that arise or are born because of human intellectual abilities. The concept of protecting Intellectual Property Rights on the one hand provides protection for the results of human thought (creativity) as outlined in an intellectual work which the state makes as an exclusive right that is given to individual intellectual property rights actors (investors, creators, designers, and so on).

Based on this explanation, it can be concluded that the Intellectual Property Rights system is a private right, where the IPR system supports the establishment of a good documentation system for forms of human creativity so that the possibility of producing technology or other similar works can be avoided or prevented. On the other hand, the concept of protecting Intellectual Property Rights originating from Western thought does not one hundred percent violate the values of Eastern cultural thought, when the concept of protecting Intellectual Property Rights is also filled with social functions. The

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6Suyud Margono, OpCit. hlm. 4.
Indonesian state which adheres to the Pancasila philosophy, especially the Fifth precept, as described in MPR Decree No. 11/MPR/1978 describes the meaning of the value of Social Justice for all Indonesian people. It also contains and implicitly regulates the balance of rights and obligations where one of these rights is Intellectual Property Rights. The description can be described as follows:

1. Develop noble deeds that reflect the attitude and atmosphere of kinship and mutual cooperation;
2. Be fair;
3. Maintain a balance between rights and obligations;
4. Respect the rights of others;
5. Avoid blackmailing others;
6. Not a luxurious lifestyle;
7. Do not commit acts that are detrimental to the public interest;
8. Likes to work hard;
9. Appreciating the work of others;
10. Together we strive to achieve equitable and socially just progress;

Based on the elaboration of the meaning of the fifth precept of Pancasila, according to Eddy Damian in his book entitled "Copyright Law", Intellectual Property Rights are not completely contrary to Pancasila because ownership rights in the form of intellectual property rights are still recognized as material rights as long as they contain a balance between rights and obligations for the Author or the Copyright Holder. The balance between such rights and obligations which is encompassed by the spirit of kinship and mutual cooperation which then gives birth to a communal or togetherness spirit is the spirit of and the original nature of the Indonesian Nation. Thus, any issues related to intellectual property rights including copyrights must always refer to the communal spirit both in dealing with civil disputes and criminal violations in the form of piracy of copyrighted works. If this communal spirit is applied in the settlement of criminal disputes, one of them can be in the form of dispute resolution that carries the concept of Restorative Justice.

The criminal provisions in the 2014 Copyright Law (Copyright Law 2014) which criminalize piracy of copyrighted works as criminal offenses in the field of Copyright are contained in Article 113 paragraph (4). Books as stated in Article 40 letter a, are included as a type of copyrighted work protected by the 2014 Copyright Law. Therefore, any act of piracy of copyrighted works in the form of books can be categorized as a criminal offense in the field of Copyright, namely piracy crime. Even though criminal provisions related to piracy have been regulated in the 2014 Copyright Law, piracy still occurs frequently.

So far, DJKI has recorded that it has closed/blocked 800 websites that have committed copyright infringements since 2015. Some of them are related to copyright infringement in the form of book piracy. But book piracy is still happening and growing. In fact, copyright infringement in the form of piracy was also justified by one of the Indonesian novelists, namely JS Khairen. He stated that many E-Commerce institutions such as Tokopedia, Shopee, and Bukalapak still allow pirated books to circulate. In fact, this was experienced by Khairen herself as her book was hijacked and sold for Rp. 20,000.00 by a pelapak. This price is certainly very different from the original price of

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the book from the publisher. Khairen explained further that pirated books were usually printed on opaque paper and printed with cheap, toxic ink.\(^{10}\)

Another example of book copyright infringement in E-Commerce is what happened to Rustina Zahra, a novelist whose works are being sold at the Tokopedia online store at a much lower price than the original price. All of his products sold on Tokopedia are the result of pirating the original works he created.\(^{11}\) This seems to imply that the enforcement of copyright law through conventional criminal policies has not been effective enough to eradicate the criminal act of pirating book creations.

Legal protection for copyright in the digital era is still very weak. Law enforcement is difficult because works in digital format are cross-country. Determining jurisdiction and legal provisions becomes difficult. In addition, many copyright infringers hide behind anonymity. Violators' social media accounts can be anonymous or fake accounts, making them difficult to trace. Technological developments make digital works of art spread easily and quickly. This convenience allows works to be copied or manipulated, there needs to be an integrated system and copyright data center because one of the obstacles to copyright protection is the lack of data. Those who want to take advantage of works of creation also find it difficult to pay royalties.

Copyright infringement in the form of piracy of copyrighted books that has penetrated into the digital realm, has not only made it difficult for law enforcement efforts, but has also prevented law enforcement from achieving maximum results. The way to resolve copyright disputes that is explicitly regulated is as stated in Article 95 paragraph (4) of Law Number 28 of 2014 concerning Copyright which stipulates that dispute resolution must first be pursued through mediation before carrying out criminal charges. The clause of the article seems to limit the choice of resolving disputes through preventive channels which are limited to forms of mediation and preventive settlement time which is limited to pre-criminal prosecution. So that in its implementation the concept of Restorative Justice experiences various obstacles both in terms of the lack of Government support in terms of the legal basis for implementing the concept of restorative justice, the incompetence of law enforcement officials in terms of being a supporting device for the implementation of restorative justice, as well as the existence of personal interests in the choice of legal channels in settling criminal cases. punishment for the exclusive rights of the individual. As for the resolution of lawsuits in civil disputes over Intellectual Property Rights, in addition to being able to go through repressive channels through filing a lawsuit at the Commercial Court, can also take the form of alternative dispute resolution or arbitration.

Based on the phenomenon of the above problems, the authors are interested in examining the issue of how the concept of Restorative Justice can solve the problem of copyright infringement of books in the Digital Market Place, which researchers will describe in a study with the title: Criminal Law Enforcement Against Book Copyright Infringement in the Digital Market Place in the E-Commerce Ecosystem Through Restorative Justice. Researchers have traced the themes of scientific writing related to different approaches. Some related scientific works, namely:


1. Law Enforcement Against Copyright Violation through Internet Media”. This research was written by Andi Kurniawati,12 Master of Law at Hasanuddin University, 2015. The results of this study are that law enforcement against copyright infringement through internet media has not been maximized. This is due to the many obstacles in its implementation, including, the Copyright Law which is considered not to follow the development of technology and information.

2. Law Enforcement Against Copyright Violation in Making E-Books. This research was written by Aan Priyatna,13 Master of Law at Diponegoro University in 2014. The results of this research show that there are forms of copyright infringement in the creation of e-books.

3. Law Enforcement Against Copyright based on Law Number 19 of 2002 concerning Copyright in Pekanbaru City. This research was written by M Edi Faryadi,14 Master of Law at the Islamic University of Indonesia, 2007. The discussion concerns the factors influencing copyright law enforcement in the city of Pekanbaru caused by a mismatch between values, rules and patterns of behavior. Factors that influence the enforcement of this law, namely legal factors, law enforcement officials, available facilities, community factors, and cultural factors.

Of the several studies used as comparisons above, the differences with the researcher's research are clear. This is because none of the studies used as a comparison specifically discusses Criminal Law Enforcement against Book Copyright Infringement in the Digital Market Place in the E-Commerce Ecosystem through Restorative Justice. Regarding this clear difference, researchers have previously searched for research in the form of a research that discusses Criminal Law Enforcement of Book Copyright Infringement in the Digital Market Place in the E-Commerce Ecosystem through Restorative Justice in repositories available both offline and online. Still, researchers did not find any of the research in question. Thus, the research used as a comparison by researchers only discusses law enforcement and copyright which in the researcher's research is used as a comparison material to determine the model of law enforcement of book copyright infringement on Digital Market Place in E-Commerce Ecosystem through Restorative Justice. This is certainly interesting if discussed from the point of view of criminal law, so that it becomes the right foundation when formulating law enforcement policies in an effort to overcome it.

From the identification of the problems found, this study aims to analyze criminal law enforcement against book copyright infringement on Digital Market Place in Indonesia, to analyze legal protection against book copyright infringement on Digital Market Place from a law enforcement perspective, and To analyze the concept of restorative justice in enforcing criminal law against infringement of book copyrights in digital market places.

The research method used to solve the problems in this study consists of several stages, namely, among others, the type of normative juridical research with an analytical descriptive approach, namely research conducted by analyzing a problem by describing the problem regarding Criminal Law Enforcement of Book Copyright Violation on

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Digital Market **Place in the E-Commerce Ecosystem** through *Restorative Justice*. The research method in this study is *normative* and empirical juridical, namely legal research conducted by researching and studying library data or what is called by another name as secondary data in the form of positive law and how it is applied at the empirical practice level. Data collection was carried out by the author carried out with a literature study by collecting all secondary data necessary for further study of regulations that will be used specifically. In addition, the form and type of library materials used are also classified, and certain notes are given regarding matters that are considered important to the object under study. This is done so that research can be carried out regularly and systematically.

**B. Discussion**

1. **Book Copyright Infringement Case**

All forms of copyright infringement can be resolved through mechanisms regulated in accordance with laws and regulations. Copyright management regulations in Indonesia refer to Law Number 28 of 2014 concerning Copyright. Copyright infringement cases often occur in Indonesia. Article 1 point 1 explains that copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in a tangible form without reducing restrictions in accordance with statutory provisions.

Furthermore, Article 40 explains that creations that can be protected by copyright include works in the fields of science, art and literature as follows:

a. Books, pamphlets, published versions of written works, and all other written works;

b. Lectures, lectures, speeches and other similar creations;

b. Visual aids made for the benefit of education and science;

d. Songs and/or music with or without subtitles;

e. Drama, musical drama, dance, choreography, wayang, and pantomime;

f. Fine art in all forms such as paintings, drawings, carvings, calligraphy, sculpture, sculpture or collages;

g. Applied art;

h. Architectural works;

i. Map;

j. Batik artwork or other motif art;

k. Photographic work;

l. Portrait;

m. Cinematographic works;

n. Translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications, and other works resulting from the transformation;

o. Translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;

p. Compilation of works or data, either in a format that can be read by a computer program or other media;

q. Compilations of traditional cultural expressions as long as they are original works;

r. Video games; And

s. Computer program.

A person needs to get a copyright on his work in order to protect the work he has created. In addition, with copyright, creators are entitled to exclusive rights, namely moral

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rights and economic rights. Article 5 explains that moral rights are rights that are eternally attached to the author to do a number of things, such as:

a. Keep including or not including his name on the copy in connection with the use of his work for the public;
b. Use aliases or pseudonyms;
c. Changing his creation according to propriety in society;
d. Change the title and subtitles of his creation; And
e. Defend their rights in the event of creation distortion, creation mutilation, modification of creation, or things that are detrimental to self-respect or reputation.

Economic rights as explained in Article 8 are the exclusive rights of creators or copyright holders to obtain economic benefits from their creations. These economic benefits can be in the form of royalties and compensation from copyright infringement. Furthermore, Article 9 explains that the copyright holder has the right to have economic rights to: Publishing creations, reproduction of works in all forms, creation translation, adapting, arranging or transforming creations, distribution of creations or copies thereof, creation show, announcement of creation, creation communication and creation rental.

As an effort to protect works, disputes and/or copyright infringements can be resolved through legal procedures. Article 95 stipulates that the resolution of copyright disputes can be carried out through alternative dispute resolution, arbitration or courts. Regarding the resolution of violations other than piracy, the disputing parties must first take mediation steps. If the mediation is unsuccessful, the copyright owner can file criminal charges.

2. Statistics on the Number of Intellectual Property Rights Violations and Their Handling Efforts

Protection of intellectual property through law enforcement for violators of intellectual property rights in Indonesia adheres to the principle of complaint delict. Complaint offenses adhering to law enforcement will be carried out if the right owner feels aggrieved and reports the violation to law enforcement officials. In Indonesia, intellectual property law enforcement officials can be complained through the Directorate of Investigation and Intellectual Property Dispute Resolution or reporting to the police.

The government has been recorded as having handled 1,184 cases related to violations of intellectual property rights and property rights in the last five years. The number of violations keeps Indonesia still on the priority watch list or PWL status in terms of intellectual property, thus hindering investment. Head of Bareskrim Polri Agus Andrianto explained that fundamentally, the police are tasked with enforcing laws related to Haki. The National Police takes action against products that violate Intellectual Property Rights, in collaboration with a number of ministries. In 2015–2021, there were 1,184 cases of intellectual property rights violations handled, with 958 of them being handled by the National Police. A total of 658 cases related to trademarks, 243 copyright cases, 27 industrial design cases, 8 trade secret cases, 2 integrated circuit layout cases, and 2 plant variety protection cases.

Of the total cases handled by the National Police, 115 cases are currently under process, 169 cases have been declared P-21, 656 cases have been issued SP3, 10 cases have been declared discontinued, and 8 cases have been delegated. On average every year 160 cases are handled by the Police. Apart from the National Police, the Directorate General of Intellectual Property of the Ministry of Law and Human Rights (DJKI

Kemenkumham) is also handling Intellectual Property Rights violations. In 2020, out of 226 cases handled by DJKI, 115 cases were in process, 4 cases were declared P-21, and 107 cases were issued SP3.\textsuperscript{18} Meanwhile, during 2021 the Directorate General of Intellectual Property has handled a total of 114 complaint cases that came in from 2019 to 2021, and 22 of them have had legal provisions, namely 17 SP3 complaints, 2 P21 complaints and 3 complaints resolved through mediation.\textsuperscript{19}

For these achievements, DJKI has attempted several programs and activities in resolving complaints of IPR infringement and preventing IPR infringement from being carried out, namely:\textsuperscript{20}

a. In 2020, start by further developing the simplification of violation complaint requirements through the e-complaint application. Developing an e-complaint application for IPR violations, which makes it easy for IPR owners to report infringements on their IPR, in 2020 DGIP changed the system for submitting complaints to the e-complaint application, namely by using only their KTP and IPR certificates, making it easier for the public to report the complaint.

b. Then in 2021 as an effort to increase the competency and capability of intellectual property PPNS, DJKI is holding PPNS training programs both at the DJKI head office and at Regional Offices, to bring intellectual property protection services closer to the community, so that regional offices also have the ability to handle complaints of violations HKI which can also be assisted by DJKI. In 2021 PPNS training has been carried out for 60 employees (10 central PPNS and 50 Regional Office PPNS).

c. DGIP will prepare regulations/policies which contain the mechanism for "Case Handling Criteria and Service Time Standards" with the following categorizations:
   1. Easy Case, 6 months period;
   2. Medium Case, 9 months period; as well as
   3. Serious Case, 12 months term.

   4. In Semester II 2021 DJKI held a meeting with the United States Trade Representative (USTR) to discuss Indonesia's steps to get out of the Priority Watch List (PWL), which contains a list of countries that according to USTR have a fairly serious level of intellectual property (IC) violations.

3. Forms of Book Copyright Violation

   Intellectual Property Rights or IPR violations often occur in Indonesia, and there are many examples of copyright infringement that even appear before our eyes, but are ignored, because there are still many people who do not know or do not understand this. A person's work is the property of that person, whether the work is patented or not. An example of a simple copyright case is a book, there are lots of cases of plagiarism or book piracy that are not handled properly, either in part or in whole of the contents of the book. Pirates or plagiarists proudly trade it and acknowledge other people's work for personal gain. This of course will be very detrimental to the owner of the original work.

   Therefore, all forms of copyright infringement have laws that regulate them. For the perpetrators will be dealt with firmly with fines and imprisonment, both patent and copyright infringement. This is in accordance with Law Number 8 of 2014 concerning Copyright. There are differences between patents and copyrights, if a patent is a monopoly right over the use of an invention. While copyright is the right to prevent other people from monopolizing a work.

\textsuperscript{18}Ibid.
\textsuperscript{19}DJKI. \textit{Laporan Tahunan Direktorat Jenderal Kekayaan Intelektual Tahun 2021}. Jakarta : DJKI Kemenkumham. 2021. p.50
\textsuperscript{20} Ibid.
The two are indeed very different, so they are also regulated in different legal articles. One thing they have in common, however, is that perpetrators must face the law when committing copyright or patent crimes. If you look for reasons why violations of the ownership of someone's work can occur, there are several reasons. Especially the development of the internet world that is so fast and fast at this time. Even before the digital era, these violations were common.

Some examples of IPR or copyright infringement, for example pirating movies, books or songs, make the perpetrators benefit from their sales. Even unconsciously, many people are helping this. For example, by downloading or downloading songs on unofficial sites, buying pirated DVDs, or buying pirated books. Cheaper prices and easier to find are the reasons many people become regular consumers of these pirated products.

Most people are not aware of the existence of laws against piracy. Prison sentences for willful copyright infringement start at 5 years. However, big and tempting profits sometimes make many people close their eyes and continue to do piracy. Likewise with consumers who do not know and only understand cheap purchases.

Copyright infringement is very common in Indonesia. However, not many owners came forward, so only a few cases were prosecuted. In fact, even ordinary people or ordinary people often committed these crimes without realizing it. To keep you alert and not involved in such cases, several forms of book copyright infringement can be considered as follows: 21

a. Writing Plagiarism

A work of writing is very vulnerable to cases of plagiarism or piracy, especially in today's digital era. And it's very easy to copy or copy other people's work and recognize it as their own, for example written works such as essays, books, articles, and so on. Standards that fall into the realm of plagiarism or piracy are when you publish a piece of writing that imitates or resembles part or all of the work of another person without including the name of the author. Even if you are inspired, if the content of the article is 70% the same as someone else's previously published article, it will be considered plagiarism or piracy. So you have to be very careful.

b. Plagiarism Content on the Internet

Another example of a violation is plagiarism or plagiarism of content on the Internet, which can be in the form of images, videos, text, etc. Generally, this is because information is easily spread in cyberspace. This allows internet users to easily copy other people's content and then pass it off as their own. Plagiarism like this can easily happen and harm the owner of the original content.

c. Software Piracy

There is also software piracy, in which individuals distribute certain software on the Internet for users to obtain free of charge. In fact, to have it requires a license that must be purchased. Many users use this pirated software because of the high price of the original software. Many pirated or plagiarized software such as Photoshop, Coreldraw, Microsoft Office, and various other software.

d. Song Copyright Violation

Songs are also frequently subject to plagiarism or piracy, such as providing download links on unlicensed websites. This of course will have a bad impact on the song owner, because they do not get royalties from the sale of the song. To avoid this, you can use licensed music listening services such as Joox, Spotify and others. Or by buying the singer's original album. Many copyright infringers are not aware that they have

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21 Rudi Ferdiansah. Pelanggaran HAKI. Tersedia : https://ridwaninstitute.co.id/pelanggaran-haki/ diakses pada Februari 2023
infringed. However, not a few people are aware of these violations but still do it in pursuit of profit. The examples of copyright infringement above are only a small part of real cases in Indonesia.

4. Causal Factors and Constraints on Book Copyright Violations

Factors causing copyright infringement in general can be caused by various factors such as economic factors, cultural factors, technological factors, law enforcement factors, educational factors, unemployment factors and environmental factors. In addition, there are also factors that cause acts of plagiarism which are included as violations of copyright, namely aspects of weak academic ethics, aspects of cohesion with law enforcement and aspects of weak originality filtering mechanisms.\textsuperscript{22}

a. Factors Causing Book Copyright Violations

Factors that influence community members to violate Intellectual Property Rights (IPR) in general according to Parlugutan Lubis\textsuperscript{23} in books or writings include:

1) Intellectual Property Rights Violations are carried out to take shortcuts in order to get the maximum benefit from the violation.
2) The violators considered that the legal sanctions imposed by the courts so far had been too light, in fact no preventive or repressive measures had been taken by law enforcers.
3) There are some members of the community who are creators who are proud when their work is copied by others, but this has begun to disappear thanks to an increase in legal awareness of Intellectual Property Rights.
4) By committing a violation, the tax on products resulting from the violation does not need to be paid to the government.
5) The community does not pay attention to whether the goods purchased are genuine or fake (asphalt), what is important for them is that the price is cheap and affordable with economic capabilities”

Factors that encourage copyright infringement in Nurhasan's research\textsuperscript{24} include:

1) Aspect: There is a violation of a person's copyright, because the act is considered normal and mediocre and is done repeatedly and without realizing it or not, the act is wrong and harms other parties.
2) Economic Aspect: There was a violation of copyright, because they were tempted to get quite large and promising profits, without wanting to pay royalties and taxes for the state.
3) Aspect: Copyright violations occur due to the low level of public understanding of copyright, so that copyright violations are considered normal.
4) Aspect: Violations of copyrights committed by members of the public are due to the weak application of sanctions that are threatened against copyright infringer.

The causative factors specifically for book piracy for education from the results of Denny Kusmawan's research\textsuperscript{25} found several causal factors, including:

\textsuperscript{22}Rusniati. \textit{Faktor- Faktor Penyebab Terjadinya Pelanggaran Terhadap Hak Cipta}. 1566 Varia Hukum. Edisi No. XXXIX Tahun XXX September 2018.
1) There is a tendency for students to be reluctant to buy original books (because the price of original books is not friendly to students’ "pockets").
2) Lecturers’ motivation to photocopy reference books (reference books) rests on the premise that photocopying the entire contents of the book without commercializing it is not a copyright infringement (or it can be said that photocopying for educational purposes is not a copyright infringement).
3) Photocopying was done because the original book was no longer published, so that both students and lecturers had difficulty getting the original book.

3. Obstacles Faced and Attempts for Book Copyright Infringement

So far, many obstacles have been faced by Indonesia in pursuing law enforcement in the field of IP. One of them is the low level of public awareness of IP, so that his party conducts various outreach on physical markets and e-commerce with the hope that pelapak will not sell counterfeit goods anymore. DJKI’s next effort is in 2022 to form an Operational Task Force and arrange collaboration with stakeholders:26

1) DJKI and POLRI signed a Cooperation Agreement through Bareskrim in the context of outreach and education to the public, besides that DJKI will collaborate with POLRI in carrying out prosecutions for IPR violations both with the central and Regional Offices of the Ministry of Law and Human Rights on October 6, 2021;
2) E-Commerce Support for Policies on the Protection and Law Enforcement of Intellectual Property Rights” with the Indonesian E-Commerce Association (idEA) on October 6, 2021;
3) Collaboration with Kominfo in efforts to protect IP rights in e-commerce and digital media in Indonesia, considering that Indonesia is developing in the industrial era 4.0 which encourages economic activities using digital;
4) Collaboration with Customs and Excise and the Indonesian Ministry of Finance, in terms of monitoring and preventing IPR violations in export and import activities;
5) Collaboration with BPOM in the context of protecting intellectual property on medicines.

5. Restorative Justice Efforts in Enforcement Criminal Law on Book Copyright Violation in Digital Market Place

Protection of intellectual property through law enforcement for violators of intellectual property rights in Indonesia in a restorative justice manner adheres to the principle of complaint offenses. Complaint offenses adhering to law enforcement will be carried out if the right owner feels aggrieved and reports the violation to law enforcement officials. In Indonesia, intellectual property law enforcement officers can be complained through the Directorate of Investigation and Intellectual Property Dispute Resolution or reporting to the police.

Article 95 Paragraph (1) UUHC explains that the settlement of copyright disputes can be carried out through alternative dispute resolution, arbitration or courts. The competent court as referred to in paragraph (1) is the Commercial Court. Other courts other than the Commercial Court as referred to in paragraph (2) are not authorized to handle Copyright dispute resolution. The flow of the alternative mediation dispute resolution process at DJKI has been carried out in the following stages:27

26DJKI. Op.Cit hlm.51-52
27DGIP. Loc. Cit
a. Submit a request for mediation by the applicant or the respondent and or the attorneys of both parties;
b. Examination of the completeness of the file, provided that the application for mediation is;
   1) Identity card
   2) Mediation request letter
   3) Complaint receipt letter (for complainant)
   4) Short description of the dispute
   5) Power of Attorney (for those authorized)
c. Recording in the register book;
d. Appointment of mediators;
e. Premediation, through the stages;
   1) Calling the parties separately
   2) Letter of approval for mediation
   3) Letter of approval for the appointment of a mediator by both parties
   4) Submission of hopes and wishes of both parties in mediation
   5) Inviting experts (if needed)
   6) Scheduling the implementation of mediation
f. Mediation implementation, namely:
   1) If the parties are properly and legally invited 2 (two) times, they are not present, then the mediation is considered unsuccessful
   2) Invitations for the second mediation are sent 5 (five) working days after the date of the first mediation
   3) Mediation is carried out for 22 working days since the first mediation and can be added for a maximum of 22 working days with the agreement of both parties
g. If the mediation is successful; written peace agreement. This is done under the hand/notarial deed or confirmed in a district court (Deed of Peace). Monitor the implementation of mediation and set it in the Minutes of Mediation;
h. If the mediation is not successful; then the effort is directly included in the Minutes of Mediation.

The implementation of Restorative Justice in resolving copyright infringement disputes in court in laws and regulations on copyright has not yet regulated in detail about alternative settlements for criminal offenses against complaints through preventive channels to fulfill the concept of Restorative Justice and is only based on investigation. However, it is explicitly stated in Article 95 paragraph (4) of Law Number 28 of 2014 concerning Copyright which stipulates that dispute resolution must first be pursued through mediation before filing criminal charges. The clause of the article seems to limit the choice of resolving disputes through preventive channels which are limited to forms of mediation and preventive settlement time which is limited to pre-criminal prosecution.

Such conditions in the implementation of the concept of Restorative Justice experience various obstacles both in terms of the lack of Government support in terms of the legal basis for implementing the concept of restorative justice, the incompetence of law enforcement officials in terms of being a resident apparatus for the implementation of restorative justice, as well as the existence of personal interests in the choice of legal channels in settling cases. criminal act on the exclusive rights of the individual.
To analyze this discussion, according to the theory of Burt Galaway and Joe Hudson,\(^\text{28}\) it is stated that the concept of justice according to the concept of restorative justice has very basic elements, namely:

- a. Crime is seen as a conflict/opposition between individuals which results in losses to the victims, society, and the perpetrators of the crime itself;
- b. The aim of the (criminal justice) process must be to create peace in society by repairing the harm caused by the conflict;
- c. The process must support active participation by victims, perpetrators and society to find solutions to the conflict in question.

From this theory it can be understood that the criminal act of copyright infringement in restorative justice is a crime of complaint, because it fulfills an element of conflict that must be resolved amicably by the parties concerned, namely between the reporter as well as the reported party in the settlement of disputes in the commercial court. As a result of the loss of copyright protection efforts in the fulfillment of both rights, namely; moral rights and economic rights.

So in the analysis of restorative justice for copyright infringement, there are two forms according to Wright's opinion that the main goal of restorative justice is restoration, while the second goal is compensation. Those who theoretically apply the concept of restitution (restitution) developed by Umbreit\(^\text{29}\) quoted by Daly\(^\text{30}\) focuses on repairing damage and losses caused by criminal acts which must be supported through the concept of restitution, namely seeking to recover damages and losses suffered by victims of criminal acts and facilitating peace. through mediation, as follows:

- a. Moral Copyright Damage Recovery

  Restorative Justice effort for copyright infringement has resulted in the loss of the moral rights of copyright holders which should be protected or are called moral losses. As a result, the work is plagiarized and/or hijacked with the identity of the owner of the work of the pirate, and/or altered so that the work is not original or has been changed without the permission of the creator, so it is said to be 'damaged'.

  The legal impact is then when there is a problem with his work which turns out to be against the law, the original copyright holder who is not registered will also be dragged into the law for what he did not do. Damage to copyrighted works in this discussion is limited to two originalities, namely:

  1) The substance of the contents of a book is partly and/or wholly similar, the same and/or similar to other books, but the title, name and identity of the author and publisher are different.
  2) The name and identity of the author, title and publisher of the book match, but the substance of the contents has been changed.

  This condition often occurs when fraudulent persons commit fraud in the sale of e-books that change the contents of a book, but for the popularity of sales so that they can be sold in the market, they still include the name of a particular creator, even though the contents contained therein are different, which are then burned in pirated CD form and printed in the form of a book that looks like the original, to then be marketed on the marketplace. In addition, there are parties due


\(^{29}\)Mark Umbreit, *Loc. Cit*

\(^{30}\)Kathleen Daly, *Loc. Cit.*
to ignorance in sales and it turns out that counterfeit goods are marketed that have already been produced and distributed.

This problem is a moral polemic that is ethical in nature so mediation is needed, because the target is a network where it is not clear which book objects are genuine and which are fake seen from the physical book, for example because it could be an original book because it was printed earlier, the quality is worse. while those that are counterfeit are of higher quality and look good in paper to mislead buyers. Likewise with the parties concerned it is still unclear whether the reported party is really the perpetrator and/or on the contrary the complainant is actually the perpetrator because he wants to claim, whereas both parties do not have permission or are administratively registered as having copyrights registered by the State.

Through mediation, efforts to recover from damage to copyright are directed at improving the position of books morally to the rights of their holders. Stop the printing of fake books and plagiarism of works without permission, as well as informing the public about fake books that are already circulating in a formal copyright position.

b. Economical Recovery of Copyright Indemnity

*Restorative Justice* effort for copyright infringement has resulted in the loss of the economic rights of copyright holders which should be protected or referred to as material losses of a material nature. The mediation process in this settlement is intended to protect the economic side or benefits of the real creators. In this case the copyright holders of the books suffered losses as a result of the actions of unscrupulous book piracy in the marketplace, two main problems were addressed, namely:

1) Sales of pirated books photographed from the original (scanner), produced, printed, distributed, marketed and traded.

2) Sales of original books are in accordance with the originals, but outside the limits of the agreement with the copyright holder, both in terms of royalties and other rights.

This problem is a complaint offense that is mediated due to the economic loss of copyright holders to the work of books that are traded on the marketplace by illegal business actors. Individuals in piracy cases often have large profits from the sale proceeds because the object of the book being marketed is a copy that is similar to the original, but in terms of lower quality so that the marketed price is cheaper than the original print, which is much more expensive. This condition is of course tempting for book enthusiasts to buy it because it is cheap, which indirectly impacts creators and other parties who officially have copyright permission. In other cases, it relates to the transfer of parties outside the agreement who still produce and trade books even though in the agreement there is no sale and/or they are still being produced and traded according to the agreement, but the copyright holders do not receive a single royalty that is their right.

As the end of the discussion, it can be analyzed that *Restorative Justice* in the settlement of criminal offenses against complaints of violations of book copyright in the future can be mediated by prioritizing the concept of restitution which is directed according to the purpose of copyright protection to obtain justice for moral rights over intellectual property rights as well as demands and material compensation. economically to fulfill the rights of copyright holders more fairly.
C. Conclusion

Enforcement of criminal law against book copyright infringement on Digital Market Place in Indonesia is categorized under the criminal 'complaint offense' which is carried out through the initial stages of receiving reports of complaints of copyright infringement followed up by mediation in an effort to resolve, and if no settlement is found then the second stage is then resolved in the process of judicial lawsuits through examination of cases on complaint reports, investigations and investigations, the process of intercepting digital evidence and handling it up to the judicial process. Legal protection for book copyrights in the Digital Market Place from a law enforcement perspective is carried out through efforts to protect aspects of copyright regulation automatically by copyright holders, a system for recording/registration of exclusive rights, moral rights and economic rights, a system of guidance and internal supervision preventively through educational outreach and repressively through market place monitoring, as well as external supervision in customs through customs cooperation in tackling the sale of goods that violate copyright. Restorative Justice's efforts in enforcing criminal law against book copyright infringement on Digital Market Place are carried out by resolving disputes through mediation and arbitration in commercial courts. Conceptually, Restorative Justice is designed in the future with the concept of fair restitution in the recovery of moral damage to copyrights and compensation for material loss of economic rights.

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