



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

Mohamad Rizki Agung Putra

Universitas Padjadjaran, Indonesia, Email: mohamadrizkiagungputra@gmail.com

Submitted: August 6, 2023 ; Reviewed: September 17, 2023 ; Accepted: December 13, 2023.

Article's Information

Keywords:

Book copy right, criminal law, enforcement.

DOI :

<https://doi.org/10.25041/ip.v4i2.3113>

Abstract

The enforcement of criminal law against book copyright infringement in Indonesia is inadequate, lacking legal certainty and failing to provide restorative justice for copyright holders due to outdated regulations. This study, using a normative juridical approach with descriptive analysis and empirical comparison, reveals that such enforcement is categorized as a 'complaint offense,' starting with the reception of complaints and proceeding to mediation, followed by judicial processes if mediation fails. It also highlights that copyright protection involves automatic regulatory mechanisms, a registration system for exclusive, moral, and economic rights, and combines proactive educational outreach with repressive marketplace monitoring and customs collaborations. Furthermore, the research explores Restorative Justice, focusing on mediation and arbitration in commercial courts for fair restitution, aiming to compensate materially and morally. The findings suggest expanding restitution concepts in Restorative Justice to align with global copyright norms and the growth of E-Commerce, thereby enhancing protection for copyright holders in the digital era.

A. Introduction

Intellectual Property Rights (IPR) play a critical role in the economic development of nations at both domestic and international levels. Developing countries, including Indonesia must implement effective strategies that can adapt to global changes and trends, thereby supporting national objectives. A key measure involves raising awareness about intellectual property and its protection. IPR is a right that protects the creative products of human thinking that is recognized under civil law as intangible property rights Such



rights qualify as IPR if they meet specific criteria, including utility and economic value. Therefore, rights that possess both beneficial and economic characteristics are deemed IPRs. Despite being a form of material property rights, IPRs are not immune to legal infringements, including crimes such as piracy and copyright plagiarism.

Copyright represents the exclusive right of creators, automatically conferred by the declarative principle once a work is manifested in a tangible form, in alignment with legal stipulations.¹ This exclusive right acknowledges public appreciation and is inherent to the creator as a recognition of their creativity.² According to this principle, the acknowledgment of a creator's ownership is unnecessary for copyright to be established. However, in line with Article 33 of the 1945 Constitution and Law Number 28 of 2014 on Copyright, these rights also serve a social function. They can be restricted for the public interests as follows.

1. Limiting copyright in the public/national interest by having to provide compensation to the creator;
2. Granting copyrights for intangible objects in the form of traditional cultural expressions.

The understanding of Intellectual Property Rights (IPR) should be clearly differentiated from tangible assets such as those derived naturally, like land or plants, and other heritable material rights. This perspective helps in distinguishing between IPR, which includes intangible property rights like copyrights, and real property, which encompasses tangible assets such as books, music cassettes, chairs, and televisions.

The challenge arises due to the intangible nature of IPR, which makes it prone to unintended transfers—unlike tangible objects which are easily visible and identifiable.³ Within the realm of IPR law, there exists the concept of communal ownership of intellectual property. Known as Communal Intellectual Property (*KIK*), this form of ownership refers to intellectual assets held collectively by the public. Recognized by the Directorate General of Intellectual Property of the Ministry of Law and Human Rights, *KIK* is considered a significant asset that can contribute to national economic advancement. Examples of *KIK* include:⁴

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

¹Article 1 Paragraph 1 Law Number 28 of 2014 concerning Copyrights

²Eddy Damian, *Hukum Hak Cipta*, Bandung: Alumni, 2019, p. 2.

³Suyud Margono, *Hukum Hak Cipta Indonesia*, Bogor: Ghalia Indonesia, 2010. p.28

⁴Eddy Damian, *Op.Cit.*, p. 23

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 advancement of science and technology has had a transformative impact worldwide, including significant advancements in Indonesia. This progression has inspired creators to innovate and craft unique contributions never before seen. However, with the rise of technology, particularly the internet—which has evolved dramatically since its inception in 1962—new challenges have emerged, including a surge in intellectual property infringements like piracy. The internet, while serving as a valuable resource for education and entertainment, also facilitates issues that are complex to track and address.⁵

The proliferation of the internet has perpetuated issues such as hacking, carding, and piracy, which have grown more prevalent year after year. Piracy, in particular, remains a pervasive problem that seems inextricable from modern life. Individuals engage in pirating creative works for profit, exploiting these unauthorized copies. In response, developed nations have enhanced cyber security by establishing specialized agencies dedicated to tackling these cyber issues.

Pirates often distribute pirated content via personal websites, offering it for free while deriving profit indirectly. This scenario underscores the legal protections enshrined in Law Number 28 of 2014 concerning Copyright, particularly highlighted in Article 4. This article states that copyright is an “exclusive right encompassing both moral and economic rights.” These rights are intended solely for the author, ensuring that no other party can exploit these rights without the author's explicit permission. Copyright holders who are not the original creators retain only a portion of these rights, specifically the economic rights.

The economic rights associated with copyright enable creators to leverage their works for financial gain, necessitating robust protection. Inadequately managed intellectual properties can precipitate disputes among copyright owners, managers, or others who infringe upon these rights.⁶ To forestall such conflicts, a comprehensive legal framework is essential to address all potential infringements by unauthorized parties. This not only includes those directly involved in the creation and distribution of copyrighted content but also extends to the broader implications for industries and national economies. The need for a well-structured legal framework highlights the importance of maintaining orderly management and enforcement of copyright laws to foster a sustainable creative industry.⁷

Furthermore, piracy, such as uploading file links to the internet without the copyright holder's consent, represents a clear violation of these rights and requires stringent law enforcement. The economic rationale for copyright protection is to incentivize creativity and innovation, providing copyright holders the authority to permit or deny the reproduction of their materials for commercial purposes. This, in turn, serves as a significant motivation for innovation, producing wide-ranging social advantages. There is also a critical need to heighten awareness among the Indonesian populace about the importance of respecting intellectual property. Educating the public and reinforcing legal

⁵ Wirakesuma, I. N., & Mudana, I. W. “Regenerasi Seni Rupa Digital Masa Kini”. *Jurnal Pendidikan dan Konseling (JPDK)*, 4 no. 6; (2022)., p. 13176.

⁶Suyud Margono, *OpCit* . hlm. 4.

⁷Suyud Margono, *Op. cit* . hlm. 7.

measures are essential steps toward mitigating losses for creators, rights holders, and the broader economy, ensuring that innovation and creativity continue to thrive in a legally secure environment.

The development of Intellectual Property Rights (IPR) has increasingly become intertwined with business law over the years, manifesting through growing registration activities and enhanced public consciousness about the importance of protecting intellectual creativity. Intellectual Property Rights pertain to the exclusive rights granted to the outcomes of intellectual efforts. The objects protected under IPR are the tangible results of human intellect. This protective framework ensures that creations of the mind, recognized as exclusive rights by the state, are legally safeguarded, benefiting inventors, creators, designers, and similar stakeholders.

This evolving understanding acknowledges IPR as a private right that underpins the establishment of a robust documentation system for intellectual outputs. This system plays a crucial role in preventing unauthorized replication and potentially fostering technological advancements or other creative works. Moreover, the protection of Intellectual Property Rights, although rooted in Western concepts, does not entirely conflict with Eastern cultural values. In Indonesia, the protection of IPR is aligned with the social functions outlined in the philosophy of Pancasila, particularly under the Fifth precept, as detailed in *MPR Decree No. 11/MPR/1978*. This decree emphasizes the importance of social justice for all Indonesians, advocating a balanced approach to rights and obligations as follows.

1. Develop noble deeds that reflect the attitude and atmosphere of kinship and mutual cooperation;
2. Maintain the fairness;
3. Maintain a balance between rights and obligations;
4. Respect the rights of others;
5. Avoid blackmailing others;
6. Avoid luxurious lifestyle;
7. Avoid committing acts that are detrimental to the public interest;
8. Enjoy working hard;
9. Appreciate others' works;
10. Strive to achieve equitable and socially just progress;

Eddy Damian, in his book "Copyright Law," posits that Intellectual Property Rights (IPR) align with the principles of Pancasila, particularly the fifth precept which emphasizes social justice. IPR, while recognizing the material rights of intellectual properties, mandates a balance between rights and responsibilities for authors or copyright holders. This balance is rooted in the communal spirit of kinship and mutual cooperation—fundamental values of the Indonesian Nation.⁸ Thus, the resolution of disputes over intellectual property, including copyright infringements such as piracy, should ideally reflect this communal ethos, potentially incorporating Restorative Justice approaches to criminal disputes.

Despite the provisions outlined in the Copyright Law of 2014, which categorizes piracy as a criminal offense under Article 113 paragraph (4) and explicitly protects books as copyrighted works (Article 40 letter a), piracy remains a persistent issue. The Directorate General of Intellectual Property (*DJKI*) has made significant efforts by shutting down or blocking 800 websites linked to copyright infringements since 2015.

⁸ Eddy Damian, *Op. Cit* , hlm 28.

However, challenges persist, notably in the realm of book piracy.⁹ This issue was highlighted by Indonesian novelist JS Khairen, who noted that major e-commerce platforms like Tokopedia, Shopee, and Bukalapak still host vendors selling pirated books. Khairen herself experienced her book being sold for Rp. 20,000, a stark contrast to its original publisher's price, often characterized by substandard printing materials such as opaque paper and cheap, potentially toxic ink.¹⁰ This ongoing issue underscores the need for strengthened enforcement and an increase in public awareness about the implications of copyright infringement.

The case of Rustina Zahra, a novelist whose works were pirated and sold at significantly reduced prices on the Tokopedia online store, exemplifies the persistent challenges of book copyright infringement in e-commerce. Despite existing legal frameworks, conventional criminal policies have proven insufficient in effectively combatting such piracy activities.¹¹ This highlights the glaring weakness in legal protection for copyrights, particularly in the digital era, where enforcement becomes increasingly complex.

In the digital landscape, enforcing copyright laws faces significant hurdles. Works in digital format transcend national borders, complicating jurisdictional determinations and legal provisions. Moreover, copyright infringers often exploit anonymity, operating behind fake or anonymous social media accounts, making identification and prosecution difficult. Rapid technological advancements further exacerbate the issue, facilitating the rapid spread and manipulation of digital works. The lack of an integrated copyright data center exacerbates these challenges, hindering effective protection and making it difficult for creators to receive rightful royalties for their works.

Copyright infringement, particularly the piracy of copyrighted books in the digital realm, complicates enforcement efforts and hinders their effectiveness. Article 95, paragraph (4) of the Copyright Law (Law Number 28 of 2014) mandates that mediation must precede criminal proceedings in copyright disputes. This provision appears to restrict the resolution options to mediation and other preventive measures before initiating criminal charges. The implementation of Restorative Justice, therefore, faces several challenges, including inadequate governmental support for its legal framework, the lack of competence among law enforcement officials, and personal interests influencing the choice of legal channels in resolving criminal copyright cases. On the contrary, resolutions of civil disputes over Intellectual Property Rights can proceed through repressive measures by filing lawsuits in the Commercial Court or through alternative dispute resolution methods such as arbitration.

Prompted by these challenges, this research aims to explore how the concept of Restorative Justice can address the issue of book copyright infringement in digital marketplaces. The study, titled "Criminal Law Enforcement Against Book Copyright Infringement in the Digital Market Place in the E-Commerce Ecosystem Through Restorative Justice," will analyze various scientific writings and approaches to the subject. Notable related works will be examined to provide a comprehensive understanding of alternative and traditional legal mechanisms. As follows.

⁹ Reza Gunadha, 2020. *Sentil E-Commerce Beri Lapak Penjual Buku Bajakan, J.S Khairen: Malu-Maluin*. <https://www.suara.com/news/2020/09/21/151757/sentil-e-commerce-beri-lapak-penjual-buku-bajakan-js-khairen-malu-maluin/> diakses pada Januari 2023.

¹⁰ Reza Gunadha, 2020. *Sentil E-Commerce Beri Lapak Penjual Buku Bajakan, J.S Khairen: Malu-Maluin*. <https://www.suara.com/news/2020/09/21/151757/sentil-e-commerce-beri-lapak-penjual-buku-bajakan-js-khairen-malu-maluin/> diakses pada Januari 2023.

¹¹ H. L. Simangunsong, *Perlindungan Hak Cipta Terhadap Pembajakan Karya Sastra Novel Versi E-Book Di Tokopedia*, Jurnal Notarius, vol. 13 No. 1, 2020, p. 452.

1. Law Enforcement Against Copyright Violation through Internet Media". This research was written by Andi Kurniawati¹², Master of Law at Hasanuddin University, 2015. The results of this research are that law enforcement against copyright infringement through internet media has not been maximized. This is due to the obstacles in its implementation related to the Copyright Law.
2. Law Enforcement Against Copyright Violation in Making E-Books. This research was written by Aan Priyatna¹³, 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 Faryadi¹⁴, 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.

The previous studies referenced have notable differences from the researcher's current work, primarily because none specifically addressed the enforcement of criminal law against book copyright infringement in the digital marketplace within the e-commerce ecosystem through restorative justice. Despite extensive searches in both online and offline repositories, the researcher found no existing studies on this specific topic. Therefore, the comparison studies only touch upon general aspects of law enforcement and copyright, which are used in this research as a benchmark to devise a model for enforcing book copyright law in digital marketplaces via restorative justice. This approach is particularly intriguing from a criminal law perspective and provides a solid basis for developing policy measures to address these issues.

This research aims to examine several facets: the enforcement of criminal law against book copyright infringement in digital marketplaces in Indonesia, the legal protections available under such enforcement, and the application of restorative justice principles in this context.

The methodology of this research involves normative juridical research using an analytical descriptive approach, which consists of analyzing and describing the issues related to criminal law enforcement of book copyright violations in digital marketplaces through restorative justice. The research combines normative and empirical juridical research methods, focusing on secondary data from library resources, referred to as positive law and its empirical applications. Data collection is achieved through a comprehensive literature review, during which all necessary secondary data is gathered for further examination of relevant regulations. The materials from the library are meticulously categorized, and detailed notes are made on aspects deemed critical to the research subject.¹⁵ This systematic organization ensures the research is conducted methodically.

¹²Andi Kurniawati. "Penegakan Hukum Terhadap Pelanggaran Hak Cipta melalui Media Internet". Magister Ilmu Hukum Universitas Hasanuddin. *Jurnal Hukum Dan Dinamika Masyarakat*. 18, No. 1 (2020). p. 89.

¹³Aan Priyatna. *Penegakan Hukum Terhadap Pelanggaran Hak Cipta dalam Pembuatan E-Book*. Magister Kenotariatan Universitas Diponegoro Tahun 2014. P. 89

¹⁴M Edi Faryadi. *Penegakan Hukum Terhadap Hak Cipta berdasarkan Undang-Undang Nomor 19 Tahun 2002 tentang Hak Cipta di Kota Pekanbaru*. Magister Ilmu Hukum Universitas Islam Indonesia, 2007. p.156.

¹⁵Soejono Soekanto, *Normative Legal Research A Brief Overview*, Jakarta: Grafindo Persada, 2014, pp.43-53.

B. Discussion

1. Book Copyright Infringement Case

The Indonesian Copyright Law, outlined in Law Number 28 of 2014, serves as the primary framework for managing copyright and addressing infringements within the country. According to Article 1 point 1 of the law, copyright is defined as the exclusive right of a creator that arises automatically based on the declarative principle once a work is manifested in a tangible form. This right is granted without the need for registration, though it is subject to certain limitations as specified by law.

Further detailed in Article 40 of the same law, the types of creations eligible for copyright protection include:

- a. Books, pamphlets, published versions of written works, and all other written works;
- b. Lectures, lectures, speeches and other similar creations;
- c. 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, puppets 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.

Under the framework of copyright law, creators are awarded exclusive rights that are essential for protecting their intellectual and creative investments. These rights are generally divided into two main categories: moral rights and economic rights. Article 5 explains that moral rights are rights that are eternally attached to the author for several entitlements 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. Changing the title and subtitles of his creation; And
- e. Defending their rights in the event of creation distortion, creation mutilation, modification of creation, or things that are detrimental to self-respect or reputation.

Article 8 outlines the economic rights granted to creators or copyright holders, enabling them to derive financial benefits from their intellectual properties. These benefits may include receiving royalties or compensation in cases of copyright infringement. Additionally, Article 9 specifies the range of activities covered under these

economic rights, which include publishing, reproducing works in various forms, translating, adapting, arranging, or transforming creations, distributing creations or their copies, displaying creations publicly, announcing creations, communicating creations to the public, and renting out creations.

To safeguard these works effectively, copyright disputes and infringements can be addressed through legal avenues. As per Article 95, such disputes may be resolved via alternative dispute resolution methods, arbitration, or court proceedings. In cases involving non-piracy violations, parties are initially encouraged to engage in mediation. Should mediation fail, the copyright holder is then entitled to pursue criminal charges..

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

In Indonesia, the enforcement of intellectual property (IP) rights relies on the principle of "complaint delict," where law enforcement proceeds only after the rights owner lodges a complaint of infringement. Rights owners can report violations to the Directorate of Investigation and Intellectual Property Dispute Resolution or directly to the police.

Over the past five years, the Indonesian government has managed 1,184 cases of intellectual property rights violations. This consistent volume of violations has placed Indonesia on the Priority Watch List (PWL), reflecting significant challenges in IP rights enforcement and potentially discouraging investment. According to Agus Andrianto, the Head of *Bareskrim* POLRI, the police play a crucial role in enforcing laws related to intellectual property rights, often collaborating with various ministries. From 2015 to 2021, the National Police addressed 958 of the 1,184 IP rights cases, encompassing 658 trademark infringements, 243 copyright violations, 27 industrial design infringements, 8 trade secret breaches, 2 cases of integrated circuit layout infractions, and 2 cases concerning plant variety protection.¹⁶

Of the cases handled by the National Police, 115 are ongoing, 169 have been declared P-21 (ready for prosecution), 656 have resulted in SP3 (cessation of investigation), 10 have been discontinued, and 8 have been delegated. The police handle an average of 160 cases annually. Additionally, the Directorate General of Intellectual Property of the Ministry of Law and Human Rights (*DJKI Kemenkumham*) plays a significant role. In 2020, *DJKI* processed 226 cases, with 115 still in progress, 4 declared P-21, and 107 resulting in SP3. In 2021, *DJKI* addressed 114 complaints from 2019 to 2021, with 22 reaching legal conclusions: 17 led to SP3¹⁷, 2 to P-21, and 3 were resolved through mediation.¹⁸

To enhance IP rights protection, *DJKI* has implemented several initiatives aimed at resolving infringement complaints and preventing future violations as follows.¹⁹

- a. Subsequently, in 2021, the Directorate General of Intellectual Property Rights and Industrial Property (*DJKI*) implemented training programs to improve the competency and capabilities of intellectual property civil enforcement officers (PPNS). These training sessions were conducted both at the *DJKI* head office and regional offices, aiming to decentralize intellectual property protection services and enhance regional capabilities in handling IPR violation complaints. A total of 60

¹⁶Wibi Pangestu Pratama. *Ada 1184 Kasus Pelanggaran Haki Ditindak di RI Sejak 2015*. <https://ekonomi.bisnis.com/read/20211006/9/1451327/ada-1184-kasus-pelanggaran-haki-ditindak-di-ri-sejak-2015>. Diakses pada januari 2023.

¹⁷*Ibid.*

¹⁸*DJKI. Laporan Tahunan Direktorat Jenderal Kekayaan Intelektual Tahun 2021*. Jakarta : DJKI Kemenkumham. 2021. p.50

¹⁹ *Ibid.*

employees received training, including 10 from the central office and 50 from regional offices.

- b. DGIP has been preparing regulations and policies that outline "Case Handling Criteria and Service Time Standards." These policies are categorized to streamline processes and improve efficiency in handling cases.
 - 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 (IPR) violations, including copyright infringement, are prevalent in Indonesia. Many such violations occur openly but often go unaddressed because public awareness and understanding of these issues are lacking. Ownership of creative works, whether patented or not, legally belongs to the creator. Copyright infringement can be as straightforward as cases of plagiarism or piracy of books where the original content is copied and sold illegally. Such actions not only deprive the original creators of their rightful earnings but also involve the unauthorized parties proudly claiming these works as their own for personal profit.

Under Indonesian law, specifically Law Number 8 of 2014 concerning Copyright, strict penalties are enforced against those who violate copyright laws. This includes both fines and imprisonment for copyright and patent infringements. It is important to note that patents and copyrights are distinct: a patent grants an exclusive right to utilize an invention, whereas copyright protects the creator's control over the use of their original work.

Copyright and patent violations are subject to different legal statutes, but both types of infringement lead to legal consequences for the perpetrators. The proliferation of these violations can be attributed to various factors, including rapid advancements in digital technology. Even in the pre-digital era, such violations were rampant.

Common instances of IPR violations include pirating movies, books, or songs, which allows violators to profit from unauthorized sales. Often, the general public inadvertently supports these activities by downloading music from unofficial websites, purchasing pirated DVDs, or buying counterfeit books. The lower cost and greater accessibility of pirated materials make them appealing to many consumers, despite the legal risks.

Most people are unaware that the law can impose prison sentences of up to 5 years for deliberate copyright infringement. The potential for significant profits can lead to willful blindness on the part of both pirates and consumers. As a result, many violations go unreported and unprosecuted because not enough owners are aware of their rights or choose to come forward.

For individuals to stay aware and avoid involvement in copyright infringement, it is essential to recognize several common forms of violation in the realm of book publishing:²⁰

a. Writing Plagiarism

A work of writing is very vulnerable to plagiarism or piracy, especially in today's digital era where copying and claiming written works such as essays, books, articles,

²⁰ Rudi Ferdiansah, Pelanggaran HAKI. Tersedia : <https://ridwaninstitute.co.id/pelanggaran-haki/> diakses pada Februari 2023

are possible. Plagiarism or piracy occurs when someone publishes writing that closely imitates or replicates part or all of someone else's work without crediting the original author. For instance, if the content of an article is 70% similar to a previously published article, it would be considered plagiarism or piracy. Diligence is crucial to avoid such violations.

b. Plagiarism Content on the Internet

Plagiarism of internet content, including images, videos, and text, is another common violation. The rapid dissemination of information online enables users to easily replicate and claim ownership of others' content, often to the detriment of the original content creators. This type of plagiarism is prevalent and potentially damaging.

c. Software Piracy

Software piracy involves the unauthorized distribution of software over the internet, allowing users to access it without a required purchase license. Despite the necessity of purchasing a license to legally own the software, many opt for pirated versions due to the high cost of the original software. Common targets for software piracy include applications like Photoshop, Coreldraw, and Microsoft Office..

d. Song Copyright Violation

Songs are also frequently subject to plagiarism or piracy, such as providing download links on unlicensed websites. This harms the original song creators by depriving them of royalties from song sales. To support artists legally, one can use licensed music services like Joox, Spotify, etc., or purchase the artist's original albums. While many infringers may be unaware of their violations, others are conscious of the infringements but continue to engage in such activities for profit. The above examples represent just a fraction of the copyright infringement cases encountered in Indonesia.

4. Causal Factors and Constraints on Book Copyright Violations

Copyright infringement is driven by multiple factors, including economic, cultural, and technological influences, as well as challenges in law enforcement, education, unemployment, and environmental conditions. Additionally, specific contributors to acts of plagiarism, a form of copyright violation, include weak academic ethics, insufficient law enforcement cohesion, and inadequate mechanisms for ensuring originality.²¹

a. Factors Causing Book Copyright Violations

Factors that influence community members to violate Intellectual Property Rights (IPR) in general according to Parlindungan Lubis²² 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 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.

²¹Rusniati. *Faktor- Faktor Penyebab Terjadinya Pelanggaran Terhadap Hak Cipta*. 1566 Varia Hukum. Edisi No. XXXIX Tahun XXX September 2018.

²²Parlindungan Lubis dalam Febri Dwi Setyawan. *Perlindungan Hak Cipta Atas Program Televisi Dalam Undang-Undang Nomor 19 Tahun 2002 (Perspektif Fiqih Jinayah)* Cit. Rusniati. *Ibid*

- 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 ²³include :

- 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, thus 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 ²⁴found several causal factors, including :

- 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, that both students and lecturers had difficulty getting the original book.

3. Obstacles Faced and Attempts for Book Copyright Infringement

Indonesia has encountered numerous challenges in enforcing intellectual property (IP) law. One major issue is the limited public understanding of IP rights, prompting authorities to engage in extensive outreach in both physical markets and e-commerce platforms, aiming to deter vendors from selling counterfeit items. Additionally, in 2022, *DJKI* took further steps by establishing an Operational Task Force and organizing partnerships with various stakeholders:²⁵

- 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;

²³Nurhasan, Faktor Penyebab Pelanggaran Hak Cipta Di Kota Jambi. Dosen Tetap PS. Ilmu Hukum Fakultas Hukum Universitas Batanghari Jambi. 2014. Hlm.20.

²⁴Denny Kusmawan Cit Syailendra Agustian. Pelanggaran Hak Cipta Buku Untuk Kepentingan Pendidikan Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta. SI Ilmu Hukum, Fakultas Ilmu Sosial Dan Hukum, Universitas Negeri Surabaya). *Novum : Jurnal Hukum* 6, no. 3 (2019) p. 29

²⁵*DJKI. Op.Cit* hlm.51-52

- 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

In Indonesia, the enforcement of intellectual property rights involves a restorative justice approach, primarily focusing on offenses based on complaints. This means that actions are taken when the rights holder feels harmed and makes a formal complaint to the authorities. Complaints can be filed with the Directorate of Investigation and Intellectual Property Dispute Resolution or by reporting directly to the police.

Under Article 95 Paragraph (1) of the *UUHC*, copyright disputes can be resolved through alternative dispute resolution methods such as arbitration or through the courts, with the Commercial Court designated as the competent authority. According to Paragraph (2), courts other than the Commercial Court are not permitted to handle these copyright disputes. The process of alternative mediation dispute resolution at *DJKI* proceeds through several defined stages:²⁶

- 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. Pre-mediation, 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 is made into notarial deed or confirmed in a district court (Deed of Peace). Monitoring 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.

²⁶DGIP. *Loc. Cit*

The implementation of Restorative Justice for resolving copyright infringement disputes in courts has not been comprehensively detailed in existing copyright laws and regulations. These laws presently lack provisions for alternative dispute resolutions for criminal complaints, relying predominantly on traditional investigative approaches. However, Article 95, paragraph (4) of Law Number 28 of 2014 concerning Copyright does mandate that parties first seek mediation before initiating criminal proceedings. This requirement suggests a preference for resolving disputes through preventive measures, though it is limited primarily to mediation and is constrained to the pre-criminal prosecution phase.

Such conditions pose several challenges to the effective implementation of Restorative Justice. Key obstacles include inadequate legal frameworks supporting the application of Restorative Justice, a lack of competency among law enforcement officials to act as facilitators in the Restorative Justice process, and the influence of personal interests in the selection of legal avenues for the resolution of criminal cases involving proprietary rights.

To further examine these issues, the theory proposed by Burt Galaway and Joe Hudson can be applied.²⁷ They emphasize that the foundation of Restorative Justice lies in several core elements:

- 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.

Continuing from the theory mentioned, it becomes apparent that copyright infringement, when viewed through the lens of Restorative Justice, is categorized as a "complaint crime." This categorization stems from its inherent conflict that necessitates amicable resolution between the involved parties — the complainant and the accused — in the context of a commercial court dispute. The loss suffered from such disputes impacts both moral and economic rights, which are central to copyright protection.

In the analysis of Restorative Justice for copyright infringement, according to Wright, the primary goal is restoration, which aims to return the situation to its pre-violation state as much as possible. The secondary goal, however, is compensation, which seeks to reimburse the victim for the losses incurred. Furthermore, the concept of restitution, as developed by Umbreit²⁸ and cited by Daly²⁹, emphasizes the repair of damages and losses resulting from the criminal act. This approach supports the concept of restitution, which involves:

- a. Moral Copyright Damage Recovery

Restorative Justice efforts for copyright infringement need to address the moral rights of copyright holders, which are often overlooked. Moral rights involve the rights of creators to claim authorship of their work and to object to any derogatory treatment of it that might prejudice their honor or reputation. In instances of plagiarism, piracy, or unauthorized alteration, the work can be considered "damaged".

The legal consequences can be severe. For example, if a work is unlawfully modified or claimed by another, and then that modified work is found to infringe upon

²⁷Mulyani, S. Penyelesaian Perkara Tindak Pidana Ringan Menurut Undang-Undang Dalam Perspektif Restoratif Justice (Adjudication Of Misdemeanor Based On Legislation In Current Perspectives). *Jurnal Penelitian Hukum De Jure* 16, no. 3 (2017), p. 339.

²⁸Mark Umbreit, *Loc. Cit*

²⁹Kathleen Daly, *Loc. Cit*.

another's rights or violates laws, the original copyright holder might unintentionally be held accountable for actions they did not commit. This situation underscores the complexities involved in protecting copyright in the digital age, where works can be easily and extensively manipulated and distributed.

In discussing damage to copyrighted works through the lens of Restorative Justice, it is pertinent to limit the analysis to two aspects of originality:

- 1) The substance of the contents of a book is partly and/ 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 issue often arises when some individuals engage in fraudulent practices in the e-book market. They alter the content of books yet retain the names of well-known authors to boost sales. These tampered works are then copied onto pirated CDs or printed in formats that mimic the original publications, and subsequently sold on various online marketplaces. Additionally, some vendors may unknowingly sell these counterfeit items that have been previously manufactured and distributed.

The problem requires mediation, particularly because it is difficult to discern authentic books from forgeries based solely on their physical appearance. For instance, an earlier print of an original book might appear inferior in quality compared to a counterfeit copy, which could be produced with higher-quality materials to deceive consumers. It is also challenging to ascertain the true culpability in disputes over counterfeit books, as it can be unclear whether the party reporting the piracy is the victim or if they themselves might be exploiting the situation for personal gain. Furthermore, both parties might lack the necessary legal copyrights registered by the state.

Mediation serves as a means to address and mitigate copyright infringement by advocating for the moral and legal rights of the rightful owners. The goal is to halt the production and distribution of forged books and the unauthorized plagiarism of works. Additionally, it is crucial to raise public awareness about the prevalence of counterfeit books and clarify the legal status of such items under formal copyright law.

b. Economical Recovery of Copyright Indemnity

The implementation of Restorative Justice in cases of copyright infringement often seeks to address the economic rights of copyright holders, which have been compromised. These rights, crucial for safeguarding the material benefits that creators are entitled to, have frequently been undermined by rampant book piracy in the marketplace. The mediation process in these cases focuses on two primary issues:

- 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.

The issue in question pertains to a type of offense that is mediated due to the economic losses suffered by copyright holders, due to books illegally sold on marketplaces by unauthorized entities. In piracy cases, perpetrators often reap significant profits because the books sold are copies that mimic originals but are of inferior quality. This allows them to be sold at a lower price, which is attractive to consumers seeking bargains, inadvertently harming creators and other parties who hold legitimate copyright permissions. Additionally, complications arise when books are produced and traded by external parties not included in the original agreements, or even if they are part of the agreement, the rightful copyright holders do not receive the royalties due to them.

Restorative Justice in addressing criminal offenses related to book copyright infringements could benefit from a mediation approach that emphasizes restitution. This approach should align with the objectives of copyright protection, aiming to secure justice for the moral and intellectual property rights of creators, while also demanding adequate material compensation. This approach would help ensure a more equitable fulfillment of the rights of copyright holders, addressing both economic and moral aspects of the infringements.

C. Conclusion

In Indonesia, the enforcement of criminal law against book copyright infringement in digital marketplaces is categorized as a 'complaint offense.' This process starts with the initial receipt of a report of infringement, followed by mediation efforts aimed at resolving the dispute. If mediation does not lead to a resolution, the case progresses to a judicial lawsuit. This second stage includes a detailed examination of the complaint, investigations, the collection of digital evidence, and eventually, a full judicial process.

From a law enforcement perspective, protecting book copyrights in digital marketplaces involves a combination of proactive and reactive strategies. Firstly, there is a system in place that automatically enforces copyright protections once infringements are detected. Secondly, a formal system exists for the registration of exclusive rights, moral rights, and economic rights, which solidifies the legal framework for pursuing violations. Preventative measures include educational outreach to raise awareness about the importance of respecting copyrights and understanding the law. Repressive measures involve ongoing monitoring of the marketplace to swiftly identify and rectify any infringements. Additionally, external supervision by customs authorities helps in tackling the importation and sale of counterfeit books, further protecting copyright holders.

Restorative Justice plays a crucial role in this framework by focusing on resolving disputes through mediation and arbitration before they reach commercial courts. Conceptually, Restorative Justice is designed to ensure fair restitution, aimed at recovering moral damages to copyrights and compensating for the material losses related to economic rights.

References

A. Book

- Aan Priyatna. *Penegakan Hukum Terhadap Pelanggaran Hak Cipta dalam Pembuatan E-Book*. Magister Kenotariatan Universitas Diponegoro Tahun 2014.
- DJKI. *Laporan Tahunan Direktorat Jenderal Kekayaan Intelektual Tahun 2021*. Jakarta : DJKI Kemenkumham. 2021.
- Eddy Damian, *Hukum Hak Cipta*, Bandung: Alumni, 2019.
- Rusniati. *Faktor- Faktor Penyebab Terjadinya Pelanggaran Terhadap Hak Cipta*. 1566 Varia Hukum. Edisi No. XXXIX Tahun XXX September 2018.
- Soekanto, Soekanto. *Introduction to Legal Research* , Jakarta: UI Press, 1986.
- Soekanto, Soekanto. *Normative Legal Research A Brief Overview*, Jakarta: Grafindo Persada, 2014.
- Suyud Margono, *Hukum Hak Cipta Indonesia*, Bogor: Ghalia Indonesia, 2010.

B. Journal

- Andi Kurniawati. “Penegakan Hukum Terhadap Pelanggaran Hak Cipta melalui Media Internet”. Magister Ilmu Hukum Universitas Hasanuddin. *Jurnal Hukum Dan Dinamika Masyarakat*. 18, No. 1 (2020).
- Denny Kusmawan Cit Syailendra Agustian. Pelanggaran Hak Cipta Buku Untuk Kepentingan Pendidikan Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta. SI Ilmu Hukum, Fakultas Ilmu Sosial Dan Hukum, Universitas Negeri Surabaya). *Novum : Jurnal Hukum* 6, no. 3 (2019).
- H. L. Simangunsong, *Perlindungan Hak Cipta Terhadap Pembajakan Karya Sastra Novel Versi E-Book Di Tokopedia*, Jurnal Notarius, vol. 13 No. 1, 2020.
- M Edi Faryadi. *Penegakan Hukum Terhadap Hak Cipta berdasarkan Undang-Undang Nomor 19 Tahun 2002 tentang Hak Cipta di Kota Pekanbaru*. Magister Ilmu Hukum Universitas Islam Indonesia, 2007.
- Mulyani, S. Penyelesaian Perkara Tindak Pidana Ringan Menurut Undang-Undang Dalam Perspektif Restoratif Justice (Adjudication Of Misdemeanor Based On Legislation In Current Perspectives). *Jurnal Penelitian Hukum De Jure* 16, no. 3 (2017).
- Nurhasan, Faktor Penyebab Pelanggaran Hak Cipta Di Kota Jambi. Dosen Tetap PS. Ilmu Hukum Fakultas Hukum Universitas Batanghari Jambi. 2014.
- Wirakesuma, I. N., & Mudana, I. W. “Regenerasi Seni Rupa Digital Masa Kini”. *Jurnal Pendidikan dan Konseling (JPDK)*, 4 no. 6; (2022).

C. Internet

- Direktorat Jendral kekayaan Intelektual Kementerian Hukum dan HAM RI, *Tanggulangi Pembajakan Buku di E-Commerce, DJKI Tengah Susun Permenkumham terkait Hak Cipta*. <https://dgip.go.id/artikel/detail-artikel/tanggulangi-pembajakan-buku-di-e-commerce-DJKI-tengah-susun-permenkumham-terkait-hak-copyright/> diakses pada Januari 2023.
- Gunadha, Reza. 2020. *Sentil E-Commerce Beri Lapak Penjual Buku Bajakan, JS Khairen: Malu-Maluin*. <https://www.suara.com/news/2020/09/21/151757/sentil-e-commerce-beri-lapak-penjual-buku-bajakan-js-khairen-malu-maluin/> diakses pada Januari 2023.
- Rudi Ferdiansah, Pelanggaran HAKI. Tersedia : <https://ridwaninstitute.co.id/pelanggaran-haki/> diakses pada Februari 2023.
- Wibi Pangestu Pratama. *Ada 1184 Kasus Pelanggaran Haki Ditindak di RI Sejak 2015*. <https://ekonomi.bisnis.com/read/20211006/9/1451327/ada-1184-kasus-pelanggaran-haki-ditindak-di-ri-sejak-2015>. Diakses pada januari 2023.