

Criminal Law Perspective on the Formulation of Ordinary Delik Changes to Complaints on Copyright Law for Creators

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Abstract

The concept of changing the offense in the law, cannot be separated from the copyright law in general following the direction of the development of today's society. This is so that the applicable law can continue to run properly. However, this change of offense certainly has its own consequences or consequences, even more so for the creator or copyright holder who is the main actor behind the birth of a work of creation.

This study aims to find out the formulation of changes in ordinary offenses into complaint offenses in copyright law for creators in the perspective of criminal law and to describe the consequences of criminal law arising from changes in offenses against copyright infringement. This research is a legal research with the type of library research (library research) with a normative legal approach. The main data source is secondary data. The data analysis used in this research is descriptive qualitative data analysis.

The results of this study indicate that Article 66 of Law No.19 concerning the Year 2002 concerning Copyright states that the state still has the authority to enforce the law for direct copyright infringement, in contrast to Law No.28 of 2014 concerning Copyright contained in Article 120 allows the state to take legal action if there is a complaint process beforehand. The consequences resulting from the change in the offense for the creator are that the creator has two access to settlements in the event of a violation of his creation, namely settlement outside the court and in court.

Based on the results of this research, it is hoped that it will become information and input for students, academics, practitioners, and all parties in need in the Faculty of Law, Pancasakti University, Tegal.

Keywords: Offense, Copyright, Creator.

A. Problem Background

Today, copyright is a very fundamental issue, where the works of copyright holders or creators need to be maintained. But with the rapid or high results of the work produced by the creator is not accompanied by legal certainty against the creator of kerya, therefore many of the results of his work are stolen or taken by individuals without the permission of the creator. In Law No. 28 of 2014 on Copyright is now used known as copyright. Copyright itself is the exclusive right of the creator that arises automatically based on declarative principles after a creation is realized in real form without prejudice to restrictions in accordance with the

provisions of the laws and regulations.¹

This is the basis of why the creator's work should not be taken over without the permission of the creator. Copyright itself is one part of the intellectual wealth that has the most wide scope of protected objects, because it includes science, art, and literature that include computer programs. The exclusive rights referred to in the above sense consist of moral rights and economic rights. That is, by having this economic right the creator can benefit economically from his creation. It should be understood that exclusive rights are rights intended only for creators or legitimate copyright holders, so that others should not utilize a creation without the permission of the creator or copyright holder. Other parties who wish to use a work may become copyright holders with the creator's permission through the agreement.²

Before the existence of Law - No. 28 of 2014 concerning Copyright, what we use is Law No. 19 of 2002 concerning Copyright. However, along with the development of the times and to meet the elements of need in society, changes or revisions are made to Law no. 19 of 2002 concerning Copyright into Law No. 28 of 2014 concerning Copyright. In which the previous law has no longer valid and has been replaced by a new law. This is in line with the principle of *Lex posterior derogate legi priori*, according to Peter Mahmud Marzuki, he argues that this principle means that the new legislation overrides the old legislation. The use of this principle requires that what is faced is two laws and regulations in the same hierarchy.³

There are several changes made by the creators of the copyright law. One of them is about changing the nature of the offense in the copyright law. In Law No. 19 of 2002 uses ordinary offenses in cracking down on copyright infringement. Then after the issuance of Law no. 28 of 2014 concerning copyright, we use a complaint offense, which of course is very different in the application of legal principles later. Ordinary offenses are criminal acts that can be prosecuted without the need for a complaint.⁴ In the ordinary nature of the offense, it imposes an obligation on law enforcement officers to actively follow up on criminal violations without having to wait for a report from the victim.

¹Article 1 paragraph (1) of Law no. 28 of 2014 concerning Copyright.

²<https://libera.id/blogs/contoh-hak-cipta/>

³Peter Mahmud Marzuki, Legal Research. Revised Edition. Jakarta. Golden publishing company Prenada Media Group. 2013.. Hal. 141-142.

⁴<https://indonesiare.co.id/id/article/perbedaan-delik-aduan-dan-delik-biasa.>

The change in the nature of the offense of copyright infringement from an ordinary offense to a complaint offense is influenced by community conditions and political factors, of course this has an impact on the process of law enforcement and protection. In terms of law enforcement, copyright infringement will be processed by the police to conduct an investigation if there is a complaint made by the copyright holder or creator. In terms of protection, changing a copyright offense to a complaint offense will cause the economic rights protection of the creator to be weaker.

Copyright protection is closely related to copyright infringement. Considering the purpose of copyright protection itself, to protect the rights of the creator from infringing actions that can harm the creator or copyright holder. The stipulation of ordinary offenses in Law Number 19 of 2002, hereinafter referred to as the Copyright Law of 2002, is intended to ensure better protection than before.⁵The creator is one or several people who individually or together produce a creation that is unique and personal.⁶This means that the creator has a main role in creating an invention or creation of a work.

Creation is any creative work in the fields of science, art, and literature that is produced on the inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in a tangible form..⁷The creation or the work of this creator must of course be protected. The change in this offense for the creator is certainly a problem in itself, because the creator must be more active in controlling when problems or plagiarism occur in their creations as early as possible by reporting to the authorities so that the legal process can apply quickly. Because currently the copyright law uses complaint offenses. A complaint offense (klackt offense) is an offense that can only be processed if there is a complaint from the aggrieved party.⁸This copyright infringement must be based on reports from victims who feel aggrieved.

The state, in this case, is carried out by the relevant law enforcement officials who cannot anticipate and carry out direct supervision of copyright infringement if it occurs. Because changing the offense of copyright infringement into a complaint offense will result in copyright infringement being processed when there is a complaint from the creator who feels

⁵Prakosa Kartiko Yudi, The juridical implications of changing the type of offense in law No. 28 of 2014 concerning copyright, Malang: Thesis Journal of the Faculty of Law, Universitas Brawijaya, 2018., hlm 5.

⁶Article 1 paragraph (2) of Law no. 28 of 2014 concerning Copyright.

⁷Article 1 paragraph (3) of Law no. 28 of 2014 concerning Copyright.

⁸Eddy O.S. Hieriej, Principles of Criminal Law, (Yogyakarta: Cahaya Atma Pustaka, 2014). See also P.A.F. Lamintang and Simons, Book of Criminal Law Studies (Bandung: Pioneir Jaya), hlm. 145.

aggrieved. In complaint offenses, the state provides protection in terms of facilitating law enforcement efforts. Or it can be said that now our law enforcement officers are passive, before there was a complaint from the creator.

From the results of the above description, the author wants to make a study entitled *"Criminal Law Perspectives on the Formulation of Changes in Ordinary Offenses into Complaints in the Copyright Act for Authors"*

B. Research Method

The legal research method used by the researcher is a type of normative legal research. This type of research focuses on positive law, namely in the form of laws and regulations. The source of the data used is secondary data, where in this study the researchers collected data through library research.

C. Formulation of the problem

Based on the above background, in this paper the author will examine the national legal response to corporate crime, with the following problems: *First*, how is the formulation of changing ordinary offenses into complaint offenses in copyright law for creators in the perspective of criminal law; *second*, what are the consequences of the application of changing an ordinary offense into a complaint offense for the creator?

D. Results and Discussion

1. The formulation of changes in ordinary offenses into complaint offenses in the copyright law for creators in the perspective of criminal law.

The law in Indonesia that specifically regulates copyright has actually been going on for a long time, it has been recorded that there have been 6 changes in the copyright law since the Dutch colonial era. The first time to regulate copyright was the Dutch inheritance law, namely Auteurswet in 1912. After approximately 70 years, it was replaced by Law Number 6 of 1982. This law was the first law made by Indonesia.

Then this law underwent 2 changes. The first change occurred in 1987 with the issuance of Law Number 7 of 1987 concerning amendments to Law Number 6 of 1982 concerning Copyright. The second amendment occurred in 1997 through Law Number 12 of 1997 concerning Amendments to Law Number 6 of 1982 concerning Copyright as amended by Law Number 7 of 1987. In 2002, this Law Number 7 of 1987 revoked and replaced by Law Number 19 of 2002 concerning Copyright. In the end, Law Number 19

of 2002 was replaced by Law Number 28 of 2014 concerning Copyright which is valid until now.⁹

Along with changes in the law from the Dutch era to the present on this copyright law, it is also accompanied by changes in the nature of the offense that applies. Each offense contains different elements and meanings, which of course are also based on the law enforcement process. The following is a change in the nature of the offense in each law from the Dutch colonial period until now:

- a. During the colonial period, namely Auteurswet in 1912 or it could also be called Staatsblad 1912 Number 600, it used a complaint offense. Which in the Dutch law has actually been enforced in the country of origin, which then based on the principle of concordance is also applied to Europeans in their colonies including the archipelago.
- b. In Law Number 6 of 1982 concerning Copyright, the formulation of a complaint offense is used, as clearly stated in this law contained in Article 45 which reads "Criminal acts as referred to in Article 44 cannot be prosecuted except on complaints from copyright holder." This indicates that in Law No. 6 of 1982 concerning Copyright, a complaint offense is used.
- c. In contrast to Law Number 7 of 1987 concerning amendments to Law Number 6 of 1982 concerning Copyright, this use the formulation of an ordinary offense. As this can be found, Article I Number 17 in paragraph 1 stipulates: "The abolition of the provisions of Article 45 of Law Number 6 of 1982, resulting in copyright infringement no longer being a criminal offense, but an ordinary crime" Then in article 45 which reads "Creations or goods resulting from copyright infringement are confiscated for the State to be destroyed" thus action can be taken immediately without waiting for a complaint from the Copyright Holder whose rights have been violated.
- d. Then Law Number 12 of 1997 concerning Amendments to Law Number 6 of 1982 concerning Copyright is still using the usual offense formula. It is proven by Article 43B which reads "The right to file a lawsuit as referred to in Article 42 does not

⁹Amrani Hanafi, Urgency of Changing Ordinary Offenses to Complaints and Their Relevance to Copyright Protection and Enforcement, Law: Jurnal Hukum, Vol. 1 No. 2 (2018): 347-362. DOI: 10.22437/ujh.1.2.347-362.

reduce the State's right to file criminal charges against Copyright infringement." So the state through the elements of state equipment is given the authority to take direct action if there is a copyright infringement.

- e. In Law Number 19 of 2002 concerning Copyrights, the formulation of ordinary offenses is also still used. We can see in the description contained in Article 66 which reads "The right to file a lawsuit as referred to in Article 55, Article 56, and Article 65 does not reduce the State's right to carry out criminal charges against Copyright infringement". in the previous law which used the usual offense formulation.
- f. In contrast to the law that we have used up to now, namely Law Number 28 of 2014 concerning Copyright, this formula uses the formulation of a complaint offense. It is clearly explained in Article 120 which reads "Criminal acts as referred to in this Law constitute a complaint offense." So in the process of enforcing the law, it must interfere with the complaint first.

Of course, this indicates a difference in every applicable law enforcement process. Where in the usual offense formulation does not require a complaint by the aggrieved party, it is different from the complaint offense formulation which focuses on the existence of a complaint first. Of course, the use of ordinary offenses and complaint offenses in each law was based on the conditions of the community at that time. because this is also related to matters of law enforcement later.

If examined more deeply, from the early days of this copyright arrangement in the Dutch era (Auteurwet in 1912) using the complaint offense formulation, until the birth of the first law made by the Indonesian people. This is because people who feel aggrieved by their creation immediately report it to law enforcement. Then in a period of approximately 15 years we use a formula that all offenses complain, become ordinary offenses. Until finally with the issuance of Law No. 28 of 2014 concerning copyright using ordinary offenses.

2. The consequences of applying for a change in an ordinary offense are a complaint offense for the creator.

The change of an ordinary offense into a complaint offense does not necessarily protect the exclusive rights of the creator himself. However, the state has provided a clear

platform and protection for creators so that they can then file complaints for copyright infringement. The creator himself knows that the results of his creation are used by other parties with irresponsible things. Therefore, it is necessary to have a permanent legal force to protect the work of the creator

The reasons for the choice of applying a complaint offense in a copyright crime are as follows:

- a. Law enforcement officials will not be able to determine whether a copyright crime has occurred only by comparing the goods resulting from copyright infringement with the original creation. Only the creator or copyright holder can be more sure which is the original creation and which is the non-original or imitation of the original creation, so that they can immediately report the violation of the exclusive rights of their creation.
- b. In carrying out the legal process, law enforcement officers may not immediately know whether a party has obtained permission to publish or reproduce a work. Therefore, there must be a first complaint from the creator or copyright holder.
- c. In practice, if there is a copyright infringement, the party whose copyright is violated prefers compensation from the party who infringes the copyright rather than the copyright violator being subject to imprisonment.¹⁰

Then the changes have a very detrimental effect on the victim. Because the application of the complaint offense means that the aggrieved party must file a complaint on every violation that occurs or it can be said to also report in each different legal area. Because of this copyright infringement, there is no place limit especially if the infringement is done through electronic media. This also adds more losses to the aggrieved parties.

The enforcement of complaint offenses on the other hand has a positive impact on the police. In the application of ordinary offenses, the level of complexity in the investigation process and the investigation of copyright infringement offenses often arises, because the police have difficulties in collecting evidence because the injured party does not know or does not complain, or even knows but does not want to complain because he does not want to deal with law.

¹⁰Rasyid Fitri Pratiwi, Study of the relevance of complaint offenses on the implementation of copyright laws, Department of Civil Law, Faculty of Law, Hasanuddin University, Volume 32, Number 2, June 2020.hlm 221.

While the use of complaint offenses in the process of eradicating copyright infringement offenses makes it easier for the police in the process of collecting evidence that is used as evidence in the investigation and investigation process, due to the awareness and willingness of the victim to carry out legal proceedings against the party that harms him, so that with awareness from the victim's side to assist the police in terms of data on their copyrighted works used by irresponsible parties, to be further used by the police in terms of evidence.

Another impact is the application of the complaint offense in UUHC No. 28 of 2014, which also provides protection for creators in terms of protecting the rights they have, namely the freedom to use their rights to defend their creations or not, because Copyright is a personal right owned by the creator. In this case, the application of the complaint offense in addition to providing protection for the rights of the creator on whether or not to use his rights to defend his creation, also respects the rights of the creator if he does not want to complain.

The nature of copyright, which is the personal right of the creator, provides legal protection for the creator in choosing whether or not to use his rights in a legal process if the work of his creation is used by other parties without his permission..¹¹This also provides an opportunity for the creator if he finds a violation of his creation to take legal action or not. Because not all problems that are dealt with by law must be resolved in court.

C. Closing

Starting from the discussion above, the conclusions that can be drawn from the results of the research and discussion that have been presented include:

1. The formulation of changes in ordinary offenses into complaint offenses in the copyright law for creators in the perspective of criminal law is in Law no. 19 of 2002 concerning Copyright in article 66 shows that the state through its law enforcement elements has the space to take direct action if there is an infringement against the creator without a complaint process. This is different from the law that we now use, namely Law No. 28 of 2014 concerning Copyright in Article 120 confirms that in the provisions of this Law, complaints offenses are used. Where law enforcement can be

¹¹Wulan Evi Retno, Kuswanto Heru, *Juridical study of article 120 of the copyright law number 28 of 2014 regarding complaint offenses for copyright infringement*, lex journal: law & justice studies, 2021. DOI : <http://ejournal.unitomo.ac.id/index.php/law>.

processed, it must first go through a complaint from the party who feels aggrieved.

2. The consequence of the application of changing an ordinary offense into a complaint offense for the creator is that the creator or copyright holder must be able to better protect the results of his creation so that the audience or third parties cannot take actions that can harm the creator. In the process of resolving the case, the creator can choose or be given space to resolve the problem process related to this copyright infringement, going through a family process (outside court) or choosing to take the problem to law.

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