

PROGRESSIVE LAW ENFORCEMENT TOWARDS HUMAN RIGHTS VIOLATION IN KUPANG CITY^Ω

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Abstract

Copyright is creator intellectual wealth so it needs to be protected by the State as a form of responsibility. Responding that problem comes into the world Law Number 28 Year 2014 concerning Copyrights and all violations in UUHC is formulated as delict complaint. Consequence of delict complaint is not all of copyright violations can be asked for the responsibility because law agencies are passive and limited by space and time. Answering that jurisdictional problem then researcher used empirical law research method. The result showed that civil servants investigator (PPNS) Kanwil Kemenkumham NTT and also Kupang Kota Police Resort have done progressive step such as appealing, warning, calling, making statement, stocktaking and confiscation whereas the obstacle factor of progressive law enforcement is knowledge, mindset and in the formula of UUHC there is no section which formulate what the step can be done if criminal matters happen so the suggestions given is law enforcement agencies need an explanation about progressive law enforcement and it is better if in UUHC need to be formulated a step which will be taken if criminal matters happen.

Keywords: right, progressive law, law enforcement

Abstrak

Hak cipta merupakan kekayaan intelektual pencipta sehingga perlu dilindungi Negara sebagai bentuk tanggung jawab. Merespon persoalan tersebut lahir Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta dan semua pelanggaran dalam UUHC dirumuskan sebagai delik aduan. Konsekuensi delik aduan adalah tidak semua pelanggaran hak cipta dapat dimintai pertanggungjawaban karena aparat hukum bersifat pasif serta terbatas oleh ruang dan waktu. Menjawab persoalan hukum tersebut maka peneliti menggunakan metode penelitian hukum empiris. Hasil penelitian membuktikan PPNS KANWIL KEMENKUMHAM NTT maupun POLRES Kupang Kota sudah melakukan langkah progresif seperti himbauan, teguran, pemanggilan, membuat pernyataan, inventarisasi dan penyitaan sedangkan faktor penghambat penegakan hukum progresif berupa pengetahuan, pola pikir dan didalam rumusan UUHC tidak ada pasal yang merumuskan langkah yang dapat dilakukan apabila terjadi persoalan pidana sehingga saran yang diberikan yaitu aparat penegak hukum perlu penjelasan tentang penegakan hukum progresif dan sebaiknya dalam UUHC perlu dirumuskan tentang langkah yang akan diambil jika terjadi persoalan pidana.

Kata kunci: hak, hukum progresif, penegakan hukum

Introduction

Copyright is creator's intellectual property, and it needs protection by the State as a State's responsibility, from every copyright violations.¹ Responding the problems, Law Number 28 Year 2014 concerning Copyright (UUHC) co-

mes up as a form of state protection towards every works. Juridically, there has been a law that set about copyright and formulated all kinds of violation towards copyright as delict complaint, but there are still many violations towards copyright such as increasing and multiplying works of other people in the form of Compact Disc (CD Room) and DVD Room that can not be touched by UUHC itself.

The consequence of copyright violations formula as delict complaint is passive law agen-

^Ω This article is a part of research in writer's thesis with the same title in Postgraduate Program Universitas Nusa Cendana.

¹ See on Suyud Margono, "Prinsip Deklaratif Pendaftaran Hak Cipta: Kontradiksi Kaedah Pendaftaran Ciptaan dengan Asas Kepemilikan Publikasi Pertama Kali", *Rechts Vinding*, Vol. 1 No. 2, 2012, Jakarta: BPHN.

cies and limited by space and time, which means law enforcement will be done if the violations happen in the domicile of the creator and law enforcement can not be done if it is outside of domicile. Based on this explanation, unconsciously UUHC finds the dead end, indirectly the State has failed to protect every creations that impact the creators unfairly.

Therefore, UUHC can not give responses about the problems if it happens outside the reach of creator, so indirectly it can be said that UUHC has not been able to serve the creators and can not satisfy society, such Satjipto Rahardjo said that law is for human. Law can be a law if it has already served and satisfied society.

From Satjipto Rahardjo thought that law is for human not for the opposite, so there is no law for own needs, but for humans, especially human happiness. Based on that thought then the existence of law is for human interest, in this case is the human interest in dealing with protection guarantee and justice for the creators.² The existence of progressive law presents to seek and to find a solution to answer legal issues that exist, so if there is something that has come to the dead end, the solution can be found to give protection and justice guarantee for creators towards all violations and crime which is done by irresponsible side.

Problems

Problems appointed in this article is how progressive law enforcement towards copyright violations in Kota Kupang? and what is the obstacle that can hamper the progressive law enforcement by law enforcement agencies?

Research Method

This research is a juridical empirical legal research or also called field research located in Kota Kupang NTT Province, especially at Kupang Kota Police Resort, Regional Office of the Minis-

try of Justice and Human Rights (Kanwil Kemenkumham) NTT and Kupang District Attorney.

Data research consists of primary data and secondary data. Primary data from field research can be done both from observation, interview or distributing questionnaires, while secondary data is a supporting data for primary data consists of books, literature or Law related to research object submitted through library research. Then the data is processed through editing and coding. Editing is to complete the answers from respondents and coding is to rearrange data obtained regularly and systematically.

Data is analyzed by descriptive qualitative: all of the data both primary and secondary data are arranged systematically, classified in patterns and themes, categorized, classified and connecting between one data to another data, then the interpretation and comprehension are made to give understanding about examined legal issues.

Discussion

Law Enforcement Towards Piracy Crime in Perspective Progressive Law

According to Satjipto Rahardjo, Law Enforcement is a series of process to describe the value, idea, abstract ambition to become concrete goal. The goal of law contains moral values, such as justice and truth. Those values can be manifested in factual reality.³

There must be a will for law enforcement in order to enforce the law, so the values of legal instruments can be manifested. In fact, the goals contained in law enforcement may not be achieved, because the law is used as an action to protect certain group's interest. Law enforcement is an effort process to uphold or to function the legal norms factually as a behaviour guidance towards law relations in society and state life. Progressive law takes a position where human becomes the determinant and the orientation of law. Law serves human, not the opposite. Law is not an absolute institution and

² Waidin, "Perspektif Hukum Dan Keadilan Terhadap Kasus Buah Randu Di Kabupaten Batang", *Jurnal Dinamika Hukum*, Vol. 10 No. 1, January 2010, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, page 2.

³ Sajipto Rahardjo, 2009, *Penegakan hukum; Suatu Tinjauan Sosiologis*, second printing, Yogyakarta: Genta Publishing, page 7.

final separated from human interest.⁴ Law quality is determined by its ability to serve human welfare. It causes progressive law is closer to *interessenjurisprudenz*.⁵

Progressive Law Enforcement by PPNS Kanwil Kemenkumham NTT towards Piracy Crime

As an effort of law enforcement that is oriented to problem solving, the law agency especially copyright PPNS Kanwil Kemenkumham NTT, conducts some legal actions to make the suspect feel wary and will not repeat the mistake.⁶ The same legal actions is also a step to prevent the violations of copyright. Those legal actions are: *first*, appealing. Appealing as a tool for giving explanation to the suspect about the importance of copyrights and as an effort for making the suspect realize what have been done is a violation. *Second*, warning. Warning will be done twice, spoken and written, in order to make the suspect stop repeating the same action in the future. *Third*, making statement. The next legal action is that the suspect will be asked to make written statement seen by copyright PPNS and the suspect will be given administrative sanctions if the suspect is proven violating the statement at a later time.

Here is shown law enforcement step done by copyright PPNS Kanwil Kemenkumham NTT on the table below:

Table 1. Progressive Legal Action done by copyright PPNS Kanwil Kemenkumham NTT

No.	Legal Action	Year			Amount
		2012	2013	2014	
1.	Appealing	6	7	4	17
2.	Warning	6	5	2	13
3.	Making Statement	3	-	-	3

Based on the data above, writer can conclude that basically every action taken and done

by PPNS copyright, Kanwil Kemenkumham NTT, has shown the essence of Progressive law, so what is seen when doing those kind of actions is whether it is feasible or not to let copyright violation get rampant. PPNS copyright, Kanwil Kemenkumham NTT, makes an effort to put human as an object of law enforcement not a regulation used for law enforcement so the law agencies in taking actions will be more oriented to the problems of humanity or its conscience.

Progressive Law Enforcement by Kupang City Police Resort towards Piracy Crime

Based on the result of interview with Chief Unit Certain Crimes Kupang City Police Resort on October 7th 2015, Progressive law enforcement by Kupang City Police Resort towards Piracy Crime is done by:⁷ *first*, Appealing. In this step police officers especially Kupang Kota Police Resort only giving explanation about value and the importance of creation towards the piracy suspect. *Second*, Implementation of the control operation towards copyright violation. The goal of implementing control operation of copyright violation by police officers Kupang City Police Resort is for searching whether the suspect is still repeating the same mistake. *Third*, calling the suspect of piracy crime. In this step, police officers of Kupang City Police Resort will be calling the suspect of piracy crime to ask why the suspect did not listen to the appeal that has been delivered and keep repeating the mistake although it is clearly harming other people and can be responsible for their crime. *Fourth*, inventorying the goods from copyright violations (pirated VCD and DVD). Besides calling the suspect of copyright violations, the things that is done by Kupang City Police Resort is inventorying the goods from copyright violations in the form of pirated VCD and DVD. Inventorying the goods is done when the suspect has already been called by Kupang City Police Resort. *Fifth*, making a statement. After police officers of Kupang City Police Resort inventoried the pirated goods and knew the

⁴ A. Sukris Sarmadi, "Membebaskan Positivisme Hukum Ke Ranah Hukum Progresif (Studi Pembacaan Teks Hukum Bagi Penegak Hukum)", *Jurnal Dinamika Hukum*, Vol. 12 No. 2, May 2012, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, page 5.

⁵ Sudijono, Sastroatmodjo, "Konfigurasi Hukum Progresif", *Jurnal Ilmu Hukum*, Vol. 8 No. 2, September 2005, Surakarta: Faculty of Law Universitas Muhammadiyah Surakarta, page 3.

⁶ Interview Result with Head of Sub Division of General Legal Administration Services and HKI Kanwil Kemenkumham NTT on October 23rd of 2015

⁷ Interview Result with Chief Unit Certain Crimes Kupang Kota Police Resort on October 7th of 2015

level of the suspect involvement, so the next step taken by police officers of Kupang City Police Resort is to ask the suspect of copyright violations to not repeat their action. *Sixth*, foreclosure. Last progressive step that will be implemented is doing foreclosure based on the statement made by suspect before, if the suspect keep repeating the piracy action towards copy-right.

Below is progressive legal actions by Kupang City Police Resort:

Table 2. Progressive Legal Actions by Kupang CityPolice Resort

No.	Legal Action	Year			Total
		2012	2013	2014	
1.	Appealing	-	4	5	9
2.	Control operation	-	4	3	7
3.	Calling	-	3	3	6
4.	Inventorying pirated goods	-	2	2	4
5.	Making statement	-	2	2	4
6.	Foreclosure	-	1	2	3

Source: *Kopang City Police Resort*

Based on the research result, it can be stated that law enforcement officer Kupang City Police Resort has actually taken legal actions progressively based on the essence of law for human.

Progressive Law Enforcement by Disrtict Attorney Kupang towards Piracy Crime

There are four inherent things in the personality of the prosecutor institution, derived from the doctrine that "the prosecutor is one" (*een en ondeelbaar*). Those four things are: *first*, bureaucratic. Bureaucratic characteristic, dealing with cases done by firm steps, sequentially and gradually, implemented by different field (investigations by intelligence and investigation also prosecution by the criminal part of special or general criminal section). *Second*, Centralized. Centralized character deals with all phases of case (inquiry, investigation and prosecution) that are controlled and depended on wisdom and leaders instruction hierarchically. *Third*, adheres to hierarchical responsibility. Hierarchical responsibility wants that all cases are the responsibility of the leadership hierarchically and structurally by prosecutors. *Fourth*,

applicable command system. Command system, putting bureaucracy at a higher level as a commander to give orders to the lower levels of the bureaucracy, and the bureaucracy under the level required to run the command. Control of case handling implemented gradually from the level of Chief State Prosecutor (KEJARI), Chief Prosecutor (KEJATI) to the head of the Attorney General (KEJAGUNG).⁸

The characteristics of the prosecutor institution above, still become pro status quo in a sense still serve the formal legal rules with the positivism paradigm that became the main mainstream. The system applied did not give freedom to the prosecutor actors to conduct creations especially related to the mechanism of the indictments and prosecutions.

Progressive law has done an effort towards the liberation of the concepts that are considered established, where the system stiffness and formal rules are still shackled and becoming the center of attention, but switched in humans as a central point, because the law is for human not for the opposite. Those characteristics, according to Satjipto Rahardjo, is a characteristic of modern law that has led to paradigmatic changes form justice order becomes the order of law and procedure in the presence of rationalization structuring, formulation and bureaucratization. The focus also shifted from humans and humanity, towards the enforcement of the regulations, structures and procedures.⁹

Based on the description above, the writer concludes that it is basically the attorney institution are still strong with the patterns of law enforcement that prioritizes bureaucratic aspects and tied to position structure and has not been able to free themselves from the shackles understanding formalism, so when dealing with a case that is seen here is the legal rule and people forced to enter in the schemes of

⁸ Yudi Kristiana, "Rekonstruksi Kejaksaan dengan Pendekatan Hukum Progresif "(Studi Penyelidikan, Penyidikan, dan Penuntutan Tindak Pidana Korupsi), *Jurnal Hukum Progresif*, Vol. 3 No. 1, 2007, Semarang: Doctoral Program Law of Science Universitas Diponegoro.

⁹ Satjipto Rahardjo, "Pendidikan Hukum Sebagai Pendidikan Manusia", dalam Yohanes Suhardin, "Fenomena Mengabaikan Keadilan Dalam Penegakan Hukum", *Jurnal Mimbar Hukum*, Vol. 21 No. 2, June 2009, Yogyakarta: Faculty of Law Universitas Gadjah Mada, page 343.

the existing law. Law enforcement patterns is basically viewed the law as a frame to execute the law itself so as Syamsudin said¹⁰ that, this understanding law is not for human but a human who is forced to adjust to the format of law and technical procedures. So that the legal formalistic institutions, bureaucratic and centralized built to serve the law as well.

Factors Inhibiting The Progressive Law Enforcement Against Copyright Piracy

Factors Inhibiting The Progressive Law Enforcement Against Copyright Piracy, The first consists of the factors of the law itself and the factor of legal structures. Both of these factors can be described as follows. *First*, the law itself factor according to legal progressive law was made to serve human and therefore the law should make human happy both materially and spiritually instead of its opposite.¹¹ Because the law makes happy so naturally legal product should respond to all the needs of human beings so that the law should be responsive too.

The birth of UUHC in response to problems in the field of copyright should be able to guarantee the protection of copyright and provide a guarantee of justice in case of copyright infringement, but in fact there are still many violations of copyright that has not been touched by the law. This is because the formulation of all forms of copyright violations as a delict complaint giving rise to consequences that law enforcement officers are passive and depend on space and time. In the UUHC there is no article that explains how the legal steps to be taken in case of a criminal act outside of the domicile of the creator so here it appears that UUHC did not answer the legal issues during this worry by the creator.

The writer concludes that UUHC has not satisfied human that has not kept pace with the essence of progressive law so that the law en-

forcement also must focus on *human for law not law to human* as said by Setya Wahyudi¹² that, the *law for human* means any legal provisions that used to serve the needs of human. The main is human need and not the law. Law only as a tool to meet their needs, then if the law does not meet the main needs, of course it will be modified, reform, interpretation, against the law.

Second, legal structure factor. The legal structure here attached to the Kupang City Police Resort, officials PPNS copyright, Kanwil Kemnkuham NTT, and the State Attorney Kupang. Based on the research result that basically things that affect law enforcement officers, especially Kupang City Police Resort in enforcing progressive law are in the form of knowledge, mindset and work culture. The inability of law enforcement to understand the true meaning of the law itself would be difficult to make law enforcement officials rigid in enforcing the law, especially supported by the formalism mindset that has built up in the minds of law enforcement officers will be difficult to understand that the law is for humans as desired by progressive law itself so the writer concluded that, in principle, the level of knowledge will affect the mindset of law enforcement officers so that impact on law enforcement to see that *human is for law not a law for man*.

Factors inhibiting the progressive law enforcement by officials copyright PPNS Kanwil Kemenkuham NTT consists of: Lack of understanding of law enforcement officers about the meaning of progressive law enforcement; Lack of training related to law enforcement that is oriented to problem solving; and PPNS Officers is not free yet, which means it is still shackled by mindset and understanding of legal formalism. While the factors that hinder progressive law enforcement in the state judiciary Kupang composed of a mussel attached to the bureaucratic system and embrace the thought of *formalism*.

¹⁰ M. Syamsudin, "Rekonstruksi Pola Pikir Hakim Dalam Memutus Perkara Korupsi Berbasis Hukum Progresif", *Jurnal Dinamika Hukum*, Vol. 11 No. 1, January 2011, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, page 4.

¹¹ Shinta Dewi Rismawati, "Menebarkan Keadilan Sosial Dengan Hukum Progresif Di Era Komodifikasi Hukum", *Jurnal Hukum Islam*, Vol. 13 No. 1, June 2015, Pekalongan: Sharia and Islamic Economics Major STAIN, page 5.

¹² Setya Wahyudi, "Penegakan Peradilan Pidana Anak dengan Pendekatan Hukum Progresif Dalam Rangka Perlindungan Anak", *Jurnal Dinamika Hukum*, Vol. 9 No. 1, January 2009, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, page 2.

Based on the description of the factors that impede law enforcement above, the writer concluded that the officers of law enforcement themselves are essentially not able to enforce the law by way of solution oriented so that in accordance with the spirit of "the law is for human", here the law enforcement officers prioritized procedure than what is to be achieved. When this pattern of law enforcement maintained, then of course the law enforcement officers prefer the text of the law then what becomes a frame in enforcement is *human for the law*.

Conclusion

Based on the discussion before so that we can conclude: *firts*, UUHC has not fully able to serve and to satisfy the creator because the law enforcement against copyright violations limited by space and time, so to give justice for creator needs progressive law enforcement in the term of law policies taken by law enforcement officers such as appealing, giving warning, making statement, control operation, stocktaking pirated goods and foreclosure as efforts to prevent and enforcing the law.

Second, basically, law enforcement officers can make policies to answer law issues as a form of progressive law enforcement but law enforcement officers have not been able to understand properly about progressive law enforcement and still adopt formalism understanding and attached to bureaucracy system itself.

Recommendation

Based on the conducted analysis, the writer makes recommendation that it needs to make a policy about the prevention of copyright violations in every authorized law enforcement officers as a legal basis for taking or doing progressive legal action considering the strength of formalism understanding among law enforcement officers. In addition, law enforcement officers also need to be given training about progressive law enforcement that is more oriented toward finding solutions.

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