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RESEARCH ARTICLE

Simplification of Law Regulations in Copyright Criminal Act Settlement

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ABSTRACT

The existence of overlapping laws and regulations in the Intellectual Property Rights (IPR) sector creates conflicts in their implementation. For example, the obligation to mediate as a condition for carrying out criminal charges for copyright infringement is based on Article 95 paragraph (4) of Law Number 28 of 2014 concerning Copyright. Mediation provisions in Law Number 30 of 1999 concerning Arbitration are a way of settling civil disputes outside the court to settle by deliberation and consensus with the help of a mediator. Meanwhile, mediation based on Perma Number 1 of 2008 is intended as an obligation for judges at the first level court in the District Court and Religious Courts in the context of resolving civil disputes. Settlement of copyright disputes is the authority of the Commercial Court, as a special court within the general court environment. However, the Commercial Court does not apply the obligation of mediation. The study results indicate that the simplification of legislation in the intellectual property sector will result in quality, simple, orderly legislation that will also increase investment, create employment opportunities, reduce the burden on society and the efficiency of the state budget.

Keywords: Simplification; Copyright; Criminal Act Settlement.

INTRODUCTION

Indonesia is an archipelagic country where two-thirds of its territory is marine waters.[1] Geographically, almost 70 percent (70%) of Indonesia's territory is an area that has the potential to store marine wealth and extraordinary natural wealth. The potential for marine wealth that is owned starts from the potential for fisheries, marine industry, marine services, transportation, marine tourism,[2] While the natural potential can be seen from the variety of types of sweet potato plants, salak ponggoh, Arabica coffee Kintamani Bali, etc., in addition, there are also products

[1]Agustina Soebachman, 2014, *Sejarah Nusantara Berdasarkan Urutan Tahun,* Surya Media Utama, Yogyakarta, 2014, p. 14.

[2]Kementerian Kelautan dan Perikanan Republik Indonesia, 2019, *Laporan Kementerian Kelautan dan Perikanan Republik Indonesia Tahun 2018,* Sekretaris Jenderal KKP RI, Jakarta, p. 17.

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produced based on local culture, in the form of Balinese Gringsing Weaving, Jepara Carved Furniture, Mandar Silk Weaving and so on.[3]

This potential becomes an interesting issue when it is associated with the protection of Intellectual Property Rights (IPR). Intellectual Property Rights (abbreviated as HKI) is a significant issue related to international trade and economic growth. Technological innovation and increasing economic power are very much needed for community growth and industrial development. Technological innovation can bring prosperity to people's lives, and technological development encourages community growth.[4]

On April 15, 1994, the Government of Indonesia signed a final agreement containing the Uruguay Round of Multilateral Trade Negotiation results. It ratified the Agreement Establishing the World Trade Organization with Law Number 7 of 1994 dated November 2, 1994, which contains the Appendix to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement), which regulates internationally accepted standard norms regarding IPR. The TRIPs agreement clarifies the position of IPR protection as a trade-related issue. The aim is to provide IPR protection and enforcement procedures by implementing measures that lead to fair trade. Part II of the TRIPs Agreement regulates IPR objects broadly, namely copyright and related rights (copyright and related rights), trademarks (trademarks), geographical indications (geographical indications), industrial designs, patents, designs layout-designs of Integrated Circuits, protection of undisclosed information.[5]

On the other hand, the TRIPs Agreement also regulates the prohibition of unfair competition practices and licensing agreements. Conventionally, IPR is divided into 2 (two) parts, namely copyright, industrial property rights, which include; patents (patents), industrial designs (industrial designs), trademarks (trademarks), countermeasures against unfair competition practices (repression of unfair competition), layout designs of integrated circuits and trade secrets. The legal umbrella related to copyright protection has been replaced from Law Number 19 of 2002 with Law Number 28 of 2014 concerning copyright (in the future referred to as the Copyright Law). Based on Article 1, point 1 of the Copyright Law states that copyright is the exclusive right of the creator that arises automatically based on declarative principles after work is manifested in a tangible form without reducing restrictions following the provisions of the legislation.[6]

The state protects creators or related rights holders in the form of exclusive rights. Copyright protection is declarative, not constitutive. Protection in exclusive rights as a "reward"

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[3]Rian Saputra, Adi Sulistiyono dan Emmy Latifah, "Pendaftaran Internasional Sebagai Upaya Perlindungan Indikasi Geografis Indonesia Dalam Perdagangan Global (Study Peraturan Pemerintah Nomor 22 Tahun 2018)", *Jurnal IUS Kajian Hukum dan Keadilan,* Volume VII, Nomor 2, Agustus 2019.

[4]Some of the main factors that trigger it are the introduction and popularization of the terms "creative industry" and then "creative economy," and what is even more interesting is the issue of whether or not IPR protection is needed for the nation's cultural heritage in the form of Traditional Knowledge (PT) and Traditional Cultural Expressions. (EBT). Specifically, regarding PT and NRE, the debate that has occurred has even extended to the political realm concerning the continuity of relations between countries, such as what happened between Indonesia and Malaysia in connection with allegations of Malaysia's claim to some Indonesian cultural heritages, such as: Batik, Reog Ponorogo, Tari Pendet, dan Tari Tor Tor. Disarikan dari Basuki Antariksa, "Landasan Filosofis dan Sejarah Perkembangan Perlindungan Hak Kekayaan Intelektual: Relevansinya Bagi Kepentingan Pembangunan di Indonesia", *Jurnal Kepariwisataan Indonesia,* Vol. 11, No.1, Juni 2016.

[5]Peter K.Yu, "Intellectual Property, Asian Philosophy and the Yin-Yang School", *The WIPO Journal,* Volume 7,Issue 1,Tahun 2015.

[6]Prasetyo Hadi Purwandoko dan M. Najib Imanullah, "Application of Natural Law Theory (Natural Right) to Protect the Intellectual Property Rights", *Yustisia,* Vol. 6 No. 1 January – April 2017.

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is given to those who have given birth to their creations and encourages other creators to give birth to intellectual property rights. Exclusive rights consist of moral rights and economic rights. Moral rights are rights that are eternally attached to the creator. Other exclusive rights of intellectual property rights are economical.[7] Economic Rights in the form of exclusive rights of the creator or related rights holders to obtain financial benefits from the results of their copyrighted works. Economic rights are controlled and owned by the creator or related rights holder and the party receiving the transfer or the party obtaining permission to exercise economic rights. As a result, other parties cannot use the said economic rights except after obtaining permission. Without the permission of the creator or related rights holder, it is prohibited to commercialize copyrighted works in reproduction and or commercial use. The term "forbidden" is synonymous with not allowed, not allowed. Thus, only creators and rights holders can exercise economic rights in order to obtain financial benefits. Violation of the use of the creator's economic rights is a violation of the law with implications from both civil and criminal aspects.[8]

If other parties use the economic rights of the creator without permission, it means that they have violated the exclusive rights of the creator. Creators and rights holders are protected from illegal use of their rights. To protect the creator, law enforcement must be carried out. Good rules are meaningless if they are not enforced. Intellectual property rights as well. Protection is obtained by law enforcement through civil settlements and or illegal settlements. The right to file a civil lawsuit for infringement of copyright or related rights does not reduce the rights of the creator and/or owner of the related rights to prosecute criminally. Civil settlements can be carried out before the court (litigation) or outside the court (non-litigation).[9] Settlement of copyright disputes by litigation is the authority of the Commercial Court, which is a special court within the general court environment. Settlement in a criminal manner is a complaint offense within the authority of the District Court.[10]

It is interesting to conduct a study on the settlement of copyright disputes as stipulated in Article 95 of the Copyright Law. Interestingly, Article 95 regulates dispute resolution with a civil orientation, but Article 95 paragraph (4) states that in addition to copyright infringement and/or related rights in the form of piracy, as long as the parties to the dispute are known to exist and/or are in the territory of the state. The Unitary State of the Republic of Indonesia must first settle disputes through mediation before making criminal charges. Efforts to settle through mediation have been reserved for civil disputes, but Article 95 paragraph (4) of the Copyright Law requires mediation efforts before settlement through illegal means. Criminal prosecution is a realm of public law where prosecutors represent the state making demands to protect the public interest. For criminal acts, the principle of legality is applied as stated in Article 1 of the Criminal Code. In simple terms, it can be said that criminal threats are intended for those who have fulfilled the criminal element. The settlement of criminal acts is an effort to protect the state from its citizens. Investigators and prosecutors represent the state's role as public prosecutors who will prove the

[7] Iswantoro, 'Strategy and Management of Dispute Resolution , Land Conflicts at the Land Office of Sleman Regency', 1.1 (2021), 1–17.

[8]Sufiarina, "Pergeseran Tindak Pidana Hak Cipta Ke Arah Sengketa Perdata (Tinjauan atas Pasal 95 ayat (4) Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta)", *Jurnal Cita Hukum,* Vol.5, No. 1 Juni 2017.

[9] Redi Res, 'Implementation of Parate Executie Object of Liability Juridical Overview of Mortgage', 1.1 (2021), 42–53.

[10]Sufiarina, "Pergeseran Tindak Pidana Hak Cipta Ke Arah Sengketa Perdata (Tinjauan atas Pasal 95 ayat (4) Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta)", *Jurnal Cita Hukum,* Vol.5, No. 1 Juni 2017.

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existence of an offense, and if the claim can be proven, the judge in court declares guilt and is given sanctions as stipulated in Article 10 of the Criminal Code.[11]

Article 95 paragraph (4) of the Copyright Law obliges the disputing parties to resolve through mediation before making criminal charges as long as the parties are in Indonesia. This obligation to mediate is excluded from piracy. Piracy is the illegal duplication of creations and/or related rights products and the wide distribution of the goods resulting from the reproduction to obtain economic benefits. From the provisions of Article 95 paragraph (4) of the Copyright Act, acts of piracy are not charged with the obligation of mediation. The mediation obligation is only imposed on copyright crimes other than piracy as a condition for carrying out criminal charges.[12] Based on the above, the problems in this study include: How to simplify the laws and regulations in settlement of copyright crimes? What is the ideal model for enforcing copyright crimes that are optimal from an economic perspective?

DISCUSSION

Simplification of Legislation in settlement of Copyright Crimes

Copyright is the exclusive right of the creator that arises automatically based on declarative principles after work is realized in a tangible form without reducing restrictions following the provisions of laws and regulations. Thus, any act intentionally or without the right to publish or reproduce a work can be categorized as a copyright crime. This arrangement can be seen in Law No. 28 of 2014 concerning Copyright below:[13]

Tabel 1
Copyright Crime

Article	Act	**Threat of Punishment**
Article 112	Any person without rights removes, alters, or damages copyright management information and electronic copyright information (violates Article 7 paragraph (3) and/or destroys, removes, or renders non-functioning technological control facilities used as protection of copyrighted works or related products as well as protection of copyright or related rights, except for the interests of national defense and security, as well as other reasons following the provisions of laws and regulations, or otherwise	Two years imprisonment and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiahs).

[11]Trias Palupi Kurnianingrum, "Materi Baru Dalam Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta" *Negara Hukum* Volume 6 Nomor 1, Edisi Juni 2015.

[12]Padrisan Jamba, "Analisis Penerapan Delik Aduan Dalam UU Hak Cipta Untuk Menanggulangi Tindak Pidana Hak Cipta Di Indonesia", *Jurnal Cahaya Keadilan,* Vol.3, No.1, 2016.

[13]Sufiarina, "Pergeseran Tindak Pidana Hak Cipta Ke Arah Sengketa Perdata (Tinjauan atas Pasal 95 ayat (4) Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta)", *Jurnal Cita Hukum,* Vol.5, No. 1 Juni 2017.

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	agreed (Article 52) for commercial use.	
Article 113 paragraph (1)	Any person who unlawfully violates the economic rights of the creator in the form of leasing the work (regulated in Article 9 paragraph (1) letter (i) for commercial use.	Maximum imprisonment of one year and/or a maximum fine of Rp. 100,000,000 (one hundred million rupiahs).
Article 113 paragraph (2)	Any person who without rights and/or without permission of the creator or copyright holder violates the economic rights of the creator in the form of translation of the work, adaptation, arrangement or transformation of the work, the performance of the work, communication of the creation (regulated in Article 9 paragraph (1) letter c, letter d, letter f, and/or letter (h) for commercial use.	Maximum imprisonment of three years and/or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiahs)
Article 113 paragraph (3)	Any person who without rights and/or without permission of the creator or copyright holder violates the economic rights of the creator in the form of publishing the work, copying the work in all its forms; distribution of the work or a copy thereof, and/or the announcement of the work (in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g) for public use.	Imprisonment for a maximum of four years and/or a fine of not more than 1,000,000,000.00 (one billion rupiahs)
Article 114	Any person who manages a trading place in all its forms who knowingly and knowingly allows the sale and/or reproduction of goods resulting from infringement of Copyright and/or Related Rights in the trading place he manages as referred to in Article 10.	The maximum fine is Rp. 100,000,000.00 (one hundred million rupiahs).
Article 115	Any person who, without the consent of the person being photographed or his/her heirs, performs Commercial Use, Reproduction, Announcement,	The maximum fine is Rp. 500,000,000.00 (five hundred million rupiahs).

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	Distribution, or Communication of the Portrait as referred to in Article 12 for advertising or advertising Commercial Use in both electronic and non-electronic media.

The table above shows that the regulation of copyright crimes is regulated in more detail than the previous regulations, especially related to ordinary copyright crimes. However, the reality on the ground shows that the usual offense of copyright crime is felt to be inappropriate. Based on the practice in the community, the application of ordinary offenses for criminal acts in the field of copyright is felt to be inappropriate because copyright is an exclusive civil right so that only the creator or copyright holder himself is aware of the infringement. Therefore, ideally, copyright infringement is a complaint offense because the one who is most aware of counterfeiting of work is the creator himself. The change from an ordinary offense to a complaint offense is related to the nature of the ownership itself. This means that ownership in copyright is personal, so that the ratio is personal (personal) who feels aggrieved will complain to the authorities so that the case is investigated.[14]

Based on Article 95 paragraph (4) of Law Number 28 of 2014 concerning Copyrights, it is stated that criminal charges require a mediation obligation first. There is no crime without mediation, except for a crime in the form of piracy. Piracy is defined as the act of duplicating creations and distributing widely duplicated goods to obtain economic benefits.[15] The mediation obligation imposed by the legislators as a condition for carrying out criminal charges related to copyright crimes that are not piracy, the parties reside in the territory of the Republic of Indonesia. Mediation provisions in Law Number 30 of 1999 concerning Arbitration are a way of settling civil disputes outside the court to settle by deliberation and consensus with the help of a mediator. Meanwhile, mediation based on Perma Number 1 of 2008 is intended as an obligation for judges at the first level courts in the District Courts and Religious Courts in the context of resolving civil disputes. Settlement of copyright disputes is the authority of the Commercial Court, as a special court within the general court environment.[16]

As a result of Article 95 paragraph (4) of Law Number 28 of 2014 concerning Copyrights, it creates a choice of the forum which in cases with the same substance, the same object, is then given the freedom to choose it will cause the legal disorder. In addition, there will be a disparity in decisions. It is also possible that there will be oddities, because maybe when a decision comes from a general court, while a decision b comes from a commercial court for the same case, or there are two cases that have the same or even the exact resemblance, it will happen. Odd to the receiving party. The laws and regulations related to the settlement of so many copyright crimes are already disproportionate or even too many, leading to being over-regulated. In addition to being over-regulated, it is also very possible that laws and regulations overlap with each other (overlapping), disharmony, and cause conflict. This kind of condition occurs in Law Number 28 of 2014 concerning Copyright, Law Number 30 of 1999 concerning Arbitration, Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, Perma Number 1 of 2008

[14]Henry Donald Lbn. Toruan, "Penyelesaian Sengketa Hak Kekayaan Intelektual Melalui Acara Cepat", *Jurnal Penelitian Hukum De Jure,* Vol.17, No. 1 Maret 2017.

[15] Abdul Kadir Jaelani and others, 'The Crime Of Damage After the Constitutional Court ' s Decision Number 76 / PUU-XV / 2017', 1.1 (2021), 31–41.

[16]Suyud Margono, "Prinsip Deklaratif Pendaftaran Hak Cipta: Kontradiksi Kaedah PendaÕ aran Ciptaan dengan Asas Kepemilikan Publikasi Pertama Kali", *Jurnal Rechtsvinding.* Vol 1, No. 2, Agustus 2012.

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concerning Mediation Procedures Court of Justice. Supreme of the Republic of Indonesia, including in the copyright dispute resolution sector.[17]

The number of laws and regulations in Indonesia is partly since many people think that every policy carried out in implementing social and state life requires a legal umbrella in the form of legislation. Even though this kind of thinking is not entirely correct because it can be done with other instruments other than legislation, with the thought that every policy requires an umbrella of laws and regulations, it will increase the number of laws and regulations and the next series of potential for overlapping and disharmony will be even more significant.[18]

The Ideal Model for Optimal Copyright Enforcement from an Economic Perspective

The emergence of this economic analysis of criminal law was in 1764 when Cesare Beccaria published a book entitled On Crimes and Punishments. According to him, the imposition of criminal sanctions should be designed to a certain level to eliminate the benefits obtained by the perpetrators. Beccaria's thoughts on punishment influenced not only the well-known utilitarian thinker Jeremi Bentham but also lawyers and criminal law experts at that time. The incredible thing is that the concept of punishment offered by Beccaria changes the perspective of criminal law in European countries, emphasizing criminal individualization.[19]

The Beccaria concept seemed to be running in subsequent developments and only revived in the early '60s after Calabresi and Ronald Coase published their writings entitled unlawful acts and social costs. These two articles are the first attempts to apply economic analysis to law.[20] Economic analysis of law is growing after Garry Becker connects it to crime, racial discrimination, and so on.[21]

Concerning crime and crime, this economic analysis provides at least three significant contributions: First, economics provides a simple model of how individuals behave before the law, which more explicitly analyzes how individuals respond to the presence of criminal sanctions. Most of us do the best with what we have, or in the language of economics, we maximize profits in doing a specific activity; second, economics is relatively rigid in its empirical analysis. The main priority in empirical economic analysis is to distinguish between relationships and causes. This is because economists assume that human behavior is rational and has specific goals; and third, economics provides a clear metric in evaluating the success or failure of a criminal law policy. In this case, the normative criterion used is efficiency, and efficiency has implications for optimal law enforcement. In practice, this view is implemented in the form of a comparison between the costs and benefits of a policy.[22]

In general, it can be said that the main principles used to understand the economic analysis of criminal law are the principles of rationality and the principle of efficiency. The principle of rationality contains an understanding that humans carry out certain activities, including committing crimes, reason with the primary goal of maximizing the expected utility. What is

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[17]Nevey Varida Ariani, "Alternatif Penyelesaian Sengketa Bisnis di Luar Pengadilan" *Jurnal Rechtsvinding*. Vol 1, No. 2, Agustus 2012.

[18]Wicipto Setiadi, "Simplifikasi Peraturan Perundang-Undangan dalam Rangka Mendukung Kemudahan Berusaha", *Jurnal Rechtsvinding*. Vol 7, No. 3, Desember 2018.

[19]Keith N. Hylton, "Punitive Damages and the Economics Theory of Penalties", *Georgetown Law Journal*, Vol. 87, Tahun 1998.

[20]Richard Posner, 1998, *Economics Analysis of Law*, Edisi Kelima, Aspen Law & Business, New York, p. 25

[21]Robert Cooter dan Thomas Ullen, 2000, *Law and Economics*, Cetk Ketiga, Eddison Wesley Longman Inc Amerika Serikat, p. 2.

[22] Thomas Miles, "Empirical Economics and Study of Punishment and Crime" *Legal Reivew University of Chicago,* Vol. 237, Tahun 2005.

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meant by rationality here is choosing the best means for voters' purposes? For example, someone who wants to stay warm in winter will compare all the means used to create warmth in terms of the costs involved. The means with which the costs must be incurred the least will be chosen as a means to realize this warmth.

The concept of rationality comes from microeconomic theory, namely the theory of rational choice. This theory deals with many assumptions about how people respond to incentives. The use of this theory is significant to the interaction between the rule of law and society. This is because the law does not exist in a vacuum.[23] The presence of the rule of law will have an impact on a person's behavior. The notion of rationality (rational choice) itself is not a single understanding, in the sense that there is no widely accepted understanding of rationality.[24] Russel B. Korobkin and Thomas Ulen put forward at least four notions of this rationality; First, humans are rational maximizers in achieving profit/objectives. Rationality here is not followed by what means are used to maximize the goal (profit). This understanding of rationality, as coined by Richard Posner, is the weakest and most common understanding. Secondly, the notion of rationality is conceptualized with expected benefits. This understanding is stronger than the first understanding because it has specified how the actor will realize/satisfy his goals and choices. There are five conditions for this expected benefit: commensurability, transitivity, invariance, cancellation, and dominance.[25]

Third, self-interest, which means that the actor will try to realize the benefits and by what means he realizes the goals/profits depending on the interests of each actor. This understanding is more concrete than the expected benefits, and the last is wealth maximization, which means that the perpetrator will try to maximize the existing wealth. This understanding is the most specific and most powerful.[26]

If the concept of rationality above is associated with criminal law, the assumption that is born is that criminals are rational economic beings who weigh the costs incurred from committing a crime with the benefits to be gained. When the profit is greater than the costs incurred, the perpetrator will commit a crime.[27] On the other hand, if the profit earned is less than the cost, the perpetrator will give up his intention to commit a crime. In other words, individuals behave rationally to maximize the benefits they get.[28] They commit crimes when the benefits of committing an unlawful act exceed the expected costs of punishment. These costs include the time it takes either before or at the time of committing the crime, the cost of buying tools, the possibility of being arrested, detained, the cost of being punished, the livelihood/jobs lost if caught, and so on. Meanwhile, profits are physical benefits such as wealth, wealth, and psychological benefits such as pleasure, satisfaction, and others.

Analysis of costs and benefits is fundamental concerning efforts to tackle crime. The problem of crime prevention is closely related to the available budget allocation, while the

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[23] Syahlan, 'Effective and Efficient Synchronization in Harmonization of Regulations Indonesia', 1.1 (2021), 54–70.

[24]Russel B. Korobkin dan Thomas S. Ulen, "Law and Behavioral Science: Removing The Rationality Assumption from Law to Economics", *California Law Review*, Vol. 88 Tahun 2000.

[25]*Ibid.*

[26]Mahrus Ali, "Penegakan Hukum Pidana yang Optima (Perspektif Analisis Ekonomi atas Hukum", *Jurnal Hukum,* Volume 15, Nomor 2, April 2008.

[27]Thomas J. Miles, "Empirical Economics and Study of Punishment and Crime",

University of Chicago Legal Forum, Vol. 237 Tahun 2005.

[28]Dan M. Kahan, "Sosial Influence, Sosial Meaning, and Deterrence", *Virginia Law Review,* Vol. 83, Tahun 1997.

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analysis of costs and benefits is also related to how much resources should be allocated to tackle the crime.[29] Gary Becker put forward his thoughts on the concept of rationality associated with criminal law, first, the optimal criminal law policy. This thinking is related to the analysis of costs and benefits, which implies an effort to allocate resources in society in fighting crime. The theoretical assumption that is built is, if the existing criminal sanctions are severe enough, every criminal will avoid the possibility of being arrested, and this will reduce crime.[30]

Second, individual decisions concerning criminal activity. In this case, the criminal is a rational actor who weighs the costs and benefits and the time and resources allocated between criminal and non-criminal activities so that it is known which one can bring the most significant benefit. In other words, all people (not only criminals) are rational actors based on their subjectivity weigh the costs and benefits of the activities carried out.[31]

Some people choose activities that are labeled criminals because, for them, the benefits derived from these activities exceed the costs that must be incurred. To prevent them from committing criminal acts, what must be taken is to increase the costs incurred so that the profits obtained are smaller. The trick is to increase the number of penalties imposed or the opportunity to be arrested and tried. At the same time, the social costs that must be borne from law enforcement must be minimized so that they are at a minimum.

This means that the cost of law enforcement should not exceed the social losses that are intended to be prevented through law enforcement. In short, to minimize the social costs that must be borne by increasing the criminal sanctions, which are pretty severe and increasing the number of criminals arrested; and third, the existence of the criminal category. The main principle in optimal criminal law enforcement is based on the idea of maximizing social welfare. In designing policies, including policies prohibiting specific actions, the government must pay attention to the maximum benefit to be obtained. In the context of economic analysis of criminal law, social welfare can be pursued by considering the amount of profit earned by the perpetrator from committing the prohibited act, minus the losses caused by the act and expenses incurred in law enforcement.[32]

Losses due to this crime include social losses incurred, costs that potential victims must incur to take precautions not to become victims, and losses directly experienced by victims. Meanwhile, the cost of criminal law enforcement includes the cost of prevention, disclosure, arrest, and imposition of criminal sanctions. All of that must be measured and compared with the amount of profit that the perpetrator gets from committing a crime.[33] If the loss due to a criminal act (after being cashed) and the costs that the government must incur to overcome the crime through law enforcement officers are higher than the amount of profit earned by the perpetrator from committing a crime, then the optimization of law enforcement will not be realized. Therefore, what needs to be done is to use other instruments to prevent the crime from occurring. In other words, actions intended to be prohibited, and it turns out that the cost of law

[29]Lewis A. Kornhauser, "On Justifying Cost and Benefit Analysis", *Journal of Legal Studies*, Vol. 29 Tahun 2000.

[30]William L. Barnes Jr, "Revenge on Utilitarianism: Renouncing A Comprehensive Economics Theory of Crime and Punishment", *Indiana Law Journal*, Vol. 74, Tahun 1999.

[31] Arifin Ma'ruf, 'Legal Aspects of Environment in Indonesia : An Efforts to Prevent Environmental Damage and Pollution', 1.1 (2021), 18–30.

[32]Mahrus Ali, "Penegakan Hukum Pidana yang Optima (Perspektif Analisis Ekonomi atas Hukum", *Jurnal Hukum,* Volume 15, Nomor 2, April 2008.

[33]Mark A. Cohen, "The Economics of Crime and Punishment: Implications for Sentencing of Economic Crime and New Technology Offences", *George Mason Law Review,* Vol. 9 Tahun 2000.

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enforcement when a violation occurs is greater than the benefits to be obtained, should not be prohibited and handled with criminal law instruments.[34]

Another thing that needs to be done is to increase the possibility of perpetrators of criminal acts being arrested, convicted, and sentenced to severe punishment because, with that, social welfare can be realized. When the probability of being arrested is high, law enforcement against it will be optimal because there will not be many people committing criminal acts, and thus, not much cost must be incurred to tackle criminal acts and finance the operationalization of law enforcement. Likewise, with the possibility of being punished with a high crime that exceeds the profits obtained by the perpetrator. Because with that, the perpetrator will bear all the costs of his actions. This thinking is generally referred to as efficient punishment.[35]

An example of how to apply efficient punishment is if the perpetrator causes a loss of Rp. One thousand dollars and the probability of not being penalized is 50%, or the possibility of being convicted is 50%, then the expected penalty is 500 dollars. This amount is inefficient because the perpetrator will benefit from the crime committed if he is convicted. Faced with the $500 penalty, potential sufferers will spend as little as $500 to avoid harm. Meanwhile, the perpetrators clearly will not spend 600 dollars to avoid losses (convicted). This amount is not efficient because the community wants the perpetrators to be charged 600 dollars. Because the chance of being arrested and sentenced to 50 percent, the sentence imposed on the perpetrator must be doubled, which is 2000 dollars. Only with that, the perpetrator does not commit a crime. The 2000 figure includes losses directly suffered by victims, social costs, potential victims' costs, and law enforcement costs.[36]

In the economic analysis of criminal law, two models can be used to achieve optimal criminal law enforcement, namely, shaping the individual's opportunities and shaping the individual's preferences. The first has the conception that a person rationally chooses the available opportunities to realize the most significant satisfaction based on the available choices. At the same time, the second has the conception that a person will act rationally as long as the choices he has been complete, and he will choose the opportunity in which there is the most significant advantage based on the choices he has. A person will commit a crime based on the opportunities and choices they have. When the opportunity is enormous so that a person does not commit a crime, what must be done is to increase the possibility of being arrested, convicted, and sentenced to a significant (severe) criminal sanction. Likewise, when the options for committing a crime are complete, he will have many opportunities to commit a crime. Only in that way will criminal law enforcement be optimal so that social welfare, which is the primary goal, can be realized.

CONCLUSION

Simplification of laws and regulations is one way to produce a proportional field of laws and regulations and at the same time improve the quality of laws and regulations so that they do not overlap, disharmony, cause conflict, and duplication. Law Number 28 of 2014 concerning Copyright, Law Number 30 of 1999 concerning Arbitration, Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, Supreme Court Regulation Number 1 of 2008

[34]*Ibid.*

[35]Robert Cooter, "Prices and Sanctios", *Columbia Law Review,* Vol. 84, Tahun 1984.

[36]David D. Friedman, "Should the Characteristics of Victims and Criminals Count? Payne v Tennessee and Two Views of Efficient Punishment", *Boston College Law Review*, Vol. 34 Tahun 1993.

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concerning Mediation Procedures at the Supreme Court of the Republic of Indonesia, gave rise to choose of the forum which in cases with the same substance, the same object, is then given freedom of choice so that it will cause the legal disorder. The simplification of laws and regulations will succeed if they are supported by the political will of the highest state leadership assisted by institutions that have a single, authoritative and robust authority and are supported by all stakeholders.

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