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COMBATTING PIRATED VCDs/DVDS IN BATAM CITY, INDONESIA: “FACTS AND EXPECTATIONS”ELZA SYARIEF¹ AND RINA SHAHRIYANI SHAHRULLAH²**ABSTRACT**

Piracy levels in Indonesia are among the highest in the world, at an 85-95% range for all industry sectors. Among other Indonesian cities, Batam City remains a haven for pirated VCDs/DVDs. This research analyses the reasons why the people of Batam buy pirated VCDs/DVDs and provides solutions for the effective implementation of the Copyright Law. The research finds that even though most of Batam society understands that pirated VCDs/DVDs constitute a violation of the Copyright Law, they still buy them because newly released foreign movies can be purchased at lower prices. In order to prevent or minimize the copyright infringement, the law enforcers should establish best practice by imposing optimum penalties on the perpetrators. The Batam City government should engage the community to combat the sale and production of pirated VCDs/DVDs by raising public awareness regarding the implementation of the new copyright law and imposing strict penalties on the violators.

Key Words: Pirated VCDs/DVDs, Copyright Law, Batam City

INTRODUCTION

Violations of Intellectual Property Rights (IPR) are still happening and are becoming even more alarming. One of these violations is the production of pirated VCDs/DVDs. Copyright violations in the form of pirated VCDs/DVDs in Indonesia are rampant. The Recording Industry Association of Indonesia (ASIRI) complains that a number of pirated CDs/VCDs containing songs that were hits in Indonesia are circulated publicly without payment of royalties. Pirated CDs/VCDs of Indonesian songs reached 3 million copies and pirated versions of foreign songs reached 120 million copies in circulation in 2002 (Taufiqurrahman, 2003). According to the Chairman of the Recording Industry Association of Indonesia (ASIRI), approximately 237 million songs were illegally downloaded per month or 7 million songs per day in 2015 (Tempo Co. Tekno, accessed 3 April 2017).

In Indonesia, sales of pirated copyrighted works in the optical disc medium of either VCDs/DVDs are conducted blatantly, ranging from the store in the shopping centre (mall) to retail traders alongside the road. This is not surprising considering the huge price difference between the pirated versions and the originals. The price might vary from 1/10 to 1/20 of the original. Besides the price, copying an optical disc does not require any special skills, and only needs a simple computer. Indonesia has suffered greatly from this piracy. The traders might obtain billions of rupiah without paying anything to the state (Sjahputra, 2016).

Among other Indonesian cities, Batam City remains a haven for pirated VCDs/DVDs. It is one of the high circulation areas for pirated VCDs/DVDs in Indonesia. Many original versions have not yet officially been screened in cinemas in Batam City. There are five cinemas in various malls which screen both Indonesian and foreign films. The cinema tickets vary from Rp. 25,000 (twenty-five thousand rupiah or US\$2,5) to Rp. 40,000 (fourty thousand rupiah or US\$7). According to Batam-today (an electronic newspaper in Batam), the price of new pirated VCDs/DVDs in Batam is around Rp. 10,000 (ten thousand rupiah or US\$1). They can easily

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be found in many plazas and markets (e.g. Plaza Top 100, Plaza Botania, Plaza Mustafa, Nasa Market) in Batam City.

LEGISLATIVE AND THEORETICAL FRAMEWORK

The Indonesian Government has enacted a new Copyright Law, namely Law No. 28 of 2014 to amend Copyright Law No. 19 of 2002. The new Copyright Law is generally favourable to copyright owners. Prior to the enactment of this new law a number of regulations to anticipate and combat intellectual property (IP) piracy, especially with optical products (CDs, VCDs, DVDs), have been issued. They are namely: Government Regulation No. 29 of 2004 regarding High Technology Production Facilities for Optical Discs; the Decree of the Minister of Trade and Industry No 645/MPP/Kep/10/2004 regarding the Provisions on the Importation of Machines, Machinery Equipment, Raw Material and Optical Discs; and the Decree of the Minister of Trade and Industry No. 648/MPP/Kep/10/2004 regarding the Report and Supervision of Companies of Optical Disc Industries. In addition, the Indonesian Government also established the Directorate of Investigation under the Directorate General of Intellectual Property Rights on 30 December 2010 for the purpose of combating IPR infringement in Indonesia. On 4 September 2012 the National Taskforce on Intellectual Property Rights, a team consisting of 13 ministries, police, and public prosecutors, was established by Presidential Decree No. 4 of 2006 to mitigate IPR violations in Indonesia, by distributing posters or banners concerning the prohibition of selling or distributing pirated CDs, VCDs and DVDs and software in several places in Jakarta, namely the Glodok area, Harco Glodok Mall and Plaza Pinangasia. The investigators of the Directorate General of IPR successfully raided one of the producers of pirated VCDs and DVDs located at Plaza Glodok (North Jakarta) on 1 February 2013. The raid was directly led by the Director of Investigations, Moh. Adri, and successfully seized six tonnes of pirated VCDs and DVDs from three locations (Kusumah and Prabawa, 2012). Although Indonesia has a new Copyright Law and has conducted a number of raids against pirated VCDs/DVDs, it appears that their circulation in Indonesia cannot be stopped.

This research adopts the Effectiveness of Law Theory by Soerjono Soekanto. This is because this theory examines the effective implementation of a law since it approaches both law in books and law in actions. Soekanto (2008) asserts that the effective implementation of law is very much influenced by five factors, namely:

1. The legal substance must contain justice, certainty and utility.
2. Law enforcers must be professional and ethical.
3. Legal facilities and means must be supported by good organisation, equipment and adequate finance.
4. Society must act to achieve harmony among its members.
5. The legal culture must contain the common values of society (e.g. the values of morality, sustainability, security and order).

RESEARCH AIMS AND METHODS

This research aims to analyse the reasons that the Batam community buys pirated VCDs/DVDs and provide solutions for the effective implementation of the new Copyright Law. To meet these aims, it has adopted a socio-legal/empirical research method that considers law as a social phenomenon with a structural approach (Saptomo, 2009). Socio-legal research covers research on the identification of unwritten law and the implementation of law, i.e. the effectiveness and impacts of law (Soekanto, 1984). This research focuses on the effective implementation of the Copyright Law against the circulation of pirated VCDs/DVDs in Batam City. The data used by this research was primary data, collected through in-depth interviews (Amiruddin, 2004; Wignjosoebroto, 2002) with students, lecturers, VCD/DVD pirates and the public by using random sampling. In addition, observations at a number of malls which sell these pirated materials were also conducted. Secondary data used by this research focused on Law No. 28

of 2014 as the primary or authorized legal material. It also used secondary legal materials, which were collected from articles, books and other relevant materials on Copyright Law to support the primary legal material (Marzuki, 2008). All the data was analysed based on its content (content analysis) using a qualitative approach to seek answers to the questions (Coutin, accessed July 2016):

1. Why has the Copyright Law not been effectively implemented in Batam City?
2. How can the circulation of pirated VCDs/DVDs be combatted in this city?

RESEARCH FINDINGS

Currently, the circulation of pirated VCDs/DVDs in Batam City is still rampant, even though the Copyright Law governs the activity of piracy and provides heavy penalties. Article 1(24) of the Copyright Law stipulates: “Piracy is the copying of works and/or products related rights with the unauthorized duplication and distribution of goods aimed extensively to gain economic advantage”. Article 113(4) of the Copyright Law emphasizes: “Any person who commits the actions referred to in paragraph (3) and carried out in the form of piracy, shall be punished with imprisonment for ten (10) years and/or a maximum fine of Rp.4,000,000,000 (four billion rupiah)”.

Based on the observations for this research, pirated VCDs/DVDs are not only sold in plazas but also in malls in Batam City, e.g. Mustafa, Top 100, Botania Plaza and BCS and Nagoya Hill Mall. Their sales can also be found along the roads near the plazas. Figure 1 below shows one of the outlets selling pirated VCDs/DVDs.

Figure 1: Sales of pirated VCDS/DVDs



Sellers of pirated VCDs/DVDs can get a 100 percent profit from each sale. Most of the products are obtained from Jakarta and sent to Batam City (Zaimi and Dodo, 2015). Based on the interviews with the sellers of pirated VCDs/DVDs, they all said that the price of pirated ones is not high. It is only Rp.10,000 (ten thousand rupiah or around US\$1) for films and Rp.5,000 (five thousand rupiah or around US50 cents) for songs. Some of them are new films which have not yet been played in Batam City. In addition to ordinary pirated VCDs/DVDs, pornographic pirated VCDs/DVDs can also be obtained in some outlets in Batam City. Barelang police seized 175 pornographic pirated VCDs/DVDs in the area of Jodoh Boulevard (near Top 100 Plaza) on 27 February 2015 (JPNN, 2015). Interestingly, the raids only stopped the circulation of these pirated materials temporarily.

The interviews with the sellers of pirated VCDs/DVDs in Nagoya Hill Mall and Top 100 Plaza revealed that most of the pirated materials contain foreign songs and movies. Only a small number of them are Indonesian songs and movies. According to the traders, during the raids the polices only seized those which contained Indonesian songs and movies. They left the foreign pirated VCDs/DVDs untouched. It is questioned whether the Copyright Law only

protects the Indonesian creations. It should be noted that the Copyright Law does not discriminate between the creations of Indonesian and foreigners as Article 2 of the Copyright Law stipulates: “This law applies to:

- all works and product related rights of citizens, residents and Indonesian legal entities;
- all works and product related rights of people who are not citizens of Indonesia, are not Indonesian residents and do not have an Indonesian legal entity, and the publication of which [works and products] was first made in Indonesia;
- all works and/or product related rights and users of works and/or product related rights who are not citizens of Indonesia or Indonesian residents, and do not have Indonesian legal entity, provided that:
 1. The country has a bilateral agreement with the Republic of Indonesia concerning the protection of Copyright and Related Rights; or
 2. The country and the Republic of Indonesia are parties or participants in multilateral agreements giving the same protection regarding Copyright and Related Rights.

It should be noted that Indonesia joined the World Intellectual Property Organization in 1979 and has become a member of the WIPO treaties; consequently, the Copyright Law is applied to non-Indonesians whose countries are WIPO members. The management of malls and plazas, where the pirated VCDs/DVDs are sold, does not take any action to stop their circulation even though they know that the Copyright Law prohibits it. Article 10 of the Copyright Law stipulates that: “Business trading places are forbidden from allowing the sales and/or duplication of goods that infringe Copyright and/or related rights in a trade under its management”. This Law also imposes sanctions as Article 114 of the Copyright Law stipulates: “Every person managing a place of trade in all its forms, who deliberately and knowingly allows the sale and/or duplication of goods that infringe Copyright and/or related rights in a trade under its management, as referred to in Article 10, shall be punished by a fine of Rp. 100,000,000,00 (one hundred million rupiah)”. Buyers of pirated VCDs/DVDs are not merely adults, as minors are also consumers even though their parents buy the pirated copies for them.

Many consumers of these pirated materials are educated people. Forty-eight law students randomly chosen for the interviews revealed that all of them (48 students) have bought pirated VCDs/DVDs at plazas (15 students), malls (23 students) and on the streets (10 students). The students all understand that the pirated products infringe the Copyright Law as it is shown by Table 1.

Table 1: Law students’ attitudes to pirated VCDs/DVDs

Question	Response
Have you ever bought pirated VCDs/DVDs?	Yes (48)
Where do you buy them?	Plaza (15) Mall (23) Street (10)
Do you know that pirated VCDs/DVDs are an infringement of the Copyright Law?	Yes (48)

Source: Data analysed by authors

In-depth interviews with five university lecturers also revealed that they know about the sales of pirated VCDs/DVDs in many areas in Batam City. Some of them have bought pirated

copies even though they are not regular customers. They also know that the sales of pirated products violate the Copyright Law, but they do not take action against it. Random interviews with 24 citizens from various areas of Batam City revealed that only three respondents said they have never bought pirated VCDs/DVDs. The others said they bought pirated VCDs/DVDs in malls (10 respondents), plazas (5 respondents), streets (8 respondents). Table 2 shows the responses of Batam City citizens regarding pirated VCDs/DVDs.

Table 2. Batam City citizens' responses to pirated VCDs/DVDs

Question	Response
Have you ever bought pirated VCDs/DVDs?	Yes (21) No (3)
Where do you buy them?	Plaza (5) Mall (10) Street (8)
Do you know that pirated VCDs/DVDs are an infringement of the Copyright Law?	Yes (24)

Source: Data analysed by authors

Today, Batam City society has a tendency to buy pirated VCDs/DVDs on the grounds that the price is very cheap compared to the original product. 80 respondents (48 students, 24 Batam City citizens, 5 lecturers and 3 sellers) from various economic backgrounds, levels of education and gender were asked the question: "Why do you or people tend to buy pirated VCDs/DVDs?" Seventy-five respondents answered that the price of pirated VCDs/DVDs is very much cheaper than original ones. Pirated VCDs/DVDs especially films cost only Rp. 10,000 (ten thousand rupiah or US\$1), whereas the original versions are Rp.100,000 (one hundred thousand rupiah or US\$10). Five respondents answered that they can enjoy the newest movies or latest music albums which are not yet circulating officially in Batam City. Films that have not been screened in cinemas can be purchased easily at most shopping malls, plazas and streets in Batam City. Seventy respondents said that today a lot of pirated VCDs/DVDs have a good quality picture and sound. The most frequent comment from the public consumers of pirated VCDs/DVDs in Batam City are: "We are looking for pirated VCDs/DVDs because counterfeit goods are sold at a much cheaper price. After all, the picture and sound quality is not much different from the original ones".

DISCUSSION

A. Analysis of the effective implementation of the Copyright Law

As mentioned previously that the Effectiveness of Law Theory by Soerjono Soekanto states that the effectiveness of the implementation of law is very much influenced by five factors, namely the legal substance, law enforcers, legal facilities and means, society behaviours, and legal culture. The first factor provided by this theory examines the substance of the legal instruments. In this regard, it is questioned whether the Copyright Law meets the requirements of justice, certainty, and utility. The answer is affirmative since the substance of this Law clearly states: "The developments in science, technology, art and literature have been so rapid that increased protection and a guarantee of legal certainty are required for the creators, rights holders and owners of related rights". This statement meets the requirements of the justice and

certainty of a legal instrument. This Law further states: “Indonesia has been a member of various international agreements in the field of copyright and related rights but further implementation is required in the national legal system so that the national creators are able to compete internationally”. This statement manifests the utility of a legal instrument. The substance of the Copyright Law among other things covers the protection of copyright and related rights, economic rights, traditional cultural expression and creation, the limitations of copyright, licences, costs, dispute resolutions and penalties. In general, the substance of the Copyright Law is favorable to copyright owners. On this point, it can be said that from a legal substance perspective, the Copyright Law complies with the requirements of justice, certainty and utility.

The second factor influencing the effective implementation of law according to the Effectiveness of Law Theory is that the conduct of law enforcers (police, prosecutors, judges and lawyers) must be professional and ethical. In conjunction, it is obvious that the professionalism of law enforcers, especially the police in Batam City, in acting against the circulation of pirated VCDs/DVDs is questionable. Based on the interviews with the sellers of pirated VCDs/DVDs, it was found that law enforcement in this regard in Batam City occurs sporadically and only focuses on Indonesian pirated products. This indicates the absence of the will of law enforcement to act on the Copyright Law. It is even dilematic because the sales of pirated VCDs/DVDs are sometimes conducted in front of law enforcers. For example, plazas and malls which sell pirated VCDs/DVDs are located not far from police stations. It seems that copyright infringement, particularly the sale of pirated VCDs/DVDs is a common offence in Batam City. Yet no serious action is being taken by law enforcement on the copyright violators (sellers and the management of retail places). In general, the Indonesian court system is also weak in enforcing the Copyright Law. The weakness of prosecutors in Batam City is that their familiarity with the Copyright Law matters is still inadequate. In addition, it is considered difficult for the police and prosecutors to present evidence (International Intellectual Property Alliance Report, 2003). Judicial orders to destroy seized pirated VCDs/DVDs have often been ignored and the court proceedings are costly and lengthy. The law enforcers, especially the police, who are obliged to combat Copyright Law infringements in connection with the circulation of VCDs/DVDs in Batam City are not professional. Their discriminatory attitudes towards Indonesian and foreign pirated VCDs/DVDs indicate that they do not fully understand the substance of the Copyright Law and how to consistently implement it (Hidayah, 2008).

The third factor under the Effectiveness of Law Theory which must be met for the effective implementation of law is adequate legal facilities and means. Irregular and unsustainable raids against pirated VCDs/DVDs in Batam City indicate that there is a lack of facilities and means to combat this piracy. Good organization of law enforcement is also a main condition to achieve the effective implementation of law based on the Effectiveness of Law Theory. This is not fully met in Batam City. According to the report of a Haluan Kepri journalist (Kepri, 2014), the distributors of pirated VCDs/DVDs in Batam City with the initials YH and ACN can be easily found in the area of Nagoya Hill Mall and Botania Plaza. It was reported that the distributors have bribed certain police to allow them to conduct this illegal business. The businessman with the initials ACN, whose business is located behind DC Mall, confessed that he has “secured” his pirated VCD/DVD business by bribing certain relevant stakeholders. In addition, there is a lack of intensive coordination between the police and civil servants under the Directorate General of Intellectual Property in seizing pirated VCDs/DVDs in Batam City. This failure to meet the third factor of the Effectiveness of Law Theory may contribute to the ineffectiveness of implementing the Copyright Law in Batam City.

The fourth factor stipulated by the Effectiveness of Law Theory is society’s actions against a legal instrument. In this regard, it is apparent that most of Batam City society is not obeying the implementation of the Copyright Law. This is manifested by the conduct of society

in buying pirated VCDs/DVDs, even though they know that it is against the Copyright Law, simply because the price of the pirated ones is much lower than the original ones. The option to buy pirated VCDs/DVDs in Batam City is not merely because of the economic conditions of buyers. People in the middle and even upper economic classes in Batam City also buy them (Lamaberaf, 2015). Both educated and non-educated people buy them on the grounds that the films have not been screened in Batam City. People in Batam City still consider that it is a common practice to buy pirated VCDs/DVDs. They even opine that the producers and retailers do not commit any crime as long as the pirated ones are not Indonesian products or pornographic films. This thought is derived from the actions of the police who only seize the Indonesian and pornographic pirated products. The ignorance of the police regarding foreign and non-pornographic pirated VCDs/DVDs contributes to the peoples' acceptance of the pirated goods in Batam City. The sellers even argued that: "the distributors of pirated goods in the Nagoya area of Batam City must be arrested instead of seizing the pirated goods of small retailers" (Zaimi, 2016).

The fifth factor under the Effectiveness of Law Theory is the legal culture of a society. In this regard, the Theory stipulates that there should be common values in society regarding morality, sustainability, security and order for the effective implementation of a legal instrument. Based on the empirical research, it is clear that most of Batam City citizens understand that pirated VCDs/DVDs infringe the Copyright Law, yet they demonstrate skeptical attitudes toward the circulation of pirated VCDs/DVDs in Batam City. They are even permissive towards copyright infringements due to a lack of serious action taken by the legal enforcers. Abdussalam (2007) states that violations of norms frequently occur in society because of "too much tolerance towards legal violators, ignorance of legal offenses, and disrespectful attitudes of certain legal enforcers which taint the good image of the entire legal enforcement". It is obvious that the situation identified by Abdussalam occurs in Batam City today. It seems that the society of Batam City has shifted its perceptions regarding pirated VCDs/DVDs because the people consider that pirated VCDs/DVDs are illegal only if they are classified as pornographic or are Indonesian productions. This may be true because they do not make any effort to stop the circulation of pirated VCDs/DVDs. On the contrary, they buy them for different reasons and consequently their circulation is mushrooming in Batam City.

B. Proposed actions to combat the circulation of pirated VCDs/DVDs

Based on the analysis of the implementation of the Copyright Law in Batam City, it can be deduced that the ineffective implementation of the Law is caused by four factors under the Effective Law Theory, namely:

1. Law enforcers are not professional in tackling the circulation of pirated VCDs/DVDs.
2. Legal facilities and means of supporting the raids and seizure of pirated VCDs/DVDs are not adequate.
3. Society has different perceptions regarding pirated VCDs/DVDs, since only those of Indonesian productions or pornographic films are considered to be an infringement of the Copyright Law.
4. The legal culture of Batam City society is skeptical and permissive of the copyright infringements due to a lack of serious action being taken by legal enforcers.

It is obvious that among the five factors stipulated by the Effectiveness of Law Theory, only the first factor, namely the legal substance of the Copyright Law, supports the effective implementation of this Law in Batam City. At this juncture, this research proposes several solutions which may improve the effective implementation of the Copyright Law in Batam City. The solutions, given are based on the approaches of the Effectiveness of Law Theory, are presented by Table 3.

Table 3. Proposed solutions to improve the effective implementation of the Copyright Law

Factors impeding the effectiveness of the Copyright Law	Proposed solution for the effective implementation of the Copyright Law
<p>The lack of professionalism of law enforcers in tackling the circulation of pirated VCDs/DVDs.</p>	<p>Raids against the circulation of pirated VCDs/DVDs should be conducted regularly, without any discrimination towards foreign songs or films.</p> <p>Regular dissemination of the Copyright Law to legal enforcers, either by conducting workshops and seminars or by posting posters and banners as reminders in their offices.</p> <p>Judges who handle the Copyright Law or any Intellectual Property Rights (IPR) cases must have the courage to strictly implement the IPR laws in their decisions. They should establish a best practice by imposing optimum penalties on the perpetrators.</p> <p>Imposing heavy penalties on any stakeholders who support the circulation of pirated VCDs/DVDs.</p>
<p>Inadequacy of legal facilities and means to support the raids and seizure of pirated VCDs/DVDs.</p>	<p>Conducting regular coordination between the police and civil servants of the Directorate General of Copyright in seizing pirated VCDs/DVDs.</p> <p>Establishing a partnership between law enforcers, the community, the government and businessmen [retailers] or industries to combat the production and sale of pirated VCDs/DVDs.</p> <p>Raising public awareness regarding the implementation of the Copyright Law.</p>
<p>Different perceptions of society in its approach to pirated VCDs/DVDs.</p>	<p>Applying sanctions on the sellers and the management of trading places that sell pirated VCDs/DVDs.</p>

Skeptical and permissive legal culture of society towards copyright infringements.	Educating the people of Batam City that buying pirated VCDs/DVDs supports crime.
	Campaigning with the slogan of “Circulating or selling pirated VCDs/DVDs is a crime with heavy penalties”.

Source: Data analysed by authors

The proposed solutions in Table 3 emphasise not only the improvement of legal enforcement and but public awareness is also required for the effective implementation of the Copyright Law in Batam City. Public awareness is very significant in combating the production and sale of pirated VCDs/DVDs because, in the absence of public demand for the pirated goods, their sale or circulation could be stopped. This approach is supported by Arief (1998) quoting the opinions of Taft and England which explain that law is a means of social control, therefore customs, group support and/or pressure, as well as public opinion can be more effective in regulating people’s conduct than legal sanctions.

CONCLUSIONS

Violations of Intellectual Property Rights (IPR) especially copyright in Batam City keep occurring due to the weaknesses of Copyright Law enforcement by those responsible. In addition, a lack of public awareness relating to the implementation of the Law contributes to the increase in sales and circulation of pirated VCDs/DVDs in this city. In order to combat infringements of the Copyright Law, it is a challenge for law enforcers to educate people in Batam City to not support this crime by buying, selling and circulating pirated VCDs/DVDs. At the same time, law enforcers and their organizations must improve their performance in combating pirated VCDs/DVDs by conducting regular raids and seizures at malls, plazas or streets where pirated goods are sold. The Copyright Law must be made familiar to law enforcers and the public in Batam City in order to abolish the bad reputation of the city as a haven for pirated VCDs/DVDs. This label taints the reputation of the city which may discourage foreign investors.

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