

## Copyright Law Enforcement: An Indonesia Case Study

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Copyright protection is an essential factor to support the nation's creativity. This study aimed to analyze the implementation of copyright law enforcement in Indonesia. The analysis focuses on the implementation of copyright regulations and the influence factors. Data were gathered through literature study, interview, and observation. Data were analyzed by framework law enforcement theory of Lawrence M. Friedman. The results showed that the enforcement of copyright law in Indonesia had obstacles from the government officers and the society. The government officers had limited knowledge about the copyright and habitual corrupt behavior. The society had low awareness and assumed that copyright infringement was not a violation of the law. This research is expected to contribute to overcome copyrights infringement in Indonesia and become a reference for other countries.

**Keywords:** Copyright, WIPO, PAPPRI, ASIRI, IIPA, PERC, Collecting Management Organization, Priority Watch List, infringements

Transformation from industrialization *era* to knowledge *era* has made intellectual property rights (IPR) more important asset. The importance of the IPR was reported in *The Washington Post*, 28/04/2001 which says “. . . if there is one lesson in the past half century of economic development, it is that natural resources do not power economies, human resources do”. The claim reminds us that in an economic growth, human resources hold a more important role than natural resources. The report in supports the statement of a modern economic expert, Tapscott, who says that “...the new economy is a knowledge economy and the key assets of every firm become intellectual assets ...”<sup>1</sup>. World Intellectual Property Organization (WIPO) also states that the IPR can enrich an individual life and a future of a country. Therefore, the IPR infringements still can be found in many countries. States Trade Representative (USTR, 2009) reported that copyright infringements are common in China, and the intellectual property infringements are committed by prominent members of the automotive and electronics industries. The American Chamber of Commerce in China surveyed over 500 of its members doing business in China regarding IPR for its *2016 China Business Climate Survey Report*, and found that the IPR enforcement was improving, but significant challenges still remained.<sup>2</sup>

Copyright is the most pirated intellectual property rights. Business Software Alliance (2014) reported that the use of pirated softwares were still in a high level especially in developing countries (Table 1).<sup>3</sup>

Indonesia is a developing country which attempts to overcome the copyright infringements. The Government of Indonesia realizes that the protection of the copyrights holds a very important role in supporting the development of Indonesia. However, there are still many copyright infringements. They are done openly in public with no worries of being arrested by law enforcement agencies. The law enforcement agencies are more likely letting the infringements to happen. The copyright infringements are considered as normal measures by the society, not as serious crimes.<sup>4</sup> This article discusses the copyright infringements in Indonesia and explains the causal factors.

The purpose of this paper is to analyze the root causes of copyright infringement in Indonesia. The root of the problem can be the basis for the government to improve the copyright law enforcement system. The paper is motivated by the importance of copyright protection to support the nation's creativity. Good copyright protection can improve the nation's competitiveness.

### Law Enforcement

Law enforcement is not considered as a simple matter, not only because of the law system's complexity itself, but also due to the complex

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Table 1 — Unlicensed Software Use (2013)

S. No.	Countries	Unlicensed software (%)
1	Venezuela	88
2	Bangladesh	87
3	Indonesia	84
4	Vietnam	81
5	China	74
6	Argentina	69
7	Russia	62
8	Australia	21
9	Japan	19
10	United States	18

Source: *Business Software Alliance (2014)*

relations among the law system and social system, political system, economical system, and the culture of society. As a process, law enforcement essentially is a variable which has a correlation and an interdependency with other factors.

This article applied the theory of law by Lawrence M. Friedman to analyze the causes of the IPR infringements in Indonesia. Friedman states that there are three factors which affect the process of law enforcement, they are: legal substance, legal structure and legal culture.<sup>2</sup>

The *Substance* is a rule, norm, and human's behavioral pattern in the system. The substance is the product created by the individuals in the law system; it includes their decisions or new regulations. The substance holds an important role in driving the performance of an organization, as a direction and guidance. The *Structure* is the framework of the law enforcement, the part which contributes the forms and the limits of the whole system. The law enforcement structure includes constabulary, attorney, judiciary, lawyer and correctional. *Legal Culture* is the attitude of an individual towards the law and its systems, trusts, values, thoughts and expectations.

According to Friedman, popular legal culture is both shaped by law and had the power to shape law. Thus, legal culture could provide a rich trove of information about how law is regarded by consumers of the legal system. Friedman proposed a three-pronged social theory for the study of law and popular culture that turned on three ideas: (1) explanations about law exist both inside and outside the legal system; (2) boundaries of law are porous and permeable to exchanged information; and (3) law is a dependent variable in a greater social system of other dependent variables.<sup>6</sup>

Legal culture is the individual's total body of knowledge, values, and attitudes in regard to his rights and opportunities to exercise them in practice. The process of the emergence of the rule-of-law state directly requires the shaping of citizens' legal culture. Legal culture represents a comprehensive complex of phenomena of civic life, one that includes legal norms, principles, awareness of the law, legal relations, and legal behavior in the process of realizing the goals of life. Each of the above elements reflects different aspects of legal culture, and in their aggregate they form the structure of it, in which two levels are to be discerned: The first is the level of public and legal institutions among a number of objective structures that form the legal space of the life and activity of young people and create the conditions necessary for them to exercise their rights. The *state* of the legal system is a most important prerequisite and a necessary condition for the formation and functioning of legal culture. The second is the level of group and individual awareness of the law and the behavior of the cohort of young people.<sup>7</sup>

### Methodology

The naturalistic was applied in this paper. The research was conducted scientifically in a perfectly normal situation without any improvements or manipulations and only focused on a natural description. The data collection was conducted naturally.<sup>8</sup>

### Setting

The research was conducted directly in the field and assimilated the data from the society involved in the IPR infringements which especially happened in Solo, Yogyakarta, and Bandung. The cities were chosen as it was the center of the circulation of pirated products in Indonesia.

### Participant

The subjects of the research came from various parties such as academicians, practitioners, officials, producers, and consumers who were directly involved in the law enforcement of the IPR. Specifically, here is the list of the research subjects:

1. The Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights, with all the corresponding staffs of the IPR law enforcement. This subject was interviewed to obtain data about the problems encountered in the copyright registration process.

2. Professor Agus Sardjono as the Professor of IPR from University of Indonesia. Professor Agus is an expert in IPR. His analysis was helpful to find the root cause of copyright infringement.
3. Pratomo Satriawan, as the Investigator of IPR Sub-Directorate I of Trade and Industry of Indonesia National Police Headquarter. Mr. Pratomo is an investigator in the field of IPR in the Indonesian Police. He gave a lot of information about the situation and conditions of copyright piracy in Indonesia.
4. Justisiari P. Kusumah, as the Consultant and the practitioner of IPR. Mr. Justi informed his experiences as a IPR consultant. He told the level of society awareness about IPR.
5. Marulam J. Hutauruk, as the General Manager of the Recording Industry Association of Indonesia. Mr. Marulam is a music producer. He informed the challenge to survive in pirated product era.
6. The sellers and consumers of pirated products. They gave information about reason and background why they produced and consumed pirated products.

### Data Collection

The data was collected through literature reviews, observations, and interviews. This research applied a non-systematic observation, where the researcher assimilated directly in the society to observe the IPR piracy phenomenon occurred within it. This research applied two models of interview: structured interview and unstructured interview. The former was conducted formally with the interviewees from the academic and practitioners. The latter was conducted on the producers and consumers of pirated products.

### Data Analysis Technique

The research used the qualitative data analysis claimed by Miles & Huberman.<sup>9</sup> Qualitative data analysis consists of three concurrent flows of activity: data reduction, data presentation, and conclusion drawing/verification. Data reduction is a process of selecting, focusing, simplifying, abstracting and transforming the raw data collected from the field notes in order to draw a final conclusion. The data was presented in the form of simplified and selective compilation of pieces of information which makes it easier to use to draw conclusion. The conclusion is drawn after the data have been organized and presented. The model of interactive analysis claimed by Miles and Huberman can be seen in Figure 1.

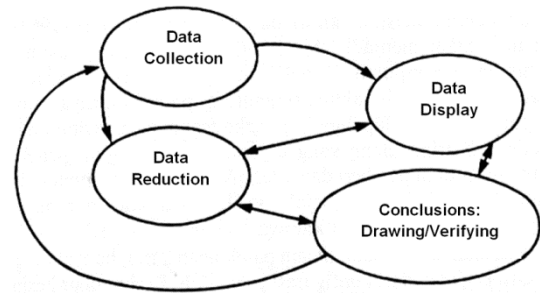


Fig. 1 — Components of Data Analysis: Interactive Model  
(Source: Miles & Huberman, 1984)

### The IPR Infringement in Indonesia

The result of the research shows that Indonesians still lacks the understanding of IPR. This is what causes the low-level of awareness of it. According to opinion poll conducted at the Directorate General of IPR, 77% of the respondents state that the level of IPR awareness in Indonesia is ranked as low (<http://www.dgip.go.id>, 2014). Thus, the impact is the level of the IPR infringements in Indonesia is ranked as high. Piracies, plagiarisms, imitations, forgery, illegal using and more similar crimes are still not considered as serious acts of crime compared to others. Furthermore, pirated products are sold in public without any fear of violating the law.

According to the data obtained from Indonesia National Police Headquarter in 26/01/2014, in the period of 2011-2013, there was an increase of IPR infringement cases in Indonesia, especially copyright infringements. In 2011 there were 209 cases of infringements with 258 suspects. In 2012, the infringements increased up to 338 cases with 309 suspects.

In software piracy, Business Software Alliance (BSA) reported that in 2013, Indonesia was in the 12<sup>th</sup> place of 108 countries, which committed software piracy around the world. 82% of software available in Indonesia was pirated (Tempointeraktif, 22/05/2013). The International Data Corporation's (IDC) sixth year study about Global Software Piracy in 2008 also show that Indonesia was in 12<sup>th</sup> place of 25 countries with the highest level of software piracy in Asia-Pacific. In 2013, if compared to 2012, the number of piracy increased by 1% from 84% to 85% with the loss of US\$ 544 million or Rp 5.6 billion. It means that from 100 computers, 85 were installed with an illegal or unlicensed software (Hukumonline, 12/05/2014).

According to the Chairman of the Association of IPR Legal Consultants of Indonesia, Justisiari P. Kusumah, SH., in 2013, Indonesia went down from

the 3<sup>rd</sup> place to the 12<sup>th</sup> place, but the number of the piracy increased from 85% to 86%. This was caused by the increasing number of computer users in Indonesia (Interview, 26/01/2014).

The Recording Industry Association of Indonesia and The Singers (ASIRI), Songwriters and Song Publishers Association of Indonesia (PAPPRI) also reported that the number of copyright piracy in music kept increasing drastically by years as shown in Table 2.

The current description of the IPR piracy in Indonesia can be seen from the result of the survey conducted by Political and Economic Risk Consultancy (PERC) whose base is in Hong Kong. In a survey in 2014, PERC reports that Indonesia was noted as the worst country in protecting the IPR. Indonesia had released a new regulation which would improve the IPR protections. However, it was not effectively established, and still, the level of piracy in Indonesia is ranked as the highest around the world. Indonesia scored 8.5 out of 10 points, while 0 is the best score (Table 3).

The description of infringements above has categorized Indonesia as “Priority Watch List” by the *International Intellectual Property Rights Alliance* (IIPA) and *United States Trade Representative* (USTR).

According to the IPR Professor of Indonesia University, Prof. Agus Sardjono, one of the causes of the ineffectiveness of the IPR law enforcement was the difference between the IPR concepts with the philosophical view of the majority of the society. The society thought that the IPR was an individual culture while the society themselves followed communal wisdom.

### The Obstacles of the IPR Law Enforcement

The result of the research shows that there were some obstacles in handling the IPR infringements in Indonesia. The IPR law enforcement experienced difficulties which were caused by several factors such as the law enforcement agency, the society, or even

the IPR owners themselves. In fact, the IPR law enforcement in Indonesia is still far from expectation, especially from the human resources’ ability of the law enforcement agencies. Most of them do not understand the ins and outs of the IPR.

Another obstacle in the IPR law enforcement was the society’s lack of understanding over the IPR. This issue was caused the society to disrespect and not to value it, and thus, infringements happened. These infringements in the forms of piracies, plagiarisms, imitations, forgery, illegal using and more similar crimes have not been considered as serious acts of crime compared to other act of crimes. Pirated products are sold in public without any fear of violating the law. These infringements happen because of the growth of the technology and also the lack of understanding and awareness over the law of the IPR.

The IPR Professor of Indonesia University, Prof. Agus Sardjono, states, “The *IPR is still unknown to the society. The people who know about it are mainly people in big cities or in companies. Not all people with law degree understand the IPR*”. From the statement, it shows that the knowledge of the IPR is only known by specific and limited circles.

Table 3 — IPR piracy ranking

Rank	Country	Score
1	Indonesia	8.5
2	Vietnam	8.4
3	China	7.9
4	Philippines	6.84
5	India	6.5
6	Thailand	6.17
7	Malaysia	5.8
8	South Korea	4.1
9	Taiwan	3.8
10	Hong Kong	2.8
11	Japan	2.1
12	Singapore	1.5

Source: PERC Survey in June-Agustus 2014 (Antara, 25/08/2015)

Table 2 — Music Copyright Piracy

Year	The number of pirated songs (in pieces)	Total copyright owner loss (in IDR)	Total country loss (in IDR)
2009	359,204	12.975 billion	934.083 million
2010	385,701,129	13.330 billion	974.245 million
2011	443,556,298	15.358 billion	1.122 billion
2012	+ 500 million	+ 16 billion	1.2 billion
2013	+ 560 million	+ 17 billion	2.5 billion

Source: (Asiri, 2014; Pappri, 2014; Bisnis.com, 2014)

Prof. Agus also said that the prosecution of the IPR was unsuccessful because the prosecution was not even close to the general root of the problem. Raiding and confiscations toward street dealers were not the appropriate prosecution, because their only motive was to earn a living. The ones who should be prosecuted were the producers of the pirated products. In Prof. Agus' opinion, the producer himself could be involved (Interview, 25/01/2013).

An IPR investigator of Indonesia National Police Headquarter, Mr. Pratomo Satriawan, stated that official producers were involved in the IPR piracy. According to him, there were two obstacles in the IPR infringement prosecution: the obstacles in field and the obstacles in investigation. The obstacles in field were the limitedness of the information and social insecurity where the pirates resisted the officers. The obstacles in the investigation were the duration and the complexity of the verification process in where the expert witness should attend the process to proof the piracy. Another obstacle, according to Kompol Pratomo, was the investigator's limited understandings of the IPR, especially in districts (Interview, 24/05/2013).

The research in the district area showed that the investigators did not act professionally toward the IPR infringements. In the interview with a local software rental owner in Solo, bribery between the law enforcement agencies and the suspects in the IPR infringement case was mentioned.

## Discussion

### The Effectiveness of the IPR Law Enforcement

Based on the result of the research, it can be seen that the IPR law enforcement in Indonesia has been ineffective. This can be seen through several national or international indicators.

The first indicators which can be easily found around us are the pirated products dealers who do not consider the honesty of their earnings. In Glodok, Jakarta, there is a distribution centre of millions CD/VCD/DVD per day. They are the result of copyright infringements which are not prosecuted in accordance to the applied law, where in fact, the place is located only next to the Glodok Police Resort's Law enforcement agency Office (Investigators). According to the report from the Recording Industry Association of Indonesia, the centre is used not only for distributing national products but also as the transit of international illegal products (Illegal products from China was

distributed to Australia through the distribution centre in Pinangsia Glodok, Jakarta).

The second indicator can be seen from the report of Recording Industry Association of Indonesia and Singers, Songwriters and Song Publishers Association of Indonesia which shows that copyrights infringements in music have been increasing drastically in each year. The Recording Industry Association of Indonesia estimated that in 2013, there were more than 500 million pieces of pirated VCD with the total country loss of Rp20 billion.

The third indicator can be seen from the result of the International Data Corporation's (IDC) sixth year study about Global Software Piracy 2008 which says that the number of piracy in Indonesia had already reached 85%, which means that from 100 computers, 85 were installed with an illegal or unlicensed software (Hukumonline, 12/5/02013). Based on the interview with the Chairman of the Association of Legal Consultants of Indonesia, Justisiari P. Kusumah, SH. (26/01/2013), in 2012, the number of the piracy increased from 85% to 86%.

Software protection under IPR itself is debatable. The TRIPS Agreement is ambiguous to protect the software. Even then, there is acceleration worldwide tend to favor adopting patent protection for software. However, States are at their sole discretion to provide protection for software that may be protected under trade secrets, copyrights and patents. Some countries encourage software protection and have laws to protect them under IPR protection, while there are many which do not.<sup>3</sup>

The fourth indicator can be seen through the report from *International Intellectual Property Rights Alliance* (IIPA) and *United States Trade Representative* (USTR) where in 2012, Indonesia was categorized as the "priority watch list" (*Bisnis Indonesia*, 05/05/2013). Meaning that the number of piracy in Indonesia was really high and a special control of its trading partners is necessary.

The fifth indicator can be seen from the result of a survey conducted by *Political and Economic Risk Consultancy* (PERC) which based in Hong Kong. In a survey in 2013, PERC reported that Indonesia was noted as the worst country in protecting the IPR. According to the Indonesian Directorate General of IPR, 77% of the respondents stated that the level of awareness of the IPR in Indonesia is ranked as low.<sup>4</sup>

Digital and online piracy is the main copyrights piracy in Indonesia. Digital piracy has been defined as

the illegal act of copying digital goods for any reason other than backup, without permission from or compensation to the copyright holder.<sup>5</sup> Digital piracy and the emergence of new distribution channels have changed the dynamics of supply chain coordination and created many interesting problems. There has been increased attention to understanding the phenomenon of consumer piracy behavior and its impact on supply chain profitability. Digital goods include software, digital documents, digital audio files, and digital videos.<sup>6</sup> Every year huge financial losses are reported from business groups on account of digital piracy. For example, Business Software Alliance alleged worldwide roughly 41% of all software installed on personal computers is obtained illegally, and software piracy has cost the software industry \$53 billion dollars annually.<sup>7</sup> Music piracy is another example that signifies the gravity of digital piracy. Based on the estimation of Recording Industry Association of America, millions of dollars are lost from the music industry every year due to online music piracy.<sup>8</sup>

Online piracy against music is also rampant because of the growing speed and technology of internet compression. The music industry suffered huge losses due to online piracy.<sup>9</sup>

Needless to say, digital and online piracy has been a serious crime issue that entails huge financial impact, and some attention has been devoted to such an issue. Research has found that software piracy is linked to opportunities presented in the physical surroundings, such as the accessibility of original software materials.<sup>10</sup> Other research also indicates that when access to the Internet is conveniently available, the computer and Internet usage increases. This increase lends itself to a greater likelihood that users will encounter opportunities of digital piracy online and a greater likelihood that users will be socialized or even conditioned to condone or participate in digital piracy.<sup>11</sup>

### **The Obstacles in the IPR Law Enforcement**

Based on the result of the research, it can be known the IPR law enforcement in Indonesia still encounters the following obstacles:

- (i) Indonesians' lack of the IPR understanding.
- (ii) Indonesians' lack of the IPR law awareness.
- (iii) The difference between the culture of IPR and the society.
- (iv) The instability preemptive, preventive and repressive acts.

- (v) Law enforcement agencies interpreted rules differently.
- (vi) The other unregulated issues.
- (vii) The law enforcement agencies' limited knowledge of IPR.
- (viii) The limited infrastructure of the law enforcement agencies.
- (ix) The unprofessional law enforcement agencies and/or the other law enforcement agencies.
- (x) The light punishments for the IPR infringers.
- (xi) The lack of business transparency between the writers/artists and the producers.
- (xii) The unoptimal performance of the IPR national team.
- (xiii) The dominance of law and economical approach rather than the IPR philosophy.
- (xiv) The high price difference between the original products and the pirated products.
- (xv) The IPR stigmatization as the new form of western colonialism and global capitalism.

Referring to Friedman's theory of law enforcement effectiveness, the mentioned obstacles can be classified into three parts: substantial, structural, and cultural.

#### **Substantial Obstacles**

Substance is a rule, norm, and human's behavioral pattern in the system. The substance is a product created by the individuals in the law system; it includes their decisions or new regulations.

In the normative way, there has been a device of well-established IPR regulations in Indonesia. There are seven regulations related to the IPR protection: Copyright regulations, Patents regulations, Trademark regulations, Industrial Design regulations, Design of Circuit Layout regulations, and Plant Variety Protection regulations.

Those who violate the regulations are threatened with a heavy punishment and a huge fine. The procedure in prosecuting the case of trademark and copyright claim is done in a relatively short period of time (more or less than six months until the judgment from the Supreme Court has set) because the court of trade treatment. The injunction action from the court prevents a bigger loss from the trademark or copyright owners. It stops the production of the piracy and shows the advance of law enforcement. However, if examined further, some weaknesses can still be found in the IPR regulations.

The major weakness of the IPR law substance is that all the IPR infringements are classified as

complaint offenses (except copyrights). The complaint offense system gives the law enforcement agencies limited prosecutions toward infringements; they can only prosecute the infringements if only the injured party reported it. This could halt the law enforcement agencies in prosecuting the IPR infringements because they shall await for reports first.

The difficulty in the investigation is in the verification process. For example, as stated by the IPR investigator of Indonesia National Police Headquarter, Mr. Pratomo Satriawan, if there is a case of Microsoft Software piracy, it is unclear whether the original software creator (Bill Gates) must attend the court himself or his attendance can be replaced by the BSA. Once, there was a case where the prosecuting attorney demanded that investigator should have investigated Bill Gates. It is a very difficult task to be done if there were no equal understanding between the law enforcement agencies.

In copyrights, there are no configurations in the Collecting Management Organization/CMO which is used for royalty withdrawal. The concepts of the CMO are still unfamiliar in Indonesia. Thus, there is no one who bridges the relation between copyright owners and users. This matter will cause the impracticability in licensing or in royalty establishment in every use of copyrighted products.

In industrial design, there are no concepts of specific or overall similarity like trademarks. Thus, whenever there is an infringement towards a design, it is still unclear whether the infringed design must be completely similar or has a slight difference.

The definition of famous trademarks (marks) has not been clarified because some said that only one certain kind of product can be said as a famous mark. There are no clear regulations to define famous marks. People in other countries do not call these trademarks as “*well-known marks*” but “*famous mark*” because the word “*famous*” ranges a larger scope than the word “*well-known*” which only ranges for one particular scope. For example, there is a trademark namely “Cannon” but there is also a trademark namely “Canon” too for cameras, where both of them are famous in each type (bed sheets and cameras).

The other problems which appear recently are the communal IPR protections such as local arts, folklores, and some traditional knowledge. The claim by Malaysia toward Indonesian cultures reminds us that the IPR regulations in Indonesia for arts and

traditional knowledge have not been established. The claim of Indonesian traditional song “Rasa Sayange” by Malaysia happened because the song could not be protected with copyrights which demand the existence of its songwriter. Even if the songwriter does exist, the time range of its protection is limited within the songwriter’s life age and with additional 50 years after the songwriter’s death.

Though the law means serves well, but the execution depends on the law enforcer’s will to prosecute the pirates. The consequences of the weak IPR enforcement in Indonesia had turned this nation into a consumerist nation. Moreover, Indonesia will only become a nation of consumers, not producers.

#### **Structural Obstacles**

The *Structure* is the framework of the law enforcement, the part which contributes the forms and the limitations of the whole system. The law enforcement structure includes constabulary, attorney, judiciary, lawyer and correctional. The law enforcement agencies hold a vital role in the IPR law enforcement, but they possess weaknesses in cooperation, knowledge, assertiveness, professionalism and infrastructure.

The cooperation between law enforcement agencies is very important in the IPR law enforcement because it involves several law enforcement agencies with different authorities but are related each other. Until now, there has not been any information system about the IPR law enforcement. The law enforcement agencies are incapable in monitoring the continuation of the previous cases that they handled. Meanwhile, the information system can be used as the reference and the evaluation toward the upcoming cases.

The law enforcement agencies’ understanding toward the IPR can be very helpful to support the IPR law enforcement’s effectiveness. The result of the research shows that there were many law enforcement agencies in some remote areas who did not understand the ins and outs of the IPR. Conversely, for example, in the case of software piracy, it is quite difficult to differ between the original and the pirated products.

The infrastructure is also important for the law enforcement agencies to determine whether the evidences they confiscated are the pirated products or not, because it is difficult to differ between the original products and the pirate products. Whereas, until now, there is only one laboratory for determining the product originality which is located in Indonesia the National Police Headquarter.

The other issues are about the law enforcement agencies' professionalism and assertiveness. The law enforcement agencies seem unassertive and reluctant to the handling of the IPR infringements which are done openly. Even if there is a handling toward the infringements, there will only be bribes between the law enforcement agencies and the pirate. The definition of peace between the law enforcement agencies and the pirates is the act of giving money (bribery) from the pirate to the law enforcement agencies which is difficult to be accounted for by the law. As a matter of fact, the law enforcement agencies' salary is not equal to the burden of their tasks. However, through this issue, the salary matter shall not be accounted for the act that deviates the law.

Until now, the punishments by the court hardly give deterrent effect to the IPR infringers to stop the infringements. In some cases, the IPR infringers were only sentenced for few months with probation. This issue disrupts the effectiveness of the IPR law enforcement because the infringers will have no fear of the law enforcement agencies' prosecution due to the light sentence.

The formation of the IPR national team has given Indonesia a positive image in the eye of the International. However, the IPR national team has its own weaknesses. If thoroughly observed, the activities done by the IPR national team was only presented for the adults. One root cause of the problem of the IPR infringement is a character of an individual. The education of the IPR awareness will only be effective if it is taught in early ages. As a result, the activities of the IPR national team have not been effective in decreasing the IPR infringements.

#### **Cultural Obstacles**

*The culture* is the attitude of the individuals' trusts, values, thoughts, and expectations towards the law and its systems. The IPR culture comes from the exclusivity of an individual. The cultural factor can be seen from several sides such as the culture of the society itself, the understanding of a society towards the law, and the paradigm of the society towards the IPR.

The exclusive and individual nature of IPR opposes the major communal culture of Indonesian society. As claimed by Prof. Agus Sardjono, Indonesians are known by their "sharing" philosophy which opposes the exclusive and individual IPR philosophy. This philosophy opposition had caused the ineffectiveness of the IPR law enforcement.

The IPR law enforcement also becomes problematic when the society only recognized the law as the behavior of the law enforcement agencies. According to a Sociology expert, Prof. Soerjono Soekanto, there is a major tendency where the society defines and identifies the law personally as the law enforcement agencies.<sup>12</sup> Thus, the pirates are only afraid of seasonal raiding, confiscations, and arrests. When the prosecution is executed, they stop, but when it is ended, they will start selling the pirated products again. This issue has been compounded with the unprofessional acts of the law enforcement agencies who accept bribery from the pirates. Whereas, according to the law theory, a "peace treaty" can only be done in civil cases not in criminal cases.

Bhattacharjee, Gopal, and Sanders (2003) studied the various demographic, economic, and technological factors associated with those who pirated music. Individuals pirating music are found to be generally young. In addition, the rise in the price of music CDs has a significant positive effect on CD piracy. Increased bandwidth leads to a significant increase in music piracy as well, indicating that consumers are pirating more music as it is easier to do so.<sup>13</sup> Until now, Indonesians still does not consider IPR infringements as a serious crime as compared to other crimes like theft or murders. This kind of view can cause the carelessness of the society itself toward the IPR infringements. This view is understandable because in IPR infringements, there are no direct victims. Thus, the society assumes that piracy is not harmful but beneficial for them because they can obtain certain products easily and cheaply through piracy. The IPR investigator of Indonesia National Police Headquarter, Kompol, Pratomo Satriawan, SIK, stated,

*"The pirates often say that they do not harm anyone. This is a wrong mindset which is difficult to be changed"*.

In the other side, discussions around the IPR are mainly filled with law and economical approaches. These kinds of discussions are what inflicted various negative views toward the IPR. For example, the IPR enforcement is considered as an 'order' from western countries/industries and it is also considered as a new form of western colonialism. The high price disparity between the original and the pirated products also sharpen the accusation towards the IPR which it is a form of global capitalism.



Table 4 — The factors and the obstacles of the IPR law enforcement

Factor	Types of obstacle
Substantial	- Difference in rule interpretations
	- Complaint offensive system (except copyrights)
	- Unregulated issues
Structural	- Law enforcement agencies' limited knowledge of the IPR
	- Unassertiveness of the law enforcement agencies
	- Law enforcement agencies' limited infrastructure
	- Unprofessional law enforcement agencies
	- The light punishment towards the IPR infringers
	- Unoptimal performance of The IPR national team
	- Unstable preemptive, preventive, and repressive acts
Cultural	- Society's lack of understanding towards the IPR
	- Society's lack of awareness towards the IPR
	- The opposing IPR culture and the society's culture
	- Dominance of law and economical approach towards the IPR
	- The lack of business transparency between the artists (original creators) and the producers
	- A high price disparity between the original products and the pirated products
	- Stigmatization of the IPR as the new form of colonialism and global capitalism

However recently, there was an interesting phenomenon in Indonesians' IPR culture. In one side, the society tends to ignore the pirated product sold publicly. However, in the other side, when Malaysia claimed an Indonesian art, a social protest movement emerged. This phenomenon, at least shows that the Indonesian IPR culture can be considered as a communal culture. The mentioned obstacles can be showed more clearly in Table 4.

### Conclusion

The IPR law enforcement in Indonesia has been proven ineffective through the following indicators: (1) The rampant distribution of pirated products in public; (2) The increasing number of piracy as reported by the industrials and the law enforcement agencies; (3) The report from USTR & IIPA which categorized Indonesia as their "priority watch list"; and (4) The statements of the IPR Directorate General about the society's lack of the IPR awareness. The IPR law enforcement in Indonesia has been encountering several substantial, structural, and cultural obstacles. The substantial, structural, and cultural approaches can be applied to overcome the obstacles in the IPR law enforcement. The substantial approach can be applied by revising the problematic

regulations or by creating new regulations toward the unregulated issues. The structural approach can be applied by fixing the law enforcement agencies' performance and professionalism. The cultural approach can be applied by applying the values or the morals of the IPR to the society.

The appropriate law enforcement does not only rely on repressive role of the enforcers but also the preemptive and preventive acts shall be done in order to support the success of law enforcement process. Thus, one of the possible acts that can be done is by establishing an IPR awareness educational program which is addressed to the society. Reinforcing the IPR law enforcement can also be done in several ways such as reinforcing the cooperation between the law enforcement agencies and improving the preemptive acts especially in the early character education.

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