Policy Formulation of Photography Copyright Crimes in the Cyber World

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Abstract: The negative impact of the development of the internet is often used as an effective means of acting against the law, along with the making of the internet as a means to break the law, there is a crime related to the internet. Act Number 19 of 2016 concerning Amendment to Act Number 11 of 2008 concerning Information and Electronic Transactions and Act Number 28 of 2014 concerning Copyright does not regulate photographic copyright in the cyber world. In fact, the ITE and UUHC Laws did not deter perpetrators. That is because the two laws do not regulate photography criminal acts in the cyber world. The UUHC only regulates criminal offenses that occur in the real world, whereas the ITE Law only states that electronic information and / or electronic documents compiled into intellectual works, internet sites, and intellectual works contained therein are protected as Intellectual Property Rights based on Laws and Regulations invitation, it is contained in Article 25 of the ITE Law. The formulation of criminal sanctions in the Information and Electronic Transaction Law and the Copyright Act cannot be applied in cases of photography copyright infringement crimes in the cyber world. That is because in the provision of Article 32 paragraph (1) jo Article 48 paragraph (1) of the ITE Law explains that acts by changing, adding, reducing, transmitting, destroying, removing, transferring, concealing an electronic information and / or electronic documents belonging to other people or public property which is done without rights and against the law is a unity of action that must be fulfilled. The ideal formulation of criminal law policy against photography copyright in the cyber world is to formulate a good criminal law through the process of criminalization which consists of several things, namely the formulation of a criminal act, the formulation of criminal liability, and the formulation of sanctions both in the form of criminal or in the form of administrative procedures, orderly. The process of criminalizing crimes of photographic copyright infringement in the cyber world can be done through efforts to codify criminal law, both total codification by formulating crime.

Keywords: Internet development, Copyright, Electronic Information and Transaction Law, Criminal Acts and Photography.
1. Introduction

The development of information and communication technology especially the internet has resulted in changes in human behavior and global society. The internet is a network that can connect between sub-system networks into one large network and are connected to one another throughout the world. These developments resulted in the emergence of borderless (unlimited world) and resulted in very rapid social change.

The development of the internet itself is like a double-edged sword, on the one hand it has positive benefits or impacts that can be felt by the wider community. Meanwhile, on one hand it has a negative impact on society. The negative impact of the development of the internet is often used as an effective means of acting against the law. Along with the making of the internet as a means to break the law, there are emerging crimes related to the internet. The emergence of crimes on the internet has given rise to a new legal problem that occurs in various fields of life. In fact, currently related to cyber activities is no longer that simple, considering that these activities are no longer limited by the territory of a country, access can easily be done from any part of the world, losses can occur either from the internet actors or from other people who not related though. One of the crimes that occur in the internet world is crime related to Intellectual Property Rights (hereinafter referred to as IPR).

Intellectual Property Rights as contained in his book. Saidin entitled the legal aspects of intellectual property rights, stated that IPR is a material right, the right to something that comes from the work of the brain, the result of human reasoning work rationale and emotional work on the one hand. He also stated in his book that IPR is immaterial rights or intangible objects born from human intellectual abilities in the form of intelligence and emotional intelligence that have produced many creative works ranging from scientific works, art to literary works, which are then protected as copyright.

One of the IPRs regulated in positive Indonesian law is copyright. Copyright is regulated in Act Number 28 of 2014 concerning Copyright (hereinafter referred to as UUHC). Article 1 number 1 of the UUHC states that copyright is the exclusive right of the creator which arises automatically based on declarative principles after a work has been realized in tangible form without reducing restrictions in accordance with statutory provisions. One type of copyright regulated in the UUHC is photography. The scope of photography itself is very broad. That is because photography is inseparable from aspects of people's lives, which some people have made photography as a livelihood called a photographer.

Photography has several fields of specialization, namely photographer journalism (photo as a news complement), wedding photographer (photographer at the wedding moment), architectural photographer (photographer specializing in buildings, kesterioir, and interior), scientific photographer (photographer specifically for scientific, aerial purposes photographer (photographer who does aerial photography), astro photographer (photographer related to astronomy), modeling photographer (photographer with human as his object), food photographer (photographer who specifically photographs food and drinks for magazines and cooking cookbooks). The existence of the world of photography has experienced a very rapid development, developments in the world of technology have rapidly changed the world of photography into the world of digital photography, the world of photography using cassette and film media has now been abandoned and changed into the form of digital files. make each individual easy to access and even duplicate the digital file. The easy access to even duplicating digital files both for personal and commercial interests has led to new legal problems and new criminal acts in the world of copyright, especially in the cyber world.

2. Literature Review
2.1 The Cybercrime concept

Cybercrime is a whole form of crime directed against computers, computer networks and their users, and conventional forms of crime that use or with the help of computer equipment. The Virginia Computers Crime Act draft states that computers are "an electronic, magnetic, optical, electrochemical, or other high speed data processing devices performing logical, arithmetic, or storage functions, and include any data storage facilities or communication facilities directly related to or operating in conjunction with such devices, but such terms don't include authomated typerwriters or type-setters, a portable hand-held calculator, or other similar devices. " In the Virginia Computers Crime Act
translated by Widodo, computers are electronic, magnetic, optical, electrochemical, or high-speed data processing devices that can perform reasoning, or storage functions, which include storage facilities or communication facilities that are directly related to the operation of the equipment integrally, but the term does not include electronic typewriters or typewriters, portable calculators, or other similar devices.

According to Ari Juliano Gema in Maskun, stated that, cybercrime actually not only uses the sophistication of computer technology, but also involves telecommunications technology in its operation. This can be seen in the view of Indra Safitri who argues that cyber crime is a type of crime related to the use of an unlimited information technology and has strong characteristics with a technological engineering that relies on a high level of security and credibility of the information delivered and accessed by internet customers.

In two documents of the United Nations Conference on The Prevention of Crime and The Treatment of Offenders in Havana (Cuba) in 1990, and in Vienna (Austria) in 2000, there were indeed two terms used, namely cybercrime and computer related crime. The 10th UN Congress document report in Vienna, 19 July 2000 uses the term computer related crime, with the understanding of the following 2 forms.

The terms "computer related crime" have been developed both the entirely new forms of crime that were directed at computers, networks to their users, and the more traditional from crime that were now being committed with the use or assistance of computer equipment ",... a. Cybercrime in narrow sense (computer crime); any illegal behavior is directed by means of electronic operations that targets the security of computer systems and the data processed by them.
b. Cybercrime in broader sense (computer-related crime); any illegal behavior committed by means of, or in relation to, a computer system network, including such crimes as illegal possession, offering or distributing information by means of computer systems on the network.

Based on the report it can be understood that cybercrime can be divided into 2 terms, namely in the narrow and broad sense. Cybercrime in the strict sense is an unauthorized act that makes computers the target or target of crime, both in the security of the system and its data. Whereas cybercrime in a broad sense is a whole form of crime directed against computers, computer networks and their users, and traditional forms of crime that use or with the help of computer equipment.

2.2 Characteristics and Types of Cybercrime

There are two opinions regarding telematics crimes as high-tech crimes. The first opinion states that telematics crime is a new type of crime that is different from conventional crime. The second opinion states that telematics crime is actually a conventional crime by using advanced technology as a means and / or target. However, both the first opinion and the second opinion recognize that criminologically crime based on telematics technology leads to the type of white collar crime and organized crime that require serious countermeasures.

According to Abdul Wahid and M. Labib, cybercrime has several characteristics, namely:

1. Acts carried out illegally, without rights or unethical occur in the cyber space / territory, so it cannot be ascertained which state jurisdiction applies to it;
2. The act is carried out using any equipment related to the internet;
3. These actions result in material or immaterial losses which tend to be greater than conventional crime;
4. The culprit is a person who masters the use of the internet and its applications;
5. These acts are often carried out transnationally.

Cybercrime has different forms in each country. In general, Ari Juliano Gema suggests that cybercrime can be grouped in 7 forms, namely:

1. Anauthorized Access to Computer Systems and Services. This crime is committed by illegally entering or infiltrate a computer system or network. The purpose of the act is sabotage or data theft or falsification of important and confidential information. The main characteristic of this crime is "the act of entering the system illegally". Whether a person enters and then does a further act that harms the victim or not, is not an element that determines crime.
2. Illegal Contents. This crime is committed by entering data or information into the internet about something that is not true, unethical, and can be considered unlawful or disturbing public order. Such acts for example in the form of loading a hoax, slander, pornography, leakage of state secrets, agitation and propaganda to fight legitimate government. The main element of this crime is fitting "contents" of data entered into computer networks.

3. Data Forgery. This crime is committed by forging data on important documents stored in a computer system as scriptless documents over the internet. This type of crime is usually directed at e-commerce documents by making a message as if there was a typing error that could benefit the offender, because the victim has already entered personal data and a credit card PIN so that the perpetrator may abuse the data.

4. Cyber Espionage. This crime is carried out by utilizing the internet network to carry out spying (espionage) against other parties by entering the computer network system (computer network system) of other parties. This crime is usually directed against business rivals or companies whose confidential documents or data (data base) are stored in a computer system connected to a computer network.

5. Cyber Sabotage and Extortion. This type of crime is done by making interference, destruction or destruction of data, programs or computer network systems that are connected to the internet illegally. This crime is committed by infiltrating a logic bomb, computer virus, or a certain program, so that data or programs or computer network systems cannot be used, cannot operate as they should, or can operate but are not in accordance with the will of the perpetrators. In some cases, after the crime has occurred, the perpetrators or members of the perpetrators' plotters offer services to victims to repair data or programs or computer network systems that have been sabotaged, asking for certain fees. Thus, the actors (through their accomplices) gain economic benefits.

6. Offense against Intellectual Property. This type of crime is directed against Intellectual Property Rights (IPR) owned by other parties on the internet. An example is the plagiarism of a web page display of someone else's site illegally, broadcasting information on the internet that is another party's trade secrets.

7. Infringement of Privacy. This crime is directed against someone's data or information that is individual and confidential (privacy) unlawfully. This crime is usually directed against someone's personal information stored on a computerized personal data form. If the data is known to others, it can harm the owner of information both materially and materially, for example a credit card number, Personal Identification Number (PIN) in the Authorized Teller Machine (ATM), personal records (diary), disability or illness hidden sickle.

Cybercrime includes violations of intellectual property rights, defamation or defamamation, violation of personal freedom, threats, and extortion, sexual exploitation of children and obscenity, destruction of computer systems, burglary of access codes, and falsification of digital signatures. All of these acts can be criminally liable in accordance with their jurisdiction. Cybercrime can also be in the form of data falsification, the spread of computer viruses into computer networks or computer systems, the addition or reduction of system instructions in computer networks, rounding off numbers, data destruction, and leakage of confidential data.

2.3 Copyright

Copyright is a translation of the English Language which is copyright consisting of the word copy which means to duplicate and right which means rights. In copyright language, it is the right to copy or distribute a work which is then translated into Indonesian with the meaning of copyright. Article 1 number 1 of the UUHC provides an explanation of the notion of copyright. Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in real form without reducing restrictions in accordance with statutory provisions.

L. J Taylor stated in his book copyright for librarians as quoted by Rahmadi Usman in his book entitled Intellectual Property Rights Law, stating that what is protected by copyright is an expression of an idea, so it does not protect the idea itself, meaning that which is protected from rights copyright is already in tangible form as a creation, not an idea. Robert M. Sherwood as quoted by Hamda Zoelva in his book Globalization and Political Law of IPR, Law Review, states that the recognition and legal
protection of human intellectual creativity (IPR) needs to be done based on the theories as below, namely:

1. Reward Theory, that someone who has succeeded in finding or creating intellectual works needs to be given recognition and appreciation in the form of protection of his works as a counterpart to the efforts of creativity.
2. Recovery Theory, that the inventor or creator who has spent time, money, and energy in mengahilannya intellectual works need to be given the speed to recover what has been issued.
3. Incentive Theory, that the inventor and creator suggests an incentive to stimulate the development of useful inventions and research.
4. Risk Theory, that Intellectual Property Rights is the work that contains risks that can allow other people who first find the way or improve it, so it is natural if given legal protection against efforts or activities that contain the risk.
5. Economical Growth Stimulus Theory, that protection of IPR is an economic development tool that is the overall goal of building an effective IPR protection system.

The copyright holder is the creator as the owner of the copyright, the party who received the right legally from the creator, or another party who received further rights from the party who received the right legally.

### 2.4 Copyright Crimes

Copyright is a property rights that are immaterial and constitute material rights which in UUHC termonology, copyright consists of moral rights and economic rights. From the perspective of criminal law, material rights that have economic value are assets, which if the assets are disturbed, the person who disturbs is included in the category of legal subjects who commit crimes against assets.

Types of criminal violations and copyright crimes will be described in the explanation below, namely:

1. Doing damage to technological control facilities used as protectors of works intended for commercial purposes (Article 112).
2. Violations of economic rights for leasing commercially used works (Article 113).
3. Market the copyright and / or rights related to the results of the violation in any way (Article 114).
4. Conduct commercial use of the portrait for the benefit of the billboards without permission of the person portrayed or his heirs (Article 115).
5. Violation of economic rights of leasing of fixation for commercial purposes (Article 116).
6. Violations of economic rights of leasing to the public for commercially used copies (Article 117)
7. Violation of economic rights by re-broadcasting broadcasts that are used commercially (Article 118)
8. Withdrawing royalties by not having an operational permit (Article 119)

Criminal law policy is also often referred to as renewal in the field of criminal law. The word policy comes from the English language, which means policy. The word policy is often associated with politics that results in criminal law reform, often referred to as criminal law politics or formulative policies, which are interpreted as efforts to reorient and reform criminal law in accordance with sociopolitical, sociophilic, and sociocultural values of Indonesian society that underlie social policies, criminal policy and law enforcement policy in Indonesia.

The criminal law policy in Dutch is expressed in terms of Strafrecht Politiek which Murder states as a policy line to determine:

1) To what extent do the applicable criminal provisions need to be changed or updated?
2) What can be done to prevent criminal offenses?
3) How should investigation, prosecution, justice and criminal conduct be carried out?

Criminal law policy (penal policy) according to Marc Ancel, is a science as well as an art that ultimately has a practical goal to enable positive legal regulations to be better formulated and to provide guidance not only to the legislators, but also to the courts implementing the laws legislation and also to the organizer or executor of court decisions.

Thus, seen as part of legal politics, criminal law policy implies, how to endeavor or make and formulate a good criminal law, it is seen from the notion of "penal policy" expressed by Marc Ancel. He stated that criminal law policy is both a science and an art that aims to enable positive legal regulations to be better formulated. Therefore, what is meant by "positive law regulations" (the positive
rules) in Marc Ancel’s definition, clearly is a criminal law regulation whereas the term "penal policy” according to Marc Ancel is the same as the term "criminal law policy or politics.

2.4 Photography

The word photography comes from the word photography which consists of two syllables namely photo and graph, photo has the meaning of light and graph has the meaning of painting or writing. Based on the meaning of the above words, it can be interpreted that photography is a process to produce images or photographs of an object by recording the reflection of light on the object on light-sensitive media. In other words, a photo is a product of two physical and chemical procedures with a negative process that must first be developed and then processed to form an "expression”.

In principle, communication is the purpose and nature of photography. Photography is said to have communication value if the appearance of the subject is used as a medium for delivering messages or is an idea expressed to the public, so that a contact understanding of meaning occurs. The photo work can also be said as a medium that has functional value as well as an instrument, this happens because photography is used as a tool for the communication process of delivering the message or idea of the creator of the photo.

2.6 Policy Formulation

The formulation stage is a stage of law enforcement in abstract by the legislative body or the legislature. At this stage it is often called the legislative stage or legislative policy. According to Barda Nawawi Arief in Dey Ravena and Kristian stated that, legislative policy is a plan or program of the legislators regarding what will be done in facing certain problems and how to do or carry out something that has been planned or programmed.

The main policy formulations in criminal law consist of several things, namely:

a. Criminal Acts

A criminal offense is an act in which a criminal may be sentenced. The formulation of a criminal act must have an element of one's actions. Basically, the person who can commit a criminal offense is a person or human, but along with the development of the road a new legal subject is emerging, which is a corporation that is considered to be able to commit a criminal offense and can be held criminally liable. Another element in a criminal offense is an act. Acts that can be subject to a criminal offense are acts that are against the law that meet the offense formula as formulated in the law. The act can be in the form of doing or not doing. In addition to breaking the law, the act must also be detrimental to the community, meaning that it contradicts or impedes the implementation of an orderly procedure in social relations. Roeslan Saleh stated that criminal acts are antisocial acts. A person is said to be a criminal offense if the act is regulated in law. It can be said that to find out whether the act is a criminal offense or not, it must be seen from the formulations of the law. This is based on the principle of legality contained in Article 1 paragraph (1) of the Indonesian Criminal Code that no acts are prohibited and threatened with criminal penalties if not specified in the legislation.

b. Criminal Responsibility (Criminal Liability) Formulation

A person who has committed a criminal offense may not be convicted because before determining the defendant is convicted, he must first fulfill two conditions namely whether the act is a criminal offense and whether the offender can be accounted for or not. Determining a criminal offense must be based on the principle of legality while to determine the existence of criminal liability is based on the principle of error. The principle of legality relates to criminal acts while the principle of error is related to the person who commits and the evil inner attitude held by that person. Criminal liability is intended as to whether a person can be held responsible for a crime or not. The UK is familiar with the doctrine or theory of strict liability which means that for certain criminal acts in a crime there is no need for mens rea. Mens rea is subjective guilt attached to the offender. Subjective guilt includes intentional or negligence. In the national criminal law system, the doctrine or theory of strict liability has been strictly regulated in the Draft Book of the 2015 Criminal Law contained in Article 38 paragraph (1).
c. Formulation of sanctions (sanction) both in the form of criminal or in the form of disciplinary action. One of the efforts to tackle crime by using criminal law is criminal sanctions. Criminal sanctions can be said to be the most cruel sanctions compared to civil sanctions and administrative sanctions. Roeslan Saleh stated that the criminal was a reaction to offense and this was in the form of a misery that was deliberately inflicted by the state on the offender. Van Bemmelen also stated that criminal law determines sanctions against violations of prohibition rules. The sanction in principle consists of adding suffering deliberately. In connection with the stage of formulation or formulation policy, the granting of a crime concerns the formation of a law that establishes a system of criminal law sanctions in legislation made. In determining the sanction stelies or sanction system, it does not only stipulate the composition of types of crimes, the severity of sanctions, and how to carry out crimes, but must also pay attention to the flows contained in criminal law and criminal purposes. Muladi said, to establish the sanction system would be closely related to the three main problems of criminal law, namely criminal acts, criminal liability, and the formulation of criminal sanctions. At present, the formulation of criminal sanctions has progressed, criminal sanctions are no longer suffering but can also be in the form of actions or even restorative. Related to restorative criminal sanctions, these sanctions originate from the concept of restorative justice (restorative justice), which sees a crime not as a violation of state law but sees a criminal act as a violation of someone against another person and is recognized as a conflict. Reorientation and re-evaluation of criminal and criminal matters, especially through legislation as a result of the legislative process, is a right needed in connection with community development and increasing crime in Indonesia and internationally. Therefore, the stipulation of criminal sanctions in legislation cannot be released as one of the objectives to suppress and overcome the problem of crime that occurs in the community.

2.7 Theory of Justice

Speaking of justice, there are still many issues regarding justice. The issue of justice always coexits with the development of legal philosophy. the development of legal philosophy is the development of philosophy as a whole, rotates around certain problems that arise continuously namely justice, welfare, and truth. Of these problems the most dominant relationship with law is the issue of justice. The law is always related to justice although sometimes empirically is not fully understood.

Justice is a fundamental problem in law. naturalists state that justice has a nature of relativism, because it has an absurd, broad, and complex nature so the purpose of law is often "floating". A fairly realistic legal objective is legal expediency and certainty. although justice is not the sole legal goal, justice is the most substantive goal of law.

Justice according to Aristotle is unicuique suum tribuere (giving to everyone who is entitled to it) and neminem laedere (do not harm others). The issue of justice, is not a matter just discussed by experts. However, discussions about justice have started from Aristotle until now. In fact, regarding the essence of justice, each expert has a different view.

According to Plato, justice is only found in the laws and regulations made by experts who specifically think about it. Justice and law have a very close relationship. Justice can be obtained through law enforcement. Plato stated that what is meant by law here is positive law made by the legislator, namely the state. For Plato, the state is the only source of law. Based on Plato's statement above, which states that justice only exists in laws made by the state, then Plato is grouped into adherents of legal monism. thus, Plato's legal philosophy reminds us of a philosophy, namely the philosophy of the modern totalitarian state. This philosophy puts all parts of individual life under the control of law and state administration.

According to Aristotle, as the first philosopher to formulate the meaning of justice, to declare justice is to give what is his right. Aristotle divides justice into 2 (two) types, namely distributive justice / dividing justice and corrective justice. Justice divides with regard to public law. Equity justice is justice that distributes rights to everyone who is a part of it in accordance with the services or charitable devotion. This type of justice puts forward the principle of comparability, that is, the size of the rights received is in accordance with the services it does. While corrective justice is justice that gives everyone as much. So, justice does not prioritize the principle of comparability but it puts forward the principle of togetherness regardless of how much service is performed. So, according to
Aristotle, justice is a form where there is an equivalent or a midpoint between the two extremes in various circumstances, because according to him the moral world only has two prospects, namely immorality and virtue.

3. Conceptual Framework

In this case the preparation of a thesis as a legal research in overcoming the problem "how does the criminal law regulate photographic copyright criminal acts in the cyber world?". Some theories, principles, and concepts used as analysis in discussing the formulation of the problem in relation to criminal acts of photography copyright in the cyber world are the concepts of criminal law policies, justice theories, anomie theories, and therapeutic justice theories. Justice theory is used as a knife analysis in the first problem formulation. While the theory of anomie and therapeutic justice is used as a knife analysis in the formulation of the second problem. The discussion and analysis results of each problem statement will produce conclusions and suggestions as outlined in the following chart:

4. Discussion

4.1 Photography Crimes in the Cyber World in the Information Act and Electronic Transactions

According to Moelyatno, basically a crime is a basic understanding in criminal law. Crime is a juridical understanding as it is to provide a definition or understanding of the term law. In terms of the
definition of crime there is no unity of opinion among scholars. As a general description of the
definition of a criminal act put forward by Djoko Prakoso that legally the definition of a crime or a
crime is "an act that is prohibited by law and the violation is subject to sanctions", furthermore
criminologically a crime or a crime is "an act that violates the prevailing norms in the community and
get a negative reaction from the community ", and psychologically crime or criminal acts are" abnormal
human actions that are against the law, which is caused by psychological factors of the perpetrators of
these acts.

The legislators have used the word "strafbarfeit" to replace the term "criminal act" in the Criminal
Code (KUHP) without giving an explanation of what is meant by the word strafbarfeit, so that there
arises in the doctrine various opinions about what is actually meant with strafbarfeit as stated by Hamel
and Pompe. Hamel said that "strafbarfeit is the behavior of people (investigating gedraging) which is
formulated in wet, legal nature, which deserves to be convicted (strafwaardig) and is done in error." Whereas Pompe argues that "Strafbarfeit can be formulated as a violation of norms intentionally or
unintentionally committed by the perpetrators."

According to Moelyatno, the term "punishment" which comes from the word "straf" and the term
"punished" which comes from the words "wordt gestraft" are conventional terms. According to him if
"straf" means "punishment", then "strafrecht" should mean "punishment". The term "punishment",
which is a general and conventional term, can have broad and changing meanings because that term can
connote a wide enough field. because "criminal" is a more specific term. According to Soedarto, what
is meant by crime is suffering which is intentionally inflicted on people who commit acts that fulfill
certain conditions. Meanwhile, according to Roeslan Saleh, the criminal is a reaction to offense, and
this is a form of misery that is deliberately inflicted by the state on the offender maker. Sir Rupert
Cross (in his book Muladi) said that "criminal means the imposition of suffering by the state on
someone who has been convicted of a crime".

Along with the progress and development of science and technology in society, it has many
implications in life which also applies to the development of crime by utilizing and using the
opportunities provided by the ease of modern instruments with sophisticated equipment, no longer
traditionally. One of the breakthroughs in technological progress is the development of the internet
network. The existence of the internet network itself provides a new scope in the field of law that needs
to be regulated. The exchange of information is so fast, broad freedom that covers the whole world and
the number of people who access the other hand provide a separate space for someone to commit
acts of violation and even crime. The acts of violations and crimes referred to include violations of
Intellectual Property Rights (IPR), especially copyright.

This allows the perpetrators of criminal acts in the field of copyright to commit criminal acts
almost perfectly. The emergence of copyright crimes in various forms and types, quantity and quality is
an attitude of disrespect for the work of others and even those who commit copyright crimes tend to
take advantage of creations that are recognized and protected by the Copyright Act. Basically the
factors that cause criminal acts in the field of copyright are the desire to seek financial gain quickly by
ignoring the interests of the copyright holders. The impact of these criminal activities has been of such
magnitude on the order of national life in the economic and legal fields.

As explained earlier in chapter 2 (two), the types of criminal violations and copyright crimes
include:
1. Destroying technological control facilities used as protectors of works intended for commercial
purposes (Article 112).
2. Violations of economic rights for leasing commercially used works (Article 113).
3. Market the copyright and / or rights related to the results of the violation in any way (Article 114).
4. Conduct commercial use of the portrait for the benefit of the billboards without permission from the
person in the portrait or his heir (Article 115).
5. Violation of economic rights of leasing of fixation for commercial purposes (article 116).
6. Violation of economic rights of leasing to the public for Copies of phonograms used commercially
(Article 117).
7. Violation of economic rights by broadcasting broadcasts that are used commercially (article 118).
8. Withdrawing royalties by not having an operational permit (Article 119).

In juridical normative both in legislation in force internationally (international conventions, bilateral or multilateral agreements) as well as in national copyright laws, copyright is limited to only three things namely works in the field of science, works in the arts, and works in the field of literature. One of the works in the field of art is photography. Along with the development of the age and increasingly sophisticated technology, the creators of photographic art use information technology by displaying and marketing their work in cyberspace through the internet.

Within the framework of Cyber Law, Intellectual Property Rights (IPR) has a very special position considering cyber activities are very closely related to the use of information technology based on the protection of the legal regime of Copyright, Patents, Trademarks, Trade Secrets, Industrial Designs, and others. In addition to providing benefits, the high use of information technology has the effect of a threat to the existence of copyrighted works and inventions discovered by intellectual property rights inventors. Intellectual works in the form of computer programs and copyright objects on the internet are very easily violated, modified and duplicated. In particular, copyright infringement on photographic artwork.

The regulation of copyright in particular photography, in positive Indonesian law is regulated in the UUHC and the ITE Law specifically for what happens in the cyber world. Regulations in UUHC are regulated in:

"Article 115, any person without the consent of the person portrayed or his heirs makes commercial use, duplication, announcement, distribution, or communication of the portrait for the benefit of advertising or advertising for commercial use both in electronic and non-electronic media".

The article only regulates the person being photographed (the person in the photo) not regulating the results of the portrait or photograph. This can be seen from the element of the article "the person being photographed or his heir" means that article 115 only regulates the person who photographs another person without the consent of the person or his heir. So for cases that upload photos of other people without the person's consent, Article 115 of the UUHC cannot be used.

In the ITE Law, arrangements regarding copyright are regulated in Article 25. The article states that electronic information and electronic documents compiled into intellectual works, internet sites, and intellectual works contained therein are protected as Intellectual Property Rights based on statutory provisions invitation. The ITE Law only regulates electronic information or electronic documents that are compiled into intellectual works both on the internet site or intellectual works in which are protected by intellectual property rights. Based on the article's meaning, photography uploaded on the internet site is an intellectual property right and is protected by intellectual property rights in accordance with statutory regulations. However, the UUHC itself does not regulate photography which is re-uploaded by someone without permission from the person who has the right.

4.2 Ideal Criminal Law Formulation Policy in Photography Criminal Acts in the Cyber World

The development of society in modern times is so rapid due to the development of science and technology (science and technology), it needs to be followed by policies in the field of law as a means to bring order and protect the public in achieving their welfare. The emergence of crimes with a new dimension (new dimension of crime) which is a negative impact of the development of society and the development of science and technology should also be addressed with a variety of efforts to deal with crime more effectively. This means that the increasingly complex problems faced by the community and law enforcement officers in tackling modern crime need to be balanced with reforming and developing a comprehensive criminal law system that includes the development of culture, structure and substance of criminal law. Criminal law policy (penal policy) occupies a very strategic position in the development of modern criminal law.

The term criminal law policy is also commonly referred to as renewal of the criminal law. In the Black Law Dictionary, Bryan A. Garner states that "Criminal Policy (Criminal Policy) is a branch of criminal law relating to the protection of crime (the branch of criminal science is concerned with protecting against crime)". The phrase "relating to" has the purpose of emphasizing more on the aspect of protecting society against crime through law enforcement.
The fundamental problem that exists in criminal law politics lies in the lines of policy or approach which should be taken in using criminal law in the context of overcoming crime, this is in accordance with what was stated by Herbert L. Packer:

1. The criminal sanction is indispensable; who could not, now or in the foreseeable future get along without it. (Criminal sanctions are absolutely necessary; we cannot live; now or in the future without criminal sanctions.)

2. The criminal sanction is the best available device we have for dealing with gross and immediate harms and threats of harm. (Criminal sanctions are the best tools or means available, which we have to deal with crimes or major and immediate dangers and to deal with threats from the danger.)

3. The criminal sanction is at once guarantor and prime threatener of human freedom. Used providently and humanely, it is guarantor; used indiscriminately and coercively, it is a threatener. (Criminal sanctions are at one time a primary guarantor, and at one time a major threat to human freedom. Criminal law is a guarantor if used sparingly, carefully, and humanely. Conversely, criminal law is a threat if used carelessly and forcibly.)

The use of criminal law in Indonesia as a means to tackle crime. This is seen in the practice of legislation so far which shows that the use of criminal law is part of legal policy or politics. Regarding the policy or politics of criminal law Barda Nawawi Arief stated that "the study of the politics of criminal law is very important, this is to complement the knowledge of positive criminal law. Positive criminal law is more a science for 'applying positive law'; whereas the politics of criminal law is more a science of making or formulating or updating positive law".

Based on this opinion to find out whether the criminal legislation has been made or formulated as well as possible, in the sense that it has fulfilled the juridical, sociological (sociopolitical and sociocultural) and philosophical requirements, is anticipatory and predictable, so that the criminal legislation produced is truly efficient, and can be expected to achieve the goal. In addition, criminal law policy (penal policy) is used as a reference to assess the effectiveness or penal reform. Thus the political science of law and criminal law policy (penal policy) are actually to make constituendum criminal law.

Renewal of criminal law policy (penal reform) as part of criminal law policy (penal policy) is essentially part of a policy step or "policy" (ie part of legal politics / law enforcement, criminal law politics, criminal politics, and politics social). Where in each policy (policy) also contains a value policy. Therefore, reform of criminal law must also be oriented towards a value approach. The meanings and nature of criminal law reform are:

1. Viewed from the perspective of the policy approach
   a. As part of social policy, criminal law reform is essentially part of an effort to overcome social problems (including humanitarian issues) in order to achieve / support national goals (community welfare and so on).
   b. As part of criminal policy, criminal law reform is in essence a part of community protection efforts (specifically crime prevention efforts).
   c. As part of the law enforcement policy, the renewal of criminal law is essentially part of an effort to renew the legal substance in order to make law enforcement more effective.

2. Viewed from the standpoint of the value approach
   Reforming criminal law is essentially an attempt to review and re-evaluate (reorientate and reevaluate) sociopolitical, sociophilic, social-cultural values that underlie and provide content to the normative and substantive content of idealized criminal law.

   According to Wisnubroto, criminal law policy or penal policy is an action that deals with the following matters:
   1. What is the government's effort to tackle crime with criminal law.
   2. How to formulate criminal law to suit the conditions of the community.
   3. What is the government policy to regulate society with criminal law.
   4. How to use criminal law to regulate society in order to achieve greater goals.
Based on this opinion, Barda Nawawi Arief stated that essentially the problem of criminal law policy (penal policy) is not merely legal technical work carried out in a normative and dogmatic systematic manner, besides that it also requires a factual juridical approach that can be in the form of a sociological approach, historical and comparative even require a comprehensive approach. With this affirmation, the problem of criminal law policy is one of the areas that should be the center of attention in criminology.

Regarding the politics of criminal law or criminal law policy, in his professor's inaugural speech, Barda Nawawi Arief said that "criminal law politics is to study the problem of how criminal law should be made, structured and used to regulate or control human behavior, specifically to tackle crime in order to protect and prosper the community ". According to Abdul Hakim Garuda Nusantara and Moh. Mahfud MD, legal politics is a translation of legal policy that will or has been implemented nationally by the Indonesian government which includes several things:

1. Development of law with the core of making and updating legal materials so that they can be in accordance with needs.
2. Execution of existing legal provisions including affirmation of the functions of institutions and fostering law enforcement.

The study of the politics of criminal law (criminal law policy) cannot be separated from the politics of law adopted by the state because the politics of criminal law or criminal law policy is part of the policy taken by the state in solving certain problems (crime). According to Sudarto, as quoted by Barda Nawawi Arief, stating that implementing the politics of criminal law (criminal law policy) means holding elections to achieve the best results of criminal legislation in the sense of meeting the requirements of justice and effectiveness.

5. Conclusions and Suggestions

5.1 Conclusions

Based on the description in the discussion chapter on the problem formulation, the following conclusions can be drawn:

1. The formulation of criminal sanctions in the Information and Electronic Transaction Law and the Copyright Act cannot be applied in cases of criminal copyright infringement in the cyber world. That is because in the provision of Article 32 paragraph (1) jo Article 48 paragraph (1) of the ITE Law explains that acts by changing, adding, reducing, transmitting, destroying, removing, transferring, concealing an electronic information and / or electronic documents belonging to other people or public property which is done without rights and against the law is a unity of action that must be fulfilled. Thus, the act of uploading photos of other people cannot fulfill the elements of that article. Meanwhile, in the provisions of Article 115 of the Copyright Act only regulates the person being photographed (the person in the photo) not regulating the results of his portrait or photograph. This can be seen from the element of the article which reads "the person being photographed or his heir". So that in the case of uploading photos of other people in this case the results of portraits or photography without the creator's approval cannot be used Article 115 of the UUHC.

2. The ideal formulation of criminal law policy against photography copyright in the cyber world, namely by formulating a good criminal law through a process of criminalization consisting of several things, namely the formulation of a criminal act, the formulation of criminal liability, and the formulation of sanctions both in the form of criminal or in the form of criminal procedure of order. The process of criminalization of photographic copyright infringement crimes in the cyber world can be done through efforts to codify criminal law, either total codification by formulating the crime as a crime in an RKUHP, or with open codification by formulating the crime into a statutory regulation outside the Criminal Code.
5.2 Suggestions

Based on the existing problems and related to the conclusions above, suggestions can be given as follows:

1. Indonesia's current positive law still has limitations in handling photography crime or criminal acts in the cyber world, because the UUHC and ITE Law currently do not regulate photography copyright crime in the cyber world, so we need a change to the UUHC or ITE Law.

2. The need for a criminal law policy against photography copyright infringement crimes in the cyber world that can be done through total codification efforts by formulating the crime as a crime in an RKUHP or with an open codification by formulating the crime into a statutory regulation outside the Criminal Code.

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