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IMPLEMENTATION OF ARTICLE 9 PARAGRAPH 3 OF LAW NUMBER 28 OF 2014 ON COPYRIGHT RELATING TO THE DUPLICATION AND/OR COMMERCIAL USE OF WORKS WITHOUT THE AUTHOR'S PERMISSION IN BANGLI DISTRICT

I Dewa Komang Bisma Gautama¹ , Si Ngurah Ardhya² , Muhamad Jodi Setianto³

Faculty of Law and Social Sciences, Ganesha University of Education, [Email:bisma.gautama@undiksha.ac.id](mailto:bisma.gautama@undiksha.ac.id)

Faculty of Law and Social Sciences, Ganesha University of Education, [Email:ngurah.ardhya@undiksha.ac.id](mailto:ngurah.ardhya@undiksha.ac.id)

Faculty of Law and Social Sciences, Ganesha University of Education, [Email:jodi.setianto@undiksha.ac.id](mailto:jodi.setianto@undiksha.ac.id)

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Corresponding Author:

I Dewa Komang Bisma

Gautama, email:

bisma.gautama@undiksha.ac.id

Abstract

This study aims to find out: (1) To find out how law enforcement is implemented against software piracy copyright violations in Bangli (2) To find out how legal protection is implemented for computer program copyrighted works in Bangli City. The type of research used is empirical legal research, with the nature of descriptive research. The location of this research was carried out in three places namely Bangli Police, business people who service and buy and sell computers, consumers who use pirated computer programs. Data collection techniques used were document studies, observations, and interviews. The sampling technique used is non-probability sampling and the determination of the subject using snowball sampling technique. Processing techniques and data analysis that is done qualitatively. The results of the research show that (1) Law Number 28 of 2014 concerning protecting the rights owned by every creator, both economic rights and moral rights, so that creators or copyright holders receive protection from the government. So that if there is a violation of the copyright can be dealt with by the law. (2) Obstacles in efforts to enforce Law Number 28 of 2014 Concerning Copyrights are community culture that is strongly related to public awareness of the laws that apply in society so that people do not understand that their actions constitute a violation of the law which is detrimental to the creator or computer program copyright holder.

Introduction

Technology is an essential part of human life. The industrial sector, government, education, and other sectors have used technology in every activity. The rapid development of technology from year to year has resulted in the utilization of information and communication technology that cannot be

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separated from its use in daily human life. The use is no longer in important instruments but also small instruments such as households. Computer or called "computare" in Latin which means "to calculate" so that the definition of a computer is simply a tool for performing arithmetic calculation processes, while in general a computer is a series of electronic machines consisting of millions of components that can work together, and form a neat and thorough work system. Currently, the renewal of technology is the main highlight. By using a computer, work can be completed quickly so as to reduce work time, reduce costs and minimize the occurrence of errors.

The presence of computer technology, especially developments in the field of computer software, is increasingly developing in line with the needs of the current global era which are required to have their respective functions and uses created to support human activities.

With the development of the use of computers, it is necessary to have legal arrangements which include legal protection. Computer which basically consists of *hardware* and *software* gets different protection, namely *hardware* protected by patent law while *software* protected by copyright law. Thus copyright has also undergone development as well, which is not only with respect to "*artistic work*", in the form of novels, poetry, drama, dance, paintings, songs, or musical instruments, as known by the public so far but also to "*non-artistic work*", in the form of cinematography, maps, translations, books, lecture works, fashion clothing, collections of speeches, and computer programs, so in this case "*non-artistic work*" is not solely the domain of patents, but has also become part of copyright. Therefore, the rules relating to copyright have undergone adjustments due to these developments.

According to the Copyright Law, computer programs are considered as objects or properties such as other tangible objects. Therefore, the creator of a computer program has the right to prohibit other parties from using or utilizing his computer program without his permission and is entitled to protection of the ownership rights of the computer program he created. Therefore, to ensure the protection of the rights to the program, the program must be registered as copyright. Copyright is part of Intellectual Property Rights, copyright covers knowledge in the field of economics, and socio-cultural very broad range, where the study is also extended to the field of literature, education, information, entertainment, and media. In Law No. 28 of 2014 concerning Copyright article 40 paragraph 1 letter s explained that the computer program is one of the objects of protected creation,

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this can be used as the basis for the protection of the creator of the computer program (*software*) on the computer program of his creation.

One of the responsibilities of the State is to provide protection, protection and recovery in the event of a dispute or dispute that cannot be separated from the existence of law as a social control. In addition, the Constitution of the Republic of Indonesia in Article 28 I paragraph (4) states that "The protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the government". And also in Law Number 28 of 2014 concerning Copyright is also made regarding sanctions that can be imposed on perpetrators of computer program piracy which are contained in Article 112 and Article 113 paragraph (1), (2), (3), and (4).

Along with the development of technology, the use of computer devices (*hardware*) is increasing and in line with the development of computer programs (*software*) which are increasingly being used by program developers to distribute commercial computer programs or other paid computer programs in order to benefit from the increasing use of technology today.

The case that is developing at this time, including in Indonesia, is that there are many *crackers* popping up who pirate shereaware computer programs and commercial software uploaded on the internet by the creator on the official website of the creator of the computer program and then downloaded by the cracker then the cracker performs the cracking process and then the *cracked* computer program (*software*) is uploaded back to the internet media. By the actions of the *cracker* who spreads the pirated computer program to the internet media and can be accessed by anyone can certainly cause harm to the creator of the shereaware computer program and commercial software. According to a study conducted by IDC (*International Data Corporation*), 80 percent of losses from piracy are suffered by software industry players, namely software companies, software industry, and distribution.

Piracy or *cracking* is not only detrimental to software companies, but also to the State. *Software* companies suffer losses because their original products that cost hundreds of thousands to millions of rupiah must compete with pirated products that cost only tens of thousands or can be downloaded for free on the internet. The state is also disadvantaged, because the pirated software in circulation certainly does not pay taxes.

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According to the Business Software Alliance (BSA), 83% of companies in Indonesia use pirated computer programs, the largest number in Southeast Asia and even in Asia Pacific. In Indonesia, the level of piracy of computer programs is very high. BSA stated that data in 2017 showed that 83% of computer programs circulating in Indonesia were pirated.

Due to the high price of original computer programs that cost hundreds of thousands to millions of rupiah so that computer users prefer to switch to pirated computer programs that cost tens of thousands and even there are also pirated computer programs that can be downloaded freely on the internet media. This can be found among computer or PC (*Personal Computer*) users in Bangli Regency who prefer to use pirated computer programs rather than using original computer programs because they can be downloaded.

free of charge and in its operation there is no need to spend money in order to run the computer program.

The same thing is also found among computer technicians who are not only in charge of repairing *hardware* (*hardware*) on computers sometimes also encounter problems that require the OS (*Operating System*) of the computer to be reinstalled (installed) so that the computer returns in an empty state or without *installed* computer programs such as *Windows*, *Microsoft Office*, *Browsers*, and other computer programs supporting computer performance. Sometimes after the *service* is complete the technician will ask for consumer opinions about the computer program and *Operating System* to be used, to reduce costs sometimes pirated computer programs are used as an option.

Copyright infringement is widely found in Bangli Regency where there are users of pirated computer programs for educational purposes and also as a medium of entertainment users of the computer program argued that they prefer to use pirated computer programs because pirated computer programs can be downloaded for free from the internet media without spending this is inversely proportional to using the original computer program which we have to buy at a price reaching hundreds of thousands of rupiah in order to be fully used.

According to data from the Creative Economy Agency (BEKRAF), users of pirated computer programs in Bangli in 2019 reached 70% of the total computer program users in the district. This figure shows that there are still many Bangli people who use pirated computer programs. BEKRAF conducted a survey of 1,200 respondents in Bangli to determine the level of use of pirated computer

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programs in the district. The survey found that the main reason Bangli people use pirated computer programs is because of the price factor. The relatively expensive price of original computer programs makes Bangli people choose to use pirated computer programs that are cheaper.

Law Number 28 of 2014 concerning Copyright has regulated the protection of Copyright owned by each creator which can be seen in Article 9 paragraph (3) which explains that "Any person who without the authorization of the creator or Copyright Holder is prohibited from using Duplication and / or Commercial Use of Creation". However, in Bangli Regency where there is a service shop or buying and selling computers or laptops in the eastern part of Bali such as Bali Yoni, Sari I-Tech, and Dixie Komputer, the shop has long been established, but they also participate in spreading the pirated computer program that should have known about the rules regarding the copyright of the computer program, especially regarding copyright protection in the field of computer programs.

So in the background of the research, it is observed that there is a gap between norms and reality in society in the form of reality that does not always go as expected. There are still many computer users who still use pirated computer programs (*software*). Which of these actions can cause harm to copyright holders materially.

Based on the above background regarding the use of *cracked* computer programs (*software*), the author is interested in following up in the form of a thesis research proposal with the title "IMPLEMENTATION OF ARTICLE 9 AYAT 3 OF THE LEGISLATION NUMBER 28 OF 2014 ON COPYRIGHT RELATING TO THE CONTROL AND/OR USE OF COPYRIGHT COMMERCIALALLY WITHOUT THE AUTHORIZATION OF THE CREATOR IN BANGLI DISTRICT".

Research Methods

This research uses empirical legal research. Where this research departs from the existence of a gap between *das solen* and *das sein*, namely the gap between theoretical conditions and legal facts that occur in society. Based on the purpose of this research, the nature of the research used is descriptive. Descriptive research is research that describes systematically, factually, and accurately to a certain population or area, regarding certain properties, characteristics, or factors (Ali, 2009: 10).

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This research is conducted based on the data used, namely data sourced from Primary Data and Secondary Data consisting of Primary, Secondary, and Tertiary Legal materials. data collection techniques used in this research method consist of Document Study Techniques, Interview Techniques, Observation Techniques, and Research Sampling Techniques. The analysis used in this research is Qualitative Data Analysis. This research is processed using qualitative analysis, where the data obtained is presented in a descriptive analysis.

Results and Discussion

Implementation of Law enforcement against Copyright infringement of software piracy in Bangli

IPR is the right to an object or property rights then the right is inseparable from the property, and the law of objects which objects (*zaak*) include goods (*good*) and rights (*recht*) which in the law of objects the rights of an object becomes a subject matter. Legal protection of copyright intends to protect the interests of copyright holders and creators of their works, this is a concern of each country and even a concern of the world. Juridically copyright is regulated by law but seen *de facto*, copyright protection arises simultaneously with the creation of a copyrighted work. (Haris Munandar, Sally Sitanggang. 2015: 24) One of the IPR studies is related to Copyright which is protected by Law No. 28 of 2014 on Copyright which has provisions in article 1 number 1 which states According to the definition in Article 1 number 1 of Law No. 28 of 2014 on Copyright, Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in real form without reducing restrictions in accordance with the provisions of the legislation. Where Ciptaan is any copyrighted work in the fields of science, art, and literature produced by inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in tangible form. Copyright holders who are not creators have only part of the exclusive rights in the form of economic rights.

The Copyright Act recognizes two protected rights, namely moral rights and economic rights. This moral right is attached to the creator even though the creation has been transferred to another party. In addition to moral rights there are also economic *rights*, namely rights that can be transferred to other parties (other parties who become copyright holders) and through this right, the creator gets economic benefits from the results of his creation. This right includes the right to publish and reproduce or give permission to publish or reproduce his creation (Anis Mashdurohatun, 2018: 30).

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Legal protection of copyright is carried out as an effort between the creator or holders of copyright and the government as the shaper of legislation that relates to the protection of copyright. Article 1 number 1 UUHC states that efforts to provide overall copyright protection efforts without reducing restrictions in accordance with the legislation. The agency that handles Intellectual Property Rights is the Directorate General of IPR which is an implementing agency under the auspices of the Ministry of Law and Human Rights.

Protection of intellectual property including copyright is strengthened by the existence of various theories, namely:

a. *The reward* theory states that the creator of a work of creation that is to be given protection needs to be rewarded for his efforts and achievements.

b. *Recovery* theory states that perhaps without a deep judgment, that inventors or creators who have devoted their energy and time need to be given some kind of opportunity to enjoy what has been spent.

c. *Incentive* theory states that incentives serve to attract efforts and funds for the implementation and development of creative inventions and the spirit to produce new discoveries and new theories.

d. *Public Benefit Theory*, the basis for granting protection to intellectual property rights is for development in the economic field

e. *Risk Theory*, intellectual property is the result of research that contains risks that can allow other parties to first discover the invention or improve it so it is reasonable to provide legal protection for an effort or activity that is at risk.

f. *Economic Growth Theory*, this theory was proposed by Robert M. Sherwood who recognized that the protection of intellectual property is an important aspect that can help countries in facing the era of free trade.

Then the philosophical basis of the regulation of computer programs into the Copyright Act is in line with the theory of *reward* expressed by Sheword that recognition of intellectual work that has been produced by the inventor / creator / designer so that it should be rewarded in exchange for creativity in finding / creating intellectual work (Sudaryat, et al, 2010: 19). Which computer programs are included in the form of intellectual property that arises from the thoughts of the creator so it is appropriate to be given copyright protection and enter into the Copyright Act.

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What is protected in the UUHC is the right owned by each creator for every creation that is born from the creativity or thoughts of the creator which is called a copyrighted work. A creator has rights that should not be violated by others, namely Economic Rights and Moral Rights that each of these rights must be respected by everyone who has been regulated in Law No. 28 of 2014 as mentioned in Articles 57 and 58.

The first form of implementation of the Copyright Act in Bangli Regency is Kadek Juli Suwartawan as the owner of Sari I-Tech, as a form of implementing UUHC in running his business before receiving service services he always educates consumers to use original computer programs in order to support the creators of original computer programs but he also continues to provide pirated computer programs if consumers are reluctant to spend expensive costs to repair their devices (interview on February 14, 2022). Furthermore, from Bali Yoni Komputer almost the same as the party with Sari I-Tech Komputer in the implementation of UUHC in their services they always remind the shortcomings of using pirated computer programs which also give consideration to consumers to choose original computer programs but the decision remains with consumers to make their choices (interview on February 15, 2022). The next one from Dixie Komputer provides information related to UUHC, according to information from Dixie Komputer employees just like from other service providers he always educates consumers to use original computer programs and always tells the shortcomings of using pirated computer programs so that in the hope that consumers prefer original computer programs to pirated computer programs so that they can support the creators of original computer programs so that their products are not rivaled by pirated computer programs that circulate a lot on the internet (interview dated February 19, 2022).

From law enforcement in the jurisdiction of Bangli Regency, which is the jurisdiction of Bangli Police, who when interviewed was represented by the Head of Legal Section, AKP. I Made Sumardika, S.H explained that the Bangli District Police in responding to the rampant phenomenon related to Copyright infringement of Computer Program Copyright explained that the Bangli District Police Bangli District Police coordinated with the Director General of IPR regarding action if there was a complaint related to the distribution of pirated computer programs in the Bangli police jurisdiction and used Law Number 28 of 2018. jurisdiction and used Law Number 28 of 2014 concerning Copyright which was also supported by Law Number 11 of 2008 concerning Electronic

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Information and Transactions as the basis for legal action if there was a complaint of copyright infringement of computer programs either piracy or dissemination of Computer Programs for personal gain without the permission of the Copyright holder. According to Article 30 paragraph (3) of Law Number 11 Year 2008

Therefore, this law is used as a basis for prosecuting perpetrators of computer program piracy based on reports from parties who feel harmed by their actions.

Efforts to prevent copyright infringement that can be taken by the creator, among others, register the work of his creation in order to later get legal protection and legal certainty regarding the rights to his creation because if there is a dispute in the future it can be used as evidence in court. By understanding the Act No. 28 on Copyright, will understand his rights as a creator, if you feel harmed by the piracy of copyright then basically the creator already knows what to do to defend the rights to his creation.

Legal Protection by way of Repressive can also be undertaken, if there is an act that has violated copyright. Repressive legal remedies that can file a lawsuit to the Commercial Court. In terms of civil law, law enforcement to the copyright infringement can be seen in article 1365 of the Civil Code which states:

"Every unlawful act, which causes damage to another, obliges the person through whose fault the damage is caused, to compensate for the damage."

From this article, it can be seen that to achieve a good share in making a lawsuit based on unlawful acts, the conditions or elements of unlawful acts must be met.

Against copyright infringement that has occurred, then in accordance with the provisions in article 1365 of the Civil Code, there must be sanctions that can be applied, among others:

1. Determination of compensation to the offending party;
2. Termination of activities, acts, reproduction, distribution, and sale of *illegal* (pirated) creations that are the result of copyright infringement;
3. Seizure and destruction of *illegal* goods resulting from copyright infringement.

Settlement of copyright disputes can also be pursued through alternative dispute resolution, arbitration, or court (Article 95 paragraph (1) of Law Number 28 Year 2014 on Copyright). The court authorized to handle copyright dispute cases is the Commercial Court.

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Implementation of legal protection of copyrighted works of computer programs in Bangli district

Law is a means to regulate social life, the purpose of legal protection is to provide protection of human rights to each person so that his rights as a human being are not violated or eliminated by others and everyone can enjoy the rights granted by law (Satjipto Raharjo, 2000: 54). Legal protection of a copyrighted work is done in order to protect human rights owned by the creator or copyright holder in this case in Intellectual Property Rights there are two rights owned by a creator or copyright holder, namely economic rights and moral rights.

The Copyright Act recognizes two protected rights, namely moral rights and economic rights. This moral right is attached to the creator even though the creation has been transferred to another party. In addition to moral rights there are also economic *rights*, namely rights that can be transferred to other parties (other parties who become copyright holders) and through this right, the creator gets economic benefits from the results of his creation. This right includes the right to publish and reproduce or give permission to publish or reproduce his creation (Anis Mashdurohatun, 2018: 30). Legal protection of copyright is carried out as an effort between the creator or holders of copyright and the government as the shaper of legislation that relates to the protection of copyright. Article 1 number 1 UUHC states that efforts to provide overall copyright protection efforts without reducing restrictions in accordance with the legislation. The agency that handles Intellectual Property Rights is the Directorate General of IPR which is an implementing agency under the auspices of the Ministry of Law and Human Rights.

To analyze a legal problem in society, various methods can be used with legal theory. Legal theory has theoretical benefits and practical benefits. Theoretical benefits are as a tool to analyze and review the results of legal research, while practical benefits are as an instrument to analyze and review phenomena in society (Jazim Hamidi, et al 3: 2013).

To analyze a legal problem regarding the effectiveness or success of law enforcement, a legal theory is used, namely *System Legal Theory* or Legal System Theory proposed by Lawrence M. Friedman who is a professor of law, historian, who is also an expert on the history of American law, and a prolific writer, there are three main elements in a legal *system*, namely:

- a. *Legal Structure*
- b. *Legal Substance*

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c. *Legal Culture*

Lawrance M. Friedman argues that the effectiveness or success of law enforcement depends on three elements of the legal system, namely the *Legal Structure*, *Legal Content (Legal Substance)* and *Legal Culture*. The legal structure concerns law enforcement officials, the substance or content of the law concerns the set of rules or laws, and legal culture is a habit or *living law* adopted in society.

Legal Structure

In Lawrence M. Friedman's theory, this is referred to as a structural system that can determine whether or not the law is implemented properly. The legal structure according to Law No. 8 of 1981 includes; starting from the Police, Prosecutors, Courts and Criminal Executing Agency (Lapas). The authority of law enforcement agencies is guaranteed by law. So that in the implementation of its duties and responsibilities regardless of the influence of government power and other influences. There is an adage that states "*Fiat justitia et pereat mundus*" even though the world is crumbling the law must be enforced. The law cannot run or be upheld if there are no credible, competent and independent law enforcement officers. No matter how good a law is if it is not supported by good law enforcement officers, justice will only be wishful thinking. The weak mentality of law enforcement officers can result in law enforcement not working properly. Many factors influence the weak mentality of law enforcement officials such as weak understanding of religion, economy, recruitment process that is not transparent and others. So it can be said that law enforcement officers play an important role in functioning the law. If the regulations are good, but the quality of law enforcement is low, a problem will arise.

The structure of the legal system consists of the following elements: the number and size of the courts of jurisdiction (including the types of cases they are authorized to hear), and the flow of appeals from one court to another. So the structure (*legal structure*) consists of the existing legal institutions intended to carry out the existing legal instruments. Structure is the pattern that shows how the law is implemented according to its formal provisions. This structure shows how the courts, law makers and legal bodies and processes run and run. In Indonesia, for example, if we talk about the legal structure in Indonesia, it also includes the structure of law enforcement institutions such as the police, prosecutors, and courts.

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Legal Substance

In Lawrence M. Friedman's theory, this is said to be a substantial system that determines whether or not a rule of law can be implemented. Substance also means the products produced by people in the legal system which include decisions that are compiled. Substantiation also includes *living law*, not just the rules in the Law Book.

Another aspect of the legal system is its substance. What is meant by substance is the rules, norms, and patterns of real human behavior within the system. So the substance of the law concerns the applicable laws and regulations that have binding force and become guidelines for law enforcement officials.

Legal Culture

Legal culture according to Lawrence M. Friedman's view is human attitudes towards a law and legal system, beliefs, values, thoughts. Legal culture is an atmosphere of social thought and social forces that determine how law is used, avoided, or misused. Legal culture is strongly related to public awareness of the law, so that the higher the public awareness of the law so that a good legal culture can be created and can change the mindset of the community regarding existing laws. So that the level of community compliance can be used as an indicator to see the functioning of a law.

Friedman's theory can be used as a benchmark in measuring the law enforcement process in Bangli Regency. Because when viewed from the substance of the law, computer programs must be protected because they are contained in Law Number 28 of 2014 concerning Copyright. Looking at the legal structure, the police as a legal structure in Bangli district together with prosecutors, judges, advocates, and correctional institutions as well as institutions authorized to handle copyright matters, namely the Director General of IPR. The interaction between these law servants determines the strength of the legal structure. To support the performance of the legal structure in law enforcement efforts must go straight with the legal culture in line with the legal structure. Although what is found in the Bangli Regency community is still far from the word running straight, which is still found a lot of distribution or use of pirated computer programs by users of pirated computer programs and from computer service services or shops that sell computers. Which is contrary to Law Number 28 of 2014 concerning Copyright which violates the wording of Article 9 Paragraph (3):

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"Any Person who without the authorization of the Creator or Copyright Holder is prohibited from reproducing and/or commercially using the Creation."

Which due to the lack of legal culture in the community causes less effective law enforcement in Bangli Regency where the distribution of computer programs is still widely found in the community, especially among students or among students in Bangli Regency, in this case the Director General of IPR must cooperate with legal officials in the Bangli Regency area to work together in synergy to tackle the problem of distribution of pirated computer programs. Based on the legal culture, awareness of the law in the community in Bangli Regency is still somewhat lacking so that there are still many users or circulation of pirated computer programs in Bangli Regency and there are still people who do not know the existence of legal substance that regulates the problem of using pirated computer programs, namely Law Number 287 of 2014 concerning Copyright and legal structures that can take action if there are complaints related to the use of pirated computer programs.

Conclusion

Based on the results and discussion that have been presented, the following conclusions can be formulated.

1. Act No. 28 Year 2014 on Copyright protects the rights owned by each creator both Economic Rights and Moral Rights so that the creators or copyright holders get protection. So that if there is a violation of copyright can be dealt with the Act. Where the aggrieved party can report the complaint to the authorities such as the Director General of IPR which will be followed up which will cooperate with other authorities such as the Police. Which enforcement in Bangli Regency has been good with the existence of raids carried out as a result of incoming reports so that various types of pirated computer programs and hard drives are secured from computer services, internet cafes or computer trading places.
2. Copyright protection has been contained in the regulations, namely Law Number 28 of 2014 concerning Copyright as a government effort to protect the rights owned by each Copyright holder, especially in this case the Copyright holder of Computer Programs so that users of Computer Programs must respect the rights owned by each Copyright holder of Computer Programs so as not to be violated and harm the Copyright holder. When associated with the legal

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system theory of Lawrence M. Friedman in substance has been fulfilled by being fulfilled with the existence of Law Number 28 of 2014 concerning Copyright and supported by the existence of Legal structures that can follow up if there are reports related to the findings of the circulation of pirated Computer Programs in Bangli Regency. As well as seen from the legal culture of legal awareness of the people in Bangli Regency is still somewhat lacking so that many do not know about the substance of the law governing the protection of Computer Program Copyrights contained in Law Number 28 of 2014 concerning Copyright.

Furthermore, there are suggestions that can be given, namely for users of Pirated Computer Programs, of course, must understand the dangers of using pirated computer programs so that they are expected to use more original computer programs so as not to harm themselves and also to take part in efforts to protect the rights owned by the creator of the computer program. For business actors are expected to educate consumers about the dangers of using pirated computer programs and business actors so as not to participate in circulating pirated computer programs and participate in efforts to protect Copyright, especially related to Copyright Computer Programs.

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- Law Number 28 of 2014 concerning Copyright;