

INITIATING THE IDEAL FORMAT IN HANDLING COMPUTER PROGRAM PIRACY IN INDONESIA

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Abstract

This study aims to review; 1) What is the configuration of computer program piracy in Indonesia over time and the impact caused, both beneficiaries and disadvantaged parties?; 2) What is the ideal concept in dealing with computer program piracy in Indonesia?. The research method used is normative juridical research, which is research focused on examining the application of rules or norms in positive law. The results showed that; 1) Piracy of computer programs occurs due to factors of public legal awareness regarding copyright that needs to be considered by the government, regulation of copyright on computer programs for the public with sanctions provided by the Copyright Law. The economic ability of the community that affects the purchasing power of original computer programs that make using artificial computer programs an option. Information factors from the internet that facilitate access and acquisition of computer programs that are not original can then be distributed with the propagation of these computer programs. 2) Ethics and morals can be distinguished by using ethics and morals where morals are a value embedded in the human psyche is abstract as a means of human control to behave, while ethics as a manifestation of morals that appear in the form of behavior Human beings, in another sense, ethics are concrete. This means that justice is very closely related to the feelings of a person / public therefore the law (in the form of norms) must be able to respond to individual / public feelings if the law is to be used as a tool to realize justice, in connection with that it is certain to enforce legal norms that have responded to the feelings of justice of individuals / public must be people who also understand the sense of justice, Because it is very impossible when we expect the enforcement of legal norms that are fair to people who do not understand the meaning of justice itself. In line with the concept of justice according to Plato in Kelik Wardiono, which states justice in a country can be learned from good rules and soul.

Keywords: Initiate, Format, Ideal, Handling, Piracy, Program, Computer, Indonesia.

INTRODUCTION

Background

Computers are no longer a foreign object in this country, with various functions that are now present in various places in this country, not only used in companies, offices, rentals, but also have been widely used by individuals in their homes. From the aspect of its function, there can be found various kinds of uses using the tool, from just typing, word processing, to processing a large data base that can be remote or controlled remotely.

Even now, this function is growing widely, not just doing games done by children but has been used for the benefit of finding information using the internet.

A set of computers in general consists of two elements that are interrelated with each other. *First* is *hardware* or hardware, which is an electronic device that can be seen in reality. *Second*, is *software* that is often referred to as software, which is in the form of procedures arranged in one integrated program and serves to carry out the application of the integrated program? In the second element this often causes various problems, it is because this software is very easy to move or copy from one media to another, even this can be done by newcomers in the computer world plus the tools to do it are also available on the computer device. The result of the copying also brings the same function between the original and the copy. Program transfer or copying activities certainly bring many benefits to certain parties, both buyers, distributors, distributors, but at the same time the owner (creator) of the program will experience losses because they do not get the economic benefits they should get.

Many agencies, whether government, private, or PC, use *Windows* software as *their operating system (OS)*, but generally they do not care whether the program they use is legal or not. The user community generally only knows that what is important when buying a computer device is that a certain program is available on his computer and does not question where, in what way, the program is installed on the computer he bought. For distributors or distribution agents, it is common to sell a set of computers that have been installed with certain *operating systems* and application software. The buyer does not care whether the installation is done legally or illegally. When viewed macro, the problem of copying programs to other computer devices without permission from the creator (owner) is often known as piracy, and it is a copyright violation, as introduced in Law No. 28 of 2014 concerning Copyright. ¹

Based on existing data on the issue of computer program piracy, our country based on the results of the BSA (*Business Software Alliance*) survey experienced a decrease in the use of illegal software *in the '2018 Global Software Survey'* Indonesia decreased from 2017 as much as one percent of piracy rates to 83%. Surveys in 2013 to 2015 were the same as Pakistan and Bangladesh in the Asia Pacific category. The total commercial value in 2015 reached \$1,145 and in 2013 it reached \$1,463.²

The issue of law enforcement in the field of IPR violations should not be underestimated, it is because foreign investors are now so critical to want to start investing in one country. Countries that are considered weak in law enforcement of IPR violations will be left behind by many investors. For this reason, the many IPR laws made by the Indonesian government to provide legal protection for many copyrighted works or technological inventions will be meaningless if they are not balanced with action against violations. In addition, it can trigger retaliatory measures in the field of trade by other countries if IPR violations of foreign nationals are not taken in this country. ³

The problem behind the occurrence of computer program piracy is indeed very complicated and has plagued almost every computer user in this country, not only in companies, government or private offices, educational institutions, to personal owned PCs in their respective residences. The piracy level that has reached above 90% seems to actually just not want to say that the piracy rate in this country has reached 100%, certainly a fantastic figure in the world of *crime* or "computer misuse". This country is indeed a paradise for pirates, one of which is computer program piracy, without intending to understand the reason.

Problem Statement

1. What is the configuration of computer program piracy in Indonesia from time to time and the impact caused, both the beneficiary and the disadvantaged party?;
2. What is the ideal concept in dealing with computer program piracy in Indonesia?

THEORETICAL FRAMEWORK

Law enforcement is the process of making efforts to uphold or function legal norms in a real way as a code of conduct in legal relations in public and state life.⁴ Viewed from the point of view of the subject, law enforcement can be carried out by a broad subject and can also be interpreted as law enforcement efforts by the subject in a limited or narrow sense. In a broad sense, the law enforcement process involves all legal subjects in every legal relationship. Anyone who carries out normative rules or does something or does not do something based on the norms of the applicable rule of law, means that he is exercising or enforcing the rule of law. In a narrow sense, in terms of its subject, law enforcement is only interpreted as the effort of certain law enforcement officials to guarantee and ensure that a rule of law runs as it should. In ensuring the enforcement of the law, if necessary, the law enforcement apparatus is allowed to use coercive force.⁵

The definition of law enforcement can also be viewed from the point of view of its object, namely in terms of the law. In this case, the understanding also includes broad and narrow meanings. In a broad sense, law enforcement also includes the values of justice contained in the sound of formal rules and the values of justice that live in society. However, in a narrow sense, law enforcement only involves the enforcement of formal and written regulations.⁶

Law Enforcement Theory, in general, law enforcement must meet certain criteria as stated by Soerjono Soekanto (1982: 20). There are five factors that affect law enforcement, namely: 1) The legal factor itself; 2) Law enforcement factors, namely those who form or apply the law; 3) Factors of facilities and facilities that support law enforcement; 4) Community factors, namely the environment in which the law applies or is applied; 5) Cultural factors, namely as the result of work, creation and taste based on human charities in the association of life. The five factors mentioned above are interrelated with each other, because they are the essence of law enforcement and are also a benchmark rather than the effectiveness of law enforcement.⁷

Problems in law enforcement make the evaluation of the need for legal reform, where law development has the aim of rallying the lives of Indonesian people who are humane and just. The stage of legal reform begins with conceptual review of legal principles.⁷ So as to formulate the right method in dealing with computer program piracy using law enforcement theory.

RESEARCH METHODOLOGY

This research was prepared using a type of normative juridical research, which is research focused on examining the application of rules or norms in positive law.⁸ Normative Juridical, which is an approach that uses a positivist legis conception. This concept views law as identical to written norms created and promulgated by authorized institutions or officials. This conception views law as a normative system that is independent, closed and independent of real community life.⁹ In legal research there are several approaches, the approaches used in legal research are the statute approach, case approach, historical approach, comparative *approach*, and conceptual approach.¹⁰

Data sources in this study are divided into two parts, namely primary data sources and secondary data sources. A primary data source is a data source that directly provides data to the data collector; while secondary data sources are data sources obtained by reading, studying and understanding through other media sourced from literature, books, and documents"¹¹.

The research technique in this study is descriptive analytical, where the analysis is carried out critically. The data collected in this study will be analyzed descriptively with a *qualitative approach*, namely by providing a thorough and in-depth explanation and explanation (*holistic / verstelen*).¹²

RESEARCH RESULTS

Computer Program Piracy Configuration in Indonesia

Software or software is a program command in a computer, which when given a command by the user will provide functions and performance as expected by the user. This statement illustrates that this software or software functions to give commands to the computer, so that the computer functions optimally, in accordance with the wishes of the user or user who gives the command. Software is an inseparable part of a computer. Without a piece of software installed on the computer, a computer is just an inanimate object that cannot perform any function. In the narrow sense software is a program that runs on a processor. Software is computer programs that are useful for carrying out a job as desired written in a special language that is only understood by computers.¹³

Software as a system are programs that are used to serve other programs. Software consists of system software i.e. operating system (*operating system*), utility programs and computer language translators (*language translator*). *Software* in the form of an operating system has a function to activate all devices installed on the computer so that it can be

used to communicate. for example operating systems are DOS, Unix, linux, OS / 2, Windows, Mac Os. The rise of computer program piracy in Indonesia, especially Microsoft's Windows operating system computer program, so many business people sell Windows operating system computer programs to make a profit by selling pirated operating systems and computer programs. In addition to market sales, there is another way to obtain pirated or illegal operating system computer programs, namely through illegal downloading.

The problem of computer program piracy in Indonesia, the law enforcement that will be taken will not bring any benefits without knowing in advance the reasons behind the occurrence of computer program piracy. Some of the reasons that are often used as the basis for violations are: ¹⁴

1. The high price of original software makes consumers switch to pirated software,
2. The ability of the average purchasing power of the Indonesian people is still low, this is exacerbated by the decline in the rupiah exchange rate against the dollar. On the other hand the price of original software in dollars,
3. Computer software is so easy to copy, it can even be done by newcomers to the computer world.
4. Pirated software can provide the same functionality as the original even so difficult to distinguish.
5. The increasingly sharp competition in the computer sales business makes each distributor, retailer, dealer, and look for its own appeal to attract consumers which is often done by illegal means.
6. The threat of bankruptcy of thousands or even millions of non-formal educational institutions in the computer field if original software must be used,
7. The user's perception that buying is buying an automatic computer with the program, no matter the original or not.
8. Lack of respect for the hard work of others.
9. Lack of Human Resources in the field of investigation and proof of Copyright cases, especially piracy of Computer Programs

Software piracy is an unauthorized way to replicate, issue, alter, market or use legally protected software i.e. the act of stealing legal software by illegal means that can be through softlifting; one rightful owner but multiple users, or via Hard Drive loading; one store owner buys certified copies and reproduces copies on many computers by installing them, or through forgery; producing duplicates of legal software programs with original appearances and sold out at lower prices, or through excessive use of client servers; install more software than has been licensed, or through online piracy; Internet piracy software is obtained from online auction sites and blogs. Currently, people are restricted

to the use of some software applications for facilities; especially bill payment over the internet, online information sharing, sports, archive handling, and so on.¹⁵

Piracy of computer programs also occurs due to factors of public legal awareness regarding copyright that needs to be considered by the government, regulation of copyright on computer programs for the public with sanctions provided by the Copyright Law. The economic ability of the community that affects the purchasing power of original computer programs that make using artificial computer programs an option. Information factors from the internet that facilitate access and acquisition of computer programs that are not original can then be distributed with the propagation of these computer programs.

Impact of Computer Program Piracy in Indonesia

Before a person uses software (*computer programs*) must obtain a license from the software. License is the granting of permission or right of use in the form of a written agreement between the party who gives the license and the party who receives the license to be able to use his property rights.¹⁶ but today, technological development is like a double-edged sword that can cause gains and losses in all aspects. Software or computer programs that are commonly used to run computers or laptops are also piracy. Pirated software or computer programs are software obtained illegally or without having permission to use (license) from the software.¹⁷ Software *piracy* is one of the computer crimes or cybercrime because it has violated copyrights protected by IPR.¹⁸

Software piracy is nothing new, although it must be admitted that the internet has provided a great opportunity for greater copyright infringement. Piracy is widespread in Europe. Eastern Europe is considered one of the largest operating centers for producing and distributing piracy software.¹⁹ According to *the Business Software Alliance* (BSA), in 2000, piracy rates were estimated to be around 88% in Russia, 26% in Denmark and the United Kingdom.²⁰

In *the First Annual BSA And IDC Global Software Piracy Study* published by the Business Software Alliance (BSA) and IDC Analyze Future in 2004, Indonesia ranked 3rd out of the Top 20 Pirating Countries or Top 20 Piracy Countries 3 with a piracy rate of 88% and computer device piracy losses of \$ 157 million on a global or world scale.²¹ The level of piracy in Indonesia began to decrease, this was recorded in *the BSA Global Software Survey* 2018, namely in 2017 the rate of computer programs without installed licenses decreased by 1% to 83%.²²

With an 83% rate of unlicensed computer programs installed in Indonesia, commercial losses amounted to \$1,095 million.²³ *The Business Software Alliance* (BSA) revealed that 83 percent of companies in Indonesia use pirated or illegal software. This number makes Indonesia a country with the use of pirated software at the company level in the Southeast Asia region and even Asia Pacific.²⁴

Various impacts can also arise due to the piracy of computer programs in Indonesia. According to the *Business Software Alliance* (BSA), the use of pirated or unlicensed computer programs can increase vulnerability to malware attacks by 29%.²⁵ This malware

litter is very easy to enter if the computer device used is a pirated computer device, so that computer viruses, spyware, root-kits and other malware can easily hijack, steal and even eliminate data on the computer and damage the computer operating system. Then, with the high number of piracy of this computer program has also clearly harmed software development companies both domestically and abroad, this will also have an impact on the progress of creativity of computer device developers due to piracy.

In addition, piracy will also have an impact on decreasing competitiveness at the international level. The results of the *World Economic Forum* survey in *Global Competitiveness 2012-2013*, Indonesia's competitiveness position is only ranked 50 out of 144 countries. This position dropped four places compared to the previous rank of 46. Software piracy has resulted in lost profits for *software* manufacturing companies so that companies do not have the ability to conduct further research and development. Piracy also causes researchers to be unmotivated to develop *new software* because they have concerns about piracy of the products they create.

There are several factors related to violations of copyright piracy of computer programs (software). These factors include: ²⁶

- 1) Economic factors, basically the desire to seek financial benefits quickly and respect the interests of creators and copyright holders. Likewise with affordable prices for the community where the price of pirated software can be purchased at prices ranging from Rp.50.000.00, - (fifty thousand rupiah) to Rp.100.000.00,- (one hundred thousand rupiah).
- 2) Legal substance factor, basically the applicable provisions, namely Law No. 28 of 2014 concerning copyright, still use complaint offenses, where the complaint offense in question is complained by the creator or party who feels aggrieved but this is actually very detrimental to the creator because generally software piracy carried out is general software piracy such as: Microsoft, Adobe, Antivirus and others, whose creators are not from Indonesia so they do not know there is piracy carried out on the software created.
- 3) Legal Structure Factors, basically the legal structure will not be able to move without the existence of legal substance where the legal substance in question still uses complaint offenses so that parties from the legal structure in this case the police must wait for complaints from the creator who feels aggrieved in order to carry out the applicable legal rules.
- 4) The Legal Culture of Society factor, related to the legal culture of the community in this case is still weak.

Indonesia is ranked 12th out of 108 countries in the results of an international study of company data on software piracy in the world. "This 12th position shows that software piracy in Indonesia has decreased by one percent," said Donni A. Sheyoputra, representative of the *business software alliance* in Indonesia, during a press conference after the opening of a seminar on software piracy at the U.S. Foreign Commercial Service

office in Metropolitan II Building Jakarta. Previously Indonesia occupied the eighth position, which means Indonesia is the top 10 software pirate countries in the world. The decline in the level of software piracy in Indonesia in 2007 has at least increased the confidence of foreign investors to re-invest in Indonesia. "Previously, the total loss due to piracy in Indonesia reached US \$ 411 million. Because in 2007 84 percent of software in Indonesia was pirated."²⁷

The high piracy of computer programs that occur in Indonesia encourages the government to try to prevent the practice of piracy of computer program copyrights. In addition to the UUHC, other efforts made by the government are the improvement of special personnel of the legal apparatus in preventing and eradicating computer program piracy. As it does:²⁸

1. Improve the ability of legal apparatus to understand the types of computer program piracy, in order to be able to prevent and enforce;
2. Legal proceedings against piracy perpetrators are very important so that sanctions can be imposed to provide a deterrent effect;
3. People's legal awareness is needed not to use pirated software on the grounds that it is cheaper and pirated products function like genuine ones. Therefore, the government needs to socialize laws and regulations to build public legal awareness in order to appreciate copyrighted works, so as to encourage the birth of more creative copyrighted works;
4. Indonesia is a country with many cases of software piracy so that it can reduce investor confidence to invest in Indonesia in the computer technology business, so government efforts are needed to increase investor confidence through supervision and enforcement of software piracy by checking the circulation and sale of software in the market.

Ethical/Moral Encouragement in Reducing Computer Program Piracy in Indonesia

The main problem of software piracy is the high risk of virus and malware infection to computer systems which can result in malicious system security and data corruption among others. The effect of piracy in the software development industry has been greatly increased which reduces its efficacy. This has resulted in serious losses for software manufacturers; by duplicating their products without legal and marketing approval by individuals who do not have the original license for use on other systems without proper registration keys. The efficacy of manufacturers and wholesalers against the resulting software; It becomes very detrimental exaggerated to intimidation especially piracy, engineering, and interference. It may be degraded because the software is not properly protected. As a result, in addition to generating enormous revenues for the software development industry, there is a need to consider a comprehensive risk analysis as well as software protection structure as a result of extensive software applications.²⁹ Operating systems need to be protected for proficient applications (e.g. graphics software); which can also be very expensive. The use of illegal software is growing every day because of

the easy way of obtaining software products without proper payment. Software wholesalers know the rigors of preventing software from hackers. It is estimated that each user must control his machine's hardware and access the network connection.³⁰

The spread of computers and the internet has provided many advantages to everyday life, but it has also created new opportunities for unethical and illegal actions such as piracy software. Computers since the 1970s have become increasingly faster, smaller and cheaper. Although the Internet has become an important tool for education and entertainment in the lives of students, it is widely accepted that the spread of the Internet has facilitated the growth of various crimes, such as digital piracy.³¹ Software piracy, i.e. unauthorized use or illegal copying of software, has become a major problem for businesses and is widespread in many parts of the world leading to depleting economies. As access to computers grows, the percentage of pirated software usage also increases. Software piracy technically covers a large area of ethical principles, as they relate to computer and information technology. This is because people may inadvertently commit such acts without realizing that they are ethically/morally/legally wrong.³²

When someone buys software, it means that they are actually buying a software license but not buying software.³³ Computers as a result of information technology have only changed the way old ethical problems arise and added new pressures on old problems. But unlike analog technology of the past, today's digital technology allows an infinite number of perfect copies to be made cheaply from just one original and allows those copies to be distributed at almost no cost around the world using the Internet. Completely eliminate this kind of piracy is impossible. One-time one digital copy of software is made without a copy of protective measures, individuals can quickly distribute it Internet and CDs until they are widely available. Officially the same CD and license number have been used. So, when people buy a CD with a license number, it seems to them that they have the right to use it anywhere and in any number of times.³⁴

The Internet has made global content distribution easier than ever, with the key promise of cutting costs by reducing the role of intermediaries who produce, distribute, and sell physical copies. Unfortunately, the digital age also has serious disadvantages for content producers and other industries as it makes it easier for consumers to gain access to content without authorization or without paying for it. As computers become more widespread in modern society, their use in criminal activities increases, reflecting repeated patterns of technology use and misuse.³⁵

The harmful effects of software piracy extend to developers, distributors, and users. Stealing software is such a simple and easy thing in this modern age that it's hard to think of this as an illegal activity, but it is. While people who use or distribute illegal software do not consider its harmful effects, software piracy has been conclusively proven to have negative effects on the economy. Software production employs millions of people and generates billions in revenue. Pirated software leads to lost income and tens of thousands of jobs lost as a result of insufficient income. A decrease in income can directly affect consumers as well as it leads to cost-cutting measures in terms of reduced support.³⁶

The following is how software piracy affects various related parties.³⁷

- a. For Users in the form of an increased risk of spreading viruses.
- b. Lack of support: Copies of illegal software often do not contain manuals, so users may not use the software productively. No warranty is given, so the program cannot be expected to be reliable.
- c. Software developers are less able to provide support to their legitimate customers. Illegal software can only be enhanced through further illegal actions The possibility of hefty fines with criminal and civil proceedings Software developers and distributors.
- d. Reduce sales and profits to the rightful owner of the software package
- e. Reduced opportunities for research and development of new/better software.
- f. Forcing developers to raise the price of the product for profit.

Quality that often lacks key elements and documentation, and doesn't come with warranty coverage or virus enhancement options because untested counterfeit disks can become infected with viruses that will damage your hard drive or cripple your network, without the benefit of technical support The process of copying or using illegally copied software in the workplace puts the entire company at risk of copyright infringement. Pirated software that doesn't work or contains viruses will waste company resources and drive up IT costs.

Pirated software harms everyone, from software developers to retail store owners, and ultimately to all software users. Illegal duplication and distribution of software has a significant impact on the economy, costing huge amounts of money per year in job losses, retail losses, and government tax losses, i.e. money that will be returned to local communities. In addition, companies facing lost revenue due to piracy must draw resources from the development of new technologies, and devote them to protecting their software, and its legitimate users. At the end of the day, software piracy is unfair to everyone.

Ethics and morals can be distinguished by using ethics and morals where morals are a value embedded in the human psyche is abstract as a means of human control to behave, while ethics as a manifestation of morals that appear in the form of human behavior, with other meanings ethics is concrete.³⁸

This means that justice is very closely related to the feelings of a person / public therefore the law (in the form of norms) must be able to respond to individual / public feelings if the law is to be used as a tool to realize justice, in connection with that it is certain to enforce legal norms that have responded to the feelings of justice of individuals / public must be people who also understand the sense of justice, Because it is very impossible when we expect the enforcement of legal norms that are fair to people who do not understand the meaning of justice itself. In line with the concept of justice according to Plato in Kelik Wardiono, which states justice in a country can be learned from good rules and soul.³⁹

CONCLUSION

Based on the results of research and discussion, several things can be concluded as follows:

1. Piracy of computer programs occurs due to factors of public legal awareness regarding copyright that needs to be considered by the government, regulation of copyright on computer programs for the public with sanctions provided by the Copyright Law. The economic ability of the community that affects the purchasing power of original computer programs that make using artificial computer programs an option. Information factors from the internet that facilitate access and acquisition of computer programs that are not original can then be distributed with the propagation of these computer programs.
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