

## LEGAL POLICY AGAINST PERPETRATORS OF COMPUTER PROGRAM (SOFTWARE) PIRACY CASES AND SOLUTIONS TO ERADICATE IT IN INDONESIA

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### Abstract

*This study aims to review; 1) Why do cases of piracy of computer programs (Software) in Indonesia occur a lot?; 2) What is the legal policy against perpetrators of piracy of computer programs (Software) 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 to then be distributed with the propagation of these computer programs. 2) Legal liability of perpetrators of computer program piracy is divided into 2 types, namely criminal liability and civil liability. Furthermore, regarding criminal liability, where the criminal provisions have been regulated in Law No. 28 of 2014 in Article 112 to Article 120, clearly explain the period of confinement and / or the amount of the fine if violations are found regarding computer programs. 3) Other efforts that must be made by the government in order to increase staffing, especially the legal apparatus in preventing and eradicating computer program piracy. Among others: a) Improve the ability of legal apparatus to understand the types of computer program piracy, in order to be able to prevent and enforce; b) Legal proceedings against piracy perpetrators are essential so that sanctions can be imposed to provide a deterrent effect; c) 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; d) Indonesia is a country with many cases of software piracy so that it can reduce investor confidence to invest in Indonesia in the field of computer technology business, so government efforts are needed to increase investor confidence through supervision and enforcement of software piracy by examining the circulation and sale of software in the market.*

**Keywords:** Legal Policy, Perpetrators of Computer Program (Software) Piracy Cases, Eradication Solutions, Indonesia.

## INTRODUCTION

### Background

In modern times everything develops rapidly and rapidly, one of which is technology. It is undeniable that the development of science will cause developments also in the technology around it. The more needs arise, the more technology is created. In terms of meeting the needs and supporting performance by humans, all technology is used and what is very dominating is technology in the computer world. Computers are the basis of technological development, it can be said that because the majority of technology ranging from electronics to machinery uses basic computer-based controls. And to run a computer, the computer needs a control, in addition to control from outside (manual) by humans, it also needs control from within by a programming called *software*.

The development of information technology that occurs in today's society cannot be denied. Information technology is one of the important needs for humans. Many changes have occurred to meet the needs of the community such as what was originally analog to be all-digital as it is today so that information technology has become a trend of technological development.<sup>1</sup>

Computer programs in short explanations that are easy to understand in general are software (software) or in its definition is a set of instructions expressed in the form of language, code, schemes, or in any form intended for the computer to work to perform a certain function or to achieve certain results. In short, a program is a collection of instructions intended for a computer. Through programs, computers can be set up to carry out certain tasks as determined by the programmer (the person who created the program)<sup>2</sup>

According to Article 1 paragraph (1) of Law Number 19 of 2002 concerning Copyright states that:

"Copyright is the exclusive right for the creator or recipient of the right to publish or reproduce his work or give permission to do so, without prejudice to restrictions under applicable laws and regulations."<sup>3</sup>

The definition of copyright regulated in Article 1 point 1 of the Copyright Law, it can be known that copyright is an exclusive right. The existence of exclusive rights is closely attached to their owners or holders which is personal power over the work in question. Exclusive rights are rights that are solely reserved for the holder so that no other party may utilize the right without the holder's permission. This right belongs to the creator or the party receiving the right from the creator.<sup>4</sup>

Computer Programs according to Law Number 28 of 2014 concerning Copyright Article 1 paragraph (9) are: "A set of instructions expressed in the form of language, code, scheme, or in any form intended for the computer to work to perform a certain function or to achieve a certain result."<sup>5</sup>

The development of internet technology gives rise to crimes called cybercrime or crimes through the internet network. The emergence of several cases of cybercrime in Indonesia, is a phenomenon, such as credit card theft, hacking of various websites, interception of other people's data transmissions, and data manipulation by preparing unwanted commands into computer programs (piracy).

For a long time, piracy of computer software has been a phenomenon in Indonesia. Software piracy is done using various media, including floppy disks, CDs (Compaq Disks), and often also done directly from computer to computer using data cables. In this case, it is felt that there is a lack of legal protection provided to software creators. It is recognized that protecting software from piracy cases is a difficult thing, considering that software which is a form of software piracy can be done quickly and without leaving a mark because it is supported by advances in computer technology that are increasingly sophisticated today.

Electronic Software (software) is an application of a computer program that contains commands to process data. When buying a computer application program or computer software should be ensured that we only buy genuine products. This is important because there are many pirated computer application programs that are traded on the market but the quality is far different from the original application program.<sup>6</sup>

With the certainty of rights for creators, copyright infringement can be limited. Of course, the development of infringement and crime activities in the field of Computer Programs is influenced by several factors such as the low level of public understanding of the meaning and function of copyright, attitudes and desires to obtain trade benefits in an easy way, plus the inadequacy of building a common understanding of the attitudes and actions of law enforcement officials in dealing with violations and crimes of Computer Program Copyright is a factor that needs attention.

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.<sup>7</sup>

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) Why do cases of piracy of computer programs (*Software*) in Indonesia occur a lot?;
- 2) What is the legal policy against perpetrators of piracy of computer programs (*Software*) and its eradication solutions in Indonesia?

### **THEORETICAL FRAMEWORK**

Law enforcement is the process of making efforts to uphold or function legal norms in real terms as a code of conduct in traffic or legal relations in public and state life.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup>

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.<sup>12</sup> So as to formulate the right method in dealing with computer program piracy using law enforcement theory.

## **RESEARCH METHODOLOGY**

### **1. Types of Research**

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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

### **2. Research Data Sources**

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<sup>16</sup>.

The primary data sources in this study were interviews and observations. The results of interviews with informants that have been specified in the research plan have been carried out at the time of the study.

Secondary data sources are: from scientific journals and books to support the research process.

### **3. Data Collection Techniques**

This data collection method with literature research or commonly called literature study, this method is carried out to obtain secondary data both in the form of primary legal material and secondary legal material. After being inventoried, a review is carried out to make the essence of each regulation concerned. Data is collected by studying literature sources in the form of literature books, laws and regulations, and collecting existing data in the form of data that is directly related to the research conducted.<sup>17</sup>

#### 4. Data Analysis

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*).<sup>18</sup>

### RESEARCH RESULTS

#### Computer Program (Software) Piracy Cases in Indonesia

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."<sup>19</sup>

Based on a study report published by the International Planning and Research Corporation for the Business Software Alliance (BSA) and the Software & Information Industry Association (SUA), it can be found that the practice of software piracy around the world is very high. In its 2001 report, Indonesia was declared the 3rd highest software piracy country, below Vietnam and China. The piracy rate of this software as much as 90% is absorbed by the consumer segment for Personal Computers (PCs) at home, while for the enterprise segment it only reaches 10%. Copyright infringement of this software in Indonesia is carried out by both dealers and end users, both individuals and corporations. According to the list issued by USTR (United State Trade Representative), Indonesia is included in the category of "priority watch list" because it is considered to have high cases of copyright piracy, especially VCDs and software. Whether we realize it or not, software piracy in Indonesia is rife, so easy we get pirated software at affordable prices in stores selling computer software, even at street vendors. Advances in technology are felt to make it easier for software piracy to occur.<sup>20</sup>

For most computer users in Indonesia, purchasing a finished software package is a luxury. Indeed, many institutions, both private and public, spend large funds for the procurement of computer systems, but rarely allocate funds for the purchase of software packages. Therefore, computer software procurement funds are only absorbed for the development of specialized systems built to address the specific needs of the institution concerned. The operating system (OS) that is likened to the life of a computer alone uses piracy. The most widely used windows OS in Indonesia for the latest version (windows 10) sold around Rp.2.600.000,00 at launch, that price was not enough to attract most Indonesians to buy it. It can be said that the average PC in Indonesia uses piracy software.<sup>12</sup> According to a survey conducted by the Business Software Alliance and Ipsos Public Affairs in 2010, Indonesia ranked seventh out of 32 countries that use the most pirated computer software. Various ways are done by piracy actors to fake and reproduce software. According to the Indonesian National Police (Polri), there are at least 4 modus operandi that are often done to hijack a software, namely:

##### 1) Hard disk loading

Software piracy occurs when a computer store offers the installation of an operating system or pirated software to customers who want to buy computer devices. Usually, this offer is put forward as an additional service to customers who purchased a laptop or assembled a computer without an operating system.

## 2) Counterfeiting

The kind of software counterfeiting that is usually done "seriously." Software CDs are not wrapped in plain plastic. Here, piracy perpetrators also make packaging boxes like the real thing, complete with a convincing manual book and CD pieces.

## 3) Internet/online piracy

This type of piracy is carried out through an internet network connection. So far, many websites provide pirated software for free. Someone who needs it can download at any time.

## 4) Corporate Piracy

In the corporate sphere, piracy is most often done when companies buy software for 10 licenses, but in practice, the software is used on 15 or more computers. According to the National Police, the use of software without a license for commercial purposes is a criminal offense.

Software piracy is any form of reproduction or use of software without permission or outside of what has been regulated by Copyright Law, here are the types of software piracy that often occur: **End user piracy**, illegal use of end users by using illegal programs; **Retail piracy & counterfeiting**, software supply in the form of CDs that are usually rented at a price of Rp 2,000 to 20,000; **Internet piracy**, downloaded from rapidshare or from illegal places or not from the official website of the program; **Hard disk loading**, purchasing assembled computers that have been filled with Windows and various programs such as Office and AntiVirus.

The development of technological advances today, it increasingly supports piracy activities itself. So far, piracy is an act of violation of the law that we actually consider commonplace. There is no item without piracy. There is nothing we use that is not bought from piracy, or we plow it ourselves. For a long time, piracy of computer software has been a phenomenon in Indonesia.

If studied more deeply the issue 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:<sup>21</sup>

- 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 can provide the same function as the original even so difficult to distinguish.
- 5) Increasingly sharp competition in the computer sales business makes each distributor, retailer, dealer, look for its own attractiveness 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.

The problem behind the piracy of the computer program is indeed very complicated and endemic in almost every computer user in this country, not only in companies, government or private offices, educational institutions, to PCs (personal computers) owned by individuals in their respective residences.<sup>22</sup>

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.

### **Legal Policy Against Perpetrators of Computer Program (Software) Piracy and Solutions to Eradicate It in Indonesia**

Computer programs as one of the results of copyright works in the field of science regulate following the results of other copyrighted works. A computer program as a protected copyright work is regulated under the Copyright Law. Provisions regarding Copyright in computer programs have only begun to be enforced in Law number 7 of 1987 and in Law Number 19 of 2002 concerning Copyright which was later updated with Law No. 28 of 2014 which is currently in force. Along with the rapid development of information and communication technology has become one of the variables in the Law on Copyright, considering that information and communication technology on the one hand has a strategic role in the development of Copyright, but on the other hand it is also a tool for legal violations in this field. Proportional arrangements are needed, so that positive functions can be optimized and negative impacts can be minimized so that the Government replaced Law Number 19 of 2002 concerning Copyright with Law Number 28 of 2014 concerning Copyright, this shows that the earnest efforts of the state to protect the economic and moral rights of Creators and Related Rights owners as an important element in the development of national creativity. The license on the software is creator rights management information attached electronically to the software that describes the function of the software, creator, software and information about the terms of use of the software is valid<sup>23</sup>

Sugeng Istanto stated that responsibility means the obligation to provide answers which is a calculation of everything that happened and the obligation to provide recovery for losses that may be caused<sup>24</sup>. Furthermore, the Quarterly Point emphasizes that legal liability must have a basis, namely the thing that causes the emergence of a legal right for a person to sue others as well as a thing that gives birth to the legal obligation of others to give him accountability.<sup>25</sup>

Copyright in Copyright Law is the exclusive right for the Creator or Copyright Holder to publish or reproduce his work, which arises automatically after a work is born without prejudice to restrictions under applicable laws and regulations. Copyright as referred to in Article 3 letter a of Law Number 28 of 2014 concerning Copyright is an exclusive right consisting of moral rights and economic rights, so the provisions in the Civil Code also apply to it.

Software / programmer piracy activities involving copyrighted works, of course, cause material losses suffered by copyright holders. In the event of a copyright dispute, the copyright holder may claim damages from the infringing party to the Court. This claim for compensation can be made by the copyright recipient either alone or jointly with the copyright owner concerned, but the right to file this lawsuit does not reduce the State's right to bring criminal claims in the field of copyright.

Legal liability for perpetrators of computer program piracy is divided into 2 types, namely criminal liability and civil liability. Furthermore, regarding criminal liability, where the criminal provisions have been regulated in Law No. 28 of 2014 in Article 112 to Article 120, clearly explain the period of confinement and / or the amount of the fine if violations are found regarding computer programs.

A creator also has the right to report violations committed by parties who are not entitled to his work as perpetrators of criminal acts to the police. This is in accordance with Article 105 of the UUHC which states that the right to file a civil lawsuit for infringement of copyright and/or related rights does not reduce his right to prosecute criminally. Law No.28 of 2014 concerning Copyright contains more of the principle of complaint offense (Article 120).

In addition to criminal liability, perpetrators of computer program piracy can be held civilly liable. Unlawful acts are regulated in Article 1365 of the Civil Code which states that: "Every unlawful act that therefore causes harm to another person, requires the person who caused the harm to compensate for the loss."

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 UUHC, other efforts made by the government are the improvement of staffing, especially the legal apparatus in preventing and eradicating computer program piracy. As it does:<sup>26</sup>

- 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;

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.

## **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.
2. Legal liability for perpetrators of computer program piracy is divided into 2 types, namely criminal liability and civil liability. Furthermore, regarding criminal liability, where the criminal provisions have been regulated in Law No. 28 of 2014 in Article 112 to Article 120, clearly explain the period of confinement and / or the amount of the fine if violations are found regarding computer programs.



3. Other efforts that must be made by the government in order to increase staffing, especially the legal apparatus in preventing and eradicating computer program piracy. Among others:
  - a) Improve the ability of legal apparatus to understand the types of computer program piracy, in order to be able to prevent and enforce;
  - b) Legal proceedings against piracy perpetrators are very important so that sanctions can be imposed to provide a deterrent effect;
  - c) 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;
  - d) 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.

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