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Legal Protection Of Copyright From The Crime Of Computer Software Piracy According To Trips Agreement And Its Implementation In Indonesia

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ARTICLE INFO	ABSTRACT
Keywords: Legal protection Computer Software Piracy	Protection against computer software is often underestimated because it is considered not so important and there are no consequences, in fact piracy against computer software piracy is an unlawful act that results in criminal sanctions in the form of imprisonment and fines. As a result of rampant computer software piracy, Indonesia is faced with problems and bad impacts, both internationally and in Indonesia itself. Although in Indonesia it has been regulated in Law No. 28 of 2014 concerning Copyright, but there are no strict laws and regulations governing the act of software piracy. Where the purpose of this research is to find out and analyze the formulation of the problem. The legal research method that the author uses is normative, where the author examines library materials which are secondary data and is also called Library Legal Research, namely research on secondary data. The result of the research is that the regulation of copyright legal protection from software piracy crimes according to TRIPs is Law Number 28 of 2014 concerning Copyright which contains the ratification of the TRIPs agreement, then there is Law Number 11 of 2008 concerning Information and Electronic Transactions and Government Regulations. Republic of Indonesia Number 29 of 2004 concerning High-Tech Production Facilities for Optical Discs.
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INTRODUCTION

The development of information technology that occurs in today's society cannot be denied. Information technology is one of the most important needs for humans. Many changes have occurred to the fulfillment of the needs of the community, such as initially being analog to being completely digital as it is today, so that information technology has become a trend of technological development. Digital information technology that exists today certainly cannot be separated from the existence of computers. The advantages of computers in the form of speed and accuracy in completing a job so that it can reduce the amount of labor, costs, and reduce the number of possible errors. This makes humans dependent on computers. To run a computer, necessary parts are needed to operate the computer. One of the most important parts is software, in which case the software is a creation that is protected through copyright[1], [2].

Software piracy does not only occur in Indonesia, but also in other countries. As happened in America, losses resulting from software piracy reached 4.65 billion dollars5. Meanwhile in Indonesia, pirated software installed on personal computers in Indonesia reached 84% in 20136. This makes Indonesia the top ranked country among ASEAN countries in terms of software piracy, beating Malaysia (55%), Thailand (72%)), Philippines (70%), and Vietnam (81%)[3], [4].

Software piracy has long been a serious problem in Indonesia. Software piracy can be carried

out using CD media, the Internet, and not infrequently it is done directly from computer to computer using a data cable. Like a case experienced by an internet cafe owner in Makassar who was hit by a software raid by the local police. The owner of the cafe was proven to have used 3 pirated software in 20 computers installed in his internet cafe. The three software are Microsoft Office Enterprise 2007, Corel Draw X4 Portable, and Adobe Photoshop CS3. In this case the judge charged him with violating Article 72 paragraph 3 of Law no. 19 of 2002 concerning Copyright and sentenced to imprisonment for 6 months and a fine of 50 million rupiah[5].

Rules regarding software copyright can be found in several international conventions. The Berne Convention for the Protection of Literary and Artistic Works 1886, which was ratified by Presidential Decree No. 18/1997, is the oldest convention on copyright. In this convention it is not regulated regarding software, but because software is a literary work, Article 2 Paragraph (1) explains that software is a literary work that must be protected. Indonesia also ratified the WIPO Copyright Treaty 1996 through Presidential Decree of the Republic of Indonesia Number 19 of 1997. Article 4 explains that computer programs are protected as literary works as referred to in Article 2 of the Berne Convention.[6], [7].

In the end, Indonesia ratified the TRIPs Agreement through the Law of the Republic of Indonesia Number 7 of 1994 concerning Ratification of the Agreement Establishing The World Trade Organization. In TRIPs, the rules regarding software copyright are regulated in Article 10 which explains that computer programs must be protected as literary works. What distinguishes TRIPs from previous international conventions, in previous international conventions the rules regarding computer software or programs are not clearly and firmly regulated, the Berne Convention and WIPO for example only mention that literary works are given 25 years of protection, while in TRIPs it is clearly stated that the Computer Program (software) is a literary work as referred to in the Berne Convention, and is protected for 50 years. TRIPs is a pioneer for the birth of a new Indonesian positive law on Intellectual Property Rights[8], [9]. Within the framework of adjusting the national Intellectual Property Rights legislation with the norms of the TRIPs Agreement, Indonesia has taken steps to systematically prepare it9. Indonesia is required to improve its positive law on intellectual property rights in accordance with TRIPs. Therefore, Indonesia made Law Number 28 of 2014 concerning Copyrights[10], [11].

Software piracy is also regulated in several articles in the Indonesian Government Regulation Number 29 of 2004 concerning High-Tech Production Facilities for Optical Discs related to piracy issues using optical disc media. The issue of software piracy is also regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as UUITE). This Law does not explain in detail about software piracy, but there are several articles related to criminal acts of software piracy, namely Article 34 regarding prohibited acts, and Article 52 Paragraphs (2), (3), (4) about criminal sanctions. Inconsistent copyright enforcement so far has had a negative impact on Indonesia, including reduced state revenues, at least investors who invest in Indonesia, and tarnish the good name of Indonesia in the international world. Therefore, it is necessary to take concrete actions from the government in dealing with the problem of computer software piracy. So that Indonesia can be an example of countries that have a high piracy rate[12], [13].

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METHOD

Research Typology

The typology of the research used is normative legal research. Normative Legal Research is legal research by examining library materials which are secondary data and also known as Library Legal Research, namely research on secondary data. This type of research is also called law in book research, doctrinal research, and secondary data research. There are only 2 types of normative legal research that will be used in this study, namely: Positive Legal Inventory Research and Research on Legal Synchronization Levels (both legal synchronization vertically and legal synchronization horizontally).

Data Type

The type of data in this study is secondary data, which consists of: Primary legal materials, which are international legal instruments and national laws, which consist of:

- a. Law of the Republic of Indonesia Number 7 of 1994 concerning Ratification of the Agreement Establishing The World Trade Organization.
- b. Law Number 28 of 2014 concerning Copyright.
- c. Law Number 11 of 2008 concerning Information and Electronic Transactions.
- d. Government Regulation of the Republic of Indonesia Number 29 of 2004 concerning High-Tech Production Facilities for Optical Discs (Optical Disc)
- e. Decree of the President of the Republic of Indonesia Number 18 of 1997 concerning Ratification of the Berne Convention For The Protection of Literary and Artistic Works (Berne Convention on the Protection of Art and Literary Copyrights).
- f. Decree of the President of the Republic of Indonesia Number 19 of 1997 concerning the Ratification of the WIPO Copyrights Treaty (WIPO Treaty on Copyright).
- g. Other related regulations.

Secondary legal materials, namely materials that are closely related to primary legal materials and can help analyze and understand primary legal materials. Secondary legal materials consist of books, writings, case study research and published articles related to this research. Tertiary legal materials, namely materials that provide information on primary legal materials and secondary legal materials.13 This material is obtained from dictionaries and encyclopedias, as well as internet browsing which helps the author to obtain materials related to research problems.

Data collection technique

The data collection technique uses library research, namely by studying the Constitution, laws and regulations on intellectual property rights, international agreements on intellectual property rights, books, articles, papers, and other electronic media. Literature studies were carried out in several places, namely the Andalas University Central Library and the Andalas University Faculty of Law Library.

Processing and analysis of data

The data that has been obtained must be processed. In carrying out data processing, the authors do so in an objective and systematic way against the legal materials. Objective means processing the legal materials in accordance with those obtained in the research. While systematic

means making a classification of the legal materials to facilitate the process of data analysis. The analysis required is qualitative analysis, because the data obtained is still in the form of descriptions of sentences, then systematically arranged into a scientific paper.

RESULT AND DISCUSSION

National Legal Arrangements Regarding Software Protection Implemented from TRIPs

Rules regarding software copyright can be found in several international conventions. The Berne Convention for the Protection of Literary and Artistic Works 1886, which was ratified by Presidential Decree No. 18/1997, is the oldest convention on copyright. In this convention, it is not regulated regarding software, but because software is a literary work, in Article 2 Paragraph (1) of the Bern convention it is explained that software is a literary work that must be protected. Indonesia also ratified the WIPO Copyright Treaty 1996 through Presidential Decree No. 19/1997. Article 4 explains that computer programs are protected as literary works as referred to in Article 2 of the Berne Convention. In the end, Indonesia ratified the TRIPs Agreement through the Law of the Republic of Indonesia Number 7 of 1994 concerning Ratification of the Agreement Establishing The World Trade Organization. In TRIPs, the rules regarding software copyright are regulated in Article 10 which explains that computer programs must be protected as literary works. What distinguishes TRIPs from previous international conventions, in previous international conventions the rules regarding computer software or programs were not regulated clearly and firmly, the Berne Convention and WIPO only stated that literary works were given protection for 25 years, while in TRIPs it was stated explicitly. It is clear that the Computer Program is a literary work that has been protected for 50 years.

TRIPs is a pioneer for the birth of a new positive Indonesian law on Intellectual Property Rights. Within the framework of adjusting the national Intellectual Property Rights laws and regulations with the norms of the TRIPs Agreement, Indonesia has taken steps to systematically prepare them, one of which is the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. Indonesia is required to improve its positive law on intellectual property rights in accordance with TRIPs. Indonesia as one of the countries participating in the TRIPs agreement ratified the contents of the agreement and perfected the understanding of computer programs in Article 1 paragraph (9) which states that a computer program is a set of instructions that are expressed in the form of language, code, scheme, or in any form intended to make the computer work to perform certain functions or to achieve certain results. The rules regarding the period of copyright protection are contained in Article 12 of the TRIPs Agreement, which is 50 years from the date the work was announced. different from the regulation of the period of protection in the Berne Convention which is only for 25 years from the time the work is published. In TRIPs, the rules regarding law enforcement for violations of intellectual property rights, namely in this case especially copyright infringement, are regulated in Chapter III from Article 41 to Article 61 which consists of 5 parts. civil justice procedures for copyright holders and fair and honest procedures, Chapter XIV UUHC concerning dispute resolution explains that copyright settlement is carried out through alternative dispute resolution, arbitration, and courts where the competent court is the Commercial Court. However, in particular Article 95 paragraph (4) explains that in addition to copyright infringement and/or related rights in the form of piracy, as long as the parties are aware of their existence and/or are in the territory of the Unitary State of the Republic of Indonesia, they

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must first complete the dispute resolution through mediation before committing criminal charges. In the article above, there are special arrangements for piracy cases where in this case, before taking the court route, the parties are required to first mediate.

Implementation of Law Enforcement Against Copyright Infringement Software Piracy in Indonesia and Obstacles in Its Implementation Arrangements in Copyright Law Number 28 of 2014

A computer program is a set of instructions that are expressed in the form of language, code, schema, or in any form intended to make the computer work to perform certain functions or to achieve certain results (article 1 point 9). A clearer understanding of this software can be seen in the Australian Copyright Act, it is explained that software actually includes source code and object code which is a set of instructions consisting of letters, languages, codes or notations that are arranged or written in such a way. in such a way as to create a tool that has the ability to process digital information and can perform certain work functions.

The economic right to lease the Works or copies thereof as referred to in Article 9 paragraph (1) letter i does not apply to Computer Programs in the event that the Computer Programs are not the essential object of the rental (Article 11 Paragraph (2)). What is meant by "essential object" is computer software which is the main object of the rental agreement. Article 40 of Law Number 28 of 2014 is an article that clearly shows that computer programs are protected creations that fall into the category of creations in the field of science. This is explained in the letter (s). In article 45 paragraph (1) a user (not a copyright holder) of a computer program can make 1 (one) copy or adaptation of the computer program that he owns legally, for research and development of the Computer Program or to be used as a backup for personal use only. Making such backup copies is not considered a Copyright infringement. In article 45 paragraph (2) the destruction of copies or adaptations of Computer Programs is intended to avoid unauthorized use by other parties.

Article 59 paragraph (1) : Copyright Protection of Works, photographic treasures, portraits, cinematographic works, video games, computer programs, representations of written works, translations, interpretations, adaptations, anthology, databases, adaptations, arrangements, modifications and works other from the result of the transformation; translation, adaptation, arrangement, transformation or modification of traditional cultural expressions; compilation of Works or data, either in a format that can be read with a Computer Program or other media; and a compilation of traditional cultural expressions as long as the compilation is an original work, valid for 50 (fifty) years from the first announcement

Article 113 paragraphs (3) and (4) are: (3) Any person who unlawfully violates economic rights as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and or letter g for commercial persons shall be sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1.000.000.000,000 (one billion rupiah). (4) Any person who fulfills the elements as referred to in paragraph (3) committed in the form of piracy, shall be punished with imprisonment for a maximum of 10 (ten) years and or a fine of a maximum of Rp. 4,000,000,000.000 (four billion rupiah).

Regulation of the Government of the Republic of Indonesia Number 29 of 2004 concerning High-Tech Production Facilities for Optical Discs (Optical Disc)

In the Government Regulation of the Republic of Indonesia Number 29 of 2004 concerning

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High-Tech Production Facilities for Optical Discs, there are several articles that can be related to computer software piracy, especially regarding the issue of optical disc production, which is regulated in Chapter III (Article 4 to Article 8) concerning the Production Code, and in Chapter VI (Article 18) regarding administrative sanctions, which are as follows:

Chapter III on Production Code:

Article 4

(1) Every Filled Optical Disc Production Facility must have a Production Code that has been accredited and accepted internationally.

(2) The Production Code as referred to in paragraph (1) consists of:

- a. stamper code (stamper code) must be written and clearly legible on each stamper;
- b. the mold code must be engraved on each mold, both installed and not installed on machines and equipment.

(3) The Production Code as referred to in paragraph (2) must be printed on the Filled Optical Disc.

Article 5 Imported Content Optical Discs must have a production code from the country of origin consisting of:

- a. stamp code;
- b. b.print code.

Article 6 Imported stampers must have stamper codes that are clearly written and legible. Article 7 Production Codes owned by the Optical Disc industry must be registered with the agency in charge of industry and trade. Article 8 Every Optical Disc company is obligated to put up a nameplate that clearly states the name, address, telephone number and business license number. In 2009 there were 355 cases of copyright infringement using this optical disc facility with the seizure of 52 duplicators and 110 shops/traders with a total of 351 suspects and 2,011,611 pieces of evidence in the form of optical discs, consisting of 611,486 films, 250,018 music and 34,279 software and confiscated 120 units of evidence in the form of duplicators. 58 In Article 4 to Article 8 of Government Regulation of the Republic of Indonesia Number 29 of 2004 concerning High-Tech Production Facilities for Optical Discs, it is stipulated that every company that produces optical discs must have a production code. Production Code is Source Identification Code (SID) which consists of stamper code and mold code. Article 8 regulates the provision that every optical disc company is required to install a nameplate that clearly contains name, address, telephone number and business license number. Especially for computer software which is generally sold in disc form, where in the case of this pirated software, apart from violating Article 8 which does not include the stampler code and printed code,

Chapter VI on administrative sanctions:

Article 18

(1) For business actors who violate the provisions of Article 4, Article 5, Article 6, Article 7, Article 8, Article 9, Article 11, and Article 12 may be subject to administrative sanctions in the form of:

a. revocation or suspension of Optical Disc business licenses owned by Business Actors; and/or

b. reporting through mass media regarding violations committed by Business Actors.

(2) The refusal to comply with the supervision and inspection as referred to in Article 13,

Article 15 paragraph (1) and Article 16 may be subject to administrative sanctions as referred to in paragraph (1) letter a.

In Article 18, it is quite clear that administrative sanctions against business actors violate the provisions as stipulated in Article 4, Article 5, Article 6, Article 7, Article 8, Article 9, Article 11, and Article 12 of Government Regulation of the Republic of Indonesia Number 29 of 2004 concerning Facilities High-Tech Production For Optical Discs (Optical Disc). Administrative sanctions are imposed in addition to the criminal sanctions as stipulated in Law Number 19 of 2002 concerning Copyright Article 72 paragraph (9) in the form of imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of Rp. 1,500,000,000.00 (one billion five hundred million rupiah).

Arrangements in the Electronic Information and Transaction Law (Law Number 11 of 2008)

In Law No. 11 of 2008, it is not regulated in detail about piracy of computer software. However, in this Law there are several articles related to the criminal act of piracy of computer software which is regulated in Chapter VII regarding prohibited acts in Law Number 11 of 2008. Regarding prohibited acts, namely:

Article 34: (1) Any person who intentionally and without rights or against the law produces, sells, procures for use, imports, distributes, provides, or owns: computer hardware or software designed or special developed to facilitate the actions as referred to in Article 27 to Article 33; password through a Computer, Access Code, or something similar that is intended to make the Electronic System accessible with the aim of facilitating the actions as referred to in Article 27 to Article 33. (2) The actions as referred to in paragraph (1) are not criminal acts if they are intended to conducting research activities, testing Electronic Systems, for the protection of the Electronic Systems itself legally and not against the law.

In Article 34 Paragraph (1) point (a) of Law Number 11 of 2008 concerning Information and Electronic Transactions it is stated that any person who intentionally and without rights or against the law is prohibited from producing, selling, procuring for use, importing, distributing provide, or have computer hardware or software that is designed or specifically developed to facilitate the actions regulated in Article 27 to Article 33 of Law Number 11 of 2008 concerning Information and Electronic Transactions. In this case, specifically computer software in question is special software or certain software that can be used to carry out certain functions as regulated in Article 27 to Article 33.

Article 28 (1) Everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions. (2) Any person intentionally and without rights disseminates information aimed at causing feelings of hatred or hostility to certain individuals and/or community groups based on ethnicity, religion, race, and inter-group (SARA).

Article 29 Everyone intentionally and without rights sends Electronic Information and/or Electronic Documents containing threats of violence or intimidation aimed at personally. Article 30 (1) Any person intentionally and without rights or against the law accesses Computers

and/or Electronic Systems belonging to other Persons in any way. (2) Any Person intentionally and without rights or against the law accesses a Computer and/or Electronic System in any way with the aim of obtaining Electronic Information and/or Electronic Documents. (3) Any person intentionally and without rights or against the law accesses a Computer and/or Electronic System

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in any way by violating, breaking through, exceeding, or breaking into the security system.

In Article 27 to Article 33 of Law Number 11 of 2008 it is quite clear that prohibited acts are regulated. In relation to software as regulated in Article 34 paragraph (1), the software in question is software that can perform special functions as stipulated in Article 27 to Article 33. Provisions regarding exceptions are regulated in Article 34 Paragraph (2) if it is intended to carry out research activities, testing Electronic Systems, for the protection of the Electronic Systems itself legally and not against the law. The research activity in question is research carried out by research institutions that have permits.

Regarding criminal sanctions, Article 52 Paragraph (2), (3), and Paragraph (4) of Law Number 11 Year 2008 concerning Electronic Information and Transactions is quite clear on the sanctions imposed on violations regulated in particular in Article 34. Specifically Article 52 Paragraph (4), this provision is intended to punish any unlawful act that fulfills the elements as referred to in Article 27 to Article 37 committed by a corporation (corporate crime) and/or by management and/or staff who have the capacity to represent the corporation. , make decisions within the corporation, carry out supervision and control within the corporation, carry out activities for the benefit of the corporation.

Barriers to Software Protection (Original Software Prices) Beyond the Reach of Most Users (Users) In Indonesia

The rapid development of information and communication technology has led to changes in community activities in various fields which will also have a great opportunity to provoke crime by utilizing technology. The development of information and communication technology, in addition to contributing to the improvement of welfare, progress and civilization of human life, has also become a more effective means for some people or groups of people to use it to fight against the law or commit crimes.

The problem of computer software piracy has become a global issue that many people talk about today. This can be caused by the dilemma of the high price of a software and the desire of computer software makers to make their products sell well in the market. On the one hand, software makers have the right to sell their software at a price they set themselves. But on the other hand, consumers seem to be victims because when everyone in the world is required to master technological developments, especially computers, most of the Indonesian people are also still faced with economic problems which ultimately limit their desire to keep up with technological developments including buying software. computers that are relatively expensive.

Weak Monitoring and Monitoring System for Software Usage

The law enforcement process is basically an effort to realize justice and order in social life through the criminal justice system and the criminal justice system. Basically the rights of citizens who are disturbed due to someone's unlawful acts will be rebalanced. Law enforcement factors are often the cause of the rise of cyber crimes that use computer technology. This is motivated by the lack of law enforcement officers who understand the ins and outs of information technology (internet), so that when the perpetrators of criminal acts are arrested, law enforcement officers have difficulty finding evidence that can be used to ensnare the perpetrators, especially if the crime committed has a proper operating system. very complicated. Besides that, Law enforcement

officers in the regions are not ready to anticipate the rise of this crime because there are still many regional police institutions, both the Resort Police and the Sector Police, are not yet equipped with an internet network. It should be noted that with such sophisticated technology, it is possible for crimes to be committed in one area but the consequences can occur in other areas, even abroad.

Lack of Public Understanding About Copyright

Copyright issues arise related to the problem of economic liberalization on the one hand and the problem of the socio-cultural conditions of the Indonesian people on the other. The sociocultural conditions of the Indonesian people are still in the industrial transition period where not all of them understand and understand copyright issues that were previously unknown. Industrial transition society can be described as a society that is undergoing a change from an agrarian society with a communal-traditional pattern to a society with a modern individual pattern. This change is related to the unfinished structure of public relations to a more rational and commercial style as a result of the development process carried out. In addition, there are also many copyright infringement. They are not ignorant or do not understand that buying and selling pirated goods is against the law. Most of our society is also still tempted by cheap goods regardless of whether an item is pirated or not. Many people still think that copyright infringement is solely the business of law enforcement officials. This assumption needs to be changed so that the culture of being reluctant to report can become a culture of playing an active role, to reduce as little as possible the space for perpetrators of copyright crimes.

CONCLUSION

Copyright law protection against software piracy is contained in several laws, including the ratification of the TRIPs agreement. Indonesia has ratified the WTO Agreement through Law Number 7 of 1994, this was followed by the making of several laws in the field of intellectual property rights, which are the elaboration of TRIPs, which are part of the WTO. new on intellectual property rights. Especially regarding copyright, Indonesia ratified all the rules contained in TRIPs, namely through Law Number 19 of 2002 concerning Copyright which was later replaced by Law Number 28 of 2014 concerning Copyright where in this law it is quite clear about piracy. computer software. Law Number 11 of 2008 concerning Information and Electronic Transactions, in this law is not regulated as clearly as in Law 28 of 2014, but in this law there are regulations related to software piracy. The main problem in law enforcement in the crime of piracy of computer software actually lies in the factors that influence it, which have a positive or negative impact, contained in the content of these factors. Lack of public understanding of Copyright. Weak monitoring and monitoring system for software usage. The price of the original software (original) is beyond the reach of most users (users) in Indonesia. Computer software is so easy to copy, it can even be done by newcomers to the computer world. Pirated software can provide the same functionality as the original even so it is difficult to distinguish. The increasingly fierce competition in the computer sales business makes each distributor, retailer, dealer, seek their own attraction to attract consumers, which is often done by illegal means. The threat of bankruptcy of thousands and even millions of non-formal educational institutions in the computer field if original software must be used, the perception of users or users that buying an automatic computer with the program, no matter original or not. Lack of respect for the hard work of other parties' works. Lack of Human

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