

Copyright on Computer Software Products in Palangka Raya City (Positive Legal Perspective and Sharia Economic Law)

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ABSTRACT

The widespread use and sale of pirated software products to the public in Palangka Raya City, who have the potential to commit copyright infringement, motivates this research. The use and sale of software products without permission from the creator/copyright holder is piracy and an act of copyright infringement under the Copyright Law and the MUI Fatwa. This study discusses the forms and constraints in controlling Copyright on computer software products and Islamic views on the practice of buying and selling pirated computer software products. The researcher uses a statutory and conceptual approach in this sociological, juridical research. The data collection techniques in this study used literature and field studies with descriptive-analytical methods. The practice of buying and selling computer software products is legal in Islam's view. However, suppose you practice buying and selling using illegal (pirated) computer software products. In that case, the sale and purchase are considered harmful, and the law is forbidden or prohibited in Islam. The existence of free song download sites on electronic media has the potential to infringe on Copyright. I gave authors the exclusive right to use themselves and may prohibit other people without their permission from using their work primarily for commercial purposes. Free download sites that do not have permission and do not provide royalties to classify creators as copyright infringement based on the Copyright Law and ITE Law provisions. The method used in this research is legal research, which is included in empirical research. Based on the research results, the law enforcement process has not run optimally. Public legal awareness of Copyright, which is still low, and technological advances.

Keywords: Copyright; Piracy; Computer Software Products.

How to Cite: Aditia, F., Pelu, I. E. A., Wahyunita, L., & Sabil, M. F. I. (2022). Copyright on Computer Software Products in Palangka Raya City (Positive Legal Perspective and Sharia Economic Law). *Jurnal Ilmiah Al-Syir'ah*, 20(2), 157–166.

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INTRODUCTION

The use of computers today is very beneficial for everyone to complete their work. In the use of a computer/laptop, there are several types of devices to be able to run it. Hardware (hardware) such as keyboards, screens, and other hardware is called software (software) such as graphic design applications, browser applications, windows operating systems, and other software. There is software that is free to use, but there are also those that require buying/paying to be able to use them.

Software Computers that are generally paid for and are often used by the public to be able to use them are required to purchase the original license code for the software. Each software product's price varies, from hundreds of thousands to millions of rupiah. For example, to buy an original Microsoft Office 2021 software product, users have to pay IDR 1,299,999/Tahun (Microsoft, 2022), CorelDRAW X7 for IDR 6,467,611 (CorelDRAW, 2022), and Windows 10 Pro 64bit for IDR 2,599,000 (Panca, 2021). When compared to installing these software products illegally by cracking (piracy), users can get them for free, and the price is much lower than buying original software products.

People in the City of Palangka Raya are indicated on the ground using pirated software, primarily commercial software. People feel the direct impact of the high price of this software. Community business activities, which are often classified as Small and Medium Enterprises (SMEs), are often forced to use pirated software to set lower selling, rental prices, and capital costs.

The influence of the situation among the community and also the very weak supervision and role of the government in making policies related to various kinds of fraudulent practices in the use of software cause various kinds of problems, as in survey data from The Boy Scouts of America (BSA), the use of pirated software in Indonesia in 2017 was 83%. This figure brings Indonesia's name as Asia's country with the second highest percentage. There are many violations against the use of software in Indonesia that should be addressed quickly (Solopos.Com, 2019)

The increasing need for computer activities in society has recently received more attention, causing the copyright law for computer software many attempts by irresponsible parties to infringe Copyright to fulfill their daily needs. One of them is the case researchers often encounter based on their initial observations that many people still use unlicensed or pirated software to run their computers. From graphic design applications to windows for computer operation, everything has been cracked or hacked. The goal of copyright infringers is to save money and capital for business and everyday use.

Copyright control is significant. According to Sondang, supervision is how an organization works to achieve goals made at the beginning (Zamani, 1998). With supervision, the public will realize that what is being done regarding piracy and other forms of violation of software copyrights is wrong. Education and

socialization related to this is also a form of supervision that government agencies should carry out to minimize the number of violations against the use of software in the country.

Copyright in contemporary Islamic treasures is known as (*haq al-ibtikar*). *Ibtikar* is a result of thought and analysis based on ability. The results become new things or discoveries that other people or scientists have never discovered. When viewed from the perspective of Islamic law, pirated software violates the *Ibtikar* rights. It also helps the community's daily activities for the common good because this is needed (Harun, 2010). Violations in buying and selling pirated computer software are also often encountered. It is interesting to discuss how this form of violation is viewed from the perspective of sharia economic law.

Copyright infringement on computer software products, which is still rampant now, is still unclear about the follow up or sanctions are given to these violators, either from the police as a supervisory body or other legal entities. This is undoubtedly a critical issue to be addressed: why is the level of use of unlicensed software in Indonesia so high, what are the legal supervision efforts against Copyright, especially in Palangka Raya City, and how Islamic law regulates it?

METHODS

The method used in this research is sociological juridical law research which is included in empirical research. Sociological juridical law research is research based on normative legal rules or rules to be able to observe how interactions and reactions occur when these norms or rules work in society. In other words, sociological juridical law research examines how the work of law in society relates to these norms or rules. Meanwhile, the research approach used by the researcher in this study is the statutory approach (statute approach) and the conceptual approach (conceptual approach). The statutory approach (statute approach) is a research approach that prioritizes legal materials such as laws and regulations as primary reference material in conducting research. At the same time, the conceptual approach method (conceptual approach) is a research approach to legal concepts such as legal functions, legal sources, legal institutions, and other concepts departing from the views and doctrines circulating and developing in legal science.

Research data were collected by interview, observation, and documentation. This study's primary data sources were interviews with the subject and research informants. The subjects of this research are Central Kalimantan Police Investigators. At the same time, the informants in this study are computer software installation sellers/services, internet cafe entrepreneurs, and students of IAIN Palangka Raya. Secondary data on this research used laws and regulations related to the topics discussed in this study, including Law No. 28 of 2014 concerning Copyright and Fatwa Ulama Indonesia (MUI) No. 1 of 2003 concerning Copyright.

RESULTS AND DISCUSSION

Copyright in Computer Software Products According to Positive Law and Sharia Economic Law

Computer software is part of a computer program that is made so that computer users can complete and do certain extraordinary things. A computer in its use must require software to operate it; it is impossible to operate a computer if the software is not included. Software needs there are many types and functions in operation. Software is broadly distinguished in its operation, among others, in the form of an operating system and application programs. Software in terms of how to get it can be divided into several types, such as freeware (free), shareware (free timed), proprietary software (paid), and open-source software (open source). Computer software products are designed and made with the ability to think and human creativity so that it becomes computer software. With respect for creativity and human thought, Copyright is here to protect the rights and interests of the creators of a computer software product. Copyright protection is contained in Law no. 28 of 2014 concerning Copyright, which is present in protecting the interests of the creator's economic and moral rights. According to article 1 paragraph (1) of the Copyright Law, Copyright is the creator's exclusive right that arises automatically based on declarative principles after work is manifested in a tangible form without reducing restrictions by statutory provisions. Software in The Copyright Act is a computer program that must be protected in the creator's creation. UU no. 28 of 2014 concerning Copyright in Article 1 paragraph (9) describes computer programs (software) as a set of instructions expressed in the form of language, code, schematic, or in any form intended to make the computer work to perform certain functions or to achieve specific results.

Islamic law recognizes Copyright as *haq al ibtikar*. *Haq al ibtikar* consists of 2 words *Haq* which means determination/certainty, and the word *al ibtikar*, which means the beginning of something. In *fiqh* terminology, right is a law determined by *syara'* in this case, in the form of authority. Because Copyright is private property, religion forbids unauthorized people (not copyright owners) to take their rights for personal and business interests. Likewise, to imitate or hijack it is prohibited by Islam because such an act can be considered theft or embezzlement. A person can do this except with the creator's or legal heir's permission (Harun, 2010). According to the MUI's view through its fatwa, the practice of copyright infringement has reached the stage of disturbing and harming many parties, especially the creators/copyright holders, the state, and the community. Therefore, the law is unlawful. In the legal protection (*mashun*) of Copyright, the MUI Fatwa does not explain the path to resolve copyright disputes that must be taken. However, this does not mean that this is a form of weakness of the MUI Fatwa because automatically, this will still refer to the rules and provisions of the applicable law, namely the Copyright Law (*Fatwa Majelis Ulama Indonesia*, 2003).

Computer software has been protected by Islamic law and law. Therefore, the importance of legal protection and law enforcement to protect creators' moral

and economic rights needs to be done. The widespread use and sale of computer software products in Palangka Raya City indicate that there is still a lack of legal protection and law enforcement provided. Law enforcement in the form of copyright control is the primary option given by the law to prevent the widespread use and sale of computer software products.

The definition of supervision can be interpreted to ensure that certain things have been achieved as well as organizational management. Based on planning carried out with activities designed according to the initial objectives. Supervision is a form of safeguarding activities within an organization or institution so that they can be directed and achieve specific goals by the initial planning and can provide corrections if there are deviations during the implementation of activities. Supervision related to this research is the supervision of the Copyright of software products in Article 109 of the Copyright Law. It is explained that the institution authorized to supervise and enforce Copyright is the Indonesian National Police Investigator. This study is directly related to the institution authorized to supervise Copyright in Palangka Raya City, precisely to investigators in the Central Kalimantan Provincial Police Unit (Polda Kalteng). The interview with the investigators of Polda Kalteng said they have the authority to supervise and enforce the law on Copyright in computer software products in the City of Palangka Raya. When there is an indication of copyright infringement on a computer software product, *the Satker Ditreskrimsus* Polda Central Kalimantan has the right to carry out supervision to prevent criminal acts, whether in the form of piracy or other violations, including computer software. Complaints and reports regarding this will be accepted and followed up by *the Satker Ditreskrimsus* Polda Central Kalimantan directly (Interview with Mr. Usman Samoy, as the Panit II of Sub-Directorate 1/Indagsi at the Satker Ditreskrimsus Polda Central Kalimantan, April 23, 2021).

Computer software products are spread in Palangka Raya City as original and pirated software. What distinguishes the two is the presence or absence of Copyright in the software product. According to interviews collected from computer software installation sellers/services, the customer, either for personal or business, tended to choose the piracy software because of the affordable price (Interview with Mrs. Tri Murni and Mr. Hendra Tri Gunawan, as the software sellers in Palangka Raya City, April 23, 2021). Based on the results of interviews with IAIN, students have the desire to buy original software. However, the price is very unfriendly to students' pockets. They are making students prefer pirated software whose prices are much lower and features that are not much different from the original (Interview with Muhammad Arief, IAIN Palangka Raya student as a software user, April 19, 2021). Copyright infringement occurs when people use or sell pirated computer software products. Piracy is a copyright violation in which severe sanctions are under civil and criminal law. Article 112 of the Copyright Law reads:

"Every person who unlawfully performs an act as referred to in Article 7 paragraph (3) and Article 52 for the Use of Commercially, shall be sentenced to a

maximum imprisonment of 2 (two) years and a maximum fine of Rp.300,000,000.00 (three hundred million rupiahs)."

Islamic law states that violations of *haq al-ibtikar* or Copyright are included in the deed *ga'ab*. *Ga'ab* is to use the rights of others by persecuting or controlling the rights of others without the owner's permission. Law *ga'abis* haram or prohibited in Islam, and the person who does so has committed a sinful act. Prohibition of action is stipulated in the Qur'an, hadith, and ijma'. One person's property is forbidden to another. Anyone can not take it without the willingness of the owner. Muslims agree on the prohibition of acts of *ga'ab*. *Ga'ab* is one of the major sins even though the amount of goods *ga'ab* does not reach the level of theft (Dieb, 2003) It is evident in positive and Islamic law that copyright infringement in the form of piracy is not justified, and there are severe sanctions for committing the violation.

The difference between original and pirated computer software products in use is not very noticeable but can be realized when users use the features contained in the software. The advantages and disadvantages of computer software products distinguish several types of software piracy. There are several types of software piracy, namely (Vivianie & Yusuf, 2018):

1. Using a single version of the license on multiple computers
2. Installing software on a computer without providing the proper license
3. A key generator to obtain a registration key can turn one evaluation version into a licensed version.
4. Using stolen credit cards to defraud software license purchases.
5. Deploy licensed software versions on the internet so others can download them.

The advantages and disadvantages of original and pirated computer software products can also be a differentiator between the two, which have their respective capacities, including:

1. Computer Software Products Original
 - a. Superiority
 - 1) Safer from virus attacks.
 - 2) Minimal possibility of product defects.
 - 3) Can enjoy some new features during version updates.
 - 4) Legal by law.
 - 5) Performance is more awake, so there is no need to reinstall.
 - b. Deficiency
 - 1) Relatively high price
 - 2) Serial numbers cannot be duplicated and can only be used for one computer/laptop in 1 serial number.
2. Computer Software Products Pirated
 - a. Superiority
 - 1) The price is relatively low, so it is very affordable.
 - 2) Can be reproduced.

- 3) The features that can be enjoyed are almost no different from the original windows.
- b. Deficiency
 - 1) Vulnerable to viruses.
 - 2) Unstable performance, so you have to reinstall several times.
 - 3) The possibility of product defects is relatively large.
 - 4) Unable to update version. When updating, it will be tracked by Microsoft.
 - 5) Legally illegal.

Pirated versions of computer software products are a form of software cracking, namely the process of illegally modifying software to remove or disable features that hinder the full use of the program. Especially manipulation of copy protection features such as serial numbers, hardware keys, check dates, and disk checks. Piracy is an act of copyright infringement that harms many parties, especially the rights of the creator/copyright holder of computer software products and consumers, where the use of computer software products is very vulnerable to viruses and limited features. Therefore, the rules in the Copyright Law must be enforced as a form of protection for the Copyright of computer software products, especially in the City of Palangka Raya.

Analysis of Buying and Selling Theory in Islamic Law

The rise of copyright infringement is in the use of computer software products and in the form of violations of buying and selling transactions of pirated computer software products in Palangka Raya City. The practice of buying and selling computer software products must be by applicable rules or regulations where the object (software) must obtain permission from the owner. From the data observation, buying and selling in Palangka Raya city increased by a number of the shop of software installation that used illegal software. Because the software is part of an intellectual property owned only by the creator/copyright holder, suppose the buyer does not understand and knows this in buying and selling. In that case, the seller must explain it to the buyer (Field Observations related to the sale of pirated software in Palangka Raya City, January 8, 2021).

In declaring the validity of the practice of buying and selling computer software products, there must be goods that are the object of buying and selling or which are the cause of the sale and purchase agreement, while the object being traded in the opinion of the scholars must meet the following conditions (Pasaribu, 2004):

- a. Clean things;
- b. Can be used;
- c. Belongs to the person who made the contract;
- d. able to submit;
- e. Knowing, and
- f. The contracted goods are in hand.

Researchers will discuss them one by one to find a valid answer or not the practice of buying and selling computer software products. In net terms, the goods traded are programs or software, so they are not classified as unclean objects or intoxicating objects such as khamr, wine, or others. Thus, in terms of clean conditions, the goods traded must be clean and without problems.

The relation with the condition that the goods being traded must be able to be used. In this case, software products are goods that can be used because the software for the community is already a particular need that must be met, whether it concerns individuals or objective benefits.

Problems will arise when the goods used as objects of sale and purchase belong to the person who made the contract. In this case, the goods being traded in this case belong to the seller or computer shop, so there is no problem like buying and selling computer software products that have obtained permits or licenses. The seller or computer shop sells computer software products without a license. It means that the goods are included in goods that do not belong to him considering that computer software products in the practice of buying and selling must be licensed (permission from the creator/copyright holder).

Selling someone else's Copyright without permission and duplicating it is considered an attempt to obtain wealth in a forbidden or unlawful way. The content of the prohibition is also because copyrighted works are assets resulting from intellectual abilities that produce financial or monetary benefits.

In this regard, respect for creators/copyright holders and protection for intellectual property rights holders can be seen in the following paragraphs:

فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ

It means:

"Whoever does *an dzarrah's* weight of good, surely he will see (reply) it, and whoever does an even *dzarrah* of evil, surely he will see (reply) it too." (Surat al-Zalzalah verses 7-8).

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

It means:

"O you who believe, do not eat each other's property in a vanity way, except using commerce that is mutually exclusive between you." (Surat an-Nisa verse 29).

The acts of vanity are cheating, stealing, imitating, hijacking, and not keeping promises or breaking an oath. So if someone does business by imitating

and even plowing other people's work without permission, it is a good deed. Allah SWT does not like people who do dishonest business. Even though he gets many benefits, the wealth he gets in the eyes of Allah SWT is haram which is contained in the concept of Islamic law.

About the condition that they can deliver, it means that the goods being traded must be able to be handed over. Then the goods are invalid if they cannot be handed over. However, the form of delivery at a later date is related to other conditions related to the requirements for knowing, and the goods being contracted must be on hand.

It is the practice of buying and selling computer software products even though the delivery is not direct (the goods are in the form of software CDs that can be seen when the software has been installed on the computer) at the time of the contract. The properties have been shown and determined by size, type, or other characteristics. So that before the sale and purchase transaction takes place, the buyer knows about the computer software product he will buy. Moreover, buying and selling are allowed in Islam, a salam contract.

In general, the terms of buying and selling practices associated with buying and selling computer software products have met the general legal requirements for buying and selling. From the opinion of the researchers, buying and selling computer software products is legal and permissible in the view of Islam. However, if you carry out the practice of buying and selling using illegal (pirated) computer software products, the sale and purchase are included in the act of wrong doing □ and or is to use the rights of others without the owner's permission. The law is forbidden or prohibited in Islam by referring to an impaired *haq al ibtikar* or Copyright.

CONCLUSION

Investigators carry out copyright supervision on computer software products in the City of Palangka Raya from the Ditreskrimsus Polda Central Kalimantan. The latter already understand the authority granted by the Copyright Law. However, in practice, the supervision is not carried out optimally, and there is no synergy between the community and law enforcement officials in preventing copyright infringement. Obstacles encountered in monitoring the Copyright of computer software products in Palangka Raya City are law enforcers who still have not paid particular attention to copyright issues. Copyright has a complaint offense nature, there are no reports, and the passive role of the creator/copyright holder is lack of knowledge. And public awareness of copyright law, the low socio-economic level of the community, and the rapid development of information technology. The buying and selling transactions of computer software products are legal in Islam. However, if you practice buying and selling using illegal (pirated) computer software products, then buying and selling is an act of injustice. The law is prohibited in Islam because this causes the loss of al ibtikar or Copyright.

Suggestion: (1) Oversight of administrative law enforcement mechanisms against lawlessness on free download song sites needs to be further enhanced to protect the economic rights of copyright owners. The participation of all parties concerned is needed so that this violation of the law can at least be reduced or no longer occur; (2) Educate the public about the need to appreciate the Copyright of others by using legal websites to download the desired song.

ACKNOWLEDGMENTS

The author expressed his gratitude for the help and support provided by all parties in conducting this research. To the Head of Police District of Central Kalimantan, who has facilitated the excavation of data on this research. Especially to Mr. Elvi Soeradji, who has given advice and input to this scientific work

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