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Video Game Copyright Against Piracy Action Under The Law Number 28 Of 2014

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**Abstract**

With Indonesia becoming a more and more industrialized country, as one of the fast growing economy it has developed a mass consumerism conduct as one of the entertainment to meet consumerism needs Most people in Indonesia in the recent years have a trend for playing video games but most good games doesn't come with a free price and the newer game brand have a very expensive price for a third world country such as Indonesia, so people though for another option is to pirate the game from any online website that provides the necessity to pirate a software. Then what are the legal protection for the game developer to avoid this sort of action in Indonesia.

Keywords: Copyright Infringement; Gaming Software Piracy; Legal Protection.

Abstrak

Dengan Indonesia menjadi negara yang semakin berindustri, sebagai salah satu ekonomi yang berkembang pesat telah menghadirkan perilaku konsumerisme pada masyarakat, sebagai salah satu hiburan untuk memenuhi kebutuhan konsumerisme kebanyakan orang di Indonesia dalam beberapa tahun terakhir memiliki tren untuk bermain video game, tetapi kebanyakan game yang bagus tidak datang dengan harga gratis dan merek game yang lebih baru memiliki harga yang sangat mahal. Untuk negara dunia ketiga seperti Indonesia jadi orang-orang memilih pilihan lain untuk mendapatkan game dengan harga terjangkau adalah membajak game dari situs online mana pun yang menyediakan kebutuhan untuk membajak sebuah perangkat lunak. Lalu apa saja perlindungan hukum bagi developer game untuk menghindari aksi semacam ini di Indonesia.

Kata Kunci: Pelanggaran Hak Cipta, Pembajakan Perangkat Lunak Game, Perlindungan Hukum

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Introduction

The use of the internet is inseparable from the high rate of video game piracy which is the result of the development of computer programs, Indonesia is still at the center of software piracy. The fact that confirms that Indonesia is in the 12th position globally as one of the countries with the largest piracy rate in the world is the increasing cases of piracy of games made by Indonesian game developers.¹

At present, in nearly all areas of the world, new technology-based media have reached diverse segments of human life. The age of globalization and internet, in particular its effect on the field of work / human activities, has grown too quickly preceding from the previous era where the progress didn't really develop this fast. It is difficult to distinguish the development of the game itself from the development of information technologies and computer networks, including the internet, which is a gateway to the virtual world at present. The gaming boom itself represents the exponential expansion of computer networks that were historically limited in size before the internet became incredibly available and continues to expand in 3-dimensional shapes with an extraordinary level of fictional character similarity to the real world as well as high definition video image sharpness.

Through the growth of new media, it turns out that it now has an impact on the rising infringement of copyright in Indonesia. In fact, digital copyright operates in the context of electronic applications and the impact on the life of intellectual property rights is one of the ramifications of information technology that is actually of interest in addition to other fields such as electronic business transactions, e-government activities, and others. Intellectual Property Rights are part of the legislation and is closely connected to creative enterprise security and economic participation in creative endeavours. On the basis of the Trade Specific Component of Intellectual Property Rights, which is the International Trade Organization Intellectual Property Rights Arrangement, these intellectual property rights include copyrights and industrial property rights (patents, brands, industrial

¹ BSA Software Alliance. *Software Management: Security Imparative, Business Opportunity*, (Global: BSA Global Software Survey 2018).[10].

designs, integrated circuit protection, trade secrets and indications . geographic origin of the goods).

Copyright, originally referred to as the author's right, is an Intellectual Property Rights study at protecting artistic works created by creators, musicians, writers and music performers, playwrights, as well as filmmakers and software, including video games and software. With rising of the age and the growth of technological efficiency, the higher the level of technology expertise, with many groups of hackers and coding experts trying to copy video game games created by developers in the form of software, causing rampant piracy of the motive to gain financial gain, causing a lot of losses among developers, especially software for video games. Intellectual Property Rights is an exclusive right granted by the Indonesian government through the law on its copyrighted works which include science, technology, art and literature.² Copyright is an exclusive right for an author or right recipient to publish or reproduce his work or to grant permission for it, without reducing the limitations according to the prevailing laws and regulations. The granting of this special right is based on the ability of the creator to produce a work that is unique and shows the authenticity of creativity as an individual.³

The enactment of Law Number 28 of 2014 which amends Law Number 19 of 2002 concerning Copyright, shows the government's efforts to continue to protect works owned by copyright holders. The copyright holder is the creator as the copyright owner, or the party who receives the rights from the creator or other parties who receive further rights from the party who receives the rights. According to Philipus M. Hadjon, legal protection for the people is a government action that is preventive and comprehensive.⁴

One of the works protected by copyright based on Article 40 paragraph (1)

² Yogiswari, Ni Made Dharmika., & Mudana, Nyoman. "*Perlindungan Hukum Hak Cipta Lagu Terhadap Kegiatan Aransemen*" (2020) 8 Kertha Semaya: Journal Ilmu Hukum. [699].

³ Sudjana Sudaryat, *Hak Kekayaan Intelektual: Memahami Prinsip Dasar, Cakupan, dan Undang-undang Yang Berlak*, (Oase Media 2010).[21].

⁴ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*. (Pt.Bina Ilmu 1987) [30].

of Law Number 28 of 2014 regarding Copyright is a video game. The form of software is developing with technology. One of them is in the form of a game. The game itself consists of several main elements, namely music, script, storyline, video, pictures and characters.

Like copyrights for other objects, copyright to video games has absolute rights, meaning that copyright for video games is only owned by the creator, so that those who have the right can sue anyone who violates their copyright. An absolute right such as copyright has a reverse side, meaning that everyone has an obligation to respect these rights. The purpose of proactive legal defense is to eliminate disputes by directing government policy to take cautious decisions based on discretion and thorough protection directed at the avoidance of disputes, including the treatment of disputes in judicial institutions.

Research Method

The research made here is a type of legal research using normative research methods which aims to find the truth of coherence by analysing the existence of a legal rule that is in accordance with the legal norms contained in the applicable laws and regulations as well as from legal principles and legal doctrine. This writing aims to find a systematic explanation of the legal protection of Video Game Software as an Object of Copyright Protection from piracy based on Law Number 28 of 2014 on Copyright Act.

The approach that will be used in this research is the statute approach, as well as the conceptual approach. The statute approach is an approach that examines the laws and regulations relating to legal matters and issues being studied. In conducting research through the statute Approach, the researcher on this scientific journal research tends to use more secondary legal materials. The research will be conducted by describing the problems that became the topic of discussion which were then reviewed judicially through the laws and regulations related to the problem so that a general conclusion could be drawn.

Video Games as Objects of Copyright Protection

Video games are works that are very complex in the process of creation. Video games combine the work of several art creators, such as music, scripts, plots, videos, paintings and characters which are then used as an interaction software between humans and the video game that is run on certain hardware. Therefore, Video Games are not a single and simple work, but are a combination of elements created by several individuals, each of which is Copyright protected based on the originality and creativity of its creator.⁵

Video games are copyrighted works that can be categorized as works of art. Video games are the youngest branch of art. He was born after cinema and video arts. In a certain sense, video games can be seen as a branch of the branch of video art. All the elements that make up video art can also be found in Video Games. However, there is one element that is not always present in video art but is certainly present in video games, namely the active participation of humans. The interaction between humans and works is occasionally found in video art. But that interactivity is not an essential feature of video art. Most video artworks do not require interactivity between the participating humans and the video artwork. It is different with video games, even cathode ray tube entertainment devices in 1947 already contained elements of human participation.

Piracy is a big issue in these markets. For example, in the market for video game consoles, it seems to be the platform sellers (Microsoft, Nintendo, and Sony) who call for action against illegal sales of video games.⁶ As such, unauthorized copying, distribution, attempts to execute illegally obtained code, or circumvent technical measures of protection are coded as acts of software piracy.⁷

The use of the internet is inseparable from the high number of piracy of video

⁵ Andy Ramos & Laura Lopez, *The Legal Status of Video Games: Comparative Analysis in National Approaches*, (WIPO 2013), [7].

⁶ Alexander Rasch, and Tobias Wenzel. "Piracy in a two-sided software market." (2013) 88 *Journal of Economic Behavior & Organization*, [78].

⁷ James Newman, "Illegal deposits: Game preservation and/as software piracy" (2013) 19 *Convergence*. [48].

games which are the result of the development of computer programs, from the perspective of vendors, there is evidence that higher-cost software is more likely to be pirated than lower-cost software.⁸

Implementation of Law Number 28 of 2014 on the Protection of Video Game Copyrights

Video games are one of the objects of creation that are protected by the Copyright Act. Video games based on the provisions of Article 59 paragraph (1) of the Copyright Law can be protected for 50 years from the time the video game is published. A video game is automatically protected by copyright once it is announced that it has been realized in a tangible form.

In practice, the implementation of video game copyright protection is carried out through mediation. This is not as regulated by Law Number 28 of 2014 concerning Copyright, namely through Arbitration (Article 95), Civil Lawsuits (Articles 96-99), Criminal Reports (Article 105 jo. 110), and Provisional Decisions (Article 106-99). The Mediation Path was chosen because the disputing parties felt that they had received a win-win solution, of course this could be justified because the disputing parties were mediated by a mediator appointed by both parties and then directed to end the existing problems through a fair and mutually beneficial agreement.⁹ Mediation also shortens the dispute resolution time compared to litigation, which must go through several stages and trials, which of course will take more time for the disputing parties.

Basically all forms of Copyright Infringement on Video Games will certainly result in losses for developers and publishers. There have been many developer companies and individual creators in Indonesia who have lost money because many have violated their Video Game Copyrights. Despite the fact that many violations

⁸ A. Graham Pearce, Dennis F. Galletta, and James YL Thong. "Software piracy in the workplace: A model and empirical test." (2003) 20 Journal of Management Information Systems [172].

⁹ Iqbal Abdul Malik, Budi Santoso, and Siti Mahmudah, "Perlindungan Hukum Atas Karya Cipta Permainan Video Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta" (2017) 6 Diponegoro Law Journal [12].

have occurred, in Indonesia, cases that have received serious treatment have only occurred a few times.

Video Game Copyright Holder Legal Protection

The protection offered by the copyright infringement legislation must first satisfy the aspect of copyright infringement, so that if the copyright infringement element is satisfied in relation to violations of economic and moral rights, the author is said to be the author. Covered by statute too. In this case, of course, it would know in advance the elements of a copyright breach, whether it is an assertion of possession of the substance of copyright / moral rights, or a denial of economic rights that the copyright holder should gain. The way to exploit copyright, especially economic rights in video games, is through licensing. However, the implementation of the license agreement on video games is an exclusive license agreement. Article 80 of Law Number 28 of 2014 concerning Copyright stipulates that agreements are non-exclusive, but their implementation is strictly regulated.

Law No. 28 of 2014 concerning Copyright stipulates that computer programs or videogame software receive the same legal protection as other copyrighted works. This can be seen in Article 40 paragraph (1) letter S, which states that a computer program is a protected creation. So legal protection for computer programs is also applied automatically when the program is created.

The relationship of individualism to software piracy suggests that anti-piracy campaigns need to demonstrate that piracy is a shameful practice that brings a loss of face upon the family, school or business firm.¹⁰

Copyright is indeed not required to be registered like other intellectual property rights, but registering the creation and attaching it to the copyright is very important because it is the initial evidence or what is called *prima facie* evidence of the ownership of the rights of the Creator on his creation.¹¹

¹⁰ Bryan W. Husted, “*The impact of national culture on software piracy*” (2000) 26 *Journal of Business Ethics*. [208].

¹¹ Rahmi Jened, *Hukum Hak Cipta (Copyright Law)* (Citra Aditya Bakti 2014).[104].

Legal action against video game copyright infringement

The government has a role in preventing the occurrence of a Copyright infringement, this is stated in article 54 of Law Number 28 of 2014 concerning Copyright with the supervision of the creation and dissemination of content related to violations of rights, cooperation and coordination with various parties , both domestic and foreign in preventing the creation and dissemination of content, monitoring of recording actions using any media of Works and products, The next action is in the form of prosecution both civil and criminal for unauthorized parties.

For what occurred, any infringement that happens in the game software would damage the owner or its holder as well as harm the rights of the consumer and state. Any breach that occurs in the game software will be taken out by law enforcement. The authors of these breaches must be punished and the damages suffered by the claimants, copyright holders or the state must be restored. The Copyright Law regulates such action and restitution, and litigation can take the form of a civil lawsuit. In the case with compensation for copyright crimes. Compensation arises because of an act against the law. Therefore, to file a claim for compensation, there are two elements there is, the elements of an illegal act must first be met which is some people make an offense and those offenses cause others to suffer losses.

If all of these elements have been met, the incident can be taken before the court in the form of a petition for compensation, as provided for in Article 56 of Law No. 28 of 2014 Indonesia. Indeed, simultaneously with a criminal charge, a claim for compensation can be brought forward. It is only because the element of the act against the law determines that there must be an error (whether due to intention or Negligence), that it is better if the claim for compensation is filed after a criminal decision states that an error has been made by the person concerned. The issue is especially piquant if a producer benefits from the network effects of piracy and, at the same time, uses costly legal proceedings to sanction a few large organizations

in which piracy has been observed.¹²

Conclusion

Legal protection for video game copyright holders is based on how video game creations qualify in the copyright law, how the copyright law determines who the video game copyright holder is and what is the way to translate the exploitation rights of video game copyright itself.

Qualification for a video game will determine the length of time the video game is protected from the first announcement. Determining who is the holder of the video game copyright will affect the acquisition of economic rights for each professional involved in the production of video games and licenses as a way of transferring copyright exploitation rights, especially video game economic rights, will provide legal protection, namely in the form of prosecution both criminal and/or civil law if the parties violate economic rights under the license agreement.

Game piracy is basically growing, from easy to very difficult to trace, however, whether it is easy or difficult, it will still harm the rights of the Creator or the Copyright Holder of the video game itself. There are several legal actions given to copyright infringement in video games by law.

Actions that can be given are the government to supervise and close down internet sites whose content violates Copyright, legal actions that can be given is the provision of criminal and/or civil sanctions to the party who violates.

Regarding the regulation of game software in Indonesia, there is still an analogy of game software with several regulations related to information technology and intellectual property such as Law Number 29 of 2014 concerning copyright and Law Number 11 of 2008 concerning information and electronic transactions because in This Act is very close and closely related to gaming software substantially.

In the future hope the Indonesian government will reduce video game piracy with strict laws, but for now because the law in Indonesia is still not specific about

¹² Reavis Conner, Kathleen, and Richard P. Rumelt, "Software piracy: An analysis of protection strategies" (1991) 37 Management science, [138].

this, for the time being it still refers to the Indonesian Intellectual Property Rights law will still do, even as bringing a case to a legal proceeding in Indonesia can be quite costly and if in the future a new regulation is issued for this area, software piracy will decrease and progress software development in Indonesia will increase significantly and drastically for the better future.

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