

## **CHAPTER I**

### **INTRODUCTION**

#### **1.1 Background**

In the current globalization era, it is hard to separate between information technology (IT) and human life. IT has become a part of our everyday life and the application of IT brings many positive impacts that benefit the society. The use of IT is increasing day by day as most of the people depend on it and use it to accomplish specific tasks in their lives. Its application makes life easier and more convenient as it is easier for people to communicate and get information online. Today, with only a single click of a button, people can shop online, search for jobs or other information, video call with their family from other side of the world send e-mails and many more activities. IT is being implemented in almost every section of our lives and business structures.

IT is a new technology that has been defined differently by different people. Information Technology Association of America (ITAA) defines IT as "the study, design, development, implementation, support or management of computer-based information systems, particularly software applications and computer hardware." It particularly deals with the use of electronic computers and software to convert, store, protect, process,

retrieve with security or transmit any information.<sup>1</sup> Based on Merriam-Webster Dictionary, IT is the technology involving the development, maintenance, and use of computer systems, software, and networks for the processing and distribution of data.<sup>2</sup> Techopedia defines IT as a business sector that deals with computing, including hardware, software, telecommunications and generally anything involved in the transmittal of information or the systems that facilitate communication.<sup>3</sup>

It should be noted that IT is helping human rapidly advance towards greater efficiency and performance. It shapes both society and the business world in general. There have been tremendous changes in the ways people live, work and play over the past decades and technological innovation and entrepreneurship have been the key players in promoting these changes. IT is the key for the development of individual, society, community and even nation as it changes the behaviour patterns of society and human civilization globally. Many aspects of human life have been impacted by this technology such as economics, entertainment, communication, health, law, and so on. The development of IT has created a world without limits and create a significant social change that happen so fast. Completing tasks using IT results in rapid processing and information mobility, as well as improved reliability and integrity of

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<sup>1</sup> IntegrityWebMarketing.com, *Definition of Information Technology*, <http://www.integritywebmarketing.com/definition-of-information-technology/>, (last visited Sept 27, 2017).

<sup>2</sup> Merriam-Webster, *Information Technology*, <https://www.merriam-webster.com/dictionary/information%>, (last visited Sept 26, 2017).

<sup>3</sup> Techopedia, *Information Technology (IT)*, <https://www.techopedia.com/definition/626/information-technology-it>, (last visited Sept 26, 2017).

processed information.

The information industry consists of all computers, communications, and electronics-related organizations, including hardware, software, and services. Although the rapid advancement of IT industry has given so many positive impacts, there are also some negative impacts that need to be aware of especially the impact of software piracy. Computer itself is not useful without the existence of the software, because computer is a collection of electronic hardware that can only be operated by using a software or computer program.<sup>4</sup> Unless it has been placed in the public domain, software is protected by the Copyright Law. The owner of a copyright holds exclusive right to the reproduction and distribution of his or her work. Therefore, it is illegal to duplicate or distribute software or its documentation without the permission of the copyright owner unless it is for a backup for your own use in case the original is destroyed or fails to work.

In the recent years, the issue of software piracy in Indonesia becomes a quite difficult problem to overcome. Software piracy is an unauthorized use or distribution of copyrighted software. According to Techopedia, software piracy means the stealing of legally protected software that occurs when copyright protected software is copied, distributed, modified or sold. It is considered direct copyright infringement when it denies copyright holders due compensation for use of their

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<sup>4</sup> Abdul kadir, *Pengenalan Sistem Informasi*, (Yogyakarta: Penerbit Andi, 2003), Pg. 202.

creative works.<sup>5</sup> Techopedia also explains that the software piracy penalties apply to users that illegally reproduce copyrighted works and/or users who are knowingly in possession of illegally reproduced works. Unknowingly accepting pirated software is another scenario, provided it can be proven.<sup>6</sup> The Software & Information Industry Association specifically includes unintentional business overuse in its definition of software piracy. They stated that software piracy is an act that occurs when a person purchases a single licensed copy of a software program and loads it on several machines, in violation of the terms of the license agreement.<sup>7</sup> Another definition from Scott & Scott's, software piracy is the distribution of counterfeit software and/or use or distribution of authentic software constituting the intentional violation of intellectual property laws.<sup>8</sup> Scott & Scott's definition of software piracy differs from that used by the Software & Information Industry Association as it adds emphasis to counterfeiting and expressly excludes the unintentional over deployment of software by end users while the definition by software industry and the Software & Information Industry Association improperly characterizes software owners as thieves because they have been, at most, negligent in the management of their software assets and documents.

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<sup>5</sup> Techopedia, *Software Piracy*, <https://www.techopedia.com/definition/4361/software-piracy>, (last visited Sept 27, 2017).

<sup>6</sup> *Ibid.*

<sup>7</sup> Robert J. Scott, *A New Definition of Software Piracy*, <https://scottandscottllp.com/a-new-definition-of-software-piracy/>, (last visited Oct 2, 2017).

<sup>8</sup> *Ibid.*

Any software product that has been installed onto a PC when the license agreement does not allow or support that installation or no license agreement has been made with the copyright owner is called unlicensed software.<sup>9</sup> The unlicensed software usage includes downloading, sharing, selling, or installing multiple copies of licensed software in personal computer. It also includes license infringement as well as sharing software license codes, uploading software codes to websites so others can download and use it, sharing activation keys, as well as user IDs and passwords for web-based software applications.<sup>10</sup>

The unauthorized copying of personal computer software for use in the office or at home or sharing of software among friends is the most pervasive form of piracy in Indonesia. This type of piracy is called end user piracy.<sup>11</sup> End user piracy is a common type of software piracy in which a person reproduces copies of software without any authorization.<sup>12</sup> Unlike commercial piracy, the purpose of this end user piracy is to provide the program to multiple users rather than to sell copies for profit. The most common examples of end user piracy are providing software to more corporate users than are covered by the license agreement, installing software licensed to an organization on home-based computers, and

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<sup>9</sup> BSA Business Software Alliance, *Don't Risk Your Business (How to Ensure Your Software is Licensed)*, <http://ww2.bsa.org/~media/F0AB296916554D23B639B97FEDEF8F7B.ashx>, (last visited Oct 14, 2017).

<sup>10</sup> BSA Business Software Alliance, *Apa Pembajakan Piranti Lunak Itu?*, [http://ww2.bsa.org/country.aspx?sc\\_lang=id-ID](http://ww2.bsa.org/country.aspx?sc_lang=id-ID), (last visited May 20, 2017).

<sup>11</sup> SIIA IP Protection, *Real-Life Examples of Piracy*, <http://www.siiainc.org/Divisions/IP-Protection-Services/About/Real-Life-Examples-of-Piracy>, (last visited Sept 13, 2017).

<sup>12</sup> BSA The Software Alliance, *Types of Piracy*, [http://ww2.bsa.org/country/Anti-Piracy/What-is-Software-Piracy/Types%20of%20Piracy.aspx?sc\\_lang=en-AU](http://ww2.bsa.org/country/Anti-Piracy/What-is-Software-Piracy/Types%20of%20Piracy.aspx?sc_lang=en-AU), (last visited Oct 2, 2017)

sharing software among friends.<sup>13</sup>

By purchasing a commercial software package, actually the user is not only purchases the ‘software’ but an end user license agreement is included to protect that software program from copyright infringement.<sup>14</sup> The end user license agreement is a contract between the software user and the software developer and this agreement has certain terms and conditions that the software user must follow.<sup>15</sup> When someone buys software, that person is known as a “licensed user” rather than as an owner of the software or only the software user. Most software programs purchased are licensed for use by just one user or at just one computer site.<sup>16</sup> Typically, the license states that the licensed user can install the original copy of software they bought on one computer and that they can make a backup copy in case the original is lost or damaged.<sup>17</sup> Not every end user license agreement is the same. Some contracts stipulate acceptance of the agreement simply by opening the shrink-wrapped package; some require the user to mail back to the manufacturer a signed agreement or acceptance card; some require the user to accept the agreement after the application is installed by clicking on an acceptance form that appears on the user’s monitor. This last method is typical of applications that can

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<sup>13</sup> Margaret Rouse, *Softlifting*, <http://whatis.techtarget.com/definition/softlifting>, (last visited Sept 27, 2017).

<sup>14</sup> WhatIs.com, *Piracy*, <http://whatis.techtarget.com/definition/piracy>, (last visited Oct 9, 2017).

<sup>15</sup> Ohio Literacy Research Center, *What is Software Piracy?*, <http://literacy.kent.edu/Oasis/Pubs/techtalk6-1.pdf>, (last visited June 2, 2017).

<sup>16</sup> Your Dictionary, *Software Piracy*, <http://www.yourdictionary.com/software-piracy#computer> (last visited Oct 9, 2017)

<sup>17</sup> WhatIs.com, *Loc. cit.*

be downloaded from the internet. In all instances, the user has the option of not accepting the license agreement, subsequently surrendering the rights and ability to use the software and if the agreement is broken or violated, then the user is guilty of software piracy.<sup>18</sup>

Based on the Business Software Alliance (BSA) as the leading advocate for the global software industry in the international marketplace and International Data Corporation (IDC) report in Annual Global Software Piracy Study 2007, Indonesia is the 12th largest software piracy country in the world with 84% software piracy rate. In short, if there are 100 computers in Indonesia then 84 out of 100 are computers with illegal software. Besides Annual Global Software Piracy Study 2007, Business Software Alliance also has a report called "Rates and Commercial Values of Unlicensed Software Installation 2015". The report shows that the commercial value of unlicensed software in Indonesia has reached \$ 1,145 Billion dollar or equivalent to 14.4 trillion rupiah. As for the rates of unlicensed software installation, it remained relatively constant since 2013 in 84%.<sup>19</sup>

One of many reasons that may cause a high piracy rate is that many people believe there is ‘no risk’ involved in installing, downloading or using unlicensed software, according to a study commissioned by the Business Software Alliance. However, there are many business risks

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<sup>18</sup> Vangie Beal, *EULA End-User License Agreement*, <http://www.webopedia.com/TERM/E/EULA.html>, (last visited October 10, 2017).

<sup>19</sup> BSA The Software Alliance , *Seizing Opportunity Through License Compliance=*, [http://globalstudy.bsa.org/2016/downloads/studies/BSA\\_GSS\\_US.pdf#page=5](http://globalstudy.bsa.org/2016/downloads/studies/BSA_GSS_US.pdf#page=5), (last visited May 20, 2017).

inherent in this practice and the assumption that there is no risk and the belief that using unlicensed software is not something to be concerned about, is a worrying trend. Failure to understand the risks associated with unlicensed software can impact on a business.<sup>20</sup> Some of risk of using unlicensed software are

- 1) Loss and damage to data

Pirated software has a one in two chance of containing ‘additional code’ such as Trojans, viruses or spyware, that can crash IT systems or expose confidential business data to intruders. In addition, pirated software may not offer security patches.

- 2) Loss of functionality

Pirated software can incur loss of functionality and compatibility issues. Unlicensed copies may not receive all updates from suppliers. This means the users of pirated software are unable to utilise the software fully or effectively. There is also a risk that data becomes corrupted or is not saved correctly, leading to critical data loss.

- 3) Lack of technical support

With business operations relying so heavily on IT, it is critical that the relevant support systems are in place. Users of unlicensed software often don’t have access to the crucial technical support

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<sup>20</sup> BSA Business Software Alliance, *Don’t Risk Your Business (How to Ensure Your Software is Licensed)*, <http://ww2.bsa.org/~media/F0AB296916554D23B639B97FEDEF8F7B.ashx>, Pg. 9-10, (last visited Oct 14, 2017).

provided by vendors and subsequently operate less efficiently.

#### 4) Legal Penalties

By purchasing a software, a person will become a licensed user with the right to use the software under certain conditions imposed by the copyright owner, typically the software publisher. If a licensed user breaches the terms of a software licence – such as copying, distributing or installing software in ways that the licence prohibits, whether intentionally or not – it is infringing the copyright and is breaking the law which means the licensed user may be subject to civil or criminal penalties.<sup>21</sup>

Software is recognized as a valuable asset for company and individual who created it. It is protected by the Copyright Law and recognized by law as a kind of object or property like other tangible objects and because of that, the owner of the computer program has the right to prohibit other parties from using the program without their permission.<sup>22</sup> Because software piracy is all but impossible to halt entirely, software companies launch legal suits against individuals violating software Copyright Law. The legal protection is supported by the provisions in Law Number 28 Year 2014 on Copyright as the “prevailing Copyright Law” which revokes the Law Number 19 Year 2002 on Copyright “previous Copyright Law”. The prevailing Copyright Law

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<sup>21</sup> *Ibid*

<sup>22</sup> Tim Lindsey, et al, *Hak Kekayaan Intelektual Suatu Pengantar*, (Bandung: PT. Alumni, 2011), Pg.13-14.

became effective since 16 October 2014 and stipulates several terms, which are more complex, compared to the previous Copyright Law.

The rapid development of information and communication technology has necessitated a revision for the Copyright Law. This happens because the previous Copyright Law is no longer suitable with the present condition. Copyright has become the most important base of the national creative economy industry; therefore the replacement of this law is expected to meet the elements of protection and development of the creative economy.<sup>23</sup> A few different things in the prevailing Copyright Law are the law regulates more details about what copyright is and also provides slightly different definitions for some words, such as the definition of "fixation", "phonogram", "cloning", "royalty", "Collective Management Institution", "piracy", "commercial use", "compensation" and so on.<sup>24</sup>

Several articles in Law Number 28 Year 2014 regarding Copyright that regulates about computer program and piracy are:

- 1) Article 1 Paragraph (9);

The computer program is a set of instructions that are expressed in the form of language, code, schema, or in any form aimed for the computer to perform a specific function or to achieve specific results.

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<sup>23</sup> Law Number 28 Year 2014 Regarding Copyright.

<sup>24</sup> HukumOnline.com, *Ini Hal Baru yang Diatur di UU Hak Cipta Pengganti UU No 19 Tahun 2002*, <http://www.hukumonline.com/klinik/detail/lt54192d63ee29a/uu-hak-cipta-baru>, (last visited Oct 18,2017).

2) Article 8;

Economic rights is the exclusive right of the Author or the Copyright Holder to gain economic benefits of Creation.

3) Article 9;

(1) The Author or the Copyright Holder as referred to in Article 8 have the right economic to do:

- a. publishing the work;
- b. unauthorized reproduction of a work in all its forms;
- c. translation of the work;
- d. adaptation, arrangement, or transforming the work;
- e. distribution of the work or a copy of it;
- f. performing the work;
- g. announcement of work;
- h. communication work; and
- i. work rental.

(2) Every person conducting economic rights referred to in paragraph (1) shall obtain permission of the Author or the Copyright Holder.

(3) Any person who without permission of the Author or the Copyright Holder prohibited from reproducing and / or use of the commercially work..

4) Article 11 Paragraph (2);

(2) The economic rights to rents out the work or copies as referred to in Article 9 paragraph (1) letter i is not applicable to the computer program in the computer program is not an essential object of the rental.

5) Article 40 Paragraph (1) and (3);

(1) Protected works include Computer Programs (Letter S).

(3) Protection as referred to in paragraph (1) and paragraph (2), including the protection of the works that are not or

have not done announcement but already embodied in a tangible form that allows the multiplication of such work.

6) Article 45 Paragraph (1) and (2);

- (1) Cloning of 1 (one) copy or adaptation of that computer program carried out by legitimate users can be done without the permission of the Author or the Copyright Holder if the copy is used for:
  - a. research and development of the computer program; and
  - b. archive or backup on Computer Programs obtained legally to prevent the loss of, damage to, or cannot be operated.
- (2) Where the use of computer program has ended, a copy or adaptation of that computer program must be destroyed.

7) Article 59 Paragraph (1);

- (1) Protection Copyright on computer programs is valid for 50 (fifty) years since the announcement was first made.

8) Article 113 Paragraph (3);

- (2) Any person who with no rights and / or without permission of the Author or Holders Copyright infringe Creator economy right as referred to in Article 9 paragraph (1) letter a, b, e, and / or the letter g to use it commercial shall be punished with imprisonment of 4 (four) years and / or a maximum fine of 1,000,000,000.00 (one billion rupiah).<sup>25</sup>

Besides adding and changing some articles in the prevailing Copyright Law, the government also omitted some articles from the previous Copyright Law and one of them is an article regarding end user piracy. Law Number 19 of 2002 used to have a regulation regarding

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<sup>25</sup> Law Number 28 Year 2014 regarding Copyright

reproduce the usage of a computer program, which can be used to regulate the end user piracy. It is stated in Article 72 paragraph (3) that any person who deliberately and without reproduce the usage of a computer program for commercial purposes shall be sentenced to imprisonment of at most 5 (five) years and/or a fine of at most Rp 500,000,000.- (five hundred million rupiahs). In the prevailing Copyright Law, this article is no longer been used.

With the promulgation of Law Number 28 of 2014 regarding Copyright, the government expected that the public can understand more about the disadvantages of software piracy and this would lower the rate of software piracy in Indonesia. However, the violations of Intellectual Property Right still occur and even tend to be more worrisome. Although the duplication of software is illegal, many show a general disregard for the importance of treating software as valuable intellectual property.

Based on the background mentioned above, it is necessary to know further about the implementation of legal protection of copyrighted software in order to overcome the violation of copyright in the form of end user piracy. For this reason, this research is formulated with the title “Analysis of Legal Protection of Copyrighted Software Against End User Piracy in the Perspective of Law number 28 year 2014 regarding Copyright”.

## **1.2 Formulation of Issue**

From the background explained above, the issue formulated as follows:

- 1) How is legal protection of copyrighted software against end user software piracy based on the perspective of prevailing Copyright Law Number 28 year 2014 after the omission of Article 72 paragraph (3) of Law Number 19 Year 2002?
- 2) What are the obstacles in enforcing the law for the crime of end user software piracy based on Copyright Law Number 28 Year 2014?

## **1.3 Purpose of Research**

The purpose of writing this research is to solve the issue formulated in the previous section and give better understanding and knowledge about:

- 1) End user software piracy behaviour and the legal protection copyrighted software against end user software piracy based on the perspective of the prevailing Indonesia Copyright Law.
- 2) The obstacles in enforcing the law for end user software piracy crime.

## **1.4 Advantages of Research**

### **1.4.1 Theoretical Benefit**

Theoretically, the result of this research is expected to be a reference or input for the development and study of Copyright Law. This research can be useful as the material or information, especially in the field of academic, to know the dynamics of end user software piracy in Indonesia, the development of Copyright Law and the process of handling the problem of software piracy. It can contribute some thoughts regarding the development of Intellectual Property Right, especially on the issue of copyright infringement.

### **1.4.2 Practical Benefit**

This research is aimed to voice the need of improvement of Copyright Law in Indonesia and other laws related to software piracy. The uncertainty of law and lack of regulations regarding software piracy in Indonesia will harm the creations or works of a person. Another benefits of this research is as an input for the development and improvement of the rule of law about copyright infringement especially in case of end user software piracy. It is expected that the improvement of Copyright Law in Indonesia will soon be done in order to promote business of software in Indonesia, and to give every creator of software a legal certainty.

Another benefit of this research is as the inputs for law enforcement officers (police, prosecutors, judges, advocates, etc.) in the criminal justice system. The results of this research serve as the reference material in handling cases of criminal software piracy, so that law enforcement officers have the same perception.

### **1.5 Systematic of Writing**

This thesis is divided into five chapter and will be written as follow:

The first chapter is introduction which is divided into five parts namely background of issue, formulation of issue, purpose of research, advantages of research and research systematic. The background of issue part will explain the reason behind the selection of this specific issue to be the topic of this thesis. The descriptions start from the general matters to more specific matters relating to the topics covered. After describing the reason and the significance of the issue, there is also the formulation of issue that will show the core of the problem to be examined. Next, the purpose of research will be provided with respect to the objectives to be achieved by conducting research. The purpose of the study is closely related to the formulation of the problem. Next part is the benefits of research, which are the impact of improvements that can be gained after the achievement of the goal. Last part is the research systematic to help the readers understand more about the content of this thesis.

The second chapter is literature review about selected topic. This chapter provides the basic theories used to support the understanding of the topic. It will also elaborate on the definition of Intellectual Property Right and the work protected by Intellectual Property Right, then narrow it down to the definition and scope of the copyright. There will also more explanation about many kinds of software piracy.

The third chapter is Research Method. This chapter explains the method used in completing this research that consist of the type and variety of research, the type of data collected, the method of data collection used and the analysis of the data used.

The fourth chapter is research data and analysis. In this chapter, the writer will arrange, summary and interpret each data collected so that it can be compiled to obtain answers to the questions in the formulation of issue.

The fifth chapter is conclusion and suggestions. This chapter will cover the conclusions of the discussion in the previous chapters, as well as suggestions that can be given in relation to the problems.