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Jurnal Int The Use Sadiani.pdf

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SADIANI SADIANI

WORD COUNT

5023 Words

CHARACTER COUNT

25741 Characters

PAGE COUNT

7 Pages

FILE SIZE

611.4KB

SUBMISSION DATE

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Research Paper

The Use of Piracy Windows among IAIN Palangka Raya Students in Sharia Economic Law Perspective

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Abstract: This research was motivated by the widespread use of pirated windows among students of IAIN Palangka Raya that they get from the service of installing computer shops in the City of Palangka Raya. The legal status of using pirated windows is categorized as 'urf facade. But there is tolerance among students of IAIN Palangka Raya who are classified as not being able to obtain original windows, that they may use pirated windows for lecture purposes. This is ḥillah because the origin was banned but used for good. Also due to difficulties if you require to use original windows. Finally, the use of pirated windows can be tolerated. This is in line with the masyaqqah's perspective that the aim is to take rukhs'ah.

1. Introduction

The Windows operating system or operating system (OS) is an operating system that has many users in Indonesia. The users are also diverse, ranging from students, employees, and others, even from people who are new to the computer world to people who have been familiar with computers for a long time. The Windows operating system or often referred to as Windows is an operating system developed by a leading company called Microsoft Corporation. As an operating system, Windows uses a Graphical User Interface (GUI) or is carried with a graphical user interface [1]. Windows itself has several functions, namely:

1. As a liaison between applications and hardware, so that they can integrate and work according to user demands consistently and stably.
2. Control and manage ongoing resources, including software and hardware on a computer.
3. Manage all processes which consist of preparation, scheduling, and monitoring of programs that are being carried out or executed.
4. Manage incoming data (input) and data out (output) and control it.

The context with computer users in Indonesia is certainly no stranger to pirated software. Software itself is a computer program, one of which is windows. The use of pirated windows is very mushrooming and can't even be denied to be a part of our lives. Especially the Indonesian people because of the high price of the original windows so that they can only be enjoyed by the middle and upper economic circles. In fact, windows itself is a necessity to complete a job or to make it easier for our students to complete their assignments. Without windows, many people will find it difficult to do various things such as typing documents in the field of education, in the field of work such as video editing and others, as well as to view information in cyberspace in this very modern era.

Windows is a computer program which has a copyright in it and is protected by law. From a legal perspective, Law Number 11 of 2008 concerning Information and Electronic Transactions Article 30 Paragraph 3 which states that "Everyone who intentionally and without rights or against the law accesses computers and or electronic systems in any way by violating, breaking through, exceed, or breach the security system" [2].

This is as referred to in Law no. 11 of 2008 Article 30 Paragraph 3 above that these actions fall into the category of cracking, hacking, and illegal access. Criminal threats contained in Law No. 11 of 2008 Article 46 Paragraph 3 reads "Everyone who meets the elements as referred to in Article 30 paragraph 3 shall be sentenced to a maximum imprisonment of eight years and or a maximum fine of Rp. 800,000,000" [3].

With regard to users of pirated windows, based on observations as well as interviews among students of IAIN Palangka Raya, it is rife where students who have laptop computers mostly install pirated windows to be used in supporting their lectures [4]. The results of installing pirated windows are used for computers or their laptops can be operated and used to complete assignments requested by the lecturers. Based on the researcher's initial observations, especially in the Sharia Faculty of IAIN Palangka Raya, generally in 1 (one) classroom they use pirated windows. Only one person uses original windows, so if in one class there are about 30 students, then if there are 3 (three) classes, there are around 90 people who use pirated versions of windows. This is as explained by one student using pirated windows explaining that in general he and his friends in class use pirated windows because they are cheap. But apparently there are still some friends who don't know that the windows are original or pirated [5].

Furthermore, when asked in depth what was the difference between laptops with pirated windows installed and original windows, the student explained that the performance of laptops with pirated windows installed often experienced errors and decreased performance. Pirated Windows will experience a buildup of data updates because they cannot perform the software update feature because the license is pirated. Unlike the original Windows which has an update feature from Microsoft so that the performance of Windows itself can always be updated, repaired and maintained its performance.

In Palangka Raya City, there are still many windows install shops that offer services to install pirated windows [6]. In practice, sellers of pirated windows install services claim to get financial benefits [7]. This is because more and more consumers or buyers are interested in the price of installing pirated windows inexpensive. From a legal point of view, the use of pirated windows can be assumed as a form of violation because pirated windows are pirated goods from officially licensed windows. Although it is clear that the regulations regarding copyright have been contained in Law no.

28 of 2014 concerning Copyright, but the use of windows is still widespread, especially among students of IAIN Palangka Raya.

This study uses several theories, namely the theory of law enforcement, the theory of 'urf, the theory of maslahah mulghah, illah, and masyaqqah. Laws will become inanimate objects if they have no power or force to apply. The law as a legal product is not just a formality, but must be implemented in order to maintain the rights and obligations to obtain certainty, justice, and the benefits of a law. Sudikno Mertokusumo conveyed that there are three kinds of foundations that affect the power of enactment of a law, namely as follows [8]:

1. Juridical basis (normative or formal applicability)

   Legislation is said to have a juridical basis (rechtsground) if it has a legal basis, legality or foundation contained in legal provisions of a higher degree. In this case, the rule of law must be made through the correct procedure and does not conflict with other regulations, especially with higher regulations.

2. Sociological Foundation (factual or empirical validity)

   A piece of legislation is said to have a sociological basis (sociologische grondslag) if its provisions are in accordance with general belief, public legal awareness, values, and laws that live in society so that the regulations made can be implemented. In this case, the rule of law is actually accepted and enforced by the general public, including by receiving sanctions if someone does not implement it.

3. Philosophical Foundation (evaluative validity)

   Legislation is said to have a philosophical basis (filosofische grondslag) if its formulation or norm is justified by a philosophical study. In this case, a rule of law must not violate human rights or contradict the rules of natural law.

These three foundations are a requirement for the strength of the enactment of a statutory regulation which is expected to have a positive impact on achieving the effectiveness of the law itself [8].

The theory of law enforcement is used to analyze the applicability of the MUI Fatwa on Intellectual Property Rights to IAIN Palangka Raya students as the object of the enactment of the law against the use of pirated windows.

Then it relates to the theory of 'urf, where the use of pirated windows itself has become a habit in society and is very difficult to let go. The theory of 'urf is used to analyze the use of pirated windows among students of IAIN Palangka Raya which has become a habit of the community so that a view of sharia economic law can be found in this problem [9]. 'Urf literally means "something that is considered good and accepted by common sense". While the term 'urf means something that is not foreign to a society because it has been integrated with their lives either in the form of actions or words certain period of time [10].

In terms of the object, 'urf is divided into two, namely 'urf lafzhi and 'urf amali [11], while in terms of its scope it is divided into two, namely 'urf al-Am and 'urf al-khas [12] or rejection is also divided into two, namely 'urf sahih and 'urf fasid [13].

Judging from the maslahah mulghah, pirated windows are the result of burglary from original windows but are very helpful for people with middle to lower economic groups to meet needs in today's modern times, whether it's in the field of education or work. In line with the theory of 'urf that the use of pirated windows has become a habit of the people to be used for a long time, the theory of maslahah mulghah is used to examine the side of benefits and consensus for students of IAIN Palangka Raya in using pirated windows.

Al-maslahah al-mulgah is a benefit that is rejected by the shari'a because it is contrary to the shari'a provisions. For example, the shari'a stipulates that a person who has sex during the day in Ramadan is punishable by freeing slaves, or fasting for two consecutive months, or feeding 60 poor people. Al-Lais bin Sa'ad, an expert on the Maliki School of Jurisprudence in Spain, stipulates a penalty of fasting for two consecutive months for a person (the ruler of Spain) who has sexual relations with his wife during the day in the month of Ramadan. Scholars view this law as contradicting the hadith of the Prophet SAW above. Because these forms of punishment must be applied sequentially, if they are unable to free the slave, they are only subject to a sentence of fasting for two consecutive months. Therefore, scholars of fiqh view that prioritizing the punishment of fasting for two consecutive months over freeing slaves is a benefit that is contrary to the will of syara', so the law is null and void

(rejected) by syara'. This benefit according to the consensus of the scholars is called al-maslahah al-mulgah [14].

In line with the illah theory regarding the use of pirated windows among students of IAIN Palangka Raya. This is in the status of doubtful so that it will be studied further regarding the legal clarity between goods that are actually prohibited from being used, namely pirated windows and the benefits obtained from using pirated windows.

to escape a burden or responsibility [15]. According to al-Shatibi, the effort to perform a practice which is permitted by birth, to invalidate other syara' laws, is considered as illah [16]. Even though 'illah is basically doing a work that is permissible, sometimes the intention of the perpetrator is to avoid himself from the syara' obligations which are more important than the amaliyah he is doing. Meanwhile, al-Khadduri defines illah as a legal concept, which is consciously used as a means to achieve the goal of making it illegal, useful for a wise legal fiction goal, which actually means the subordination of substantive justice to procedural justice. Illah is a way out according to legal methods.

Masyaqqah comes from the Arabic language in the form of mas} dar which is مَشَقَّةُ. Masyaqqah is rooted in the words شَقَّ (fi'il al-madi), يَشُقُّ (fi'il al-mudhari) and مَشَقَّةً (masdar). According to etymology it means fatigue (al-ta'ab), difficulty (al-s} a'ab), fatigue (al-juhd), narrowness (al-syiddah) and difficulty (al-'ina ') [17]. The meaning is in accordance with the words of Allah SWT in Q.S. al-Nahl verse 7 [18]:

ۚ رَّحِيمٌ لَرَءُوفٌ رَبَّكُم إِنَّ ٱلْأَنْفُسِ بِشِقِّ إِلَّا بَٰلِغِيهِ تَكُونُوا لَّمْ بَلَدٍ إِلَىٰ أَثْقَالَكُمْ مِلُوَتَّحُ

The verse explains that humans are not able to go to a place, except with fatigue and difficulty. It is clear that what is meant by masyaqqah is difficulty or difficulty [19]

Masyaqqah that brings convenience are all forms of relief prescribed by Allah SWT to converts for certain reasons so that the relief is prescribed. So masyaqqah is a narrow condition because it gets difficult when carrying out orders [20].

Shari'a does not burden the converts with difficulties and difficulties in the actions of the converts. Shari'a stipulates several laws to eliminate the narrowness (al-haraj) and the difficulties that accompany the act of mukallaf [21]. Shari'a provides certain conditions for the mukalaf that make the burden considered a masyaqqah which is obliged to get relief (rukhsah), because not all types of actions are considered difficult.

2. Disscussion
2.1. 'Urf' Perspective

Observing the phenomenon of the use of pirated windows which are widely used by various levels of society in Palangka Raya City, including the students of IAIN Palangka Raya in which there are students of the Faculty of Sharia, this seems to have become a habit from generation to generation that has occurred for years. This the researcher said because based on the results of interviews with the subject that they had long used the pirated windows as a facility to use. In addition, civil servants were also seen using the same pirated windows used by students [22].

Moving on from this habit, in the perspective of Islamic law, which will also have something to do with sharia economic law, it raises the question of whether the tradition of installing pirated windows is included in the discussion of 'urf sahih and 'urf fasid. It is said 'urf sahih, if there is a tradition that does not conflict with the texts in the Hadith and the Qur'an. Then it is also a tradition that has been accepted by the wider community and is justified by considerations of common sense, brings good, and resists damage. On the other hand, if it is said to be 'urf fasid' if it contradicts the texts in the Qur'an and Hadith and brings harm (trouble) and damage. From this, the researcher assumes that the use of pirated windows among IAIN Palangka Raya students is more inclined to 'urf fasid'. This means that the use of pirated windows, even though it seems acceptable by common sense considerations, is contrary to the provisions of Islamic law. This is as the word of Allah SWT in Q.S. Al-Baqarah verse 188 [23] which reads:

تَعْلَمُونَ وَأَنْتُمْ بِالْإِثْمِ النَّاسِ أَمْوَال مِنْ فَرِيقًا لِتَأْكُلُوا الْحُكَّامِ إِلَى بِهَا وَتُدْلُوا بِالْبَاطِلِ بَيْنَكُمْ أَمْوَالَكُمْ تَأْكُلُوا وَلَا

Based on the description above in the study of 'urf, the use of pirated windows which is a tradition in the research community is considered to be categorized as 'urf fasid because it is a habit that is

considered good but contradicts the arguments of the Qur'an. From the definition, 'urf fasid is a custom that is not good and cannot be accepted because it is contrary to one of the syara' arguments' [24].

In the study of positive law and its relation to sharia economic law, the use of pirated windows is an act against the law as windows are categorized as computer programs that are protected by copyright [25] and are not justified by the state due to violating Indonesian laws and regulations relating to the legal protection of shareholders copyright in Law No. 28 of 2014. That means as users of pirated windows do not obey government rules even though Islam commands them to obey the leaders as in the Word of Allah SWT in QS. An-Nisa verse 59 which reads:

مُ الْأَمْرِ وَأُولِي الرَّسُولَ وَأَطِيعُوا اللَّهَ أَطِيعُوا الَّذِينَ آمَنُوا الَّذِينَ أَيُّهَا يَا

In practice the use of pirated windows among students of IAIN Palangka Raya there are several elements that have violated or contradicted the texts in the Qur'an itself. Viewed from the perspective of maslahah mulghah, the tradition of IAIN Palangka Raya students who install pirated windows will be studied regarding the benefits and benefits.

2.2. Maslahah Mulghah Perspective and Hillah

Understanding of the maslahah mulghah, the researcher begins by explaining the meaning of the maslahah itself. Al-maslahah al-mulgah is a benefit that is rejected by syara' because it is contrary to the provisions of syara'. The relationship between maslahah and the use of pirated windows which is a tradition among students of IAIN Palangka Raya is very closely related, which aims to reduce spending too much money to install windows original ones, so that the money for tuition costs becomes efficient and can be used for other college interests. It's just that intellectual property rights are defeated in the sense that it seems as if they don't respect other people's copyrighted works in making original windows. Ideally, the state should provide guarantees to the creator so that his creation is recognized or paid for because someone who becomes a scientist or inventor should get royalties for finding a work he is researching.

Based on the discussion above, that the use of pirated windows is included in the realm of maslahah mulghah. Based on the discussion above, that the use of pirated windows is included in the realm of maslahah mulghah. The emphasis is, because using pirated windows is the same as using goods that are clearly prohibited.

IAIN Palangka Raya students who are in a dilemmatic position in obtaining windows programs between pirated and original, then the understanding that researchers can mean to undermine students because it is contrary to shari'a'.

Thus, according to the researcher, the use of pirated windows among students is still a rejected benefit. The reason is that even though pirated windows have helped a lot of students of IAIN Palangka Raya in supporting all lecture activities, but still pirated windows are the same as stolen goods.

In connection with the explanation above, it is categorized as illah. According to the researcher illah means ingenuity, deceit, stratagem, tactics and reasons that are sought to escape a burden or responsibility. According to al-Shatibi, the effort to perform a deed which is permitted by birth, to invalidate other syara' laws, is seen as as illah. Even though 'illah is basically doing a work that is permissible, sometimes the intention of the perpetrator is to avoid himself from the syara' obligations which are more important than the amaliyah he is doing. Meanwhile, al-Khadduri defines illah as a legal concept, which is consciously used as a means to achieve the goal of making it illegal, useful for a wise legal fiction goal, which actually means the subordination of substantive justice to procedural justice. Illah is a way out according to legal methods.

The context with the use of pirated windows, namely that the legal status of pirated windows itself is prohibited to use. However, there is a benefit side that is deemed very necessary to be taken in the use of pirated windows among IAIN Palangka Raya students. In line with the theory of illah that illah can be judged as a way out. Besides that, illah is often used as an excuse to avoid legal burdens, because illah appears as a reaction to the values of benefit which the community considers urgent. Meanwhile, legal values are considered to have not touched needs, which some people consider as urgent needs. In this context, illah is a form of deviation by making use of a legitimate law. If illah is identical with the way out, then basically the theory of law in Islam (ushul fiqh), has been enriched

with various models of the way out. If illah is identical with deviation, then the level of tolerance for deviation lies only in the demands of coercion (daruri).

The point is that the use of pirated windows among IAIN Palangka Raya students, researchers consider it a tolerance or an illah. Because the law of pirated windows is forbidden to use but used for good. Judging from the conditions for students of IAIN Palangkaka Raya, the middle and lower economic groups have not touched the needs of an emergency. The emergency needs referred to here are the needs to carry out lecture assignments.

Thus, according to researchers, the use of pirated windows among IAIN Palangka Raya students is a tolerance that can be done. Because it is intended to take advantage of legal goals that have not touched urgent needs in accordance with the illah theory. This is an exception for students who can afford to buy pirated windows. The general principle in Islamic law is that every legal action must be in accordance with the objectives of the sharia, even though everything is allowed but the permissibility is limited as long as it does not conflict with the shariat.

2.3. Masyaqqah Perspective

Before analyzing further, the researcher explained in advance the meaning of masyaqqah. Masyaqqah is all forms of relief prescribed by Allah SWT to converts for certain reasons so that the relief is prescribed [33]. So masyaqqah is a narrow condition because it gets difficult when carrying out orders. Then its relevance to the use of pirated windows among students of IAIN Palangka Raya that considering the law of pirated windows which in theory 'urf is 'urf fasid and in theory maslahah mulghah is a rejected benefit . So the point is that the use of pirated windows is clearly prohibited from being used, but the students of IAIN Palangka Raya will have difficulties if they run according to shari'a orders.

In accordance with the masyaqqah theory that the use of pirated windows among IAIN Palangka Raya students is a tolerance that results in being allowed in the intention to take rukhsah. Rukhsah according to the researcher's understanding is the movement from something difficult to something easy or something that is prescribed because a certain reason to take relief from the law of origin of the thing.

Hanafiyyah explained that rukhsah is the ability of the mukalaf to do it because of a certain age whose original law is haram when there is no excuse or the ability of the mukalaf to leave what is obligatory with the sin of the mukalaf or haram when there is no excuse. Ibn al-Hajib from the Malikiyah ulema explained that rukhsah is prescribed when there is a certain age by carrying out what is forbidden. Ibn al-Subki from the Shafi'iyah circles explained that rukhsah is a change in a law because of the age to take convenience and relief with the cause that changes the original law. Ibn al-Najjar from the Hanabilah circle explained that rukhsah is a provision that is contrary to the law of origin because of a strong religious argument. Thus, the closest understanding of rukhsah is a change of a law due to aging to ease and lightening with the existence of a valid cause change the original law.

The context in the use of pirated windows among IAIN Palangka Raya students is that there is old age. That is, when you don't use pirated windows in accordance with shari'a rules, there are difficulties that have an impact on IAIN Palangka Raya students who have not been able to buy original windows. While there are demands for college assignments that require using windows. In Islam, it is allowed to take the convenience of legal provisions that have been regulated in accordance with the Word of Allah SWT in Q.S. Al-Baqarah verse 286 which reads:

إِصْرًا عَلَيْنَا تَحْمِلْ وَلَا رَبَّنَا أَخْطَأْنَا أَوْ نَسِينَا إِنْ تُؤَاخِذْنَا لَا رَبَّنَا اكْتَسَبَتْ مَا عَلَيْهَا وَ كَسَبَتْ مَا لَهَا وُسْعَهَا إِلَّا نَفْسًا اللَّهُ يُكَلِّفُ لَا الْكَافِرِينَ الْقَوْمِ عَلَى فَانْصُرْنَا مَوْلَانَا أَنْتَ وَارْحَمْنَا لَنَا وَاغْفِرْ عَنَّا وَاعْفُ بِهِ لَنَا طَاقَةَ لَا مَا تُحَمِّلْنَا وَلَا رَبَّنَا قَبْلِنَا مِنْ الَّذِينَ عَلَى حَمَلْتَهُ

The verse shows that Allah SWT prescribes the law to His servants with ease. None of the actions of the heart and other parts of the body unless accompanied by the ability to convert. Al-haraj must be removed from Muslims in all forms of narrowness related to the Islamic faith, both in soul and body in this world and the hereafter. Mukalaf can carry out orders freely when in a narrow situation it becomes an allowance to do

Thus, according to the researchers, students of the Sharia Faculty of IAIN Palangka Raya who have not been able to obtain original windows can use pirated windows in the sense of taking rukhsah according to the intent of the masyaqqah theory. Of course, this can be done until the students have been able to buy original windows or can use other alternatives.

3. Conclusion

The legal status of using pirated windows is categorized as 'urf fasid. Because it is a habit that is considered good, but contradicts the arguments of the Qur'an regarding the prohibition of consuming wealth in a vanity way as contained in Q.S. An-Nisa verses 59 and 29, Q.S. Al-Baqarah verse 188, Q.S. Al-Syu'ara verse 183. However, there is tolerance among IAIN Palangka Raya students who are classified as not being able to obtain original windows that they may use pirated windows for lecture purposes. This is illah because what was originally prohibited but is used for good. Also because of the difficulty if it requires using original windows. Finally the use of pirated windows can be tolerated. This is in line with the masyaqqah perspective that the goal is to take rukhs'ah.

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