

The Use of Pirated Software During the Covid-19 Pandemic from Maqashid Shari'ah Perspective

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Abstract

The current Covid-19 pandemic has resulted in economic problems, but on the other hand, learning must still be carried out using computer or laptop technology that has software in it. The problem discussed in this article was how the law used pirated software during the Covid-19 pandemic. This research used a qualitative approach by interviewing students at the State Islamic University of North Sumatra. According to the results of the author's research, it showed that this pandemic condition has changed the learning system from offline to online which had a huge impact on all levels of society. Copyright regulation and software requirements were needs that have reached the dharuri level and were included in the maqashid Sharia which aimed to maintain reason and protect human property so that they were not trapped and were not left in ignorance. Therefore, the result of this research was that the use of pirated software during the COVID-19 pandemic was permissible due to the pandemic period that has greatly changed the economic system of human beings, and will return to the original law, which was haram (forbidden) when this pandemic period ended, and the economy was back on its feet.

Keywords: *Covid-19; maqashid sharia; pandemic; Pirated software*

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INTRODUCTION

Pirated software is an option for computer and laptop users as an application to replace the original software which costs much more. The high level of software piracy is the trigger for the ease of obtaining this pirated software. Software piracy is a computer crime or cyber crime because it has violated copyright protected intellectual property rights (Setiyani, 2017).

Users of pirated software are not only among students, but also include the public, government, corporates, and law enforcement circles. The software can be obtained at a low price. Public awareness of the values of intellectual property rights to software is still lacking. Moreover, the price of the original software cannot be obtained cheaply by the public, such as students. This condition makes computer users switch to using pirated software so that they become dependent on the software even though in reality this is against the law. There are several types of use of pirated software and software piracy, namely: Using a single version of a license on several computer devices, installing software on a computer without providing the right license, using a key generator to obtain a registration key that can convert one evaluation

version into a licensed version, using a credit card stolen to deceive the purchase of software

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licenses, distribute licensed versions of software on the internet so that other people can download them (Basrul, 2018).

Digital product piracy activities occur on a large scale in the world. In terms of internet usage traffic, 23.76 percent of the world's internet usage traffic in 2010 was used for piracy, which is the second leading destination for internet usage. In Indonesia, piracy of intellectual property, both traditional products and digital formats, often occurs with losses reaching 5 trillion rupiah per month. According to data published by Business Software Alliances (2010), losses due to piracy of software products in Indonesia reached US\$886 million in 2009. Another fact states that 39% of the software installed on computers is not officially licensed products. From this fact, there is a danger of loss that lurks in the company (Javier, 2014).

The act of software piracy is included in one of the computer crimes or cyber crime because it has violated the copyright protected by IPR. In Islam it is clear that Allah forbids humans to take rights from other people's property without the permission of the owner, as stated in Surah Assyuara Verse 183

And do not defraud people by reducing their things (do not cause their positive degrees to be less than their negative degrees by hindering them from making the wish to reach Allah) and (based on this) do not cause disorder in the earth, making mischief.” (Q.S As-Syu'ara:183) And in another verse Allah also says *“O you who believe (who are âmenû)! Do not eat up your property among yourselves falsely (unjustly) except that it be trading by your mutual consent. And do not (commit suicide) kill yourselves (one another). Surely Allah is Most Merciful to you.” (Q.S An-Nisa:29).*

Allah offers a buying and selling activity that must be done conscientiously. The sentence between taradhin minkum shows that both parties are equally willing to carry out trading activities, such as buying and selling, leasing, cooperation and so on. In fiqh the measure of consensual is the implementation of consent and qabul. That is, Ijab is a statement of willingness from the owner of goods or services to release or assign his property to others. While qabul is a statement of willingness to receive goods or services from other people. When the consent and qabul are said in an assembly, then both parties are equally pleased (Tarigan, 2012).

In addition, the Indonesian Ulema Council (MUI), in the VII MUI National Deliberation, on 19-22 Jumadil Akhir 1426 H/26-29 July 2005 AD also issued the MUI Fatwa on the Protection of Intellectual Property Rights (HKI) and stated that any form of violation against IPR is not limited to using, disclosing, making, using, selling, importing, exporting, distributing, handing over, providing, announcing, reproducing, plagiarizing, falsifying, illegally hijacking other people's IPR is an injustice and the law is haraam 2017). (Hamman, 2017).

On the other hand, the practice of distributing pirated software is inevitable. Even events in the field show that this pirated software is intentionally reproduced to make it easier for software users not to spend a lot of money to own the software. This phenomenon makes users of pirated software consider that this product is halal (in their assumptions) due to their willingness to pay a lower price (Mardalis, 2012). In an analogy, Allah also forbids the buying and selling of wine, carrion and pork.

The MUI fatwa above is quite clear with the legal provisions it has issued. However, there is something that needs to be criticized, namely that the MUI fatwa generalizes all actions that counterfeit products, which by doing so will harm producers. Meanwhile, in this case, no such case was found. In fact, both sellers and buyers feel the same in the desire to own the software that is pirated.

Buying and selling in Islam must be carried out in accordance with the provisions of *syara'*, which must meet the terms and pillars of buying and selling. Therefore, a legitimate sale and purchase transaction according to the teachings of Islam must meet the pillars and conditions for the legal sale and purchase itself. On the conditions of the object that is the object of the contract, one of which is self-owned or complete ownership of the goods. Thus, pirated goods cannot become the property of the pirate, unless there is a legal and legal transfer of ownership. This means that the pirates' ownership of their pirated goods is not recognized and is seen as false by all Islamic fiqh. Therefore, the pirates are not allowed to sell in any form the pirated goods to other people. In addition to the legal problem of selling and using pirated software, which has become a problem in Islamic law. Researchers consider that the use of pirated software is inappropriate if only viewed from the perspective of its use in general. However, to deepen the analysis of Maqashid theory in this case, the author feels that it is also necessary to look at the conditions of consumers who use it, and the facts that occur in its use, such as during the Covid-19 pandemic and the number of people who need the software (Djuawaini, 2010).

GENERAL REVIEW ABOUT PIRATED SOFTWARE

Software comes from English, while in Indonesian, it is called *perangkat lunak*. Understanding Software is a special term for programs or applications in a device or tool. Software in general can be interpreted that, a collection of data or commands that are encapsulated to perform certain commands. Software can be made with a programming language and the maker is called a programmer or application developer. Without software a device will not run perfectly (Oz, 2009).

There are various types of software that play an important role in computer equipment, which will be discussed in this study is the operating system software or better known as windows. The operating system is the most important software for running computer devices. Without the operating system, the computer device will not be able to run other software. The operating systems that are often used by the Indonesian people include: Mac 10s from the Apple Company, Windows XP, Windows 7, Windows 8, Windows 8.1, Windows 10 from the Microsoft Corporation, and Linux (Langer, 2008).

From several operating system above, at most is used by society of Indonesia is Windows from Microsoft Corporation. This thing happened caused because operating system circulating around is in form of pirated one. Pirated Windows has price which is 10 times from the original one. In addition to the price, the ignorance of the community against pirated becomes the factor why pirated operating system circulating among society. Not only among people in the lower level, even the office uses pirated windows (Hariyanto, 2015).

According to BSA (Business Software Alliance), Piracy of software is copying or distribution over device software which is protected by law. This thing can be done with copy, download, sharing, sale, or installation of multiple copy to personal or work computer. In simple, making or downloading unauthorized copy of software is action violates law, doesn't matter how many copies or how many persons involved. Making several copies for friends, renting disk, distributing or downloading pirated software from internet, or buying one software program and then installing it on several computers, this includes piracy (Setiyani, 2017).

Software piracy in Muslim countries is a common problem. Based on the BSA in 2009 it was estimated that more than 90% of software in Yemen was pirated, followed by Libya 88%, Indonesia 86%, and Iraq 85%. The UAE has the lowest software piracy rate, at 36%. While in the Middle East region, the piracy rate is around 59% with a total commercial value of \$2,887 Million. Furthermore, software piracy remains a critical problem in Asia Pacific, with the region experiencing the highest dollar losses in the world from the use of unlicensed software. The worldwide software piracy survey, a collaboration between the Business Software Alliance (BSA) and IDC, showed that software piracy on personal computers in the Asia Pacific region in November 2009 was 61 percent worth 15,000 million US dollars (BSA, 2009; IDC Global PC) (Majeed, nd).

Forms of software piracy which is often carried out such as: Loading to hard disk. This action is usually done if consumer buys computer from computer shops, where seller usually installs operating system along with other software as bonus to computer buyer (Wahono, 2007). Softlifting that is where a license use a software used exceeds capacity use. For example,

buying one software officially but then installing it on total of computer exceeds the total of license for install which is given. Counterfeit, such as producing and selling pirated software usually in form of CD ROM, up to or in book shop center. Renting software, Illegal downloading, such as by downloading software from internet illegally.

Rental of Device Soft. It is known three forms of piracy through software rental, such as product rented for used on computer in home or in office tenant, product rented via mail order, product in limit loaded time on computer. Downloading illegal via BBS or Internet Occurs through downloading legal software through modem connection to electronic newsletter is another form of piracy. This piracy is not equals and do not be misunderstood with the use of software which is given in public domain, or facility shareware which is used together. (Hariyanto, 2015).

Using illegal software or pirated is an act violates law and is act of sin. By using product device software of software developer not getting profit from hard work making software so they lose and able to lose desire to develop software or sequel. (Hofman, 2011).

Using pirated software product, person becomes so addicted and get used to with good software with expensive price, but person doesn't want to pay penny for to use it. Before installing program, investigating first whether software is legal or illegal. Characteristics of pirated software such as for sale in the form VCD or DVD with price which is cheap, form and CD or DVD packaging similar with other CD or DVD, bundled in set of software which the serial number or developer(s/n) crack program to open protection of software, not accompanied by dongle, cannot be updated, experienced error or hangs on number of certain transaction, sometimes contains virus or trojan which is dangerous, or 1 downloaded free from indefinite official site has certain price (Kompas.com, 2016).

The more development of advanced technology, in fact the more supports activity of piracy itself. So far, piracy is act violation of law which is at least we consider normal. There is no item without pirated one. There is no item that we use which is not bought from pirated, or we pirate it by ourselves. With copy of CD belonging to friend, whether game software, or music, even including plowing. This has become thing which is very normal we do without we realize that if in country is aware of law, has from in the past we will be prosecuted.

Factor which is most dominant is economical, where person will tend to choose pirated software which is definitely far cheaper than licensed software. For comparison, the price of license of Windows 198 is 1200 US dollar, while pirated software gets can be bought with Rp.10.000,00. If it is in an office has 20 PC which uses windows 98, then costs which must be

spent for 4000 US dollars or worth almost 40 million rupiah. That's only for system only operation and has not included other application programs.

This becomes the cause why society uses pirated software, in addition to the price is which is relatively cheap, result of pirated product even will function as it should be original. It is difficult to meet the needs of life, if you are required to buy software that is so expensive, maybe people in our country This technology will not be advanced in the field of technology, especially computers, which require very expensive costs to be able to buy it (Tiara, 2015).

RESEARCH METHODS

The type of research used in this research was descriptive qualitative where this method was used to get answers to problems by looking at various aspects that exist among students related to the law on the use of pirated software during the covid-19 pandemic by using *maqashid shari'ah* analysis. This research was conducted to describe, facts, aspects and legal remedies related to the law on the use of pirated software during the COVID-19 pandemic for UIN Sumatra Utara students. The location of this research was actually located on the UIN Sumatra Utara campus, but because students were studying online. This research was conducted at the home of each informant. This research was included in normative and empirical legal research, while this research was using comparative comparative approach. The data collection instruments used in this research were observation, documentation and video conferencing.

MAQASHID SYARIAH ANALYSIS OF THE USE OF PIRATED SOFTWARE DURING THE COVID-19 PANDEMIC

Maqâshid 1al-Syarî'ah is plural word (idlafî) which consists of two words, including Maqâshid and al-Syarî'ah. Etymologically, Maqâshid is form of word maqshid (*1al-Manâhij 1al-Ushûliyyah 1fî 1Ijtihâd 1bi 1al-Ra'yi 1fî 1al-Tasyrî', 1Dâr 1al-Kitâb 1al-Hadîts, 1Damsyik*, n.d.). From the letters qâf, shâd and dâl, which means intentional or purpose, while the word al-syarî'ah etymologically comes from the word syara'a yasyra'u syar'an which means making shari'at or law, explaining and stating. It is said that *syaraa lahum syar'an* means he has shown way to them or sanna which means shows way or rule (Umar, 2007).

While syarî'ah in terminology, there are several opinion arising. According to Asaf A.A. Fyzee, it is said that shari'ah is canon law of Islam, that is whole commandment of Allah which is in the form of texts. While Satria Effendi explains that syari'ah is *al-nushûsh almuqaddasah* that is text which is holy in Al-Qur'an and al-Hadith al-Mutawâtirah, which has not been mixed with understanding of human, so that coverage of syarî'ah includes area of i'tiqâdiyyah, 'amaliyah and khuluqiyah. This is what it means with shari'ah, but according to recent Islamic

scholars, there is narrowing in the meaning of sharah'ah. Mahmud Syalthûth gives description of shar'ah meaning, that syar'ah is laws and rules prescribed by Allah for His servants so that it is used as guidance by human in regulating the relationship with God, and human, also life. While Ali al-Sayis explains that shari'ah is laws given by God for His servants so that they believe and practice it for their interest in world and hereafter (Al-Sayis, 1970).

The scholars of *ushûl al-fiqh* agree that maqâshid al-syarî'ah is goal which must be realized with applied sharî'at. The application of shari'ah in real life (world), is for creating benefit or goodness for creatures on earth, which then affects on benefit or goodness in hereafter (Darwis, 2012).

Maqashid Shari'ah contains four aspects: First, initial goal of sharia, including benefit of human being in world and in hereafter. Second, Shari'ah as something which must be understood. Third, Shari'ah as law of taklif which must be carried out. Four, goals of shari'ah is to bring human being under the auspices of law (Al-Sayis, 1970).

The purpose of shari'ah is benefit of human in the world and hereafter as core aspect can be realized. In the framework of division of maqashid al-syari'ah, first aspect as core aspect becomes focus of analysis. It is because, the first aspect relates to essence of Shari'ah enforcement by God. The essence of initial purpose implementation of Shari'ah is to realize if the principal element can be realized and is maintained. The five principal elements including religion, soul, descent, intellect and property. In the effort to realize and maintain five basic elements, then there are three level of maqashid or goal of sharia including: Maqashid al-daruriyat, Maqashid al-hajiyyat, Maqashid al-Tahsiniyat.

Islam stipulates various law with various aspects of worship and prayer, also punishment which is meant to guarantee something which is dharuriy for human being by making it happen, maintaining and protecting it. Furthermore, Islam guarantees maintenance of dharuriy with way allows things that is forbidden in Islam because of an emergency situation, of course, the thing is in accordance with provisions of sharia'. So, things which contains effort takes care of five things is maslahat. On the other hand, for every thing which does not contain the five cores is mafsadah, and rejecting it includes maslahat (Al-Syatibi, n.d.).

Historically, we have known that even Prophet gave attention in the aspects of maqasid al-syaria'ah. Ibn Qayyim mentions in I'lâmul Muwaqqi'în that when in situation of war, Prophet saw forbade cutting the hand of person who stole until war is finished. Abu Muslim al-Kharaqi mentions in his Mukhtashar while saying: had (punishment) on Muslim is not carried out in enemy area. On occasion, Basyr bin Arthah brought a person among soldiers who stole a shield, while saying: "if I never heard The Prophet peace be upon him said: "Punishment on cutting

arm is not being enforced ruing war” 1 will cut your arm. This is because, it is worried that it will spread to something more, hated by Allah swt. Punishment on cutting hand which should be carried out on person who is stealing is not implemented because it bring benefit wanted by syara’ and at the same time, ward off the stigma which states that Islamic law is far from benefit (Al-Jauziyyah, n.d.).

When it is seen from an economic point of view, one of the goals of maqashid shari’ah is to protect property. Economic welfare is one of the goals of maqashid syari’ah. This is part of the Rahmatan lil alamin taught by Islam. The prosperity referred to in the Qur’an, however, is not an unconditional right. Allah will give it if people obey His orders and stay away from His prohibitions. Allah describes welfare in several verses of the Qur’an that are related to economic problems, directly (explicit) and indirectly (implicit). However, there are 2 types of verses that describe views on welfare, among others; al nail : 97, At taha 117-119, al a’raf ;10, an nisa: 9 al baqarah : 126. More specifically, the Qur’an defines welfare in several terms الفوز, الفرح, and الفلاح as well as حيوة طيبة. *First*, the term الفرح means “happy person” or “excited”. The feeling of pleasure or joy usually arises from getting the things desired which is reflected on one's face and conversation. *Second*, الفوز which is masdar. The Quran repeats 26 times the word fauz and these words have the same origin, twice in the form of fi’il madi and once in the form of fi’il mudhuri’, four times in the form of isim fa’il and nineteen times in the form of masdar. In other words, fauz means luck, the word fauz means luck or victory obtained at the end of the day or actual luck. *Third*, الفلاح becomes a diction to get luck or happiness. This word includes all the mobility of people who balance their life with food. Since the earth is the source of all these things, it is the source of “luck”. *Fourth*, حيوة طيبة. Islamic teachings as a consistent way of life in all life will have a good impact on life. This phase can be achieved after passing through the previous three phases (Elviandri, 2018).

Based on the Government Regulation of the Republic of Indonesia No 21 of 2020 concerning the Large Scale Social Restrictions within the Framework of Acceleration in Handling Coronavirus Disease 2019 (Covid-19), then some public facilities are closed for a while to the specified time limit. As a result of regulation is that part of activity which is usually carried out face to face is changed to online (Kemendagri, 2020). As a result of this regulation, the community’s economy declined drastically. The number of layoffs and people who used to work outside were unable to carry out their activities again.

Things that the government has done to help the community include: Those affected by the business sector in the form of suspension of Community Business Credit (KUR) and ultra-micro loan payments and delays in loan payments, especially for small and medium enterprises

(SMEs) and other small economic actors. The government has also reduced the PPH tariff from 25 percent to 22 percent. The purpose of all this is nothing but to save the country from the crisis and cannot be considered a loss to the country. According to a government regulation, the government extends additional funds for the 2020 Budget funds to deal with Covid-19, a total of IDR 405.1 trillion. The details are Sector 75 trillion Health Expenditure; Rp 110 trillion Social Protection; Rp; 70.1 trillion of Incentive Tax and National Credit Business Stimulus (KUR) Rp. 150 trillion of National Finance for the Economic Recovery Program (Purba, 2020).

If the use of Windows software is seen in Office Activity and lecture in this pandemic period, according to author, the use of the software is *dhururiyat* need, not *hajiyyat* or *tahsiniyyat*, and it is included into *hifdzul 'aql* and *hifdzul Mal* classification. But, it is not solely uses *dhururiyat*, because basically, there is condition and rule which must be followed in using *dhururiyat* rule (Al-Jauziyyah, n.d.).

In this pandemic period, the use of software in computer occupies *hifdzul 'Aqli* and *hifdzul Mal* in *Maqashid* in the position of *dhururiyah*, in which, in this situation, this pandemic, the needs of worker and office, also student to the device is active, since when the job is lost, the the activities and lecture during the Covid-19 pandemic is lost. Whereas in position of *hajiyyah*, it is the needs of workers and student need to buy data package for internet, they are able to stay connected so they can attend online lecture/meeting.

When it is viewed from the practice of using it during this pandemic, the author views that the use of pirated software during this pandemic is a manifestation of *Hifdzu al 'Aql* who occupies the position of *dhururiyah*. This is reinforced by the opinion of Syathibiy who quoted Rasyid Rida's opinion:

فالأصوليون يجعلون حفظ العقل مقصداً، ويستدلون على ذلك بتحريم المسكر وبالعقوبة الشرعية عليه، بينما يذكر الشيخ راشد أن حفظ العقل يتعلق به حق الإنسان في التعليم وحرية التفكير وحرية التعبير،

The scholars of *ushul fiqh* make *hifdzu al 'aql* as a goal, and they take the argument from the process of prohibiting alcohol and the existence of penalties for those who violate it. Shaykh Rasyid Rida said that *Hifdzul Aqli* is related to the human right to learn and freedom in thinking and expressing thoughts through writing (Al-Syatibi, n.d.).

Besides *Hifdzul Aql*, *Hifzhul Mal* is also an indicator that students are allowed to use pirated software during the pandemic. Because if we look at the data in the field, there are many students whose parents were dismissed from their jobs on the grounds of reducing employees due to COVID-19.

The maqashid sharia formula in maintaining/safeguarding assets is to continue to prioritize primary matters, it is maintaining religion and by maintaining primary integrity with other matters, including safeguarding property. Usul scholars agree that the primary issue is maintaining religion and cannot be replaced. While the matter of protecting property cannot occupy the primary issue, it shifts the position of guarding religion. (Mas'adi, 2002).

For example in muamalah activities that Friday prayers are the primary and main thing to do than buying and selling muamalah activities referring to QS. al-Jumu'ah verse 9. Another example is that damaged property material can affect the integrity of primary matters, such as praying using stolen gloves.

Muhammad Ibn Ibrahim gave an explanation:

[ومفسدات العقل نوعان: الأول: مفسدات حسية: كالخمر والمخدرات التي هي مفتاح كل شر وبلاء. الثاني: مفسدات معنوية: كالأفكار والتصورات والمبادئ الفاسدة التي تجر الإنسان إلى المعاصي والردة والكفر]

There are two mafsadat that will occur in maintaining hifzu al 'aql, including:

- a. Concrete mafsadat, such as alcohol and drugs which are the key to all evil.
- b. Abstract Mafsadat, such as broken thoughts, views and principles that lead people to evil and apostasy as well as disbelief.

Based on this second type of mafsadat, we can apply the mafsadat of reason when we do not meet the needs of reason in the form of knowledge. When it is known that the lecture process in higher education uses a computer in which there is software, it must be known that making the obligation to use original software can hinder the teaching and learning process of students in college, because the price of software is very financially unaffordable for students. It is not limited to laptops, but also occurs on computers -with pirated software - which they use in the printery to print papers which is the task of the lecturers. So, we can understand that software is a necessity at the dharuri level today, which if it is not fulfilled then the process of studying will not run, furthermore it will have an impact on ignorance for the nation's successors, and in the end can let our young generation be left in the ignorance of those who jeopardize the future, undermine their principles and character.

During the Covid 19 pandemic, where lectures are not implemented face-to-face between lecturers and students, but only use applications that can connect educators and students, laptops and smartphones are very important tools for students. So, in this case software with all uses becomes a necessity in the hajiyat category that cannot be separated from students. Al-Syathibi describes how to maintain/maintain assets in accordance with the provisions of maqashid

sharia, namely the existence of legal provisions legalized by Allah regarding the prohibition of stealing and sanctions for it, the prohibition of cheating and treason in business, the prohibition of usury, the prohibition of consuming other people's property in an unfair way, vanity, and is obliged to replace the goods that have been damaged, so that in this way the property is preserved. In addition, the role of maqashid sharia in maintaining/maintaining these assets is by prohibiting the waste of wealth from things that are needed, the prohibition of the accumulation of wealth in the hands of the rich, and the obligatory infaq and alms for the distribution of wealth in order to provide benefit to the whole human (Ahmad, n.d.).

However, if we analyze more deeply the declining economic situation during this pandemic, if we cannot change the law on the prohibition of using pirated software to be allowed, then it is feared that many people will violate one of the objectives of enforcing Shari'a, namely hifzul mal, such as stealing and robbing. And if the provisions of hifzul mal are violated, it is feared that there will be a lot of evil and other harm as well as evil deeds that will run rampant.

All needs for Windows software cannot be fully met legally (officially) by workers and students because the price of software is too expensive and most of the workers and students are in the lower middle class economy. What the author explains in this analytical study is reinforced by the "general balwa" rule. Regarding this rule, Imam Al Qarafi provides an explanation in his book called Al-Furuq:

وَالْقَاعِدَةُ فِي الْمِلَّةِ السَّمْحَةِ تَخْفِيفٌ فِي كُلِّ مَا عَمَّتْ بِهِ الْبَلْوَى وَالتَّشْدِيدُ فِيهَا لَمْ تَعَمْ الْبَلْوَى بِهِ كَمَا وَضَّحْتُ ذَلِكَ فِي رِسَالَتِي شَمْسِ الْإِشْرَاقِ فِي حُكْمِ التَّعَامُلِ بِالْأَوْزَاقِ فَإِذَا أَحْطَطَ بِهَذِهِ الْقَوَاعِدِ عِلْمًا ظَهَرَ لَكَ سَبَبُ اخْتِلَافِ مَوَارِدِ الشَّرْعِ فِي هَذِهِ الْأَحْكَامِ وَسَبَبُ اخْتِلَافِ الْعُلَمَاءِ وَنَشَأَتْ لَكَ الْفُرُوقُ وَالْحِكْمُ وَالتَّعَالِيلُ وَاللَّهُ سُبْحَانَهُ وَتَعَالَى أَعْلَمُ.

"There is a samhah rule which says that the law will be light on a case that has spread and become common, and will be strict on a case that has not spread and become public. And I have written this discussion in my book entitled "Syamsul Isyraq fi hukmi ta'amul bi al-auroq". If you have studied this rule in depth, then you will know the reason for the difference in sources in the shari'a law and the reason for the difference of opinion among the scholars, and your thoughts and wisdom and illat will grow (dari suatu hukum. Wallahu A'lam)" (Al-Qarafi, n.d.).

From this rule, it can be understood that something which in a legal case is not allowed. However, because it is difficult to practice the law because many people have already done it and it is difficult to implement it, and also because it is difficult to obtain and apply the solutions that have been given, the prohibited law will become permissible because it is common in society. Pirated software in Indonesia has become commonplace. Even government agencies and Islamic mass organizations also use pirated software. This happens because of a lack of knowledge about this. The laws and regulations governing this matter are also poorly

implemented in Indonesia, this is proven by the free websites of pirated software providers and pirated vcd kiosks in Indonesia. The lack of socialization about these laws and regulations is also the cause of this freedom. Then to buy the original software, the community is also quite difficult to find a store that provides it. Medan, especially researchers, have tried to ask the computer trading center in Merak Jingga and others, the sellers said that what they were selling was not necessarily authentic and some of the sellers even suggested using pirated ones. The only safe way to buy genuine Windows software is to buy it directly through the official website, it's just that the problem is if you buy from the original website you have to use a credit card, while people in general do not have a credit card in the lower middle class. These factors are one of the reasons why pirated software is commonly used in Indonesia.

In this research, the author finds similarities from what is described by Imam Al Qarafi above regarding the general rules of al Balwa. The first, which in this case has spread to all corners of Indonesia, even within government agencies the use of pirated software has spread and seems to have become an open secret. Al Balwa's general rule is put forward as a supporter of the results of the author's analysis. Therefore, the results of the analysis that the author holds are that during the Covid-19 Pandemic the use of pirated software is allowed, and the legal status of the prohibition is light due to circumstances that do not allow the mukallaf (who in this case is a user of pirated software) to apply the law.

So according to researchers, the use of pirated software during a pandemic is permissible. The permissibility of using pirated software for students during this pandemic is not an absolute law, but it will change, because in essence this problem is not a manshush case (there is a proof in the Koran in the text) but an ijtihadi case (which is legally obtained through istinbat from some rules and texts). As Imam Ibn Taymiyya explained:

تغير الأحكام بتغير الأزمنة والأمكنة والأحوال والعوارض

"Laws will change with changing times and places and circumstances and situations."

The above rule explains that the law of ijtihadi cases will change if the time and place change. So the ability to use pirated software will change to the original law (Haram) when the COVID-19 pandemic is over and economic activity has returned to normal.

CONCLUSIONS AND SUGGESTIONS

The conclusion that the author can convey is that the use of software in computers is a very primary and very vital need, so it can be said that the use of pirated software during a pandemic is permissible. Therefore, the position of pirated software during a pandemic occupies

a dhoruriyah position to meet needs. Hifzdu al 'aql and Hifzdul Mal and Law will return to the original law if the pandemic is over and the economy is back on its feet.

Suggestions from the author should be for Islamic law conceptors not only to say the prohibition and permissibility of using a product before reviewing it and analyzing it with the Maqashid Sharia theory. It is better for muftis and Islamic law experts to conceptualize and contextualize the law on the use of pirated software for students during the Covid-19 pandemic so that the study of Islamic law is not narrow and can be realized what is called Islamic law shalih likulli era wa eating.

The government should provide a solution to the high price of original software and the difficulty of finding sellers who provide pirated software in all regions. Because as we all know, one of the reasons for the high price of original software is that our exchange rate is quite low against foreign currencies.

REFERENCES

- al-Manâhij 1al-Ushûliyyah Ifî Ijtihâd Ibi 1al-Ra'yi Ifî 1al-Tasyrî', 1Dâr 1al-Kitâb 1al-Hadîts, 1Damsyik.* (n.d.).
- Ahmad, bin M. bin A. wahab A. S. (n.d.). *Al Washfu Al Munasib li syar'i al Hukmi* (Pertama). Madinah : Imadah Bahtsi al Ilmi bi al jami'ati al Islamiyah.
- Al-Jauziyyah, I. Q. (n.d.). *I'lâmul Muwaqqi'în*. Beirut: Dar Al Fikr.
- Al-Qarafi, S. (n.d.). *Anwar Al-buruq fi Anwa' al furuq*. Alam Al-Kutub.
- Al-Sayis, A. (1970). *Nash'ah al-Fiqh al-Ijtihad wa al-Ruh*. Kairo : Majma al-Islamiyyah.
- Al-Syatibi. (n.d.). *Al-Muwafaqat fi Ushul al-Syari'ah*.
- Basrul, dkk. (2018). Studi Evaluasi Penggunaan Software Bajakan Di Kalangan Mahasiswa Ftk Uin Ar-Raniry. *Cyberspace: Jurnal Pendidikan Teknologi Informasi*, 2(1).
- Darwis, M. (2012). *Maqâshid 1al-syarî'ah dan Pendekatan Sistem Dalam Hukum Islam Perspektif Jasser Auda, Studi Islam Perspektif Insider/Outsider*. Jogjakarta : IRCiSoD.
- Djuawaini, D. (2010). *Pengantar Fiqh Muamalah*. Yogyakarta : Pustaka Pelajar.
- Elviandri. (2018). The formulation of welfare state: the perspective of Maqâsid al-Sharî'ah. *Indonesian Journal of Islam and Muslim Societies*, 8(1), 117–146.
- Hamman. (2017). Urgensi Kaidah Fiqhiyyah Dalam Perumusan Hukum Dan Implemetasinya Dalam Fatwa DSN-MUI. *Jurnal Et-Tijarie*, 4(1), 117.

- Hariyanto, M. & W. (2015). Estimasi Proyek Pengembangan Perangkat Lunak denan Fuzzy Use Case Points. *Jurnal Kebijakan Kesehatan Indonesia : JKKI*, 1(1), 54–63.
- Hofman, R. (2011). Behavioral Economics In Software Quality Engineering. *Journal Of Empirical Software Engineering*, 16(2), 278–293.
- Javier, C. (2014). *Perkembangan Software dan Hardware*. Bandung : Pustaka Media Utama.
- Kemendagri. (2020). *Pedoman Umum Menghadapi Pandemi Covid-19*. Jakarta : Kemendagri.
- Kompas.com. (2016). *Begini Cara Bedakan Software Asli dan Bajakan*.
<https://tekno.kompas.com/read/2016/10/01/08041837/begini.cara.bedakan.software.asli.dan.bajakan?page=all>
- Langer, M. A. (2008). *Analysis and Design of Information System (3 rd ed)*. London: Springer.
- Majeed, Hewa, D. (n.d.). An Inquiry from an Islamic Perspective. *Jurnal The Ethical Dilemma of Software Piracy*.
- Mardalis, A. dan D. P. (2012). Faktor-Faktor Yang Mempengaruhi Penggunaan Software Bajakan Di Kalangan Mahasiswa. *Jurnal Manajemen Dan Bisnis*, 16(2), 99–105.
- Mas’adi, G. A. (2002). *Fiqh Muamalah Kontekstual*. Jakarta : Rajawali Press.
- Oz, E. (2009). *Management Information System (6 th ed)*. Boston: Course Technology.
- Purba, N. (2020). The Death Sentence for Covid-19 Financial Fraud Perpetrators. *Jurnal Sriwijaya Law Review*, 7, 219–232.
- Setiyani, L. (2017). *Rekayasa Perangkat Lunak (Software Engginering)*. Bandung : Jatayu Catra Internusa.
- Tarigan, A. A. (2012). *Tafsir Ayat-ayat Ekonomi Al-Quran: Sebuah Eksplorasi melalui kata-kata Kunci*. Bandung : Ciptapustakamedia.
- Tiara. (2015). Faktor-Faktor Penyebab Meningkatnya Penjual Software Komputer Bajakan. *E-Jurnal Gloria Yuris*, 37.
- Umar, H. (2007). *Nalar Fiqih Kontemporer*. Jakarta : Gaung Persada 1Press.
- Wahono, R. . (2007). A Systematic Literature Review Of Software Defect Prediction Research Trends, Datasets, Methods and Frameworks. *Journal Of Software Engineering*, 1(1), 1–16.