

CHAPTER I

INTRODUCTION

1. Background of The Problem

Computer programs are growing rapidly in society as people's need for technology increases. Business actors who market computer programs are also getting easier to make a profit because of the high sales figures. Computer program nowadays are also much more expensive to make, thus making the price of computer programs on the market is relatively high¹. With the progression of computers and as well with video games, then it is well within the nature of change that people start to experiment with the developing technology. Thus, through the efforts from the gaming community, with their own programming abilities came in with a technological discovery of video game emulation.

Within the gaming community, there is a disputed matter of emulation, a term used in the software system industry where a device can run a program or software on a device that it is not usually meant to run on². Take for example a MacBook Pro running a Microsoft 10 OS as an example of a device emulating an operating software. In theory, many would see emulation as an illegal act that borderlines on piracy and violation of intellectual property rights, in the form of

¹ Supervision with Prof. Rahmi Jened, Surabaya, 21 March 2022

² "Emulation Definition: 3 Samples" (Law Insider)
<<https://www.lawinsider.com/dictionary/emulation>> accessed July 4, 2021

copyright and patent infringement³, due to that it uses parts of the original software or program to emulate the software in that device.

Emulation has been a legal discourse that originated in the US. However, since companies that sell electronic products have ventured from every country, it has spread to every country since that every other company that has released or yet to release. Within the US, a time comes upon the case as far back as regarding Atari and a company under the name Coleco Industries where patent infringements regarding covering motion objects⁴ and sound effects⁵ came upon Atari's lawsuit.

For game emulators to exist, such software had to be re-engineered, since that it had not been available to many people⁶ or rather just a customer coming to bring back a product that was previously discontinued. From such a case in the 1980s comes the time to where emulation cases moved to the idea of reengineering in the case of Sony v. Connectix, where the case comes in of a PlayStation emulator

³ Conley, J., Andros, E., Chinai, P., Lipkowitz, E. and Perez, D., 2004. Use of a Game Over: Emulation and the Video Game Industry, A White Paper. <<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1022&context=njtip>>p. 3-4, accessed July 22, 2021

⁴ Gallagher S and Park SH, "Innovation and Competition in Standard-Based Industries: A Historical Analysis of the U.S. Home Video Game Market" <https://www.researchgate.net/publication/3076707_Innovation_and_competition_in_standard-based_industries_A_historical_analysis_of_the_US_home_video_game_market> accessed July 22, 2021

⁵ *ibid*

⁶ Conley, J., Andros, E., Chinai, P., Lipkowitz, E. and Perez, D., 2021., *op cit*, p.4

deemed infringing on a copyright, trademark, and patent infringement⁷. Within this case, there was an argument that there had to be a reengineering process to emulate games better, with the emphasis that the BIOS, the software system that was used to program to get the game running, was necessary as that it included much of what was needed to run the system for the emulator⁸.

This research discusses how Indonesian copyright law would apply if these kinds of cases appeared in Indonesia, primarily using the case regarding Sony vs. Connectix as means of a comparative study to how this case will be handled according to Indonesian law. Within that, there is massive extension towards what is needed for the reverse-engineering process, in terms of fair use such as nature of copyrighted work⁹, amount and substantiality of the portion used¹⁰, purpose and character of the use¹¹, and effect of the use upon the potential market¹². This is where the discussion and establishment of legal defense come into play for the emulator of whether the handling of BIOS and ROMs if should the process of attaining them in what ways is the process is conducted through either reverse-engineering or downloading¹³ emulators in that way.

⁷SONY COMPUTER ENTERTAINMENT, INC v CONNECTIX CORPORATION, <<https://cyber.harvard.edu/people/tfisher/IP/2000%20Sony%20Abridged.pdf>>, p. 1-2

⁸ *ibid* p. 4-5

⁹ *ibid* p. 5-7

¹⁰ *ibid* p. 7

¹¹ *ibid*

¹² *ibid* p. 8

¹³ Conley, J., Andros, E., Chinai, P., Lipkowitz, E. and Perez, D., 2021. Use of a Game Over: Emulation and the Video Game Industry, A White Paper. [online] Scholarlycommons.law.northwestern.edu. Available at:

2. The Legal Problem Formulation

Based on the background of emulation, then the legal issues regarding the title would be:

- a) The Copyright Protection for Software Game Emulators.
- b) Copyright Infringements around the Software Game Emulator and the Legal Remedies available for disputes between the copyright holder and the copyright infringer.
- c) The limitation of the Undergraduate Thesis is for computer software not including character, story etc.

3. The Purpose of Undergraduate Thesis

The purpose of the Undergraduate Thesis is to:

- To analyze the copyright protection for the game emulator.
- To analyze the copyright infringements that can arise from the Game Emulator and provide the legal remedies available for such copyright infringement cases.

<<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1022&context=njtip>> p. 7

4. The Benefit of Undergraduate Thesis

The benefit of this thesis is to be a reference towards academia, for legal enforcement officers in order to know what to do when face with a copyright infringement towards, for the programmers in order to know how to make a legal game emulator program for their computer without any way that would infringe on the BIOS Software and ROM files and for the gamers to determine how they can use their original consoles and the game emulator in a legal way and not used the programs that infringe the original console copyright.

5. Method of Undergraduate Thesis

a. Type of Undergraduate Thesis

This thesis is normative legal research using the legal resources in order to determine the prescription for the legal problems in question. This is done with the process of identifying the legal problems, using legal reasoning and looking at the provisions of copyright law in order to analyze the legal problems and come up with suggestions and legal solutions, generally for the copyright infringement towards the game emulators.

b. The Undergraduate Thesis Approach

The legal approach that will be used in this thesis is using the statute specifically from Act No. 28 of 2014 concerning Copyright, conceptual, statutory and comparative approach. The statutory approach employs on using the law in

order to analyze the legal problem¹⁴. Alongside with that it would be using conceptual approach from legal scholar that enforced and initiative in which will be to analyze from how the game emulators are made and analyze in a legal matter how it is made that would not infringe the original game console. Through the comparative approach, that will go through being able to analyze the legal problems through by looking through cases or legal events¹⁵, with the objective of finding out the legal prescriptions for the legal problems.

c. The Undergraduate Thesis Legal Resources

The legal materials used in compiling this thesis consist of primary and secondary legal materials. The primary legal materials include that of statutes, laws and elucidations of copyright laws that will help regarding researching about copyright protection for the game emulator computer programs. Primary legal materials include Act 28 of 2014 concerning Copyright which is the main tool for analyzing legal issues regarding video game emulators.

The secondary legal materials that the author uses in compiling this thesis include the opinions of scholars in the field of law, especially copyright law subjects in the literature in the form of books, papers, relevant articles regarding the legality of Game Emulators.

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, Prenada Media, Jakarta, 2005, p. 93-137

¹⁵ *ibid*

d. The Undergraduate Thesis Resources Collection

Primary legal materials in the form of statutory regulations will be obtained and collected by selecting and making an inventory according to the problems to be discussed. The legislation that will be used as a reference is the legislation in the field of intellectual property rights, more specifically the Copyright Law.

Secondary legal materials in the form of opinions of legal experts and court decisions which are complementary and clarify in analyzing problems are obtained through a literature study of the literature and references written and put forward by scholars in the field of law as well as through searching articles that have relevance to the problems discussed in this thesis.

e. The Undergraduate Thesis Resources Analysis

The legal resources used in this thesis will be analyzed is of qualitative and normative nature¹⁶ in order to have prescription related to the problem in question. Then the legal resources will be collected, after analyzing the legal problems first, then with using the legal resources, it will be used in order to analyze the legal problems in order to figure out a solution for the legal problems.

¹⁶ Supervision with Prof. Rahmi Jened, Surabaya, 2 April 2022

6. The Structure of the Undergraduate Thesis

Based on the formulation of the problem that became the basis for the author's discussion in doing this thesis, the author tries to provide an overview of the contents of this research through a systematic which has been designed in such a way as to be systematic as follows:

In this chapter I about the introduction, it will consist of the background of the problem and the problems to be researched in this paper will be explained. In this chapter, the chapter will discuss about the legal problems and the purpose of the thesis is. This chapter will continue on to discuss about the benefit of the thesis and the methods of research employed in this thesis. In the ending of this chapter, the thesis will discuss about how the structure of the thesis and how it will be formatted for each chapter.

In Chapter II regarding Copyright Protection on Game Emulators, this chapter will discuss about the copyright ability which starts from the process/flowchart of making the game emulator. Then, further on the chapter will determine the rights acquisition and then the terms of protection towards the game emulator computer program. The next topic after will be about the exclusive right and any other related rights that could be entitled towards the game emulator programmer such as economy rights and moral rights and other related rights that the programmer has towards his/her work. The last topic in Chapter II will be about limitations to copyright for game emulator, such as the limitation to only have one copy from the original software, etc.

In Chapter III regarding Copyright Infringements on Game Emulators and its Legal Remedies, this chapter will analyze any copyright infringements that would be present with game emulators. This chapter will discuss the related infringements towards software in general and then the more specific and more newer infringements that are related to new technologies, specifically to game emulators. This chapter is to ensure that this research is to ensure the legal position of game emulators as a creation that can be protected as a copyrighted work. The next topic will discuss the legal remedies for the copyright infringement over game emulators. In terms of direct and indirect infringements, this topic will discuss the legal remedies for direct infringements where the available legal remedies would either be that of a civil lawsuit or a criminal penalty and then terms of authorization liability, which will be the sanction of the use of infringing material or that the infringer will be held liable for infringement and damages towards the copyrighted works. This chapter will continue to discuss in terms of whether if the lawsuit done through court proceedings or through alternative dispute resolution according to the many regulations, statutes and delve into alternative dispute resolutions towards the copyright infringements.

In Chapter IV regarding Closing, conclusions will be drawn from the overall discussion that has been limited through the formulation of the problem, as well as suggestions related to the writing of this paper. So that it is comprehensively able to provide a general description of the content and expectations of the writing that the author will examine.