
RESEARCH ARTICLE

Law Enforcement against Copyright Infringement for Unauthorized Use/Sale of Other People's Fan Art on the Internet under Law Number 28 of 2014 Concerning Copyright

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ABSTRACT

The problem of copyright infringement and law enforcement against the use/sale of fan art without permission on the internet based on Law Number 28 of 2014 is the focus of research on the Director General of IPR Kemenkumham Lampung Regional Office. Normative juridical and empirical juridical methodologies are the methods used in this research. The results showed that the factors of copyright infringement on the use/sale of fan art of others without permission on the internet are the lack of knowledge and understanding of the public to copyright protection, seeking personal gain for commercial purposes, and law enforcement in copyright is still weak. Act No. 28 Year 2014 regulates the offense of complaint against copyright in the form of verbal reprimand through the mass media without a lawsuit for compensation. The author suggests the government, together with IPR institutions, socialize with the public about the importance of copyright, infringement, and its impact and can report if there is a violation with strong evidence.

KEYWORDS

Law Enforcement; Copyright Infringement; Fan Artwork; Internet.

ARTICLE INFORMATION

ACCEPTED: 02 July 2024

PUBLISHED: 29 July 2024

DOI: 10.32996/ijlps.2024.6.4.4

1. Introduction

The word "fan" is ubiquitous, appearing in both offline and online contexts on a regular basis. A fan is someone who has an unhealthy obsession with an artist, movie, TV show, band, etc. The term "fandom" describes the community of people who share a passion for a certain medium, be it film, television, literature, comics, music, video games, or anything else. Nowadays, fandoms that bring people together are called fanclubs ¹

The emergence of fan works is predicated on the establishment of fandom or fanclub. The term "fan work" refers to creative endeavours undertaken by fans that are centred around the characters they like. Fan art is one type of fan effort. Fan Art also refers to fans' use of visual media to convey their thoughts and feelings. ²

In terminology, Fan Art can also be defined as a work of art created by a person by resembling a character or character found in a movie, comic, or video game ³. Each fan artist (the term for the person who creates fan art) has their own distinct style and hand stroke; therefore, the drawings are never an exact replica of the original or imitation character, but they do look a lot like it. As

¹ Erlina B, Seftiniara, and Sukma, "Penegakan Hukum Terhadap Pelanggaran Hak Cipta Atas Penggunaan/Menjual Karya Seni Penggemar (Fan Art) Orang Lain Tanpa Izin Di Internet."

² Hindom and Sarjana, "Eksistensi Fan Art: Karya Cipta Derivatif Yang Dilindungi Dan Potensinya Terhadap Terlanggarnya Hak-Hak Cipta Asli."

³ Hindom and Sarjana.

proof, just look at all the free fan art floating around on platforms like Instagram, Twitter, Pinterest, and more. What people post on social media, however, is frequently utilised inappropriately by others.⁴

Instances of fan art being traded on Indonesian e-commerce platforms include photocards, clothing, accessories, and more. An Indonesian illustrator and virtual youtuber recently made headlines when he took to social media to voice his disapproval of a vendor who had been selling products based on his paintings without his authorization⁵.

The vendor refused to remove the watermark even after polite requests; he appeared to be trying to avoid blame by insisting that the photo he took did not have one. Because of this, internet users became irate and flooded the vendor's booth, briefly forcing the online store to close. It is well-known that the online store's owner has expressed regret for the situation and intends to shut down the business.

Furthermore, fan art circulates on social media without the creator's consent; this art is not original and was created by someone else. Other parties reproduce and sell Fan Art without the Fan Artist's consent, who is the rightful owner of the Fan Art.

Intellectual Property (IP), in a broad sense, can be defined as a set of legal rights resulting from intellectual activity in the fields of industry, scientific work, literature, and art⁶. Copyright, which is part of Intellectual Property Rights, has criteria as an object of inheritance because copyright law determines copyright as an intangible movable object that gives moral rights and economic rights to the creator, which is exclusive and can be transferred to his heirs.⁷

Based on Article 1 paragraph (1) of Law Number 28 of 2014 concerning Copyright (also known as UUHC), Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in a tangible form without reducing restrictions in accordance with statutory regulations.

The reason copyright is called exclusive rights because the owners of the creation are given the right that one of them can reproduce their own creations or similar to the original, but the action is not included as an infringement but as an act of transferring the creation. In addition to reproduction, the act of announcing the work and also giving permission for the use of the work of other parties is included in the rights of the owner of the work. Making a fanart without identifying oneself can also be said to violate the moral rights of the owner of the work.⁸

If we look at the official meaning of creation, as regulated precisely in Article 1 number 5 of the UUHC, namely: "any copyrighted work produced by inspiration, imagination, ability, dexterity, skill, thought, someone either in the field of science, literature, art, which is expressed in real form." The work that comes from intellectual results is a creation that is usually produced by the creators with the talent it has and cannot be done by just anyone, especially the work that produces "Intellectual Property Rights." That is the reason why IPR is said to be an exclusive right that is legally protected by law⁹.

Fan Art is one of the works of fine art in the form of images or, whether made on paper or digital media and is included in Article 40, paragraph (1) letter f. The legal remedies that Fan Artists can take if their Fan Art is used without permission for commercial purposes are through litigation and non-litigation. One of them is through mediation before filing criminal charges.¹⁰

Fan Art can be used or traded if the person selling it is the illustrator himself or can cooperate with related parties who want to sell the work for commercial purposes and still give credit to the illustrator because, based on Article 9 paragraph 3 of the UUHC reads: "Any person who without the authorization of the Creator or Copyright Holder is prohibited from copying and/or commercial use of the work.

⁴ Erlina B, Seftiniara, and Sukma, "Penegakan Hukum Terhadap Pelanggaran Hak Cipta Atas Penggunaan/Menjual Karya Seni Penggemar (Fan Art) Orang Lain Tanpa Izin Di Internet."

⁵ Erlina B, Seftiniara, and Sukma.

⁶ Pratiwanggini, "Kepatuhan Terhadap Hak Kekayaan Intelektual (HKI) Di Dunia Cyber Dan UMKM."

⁷ Prasetyo, "Hak Kekayaan Intelektual (Hak Cipta) Sebagai Objek Waris Dalam Hukum Perdata."

⁸ Kusuma and Purwanti, "Perlindungan Hukum Terhadap Hak Cipta Anime Yang Diperjualbelikan Dalam Bentuk Fanart Di Indonesia."

⁹ Kusuma and Purwanti.

¹⁰ Nusantika and Hermono, "Tinjauan Yuridis Karya Seni Penggemar (Fan Art) Sebagai Sebuah Ciptaan."

2. Research Method

This research uses normative and empirical juridical approaches.

- a. Normative juridical approach
Approach through literature study by reading, quoting, and analyzing legal theories and laws and regulations related to research problems.¹¹
- b. Empirical juridical approach
An approach that is obtained directly by the community as the first source through field research, which is carried out both through observation (observation) and interviews with respondents in the field.¹²

3. Results and Discussion

3.1 Law Enforcement Against Copyright Infringement for Unauthorized Use/Sale of Other People's Fan Art on the Internet Based on Law Number 28 of 2014

Another potential violation of the creation of fan art is the violation of economic rights. The relationship between fan art and the economic rights of the creator of the original artwork referenced lies in the creator's economic rights related to the adaptation and transformation of the work. Fanart is a work born from the process of adaptation or transformative process of other works of art that have been realized, while the adaptation and transformation of creation is one of the economic rights of the creator as stated in Article 9 paragraph (1) letter d of the UUHC. In order to be able to exercise economic rights in the form of adaptation and transformation of creations, it is necessary to obtain prior permission from the creator.

The creation of fanart has included a violation of the economic rights of the creator of the original artwork because the fanartist, as a party other than the creator, has adapted and transformed a creation that generally does not get permission from the creator. Thus, fanart can be said to be an infringement of copyright because it violates the moral rights and economic rights of the creator because the process of creating fanart is included as a modification of creation, which consists of adapting or transforming the creation, which generally, fanartists do not get permission to do so.

Copyright is the exclusive right of the creator that arises automatically after creation is realized in real form Article 1 paragraph (1) UUHC. Copyright cannot be as if in wishful thinking or a dreamed without being realized. There is one case of copyright infringement; namely, there is one unscrupulous seller who sells merchandise images of one of the creators of illustrators without permission. The salesperson did not want to admit that the image was not made by the creator, but the illustrator proved that the image was a Fan Art image made by him. In the end, the seller admitted that the image used was the result of taking the illustrator's work for commercial purposes.

Protection of a creation arises automatically since the creation is realized in real form. Registration of creation is not an obligation to obtain copyright. However, creators and copyright holders who register their creations will get a creation registration letter that can be used as initial evidence in court if a dispute arises in the future against the creation. Copyright protection is not given to ideas or ideas because copyrighted works must have a distinctive form, be personal, and show originality as a creation born based on the ability, creativity, or expertise so that the creation can be seen, read, or heard.

Copyright is automatically protected if it has been announced through the public, such as a large audience, such as family or friends, and can also be through the internet or social media. If it is not realized to the public, then the work is prone to plagiarism, or the work is taken by others. The creator can also register his work through the intellectual property section so that the work can be proof that the Fan Art is his work.

According to Article 4 of the UUHC, exclusive rights are rights that are only reserved for the creator so that no other party can utilize these rights without the creator's permission. Exclusive rights consist of 2 rights, namely moral rights and economic rights. Moral rights occur because of plagiarism without the creator's knowledge, while economic rights occur because they involve commercialization because they are traded for their personal interests.

Copyright is a right that is part of the object and can be used as an object of property rights; according to Article 499 of the Civil Code Article 16 paragraph 1 UUHC, copyright is an intangible movable object. Regarding movable objects set forth in Article 509 to Article 518 of the Civil Code, an object is calculated, including the class of objects that move because of its nature or because it

¹¹ Rahmawati, Siregig, and Zainudin, "Pelaku Tindak Pidana Pembunuhan Berencana."

¹² Putra, Suharta, and Dahana, "Peranan Pemerintah Kabupaten Klungkung Dalam Menanggulangi Pengemis Berdasarkan Peraturan Daerah Kabupaten Klungkung Nomor 2 Tahun 2014 Tentang Ketertiban Umum."

is determined by law. An object that moves because of its nature is an object that is not incorporated with the land or is intended to follow the land or building.

If you want to work together with the creator, there must be a license. Based on Article 1, paragraph 20 of the UUHC, a license is a written permission granted by a Copyright Holder or Related Rights Owner to another party to exercise economic rights over his/her Creation or Related Rights product under certain conditions. The license must also be in writing with the creator and must be registered first to the creator and from the creator to those who want to license. The license is related to both parties. In order to give legal power, it must be registered first in the copyright certified IP.

For the validity period, fan art is included in fine art works such as paintings and drawings as stated in Article 58, paragraph (1) to paragraph (3) of the UUHC, which reads:

- (1) Protection of Copyright on Creation:
 - a) books, pamphlets, and all other written works
 - b) lectures, lectures, speeches, and other similar creations
 - c) teaching aids made for the purpose of education and science
 - d) songs or music with or without text
 - e) drama, musical drama, dance, choreography, puppetry, and pantomime
 - f) works of fine art in all forms, such as paintings, drawings, engravings, calligraphy, sculpture, statues, or collages
 - g) works of architecture
 - h) maps
 - i) works of batik art or other motif art

Valid during the life of the creator and continues for 70 (seventy) years after the creator dies, starting from January 1 of the following year.

- (2) In the event that the Creation, as referred to in paragraph (1), is owned by 2 (two) or more persons, the protection of Copyright shall apply during the lifetime of the Creator, who dies at the latest and lasts for 70 (seventy) years thereafter, starting from January 1 of the following year.
- (3) The protection of Copyright on Creation, as referred to in paragraph (1) and paragraph (2), owned or held by a legal entity shall be valid for 50 (fifty) years since the first Announcement is made.

There are 2 factors for copyright infringement in fan art, namely:

1. For commercial purposes
In this case, the fan art is made for merchandise to be sold to the general public such as the internet, social media, e-commerce, and others. In addition, it is also for personal gain.
2. No understanding of copyright protection
The person concerned does not know that the work is protected by law and has economic value.

Law enforcement in the field of copyright can be done in 2 ways, namely:

1. Enforcement by non-litigation or out of court, namely by way of negotiation, mediation, and arbitration, in accordance with the contents of Article 95 paragraph (1) UUHC, which reads, "Copyright dispute resolution can be done through alternative dispute resolution, arbitration." If it cannot be resolved through non-litigation, it can be resolved by the commercial court.

Furthermore, law enforcement is through the ordinary lawsuit stage, namely through the commercial court as stated in Article 99 paragraph (1) of the UUHC, which reads, "The Creator, Copyright Holder, or owner of

Related Rights has the right to file a lawsuit for compensation to the Commercial Court for infringement of Copyright or Related Rights products."

2. Criminal Law Enforcement, which is regulated in Article 110 paragraph (1) UUHC which reads: "In addition to investigating officials of the Indonesian National Police, certain Civil Servant Officials within the ministry that organizes government affairs in the field of law are given special authority as investigators as referred to in the Law governing criminal procedure law to investigate criminal acts of Copyright and Related Rights.

The submission process can be to the Ministry of Law and Human Rights as a Civil Servant Official or, also known as PPNS, and coordinate with the police in accordance with Article 110 paragraph (3), which reads: "In conducting investigations, civil servant investigators may request assistance from investigators of the Indonesian National Police."

Enforcement of copyright law consists of several stages in reporting, namely the first stage of the complaint the creator can report to the regional office or the authorities such as the police, and then conduct the first and second mediation; if it cannot, then do the investigation stage.

Enforcement of IPR laws, including copyright, is a complaint offense, and a complaint offense is a type of offense that requires a complaint or report from the injured party. If there is no complaint or report from the creator, there will be no problem, but if there is a complaint from the creator and the complaint is commercial in nature, it will be subject to sanctions in Article 112 through Article 114 of the UUHC.

If you want to report, the creator can make a lawsuit first against the person who uses the work to make merchandise without permission from the creator, and it must be proven or shown that the Fan Art is the work of the creator; if the lawsuit cannot be claimed, then you can make a complaint to the police.

If the person claims that the work is his work and the creator cannot prove his work and cannot show the legal basis, then the creator can be sued back because the work that has been copied is automatically protected and included in copyright protection.

There is one case that was reported to KI about copyright, namely about high school textbooks. The book was photocopied or reproduced and sold to school children. The owner of the printing press protested and reported to the regional office of the Ministry of Law and Human Rights Lampung KI section and finally transferred to the police; this is included in the enforcement of criminal matters. For cases such as artwork such as paintings, or drawings, no one has reported to the regional office of the Lampung Ministry of Law and Human Rights.

Based on the description above, it can be seen that the case of taking fan art by making merchandise is not up to the court; just do a verbal reprimand through the mass media without a lawsuit for compensation and law enforcement against copyright infringement on the use/sale of fan art (Fan Art) of others without permission on the internet is actually regulated under Act No. 28 Year 2014, but because of the offense of complaint then as long as the creator does not make a complaint then the dispute over copyright issues cannot be processed through criminal offense.

4. Conclusion

Based on the results of the study, the authors can conclude that Factors of copyright infringement on the use/sale of fan art (Fan Art) others without permission on the internet, namely, the first lack of knowledge and understanding of copyright protection. The second is to seek personal gain for commercial purposes. The last is law enforcement in copyright is still weak because the creator did not bring the problem to the law but only do verbal reprimand through the mass media.

Law enforcement against copyright infringement on the use/sale of fan art of others without permission on the internet is actually regulated under Act No. 28 Year 2014, but because of the offense of complaint, as long as the creator does not make a complaint then the dispute over copyright issues cannot be processed through criminal action and in this case, the taking of fan art by making merchandise is not up to the court, just do a verbal reprimand through the mass media without a lawsuit for compensation.

Funding: This research received no external funding.

Conflicts of Interest: The authors declare no conflict of interest.

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