



ISSN 2809-7572 (Online)

YURIS (Journal of Court and Justice)

<https://journal.jfpublisher.com/index.php/icj>

Vol. 1 Issue 3, 2022

doi.org/10.56943/icj.v1i3.137

The Copyright Infringement in Using Famous Artists Names as Fan-Fiction Novels' Characters

A Juridical Analysis Based on Law No. 28/2014 Regarding of
Copyrights

Juli Nurani^{1*}, Nuraini Kartika Sari²

¹juliaraniok@gmail.com, ²nurainikartikas@gmail.com

Universitas Bhayangkara Surabaya

Corresponding Author: Juli Nurani

Email: juliaraniok@gmail.com

ABSTRACT

Fan-fiction novel is one of the copyrighted works that already exist and are widely distributed on the internet. Generally, it is written by some fans in conveying their ideas and imagination about their idols and their ideas in the form of written works. There are many fan-fiction novels that have been commercialized or sold freely and massively in bookstores and certain application platforms throughout Indonesia. This brought some problems, one of those problems is using the artist's name as a character in its fan-fiction novel, which in its use, neither the author nor the publisher asked for permission to use their artist' names. However such actions committed by authors and publishers is a deprivation of economic and moral rights from an artist as an entertainer in Law No.28/2014 concerning Copyright. The form of protection that can be given to famous artists and related parties can be in the form of preventive and repressive legal actions in accordance with Law No.28/2014 concerning of Copyright.

Keywords: *Artist Names, Copyrights, Commercial, Fan-Fiction Novel, Legal Protection*

INTRODUCTION

Humans are social creatures who are endowed with intelligence and creativity. In this case, the creativity is in the form of literature, art, music, and others. Creativity is created because of the time, cost, and energy of the person's sacrifice. These sacrifices give a value to literature works.¹

Intellectual property is human's proceeds of the intellectual process in the fields of technology, science, art, and literature.² Every literature work has moral and economic values which are evidence of human abilities in knowledge and technology, which arise from their creativity, quality and initiative.³ The ownership proof of Intellectual Property can be concrete results of humans intellectual abilities. Intellectual Property defended information used connected with ideas that has economic and commercial value. In thought processing used, when someone need to realize something, abilities are needed that are not possessed by everyone and this term will create an Intellectual Property Rights.

Intellectual Property Rights in Indonesia have become part of positive law as a consequence of the Paris Convention ratification on Industrial Property and the Berne Convention on Copyrights Protection. Industrial Property and Copyrights are part of those two convention.⁴ According to Denny Kusmawan statement, The Rome Convention provides basic protection for related parties which have relevance with copyright distribution. This term is Neighboring Rights. Basic protection is applied to original copyrights and neighbouring rights. The protection of Neighbouring Rights is specifically provided to those who work on recording, shows, and broadcasting.⁵

Law No. 28/2014 regarding of Copyrights in Article 1 of Point 1 stated that Copyrights is exclusive right for creator which created automatically based on declarative principle after a literature work is realized without reducing restrictions in accordance with the law provisions and regulations.⁶

Saidin stated that copyrights is a personal right attached to the creator. The creator has a creativity which will be a main factor of its literature works. This term

¹ Sophar Maru Hutagalung, *Hak Cipta : Kedudukan Dan Peranannya Dalam Pembangunan*, ed. Tarmizi & Suryani (Jakarta: Sinar Grafika, 2012).

² Sudarmanto, *KI & Hukum Kekayaan Intelektual Serta Implementasinya Bagi Indonesia* (Jakarta: PT Elex Media Komputindo, 2012).

³ Supasti Dharmawan et. al Ni Ketut, *Buku Ajar Hak Kekayaan Intelektual*, 1st ed. (Yogyakarta: Deepublish, 2016),

<http://erepo.unud.ac.id/id/eprint/9308/1/9a01527a74bdd449329d8c519fdad9af.pdf>.

⁴ Duwi Handoko, *Hukum Positif Mengenai Hak Kekayaan Intelektual Di Indonesia (Jilid II)* (Pekanbaru: Hawa dan Ahwa, 2015), <https://books.google.co.id/books?id=Suy7CgAAQBAJ>.

⁵ Denny Kusmawan, "Perlindungan Hak Cipta Atas Buku," *Perspektif* 19, no. 2 (May 1, 2014): 137, <http://jurnal-perspektif.org/index.php/perspektif/article/view/16>.

⁶ Amir Syamsudin, *Undang-Undang Republik Indonesia Nomor 28 Tahun 2014 Tentang Hak Cipta* (Jakarta, 2014), <https://peraturan.go.id/common/dokumen/ln/2014/uu28-2014bt.pdf>.

can be called an exclusive rights.⁷ In Article 4 of Law regarding of Copyrights states that the Copyright as referred to in Article 3 Letter A is an exclusive right consisting of moral rights and economic rights. The creators which have an exclusive rights, they will have a related rights, there are economic rights and moral rights. If there is a person who will be appointed as Copyrights Holder later, they only have economic rights.

Copyrights registration has a declarative principle, which means that registration is not mandatory and copyrights will appear in the original form. Something that has been realized in a tangible form and original is included in the creation definition as mentioned in Article 1 Point 3 of the Copyright Regulations, every copyrighted work in science, art, and literature field that is produced on the inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in a tangible form.

Currently many emerging of inventions and innovations that have developed in the community, it makes it easy to access and enjoy certain works and innovations. Economic elements can be carried out which will arise an obligation regarding the creation protection such as a literature work of fan-fiction. Rebecca W. Black stated that fan-fiction are fan-produced text that derive from forms of media, literature, and popular culture. It means that fan-fiction is a writings which created by fans and those came from various media, literature and popular culture. The form of fan-fiction is adapted from a existings literature works or it can be from author's imagination about its favorite artists. In its writings, a fan will use artist's name and illustrate it into character of fan-fiction. Unfortunately, some of fan-fiction cannot access in free, some of them have been commercialized in Indonesian bookstores.

Fan-fiction is a fan made literature which created from author's imagination regarding of famous artist. One of commercialized fan-fiction is titled "The Darkest Shadows", written by Herlinssi and published by Aria Media.⁸ In her book, she used famous artist as a character and she also used non-fiction character as the cover of her novel. Her novel is found commercialized in reputed bookstore.

Commercial use is regulated in Article 1 Point 24 of Copyrights Law, product utilization related rights which aims to obtain economic benefits from various sources. The author of fan-fiction titled "The Darkest Shadows" does not have permission from the famous artist whose name and face are used in the novel. The actions of the author and publisher is making a profit from the sale of the novel. Based on the background of this research, the researcher would analyze about using famous artist's name as a character in a fan-fiction is a violation and to find out the type of protection that the law can provide for the aggrieved one, that is the famous artist whose name and face are used in this novel.

⁷ OK Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, 10th ed. (Depok: Rajawali Pers, 2019).

⁸ Herlinssi, *The Darkest Shadows* (Yogyakarta: Aria Media, 2020).

RESEARCH METHODOLOGY

In this research, the researcher used a conceptual and a statutory approach. According to Kenneth Einar, conceptual approach or conceptual jurisprudence is concerned with explaining the core concepts of our legal practice, including the interrelationships between them. In particular, conceptual jurisprudence seeks to explain the concepts of law, validity, and the legal system and thus seeks to clarify the logical relationship between these concepts and other concepts potentially related to them, such as the concepts of morality, authority, legal obligation and social.⁹ Meanwhile, based on Dan Meagher statement, statutory approach is concrete scenarios and often interesting facts and to gain insight into the policy behind the law from the reasons given for deciding cases¹⁰. The conceptual approach is used by making legal principles and some of legal opinions experts as reference material. Meanwhile, a legal approach is needed in finding answers of this problem by referring to several existing laws and regulations in Indonesia. This research focused on copyright infringement through the use of famous artists names as characters in fan-fiction novels, and the primary data in this research is legislation in Indonesia. The researcher used a juridical-normative. The juridical-normative is a research by raising an issue and describing it into a research by focusing on the application of existing rules as well as some existing norms in positive law. There is a secondary data in this research. The researcher divide it into three sources, such as (1) Primary Legal Source is source of law that becomes the legal basis of an opinion or analysis, such as the 1945 State Constitution of the Republic of Indonesia, Indonesian Civil Code, and other regulation; (2) Secondary Legal Source is supporting sources for primary source, such as law journals and some of scientific literature based on related topics; and (3) Tertiary Legal Source is materials that provide additional information for primary and secondary legal sources such as legal dictionaries, bibliographies and others. The data collection used by the researcher in this research, both primary and secondary legal sources, is conducted with library research and it is supported by appropriate and credible electronic articles. Furthermore, the other of collection data such as legal principles, legal theory, doctrine, and so on.

RESULTS AND DISCUSSION

General Review of Intellectual Property Rights

The statement of Saidin stated that Intellectual Property Rights is a material right that comes from minds work rationally. After reasoning, humans get the work

⁹ Kenneth Einar Himma, "Conceptual Jurisprudence," *Revus*, no. 26 (December 10, 2015): 6592, <http://journals.openedition.org/revus/3351>.

¹⁰ Dan Meagher, "The 'Modern Approach' to Statutory Interpretation and the Principle of Legality: An Issue of Coherence?," *Federal Law Review* 46, no. 3 (September 10, 2018): 397–425, <http://journals.sagepub.com/doi/10.1177/0067205X1804600303>.

result ratio as well as the results of emotional labor. The heart work in abstract form is a combination of rational and emotional work that will produce an intellectual work. The results of that work are included in immaterial objects.

The work result performed by the human brain is called intellect. Meanwhile, someone who will use his brain and heart optimally is called an educated person. It means that someone who manages to use his thinking power and logic rationally and balance it with the heart work that creates wisdom. The word of intellectual will be attached to the property rights for the struggle for minds work by using rational and emotional intelligence.

In this world, humans are able to use their brains optimally, it means that not everyone can also produce or have Intellectual Property Rights. This term is caused by minds work results in Intellectual Property Rights which having exclusive properties.

If the researchers analyze for further analysis, Intellectual Property Rights are part of immaterial objects. In Civil Law, an object is classified into two types, there are tangible and intangible objects. The definition of objects is regulated in Article 499 of the Civil Code, according to the understanding of the law, objects is every item and every right that can be controlled by property rights.¹¹ Regarding of this Article, Mahadi stated that property rights objects are objects and those objects consist of goods and rights. Intellectual property rights are one example of intangible objects in the form of rights. This caused immaterial property rights become the object's rights.

Intellectual Property Rights are also stated in Law No. 7/1994 regarding of Agreement Establishing The World Trade Organization Ratification which contains about property rights that developing from human intellectual abilities, which related with a person's rights personally, that is called a human rights.

Meanwhile, WIPO (World Intellectual Property Organization) describes that Intellectual Property Rights are human thought which includes their creations, literary works, art, symbols, names, images and designs used in commercials.¹²

In the WIPO Convention, they described that Intellectual Property Rights is an intellectual property right that can be combined with other rights relating to several works such as literature, art, scientific works, and all inventions in various fields such as scientific inventions, industrial design, trademarks and so on.

On the other hand, Intellectual Property Rights is an acknowledgment and appreciation to a person or legal institution for the discovery of their intellectual work by giving them special rights, both social and economic.

¹¹ Tim Redaksi BIP, *3 Kitab Undang-Undang : KUHPer Kitab Undang-Undang Hukum Perdata, KUHP Kitab Undang-Undang Hukum Pidana, KUHP Kitab Undang-Undang Hukum Acara Pidana Beserta Penjelasan*, ed. Saptono Rahardjo (Jakarta: Bhuana Ilmu Populer, 2017).

¹² Abdul Atsar, *Mengenal Lebih Dekat Hukum Hak Kekayaan Intelektual* (Yogyakarta: Deepublish, 2018).

Something that is created from one's mind is an object that is regulated in Intellectual Property Rights. The creator cannot use all of his rights if everyone is allowed to freely use his creation.¹³

Intellectual Property Rights Principles

According to Sunaryati Hartono, the balancing principle between community interests and individuals is called Intellectual Property Rights principles. Intellectual Property Rights divided into four types¹⁴ these are:

1. The Principle of Natural Justice
The creator has the right to feel safe for his creation because it is protected and recognized by law. Law which functions to protect the actions, creations, and residence of the creator itself, both domestically and abroad.
2. The Cultural Argument
The growth and development of science, art, and literature is very meaningful for improving the standard of living, civilization, and human dignity. In addition, it will also provide benefits for the community, nation and state. It is expected to encourage the spirit to create new creations.
3. The Economic Argument
Intellectual Property Rights arise from the power and thought of the creator which is included in various works whose existence can be useful in people's lives. Ownership of the creation is natural because the economic nature of a creator makes his right to get easy life in society.
4. The Social Argument
Law exists to regulate the community interests, it is not regulate humans as independent individuals.

General Review of Copyrights

In the Berne Convention of 1886, the copyright appeared for the first time, but its definition was not given in a separate article. However, it is implied in Article 2, Article 3, Article 11, and Article 13 which will be ratified into Article 2 in conjunction with Article 10 of Auteurswet in 1912.¹⁵ In Auteurswet 1912 Article 1 regulates that copyright is the sole right of an author or the right of someone who obtains the right of his creation in the fields of literature, knowledge and art, which

¹³ Maria Alfons, "Implementasi Hak Kekayaan Intelektual Dalam Perspektif Negara Hukum," *Jurnal Legislasi Indonesia* 14, no. 3 (2017): 357–368, <https://e-jurnal.peraturan.go.id/index.php/jli/article/viewFile/111/pdf>.

¹⁴ Edi Pranoto, "Pembangunan Sistem Hukum Ekonomi Indonesia Berlandaskan Pada Nilai Pancasila Di Era Globalisasi," *Spektrum Hukum* 15, no. 1 (April 19, 2018): 89, <http://jurnal.unissula.ac.id/index.php/jurnalhukum/article/view/220>.

¹⁵ Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*.

aims to publish and reproduce by mindful of constraints due to the restrictions determined by law.

According to Law Article 1 Point 1 No. 19/2002 concerning copyright, copyright is an exclusive right for the creator or beneficiary to announce or reproduce his creation or give permission for it without reducing the restrictions in accordance with the applicable laws and regulations. Based on the article, exclusive rights are rights that are given specifically to copyright holders and no one may use their rights without obtaining permission from the copyright holder.

Exclusive Rights, Moral Rights, and Economic Rights in Copyright

Exclusive rights are rights that are reserved for copyright holders in obtaining benefits and enjoying their rights. Publication and reproducing a work is an example of an exclusive right. Publication and reproducing a work is intended for the creation can be delighted by everyone.

The copyrighted work that is created from the mind of a human being will produce a copyright that is inherent in a creator or copyright holder which contains moral rights and economic rights.

Moral rights are rights attached to the creator that cannot be removed even though the copyright and related rights have been changed to other people or parties. Moral rights can also be referred to as rights that contain a prohibition on making changes to the work content, creation title, creator name and the creation itself. Meanwhile, economic rights are rights to obtain economic benefits from a work. In other hand, the right to exploit in publishing and reproducing the work.¹⁶

Broadly, moral rights are regulated in Article 6 of Berne Convention¹⁷, these are the regulation contains below:

1. The creator has rights to claim its creation results,
2. The creator can be lodge an objection for any deviation, truncation or other change of actions that can degrade the quality of a work and damage the creator reputation.

According to Suyud Margono, there are basically two main principles in moral rights as following below:

1. The right to be recognized from the work is creator right to publish his work. It is to prevent other parties from claiming to be the creators of the work, and
2. Integrity right is the right to lodge an objection for any deviations or other change of actions that can degrade the quality of a work.

The Existence of Fan Fiction Novels in Copyright Regulations

¹⁶ Handy Awaludin Prandika, "Analisa Perlindungan Hak Cipta Di Jaringan Internet Menurut Undang-Undang No 19 Tahun 2002 Tentang Hak Cipta," *Lex Privatum* 3, no. 1 (2015): 49–57, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/download/7025/6534>.

¹⁷ Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*.

After the signing of The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) by Indonesia, the problems caused of copyright in Indonesia have become complicated, ambiguity and confusion caused by Indonesian cultural roots itself. In the Indonesian Customary Law System, exclusive rights are not clearly stated and regulated. There are various values that form the basis of individual ownership rights of a work originating from western culture that is integrated with the civil law system in Indonesia. This difference in value sometimes creates friction of conflict as a result of the enactment of a regulation.

Even, the existence of fan fiction novels is also regulated in the copyright regulations. Fan fiction has become a popular culture and being well-known in around the world. It became a legal discussion because of its existence. Moreover, regarding the act of transforming fan fiction into fan fiction novels which are commercialized and traded in many bookstores in Indonesia, this cause an uncertain side and many questions about copyright regulations in Indonesia. The existence of fan fiction has spread as the fan community around the world. In the United States, fan fiction has regulations.

Understanding how fan fiction authors are protected by fair use terms requires reviewing Law in Article 107/1976 of the American Copyright Regulations. In general, fan fiction is exempt from copyright regulations under the terms of fair use. If writing fan fiction raises concerns about its legality, then there are simple things we can do to prevent problems, one of them is not being allowed to sell fan fiction writing.

In Indonesia, fan-fiction regulation has not been regulated in detail in the Copyright Regulations. Risa Amrikasari stated that the regulation regarding fan-fiction works specifically in the copyright regulations of our country does not yet regulate. However, the works created by these fans has been regulated in Law no. 28/2014 concerning Copyright, those works including as an adaptation work. Adaptation is the transformation of a creation into another form, for example from a book into a film, from a film into a picture, from a book into another written work, and others.

Fan-fiction is created by a fan who writes a fictional story that uses a famous artist or an existing character in a literary work as a character in the story. The purpose of writing fan-fiction is to be enjoyed by fellow fans of an artist or existing character in other literary works. Rebecca Tushnet also stated that fan fiction is all creativity that is expressed in writing based on popular culture, such as television shows, films, novels, and famous artists. The creativity in this article is not created as a professional writing.¹⁸

Ever since the beginning of fan-fiction, this work has appeared several decades ago which was started with the first fan-fiction from the famous science

¹⁸ Jacqueline D. Lipton, "Copyright and the Commercialization of Fanfiction," *Houston Law Review* (2014): 425–466.

fiction film franchise titled “Star Trek”. On that year, fan-fiction was independently printed by fans and published during fan meetings or sent to fans who ordered for it. Since the internet era, fan-fiction was generally reproduced using a printing press and distributed on an internet page named Fanzines, this page is a non-official publication and it being non-profit because this page is a place for fans to publish their work freely. The active use of the internet has caused many people to participate in creating that work and it created various online fandoms, one of their duties is writing and distributing their works for free.

Copyright Infringement on the Rights of Famous Artists in Commercialization of Fan Fiction Novels

The limitation of copyright infringement scope is regulated in Chapter VI of the Copyright Regulations. These violations can occur in the civil or criminal scope. In the civil scope, well-known artists, publishers and authors can do license agreements to regulate several things that publishers and authors may and may not do during the writing and publishing of a copyrighted work. If there is a violation of the license agreement, it will cause in default.

Although the fan-fiction novel’s author has already given the disclaimer concerning of its publication work, however, the artist whose name is used as the character of the novel still gets royalties due to the use of his name in commercialized fan-fiction novels. In addition to royalty rights, the artist also has the right to object to a copyrighted work which causes against him.

Generally, an artist becomes a character in a fan-fiction work. In this case, well-known artists whose names and portraits are used in the commercialization of fan fiction novels have the related rights. The definition of related rights is stated in Article 1 No. 5 of the Copyright Regulations, related rights are rights related to Copyrights which are exclusive rights for entertainers, phonogram producers, or broadcasting institutions.

Famous artists can be categorized as entertainers in accordance with the understanding provided by Article 1 Point 6 of the Copyright Regulations, which contains that the entertainer is one or several people who individually or together in showing a work. The famous artist used in the fan-fiction novel entitled “The Darkest Shadows” is Park Jimin, who is a musician and member of a South Korean boy band called BTS. If it is related to the understanding of entertainer, then Park Jimin as the entertainer has the related rights.

The related rights have other terms in international Copyright regulations. This right is specifically regulated in the Rome Convention of 1961. According to Saidin's statement, Neighboring Rights is an abbreviation of the term Rights Neighboring on Copyrights. In other terms, this term is also defined as "rights related to" or "neighboring on copyrights." The related rights contain moral and economic rights as regulated in Article 20 of the Copyright Regulations.

The provision on moral rights for entertainers aims to protect the public interest because of the protection and recognition of self-identity, in this context is a well-known artist whose name and portrait are used as commercialized fan-fiction novel characters and the originality of the author's work. The definition of moral rights for entertainers is explained in Article 21 of the Copyright Regulations, the moral rights of entertainers are rights attached to entertainers that cannot be removed for any reason even though their economic rights have been diverted.

Furthermore, in Article 22 states that the moral rights of entertainers has two rights. These rights including the following below:

1. The names of those listed as entertainers must have approval and vice versa, and
2. No work distortion, work mutilation, work modification, or other things that are detrimental to one's honor or reputation unless approved and vice versa.

The fan-fiction novel is included in a creation distortion, namely an act that distorts the facts and identity of the entertainer's work. The fan-fiction novel is a reconstruction of well-known artist identity and is arranged in a different setting from the actual fact. Fan-fiction writings is different from the actual fact, this is caused the loss of honor and reputation of a famous artist whose name is used as a character in a fan-fiction novel. The things that cause a loss and honor can be classified as a moral rights violation of a famous artist. In the author's opinion, famous artists are included in entertainers in the Indonesian Copyright Regulation, then as a entertainer, moral rights and related rights are already attached to the artist's personal self cannot be removed from him under any circumstances. Another example of moral rights violation is the description of an attribute or artist's name as a entertainer, and a writer who distorts, mutilates, modifies a work or incurring losses to the honor and reputation of a well-known artist.

The famous artist name in a fan-fiction novel has an important role in the popularity of commercialized fan-fiction novel sales. The more famous the reputation of an artist, the more people is being his fans. Most fans will try their best to collect an item related to their idol regardless of whether the item is a legal item that was created by the artist or the related rights holder. Name is the most crucial attribute of an artist. However, in this case, the name cannot be registered for protection even though it is a generic thing for everyone, including famous artists as entertainers. Simon Stokes in his book *Art and Copyright* states that copyright is a purely negative right, especially the right to stop others from copying a copyrighted work and does not prevent others from making similar works, it also does not mean the copyright owner has right to exploit their own work.¹⁹

¹⁹ Simon Stokes, *Art and Copyright*, 3rd ed. (London: Bloomsbury Publishing, 2021).

Based on the success and high reputation of an artist, more people will imitate the work by taking advantage of its popularity and it caused losses to the artist. Therefore, it is necessary to prevent and protect these actions.

The Aggrieved Parties in Using Famous Artist Names on Fan-Fiction Novels

The aggrieved parties caused using of famous artist names in commercialized fan-fiction novels are the artists and the collective management agency. If an artist whose name is used as a commercialized fan-fiction novel character does not give permission to the publisher or author to use his name in that novel, this will harm the artist concerned because his economic rights are taken away by the publisher and author. In Collective Management Institutions, this institution will receive reasonable compensation from certain parties who take advantage of Copyright and Related Rights from something commercial. The Collective Management Institute is a non-profit Indonesian legal entity specifically appointed by the Copyright Law which aims to determine reasonable fees from users who take advantage of Copyright and Related Rights. On the Article 87 Point 1-4 describe that every creator, copyright holder, and related rights owner in obtaining economic rights from copyright users and related rights who utilize their economic rights, they must become Collective Institution member. The Copyright and Related Rights Users make an agreement with the Collective Management Institute containing the obligation to pay royalties for the use of rights so that it is not considered a violation of the Copyright Law.

Based on the facts across society occur, fan-fiction novels that had been distributed all around Indonesian bookstores mostly used famous foreign artist. Getting a copyright protection is something that is very important and crucial for a creator of his works from piracy, plagiarism, and so on. However, there is something more crucial, that is the rights protection for an author in which affects author's reputation. The most important rights for an author are economic rights and moral rights.

According to a statement from J.C.T. Simorangkir, the moral right of the creator is a special and long term right than the creator for his creation, which is non-transferrable from the creator. The moral rights of the creator remain attached to the creator even though the copyright itself has been transferred to another person. Publishers have a crucial role in publishing fan-fiction works in bookstores or through e-commerce. If publishers are aware of the importance of copyright in fan-fiction works, then there will be no copyright infringement regarding the use of famous artist names in commercialized fan-fiction novels.

Legal Protection obtained by Aggrieved Parties in Commercializing Fan Fiction Novels

1. Drafting of License Agreement as Preventive Legal Protection

Other people can publish and reproduce protected works if the copyright holder has given permission to them. Famous artists as related

rights holders have the right to disapprove of the use of their names and portraits in commercialized fan-fiction novels. On the other hand, famous artists also have the right to give permission to other people to use their identities. The permit can be draft a license agreement in which the licensee has an obligation to provide royalties to famous artists as licensors.

Mostly, the license agreement is submitted through a written agreement because it is proof that the licensee has obtained permission to enjoy economic rights of work. The agreement must be signed by the parties as a symbol of agreement regarding license submission from the right owner.

If the publisher and author have obtained a license agreement, then fan-fiction novels that use an artist attributes such as name and portrait, they not need to include a disclaimer. The use of a disclaimer itself is a dirty way for authors and publishers to eliminate their obligations in paying royalties to the artist and related parties. After drafting a license agreement, it can be said that both parties, both publishers-authors and artists, have protected and respected the related rights of well-known artists and respected the existence of Collective Management Institute as eligible institution to determine royalties on the economic rights of the artist.

2. Dispute Resolution Through Mediation

The provision of mediation rules for the settlement of civil disputes is regulated in Supreme Court Regulation no. 1/2016 concerning Mediation, based on Article 130 of the HIR (Herzien Inlandsch Reglement) and Article 154 RGb (Rechtreglement voor de Buitengewesten) states that in fact judges must try to reconcile the two parties to the dispute and mediation is considered the most effective solution. While in the provisions of Article 4 paragraph (2) Letter A Supreme Court Regulation no. 1/2016 concerning mediation states that disputes that are excluded from the obligation to settle through mediation are disputes that are resolved through the Commercial Court procedure. However, when referring to Article 95 paragraph (2) of the Copyright Law, the authority to examine and decide on a Copyright dispute is the Commercial Court. Therefore, efforts to resolve disputes through mediation in copyright disputes are carried out voluntarily as stated in Article 4 paragraph (4) of Supreme Court Regulation No. 1/2016 states that based on the agreement of the parties, disputes that are excluded from the mediation obligation can still be resolved through voluntary mediation at case examination stage and level of legal action.

3. The Lawsuit as Repressive Legal Protection

On the Article 95 paragraph (1) of the Copyright Law specifically regulates the settlement of copyright disputes which can be done through alternative dispute resolution, arbitration, or courts. Even though there has been a license agreement between a well-known artist and the licensee, the famous artist as the licensor and the economic rights owner as the entertainer can be sued a lawsuit against these parties if they violate their moral rights intentionally and do not give notice or ask for permission to them²⁰. If there is a violation of moral rights, the famous artist as the owner of the related rights and the licensor can be sued for compensation in the Commercial Court for Copyright Infringement act or related products. In Article 100 and Article 101 of the Copyright Law, it is explained the systematic procedure for claiming copyright infringement.

CONCLUSION AND SUGGESTION

Conclusion

Using famous artist names in commercialized fan fiction novels, authors and publishers of fan-fiction novels benefit regardless of the related rights owned by famous artists as entertainers as described in the Copyright Regulation. The most important related rights owned by famous artists are economic rights and moral rights. The profits earned by authors and publishers can eliminate fair use of a work. Legal protection that can be taken by famous artists is preventive and repressive legal protection. Preventive legal protection can be conducted by drafting a license agreement with publishers and authors of fan-fiction novels who will use their names as characters in the novel. Meanwhile, Repressive legal protection can be conducted by filing a lawsuit to the Commercial Court if the publisher and author deprives their economic rights and moral rights as entertainers.

Suggestion

Based on the results and discussion of this research, the researcher can suggest into several suggestions, such as (1) for publishers and authors, they should be more careful in publishing and writing a work. If in writing a work a famous artist's name is found, it is better to change the name to avoid passing off or taking advantages on the artist's fame; (2) for the publisher, it is better to provide offers to famous artists in drafting license agreements, then publishers and authors can use the names and attributes of the famous artists concerned.

²⁰ Undang-Undang Republik Indonesia No. 28 Tahun 2014 Tentang Hak Cipta (Jakarta, 2014), [https://www.kemhan.go.id/itjen/wp-content/uploads/migrasi/peraturan/NOMOR 28 TAHUN 2014.pdf](https://www.kemhan.go.id/itjen/wp-content/uploads/migrasi/peraturan/NOMOR_28_TAHUN_2014.pdf).

REFERENCES

- Alfons, Maria. "Implementasi Hak Kekayaan Intelektual Dalam Perspektif Negara Hukum." *Jurnal Legislasi Indonesia* 14, no. 3 (2017): 357–368. <https://ejournal.peraturan.go.id/index.php/jli/article/viewFile/111/pdf>.
- Atsar, Abdul. *Mengenal Lebih Dekat Hukum Hak Kekayaan Intelektual*. Yogyakarta: Deepublish, 2018.
- Handoko, Duwi. *Hukum Positif Mengenai Hak Kekayaan Intelektual Di Indonesia (Jilid II)*. Pekanbaru: Hawa dan Ahwa, 2015. <https://books.google.co.id/books?id=Suy7CgAAQBAJ>.
- Herlinssi. *The Darkest Shadows*. Yogyakarta: Aria Media, 2020.
- Himma, Kenneth Einar. "Conceptual Jurisprudence." *Revus*, no. 26 (December 10, 2015): 6592. <http://journals.openedition.org/revus/3351>.
- Hutagalung, Sophar Maru. *Hak Cipta : Kedudukan Dan Peranannya Dalam Pembangunan*. Edited by Tarmizi & Suryani. Jakarta: Sinar Grafika, 2012.
- Jacqueline D. Lipton. "Copyright and the Commercialization of Fanfiction." *Houston Law Review* (2014): 425–466.
- Kusmawan, Denny. "Perlindungan Hak Cipta Atas Buku." *Perspektif* 19, no. 2 (May 1, 2014): 137. <http://jurnal-perspektif.org/index.php/perspektif/article/view/16>.
- Meagher, Dan. "The 'Modern Approach' to Statutory Interpretation and the Principle of Legality: An Issue of Coherence?" *Federal Law Review* 46, no. 3 (September 10, 2018): 397–425. <http://journals.sagepub.com/doi/10.1177/0067205X1804600303>.
- Ni Ketut, Supasti Dharmawan et. al. *Buku Ajar Hak Kekayaan Intelektual*. 1st ed. Yogyakarta: Deepublish, 2016. <http://erepo.unud.ac.id/id/eprint/9308/1/9a01527a74bdd449329d8c519fdad9af.pdf>.
- Prandika, Handy Awaludin. "Analisa Perlindungan Hak Cipta Di Jaringan Internet Menurut Undang-Undang No 19 Tahun 2002 Tentang Hak Cipta." *Lex Privatum* 3, no. 1 (2015): 49–57. <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/download/7025/6534>.
- Pranoto, Edi. "Pembangunan Sistem Hukum Ekonomi Indonesia Berlandaskan Pada Nilai Pancasila Di Era Globalisasi." *Spektrum Hukum* 15, no. 1 (April 19, 2018): 89. <http://jurnal.unissula.ac.id/index.php/jurnalhukum/article/view/220>.
- Saidin, OK. *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*. 10th ed. Depok: Rajawali Pers, 2019.
- Stokes, Simon. *Art and Copyright*. 3rd ed. London: Bloomsbury Publishing, 2021.
- Sudarmanto. *KI & Hukum Kekayaan Intelektual Serta Implementasinya Bagi Indonesia*. Jakarta: PT Elex Media Komputindo, 2012.
- Syamsudin, Amir. *Undang-Undang Republik Indonesia Nomor 28 Tahun 2014 Tentang Hak Cipta*. Jakarta, 2014. <https://peraturan.go.id/common/dokumen/ln/2014/uu28-2014bt.pdf>.
- Tim Redaksi BIP. *3 Kitab Undang-Undang : KUHPer Kitab Undang-Undang Hukum Perdata, KUHP Kitab Undang-Undang Hukum Pidana, KUHP Kitab Undang-Undang Hukum Acara Pidana Beserta Penjelasannya*. Edited

by Saptono Rahardjo. Jakarta: Bhuana Ilmu Populer, 2017.

Undang-Undang Republik Indonesia No. 28 Tahun 2014 Tentang Hak Cipta.
Jakarta, 2014. [https://www.kemhan.go.id/itjen/wp-content/uploads/migrasi/peraturan/NOMOR 28 TAHUN 2014.pdf](https://www.kemhan.go.id/itjen/wp-content/uploads/migrasi/peraturan/NOMOR_28_TAHUN_2014.pdf).