

Limits of the Concept of Fair Use in Law number 28 of 2014 concerning Copyright

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ABSTRAK

Sebagai makhluk sosial, orang sering mengalami masalah kekayaan intelektual dalam hubungan mereka. Tuhan menciptakan manusia sebagai makhluk yang kompleks dengan berbagai kebutuhan agar dapat berfungsi. Bahan-bahan yang dibutuhkan oleh manusia untuk mempertahankan keseimbangan fisiologis dan psikologis, yang berusaha mempertahankan kehidupan dan kesehatan, juga merupakan kebutuhan dasar manusia. Ada beberapa hal yang dapat menyebabkan pelanggaran hak cipta di Indonesia, mulai dari peraturan pemerintah yang longgar hingga kurangnya pemahaman masyarakat tentang nilai hak cipta dan perlindungan hak kekayaan intelektual. Namun, karena doktrin penggunaan wajar, hak cipta tidak sepenuhnya dikuasai oleh penemu atau pemegang hak cipta. Konsep Batas Penggunaan yang Adil dalam Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta merupakan rumusan masalah dalam penelitian ini, yang berupaya untuk mengetahui sejauh mana Konsep Batas Penggunaan yang Adil dalam Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta, metodologi yang digunakan dalam penelitian ini menggunakan jenis penelitian normatif yang melibatkan membaca ulasan sumber informasi sekunder. Studi ini juga mempertimbangkan dan mengkaji hukum dan peraturan hak cipta. Temuan penelitian ini menunjukkan bahwa undang-undang penggunaan wajar di Indonesia dievaluasi dengan tepat berdasarkan adanya nama penulis atau maksud nonkomersial dari penggunaan tersebut. Di Indonesia, undang-undang penggunaan yang adil memberi lebih banyak orang kesempatan untuk berkarya dan mengembangkan kreativitasnya dengan memanfaatkan karya orang lain. Hal ini sesuai dengan hakekat hak cipta yang mensyaratkan individu menghasilkan karya tertentu, yang dalam hal ini dapat dilakukan melalui modifikasi karya cipta individu lain.

ABSTRACT

As social beings, people frequently run into intellectual property issues in their relationships. God created humans as complex beings with a variety of needs in order to function. The ingredients required by humans to sustain physiological and psychological equilibrium, which attempts to maintain life and health, are also basic human requirements. There are a number of things that might lead to copyright infringement in Indonesia, from lax government regulations to a lack of public understanding of the value of copyright and the protection of intellectual property rights. However, because of the fair

use doctrine, copyright is not entirely controlled by the inventor or copyright holders. The Fair Use Limit Concept in Law Number 28 of 2014 Concerning Copyright is the formulation of the problem in this study, which seeks to determine how far the Fair Use Limit Concept is in Law Number 28 of 2014 Concerning Copyright, the methodology utilized in This study employs a type of normative research that involves reading reviews of secondary sources of information. This study also takes into account and examines copyright laws and regulations. The study's findings demonstrate that Indonesia's fair use laws are appropriately evaluated by the presence of the author's name or the use's noncommercial intent. In Indonesia, fair use laws give more people the chance to work and develop their creativity by utilizing the works of others. This is consistent with the essence of copyright, which requires that individuals produce specific works, which in this instance can be accomplished through the modification of other individuals' copyrighted works.

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1. INTRODUCTION

The development of science and technology has had a considerable impact on the field of intellectual property rights; this impact extends beyond the items that are protected by these rights and has an effect on the doctrine governing them as well. Due to the numerous interests associated to IPR in the sectors of economics and politics that have been central to discussions of IPR concerns, the problem of IPR has grown more complicated over the past ten years and is no longer limited to the field of IPR alone. IPR is still in need of several application-specific modifications. The reason for this is that because of how quickly the age is developing, there will be a large number of new creative works. As a result, the law must change to reflect this development in order to prevent infractions that could affect the author.

The ever-expanding conception of wealth in connection to the products of human intellect is the ultimate impetus behind the need to either protect or defend this prosperity. In order to establish the concept of legal protection for intellectual property rights, which includes recognizing and preserving the copyrights of these ideas and creations, we need to acknowledge that these rights exist. From the standpoint of intellectual property rights, this kind of protection is necessary because it fosters an attitude of admiration, respect, and protection that will not only provide people a sense of security but also encourage them to create even better works of art.¹

Intellectual property problems often occur in human interactions as social beings. Humans are creatures created by God who have several needs to carry out their lives. Basic human needs are

¹ Aditya Putra Patria, "Perlindungan Hukum Terhadap Karya Desain Interior Dalam Perjanjian Jasa Kontruksi Dikaitkan Dengan Undang-Undang Nomor 18 Tahun 1999 Tentang Jasa Kontruksi Dan Undang-Undang Nomor 19 Tahun 2002 Tentang Hak Cipta" (Universitas Padjajaran Bandung, 2011).

also the elements needed by humans in maintaining physiological and psychological balance, which aims to maintain life and health. Maslow's theory put forward the concept of human needs which states that humans must meet the most important needs first and then increase the needs that are not too important.

Piracy and copyright infringement are phenomena that still occur in Indonesia. Copyright infringement refers to the use, distribution or reproduction of a copyrighted work without the permission or approval of the copyright holder. In recent years, copyright infringement has continued to increase in Indonesia due to the spread of internet and digital technologies. The lack of public knowledge of the value of copyright and the protection of intellectual property rights are just two examples of the many causes of copyright infringement in Indonesia. Other causes include lax government laws. However, since the concept of fair use exists, the inventor or copyright holder does not wholly control the copyright.

According to Thomas G. Field, Jr., one of the most significant and at least unambiguous restrictions on copyright is fair use. It allows some unapproved uses of other people's works. This understanding makes it clear that the principle of fair use permits the use of copyright without the creator's or owner's permission. Limitation and exception to copyright are provisions in copyright law which allow for copyrighted work to be used without license from copyright owner relating to a number of important considerations such as market failure, freedom of speech, education, and quality access, according to the definition of limitations and exceptions in copyright law. Copyright law permits some limitations of an economic right, or situations in which protected work may be used without the consent of right holders and with or without payment of compensation, in order to maintain an appropriate balance between the interests of right holders and users of protected work.² This study seeks to determine the boundaries of the concept of fair use as defined by Law No. 28 of 2014 about Copyright based on this explanation.

2. LITERATURE REVIEW

2.1 Definition of Copyright

Copyright is an exclusive right or right that only the creator or copyright holder has to regulate the use of works or the results of processing certain ideas or information. Basically, copyright is the right to copy a work, or the right to legally enjoy a work. A creation is restricted for use and to prevent unauthorized use which may be carried out by the right holder based on copyright. Exclusive rights in copyright have a limited validity period, because exclusive rights contain economic value that everyone cannot pay for them.³

Copyright is a type of exclusive right that includes both moral and commercial rights. Because the right is only reserved for the creator, it is called an exclusive right because no other parties are allowed to utilize it without the inventor's consent. Only a portion of the exclusive rights, specifically in the form of economic rights, are held by copyright owners who are not creators. Economic rights have economic worth, whereas moral rights have none at all. This is how moral rights differ from economic rights. Moral rights are those that the creator endowed us with. Even when the copyright protection period has passed, moral rights are indelible. When the creator is still

² Fatimah Nurul Aini and Indirani Wauran, "Pemenuhan Prinsip Fair Use Dalam Cover Lagu Berdasar Hukum Hak Cipta Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 111–132.

³ Ujang Badru Jaman, Galuh Ratna Putri, and Tiara Azzahra Anzani, "Urgensi Perlindungan Hukum Terhadap Hak Cipta Karya Digital," *Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia* 3, no. 1 (2021): 9–17.

living, moral rights cannot be transmitted; but, after their creator has passed away, they may be transferred by will or for other reasons in compliance with the laws and regulations. Related rights are also included in moral rights (neighboring rights).

The ability to get financial compensation for one's works is known as an economic right. The publishing of works, reproduction of works in all forms, translation of creations, adaptation, arrangement, or transformation of works, distribution of original works or copies of them, creation shows, announcements of new creations, communication of new creations, and rental of creations are all activities that holders of economic rights may engage in. The rapid expansion of the creative industry requires strengthening with legal protection since copyright is the most crucial pillar of the national creative economy. These rights not only provide personal advantages but also give hope for its growth.⁴

2.2 Fair Use Concept

The fair use principle or fair use (fair dealing, fair use). Any use of anything protected by copyright for specific, transformative purposes is the most typical definition of fair use. The phrase "fair use" refers to a principle of copyright law in the United States that permits limited uses of works protected by copyright without the need for permission from the right holder. The second phrase is fair usage. Only commentary, criticism, news reporting, study, and education may be done with such information. Article 107 of the Copyright Act of 1976 was the very first piece of legislation to regulate this concept. The use, retrieval, duplication, and/or modification of a work and/or Related Rights product in whole or in significant part is not regarded as a copyright infringement provided the source is acknowledged, or recognized fully for the purposes. No matter how much or how little the source is cited, the same applies.

1. Without compromising the logical interests of the author or copyright holder, education, research, producing scientific papers, preparing reports, writing critique, or reviewing an issue;
2. Administration of the government, legislature, and judiciary and government security;
3. Lectures exclusively for scientific and educational objectives; or
4. Free or discounted performances as long as they don't conflict with the author's reasonable interests.⁵

Fair use and fair dealing are regulated under Articles 43 through 49 of The Copyright Law Number 28, which was passed in 2014. (Hereinafter written the Copyright Law). According to these provisions, a legal action that is of a non-commercial nature and has the consent of the original author is not regarded as a copyright infringement. It is not considered to be a copyright violation when a Work and/or Related Rights product is used, recovered, reproduced, or modified in whole or in large part as long as the source is acknowledged or listed in full. To avoid interfering with the author's or rights holder's reasonable interests, make sure to do this while keeping an eye toward education. Only one copy of an advertised work may be reproduced for personal gain without the

⁴ Khwarizmi Maulana Simatupang, "Tinjauan Yuridis Perlindungan Hak Cipta Dalam Ranah Digital," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 67.

⁵ Inge Dwisvimiari, "PENERAPAN KEPENTINGAN YANG WAJAR (FAIR USE) MENGENAI MATERI HAK CIPTA DI INTERNET," *Humani (Hukum dan Masyarakat Madani)* 11, no. 2 (2021): 425–437.

author's or copyright holder's consent, as long as it does not include all or a significant portion of a book and does not run counter to the author's or copyright holder's legitimate interests.⁶

3. METHODOLOGY

This research examines theories about the application of the concept of fair use. Then this research uses a type of normative research which is carried out by examining library materials or secondary data. Furthermore, this research considers and analyzes laws and regulations regarding copyright. The data that was examined was obtained indirectly, in understanding the problems described in this study also using a conceptual approach and analyzed qualitatively. The method of analysis is carried out step by step. Namely looking for legal or literature materials and collecting them for research so that they can provide an overview of the research topic. This allows the writer to draw objective conclusions.⁷

4. DISCUSSION

One of the seven categories of rights regimes that make up intellectual property in Indonesia is copyright. People's inability to distinguish between patents and copyrights or brands or even with other sorts of intellectual property rights is a common indicator of how little the general public understands about the various types of intellectual property rights. Intellectual property rights come in seven different kinds, all of which are generally subject to the same restrictions. These exceptions are triggered when the property rights in question come into conflict with the pursuit of educational or public interests. Nonetheless, in order to make the subject matter of this article more understandable, the concept of a copyright exception will be discussed. Elucidation of Article 44 paragraph (1) letter a of Law no. 28 of 2014 concerning Copyright regulates 'reasonable interest' for copyright exceptions which are based on a balance in enjoying the economic benefits of a creation. Provisions regarding fair use are Anglo Saxon principles adopted into the Indonesian legal system (as a legacy of the system in Continental Europe). Despite the disparities between the legal systems, it is still unclear what the exclusion criteria are for legitimate interest in copyright exclusions.

However, there are various restrictions on the application of the fair use principle in Article 44 paragraph (1) letter an of Law No. 28 of 2014 respecting Copyright, including:

The goal and kind of use comes first. if it is being used for business or non-business reasons. If it is used for business, the author or copyright holder must grant a license. Yet, it can be considered fair use if the copyrighted work is used for non-commercial reasons alone.

The nature of a creation is the second. that the original copyrighted material is used as intended. It puts a focus on originality. If a work is factual and not fictional, the authenticity of a copyrighted work can satisfy the requirement of fair use.

The third factor is the quantity and split of the content substance used. The phrase "the less what is taken, the greater the activity is in the category of fair use doctrine" is used to determine how much and what kind of substance to utilize. This indicates that the likelihood that an action falls under the doctrine of fair use and not copyright infringement increases the less content that is taken.

⁶ Anis Mashdurohatun and M Ali Mansyur, "Model Fair Use/Fair Dealing Hak Cipta Atas Buku Dalam Pengembangan IPTEK Pada Pendidikan Tinggi," *Jurnal Hukum IUS QUIA IUSTUM* 24, no. 1 (2017): 29–51.

⁷ Ujang Badru Jaman and Agung Zulfikri, "Peran Serta Masyarakat Dalam Pencegahan Kekerasan Seksual Dihubungkan Dengan UU No. 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *Jurnal Hukum dan HAM Wara Sains* 1, no. 01 (2022): 1–7.

However, this principle will not be applicable if the component removed is the centerpiece or focal point of a piece of art.

Fourth, the effect of use on the market or on the value of the work used, namely the impact that will be caused which can be detrimental to copyright. Uses that prejudice the copyright owner's ability to profit from the original work are less likely to be considered fair uses.⁸

Thus, the regulation of fair use in Indonesia is sufficiently assessed from the factor of including the name of the creator or the purpose of non-commercial use. Fair use regulations in Indonesia open more opportunities for a person to work and increase the creativity of that person even though it is through other people's creations. This is in accordance with the nature of copyright, that is, people produce a particular work, which in this case can be done through the development of other people's copyrighted works.

5. CONCLUSION

Definition of "reasonable interest" for copyright exceptions that are based on a balance in reaping the financial rewards of a creative is regulated by Article 44, paragraph (1), letter an of Law No. 28 of 2014 respecting Copyright. Even if it involves using other people's works, Indonesian fair use laws give more people the chance to create and express their creativity. This is in line with the fundamental tenet of copyright, which is that people transform the works of others that are covered by it into their own original creations. Notwithstanding the fact that Law No. 28 of 2014 Governing Copyright does not specifically address restrictions on the use of fair use in Indonesian copyright.

However, there are some economic principles that cannot be broken, some principles pertaining to the form and content of works protected by copyright that cannot be changed, and some principles pertaining to the copyright owner's own interests that cannot be disregarded; as a result, there are theoretically some limits to the exceptions to copyright. Because of the limits that surround copyright exceptions, the meaning of fair in Indonesia's legal framework for intellectual property rights can be linked to the criterion of decency. Fair in this context means acceptable and sufficient.

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⁸ Dyah Hapsari Prananingrum, "Telaah Terhadap Esensi Subjek Hukum: Manusia Dan Badan Hukum," *Refleksi Hukum: Jurnal Ilmu Hukum* 8, no. 1 (2014): 73–92.

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