# PROTECTION OF FICTIONAL CHARACTERS AGAINST FANFICTION ACTIONS AND ITS RELATION TO FAIR USE IN THE PERSPECTIVE OF COPYRIGHT LAW

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***Abstract***

*This research aims to investigate the protection of fictional characters within the framework of intellectual property, including copyright, and explore the challenges arising from fanfiction cases in the era of the internet. Through legal analysis, the study delves into the legal regulations governing fictional characters and identifies the potential application of fair use principles to support fanfiction activities that utilize pre-existing fictional characters. The findings provide insights into the legal framework surrounding fictional characters within intellectual property law and its relevance in addressing the evolving landscape of internet culture. Moreover, this research contributes to a deeper understanding of how to safeguard fictional characters while considering freedom of expression and fostering innovation in the realm of creativity. By examining these issues, this study not only sheds light on the legal aspects of protecting fictional characters but also addresses the dynamic interplay between traditional intellectual property concepts and the transformative nature of fan-driven creativity on the internet, ultimately contributing to the ongoing discourse on the regulation of fictional characters in the digital age.*

***Keywords:*** *Fanfiction, Fictional Characters, Intellectual Property*

## 1. INTRODUCTION

Fanfiction is a recognized term denoting creative works produced by enthusiasts derived from an original literary source. Fanfiction typically engages with fictional characters originating from the original work, although fan creators craft distinct narrative settings and plotlines. The authors of fanfiction are seldom vested with formal authorization by the original work's copyright holder. In this context, such works predominantly take the form of written narratives, often bypassing professional publication.

Fanfiction constitutes a form of fictional narrative generated by fans, predicated on preexisting storylines, characters, or settings. Its scope extends to various media forms, encompassing films, comics, novels, celebrities, and other prominent figures. Some fanfiction compositions may incorporate the writer's identity or feature other individuals as characters (commonly referred to as Original Characters or OCs), while others may abstain from such inclusions. Additionally, certain fanfiction genres employ reader-insertion techniques, inserting the reader into the narrative as a character. Fanfiction creations have witnessed an exponential surge in popularity, as reflected in the extensive fan base and the proliferation of hosting platforms, such as Fanfiction Mobile and Wattpad. Presently, fanfiction stands as a distinct literary genre.

Notwithstanding its burgeoning worldwide and Indonesian popularity, the practice raises queries pertaining to the copyright protection framework applicable to fanfiction involving fictional characters drawn from original copyrighted works. When scrutinizing the nature of fanfiction activities, the stories originating from fanfiction compositions are original works produced by fan fiction writers. On the surface, fanfiction compositions

qualify as intellectual property creations, rendering them eligible for copyright protection. However, upon closer examination, it becomes evident that the characters or figures featured in fanfiction narratives often hail from renowned copyrighted works and constitute integral components of the original stories. Notable fictional characters, such as Sherlock Holmes from the novels of Sir Arthur Conan Doyle or Harry Potter from the writings of J.K. Rowling, are commonly employed as protagonists in fanfiction creations.

Fanfiction writing has evoked controversy within society, predominantly premised on allegations of distorting the fictional characters initially fashioned within the original works. These contentions also relate to the economic advantages reaped by fanfiction enthusiasts, invariably entailing potential copyright infringement issues. Yet, in the context of safeguarding fictional characters, Article 40, Paragraph 1 of the Indonesian Copyright Law No. 28 of 2014 (henceforth referred to as UUHC) provides a comprehensive exposition of protected forms of creative works. Article 40, Paragraph 1 of the UUHC enumerates a diverse array of copyright-protected creations, encompassing, but not confined to, books, pantomimes, the public presentation of published written works, and all conceivable written forms. It further extends to lectures, speeches, and analogous works, educational and scientific aids, musical compositions with or without accompanying lyrics, theatrical productions, choreography, *wayang* (puppetry), and pantomime. The list includes various visual arts, encompassing paintings, drawings, carvings, calligraphy, sculptures, or collages, as well as applied arts, architecture, cartography, batik works, and other motif arts. Furthermore, the protected categories encompass photography, portraiture, cinematography, translations, interpretations, adaptations, arrangements, modifications, and derivative creations. This section also addresses transformations, adaptations, arrangements, and modifications of expressions of traditional cultural heritage, as well as compilations of creations or data in formats suitable for computer programs and other media. Moreover, it incorporates compilations of expressions from traditional culture, contingent upon the compilation being an original work, along with video games and computer programs.

The aforementioned article implies that fictional characters do not explicitly fall within the scope of copyright protection under the UUHC, engendering an element of normative ambiguity. Nevertheless, scrutinizing a literary creation, such as a novel, underscores the integral role of developed characters alongside the storyline. Fictional characters ought to represent an indivisible aspect of the written work, constituting a defining facet of its identity. The practice of fanfiction could thus potentially erode the distinctive identity of the original work, thereby giving rise to losses.

Copyright, as an integral component of Intellectual Property Rights, receives explicit regulation under the 2014 Indonesian Copyright Law. This legislation mandates the protection of fictional characters within various media forms, including cinematography, literary compositions, dramatic works, books, novels, comics, and video games. The significance attributed to fictional characters as the foundation for these creative works raises a consequential legal quandary, as the 2014 Copyright Law does not explicitly delineate the scope of protection vis-a-vis fictional characters. The scope of protection is ambiguous, encompassing aspects extending beyond character portrayal to encompassing the broader application of these characters.

The ensuing debate also correlates with the doctrine of fair use. The concept of fair use is a legal doctrine that provides a constraint on copyright, permitting the utilization

of copyrighted works for specific purposes without constituting copyright infringement, provided that requisite conditions, such as non-commercial usage and permission from the creator, are satisfied. Fair use, as outlined within the prevailing legal framework in Indonesia, specifically in Articles 43 through 49 of the UUHC, posits that actions do not constitute copyright infringement if they involve the use, replication, duplication, or alteration of a copyrighted creation, in whole or in substantial part, as long as the source is duly acknowledged or completely cited and does not unduly impair the reasonable interests of the creator or copyright holder. This exception is permissible when the actions serve educational purposes.

The emergence of the doctrine of fair use in this context stems from contentions that certain fanfiction activities do not significantly impact the original creator or copyright holder's economic interests. Fanfiction, born from fan creativity, predominantly entails non-commercial writing and is often disseminated freely across numerous digital platforms. The objective of this research is to scrutinize the extent to which fanfiction may be construed as an act of fair use within the contours of copyright law. In addition, this study seeks to explore the possibility of expanding or tailoring the copyright framework to better accommodate the burgeoning fanfiction phenomenon. Consequently, this research will offer a substantial contribution to comprehending and addressing the legal issues arising from fanfiction and the portrayal of fictional characters in the evolving digital age.

## 2. RESEARCH METHODS

This research employs a juridical-normative approach, utilizing three key research methodologies: the statute approach, the conceptual approach, and the comparative approach. The statute approach allows for the collection and analysis of data from legal statutes and regulations applicable in Indonesia, with a particular focus on Copyright Law No. 28 of 2014 (UUHC). Data gathered under this approach encompasses legal provisions relevant to copyright, the protection of fictional characters, and the fair use doctrine within the context of copyright.

The conceptual approach in this study involves collecting data from an extensive range of legal literature, academic papers, and theories pertaining to various aspects of copyright, fictional characters, fanfiction, and fair use. This diverse dataset forms a rich tapestry of theoretical knowledge that underpins the research. It serves as the theoretical backbone, providing an in-depth understanding of the core concepts central to the research, including copyright law, the nature of fictional characters, the dynamics of fanfiction, and the legal nuances of the fair use doctrine. This conceptual data not only informs the theoretical framework of the study but also helps in crafting rigorous theoretical arguments and a nuanced comprehension of the multifaceted research issues.

The comparative approach involves comparing the copyright regulations in Indonesia with the laws in other jurisdictions relevant to the research. Comparative data aids in identifying differences, similarities, and best practices related to fanfiction and fictional characters. This data will be employed to formulate relevant legal recommendations and implications. By utilizing these three approaches, this research will analyze the legal aspects pertinent to fanfiction, fictional characters, and copyright. The study will conclude with recommendations and conclusions drawn from the analysis of data obtained from diverse sources.

## 3. DISCUSSION

### 3.1. Fanfiction and Fictional Characters

Fanfiction is a work of fiction created by a fan who names the characters in their story using the names of famous characters that already exist. Usually, these fanfictions are shared by the authors on a website commonly used for sharing fanfiction. As time has progressed, it has become easier to access these fanfictions, and they are typically distributed for free and publicly. Fanfiction is a written work created by fans based on original works such as books, films, TV series, manga/anime, or video games. In fanfiction, fans develop new stories using the characters, world, or concepts from the original work. Fanfiction can take various forms, including short stories, novels, scripts, or comics.

Fanfiction is often published online on specialized platforms like Archive of Our Own (AO3), Fanfiction.net, or Wattpad. There, fans can upload their fanfiction for others with similar interests to read. There are also fan communities that interact and provide feedback to each other. The sources of fanfiction can vary, depending on the original work that serves as inspiration. Some fans write fanfiction based on popular books or films like Harry Potter, Star Wars, or the Marvel Cinematic Universe. Others develop alternative stories for TV series like Game of Thrones or Sherlock Holmes. Additionally, anime and manga like Naruto, One Piece, or Attack on Titan are also popular sources for fanfiction. Even video games like Overwatch or The Legend of Zelda serve as inspiration for fanfiction.

Fanfiction sources are not limited to widely popular media. Some fans write fanfiction for more niche or less-known works. For example, fanfiction can be based on classic books, indie films, or even original artwork uploaded to platforms like DeviantArt. Fanfiction often differs significantly from the original work, with the introduction of new characters, locations, and sometimes even mixing with other works. Fanfiction takes various forms, such as short stories, dramas, or interactive events. Based on the definition of fanfiction above, it is a creation produced by fans using their imagination based on pre-existing characters and brought to life in written form in the field of literature.

However, in the present day, widely spread fanfiction tends to present some issues, including:

a. Copyright Infringement: The most significant issue in fanfiction is copyright infringement. Fanfiction uses characters, stories, and worlds created by others without their permission. This can lead to legal problems for fanfiction writers and may result in the restriction or removal of their stories.
b. Inappropriate or Sensitive Content: Some fanfiction contains inappropriate content, including violent scenes, explicit sexual content, or strong language. This can make readers uncomfortable if they do not expect or are not comfortable with such content.
c. Incorrect or Inconsistent Interpretation of Original Characters: Fanfiction writers sometimes provide incorrect or inconsistent interpretations of original characters. This can disrupt the reading experience and leave loyal fans of the characters unsatisfied with how they are portrayed in the story.
d. Bullying and Trolling: The fanfiction world is not immune to bad behavior such as bullying and trolling. Some fanfiction writers or fans may unfairly criticize or

attack other fanfiction writers or their works. This can create an unhealthy and detrimental environment for the fanfiction community.

e. Overreliance on Conventions and Stereotypes: Some fanfiction tends to rely on conventions or stereotypes within a specific genre or fandom. This can result in less original and challenging works and hinder innovation in exploring existing characters and worlds.
f. Disparagement of Original Authors: In some cases, fanfiction writers may disparage or mock the original authors or their works. This can create conflicts between fanfiction fans and fans of the original works and damage the relationship between these communities.
g. Overdependence on Specific Powers: In some fandoms, fanfiction may become overly dependent on the powers or abilities of specific characters in the original work. This can reduce the complexity and interest of the story and lead to an excessive reliance on existing story elements.

There have also been legal cases related to fanfiction. For example, the "Anne Rice vs. Internet" case in 1996, where author Anne Rice filed a lawsuit against fans who had written fanfiction based on her work, "The Vampire Chronicles." Rice argued that the fanfiction violated her copyright. However, she later withdrew the lawsuit after facing resistance from the fanfiction community. Another case, "Cassandra Claire vs. Fanfiction Plagiarism," in 2001, involved fanfiction writer Cassandra Claire (real name Cassandra Clare) being accused of plagiarism for incorporating parts of other writers' works into her fanfiction. Although this created tension in the fanfiction community, other cases have arisen, such as "Paramount Pictures vs. Axanar Productions" in 2015, where Paramount Pictures sued Axanar Productions for producing a fan film based on the "Star Trek" franchise, alleging copyright and trademark infringement. Eventually, both parties reached an out-of-court settlement. There was also a long-standing case in 2008, "J.K. Rowling vs. Steven Vander Ark," where fanfiction writer Steven Vander Ark and his publisher, RDR Books, faced a legal lawsuit from author J.K. Rowling and her publisher, Warner Bros. Vander Ark had created "The Harry Potter Lexicon," an encyclopedia based on the "Harry Potter" series. Rowling argued that the encyclopedia violated her copyright.

Given the numerous issues, fanfiction often intersects with fictional characters. Fictional characters often gain popularity among fans and have dedicated fan communities. These fan communities typically produce fanfiction, fan art, cosplay, and various other forms of creativity related to these characters.

Characters are individuals or other entities within a narrative story. They are essential elements used by a creator or author to support the themes and conflicts in various forms of media such as film, video games, novels, or comics. According to Kurtz, (2012), characters "can be used outside their original contexts. They can take on lives of their own, moving from one story to another, from one medium to another, from stories to merchandise and back again." Matthew Freeman adds that, "It was character, then, that worked to build narrative references between the films and the books, connecting both media texts as components of a larger story world."

Characters can originate from real-life figures (realistic or reality-based characters) or be purely fictional (fictional characters). DiBattista (2011) notes, "The character may be entirely fictional or based on a real-life person, in which case the distinction of a 'fictional' versus 'real' character may be made." Creations in the form of cinema, literature,

drama, books, novels, comics, and video games often result in the development of fictional characters (referred to as "characters" in this dissertation), serving as foundational elements used by creators or authors to support themes and conflicts. As Roser et al. (2007) assert, "In literature, characters guide readers through their stories, helping them to understand plots and ponder themes." Characters also play a crucial role in developing themes, ensuring that the author's messages are effectively conveyed in various media, including cinema, literature, drama, books, novels, comics, and video games.

Fictional characters are characters created within works of fiction, such as novels, films, television series, video games, or other narratives. They do not exist in real life and are purely products of imagination within these works. Fictional characters can possess a wide range of attributes, including physical appearance, personality, background, goals, skills, and relationships with other characters. Key facets to comprehend regarding fictional characters include (Swain, 2012):

a. Characterization: Characterization is the process of character development, involving elements such as physical descriptions, backgrounds, emotions, motivations, beliefs, and character actions. Effective characterization enables readers or viewers to understand and connect with the character.
b. Role in the Plot: Fictional characters often assume significant roles within the storyline. They may serve as central figures or supporting characters, contributing to the narrative's development. Each character may have distinct conflicts, goals, or journeys they undertake within the narrative.
c. Character Development: Throughout the narrative, fictional characters frequently undergo development. They may face challenges, alter their viewpoints, or experience emotional transformations. Character development enhances the complexity and authenticity of the character, engaging readers or viewers.
d. Representation and Identification: Fictional characters can also function as representations or symbols of specific groups or issues. For instance, certain characters may symbolize heroism, cultural representation, or specific values. Readers or viewers may identify with fictional characters and empathize with their experiences and emotions.
e. Fictional characters play a vital role in literary and artistic works. Creators endeavor to fashion characters that are engaging, multifaceted, and relatable to their audience. Strong fictional characters bring narratives to life, enhance narrative appeal, and contribute to more fulfilling reading or viewing experiences. In contemporary times, fictional characters often outshine the works from which they originate, becoming the icons of entire literary or cinematic creations.

Intellectual property law, as defined by Copyright Law, safeguards creative works when they are tangibly expressed, but it does not explicitly address the copyright protection of fictional characters. The distinction between visual and textual representation, such as in films or comic books, makes characters eligible for copyright protection. However, purely literary works like novels pose challenges in protecting fictional characters through copyright. Therefore, a comprehensive approach to copyright protection for fictional characters is crucial, particularly in light of challenges posed by fanfiction and related activities.

### 3.2. Fictional Character Protection in Copyright Perspective

John Locke, an influential figure in the common law tradition, expounded on the labor theory. According to Locke, property rights are one of three inseparable things from humans, along with life and liberty, as they are a natural or divine law, and these three things originate from God (Roisah, 2015). Locke (2015) explained that every individual has a right to themselves, including the products of their labor, as obtaining something requires sacrifice, such as discovering, processing, and adding a "personality" to their work. As expressed in the following passage: "...yet every man has a 'property' in his own 'person.' This nobody has any right to but himself. The 'labor' of his body and the 'work' of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labor with it, and joined to it something that is his own, and thereby makes it his property.

The addition of "personality," as explained by Locke, was developed by Georg Wilhelm Friedrich Hegel, or commonly referred to as Hegel. Hegel explained that "the individual's will be the core of the individual's existence...constantly seeking actuality...and effectiveness in the world." This theory is considered a manifestation of the concept of freedom, which, according to Hegel, must be realized in the form of a creative work to be clearly visible. Hegel also argued that the compensation given to someone for purchasing the work of the creator is a recognition of the creator. Therefore, the presence of Intellectual Property Rights (IPR) can create an environment that supports economic and social aspects for the creation of intellectual works, which are ultimately essential for human development (Hughes, 1988). Hegel's theory complements Locke's with two reasons. First, IPR is property related to works that demonstrate intellectual capacity and creativity beyond mere consumption, as stated by Locke. Second, Hegel's interpretation of Locke's theory laid the foundation for the idea that IPR is an abstract right that underpins human existence (Nasution, 2013).

The Copyright Law (UUHC) regulates that copyright is an exclusive right of the creator that arises automatically based on the declaratory principle if a creation has been manifested in tangible form. The exclusive right is a right granted specifically by the creator, so a person's creation belongs entirely to the creator, and the creator can allow or prohibit someone from exploiting the creation. The UUHC recognizes two types of rights: economic rights and moral rights. Economic rights involve the right to obtain economic value, such as money, while moral rights concern the protection of the creator's personal interests and reputation.

In essence, a fictional character is the creation of an artist, and they use their imagination to provide specific and unique attributes to the idea of a character, thereby giving the idea an expression or fixation. Furthermore, the creator of a fictional character uses their thinking and effort to shape the character. Fictional characters are also the result of the creator's creativity. Therefore, it can be concluded that the process of creating a fictional character fulfills the criteria for creating a work that can be protected by copyright, and the creator of a fictional character should be able to exploit their work by providing protection (Biswas, 2004).

In line with this opinion, Brehm & May (2012) argued, "Just because a work is copyrighted, however, does not mean that every element of the work is protected against copying. Copyright protects characters whose talents and traits qualify as unique elements of expression, not simply basic ideas." Metsola (2016) argued, "Only characters that are

described sufficiently distinctively and have consistent identifiable traits qualify for copyright protection separate from the works in which they appear."

Regarding tangible expression, this provision is based on the fundamental doctrine of copyright law, which states that copyright protects the "expression" of a work and does not protect an "idea" that has not been expressed in tangible form. This doctrine is found in TRIPS Article 9(2). In the UUHC, it is mentioned in the general provisions on creations in Article 1(1) and also in Article 41(a), which states that "creations that have not been manifested in tangible form" do not receive copyright protection. Furthermore, the UUHC provides protection for works of art that serve as the medium for the birth of fictional characters, such as cinematographic works, literature, books, comics, novels, dramas, and video games. However, fictional characters themselves are not explicitly protected; the UUHC provides general protection. This creates ambiguity and confusion about whether copyright protection also extends to fictional characters, not just their visual representation.

In the United States, protection for fictional characters is established through jurisprudence, with Judge Learned Hand introducing the concept of "the level of abstraction analysis." This concept explains that the position of the idea of a creation that is universal and in the public domain is at the top, with the foundational layer being the expression of the idea that has been realized. Fictional characters can be included in the thematic layer of this expression, but they must meet the criteria for copyright protection (Jened, 2014).

According to the researcher, fictional characters have essential elements, including the fact that each character derived from an author's idea is expressed in tangible form, whether through visuals or writing that can be clearly and distinctly conveyed. Not all fictional characters can be protected by copyright. In the United States, courts have formulated specific tests or standards to set boundaries by applying the Character Delineation Test and Story Being Told Test (Donaldson & Callif, 2008). To be eligible for protection, fictional characters must meet certain criteria, including (Hans, 2018):

a. Fictional characters must possess unique or exceptional characteristics. Fictional characters are extraordinary or unusual in their characteristics, setting them apart from ordinary beings.
b. Fictional characters must be clearly defined and developed with consistent traits, such as clothing, speech or voice, instincts, physical attributes, or interactions with supporting characters.
c. The character should have the potential to be recognized by the public at large. The more well-known a fictional character becomes among the public and the more numerous the works in which the character appears, the better it is for copyright protection.

The Story Being Told Test ensures that the protection of a fictional character, independent of the work in which the character appears, is granted appropriately. With this standard, if the character is not a central element of the story and serves merely as a means to convey the narrative, it seems unlikely for the character to be considered a separate or independent work from the work in which it is told.

The Story Being Told Test may be feasible in Indonesia. To strengthen the fact that fictional characters can be protected from a copyright perspective, their protection can

also be implemented through moral rights. Moral rights are the rights of a creator to prevent others from taking actions that harm the creator. Regulations concerning moral rights originated in the 19th century in France and have since been included in Article 6 bis of the 1928 revision of the Berne Convention, which states:

"*Independently of the author's economic rights and even after the transfer of said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation, or other modification of or other derogatory action in relation to the said work, which would be prejudicial to his honor or reputation*."

Based on the formulation of this article, the substance of moral rights includes:

a. The right to claim authorship, which is the right to receive recognition as the creator. This can be done by mentioning or including the creator's name in the creation.
b. The right to object to any distortion, mutilation, or other modification of the work, which is the creator's right to reject actions that could distort, cut, or alter parts of the creation or modify it in a way that damages or harms the creator's reputation and honor.
c. The right to object to other derogatory actions in relation to the said work, which is the creator's right to reject any actions or treatments that may disrupt or diminish the creator's honor and reputation.

When related to the protection of fictional characters, moral rights can indeed provide protection. However, protection through moral rights does not separate the fictional character from the original work. The original work, in this context, is the primary source from which the fictional character originates, such as a film, novel, or illustrated book like a comic (the parent work). Additionally, protection related to moral rights is also regulated in the Indonesian Copyright Law (UUHC) in Article 5, which states:

Moral rights are inherent rights of the Creator that are perpetual in nature, including the right to:

a. Include or not include their name on copies in connection with the use of their creation for the public;
b. Use their pseudonym or alias;
c. Modify their creation according to societal norms;
d. Change the title and subtitle of the creation; and
e. Maintain their rights in case of distortion of the creation, mutilation of the creation, modification of the creation, or rights that are damaging to their honor or reputation.

To provide dual protection for fictional characters, a clear depiction of the characters to be protected is necessary. As mentioned earlier, it is important to define and develop fictional characters clearly with consistent traits, such as their clothing, speech or voice, instincts, physical characteristics, or interactions with supporting characters.

### 3.3. Protection of Fictional Characters related to Fanfiction activities and its relation to Fair Use in Copyright

In many cases, fanfiction that connects fictional characters from the original creator strengthens the argument that fanfiction activities are actually common, and their relationship with copyright uses fictional characters from original works that are protected by fair use. Fair use is a legal doctrine that originated in U.S. copyright law, allowing the use of copyrighted materials in other works under certain conditions (Depoorter & Parisi, 2002). Fair use is one of the copyright limitations designed to balance the interests of copyright holders and the public in broader distribution and use of creative works by allowing it as a defense against claims of limited specific copyright infringement (Aufderheide & Jaszi, 2018).

Fair use, also known as "*Kepentingan yang Wajar*" in Indonesian law, is regulated in Article 15 of the Indonesian Copyright Law (UUHC) and states that copyright use can be carried out, provided that the source is attributed or mentioned and it is not considered a copyright violation:

a. The use of another party's creation for educational, research, scientific writing, report preparation, writing criticism or review without harming the legitimate interests of the creator.
b. The use of another party's creation, in whole or in part, for defense purposes, either in or out of court.
c. The use of another party's creation, in whole or in part, for purposes of lectures solely for educational and scientific purposes, or for free performances or displays, provided it does not harm the legitimate interests of the creator.
d. Reproduction of a creation in the fields of science, art, and literature in braille for the benefit of the visually impaired, unless such reproduction is commercial.
e. Reproduction of a creation other than computer programs, in a limited manner by any means or similar process by public libraries, scientific or educational institutions, and non-commercial documentation centers solely for their activities.
f. Alterations made based on technical implementation considerations of architectural works, such as building creations.
g. The creation of backup copies of a computer program by the owner of the computer program for their own use.

Fair Use is one of the copyright law's protections in using copyrighted materials reasonably and in a limited manner to minimize copyright violations. However, on the internet, various copyright violations can occur, such as copying copyrighted internet content, sharing music data without permission, and reading articles and e-books that may lead to copyright infringements.

Fanfiction and copyright are closely related. Copyright protects the exclusive rights of the original creator to control the use, reproduction, and distribution of their works. Fanfiction, as a derivative work based on an original work, can raise questions about copyright infringement. In essence, fanfiction involves using characters, worlds, or concepts owned by others. Although fanfiction is typically created with the intention of respecting or appreciating the original work, it still involves the use of copyrighted material. Therefore, fanfiction technically infringes on copyright. According to

researchers, there are several limitations to fair use related to the use of fictional characters as seen in the characteristics of fanfiction activities:

First, fanfiction is often published on internet platforms like Wattpad or mobile applications, and these websites do not distribute content for free. Fanfiction works can be accessed through payments made to compensate the fanfiction authors and as administrative fees for the websites. This can be seen as a commercialization of fanfiction, which does not align with the fair use regulations in the UUHC.

Commercialization is regulated in Article 9 of the UUHC. The original creator (in this case, the original creator of the fictional character) has economic rights to publish, duplicate, translate, adapt, arrange, transform, distribute, perform, announce, communicate, and lease their creation. Anyone exercising the economic rights of the creator must obtain permission from the creator or copyright holder. In the case of fanfiction, several economic rights are exercised:

a. Fanfiction involves the transformation of fictional characters from the original copyrighted work.
b. Fanfiction is published on websites, which constitutes an act of communication.

In addition to the violation of economic rights, fanfiction also infringes on the moral rights of the original creator, especially regarding the protection of the creator's rights in case of distortion, mutilation, modification of the creation, or actions that damage the creator's honor or reputation.

From a copyright perspective, fanfiction has the potential to be considered a copyright infringement by the original creator or copyright owner. However, in many cases, copyright owners do not take legal action against fans creating fanfiction. Many copyright owners choose to allow fanfiction to exist because it can help maintain interest and love for the original work. Fanfiction can also serve as an unofficial form of promotion for the original work.

In essence, fanfiction and similar works created by fans in terms of copyright are considered acts of infringement. There is no one solution that benefits both fanfiction creators and original creators. Changes in copyright law, including the protection of derivative works and exceptions to fair use, may be necessary to avoid copyright violations. The other solution is to expand the moral rights of authors, giving them more authority to control how their content is used by others. Ideally, this expansion allows authors to oversee derivative content, such as fanfiction, without relying on the derivative work doctrine. Another possibility is to provide limited licenses to fans who want to create fanfiction. If copyright holders allow their fans to create derivative works freely, fans do not need to worry about being sued, and copyright holders do not need to compete with their fans.

Unfortunately, there is no single solution to resolve the fanfiction and derivative works dilemma. However, better representation from fan communities can help address some of the issues. Well-organized fans are in a better position to negotiate with original creators and copyright holders.

## 4. CONCLUSION

Based on the comprehensive analysis undertaken, it can be deduced that fictional characters represent an integral component within the primary work, and copyright pertaining to these fictitious personas should be duly acknowledged and safeguarded, encompassing both economic and moral dimensions. The confusion that has arisen from fanfiction has led to legal ambiguity, especially evident within Indonesia's jurisdiction and beyond. Such scenarios recurrently culminate in conflicts between the authors of fanfiction and the proprietors of copyright for the fictional characters in question. In the contemporary digital milieu, derivative works such as fanfiction have indubitably assumed a pivotal role within the realm of internet culture. Consequently, measures necessitate formulation to facilitate fanfiction activities while concurrently upholding the integrity of the original creators' intellectual property rights. A plausible remedy may lie in the establishment of a dedicated forum or platform, thus underpinning fanfiction works and affording a conduit for direct discourse between enthusiasts and the authentic creators. In this context, the purview of fanfiction activities should not be circumscribed exclusively within the realm of economic rights infringement but be regarded as a manifest expression of adulation and endorsement for the progenitor works.

In summation, it is imperative to discern a judicious equilibrium betwixt the safeguarding of the rights of creators of fictional characters and the allowance for aficionados to partake in creative expressions via fanfiction. The creation of a legal framework and platforms that acknowledge and honor both facets of this complex dynamic hold the promise of resolving the ongoing legal impasses and ambiguities surrounding fanfiction, spanning various legal jurisdictions. Such initiatives are poised to cultivate a more harmonious and collaborative rapport between the creators and their devoted fan communities, ultimately conferring advantages upon the broader creative ecosystem.

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