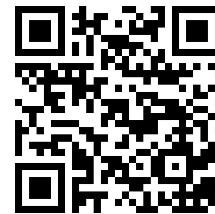


Indonesia and Japan Perspectives on Fair Use Defense to Copyright Infringement in Cosplay



Tyas Noerningsih Utomo¹, Budi Santoso²

¹Student, Master of Law, Faculty of Law, Diponegoro University, Semarang, Indonesia

²Lecturer, Master of Law, Faculty of Law, Diponegoro University, Semarang, Indonesia

ABSTRACT: The increasing number of competitions centered around the fair use of Cosplay has prompted discussions over its legality in Indonesia. The renowned practice of Cosplay, which is widely embraced by many individuals, originates from Japan. Indonesia has legislation pertaining to Law Number 28 of 2014, which specifically addresses matters related to copyright. Japan's legislation pertaining to Fair Use is included under the Copyright Law. This study will compare the use of fair use in cosplay, specifically examining the Copyright Law of Indonesia and Japan. There is no more clarification provided about the protection of fair use in cosplay when comparing the two countries. However, the two nations have commonalities in which actions are not considered offensive as long as they do not result in any benefits. Conversely, if same actions do lead to benefits, they will be considered offensive

KEYWORDS: Copyright law, Fair Use, Cosplay

INTRODUCTION

When a person is alive, he or she has a mind that is also known as an intellectual. With intellect, a person can create something, especially a work. Some works that have been produced, created, or born from a person's intellectual ability with effort, energy, and thought that produce a work. This makes the works they have created should be given legal protection which is part of Intellectual Property Rights (IPR). Intellectual property rights are crucial for the growth of a country's economy, both domestically and globally (DJKI, 2020). Intellectual Property Rights are intangible rights bestowed by employers to bestow economic value onto society, to acknowledge the purpose of the owner's labor, and to establish ownership in the attainment of the economic or productive value of human creativity (Ramadhan, 2021).

Intellectual Property Rights include the protection of intangible assets such as ideas, symbols, literary and creative works, as well as names and pictures used in commercial activities. IPR encompasses several categories that pertain to copyright, including copyright itself and allied rights such as patents, trademarks, industrial designs, integrated circuit designs, trade secrets, and plant varieties. Intellectual Property Rights (IPR) have been regulated in Indonesia since the Dutch colonial period, starting with the ratification of Auterswet 1912. However, this law is no longer valid and has been replaced by Law Number 6 of 1982 concerning Copyright. This law has undergone subsequent changes, leading to the current legislation Law Number 28 of 2014 concerning Copyright (Prabandari, 2017).

The rise of cosplay in Indonesia may be attributed to the influence of Japanese culture. Cosplay is a fan activity where individuals or groups create and wear costumes and accessories that resemble characters from manga, anime, literature, or famous films. It is mostly enjoyed by fans who have a strong interest in these genres. A game, image, or idol group (Pramana & Mujab Masykur, 2019). The term cosplay introduced for the first time by Nobuyuki Takahashi who was the president of Studio Hard in June 1983 (Lotecki, 2012). Cosplay activities are characterized by role-playing behavior or performing the role of a character. Cosplay became popular in Japan due to the large number of manga (comic) and anime (animation) lovers. The writing of cosplay in Japanese is kosupure which comes from costume and play. Cosplay itself when done has several classifications that cause several genres including horror, romance, gothic, cuteness, fantasy, sci-fi and mythology. Some of these genres are very popular outside of Japan and have appeared in several Asian countries such as Taiwan and Hong Kong (Pramana & Mujab Masykur, 2019)

The study of emerging events of cosplay from the perspective of intellectual property has its shortcomings, although people know about intellectual property rights they only know it in general. The legal comparison used between Indonesian and Japanese law regarding the protection and fair use of cosplay, the author wants to provide a better understanding of the regulations for the protection and fair use of cosplay.

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MATERIALS AND METHODS

This study employs a methodology known as normative juridical research or simply normative legal methodology. Research from library materials is employed to conduct normative legal research. Three methods are employed: the legislative method, the conceptual method, and the comparative method. Methods like literature reviews that were pertinent to the research issue were used to gather data. The main legal documents consist of Law Number 28 of 2014 on Copyright and the Japanese Copyright Law. Legal publications such as articles, books, journals, and theses that are not directly relevant to the subject of this study are considered secondary sources. There are also tertiary legal materials, including the Big Indonesian Dictionary (KBBI) and the Legal Dictionary. In line with the planning, we will evaluate and provide some of the acquired data in a descriptive qualitative

RESULT AND DISCUSSION

Cosplay in Indonesia Copyright Law

David I Brainbridge has defined intellectual property as wealth derived from human creative or intellectual work. This asset comes from the creativity of humans who use their intellectual abilities and pour them into various forms of work that are beneficial to aspects of human life (Mar & Nugroho Putri, 2016). Under article 1 number 1 of Law No. 28 of 2014 on Copyright, copyright refers to the exclusive right to protect original works, which is automatically granted once certain obligations are fulfilled, while still respecting any copyright obligation outlined in the law. According to Article 1 number 3 of the Copyright Law, creation refers to any work in the domains of science, art, and literature that is protected by copyright. This work is produced via inspiration, aptitude, thinking, imagination, dexterity, skill, or expertise, and is represented in a concrete form.

Regulations related to protected creations are in Article 40 paragraph (1) of the Copyright Act. The UUHC does not directly explain that the work of a costume or cosplay is within the scope of the Copyright object. Cosplay itself is a costume that comes from the adaptation of certain images or characters that have been designed in such a way. The design or sketches related to the making of costumes and accessories is poured into conventional and digital media (Ramadhan, 2021). Article 40 paragraph (1) letter (f) specifically mentions several types of fine art, such as paintings, drawings, engravings, calligraphy, sculpture, sculptures, and collages. An explanation of the letter f, what is indicated by the term "drawing" comprises not only the components of color and attractive letter shapes, but also schematics, motifs, logos, and drawings..

Making costumes with accessories from cosplay is a process that comes from the adaptation of a design or sketch of a costume that produces a character design in the form of an image. This makes that cosplay itself is an adaptation of the embodiment of a copyrighted work where it changes into another form in the form of costumes or accessories made into a physical formation and used by humans. This adaptation itself can be seen in the arrangement in Article 40 paragraph 1 letter (n) of the Copyright Law explains that translations, interpretations, adaptations, anthologies, databases, adaptations, modified arrangements and other works of transformation. Related to the explanation in letter n about adaptation, it can be seen that adaptation itself is a transformation of creation into another form. An example is when there is an adaptation of a book into a movie and a Naruto cartoon adapted into a Naruto cosplay outfit.

The cosplay itself is not only a form of costumes and accessories produced in physical form but the use of fabric materials in making clothes or costumes as well as the use of non-fabric materials in the form of hard foam (eva foam), mattress foam, aluminum / brass, latex liquid, and various other materials which will then be given a dye to match the desired cosplay. The completion of this work usually uses human hands (handmade) so as to produce satisfactory results because of the addition of some details related to the costume (Ramadhan, 2021). Based on the explanation above, we can know that the explanation of the costume itself is not explicitly explained as an object included in the protection of the UUHC, but we can see the costumes used in cosplay can use copyright protection settings in accordance with the use of Article 40 paragraph 1 letter (n) and will get protection against creation for 70 years in the presence of original provisions or get permission from the relevant parties who are owners or licensees for adaptation.

Picture is an object of copyright that is in Article 40 paragraph 1 letter (f) UUHC. Associated with cosplay which is part of the adaptation of the work on costumes or accessories derived from a sketch of costumes or draft images and accessories through the depiction of character designs of fictional characters that are the work of others or an original work that is poured through print or digital media used in the manufacture of cosplay as a reference image in creating costumes and accessories in accordance with the adaptation of existing design/sketch images (Ramadhan, 2021) **The Concept of Fair Use in the Context of Cosplay in Indonesia**

The doctrine of Fair Use is the use of material that already has protection by copyright with the provision of restrictions and transformative (Dwisvimiari, 2021). A different definition of this doctrine is to allow others to engage in the use of a particular copyright for specific purposes. Terms related to the reasonable interests listed in Article 44 paragraph 1 and Article 46 of the Copyright Act. Explanation related to Article 44 paragraph (1) and Article 46 of the Copyright Act we can interpret that the dissemination and production of a copyrighted work where the work is not to generate profits, destruction of economic interests for copyright owners then it is not included in the copyright infringement, but if it happens otherwise it is categorized as copyright infringement.

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The regulation of fair use in the applicable law in Indonesia does not provide a limitation of this reasonable interest, making the principle of fair use blurred (Widowari, 2014). The use of copyright works that are free or reproduced has been regulated in the Berne Convention. According to Article 9(2) of the Berne Convention states that member states may provide for free reproduction in certain cases where such action does not conflict with the normal exploitation of a work and unduly prejudices the interests of the owner (WIPO, 2016). Article 9(2) establishes a provision related to the three step test, which serves as a standard for evaluating the activities made in duplicating a copyrighted work. The cosplay phenomenon may be analyzed via the application of the three-step test outlined in Article 9(2) of the Berne Convention, which pertains to the creation of costumes and accessories.

Firstly, the provisions related to 'special cases' in cosplay when the costumes and accessories are produced for personal use then this is not included in copyright infringement but when there is a financial aspect that will be obtained and does not interfere with the prospects of the main business of the owner of the design or has held a license on it or similar business actors then it will be reviewed based on the statutory requirements (Ramadhan, 2021).

Secondly, the provision 'provided that such reproduction does not conflict with a normal exploitation of the work' where the making of a costume and accessories in cosplay should be when the reproduction process is given a differentiator from the character design that has been adapted in it so as not to eliminate the creativity that is in the making of costumes and accessories in cosplay and make it not identical or not exactly the same as the costumes and accessories owned by the official or licensee or creator (Ramadhan, 2021).

Finally, the provision 'does not unreasonably prejudice the legitimate interests of the author' Both permitted and unpermitted cosplay are advised not to affect the overriding interests of the author, licensee or creator of the character design, especially in terms of business. Cosplay activities themselves help in the promotion and marketing of their work, making them known to the public and giving fans an appreciation for their work (Ramadhan, 2021).

No confusion will arise during the settlement process when copyright protection is granted to cosplay. When someone is participating in cosplay and he has profited from the activities, then he has to pay attention to the process of using reasonable interests with the study of the three-step test that was presented before. This leads in a positive outcome. Businesses and individuals involved in cosplay activities must be respectful of the economic and moral rights of the proprietor by mentioning the name of the creator, if known, and by mentioning the name of the character and the title of the character being used.

Cosplay in Japanese Copyright Law

Copyright has the potential to significantly impact a country's national economy. The Japanese government is tasked with safeguarding intellectual property rights inside the nation. The Japan Copyright Office (JCO) is a division of the Agency for Cultural Affairs (ACA), which is under the jurisdiction of the Ministry of Education, Culture, Sports, Science and Technology (MEXT). The JCO is responsible for the strategic management of copyright legislation, the enhancement of the copyright licensing framework, the formulation of new policies to address the advancements in digitalization, and the oversight of copyright protection measures (Węgrzak, 2022).

According to Article 1 of the Copyright Act of Japan, the primary objective of this legislation is to safeguard and support copyright owners by ensuring fair use of cultural works, therefore contributing to the advancement of culture. Therefore, it may be inferred that the primary objective of copyright legislation is to ensure that the outcomes of diverse creations can be shown to the general public. Nevertheless, in the realm of the arts, it is possible to assert statements that prioritize the aspect of "providing and ensuring protection". As per the Japanese Copyright Act, the protected content is restricted to "works" that are characterized as "expressions of thoughts or emotions in a creative manner and that belong to the literary, scientific, artistic, or musical fields." It is important to emphasize that for a work to be eligible for copyright protection, it must convey ideas or emotions in an innovative manner and belong to the fields of literature, science, art, or music. The Japanese Copyright Law, namely in art. 10(1), provides the detailed description of the instance of the work itself.

Cosplay, short for "costume play," refers to the practice of using costumes to accurately portray a certain character. Typically, well-liked characters originate from anime (Japanese animated cartoons) and manga (Japanese comic books). The popularity of cosplay is seeing a dramatic surge, as several cosplayers are earning substantial amounts of money via sponsorships, while their social media following is growing substantially. The lack of legislation safeguarding cosplayers and copyright holders necessitates the formulation of new regulations pertaining to the emerging copyright issues arising from the interaction between cosplayers and copyright holders, which need thorough deliberation. If an individual engages in cosplay as a recreational activity without deriving any financial gain from it, they are not in breach of any legal regulations. Nevertheless, if the cosplayer's photographs or photos of their cosplay are distributed online or commercially exploited, it might be argued that the cosplayer has infringed against the existing Copyright Law in Japan. (Węgrzak, 2022).

A contentious comment was made by Yuuji Okuma, a Japanese attorney who practices at the Toranomon law business, which focuses on legal and patent matters. He communicated his message via the Oshite platform. According to Goo, the use of costumes based on anime characters, manga, or similar works is considered a violation of Article 21 of the Copyright Law in Japan (Sulistianingsih et al., 2024). There are Copyright regulations in Japan which provide an explanation of Article 21 where a creator

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must have the exclusive right to make copies of his work in various forms. Article 22 of the Japanese Copyright Law also provides for the exclusive right of the creator to display his work in public (by publishing it and allowing his work to be displayed directly to the public. The creators possess the exclusive right to reproduce the work in a variety of media, and they are entitled to file litigation against individuals who do so without their permission, as deduced from the existing provisions. On the other hand, it is important to bear in mind that Japan, on the other hand, has a relaxed attitude toward cosplay. The reality of the matter is that they actively promote activities related to cosplay, provided that they are done for personal reasons and not for commercial objectives. As the number of individuals who are dressed up as famous characters from anime, manga, and video games continues to rise, Japan is planning to conduct more reviews of its copyright legislation in order to avoid any potential legal infractions that may be committed by cosplayers (Sulistianingsih et al., 2024).

The Concept of Fair Use in the Context of Cosplay in Japan

Japan has established five special provisions on "incidental involvement (Utsurikomi)" in lieu of fair use provisions. These provisions have allowed copyright to incorporate additional provisions that pertain to certain exceptions to copyright protection (Firedman, n.d.).

According to the Japanese Copyright Law, the following uses do not constitute copyright infringement:

1. Article 30-2(1): things duplication or adoption may occur when the material includes noises or things that are challenging to distinguish from other items. Replication or assimilation may occur via the use of pictures, sound recordings, or movies.
2. Article 30-2(2): the use of replicated or altered materials, as previously shown;
3. Article 30-3: utilize copyrighted content to the appropriate amount for the evaluation procedure and acquisition of a license from the copyright holder;
4. Article 30-4: the use of published copyrighted content is permitted to the degree that it is essential for testing the creation or implementation of sound or video recording equipment; and
5. Article 47-9: the act of recording or altering copyrighted content to the degree required for streamlining computer processing of such material for transmission across a network.

Article 119 (3) of the copyright law has been implemented to enhance the protection of intellectual property rights by making unlawful downloading a criminal offense. Engaging in copyright infringement is deemed deliberate if it results in a criminal offense as defined in Article 119. In such cases, the infringer may face a maximum jail sentence of ten years and a fine of up to 1 million yen (about \$10,000). The party filing a formal complaint must be the copyright holder who claims to have been injured. Article 119(3) explicitly states that there are severe measures for deliberately downloading and unlawfully uploading copyrighted content, even if the downloading is done in a private manner. The penalties for this offense consist of a jail sentence of two years and/or a maximum fine of 2 million yen (equivalent to around \$20,000). Furthermore, if the infringing conduct is connected to employment, the firm employing the infringer will face fines of up to 300 million yen (roughly 3 million US dollars) as stipulated in Article 124. The Copyright Act underwent amendments in 2012, which introduced certain limitations and exceptions to copyright. These include provisions for reproduction in private use, reproduction in libraries, privileges in quotation, use for educational purposes, non-profit performances, use in news reports, use in political speeches, reproduction related to court proceedings, exhibition of artistic works by the owner, and use of artistic works in public spaces.

The philosophy of fair use is elucidated in the articles of the UUHC, including Article 30, which outlines the allowance for reproducing copyrighted content for personal use under permission, and Article 32, which allows the privilege of quoting in certain circumstances. Traditionally, reproducing copyrighted material for personal use, such as for oneself, family, or similar purposes, would be subject to copyright restrictions under Article 30 (established in 1970). However, these restrictions have been progressively limited over time, and the most recent legislation now considers illegal downloading for personal use as a criminal offense. (Firedman, n.d.). The development of this tendency may be attributed to the proliferation of advanced manufacturing techniques and the progress in digitization and information networks, which have blurred the distinction between public and private domains, as well as between commercial and personal use. The reason for this trend is due to the development of sophisticated production tools and the advancement of digitization and information networks that have provided an indefinite boundary between public and private space, and between commercial use and personal use.

CONCLUSIONS

Indonesia and Japan lack proper laws and regulations regarding cosplay, which is a form of creative expression that involves similarities in its construction. The Indonesian UUHC does not explicitly address whether the work of a costume or cosplay falls within the category of Copyright objects. We may include this into the designs or sketches, as stipulated in Article 40 paragraph (1) letter f, to provide legal protection for them. As per the Copyright Law, Fair use is allowed under Article 44 paragraph 1 and Article 46. No violation occurs if there is no profit gained.

A Japanese lawyer contends that the action in question has infringed against Article 21 of the Copyright Law in Japan. However, there is ongoing debate around this assertion. As a result, the Japanese government will now undertake a study of matters pertaining

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to future arrangements. Japan does not adhere to the fair use system. They use five specific provisions pertaining to "incidental involvement (Utsurikomi)". Due to Japan's lack of elaboration on cosplay, engaging in cosplay without making any profit will not be deemed a violation of copyright. Nevertheless, if the photograph of the individual in cosplay is distributed online or commercially exploited, it might be argued that the cosplayer has infringed against Japan's existing copyright legislation.

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