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Content Creating: Breaking Down the Legal Aspect of Originality



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ALSA Legal Review I 2024**Content Creating: Breaking Down the Legal Aspect of Originality****Written by:** Luthfan Naufal Wanaputra, Rahmi Nandinanti Laodengkowe,

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ABSTRACT

In recent times, content creation has gained popularity on social media. One of the most popular forms of content creation is short-form content. With countless amounts of short-form content circulating in social media, the obvious similarities between one piece of content and another implicate potential issues regarding originality. This legal review examines copyright issues in the age of social media, particularly concerning short-form content. The authors explore the concept of originality and its application to content creation by analyzing Indonesian Copyright Law (UUHC) and its limitations in dealing with copyright infringement. Additionally, this paper discusses the concept of fair use and its applicability in Indonesia. Some real-world cases of plagiarism on YouTube and TikTok are presented to illustrate the challenges of defining originality. This addresses the importance of protecting creators' rights and the need for collaboration between governments and video-sharing platforms to enforce copyright in the digital sphere.

Keywords: Content creation, short-form content, copyright, social media, originality

ABSTRAK

Belakangan ini, pembuatan konten di media sosial menjadi semakin populer. Salah satu bentuk kreasi konten yang paling populer adalah konten berdurasi pendek. Dengan banyaknya konten pendek yang beredar di media sosial, kemiripan yang jelas antara satu konten dengan konten lainnya mengimplikasikan adanya potensi masalah terkait keasliannya. Tinjauan hukum ini membahas isu hak cipta di era media sosial, khususnya yang berkaitan dengan konten pendek. Penulis mengeksplorasi konsep orisinalitas dan penerapannya dalam pembuatan konten dengan menganalisis Undang-Undang Hak Cipta (UUHC) Indonesia serta keterbatasannya dalam menangani pelanggaran hak cipta. Selain itu, tulisan ini juga mengulas konsep penggunaan wajar dan penerapannya di Indonesia. Beberapa kasus plagiarisme di YouTube dan TikTok disajikan untuk menggambarkan tantangan dalam mendefinisikan orisinalitas. Pembahasan ini menekankan pentingnya perlindungan hak-hak pencipta dan perlunya kolaborasi antara pemerintah dan platform berbagi video untuk menegakkan hak cipta di ranah digital.

Kata kunci: *Kreasi konten, konten berdurasi pendek, hak cipta, media sosial, orisinalitas*

I. Introduction

In the era of rapid technological advancement, various forms of information are now widely available on the internet. One of the most common forms of information currently on the rise is short-form content.¹ This type of content is the one that can be easily and quickly consumed by audiences, which, if in written form, is no longer than 1000 words, and if in audio or video form, is less than three minutes long.² Short-form content usually takes the form of creative content, whether in the form of videos, photos, or written pieces, and is often published on social media. Its short format makes similar content successful in gaining high engagement.³ Additionally, shorter formats are particularly vulnerable to plagiarism due to their ease of replication and distribution without proper attribution. The digitization of editorial management and regular scanning of online platforms have improved the detection of unethical reuse, especially in shorter texts that can be easily identified and flagged by anti-plagiarism software.⁴ Many of these contents are substantial and beneficial to their audience, such as threads on X or videos on TikTok used by some social media users to voice social issues. However, there are also some contents whose substance is relatively questionable, created solely for the sake of targeted engagement. This is partly due to the ease of technological access, which allows anyone to create content easily.

The increasing proliferation of content on social media also raises copyright issues. Technological advancements bring great opportunities, but they also pose new challenges in terms of copyright protection. One of such challenges arises when these contents are monetized, either through advertisements or other revenue sources. Monetization increases the value of the content, which can lead

¹Victor Potrel, "Five Insights Into The Popularity Of Short-Form Video Content," *forbes.com*, September 6th, 2022, available at <https://www.forbes.com/sites/forbescommunicationscouncil/2022/09/06/five-insights-into-the-popularity-of-short-form-video-content>, accessed on June 17th, 2024.

²Julia McCoy, "What is short-form content? Your guide to when and how to use it," *searchengineland.com*, February 17th, 2024, available at <https://searchengineland.com/short-form-content-393191>, accessed on June 2nd, 2024.

³Gao-fu Liu, *et al.*, "Research on the Influence of Social Media Short Video Marketing on Consumer Brand Attitude," *Advances in Social Science, Education and Humanities Research*, Vol. 336 (2019), p. 785.

⁴Olena Zimba and Armen Yuri Gasparyan, "Plagiarism detection and prevention: a primer for researchers," *Reumatologia*, Vol. 59, No. 3 (2021), p. 133-134.

to a greater likelihood of copyright infringement.⁵ The incentives gained from content monetization lead many people to compete in producing content, often without careful consideration towards the rights of others. Content production efforts often overlook the impact of excessive exploration and/or use of ideas from other contents. This is exacerbated when practiced without giving proper credit or attribution. One common example on social media is the case of reposting content without permission, which generates revenue for the uploader, not the original creator.⁶ This situation underscores the importance of copyright protection amidst the increase of content monetization on social media.

Technology that facilitates content production and distribution needs to be balanced with awareness and enforcement of copyright to ensure that creators receive credit and protection for their creations. Copyright plays a role as a protector of someone's creation, as a form of recognition for the creator's hard work, effort, and expression in their creation.⁷ In the context of digital content, copyright protects content from uses that may harm its creator. The urgency of the copyright issue in digital content is increasing given the increasing amount of content uploaded daily, which also increases the risk of copyright infringement. Furthermore, not everyone is aware that they may be producing or consuming content that infringes on copyright. Therefore, giving credit to creations—including digital content—is something very important and cannot be ignored.

II. The Copyright Paradigm in Indonesia

As short-form content becomes increasingly popular on social media, it continues to raise copyright issues, especially when similar content is monetized.

⁵Andrew Chu, *et al.*, "Behind the Tube: Exploitative Monetization of Content on YouTube," *usenix.org*, n.d., available at https://www.usenix.org/system/files/sec22summer_chu.pdf, accessed on June 18th, 2024.

⁶Daniel Daniele, "To regram or not to regram? Legal implications of reposting content to social media," *socialmedialawbulletin.com*, August 21st, 2019, available at <https://www.socialmedialawbulletin.com/2019/08/to-regram-or-not-to-regram-legal-implications-of-reposting-content-to-social-media/>, accessed on June 21st, 2024.

⁷Rizky Fauzi, Tasya Safiranita Ramli, Rika Ratna Permata, "Masa Depan Hak Cipta: Tinjauan Keabsahan Hasil Karya Kecerdasan Artifisial di Indonesia," *Jurnal Ilmiah Multidisiplin Indonesia*, Vol. 2, No. 1 (2022), p. 124.

Therefore, it is important to understand the paradigm of copyright in Indonesia. How is copyright regulated in Indonesia to protect the works of content creators?

Copyright is the exclusive rights of creators that arise automatically and simultaneously with the creation of a work.⁸ This exclusive right includes economic and moral rights, ensuring that creators receive recognition and economic benefits for their creations. Moral rights are rights inherent to the creator that will not be lost or deleted for any reason.⁹ This means that even if copyright is transferred, the creator will still be recognized as the original creator of the related work. On the other hand, economic rights relate to the rights of copyright holders, whether creators or not, to derive economic benefits from a creation.¹⁰ Therefore, understanding these rights is crucial in addressing the copyright issues arising from the increasing popularity of short-form content on social media.

In Indonesia, Law Number 28 of 2014 on Copyright (UUHC) regulates the types of copyright protected, similar to those agreed upon in the World Intellectual Property Organization Copyright Treaty (WCT) and Agreement of Trade Related Intellectual Properties (TRIPs). UUHC provides legal protection to several types of creations, including creations in the fields of science, art, and literature.¹¹ Meanwhile, WCT also specifically regulates the protection of works and the rights of their creators in the digital environment.¹² In the case of digital media, copyright holds an important purpose in providing recognition and legal certainty to creators, as well as protecting creations from unauthorized use through any platform.

In the context of copyright, there is an important requirement that can guarantee the protection of copyright in a work, namely originality. Originality is the threshold standard of qualification for copyright protection.¹³ In other words, a

⁸*Law on Copyright*, Law Number 28 of 2014, LN No. 266 of 2014 TLN No. 5599, hereinafter referred to as UUHC, Article 1 Point 1.

⁹*Ibid.*, Article 5.

¹⁰*Ibid.*, Article 8.

¹¹*Ibid.*, Article 40.

¹²WIPO Copyright Treaty (adopted on December 20, 1996, entered into force on March 6, 2002) 2186 UNTS 121, Article 8.

¹³Howard B. Abrams, "Originality and Creativity in Copyright Law," *Duke Law School*, n.d., available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4136&context=lcp>, accessed on May 19th, 2024.

creation can be protected by copyright if it meets the requirement of originality. The requirement of originality goes hand in hand with the requirement of fixation, which emphasizes the physical existence of a creation. On the other hand, the requirement of originality emphasizes the aesthetics of a creation.¹⁴

With the fast-paced growth of technology, the types of copyright regulated in UUHC, WCT, and TRIPs, become increasingly relevant and complex. The digital era has changed the way a creation or creative work is produced, distributed, and consumed, expanding the scope of copyright to also protect various forms of digital content. This content includes moving images, music, or text that can be easily published, disseminated, and monetized through digital platforms. However, this ease of access is also accompanied by challenges in enforcing copyright, such as piracy of works and enforcement of intellectual property rights violations in the digital environment.¹⁵ Therefore, it is important to understand and enforce copyright in the digital era as an effort to ensure that creators receive proper recognition and compensation for their creations.

III. Status Quo: Stealing Other Creators' "Thunder"

The digital age has enabled anyone to express themselves through social media, both for entertainment and commercial purposes. Activities such as content creation and advertising can be done across several social media platforms, such as YouTube, Instagram, and TikTok.¹⁶ Those who engage in content creation are called content creators, defined as someone who produces and creates media, either in digital or physical format, to share with others, generally with the explicit purpose of growing an audience. The end product of content creation varies, from articles, blogs, videos, or even podcasts.¹⁷ On the other hand, advertising is the techniques and practices used to bring products, services, opinions, or causes to

¹⁴Ramos Perisai, "Orisinalitas Ciptaan menurut Perlindungan Hak Cipta di Indonesia," *Literasi Hukum Indonesia*, March 8th, 2024, available at <https://literasihukum.com/orisinalitas-ciptaan-dalam-hak-cipta-indonesia/>, accessed on May 19th, 2024.

¹⁵Meriza Elpha Darnia, *et al.*, "Perlindungan Hak Kekayaan Intelektual di Era Digital," *Journal of Education Religion Humanities and Multidisciplinary*, Vol. 1, No. 2 (2023), p. 412.

¹⁶Andrew Kemp, "What Is a Content Creator? The What, Why and How of the Creator Economy," *State of Digital Publishing*, n.d., available at <https://www.stateofdigitalpublishing.com/content-strategy/what-is-a-content-creator/>, accessed on June 5th, 2024.

¹⁷*Ibid.*

public notice to persuade the public to respond in a certain way toward what is advertised.¹⁸ Advertising in social media can be done on behalf of a brand through its official brand account or content creator who produces branded content.

Through social media, brands and content creators compete to share interesting and different content, putting their creativity to the test. However, in practice, some brands and content creators compete in unorthodox ways by using others' work without permission from the original creators. The use of copyrighted work without permission from the copyright holder and without any exceptions as regulated in the applicable copyright laws can be categorized as copyright infringement.¹⁹ Copyright infringement includes actions such as imitation, quoting without attribution, piracy, plagiarism, and unauthorized translation of copyrighted works.²⁰ As one of many forms of copyright infringement, plagiarism is done by using some or all components of those contents without the creator's permission to create new content, appearing as if it were "original."²¹ In the context of plagiarism, concrete forms can include verbatim (word-for-word) quotations without clear acknowledgment, copying and pasting from the internet, paraphrasing, collusion, failure to acknowledge assistance, use of material written by professional agencies or other persons, and even auto-plagiarism.²²

However, in certain countries including Indonesia, quoting or using others' copyrighted materials without permission is still allowed under certain circumstances. In the Indonesian Copyright Law, there are provisions that regulate limitations on copyright. It regulates that the use of copyrighted work without permission is not considered a copyright infringement if the source is mentioned or stated in full and not harming the reasonable interests (*kepentingan yang wajar*) of the author or copyright holder for the purpose of education, research, public

¹⁸Britannica Money, "Advertising," *britannica.com*, n.d., available at <https://www.britannica.com/money/advertising>, accessed on June 6th, 2024.

¹⁹Nejat Utku Inaltong, "Notion Of Fair Use: An Exclusive Exception In Copyright Law," *papers.ssrn.com*, June 3rd, 2020, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4170017, accessed on June 22nd 2024.

²⁰Cornell Law School, "Copyright," *law.cornell.edu*, n.d., available at <https://www.law.cornell.edu/wex/copyright>, accessed on June 8th, 2024.

²¹University of Oxford, "Plagiarism," *ox.ac.uk*, n.d., available at <https://www.ox.ac.uk/students/academic/guidance/skills/plagiarism>, accessed on May 19th, 2024.

²²*Ibid.*

security, lectures, and unpaid performances, as described in Article 44 paragraph (1) UUHC.²³

In recent days, copyright infringement and plagiarism, as explained above, have been carried out by irresponsible brands and content creators to reach more viewers and persuade people to buy their products. This practice is done to receive various benefits, such as revenue from the number of viewers and potential sales resulting from attracting viewers. Some examples of cases that illustrate plagiarism and copyright infringement in content creation as described earlier include incidents involving the Calon Sarjana YouTube channel, YouTuber Filip Miucin, and “neumane” on TikTok.

The YouTube channel Calon Sarjana, is most known for its “toplist” content, where the creator makes tiered ranks of interesting and trending topics. This YouTube channel has been posting content since 2016 and reached its peak in 2019, when it managed to be the third YouTube channel with the most subscribers in Indonesia. On November 7th, 2019, a channel named JT made a video titled “YouTuber with 12 million subs STEALS my video...”. In the video, it was claimed that Calon Sarjana had plagiarized one of JT’s videos. The Calon Sarjana video titled “Parlophone Records, Channel YouTube No #1 yang Mengalahkan T-Series, Pewdiepie, dll..” was considered to have plagiarized JT’s video titled “this is the NEW #1 YouTube Channel... (Parlophone Records).”

The claim was based on two similarities found by JT between JT’s video and the Calon Sarjana video. First of all, the thumbnail used by the Calon Sarjana channel was the exact same thumbnail used by JT’s channel. The only difference was the addition of emojis and a watermark. Secondly, the materials of the Calon Sarjana video were the same as JT’s video, from the discussion to the screenshots of JT’s research, used by Calon Sarjana without proper credit. Upon further investigation, it was found that most of Calon Sarjana’s content was a rip-off from other channels on YouTube. Some of these channels were large channels on YouTube, such as Trend Central, Top5Gaming, and MrWolf. In the end, on January 22nd, 2020, the Calon Sarjana channel was temporarily closed by YouTube after JT and several other channels filed copyright infringement reports against

²³*Ibid.*

their plagiarized content.²⁴ A day after YouTube closed the Calon Sarjana channel, the channel eventually emerged and has been actively posting content ever since.²⁵

On the other hand, the case of Filip Miucin concerns a YouTuber who was accused of plagiarism. On August 6th, 2018, IGN posted a video of Filip reviewing Dead Cells, a Nintendo Switch game. A day later, Boomstick Gaming, a game reviewer channel, posted a video criticizing IGN for copying his Dead Cells review. In the video posted by Boomstick Gaming, it was explained that there were several similarities between his review and IGN's through Filip's review, notably the script used throughout the video. The script used in IGN's video was merely a paraphrase of Boomstick Gaming's. In response to Boomstick Gaming's critique, IGN took down its video and claimed that they had parted ways with Filip, stating that they would be re-reviewing Dead Cells not long after the incident.²⁶

Not long after that incident, an anonymous tipster pointed to Kotaku, a gaming news website, about the similarity of the script in one of Filip's videos with a review of FIFA 18 from an article written by Chris Scullion. Filip's FIFA 18 review video was on his personal YouTube channel and was posted before he was recruited by IGN. Through the Tired Old Hack channel, Chris Scullion made a video proving that Filip had plagiarized his FIFA 18 review, but Filip denied the accusation. In reality, a similar situation occurred in this case, where Filip read a paraphrased script, in this case, from an article reviewing the same game.

Filip continued to attract controversy, both on YouTube and other platforms. This was due to more and more people exposing Filip's plagiarism practices, where in the creation of his articles and review videos, he took

²⁴Kumparan, "Usai Diduga Plagiat Konten, Kanal YouTube 'Calon Sarjana' Hilang," *kumparan.com*, n.d., available at <https://kumparan.com/berita-heboh/usai-diduga-plagiat-konten-kanal-youtube-calon-sarjana-hilang-lshOVj4bo5l/2>, accessed on June 6th, 2024.

²⁵Tria Adha, "Hilang dan Muncul Lagi, Ada Apa dengan Kanal YouTube Calon Sarjana?" *TimesIndonesia.co.id*, available at <https://timesindonesia.co.id/tekno/248637/hilang-dan-muncul-lagi-ada-apa-dengan-kanal-youtube-calon-sarjana>, accessed on June 30th, 2024.

²⁶Jason Schreier, "IGN Pulls Review After Plagiarism Accusations [UPDATE: Writer Fired]," *Kotaku*, August 2018, available at <https://kotaku.com/ign-pulls-review-after-plagiarism-accusations-1828157939>, accessed on May 19th, 2024.

fragments of reviews from several articles and YouTube videos.²⁷ In response to these allegations, Filip made a clarification video admitting that he intentionally and consciously plagiarized. Filip argued that he lacked confidence in his writing and video editing skills, especially when he joined IGN and was faced with a much larger audience than when he pursued his career through his private channel. However, Filip did not receive sanctions from YouTube.

Furthermore, the case of “neumane” concerns a TikTok influencer named Kane Trujillo, also known as “neumane.” Kane Trujillo is a social media star who is known for his comedic short-form content on TikTok, especially the “I can take you there” videos.²⁸ Despite his fame, Kane Trujillo was accused of stealing content from other short-form content creators on TikTok.²⁹ On March 15th, 2021, a TikTok influencer, Joey Bailey, posted a video on TikTok displaying side-by-side comparisons of Trujillo’s videos and other creators’ contents. The original was featured under the label “stolen” and the latter was labeled “original.”³⁰ Among seven TikTokers whose “original” contents were allegedly “stolen,” Bailey was the first to expose Trujillo’s practice.³¹ As it turns out, Trujillo’s videos are nearly identical to theirs, and the videos under the “original” section were posted previous to Trujillo’s similar videos.³² Trujillo steals the video word for word, with the same sound, same gestures, and even the same wording without proper credit to the creator.

After Bailey’s video went viral, he made a follow-up video on April 9th, 2021, revealing that Trujillo messaged him on Instagram to insist him to delete the initial video.³³ Bailey archived the initial video for a day and unarchived it again, resulting in Trujillo messaging and threatening Bailey to file a lawsuit against

²⁷Jason Schreier, “IGN Pulls Ex-Editor's Posts After Dozens More Plagiarism Accusations Surface,” Kotaku, August 2018, available at <https://kotaku.com/ign-pulls-ex-editors-posts-after-dozens-more-plagiarism-1828357792>, accessed on May 19th, 2024.

²⁸Glazers Media, “Kane Trujillo - Biography,” *imdb.com*, available at <https://www.imdb.com/name/nm11454178/>, accessed on June 30th, 2024.

²⁹Daysia Tolentino, “Popular TikToker Accused of Stealing from Smaller Creators, Threatening to Sue Black TikToker who Exposed Him,” *dailydot.com*, April 11th, 2021, available at <https://www.dailydot.com/unclick/tiktoker-neumane-joevy-bailey-stealing-content-accusations/>, accessed on June 30th, 2024.

³⁰*Ibid.*

³¹*Ibid.*

³²*Ibid.*

³³*Ibid.*

Bailey. Yet, Bailey ignored Trujillo and Trujillo didn't file any lawsuit regarding the matter. Trujillo's stealing-content-practices have been exposed ever since, where many smaller content creators eventually emerged and testified that they too experienced their content being stolen by Trujillo.³⁴

The cases above are some examples of plagiarism that lead to copyright infringement, except for Trujillo's case. Moreover, the cases of Calon Sarjana and Filip Miucin resulted in direct sanctions, namely the temporary closure of the channel for Calon Sarjana and the dismissal of Filip Miucin by IGN. Although sanctions have been given, these cases raise questions. Is it possible that their creation is merely inspired by the work they're using, and not plagiarizing? And if so, how far can a work be defined as original?

IV. Testing Boundaries: Drawing The Fine Line Between Inspiration and Plagiarism

What is originality? Is there still a truly original work, born just from someone's ideas without any inspiration from any other works? Before delving deeper into what can be done to strengthen Copyright regulations in Indonesia, it is necessary first to consider the boundaries of what constitutes an original piece of content.

The definition of originality can be examined etymologically. According to the *Kamus Besar Bahasa Indonesia* (KBBI), "originality" is defined as authenticity or purity. Meanwhile, in KBBI, "authentic" means without mixture, pure, or genuine. However, in the context of content creation, a work inspired by other works can still be considered an original piece and a result of one's own creativity.³⁵ Article 1, paragraph (3) of the UUHC defines a creation as any work in the fields of science, art, and literature that can result from inspiration, thinking ability, imagination, dexterity, skill, or expertise.³⁶ From this definition, it can be interpreted that Indonesian law recognizes the originality of a work even if it is

³⁴*Ibid.*

³⁵Pratiwi Eka Sari, "Kebutuhan Perluasan Doktrin Orisinalitas dan Fiksasi Dalam Undang-Undang Hak Cipta Sebagai Perlindungan Kreativitas Anak Bangsa," *Dharmasiswa*, Vol. 1, No. 1, (2021), p. 448.

³⁶UUHC, Article 1 paragraph (3).

inspired by previous works. Therefore, the question becomes: at what point does a work inspired by another become too similar to the work that inspired it?

To determine how similar a work is compared to another, there are three types of tests used in the United States of America (US) that can be used as references: The Lay Observer Test, The Extrinsic-Intrinsic Test, and The Abstraction-Filtration-Comparison Test.³⁷ The Lay Observer Test is the easiest method to determine whether a work can be said to be too similar to its inspiration. In this method, several ordinary viewers are presented to decide whether a work can be considered a direct copy of another work.³⁸ On the other hand, the Extrinsic-Intrinsic Test is a method used by the US Ninth Circuit Court of Appeals. This method consists of two stages of testing. The extrinsic test involves examining the similarity of ideas between the two works in question.³⁹ The other stage is the intrinsic test that, on the other hand, involves examining the similarity of the fixation or the tangible elements present in the work in question compared to the other work.⁴⁰ Lastly, there is the Abstraction-Filtration-Comparison Test, which was created by the US Second Court of Appeals and first used in the case of *Computer Associates International Inc. v. Altai Inc.*⁴¹ As the name suggests, this method consists of three stages of testing. The first step is called the abstraction test, which was used in the case of *Nichols v. Universal Pictures Corp.* In this test, the court dissects and isolates all levels of abstraction, essentially performing a reverse engineering process to identify similarities between the two works.⁴² Next, there is the filtration test, which separates all elements that cannot be owned, such as ideas, facts, general information, and others.⁴³ The filtration test demonstrates substantial similarity in court by separating other elements in the work to determine if there is a substantial similarity with another work.⁴⁴ The final step in determining the originality of a

³⁷Modhura Roy, "Substantial Similarity in Copyright Law," *papers.ssrn.com*, August 29th, 2010, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1666910, accessed on June 21st, 2024.

³⁸*Ibid.*

³⁹*Ibid.*, p. 4.

⁴⁰*Ibid.*

⁴¹*Ibid.*

⁴²*Ibid.*, p. 5.

⁴³*Ibid.*

⁴⁴*Ibid.*, p. 6.

work is the Comparison Test. To be considered a copyright infringement, it must first be proven that there is substantial similarity between a work and the work it allegedly copied by comparing the two works.⁴⁵ Ultimately, those three steps were used to determine whether there is a substantial similarity, which is the point where the originality of a work can be considered to infringe upon copyright.

Fundamentally, finding a work that is entirely original and devoid of any inspiration from others, is highly challenging. Thus, it becomes imperative to establish reasonable and fair boundaries for the use of individual works. For a long time, the use of even a small portion of someone else's work without the creator's permission has been viewed as copyright infringement. However, this definition of copyrighted creative works limited the creation of new creative works, thus, the term "fair use" was created to prevent copyright regulation from restricting one's ability to produce new creative works inspired by another work.⁴⁶ That is why in certain countries including Indonesia, quoting or using others' copyrighted materials without permission is still allowed under certain circumstances.

Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances. Section 107 of the Copyright Act provides the statutory framework for determining whether something is a fair use and identifies certain types of uses—such as criticism, comment, news reporting, teaching, scholarship, and research—as examples of activities that may qualify as fair use.⁴⁷ To determine whether a portion of a work can be used fairly, Section 107 of the U.S. Copyright Act outlines four factors to consider.⁴⁸ The four factors are (1) the purpose and character of the use, including whether it is for nonprofit or commercial purposes, (2) the nature of the copyrighted work, such as whether it is factual like the news or a creative/entertainment content, (3) the amount and substantiality of the

⁴⁵*Ibid.*

⁴⁶Madeleine Lie, "Permasalahan Penggunaan Youtube *Fair Use* Dalam Kasus *Totally Not Mark Vs Toei Animation*", *Jurnal Ilmu Sosial dan Pendidikan (JISIP)*, Vol. 7 No. 3 (2023), p. 1920.

⁴⁷*Ibid.*

⁴⁸Columbia University Libraries, "Fair Use Checklist," *copyright.columbia.edu*, 21 Mei 2024, available at <https://copyright.columbia.edu/basics/fair-use/fair-use-checklist.html>, accessed on May 21st, 2024.

portion used in relation to the copyrighted work as a whole, and (4) the effect of the use upon the potential market for or value of the copyrighted work.⁴⁹ The term “fair use” has been widely used in the United States. A work that incorporates elements from other works must adhere to the limitations outlined in fair use regulations to avoid being deemed a copyright infringement.

What about the regulations in Indonesia? We recognize that Indonesia is a country with a communal society. This makes Indonesians generally unaccustomed to personal rights over creative works. For example, various expressions of traditional culture, such as dance, literary works, traditional music, prose, and other traditional artistic heritage produced, developed, and preserved by local communities.⁵⁰ According to Article 38 paragraph 1 of the UUHC, it states that copyright over the cultural expressions mentioned above is fully owned and held by the state.⁵¹ This paragraph reinforces the evidence that the UUHC recognizes the existence of artistic works or parts of artistic works that cannot be owned personally in Indonesia, but are owned communally, with the state being responsible for their protection.

Due to communal ownership as previously explained, UUHC explains that several things cannot be protected under the UUHC. Those creations include: (1) Creations outside the fields of science, arts, and literature; (2) Creations that are not original; (3) Creations that do not have a tangible fixation and are merely ideas; (4) Creations considered to be owned by the public; and (5) Provisions regulated under Article 13 of the UUHC.⁵² Furthermore, if a creation is deemed to have copyright infringement, individuals can take legal action under the provisions of the UUHC to claim economic rights to their creation that has been proven to be plagiarized. One legal recourse available to victims is a lawsuit for damages to restore their economic rights over their creation.⁵³ However, Indonesia

⁴⁹U.S. Copyright Office, “U.S. Copyright Office Fair Use Index,” *copyright.gov*, November 2023, available at <https://www.copyright.gov/fair-use/>, accessed on 21st May 2024.

⁵⁰Robiatul Adawiyah and Rumawi, “Pengaturan Hak Kekayaan Intelektual Dalam Masyarakat Komunal di Indonesia,” *Jurnal Ilmiah Hukum Kenotariatan*, Vol. 10, No. 1 (2021), p. 8.

⁵¹UUHC, Article 38 paragraph (1).

⁵²Fachruddin Razi, “Jenis dan Pengaturan Hak Kekayaan Intelektual Yang Diakui dan Dilindungi di Indonesia,” *Lex Specialist*, No.11 (2010), p. 14.

⁵³Selvia Dinda Rahmayanti, *et al.*, “Pertarungan Hukum Hak Cipta di Era Digital: Studi Kasus Dalam Konteks Indonesia,” *Jurnal Dunia Ilmu Hukum*, Vol. 2, No.1 (2024), p. 18.

indeed lacks specific regulations governing the protection of copyright on video-sharing platforms that are widely used today, as the country does not have broad legal jurisdiction in the digital realm.

V. An Answer to Copyright Infringement: YouTube's Efforts to Protect Content Originality

With the development of the digital world, the responsibility for protecting copyright in the digital sphere lies not only with governments but also with video-sharing platform providers. YouTube, as a widely used video-sharing platform for people to share videos, allows content creators to earn economic rights from ads placed by YouTube before their content is played.⁵⁴ With the practice of monetization, there arises an urgency to protect the economic rights of the owner. Not only to protect the interests of its creator but to protect YouTube as a company, by ensuring that any copyright infringement will not be tolerated on their platform, thus increasing their creators' trust and loyalty to upload content on YouTube.

To protect its content creators, YouTube has a claim mechanism adjusted in accordance with the WIPO and UUHC in Indonesia.⁵⁵ One can report a video on YouTube if they feel that their content has been plagiarized by another content, ensuring that everyone on YouTube can protect their rights from said content. Another example of YouTube's efforts to protect copyright on its platform is with Content ID. Which allows someone to avoid using copyrighted music on YouTube.⁵⁶

As in the previously mentioned case of copyright infringement on the YouTube platform such as the case of Calon Sarjana, YouTube understands the importance of protecting the economic rights of content creators on YouTube. Therefore, YouTube provides a way for someone who feels their content has been plagiarized to file a claim through YouTube. By submitting a claim to YouTube, one can block the problematic video, block specific platforms deemed

⁵⁴Mardiyana Putri Lestari, Lalu Wira Pria Suhartana, Nizia Kusuma Wardani, "Analisis Klaim Hak Cipta Terhadap Konten Video Pada Platform Youtube Berdasarkan Hukum Positif Di Indonesia," *Jurnal Commerce Law*, Vol. 3, No. 2 (2023), p. 310.

⁵⁵*Ibid.*, p. 311.

⁵⁶*Ibid.*

problematic, and monetize the disputed video.⁵⁷ YouTube also provides a way for someone to avoid unintentional plagiarism through Content ID, which will notify them in advance if there are elements of plagiarism from other content.

VI. Conclusions

As creativity becomes an important asset for human beings, protecting it is important for all of us. This fact is multiplied because we live in an era that makes it easy for people to exchange the content they create, so maintaining the originality of content guarantees creators protection of their creativity, prevalent in copyright infringement cases such as the Filip Miucin, Calon Sarjana, and Kane Trujillo cases mentioned above, The originality of creation can be assessed through the similarities in the fixation of both works, which can be evaluated through elements such as music, editing style, animation, and others. In essence, a work created from the same idea is not plagiarism, but rather how we develop that idea into a work or content that can be subject to plagiarism.

Indonesia does have a law that protects the rights of people over their creative works, known as the UUHC, that not only classifies plagiarized and copied works but also explains what one can do to protect their works. However, knowing that the state only has limited jurisdiction in the digital world, this means that the obligation to protect one's rights over their creative works on the internet lies not only on the government but also on the video sharing platform companies such as YouTube or TikTok. Because of this Indonesia has to work together with said companies to ensure the protection of copyrighted material on the Internet. This can be done by assuring that the copyright policy of a platform is in accordance with UUHC and other international copyright laws.

⁵⁷*Ibid.*, p. 312.

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