

Fair use and Transformative Works in Reaction and Review Videos: Comparative Insights from Indonesia and the United States

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ABSTRACT: In the digital age, reaction and review videos have evolved into one of the main forms of user-generated content (UGC) that is increasingly popular on various online platforms. This phenomenon has sparked an interesting debate about the line between creative expression and copyright infringement. This study examines how copyright law in Indonesia and the United States treats this type of content, highlighting the application of the fair use doctrine and the concept of transformative works.

Through a comparative legal approach, this study compares the normative provisions, court decisions, and relevant policies in both countries to understand how each legal system seeks to balance the protection of the moral and economic rights of creators with freedom of public expression. In the United States, the fair use doctrine provides considerable interpretive leeway for transformative works, thereby encouraging innovation and new creative expression. In contrast, the system of restrictions and exceptions in the Indonesian Copyright Law is still relatively rigid and has not fully adapted to the rapidly evolving dynamics of digital culture.

Through this comparison, the study identifies normative and structural gaps in Indonesia's copyright legal system, especially in dealing with new forms of creativity that emerge from interaction, collaboration, and active community participation in the digital space. Therefore, this article proposes the adoption of a more contextual and adaptive fair use principle as a step towards balancing the protection of creators' rights and support for the digital creative ecosystem. These findings are expected to enrich the global discourse on the relationship between creativity, freedom of expression, and copyright protection in an increasingly participatory digital society.

KEYWORD: Fair Use Doctrine; Transformative Works; Copyright Law; Comparative Study; Indonesia; United States.

A. INTRODUCTION

One of the most popular social media platforms accessed by netizens in Indonesia is YouTube. This platform offers a collaborative space for its users to upload, watch, download, and share video content directly and for free. YouTube users are divided into two categories. The first is content creators, who actively upload video material for commercial or non-commercial purposes. The second is viewers, who enjoy the content without being directly involved in the production process (1).

For content creators who want to earn income from their activities, YouTube implements a content monetization policy, which is a mechanism for utilizing data and video popularity to generate economic profits. The popularity of a piece of content is usually measured by the number of views and subscribers, which then attracts income from advertising revenue (AdSense) (2). However, not all videos uploaded are original works belonging to the uploader. In practice, many users utilize other parties' content to create new material, whether in the form of parodies, compilations, or reaction videos.

The phenomenon of reaction videos has become one of the most prominent forms of user-generated content (UGC) on YouTube. This activity involves recording a person's expressions and comments on a video made by another party, which is then re-uploaded to their own channel and can even be monetized. From a copyright law perspective, this practice raises serious questions as to whether the act of recording and re-uploading pieces of other people's work, even if accompanied by personal reactions and reviews, can be categorized as copyright infringement or rather a form of legitimate creative expression.(3)

The existence of YouTube as a UGC platform has changed the creative economy and opened up great opportunities for public participation in digital culture production. However, on the other hand, its presence also presents new legal challenges. When the line between creators and users becomes blurred, the legal system is required to balance the protection of the moral and economic rights of creators with the public's freedom of expression. This is where the need to review the applicable legal framework arises, especially in the context of Indonesia, which still adheres to a closed list system in copyright restrictions.

The development of digital technology has profoundly changed the way people create, consume, and distribute creative works. The presence of various UGC platforms such as YouTube, TikTok, and Twitch has given rise to new forms of expression that effectively

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blur the traditional boundaries between creators and users of works. One of the most prominent examples is the existence of reaction videos and review videos, which rework other people's works, such as films, music, or videos, for the purpose of providing commentary, evaluation, or entertainment. This phenomenon raises a normative dilemma in copyright law: to what extent can the reuse of a work be considered a form of transformative use, and when does it constitute infringement?

This dilemma reflects the tension between two equally fundamental legal values, namely the protection of the economic and moral rights of creators, and, on the other hand, freedom of expression and public innovation. In the Indonesian context, the reuse of copyrighted works is regulated in a restrictive manner through Article 43 of Law No. 28 of 2014 on Copyright, which stipulates exceptions only for the purposes of education, research, or news reporting. This approach differs paradigmatically from the US legal system, which, through the doctrine of fair use, provides a broad scope for interpretation of the use of others' works for transformation, commentary, criticism, or parody (4).

The absence of a doctrine equivalent to fair use shows how Indonesian copyright law has not been able to fully keep up with the dynamics of digital culture, which is characterized by collaboration and broad user participation. Content creators often operate in a grey area, where their work may be socially accepted as a form of valuable creativity, but still risks being considered a copyright infringement under the law. In contrast, in the United States, reaction and review videos are often recognized as a form of transformative expression that contributes to public discourse and popular culture.

This difference in paradigms is interesting to study comparatively, not only to understand the normative structures of the two legal systems, but also to assess how the law can adapt to the increasingly fluid landscape of digital creativity. Therefore, this study seeks to critically examine how the copyright regimes in Indonesia and the United States respond to the practice of reaction and review videos on UGC platforms, and to what extent the legal system can balance legal certainty for creators with freedom of expression for digital creatives.

B. THEORETICAL AND CONCEPTUAL FRAMEWORK

The development of user-generated content (UGC) has marked a major shift in the landscape of content production in the digital age. Whereas in the past, the production and distribution of intellectual works were hierarchical, monopolized by media institutions, publishers, or formal creative industries, the process has now become more open and participatory(5). Platforms such as YouTube, TikTok, and Twitch allow ordinary individuals to produce, modify, and distribute works to a wide audience without intermediaries. In this ecosystem, the boundaries between creators and consumers become blurred. Users not only consume works, but also participate in creating and modifying the meaning of those works. The phenomenon of reaction videos and review videos is a clear manifestation of the logic of participatory culture as described by Henry Jenkins (2006), namely a culture in which the audience plays an active role in the production, interpretation, and dissemination of content, rather than being passive recipients of information.(6)

In the context of copyright law, this paradigm shift challenges traditional concepts of ownership and use of works. The legal system designed to protect individual creators from unauthorized copying is now confronted with collaborative and remix practices that are often difficult to categorize in binary terms as "infringement" or "creative transformation." (7). To understand this issue, this study uses several complementary theoretical foundations.

First, the theory of fair use was developed in the United States legal system. Based on the Copyright Act of 1976, fair use assesses the legality of the use of copyrighted works through four main factors: (1) the purpose and character of the use, including whether it is commercial or for educational purposes; (2) the nature of the work used; (3) the proportion of the work used in relation to the whole; and (4) the effect on the potential market for the original work(8). In practice, fair use is casuistic and has developed through jurisprudential precedent. The important ruling in *Campbell v. Acuff-Rose Music* (510 U.S. 569, 1994) became a milestone because it emphasized the importance of the element of transformative use, namely, whether the use adds new meaning, new expression, or new perspective to the original work (9). This theory of transformative use affirms that the reuse of another person's work cannot always be classified as copyright infringement, as long as its use is capable of presenting new meaning, value, or messages that are different from the original work. In other words, if a derivative work adds new context or enriches public discourse, then its use can be considered legally valid. This concept forms the basis for the application of the fair use doctrine, which places freedom of expression as an integral part of the copyright system itself. This concept then became the basis for justifying many derivative content practices, including parodies, critiques, and analytical or reflective reaction videos.(10)

In contrast, Indonesia adopts a more restrictive approach through exceptions and limitations in Law No. 28 of 2014 on Copyright, specifically in Articles 43 and 44. These two articles provide limited space for unauthorized use, such as for educational, research, or news reporting purposes. However, the list of exceptions is a closed list, meaning that it cannot be expanded through analogy or evolutionary interpretation, as is the case with fair use. As a result, new forms of digital expression, such as reaction or review videos, often fall into a legal grey area, where they are not fully protected, but also cannot always be considered a clear violation.(11) To bridge the tension between copyright protection and freedom of expression, this study also draws on balance theory. Copyright law does not merely function as an instrument for protecting the exclusive rights of creators, but also as a legal mechanism designed

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to maintain a balance between the exclusive rights of creators and the rights of the public to benefit from the dissemination of works (Copyright as a balance system). In this case, Copyright must be able to protect intellectual works without hindering the flow of knowledge, innovation, and creativity in society (12). Lawrence Lessig (2004), in his work *Free Culture*, emphasizes that overly rigid restrictions on access and use of works actually risk dampening the collaborative potential that is characteristic of digital culture. When legal protection is applied excessively, it can transform from a protective instrument into a barrier to the growth of participatory innovation and creative expression.(13)

By combining fair use theory and balance theory, this study positions the phenomenon of reaction and review videos as a form of transformative creativity that reflects a cultural shift towards collective participation. Within this framework, the law should not be understood solely as a restrictive tool, but as an adaptive mechanism that ensures that creators' rights are protected without stifling the dynamics of digital culture that grow from public interaction, reinterpretation, and collaboration.

The novelty of this research lies in its approach, which combines comparative legal analysis with an understanding of contemporary digital culture. Substantively, three forms of originality contribute to this research.

First, this research offers a comparative analysis of copyright regimes in the context of user-generated content (UGC). Until now, studies in Indonesia have generally focused on aspects of copyright infringement and the protection of digital works, but few have examined in depth the position of reaction videos and review videos as creative practices that exist in a grey area between infringement and transformation. By placing Indonesia (which uses a closed list exception system) and the United States (which applies the principles of fair use and transformative use) in a comparative framework, this study seeks to explain how differences in legal structures can affect the freedom of expression of digital creators.

Second, this study proposes an interdisciplinary analysis between law and digital culture, positioning reaction videos not only as legal events but also as forms of cultural expression. This approach opens up a new understanding that copyright law does not exist in a vacuum but interacts directly with the social, economic, and technological values that shape the behaviour of digital platform users.

Third, this study offers an initial conceptualization of "Fair Use Contextualization" for the Indonesian legal system. This idea is not intended to adopt the fair use doctrine of the United States wholesale, but rather to adapt its essence within the context of Indonesian national law. Through a transformative value-based approach, this study proposes that policymakers have more flexible room for interpretation in assessing whether the use of a work should be viewed as an infringement or as a form of expression that is legitimate and has social value.

Thus, this study not only provides a comparative description of the two legal systems but also offers a conceptual contribution to the reform of copyright law in Indonesia to make it more adaptive to increasingly dynamic and participatory digital cultural practices. The phenomenon of reaction videos and review videos raises complex legal debates. On the one hand, this type of content clearly uses other people's works as its main material; on the other hand, there are elements of originality and new expression that actually enrich the social context of the work. This dilemma is the starting point for this study.(14)

Substantively, there are four questions to be answered. First, what are the characteristics and practices of reaction and review videos in the context of user-generated content, and how are they positioned from the perspective of copyright law? Second, how do the copyright legal systems in Indonesia and the United States regulate, restrict, and assess the legality of these practices? Third, what are the implications of the different approaches between the closed list exception system in Indonesia and the fair use system in the United States on copyright protection and freedom of expression in the digital realm? Fourth, what legal interpretation models can be used to balance copyright protection with space for transformative creativity in the context of Indonesian law?

The objectives of this study are in line with the above problem formulation, namely:

- 1) To describe the phenomenon of reaction and review videos as a form of creative expression born from digital participatory culture;
- 2) To comparatively analyze the differences in the principles of copyright protection and exceptions between Indonesia and the United States;
- 3) To evaluate the responsiveness of the Indonesian legal system in dealing with transformative creativity practices in the digital realm, and
- 4) Formulating a conceptual model for the renewal of Indonesian copyright law that is more adaptive to developments in digital culture, drawing inspiration from the spirit of fair use and the values of transformative use.

Thus, this research is expected to contribute theoretically to the development of copyright law in Indonesia, while providing an argumentative basis for policymakers to balance legal certainty with freedom of expression in the era of the digital creative economy.

C. RESEARCH METHOD

Legal research is a scientific activity aimed at testing the validity and degree of truth of legal knowledge, with an emphasis on accurate explanations of legal issues that exist in society. According to Black's Law Dictionary, legal research aims to find and assemble authorities that bear on questions of law (15). Peter Mahmud Marzuki argues that legal research is a know-how activity,

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so that legal research is carried out to solve legal issues that are faced. Therefore, it can be interpreted that the main focus of legal research is to answer or provide solutions to problems caused by doubts in applying existing positive legal rules.(16)

This study uses a comparative normative legal research approach, focusing on the analysis of norms, principles, and doctrines of copyright law that regulate the use of works in the context of user-generated content (UGC). This approach was chosen because the main problem of the research lies in the differences in normative construction between the Indonesian and US legal systems in assessing the legality of the transformative use of other people's works in the digital space.

The normative legal approach is used to examine the principles, rules, and provisions of positive law related to copyright and their interpretation in practice. This study includes an analysis of national legislation (Law No. 28 of 2014 on Copyright), the Copyright Act of 1976 in the United States, as well as relevant doctrines and jurisprudence, such as *Campbell v. Acuff-Rose Music* (1994) and *Cariou v. Prince* (2013).

Meanwhile, a comparative approach is used to identify similarities and differences in how the two legal systems interpret the line between infringement and transformative creativity. This comparison is not only textual but also conceptual, highlighting how the cultural values and legal structures of each country shape their copyright regulation logic.

The legal materials used include:

- 1) Primary legal materials, in the form of legislation (Indonesian Copyright Law, US Copyright Act), international conventions (Berne Convention, WIPO Copyright Treaty), and relevant court decisions.
- 2) Secondary legal materials, in the form of academic literature, reputable journal articles (Scopus-indexed), and expert opinions discussing the issues of fair use, transformative work, and copyright balance.
- 3) Tertiary legal materials, such as legal dictionaries, reports from international institutions (e.g., WIPO, UNESCO), and government policy documents that provide context for the development of the digital creative economy.

The analysis was conducted using descriptive and interpretive qualitative methods. The first stage was the identification and classification of relevant norms in both legal systems. The second stage was normative interpretation, which involved assessing the meaning and rationale behind these norms, taking into account the underlying social, cultural, and economic contexts. The third stage is comparative synthesis: critically assessing the effectiveness of each system's approach in balancing copyright protection and freedom of expression in the digital realm.

This interpretive approach is in line with the framework of legal responsiveness theory (17), which emphasizes the need for law to adapt to social and technological dynamics. The analysis does not stop at the normative aspect, but also assesses the extent to which the law is able to respond to the participatory and rapidly changing reality of digital creativity.

The comparison focuses on two jurisdictions:

- 1) Indonesia, with its closed list exception system as stipulated in Articles 43– 44 of the 2014 Copyright Law, which emphasizes strict protection of the exclusive rights of creators;
- 2) The United States has its fair use and transformative use doctrines, which provide broader interpretive space for secondary creativity and cultural criticism.

The scope of the analysis covers:

- 1) legal concepts regarding fair use;
- 2) jurisprudential assessments of digital content (e.g., parody, criticism, reaction videos); and
- 3) implications for public policy and the creative industry.

Thus, this method allows the research to not only compare legal norms formally but also to examine the response of the legal system to concrete challenges in the digital age, thereby producing conceptual proposals for copyright law reform in Indonesia.

D. RESEARCH RESULTS AND DISCUSSION

1. Characteristics and Dynamics of Reaction and Review Video Content

The phenomenon of reaction videos and review videos has emerged as a manifestation of participatory culture in the digital era. In user-generated content (UGC) ecosystems such as YouTube, TikTok, and Twitch, the boundaries between creators and consumers of works are becoming increasingly blurred. Users no longer consume content, but also actively participate in producing new meanings for existing works (12).

Reaction videos are recordings of a person's response to a video, movie, song, or other digital work. Review videos, on the other hand, focus more on reviewing or evaluating the work. Both types of content often use part or all of the original work, whether in the form of clips, images, or audio, to support the narrative or commentary provided (1).

However, from a copyright law perspective, the reuse of such works creates tension between two legal values: the protection of the creator's exclusive rights and the freedom of public expression. In many cases, reaction videos and review videos have the potential to be considered copyright infringement because they upload or redistribute works without permission. However, on the other hand, such works can also be considered a form of transformative creativity, adding new value, new interpretations, or different social dimensions to the original work.

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2. Fair Use Doctrine

The concept of fair use is a key pillar of the US copyright law system that serves as a balancing mechanism between the exclusive rights of creators and the public interest in accessing and developing creative works. Based on the US Copyright Act of 1976 (17 U.S.C. §107), fair use provides legal defense for the use of copyrighted works without permission, as long as it meets the principle of fairness and does not violate the economic protection of the creator.

The four main factors that serve as benchmarks for fair use include:(18)

- 1) Purpose and character of the use, including whether the use is commercial or for educational and research purposes. This factor became increasingly important after the *Campbell v. Acuff-Rose Music, Inc.* (1994) ruling, in which the Supreme Court emphasized the importance of transformative use, namely, use that adds new meaning, message, or expression to the original work.
- 2) Nature of the copyrighted work, which considers whether the original work is creative or factual.
- 3) The amount and substantiality of the portion used means that the greater the proportion taken, the less likely it is to be protected by fair use, unless there is significant transformative value.
- 4) The effect of the use on the potential market for the original work.

Through these four factors, the fair use doctrine assesses not only quantitative aspects but also qualitative transformation. For example, in *Authors Guild v. Google, Inc.* (2015), the court recognized Google's digitization of books as fair use because it created a new function, namely a text search engine, without replacing the original book market (19). This means that fair use is dynamic and contextual, allowing for adaptation to new forms of cultural expression and digital technology

The important case of *Campbell v. Acuff-Rose Music* (1994) expanded the meaning of fair use through the concept of transformative use, which is use that “adds something new, with a different purpose or new meaning, and does not merely replace the original work.”(20). This doctrine opens up space for secondary creativity, including reaction and review videos, as long as the new work has a clear, expressive, educational, or critical contribution to the original work.

In practice, reaction videos are often considered fair use, especially when they contain commentary, criticism, or evaluation of the original work. For example, YouTube channels that show movie reactions or music reviews can be categorized as transformative commentary, as long as they do not copy the entire work or replace its original commercial function.

This approach shows that US law is adaptive and contextual, providing interpretive space for judges to assess the balance between protection and freedom of expression.

3. The Dynamics of Jurisprudence and the Flexibility of Judicial Interpretation in Responding to Digital Change

One of the main strengths of the fair use system in the United States lies in the role of jurisprudence as a living law. The fair use provision in 17 U.S.C. §107 itself is open-ended; it does not provide strict limitations or fixed formulas but leaves the assessment to judges through four main factors. Therefore, this doctrine evolves through interpretation and court precedents, making it an adaptive tool for technological changes and new forms of cultural expression.

The origins of the fair use doctrine can be traced back to the case of *Folsom v. Marsh* (1841), in which Judge Joseph Story emphasized the importance of “fair and reasonable use” as a criterion for assessing copyright infringement (21). Although at that time there was no explicit framework such as the four factors known today, the ruling became the foundation for the principle that not all unauthorized use automatically constitutes infringement.

During the 20th century, courts expanded the application of this doctrine in various contexts, including education, journalism, parody, and scientific research. However, the peak of conceptual transformation occurred in the case of *Campbell v. Acuff-Rose Music, Inc.* (1994), in which the Supreme Court introduced and affirmed the concept of transformative use. The court ruled that the parody of the song "Pretty Woman" by the group 2 Live Crew did not infringe on copyright because it created a new expression that commented on the original work. Since then, the element of transformative character has become a determining factor that transcends the boundaries of the four classic factors.(22)

In assessing whether a particular use qualifies as fair, courts first look at the purpose and character of the use, specifically, whether commercial motives drive it or serve educational, research, or other socially beneficial purposes. This factor gained particular importance after the *Campbell v. Acuff-Rose Music, Inc.* (1994) decision, where the U.S. Supreme Court underscored the value of transformative use, that is, a use that adds new meaning, message, or expression to the original work rather than merely replicating it.

Another key consideration lies in the copyrighted work. Works that are creative in form, such as novels, songs, or paintings, generally receive stronger protection than factual or informational works, since creativity embodies a higher degree of original expression.

Courts also weigh the amount and substantiality of the portion used. The more of the original work that is taken, both in quantity and significance, the less likely it is to fall under fair use, unless the borrowed portion is essential to achieving a meaningful, transformative purpose.

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Finally, the analysis turns to the effect of the use on the potential market for the original work. If the new use diminishes the market value or substitutes for the original, it is less likely to be considered fair. However, suppose the use contributes something new, such as commentary, criticism, or parody, without harming the original work's commercial prospects. In that case, it is more likely to be protected under the doctrine of fair use.

Entering the 21st century, courts increasingly emphasized transformative purpose as the distinction between infringement and cultural innovation. In *Authors Guild v. Google, Inc.* (2015), the digitization of millions of books for the Google Books project was deemed fair use because it created "new value" that enabled full-text search without replacing the economic function of the original work (23). The same occurred in *Bill Graham Archives v. Dorling Kindersley Ltd.* (2006) (24), where the use of concert poster images for a music history book was deemed fair use because it had a documentary context different from the original commercial purpose.

This flexibility of interpretation was also evident in the case of *Cariou v. Prince* (2013) (25), where the appeals court recognized Richard Prince's collage art as a transformative work, even though there was no explicit commentary on the original work. This means that the court no longer requires satirical intent or direct criticism, but only the demonstration of altered meaning or new expression. This approach expands the legal legitimacy of contemporary artistic practices such as remixes, mash-ups, and fan-based creations.

Through the development of jurisprudence, it is apparent that judges act as a balance between the interests of creators and the public. Fair use is not an absolute justification, but rather an assessment mechanism that considers the social context, the purpose of expression, and the potential impact on the market. Thus, fair use is an elastic but not arbitrary concept; it always adapts to social and technological transformations without losing its basic principles: fairness and proportionality (26).

This flexibility enables the fair use system to accommodate new creative phenomena such as user-generated content (UGC), memes, fanfiction, or Alternative Universe (AU), which essentially rely on the reproduction and reinterpretation of existing works as a form of participatory cultural expression. In this context, American jurisprudence shows that copyright law can function not only as an instrument of economic protection but also as a space for dialogue between law, technology, and freedom of expression (27).

4. Indonesian System: Closed list exceptions (Articles 43–44 of the Copyright Law).

Unlike the open-ended model in the United States, the Indonesian system adopts a "closed list exceptions" approach as stated in Articles 43–44 of Law Number 28 of 2014 concerning Copyright (UUHC). This means that only uses explicitly mentioned in the law are considered exceptions to copyright infringement.

Article 43 regulates exceptions for:

- 1) education and research;
- 2) news reporting;
- 3) the performance of religious activities; and
- 4) used for state purposes.

Meanwhile, Article 44 allows limited reproduction by libraries and educational institutions on a non-commercial basis. However, the UUHC does not recognize the concept of transformative work as it does in the United States. The Indonesian system still focuses on the author's consent principle, rather than on social justification or the added value of reuse.(28)

As a result, in the context of digital works such as fanfiction, Alternative Universe (AU), or remix culture, the legal position of users is very weak because there is no interpretive space that allows for defense based on new functions or different expressive values. This raises fundamental questions about the balance between copyright protection and freedom of expression in a participatory cultural ecosystem.(29)

The difference between fair use (US) and the limitation and exception system (Indonesia) lies in the philosophy of copyright protection. The American system is rooted in common law, which emphasizes flexibility, judicial interpretation, and adaptation to social change. Meanwhile, the Indonesian system, which is rooted in the civil law tradition, emphasizes legal certainty and normative enumeration.

Aspect	United States (<i>Fair Use</i>)	Indonesia (<i>Closed List Exception</i>)
Legal basis	17 U.S.C. §107	Articles 43–44 of Law No. 28/2014
Character	<i>Open-ended</i> , based on judicial interpretation	<i>Closed list</i> , based on legislation
Focus	Transformation and public interest	Protection of creators' economic rights

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Flexibility	High – adaptive to cultural innovation	Low – requires regulatory revision for adaptation
Key principles	Contextual fairness (<i>fairness</i> , <i>transformativeness</i>)	Legal certainty and creator permissions

Thus, this comparison shows that the difference between fair use and the Indonesian system is not only a matter of legal technicalities, but also a matter of paradigm. The United States emphasizes the social function of copyright as a catalyst for innovation and cultural dialogue, while Indonesia places copyright as an exclusive economic right with strict exceptions. In the context of user-generated content, this means that transformative digital expressions often lack legal legitimacy in Indonesia, even though they contribute culturally and socially to the creative dynamics of society.(30)

5. Fair use vs. fair dealing/limitation-exception

In the evolving global copyright law ecosystem, one of the most fundamental conceptual debates lies in the paradigm difference between the fair use doctrine (adopted by the United States) and the fair dealing model (used by many countries with a Continental European and Commonwealth legal tradition, including Indonesia through its closed limitation and exception system). This difference is not merely technical, but concerns the basic philosophy of how the law understands the relationship between intellectual property and the public interest.

The fair use system contained in 17 U.S.C. §107 is open and evolutionary. The wording of the law only provides four assessment factors, namely the purpose of use, the nature of the work, the proportion of use, and the impact on the market, without limiting the types of activities that can be considered fair. Thus, fair use gives judges broad discretion to assess each case based on the social context, expressive function, and transformative value of a particular use. Philosophically, this model is rooted in the American legal tradition of pragmatism, which places flexibility and adaptation to social developments as key values. Lawrence Lessig (2004) and Julie Cohen (2007) emphasize that fair use is not merely an “exception to exclusive rights,” but a dynamic mechanism for maintaining the ecosystem of creativity, so that the law does not stifle innovation under the burden of copyright monopoly (31). In contrast, the fair dealing and limitation–exception system adopted by Indonesia through Articles 43–44 of Law No. 28 of 2014 on Copyright is a closed list. This means that only uses explicitly mentioned by law, such as quotations for education, news, or research, are considered legitimate without the creator's permission (29). Outside of this list, the use of another person's work is automatically classified as an infringement, regardless of the intent or creative context. The philosophy behind this system tends to be oriented towards protecting the economic rights of creators, rather than social flexibility (5). It stems from an absolute property rights paradigm (property-based approach), in which restrictions on exclusive rights are viewed as narrow exceptions that must be regulated enumeratively. As a result, this system tends to be less adaptive to new forms of expression, especially in the context of participatory, remixed, and collaborative digital culture (32).

Conceptually, fair use represents a functional and open approach, while fair dealing and limitation, exception represent a formalistic and closed approach. In fair use, the main emphasis is on the “social purpose of the use” and the “transformative added value” to the original work; in fair dealing, the emphasis is on the “type of activity” permitted by law (33).

From a policy perspective, this difference has important implications. The fair use system allows for the evolution of law through precedent, enabling it to adapt to new phenomena such as reaction videos, review content, or fan edits. Conversely, the limitation, exception system requires legislative revision every time a new form of expression emerges, as the judges' room for interpretation is limited by the wording of the law (31).

The limitations of the closed system in the Indonesian Copyright Law create a regulatory dilemma amid the development of the digital ecosystem. On the one hand, strict copyright protection is necessary to ensure legal certainty for creators. On the other hand, the rigidity of the norms can limit the movement of creative economy actors, especially in a landscape that now relies heavily on user-generated content.

Therefore, several academics (34) (35) have proposed the need to contextualize the principle of fair use, namely the application of transformative use values that are adapted to the characteristics of the national legal system. This approach is not intended to replicate the common law model in its entirety, but rather to encourage a more progressive interpretation of the exceptions in copyright law. Such a model opens up opportunities for Indonesian law to move towards a more adaptive and responsive balance regime, as proposed in the theory of responsive law by Nonet and Selznick (1978). With this perspective, the law does not stop at normative texts alone. However, it continues to adapt to the social, cultural, and technological dynamics that shape new creative practices in the digital space.

From a normative perspective, the fundamental difference between the Indonesian and US legal systems lies in the degree of interpretive flexibility in assessing the reuse of copyrighted works.

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In the United States, the fair use doctrine, regulated in Section 107 of the US Copyright Act (1976), allows judges to assess each case based on four main factors:

- a) the purpose and character of the use;
- b) the nature of the work used;
- c) the proportion of the work used; and
- d) the effect on the potential market for the original work.

These four factors are not cumulative, but rather contextual and complementary, providing broad discretion in assessing the intent and transformative value of a use.

In contrast, Law No. 28 of 2014 on Copyright (UUHC) adopts a closed list system of limitations and exceptions, as reflected in Articles 43–44, where only uses for educational, research, news reporting, or criticism and review purposes are explicitly recognized. There are no evaluative parameters such as purpose, amount, or market effect as in the fair use system. As a result, the scope for interpretation by judges is limited, and new forms of creativity, such as reaction videos or review-based content, are difficult to assess progressively without legislative amendments. The case of *Hosseinzadeh v. Klein* (2017) (36), also known as the H3H3 Productions case, is one of the important precedents in the development of fair use doctrine in the digital age. In this case, H3H3 Productions (Ethan and Hila Klein) were sued for using video clips belonging to Hosseinzadeh (creator of the short film "The Bold Guy") in their reaction videos containing satirical comments and criticism.

The Southern District Court of New York ruled that this use constituted “transformative fair use” because H3H3 did not merely copy the footage but changed its context and added new expression and meaning through commentary and analysis. Judge Katherine Forrest emphasized that the work “adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message”. This ruling reinforces the position of reaction videos as a legally valid form of expression when they fulfill transformative value and do not damage the market for the original work.

Conversely, in the Indonesian legal system, there are no jurisprudential cases that directly examine the legality of reaction videos. However, an analogy can be drawn from the case of the Central Jakarta Commercial Court Decision No. 82/Pdt.Sus-HKI/2018 (37), which involved the reuse of audiovisual material without the creator's permission. In that case, the court affirmed the formal principle that any reuse of audiovisual works without the creator's permission is an infringement, without considering the context, intent, or potential added value of such use.

A comparison of these two cases reveals a difference in legal paradigms: US courts assess social function and transformation of meaning, while Indonesian courts focus on formal compliance with the creator's permission.

Aspect	United States (<i>Fair Use</i>)	Indonesia (<i>Limitation–Exception</i>)
Source of Law	17 U.S.C. §107	Law No. 28 of 2014 (Articles 43–44)
Flexibility	Open; context-based	Closed; list-based
Role of Judges	Discretionary; can assess transformative value	Limited to literal interpretation of the law
Basic Values	Balance between the rights of creators and public expression	Protection of the creator's exclusive rights
Jurisprudence	H3H3 Productions is considered <i>transformative</i>	Judgment 82/Pdt.Sus-HKI/2018 confirms infringement without considering context

Conceptually, reaction and review videos can be categorized as transformative works, as long as the use of the original work adds new meaning, commentary, or different interpretations. This form of expression is not merely reproduction, but a dialogic process between the creator and the audience, where reactions, criticism, or humor serve as a form of cultural communication. However, the transformative aspect must be measured by the extent to which the new work changes the purpose and function of the original work. If a reaction video merely copies without a new context, then it loses its transformative nature and can be considered an infringement (10).

The main weakness of the Indonesian system lies in its normative rigidity. Without room for interpretation, such as fair use, digital creative practices often fall into a legal grey area.

Some of the obstacles that can be identified include (28):

- 1) The absence of transformative value parameters in positive law.
- 2) A tendency toward formalistic jurisprudence, which assesses infringement textually without considering creative intent.
- 3) An administrative legal culture that emphasizes formal permissions over the social function of the work.

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4) The lack of soft law mechanisms or implementative guidelines for digital platforms such as YouTube.

This situation has the potential to hamper the development of the national creative economy, as digital creators face legal uncertainty and high litigation risks. A reinterpretation of Indonesian copyright law is needed to be more responsive to the phenomenon of user-generated content. This approach does not mean fully adopting fair use, but rather conducting “contextual adaptation” through strengthening the interpretation of Articles 43–44. The Supreme Court and policymakers can develop a contextual four-factor flexibility test, for example:

- 1) Social purpose and expressive added value;
- 2) Level of transformation of meaning;
- 3) Impact on the market;
- 4) Contribution to public culture.

Such an approach would maintain a balance between the protection of exclusive rights and freedom of expression, as is the essence of the theory of copyright as a balance system and responsive law theory.

E. CONCLUSION

This study shows that the fundamental differences between the Indonesian and US copyright legal systems are not only structural but also philosophical. Fair use emphasizes social function and transformative value, while limitation–exception focuses on explicit formal limits on use.

The case of *H3H3 Productions v. Hosseinzadeh* confirms that reaction videos can be a legitimate form of creativity as long as they are transformative and do not diminish the economic value of the original work. Conversely, the Indonesian legal system does not yet provide an assessment mechanism that allows for the recognition of such transformative value.

Several normative recommendations can be proposed to enhance the flexibility and responsiveness of Indonesia’s copyright regime in the digital era. One important step is to strengthen the progressive interpretation of Articles 43 and 44 of the Copyright Law through clear judicial guidelines, such as a Supreme Court Circular (SEMA) or a Supreme Court Regulation (PERMA), to ensure that transformative use is better accommodated within judicial reasoning.

In addition, developing a model for the soft adoption of the fair use test in judicial practice could serve as a transitional mechanism toward a more adaptive and context-sensitive system. Such an approach would allow courts to gradually incorporate comparative insights while remaining aligned with Indonesia’s legal traditions.

Equally crucial is fostering collaboration between regulators and digital platforms, such as YouTube, TikTok, and others, in establishing content use guidelines that reflect national legal principles while addressing the realities of digital creativity.

Finally, expanding digital legal education for content creators is essential to building awareness of copyright ethics and the responsible reuse of creative works. By equipping creators with this knowledge, the legal system can promote a culture of respect for intellectual property without stifling innovation and expression.

With this approach, Indonesian copyright law can transform from a protective system to a balanced, participatory legal regime that is responsive to digital innovation, which is in line with the vision of progressive law in a 21st-century creative society.

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