

The Concept of Parody Exclusion in Indonesia

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Abstract

This is an interesting issue is how parody songs and copyright are regulated in Indonesia, and the next issue is the comparison of parody law between Indonesia, Canada and the United States. This research uses approaches: statute approach and conceptual approach. The legal material search technique uses document study techniques (library research), as well as study analysis using qualitative analysis. Namely a method that analyzes data obtained qualitatively to find clarity on the main problem. In Indonesia, creative works resulting from transformation (such as parody songs) are protected, their creation may not reduce the copyright for the original work which includes the economic and moral rights of the creator. Thus, parodiers are required to seek prior approval from the creator of the original song. As a comparison, in the United States there are known creations called derivative works which result from various acts of transformation. The United States not only recognizes changes in form as the meaning of transformation but also various other actions which are considered to produce derivative works. In order to qualify as a transfer, the work must go through a process of changing (transforming), adapting, or modifying an existing work. Canada must ensure that users can use the following exceptions when providing content: quotation, criticism, review, caricature, parody or pastiche. Although it can be difficult to know whether a particular use of a copyrighted work constitutes fair use. UUHC in Indonesia needs to set parameters or benchmarks regarding the meaning of "reasonable interest." This is especially important for judges in deciding cases of whether there is "fair use", so that it substantially guarantees legal certainty, and realizes the principle of justice (in the sense of balance), between the Creator or Copyright holder who has exclusive rights and other parties who use or quote the creation for the development of science.

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1. INTRODUCTION

Humans give rise to thoughts that can create creative fruit in the hope that this creative fruit can advance and enrich people's lives. "Our mind is our most powerful asset," said Robert T. Kiyosaki in his book, Rich Dad Poor Dad. Good mind management can lead us to become more creative people. A human's creative power never has limits. In short, it can be said that culture changes more quickly when humans are active and creative. This creativity is still influenced by the socio-cultural environment in which he lives. The environment can encourage or stem the flow of creativity over a period of time. The tug-of-war between the freedom to create or accept the creation vis-à-vis cultural demands is what gives rise to the diversity of the cultural world.

The creative development they carry out is usually expressed in a video and distributed on cyber platforms. The development of cyberspace with increasingly easier internet access, as well as the increasing development of platforms in cyberspace such as YouTube, Instagram, Facebook and so on, means that not only can someone easily share their experiences or stories, someone can also use these media as a means. to announce his creations which are the result of his personal creative thoughts so that they can be enjoyed by the general public. Copyrighted works are protected by copyright law, which is one of the intellectual property legal regimes. The concept of Intellectual Property Rights is basically interpreted as a reward for someone's creativity, whether in the form of discoveries or creative and artistic works. In its development, creative works that are widely announced via social media become more widely consumed by the public, and can make their creators widely known, including parody works.

Parody works are generally born as a form of expression of admiration or often even criticism of social phenomena that are occurring in society. Parodies that became famous after being uploaded on social media, one of which was the Parody of Arya Wiguna in 2013, which was uploaded via the video sharing site YouTube in 2013, were initially created as an expression of

daily habits, but because their work was in demand by the public, in the end they became choice of profession. Creating work and generating income through social media is a great opportunity, especially after the speed of internet access has grown rapidly and according to Global Web Index data, Indonesia is in the category of countries that most actively use social media. Apart from social phenomena or social reality, the existence of a previously published work can also be a trigger for the birth of other new works. Existing works can inspire other parties to create new creations by converting the original work into another form, including converting a cinematography work into a parody work.

Modification of other people's creations in whole or in part is prohibited by the UUHC, because it is considered to be contrary to the Moral Rights of both the creator and the performer. However, parody songs seem to be commonplace and do not carry legal consequences. This is because the creators of parody songs often use the fair use argument by including the name of the performer in the caption column, so that the upload of the parody song is considered to be protected. In the 2014 UUHC, the provisions regarding fair use regarding parody songs are regulated in article 44 paragraph 1 letter a which states that the use, taking, duplication and/or modification of a work and/or related rights product in whole or in substantial part is not considered as a Copyright violation if the source is stated or included in full for the purposes of education, research, writing scientific papers, preparing reports, writing criticism or reviewing a problem without harming the reasonable interests of the Creator or Copyright Holder.

By looking at the fair use requirements regarding writing criticism, inclusion of sources and elements of the creator's reasonable interests regulated in the UUHC, it can be said that the regulations are less clear, so that the interpretation of the inclusion of sources and actions that are deemed to have violated the creator's interests can be broadened or narrowed. because everyone can interpret the meaning behind these elements. Thus, the interesting issue is whether Indonesian law allows parody videos produced by someone? How do parody laws compare between Indonesia, Canada and the United States?

To answer this, an in-depth analysis of the legality of song creation is needed parody. This is because what form and type of parody can be categorized as a creation that does not violate the law. However, in conclusion, every person has the right to obtain protection for moral and material interests originating from scientific, literary or artistic creations of which he is the author.

2. RESEARCH METHODS

The research method used is Normative Juridical, namely research that uses data obtained through library materials. The first step carried out by this research was based on secondary legal materials, namely including statutory documents, official documents, books, jurisprudence related to civil law analysis, especially the principles and regulations regarding Copyright Protection for the Use of Parody Videos on YouTube.

This research uses approaches: statute approach and conceptual approach. The legal material search technique uses document study techniques (library research), as well as study analysis using qualitative analysis. namely a method that analyzes data obtained qualitatively to find clarity on the main problem. Miles and Huberman revealed that activities in qualitative data analysis were carried out interactively and took place continuously at each stage of the research until completion.

The approach used in this research is the statutory approach which is carried out by reviewing Law no. 28 of 2014 concerning Copyright, as well as a conceptual approach, namely examining the concept of transformation and parody. The legal materials used consist of primary legal materials, secondary legal materials and tertiary legal materials, which are analyzed qualitatively.

3. DISCUSSION

a. Legal regulations in Indonesia include parody videos produced by someone

Parody as a creative human work in the context of intellectual property law is protected through the copyright regime. As is known, creative works that receive copyright protection

are works in the fields of art, literature and science. Parodies can be categorized in the field of works of art, therefore it is relevant that the copyright legal regime protects them. Copyright adopts automatic protection or adopts a declarative system. Copyrighted works that are announced to the general public can immediately obtain copyright protection. This automatic copyright protection is based on the Berne Convention. The principle of automatic protection is adhered to by the Berne Convention. Based on this concept, registering a work is not an obligation that absolutely must be carried out, but rather is something that is facultative in nature.

A work receives copyright protection according to Miller and Davis based on the criteria of originality. The element of authenticity in copyright is when the work is a creative result that shows uniqueness and is personal in nature. Creative works that are born from human creativity, reason, intelligence and high intellectual abilities cannot be separated from the sacrifice of time, energy and maximum effort from the individual who produces the work. Therefore, it is appropriate to receive legal protection in the form of exclusive rights for the creator and receive recognition from the state. Apart from being regulated in the Berne Convention, copyright is also regulated internationally through the TRIPs Agreement which requires member countries, including Indonesia, to harmonize standards for the protection of intellectual property rights, including copyright, according to the standards of the TRIPs Agreement. It is the state's obligation to respect, recognize and provide legal protection for creative works born of intellectual abilities as a reflection of a dynamic individual personality.

Based on article 40 paragraph 2 UUHC, even though creative works resulting from transformation (such as parody songs) are protected, their creation may not reduce the copyright for original works (original songs) which includes the economic rights and moral rights of the creator. Thus, a parodist is obliged to seek prior approval from the original song creator. Apart from that, other personal intellectual creations as long as they meet the elements of originality and creativity must legally be considered creations. Other works, including creations on the internet or in digital form, are still given copyright protection, the same as for conventional works. However, in practice so far there has never been any study or legal research that states that parody songs are a form of creative work protected by copyright. This makes sense because it is impossible for a creator or performer to be willing to have his creation ridiculed by other parties.

Several exceptions to permission to publish or reproduce a copyrighted work. Article 44 of the Copyright Law regulates that:

Use, taking, duplication and/or modification of a work and/or product of related rights in whole or in substantial part is not considered a violation of copyright if the source is stated or included in full for the purposes of:

- Education, research, writing scientific papers, preparing reports, writing criticism or reviewing a problem without harming the reasonable interests of the Creator or Copyright Holder;
- Security and administration of government, legislature and justice;
- Lectures that are only for educational and scientific purposes; or
- Performances or performances that are free of charge provided that they do not harm the reasonable interests of the Creator.

Parody activities are often associated with works that are protected by the Fair Use doctrine, namely where the activity of changing a copyrighted work into a new creation is permitted by law with several provisions. Parody activity is the activity of changing (transformative use) a previously existing copyright work, including song creations. In UUHC provisions, matters relating to the modification of copyrighted works are the moral rights of the creator and the moral rights of the performer. According to article 5 paragraph (1) letter e jo. Article 22 letter b states that both the creator and performer have the right to prohibit or allow activities to modify the copyrighted work. In other words, for a parodist to

be able to create a parody song, he must first obtain permission from the creator or performer of the original song.

Creators and Performers are the main subjects of copyright protection in the UUHC. This can be seen from the general explanation of the UUHC which states that the state is serious about protecting the economic and moral rights of creators and related rights holders as an element of national creativity. The state's seriousness in protecting copyright is an incentive for every creator and related rights holder to continue producing creative works. Thus, the better the legal protection provided by the state, the greater the creator's desire and motivation to create his creative work, conversely, the weaker the legal protection provided to the creator, the greater the creator's motivation in creating creations will also decrease.

In the UUHC, legal protection for creators and performers has been formulated in exclusive rights regulations, which consist of economic rights and moral rights, regulations regarding copyright registration, and regulations regarding licensing. Apart from that, the UUHC also regulates dispute resolution mechanisms if there is a copyright violation by another party. This dispute resolution mechanism is the core of the discussion in this subchapter as the implementation of copyright protection and related rights. Where creators and performers have the right to obtain justice for copyright violations of their creations. In UUHC, dispute resolution can be resolved through litigation or non-litigation and the punishment can be termination, civil (compensation) and also criminal (imprisonment and fines).

Regarding the uploading of parody songs that are contrary to the UUHC to YouTube, the creators and performers of original songs have the right to sue or report the actions of parodikers. However, the creator and performer of the original song must be absolutely sure in advance whether the parody song uploaded to YouTube is not in accordance with the UUHC (such as done without permission or the purpose of the parody song is not in accordance with fair use), to avoid lawsuits or counterclaims. by parodikers. Thus, these two legal subjects are entitled to legal protection by related laws and regulations such as UUHC UU ITE and copyright provisions on YouTube.

For example, the video parody of the song Indonesia Raya which went viral in 2020. The reason is that in the video uploaded by a YouTube channel called MY Asean, the lyrics of the song Indonesia Raya were replaced with inappropriate words. The Garuda bird symbol was also changed to a cartoon chicken with a Pancasila necklace. As the national anthem, Indonesia Raya is recognized and protected by law. The use of the song Indonesia Raya is regulated in Government Regulation Number 44 of 1958 and Law Number 24 of 2009 concerning the National Flag, Language and Emblem, as well as the National Anthem. In the law, it is stated that the flag, language and national symbols, as well as the Indonesian national anthem are a means of unification, identity and a form of existence for the nation which is a symbol of the country's sovereignty and honor. Therefore, according to Article 59 of Law Number 24 of 2009, Indonesia Raya is heard and sung on certain occasions, namely:

- To honor the President and/or Vice President;
 - To respect the National Flag when the National Flag is raised or lowered during a ceremony;
 - In official events organized by the government;
 - In the opening ceremony of the plenary session of the People's Consultative Assembly, the People's Representative Council, the Regional People's Representative Council and the Regional Representative Council;
 - To honor the head of state or head of government of a friendly country during an official visit;
 - In international sporting events or activities;
 - In international science, technology and arts events or competitions held in Indonesia.
- Then Article 64 contains several prohibitions on the use of the national anthem, namely:

- Changing the National Anthem with notes, rhythms, words and other compositions with the intention of insulting or degrading the honor of the National Anthem;
- Listening to, singing, or distributing changes to the National Anthem for commercial purposes;
- Using the National Anthem for advertising with the intention of commercial purposes.

Violation of this rule has legal consequences. Article 70 states that anyone who changes the National Anthem with notes, rhythms, words and other compositions with the intention of insulting or degrading the honor of the National Anthem shall be sentenced to imprisonment for a maximum of 5 (five) years or a fine of a maximum of IDR 500,000,000.00 (five hundred million).

Then article 71 paragraph 1 also confirms that anyone who deliberately listens to, sings or distributes changes to the National Anthem will be sentenced to imprisonment for a maximum of 1 (one) year or a fine of a maximum of IDR 100,000,000.00 (one hundred million rupiah).

Because parody is a transformation activity, which is a form of the creator's economic rights. So if parodikers use the parody song commercially, the parodikers can be subject to a maximum prison sentence of 5 years and a maximum fine of five hundred million rupiah. Criminal legal protection for performers related to uploading parody songs on YouTube which is contrary to the UUHC does not appear to be regulated in the UUHC because parody as a transformation of creation is not an economic right of performers. However, criminally the performer can still be prosecuted for defamation if the parody song contains insults that tend to damage the dignity of the performer based on articles 310 and 315 of the Criminal Code regarding blasphemy and minor insults.

b. Analyzing the Comparison of Parody Laws Between Indonesia, Canada and the United States

In practice, creative works of parody video are often made by someone by taking another cinematographic work that has already been popularized by someone else. This parody video is usually made as someone's response to a work which can be intended as a criticism or expression of someone's admiration for the work. In the context of copyright provisions, the creation of such a work is referred to as a form of transfer or derivative creative work, which is also known as derivative work. Transformation works in their current development are often carried out on cinematographic copyrighted works.

In relation to cinematographic creative works made in video form as mentioned above, which are then converted into parodies in video form by other parties, if viewed solely from the perspective of the work as the final result of the parody video, it does produce a parody video work which is included in the category as a cinematographic work. However, if you look at the overall process of how the parody video was created, the element of originality is not fulfilled considering that this parody video was made based on or inspired by another cinematographic creation. Parody videos are made solely by recreating a cinematographic work with humor inserted into it.

As a comparison, in the United States there are known creations called derivative works which result from various acts of transformation. The United States not only recognizes changes in form as the meaning of transformation but also various other actions which are considered to produce derivative works. In order to qualify as a transfer, the work must go through a process of changing (transforming), adapting, or modifying an existing work

Derivative works In the United States, these are then limited by fair use restrictions, namely in the manufacturing process using methods that do not violate the law. The United States also allows the use of the original copyright work in its entirety for parody. Parody is an exception to fair use, although using the entire copyright work down to the most core or fundamental aspects of a copyrighted work is permitted in law. There are several factors in which parody is classified as fair use: parody is considered as a form of criticism of things that are considered strange or strange in a creative work. Second, parody can increase public

interest in the original work. Third, parody is often used as a means of providing criticism not only of the original work but also of using the original work which is considered to have a high standard to provide criticism of other things. By considering the factors mentioned above, the existence of parody is actually very important, therefore it should receive clear legal protection, of course a form of protection that does not harm the legal protection of the original copyright work.

Where Canada provides exceptions or other limitations to copyright. These exceptions or limitations allow users to use copyrighted material where appropriate. The application of exceptions and limitations to copyright may vary by country. Generally, in countries that apply exceptions and limitations, use of a copyrighted work must not unreasonably harm the rights owner¹. Canada must ensure that users can use the following exceptions when providing content: quotation, criticism, review, caricature, parody or pastiche. While it's difficult to know whether a particular use of a copyrighted work constitutes fair use, the law outlines several factors you can consider:

- a. **Purpose and characteristics of use, including whether use is commercial or for non-profit educational purposes:** Does the use transform or alter the original work by adding new meaning, context, or expression? For example, using a fashion photo to discuss the amount of editing in it is more likely to be considered fair use than simply posting the photo without comment. A parody can be classified as fair use if the parody imitates a work with the aim of criticizing or commenting on the original work. Is the use commercial or purely personal? Commercial use or for profit may not be considered fair use.
- b. **Nature of copyrighted work:** The use of factual works such as maps or databases is more likely to constitute fair use than the use of highly creative works such as poetry or science fiction films.
- c. **Number and substance of parts used in connection with the copyrighted work as a whole:** Using a small portion of a copyrighted work is more likely to be considered fair use than copying the entire work. However, even if it is only small, the use may not be considered fair use if what is used is the most important part, namely the "core" of the work.
- d. **The effect of this use on the marketing potential or value of the copyrighted work:** Will the use displace the original work so that people stop buying or viewing the copyrighted work? If so, this is unlikely to be considered fair use.

The European Court of Justice defined the parody exception to copyright law in Article 5(3)(k) of EU Directive 2001/29 as the exception evoking an existing work but appearing different from it together with an expression of humor or mockery. The court stated that determining whether the use of a parody constitutes an exception requires a fair balance between the rights of the person who created the original work and the freedom of expression of the individual relying on the parody exception.

For example, in 2011, the Defendant, a member of the Vlaams Belang political party in Belgium, produced and distributed a calendar with an image that resembled the cover page of a copyrighted comic book written by the Plaintiff. The Plaintiff then filed a copyright infringement lawsuit at the Court of First Instance in Brussels against the Defendant. The court ordered the Defendant to cease all use of the image. The Defendant then appealed the decision, arguing that the image did not infringe the Plaintiff's copyright because it was a political cartoon within the use of the parody exception under Article 22(1)(6) of the Belgian Copyright Act. The plaintiff argued that the image was not a parody because it lacked the important elements of a parody work, such as originality, display of humorous nature, the aim of mocking the original work. The

¹ <https://kumparan.com/berita-hari-ini/parodi-indonesia-royal-viral-how-aturan-cepatan-lagu-kebangsaan-lurqinOmLF4/full>

Brussels Court of Appeal postponed the hearing and referred the case to the European Court of Justice to discuss the concept of parody and its essential elements under European Union law.

In determining whether a parody work constitutes an exception to copyright, the European Court of Justice demands a fair balance between the rights and interests of the copyright owner and the freedom of expression of the person relying on the parody exception. All CC licenses have terms regarding exceptions and limitations, such as the following: "Nothing in this License is intended to reduce, limit, or inhibit any free exercise of copyright or rights arising from the limitations or exceptions provided in connection with copyright protection in accordance with copyright law or other applicable laws." National laws in many countries allow, at least, some uses of copyrighted material without the author's permission, and may include uses such as quoting, current affairs reporting, or parodying. These exceptions vary and depend on applicable law.

4. CONCLUSION

In accordance with this discussion, it can be concluded that even though creative works resulting from transformation (such as parody songs) are protected, their creation may not reduce the copyright for original works (original songs) which include the economic rights and moral rights of the creator. Thus, a parodist is obliged to seek prior approval from the original song creator. Apart from that, other personal intellectual creations as long as they meet the elements of originality and creativity must legally be considered creations. Regarding the uploading of parody songs that are contrary to the UUHC to YouTube, the creators and performers of original songs have the right to sue or report the actions of parodikers. However, the creator and performer of the original song must be absolutely sure in advance whether the parody song uploaded to YouTube is not in accordance with the UUHC (such as if it was done without permission or the purpose of the parody song is not in accordance with fair use), to avoid lawsuits or counterclaims. by parodikers.

As a comparison, in the United States there are known creations called derivative works which result from various acts of transformation. The United States not only recognizes changes in form as the meaning of transformation but also various other actions which are considered to produce derivative works. In order to qualify as a transfer, the work must go through a process of changing (transforming), adapting, or modifying an existing work. These derivative works are then limited in the United States by fair use restrictions, namely in the process of making them using methods that do not violate the law. Where Canada provides exceptions or other limitations to copyright. These exceptions or limitations allow users to use copyrighted material where appropriate. The application of exceptions and limitations to copyright may vary by country. Generally, in countries that apply exceptions and limitations, use of a copyrighted work must not unreasonably harm the rights owner.

5. SUGGESTION

To avoid plagiarism which results in the imposition of civil, criminal and administrative sanctions, according to the author, the relevant parties must understand the restrictions on Copyright (fair use) stated in the UUHC. However, UUHC needs to set parameters or benchmarks regarding the meaning of "reasonable interest." This is especially important for judges in deciding cases of whether there is "fair use", so that it substantially guarantees legal certainty, and realizes the principle of justice (in the sense of balance), between the creator or copyright holder who has exclusive rights and other parties (lecturer or researcher) who uses or quotes the creation for the development of science.

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