

COPYRIGHT PROTECTION FOR INTERNET MEMES: THE DOCTRINE OF FAIR USE IN INDONESIA

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ABSTRAK

Internet Memes merupakan salah satu media yang populer digunakan masyarakat dalam era bermedia sosial untuk berbagai macam tujuan, mulai dari pengiklanan, penginformasian, edukasi, hingga politik. Dalam penggunaannya, internet memes sering menggunakan ciptaan lain yang dilindungi hak cipta. Penelitian ini bertujuan untuk mengetahui terkait adanya pelanggaran hak cipta terhadap internet memes. Hasil dari penelitian ini menunjukkan bahwa di Indonesia, terdapat kesulitan terkait dengan penggolongan internet memes sebagai hak cipta berdasarkan Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta. Namun, internet memes juga tidak dapat digolongkan sebagai pelanggaran hak cipta karena diakuinya doktrin fair use yang termaktub dalam Pasal 26,43, dan 46 Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta. Penelitian ini juga meninjau doktrin fair use yang berlaku di Amerika Serikat dan Singapura serta membandingkannya dengan doktrin fair use yang berlaku di Indonesia. Dari hasil perbandingan tersebut, Indonesia belum mengatur mengenai faktor-faktor untuk menentukan apakah suatu ciptaan dapat dianggap sebagai fair use atau tidak sebagaimana diatur oleh diberlakukannya di Amerika Serikat dan Singapura.

Keywords: Fair Use, Hak Cipta, Hak Kekayaan Intelektual, Internet Memes, Media Sosial.

INTRODUCTION

New technologies are affecting people's communication habits. (McLuhan, 2012) The popularity of the internet and social media has led to a tendency to communicate through visual forms. For instance, people now view video content on Youtube, communicate using emojis and gifs, and scroll through "for your page" on social media platforms like Facebook and Instagram. As a result, social media is now presenting more images in the form of photos, videos, gifs, emojis, and stickers, than text (Obravodic, Milosavljevic, & Vujovic, 2017).

The use of social media is becoming more intense year by year, with 59.32% of people worldwide using social media as of October 2022 (Annur, 2022). This rapid growth of social media has given rise to new forms of media, such as Internet memes (Cannizzaro, 2016). The term "meme" was introduced by Richard Dawkins and referred to various forms of cultural information, such as ideas, habits, and figures, which can spread, replicate, and evolve within human culture (Dawkins, 2006). Internet memes are a relatively new occurrence and pertain to the most widely circulated and humorous ideas shared on the internet, commonly taking the form of videos or photos. Internet memes often consist of a combination of visual elements, which tend to be the

dominant aspect, and accompanying text that provides context or clarifies the meme's underlying message. The images used in Internet memes are often borrowed from various forms of popular culture, such as TV shows, movies, and news media, and are frequently parodied or reworked in some way. Meanwhile, the text used in Internet memes determines the meaning of the Internet memes themselves (Milosavljević, 2020).

Internet memes can be categorized based on their intended purposes, which can reveal the intention of their creators. While humor is a crucial aspect and function of Internet memes, it can sometimes be the only feature of a meme, while the message being conveyed may have a different meaning altogether. Due to their amusing and simplistic form, Internet memes can serve as a visual communication medium for various purposes, including entertaining, informing, advertising, and political purposes (Milosavljević, 2020).

- a) Memes for entertaining purposes. This type of meme lacks deliberate or covert messaging, unlike political advertising memes that aim to convey a specific message. Rather, the nature of entertainment memes stems from their inherent function of satirically and humorously representing cultural elements of society. Therefore, any

memes that parody and humorously depict cultural phenomena such as TV shows, movies, art, social events, and other cultural and social phenomena without secondary intentions can be categorized as entertainment memes (Huntington, 2017).

- b) Memes for informing purposes. Compared to humorous memes, informative memes generally contain less humor and prioritize conveying information clearly and effectively. These types of memes are designed to be more straightforward and to the point to educate the audience on a specific topic or issue. As a result, informative memes tend to be more focused on their messaging and less concerned with humor or entertainment value (Milosavljević, 2020).
- c) Memes for advertising purposes. One of the main reasons companies have increasingly turned to memes as a form of advertising is due to their cost-effectiveness. Memes share many similarities with traditional advertising posters in terms of their content and messaging, but their impact is often greater because of the interactive nature of the internet. Unlike a static poster, memes can be responded to

and shared, allowing for a more dynamic dialogue between the company and the consumer. This type of advertising meme often incorporates humor and can be used to highlight the quality of a product or company, as well as to criticize competitors. These types of memes are sometimes well-hidden but have become more prevalent in recent years as companies seek to harness the power of memes as a marketing tool (Bury, 2016).

- d) Memes for political purposes. The use of memes in political visual communication can be interpreted in two ways. Firstly, it can be used to promote political figures and ideas, similar to traditional advertising. Secondly, there are numerous memes created by internet users that humorously or critically express their views on political phenomena, ideas, and figures (Milosavljević, 2020).

Because Internet memes often appear in videos or photos, Internet memes are related to copyright law. Indonesian Law Number 28 of 2014 on Copyrights (Indonesian Copyrights Law) defines works as *“any scientific, artistic, and literary works resulted from inspiration, ability, thought, imagination, dexterity, skill or expertise expressed in a tangible*

form". Moreover, based on Article 40 Copyrights Law, several protected works are photographic, portrait, and cinematographic works. The difference between photographic and portrait works is in the object. Based on Article 1 number 10 Copyrights Law, a portrait is a photographic work with the object of a human being, while the photographic work itself, which in the explanation of Article 40 letter k Copyrights Law, means all photographs produced using a camera. These works are often used as Internet memes.

PROBLEM FORMULATION

Internet memes are forms of expression that utilize previously created and sometimes copyrighted content. This makes them vulnerable to claims of copyright infringement, especially when copyright owners are taking an assertive approach to safeguarding their intellectual property (Patel, 2013). However, a *fair use* doctrine in several articles in the Indonesian copyright law is an exception to the protection of creations. The questions arise regarding this situation:

1. Are internet meme works protected by Indonesian copyright law or are internet memes a form of infringement of Indonesian copyright law?
2. How is the fair use doctrine applied to internet memes in other United States and Singapore?

Therefore, this paper will answer both questions in the Analysis section.

RESEARCH METHODOLOGY

This research is conducted in the form of normative juridical, which examines the principles of law, which is the doctrine of fair use in copyright law and written legal sources, which is Indonesian Law Number 28 of 2014 concerning copyright, and compares it with the US Copyright Act 1976 and Singapore Copyright Act 2021.

This research is descriptive by describing the implementation of copyright law in Indonesia, the United States, and Singapore against internet memes. This research is also prescriptive in that it will describe the problem of internet memes in copyright, describe how the application of regulation of the phenomenon, and provide solutions to the shortcomings of regulation in Indonesia.

The legal material used is secondary data through the search for primary legal sources (Indonesian Law Number 28 of 2014, US Copyright Act 1976, and Singapore Copyright Act 2021) and secondary (books and scientific articles related to the topic). The legal materials were collected using the literature study method.

DISCUSSION AND RESULTS

A. Internet Memes and Indonesian Copyrights Law

The protection of copyright does not extend to mere ideas or concepts but rather to expressing those ideas or concepts in a specific form. In order to receive copyright protection, a work must possess a unique form and exhibit originality as a product of creative or expert work. This authenticity is necessary for the creation to be perceptible, such as through reading, hearing, or viewing. As stated in Article 1 Number 1 Indonesian Copyrights Law, copyright is an exclusive right that belongs to the creator, which is automatically granted upon the completion of a tangible work.

In copyright law, several requirements must be met for a work to be eligible for protection. These requirements are fixation, origin, and form (Direktorat Jenderal Kekayaan Intelektual, 2020).

- 1) Fixation. To be protected, a piece of work needs to be 'fixed' in a concrete format. This implies that the work should be available in a digital or physical structure that can be directly perceived or with the assistance of a machine.
- 2) Original refers to the requirement that the work must be the author's or creator's original creation. In other words, the work must be the product of the author's

creativity and must not be copied from another work.

- 3) Form requires that the work be expressed in a specific form or medium. For example, a musical composition can be protected under copyright law, but a mere idea for a song cannot be protected. The form of the work must be sufficiently tangible and fixed in order to be protected.

When a work has met these requirements, the creators are granted two types of rights: economic rights and moral rights. Economic rights grant creators the exclusive right to use and profit from their work, while moral rights provide them with the right to be acknowledged as the author of their work and to uphold the integrity of their work. Under Part Three of the Indonesian Copyrights Law, economic rights encompass a range of activities, such as the right to reproduce, distribute, perform, and display the work. Economic rights enabling creators to maintain control over the use of their work and receive remuneration for its use. However, economic rights have a limited duration, typically lasting for the life of the creator plus a certain number of years after their death. Meanwhile, Under Part Two of the Indonesian Copyrights Law, moral rights are perpetual and cannot be transferred to others. These rights incorporate being acknowledged as the creator of the work, the ability to prevent any

changes or distortions to the work that could potentially damage the creator's reputation, and the freedom to retract the work from public access in specific situations (Direktorat Jenderal Kekayaan Intelektual, 2020).

Article 9 of Indonesian Copyrights Law outlines the economic rights that an author or copyright holder has with respect to their work. These rights include publishing, reproducing, translating, adapting, distributing, performing, communicating, and renting their work. However, anyone who wishes to exercise these economic rights must first obtain permission from the author or copyright holder. The law also explicitly states that reproduction and commercial use of the work without permission from the author or copyright holder is strictly prohibited.

Based on Article 1 number 1 Indonesian Copyrights Law, it can be analyzed that there are difficulties in determining whether Internet memes are protected works. Although there has been a fixation on the form of images or videos of Internet memes and there has been a form that is not just an idea, it is unclear what level of originality of Internet memes. Given that internet memes generally use pre-existing works that are sometimes protected by copyright and the elements from both written and visual works and their frequent use of repetition. Furthermore, the textual components of memes are often brief, which further complicates

the task of determining their classification as protected works under Indonesian Copyrights Law. In some cases, the original expression may only be a small part of the meme, while in others, it may be more significant (Mielczarek & Hopskin, 2021). Therefore, categorizing memes within the realm of copyright law is a challenging task (Koponen, 2021).

Based on Article 40 paragraph (1) of the Indonesian Copyrights Law, which regulates protected works, there are two types of protected works. These are original works of authorship as stated in Article 40 paragraph (1) and derivative works of authorship as stated in Article 40 paragraph (1) letters n, o, p, q, and r. The Indonesian Copyrights Law does not explicitly regulate derivative copyrighted works. However, based on Article 101 of the US Copyright Act, derivative works are works based on pre-existing works, such as translations, musical arrangements, dramatizations, fiction, film versions, sound recordings, art reproductions, or other forms are then rearranged, changed, and adapted. Examples include movies adapted from novels, converting black and white movies to color, and revised software versions. However, it should be noted that under Article 40 paragraph (2) of the Indonesian Copyrights Law, derivative works are protected as creations that do not diminish the original work's copyright.

Depending on their format, internet memes can be classified as either a "derivative work" under Article 40 paragraph (1) letters p as a "compilation of works". A "derivative work" is a creation based on one or more pre-existing works. In contrast, a "compilation of works" is formed by collecting and assembling pre-existing materials to produce a new, original work of authorship. Most internet memes can be considered "derivative works" as they use copyrighted materials to add commentary or humor and create a new work. Memes that incorporate multiple works, such as those that feature images from two different films, may be classified as a "compilation of works." (Patel, 2013)

Regardless of whether they are categorized as "derivative works" or "compilation of works" internet memes are creative works that use other creative materials. While some memes use original or public domain content, many incorporate copyrighted materials, such as photographs, television or movie screenshots, or illustrations. It is essential to determine whether memes using copyrighted materials infringe on the rights of the original works (Akhdan, 2022). Ronak Patel (Patel, 2013) answered by illustrating that readers may photocopy this article, and the author may sue the person who photocopied this article. However, it does not mean the author can win the lawsuit to protect the author's rights because the readers

can use the doctrine of fair use for defense.

Fair use is widely used, particularly in cases such as parodies of copyrighted works, where commentary and analysis are provided. However, the applicability of fair use in the case of Internet memes is an unexplored area of copyright law. Internet memes refers to an image that has been altered by adding text and evolves through multiple iterations by different authors, primarily for humorous or satirical purposes. Anonymous individuals often create them on sites like Reddit without clearly indicating the original creator, suggesting no profit is sought (Patel, 2013).

The doctrine of fair use is set out in the Indonesian Copyrights Law as in the following table:

- 1) Article 26 Indonesian Copyrights Law

"The provisions as referred to in Article 23 (Economic Rights of Performers), Article 24 (Economic Rights of Producers of Phonogram) and Article 25 (Economic Rights of Broadcasting Organizations) apply to

- a. *use of short excerpts from Works and/or Related Rights products for reporting actual events intended solely for the purpose of providing current information;*

- b. *Reproduction of Works and/or Related Rights products solely for the purpose of scientific research;*
- c. *Reproduction of Works and/or Related Rights products solely for the purpose of teaching activities, except performances and Phonograms that have been published as teaching materials; and*
- d. *use for the purpose of education and scientific development that allows Works and/or Related Rights products to be used without permission from Performers, Producer of Phonogram, or Broadcasting Organizations.”*

2) Article 43 Indonesian Copyrights Law

“Acts that are not considered as Copyright infringements include:

- a. *Publication, Distribution, Communication, and/or Reproduction of State emblems and national anthem in accordance with their original nature;*
- b. *Any Publication, Distribution, Communication, and/or*

Reproduction executed by or on behalf of the government, unless stated to be protected by laws and regulations, a statement to such Works, or when Publication, Distribution, Communication, and/or Reproduction to such Works are made;

- c. *taking of actual news, either in whole or in part from a news agency, Broadcasting Organization, and newspaper or other similar sources provided that the source is fully cited; or*
- d. *the production and distribution of the Copyrighted content through information technology and communication media that are not commercial and/or lucrative for the Author or related parties, or the Author expresses no objection to the manufacture and dissemination in question. Reproduction, Publication, and/or Distribution of Portraits of the President, Vice President, former Presidents, former Vice Presidents, National*

Heroes, heads of State institutions, heads of ministries/nonministerial government agencies, and/or the heads of regions by taking into account the dignity and appropriateness in accordance with the provisions of laws and regulations.”

3) Article 46 Indonesian Copyrights Law

“(1) Reproduction for personal use of Works that has been published may only be made for 1 (one) copy and may be carried out without permission from the Author or the Copyright Holder

(2) The Reproduction for personal purposes as referred to in section (1) does not include:

- a. *architectural works in the form of buildings or other constructions;*
- b. *an entire or a substantial part of a book or musical notation;*
- c. *an entire or a substantial part of a database in digital form;*
- d. *Computer Programs, except as referred to in Article 45 section (1); and*

e. *Reproduction for personal purposes of which exercise contravenes the reasonable interests of the Author or the Copyright Holder.”*

In the above provisions, Kristian Takasdo (Takasdo, 2013) concludes that these four things are the core of fair use in the Indonesian Copyrights Law. These four things include

- 1) acknowledgment or crediting of the source;
- 2) commercial or non-commercial purpose;
- 3) the part has been qualitatively taken;
- 4) does not prejudice the reasonable interests of the creator or copyright holder.

Based on the above provisions, internet memes in Indonesia can be categorized as fair use. First, it fulfills the provisions of Article 26 letter a as the provision of information in the case of internet memes intended to provide information. Second, it satisfies the provisions of Article 43 letter d as the dissemination of copyright content without commercial intent because basically internet memes are made only for entertainment and without commercial purposes except for memes that aim to advertise. In fact, certain internet memes, for example, internet memes derived from the footage of a movie will make the

creator of the movie profitable because it attracts more people to watch the movie. Thirdly, Article 46 paragraph (1) is duplication for personal use because the purpose is not commercial. If internet memes, fulfill one of the three articles, it can be said that fair use applies as protection. Unfortunately, in Indonesia, there have been no cases related to fair use to examine in depth.

B. Fair Use Doctrine in United States and Singapore

In this section, the analysis will be made on the doctrine of fair use in copyright law in the United States and Singapore and its application to the phenomenon of internet memes in the digital world.

1. United States

The United States is one country that applies the fair use doctrine. The landmark case in the United States regarding fair use is *Folsom v. Marsh* 1841 (*Folsom v. Marsh*, 1841), where Judge Joseph Story made the following statement regarding fair use:

"we must often, in deciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work."

This statement suggests that when evaluating whether a particular use of copyrighted material constitutes fair use, the court should consider factors such as *"the purpose and character of the use, the amount and substantiality of the material used, and the effect of the use on the potential market for the original work"*. This decision became the basis for the formation of the norms governing the doctrine of fair use in the Copyright Act 1976 (Takasdo, 2013). Such provision can be found in Article 107 of the Copyrights Act 1976, which reads:

"Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- 1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;*

2. *the nature of the copyrighted work;*
3. *the amount and substantiality of the 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.*

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors."

Regarding fair use doctrine, there are four factors analysis that necessary when the fair use defense is utilized, which is stipulated in *Folsom v. Marsh* 1841 and Article 107 Copyright Acts 1976 (Patel, 2013).

1) Factor One: The Purpose and Character of Use

The concept of "purpose and character of use" pertains to the manner in which the copied section is utilized. This could require modifying the content by introducing novel expressions or significance, such as in the case of a parody. (*Campbell v. Acuff-Rose Music, Inc.*, 1994). Additionally, the process of copying may include utilizing a portion of the original work to offer a fresh interpretation or understanding, as exemplified

in a review. The character of use may also refer to the actions of the accused infringer, as fair use assumes that they acted in good faith and with fair dealing (Koponen, 2021).

2) Factor Two: The Nature of the Copyrighted Work

This factor plays a significant role in determining the extent to which society is willing to permit the uses of the work that would otherwise be considered infringement. For example, if we examine a copyrighted work that provides information on current events, the nature of the work, which involves informing the public about important societal developments, would provide a compelling rationale for considering fair use (Patel, 2013).

3) Factor Three: The Amount and Substantiality of the Portion Taken

This criterion is used to evaluate the extent to which the derivative work utilizes the copyrighted material and how substantial that use is compared to the overall derivative work. Generally, if only a small portion of the material is copied, it's more probable that the derivative work can be categorized as fair use. Nonetheless, that's

not always the case since even minor copying could be considered infringement if the copied segment is recognized as a crucial or "core" element of the initial work. As a result, the assessment of the copying's importance is determined by both quantitative and qualitative factors. The quantity of the copied material that meets the criteria for fair use is also tied to the intention and nature of the usage. Furthermore, the amount of material that is copied must be rational and appropriate for the purpose for which the copying was done. (Koponen, 2021).

4) Factor Four: The Effect of the Use on the Potential Market

The last factor examines the impact of the infringing work on the market for the original work. Derivative works that decrease the worth of the original piece are unlikely to be successful in claiming fair use as a defense. In contrast, if the infringing work has no unfavorable influence on the marketability of the copyrighted work or even elevates it, it is more likely to be classified as fair use. (Patel, 2013).

There is one case in the United States which is the basis that the doctrine of fair use can protect

memes. The case is *Campbell v. Acuff-Rose Music, Inc.*, a 1994 United States Supreme Court case involving a dispute over using a copyrighted song in a parody. In the case, 2 Live Crew, a rap group, created a parody version of Roy Orbison's song "Oh, Pretty Woman" without obtaining permission from the copyright owner, Acuff-Rose Music. Acuff-Rose filed a lawsuit for copyright infringement, claiming that the parody did not constitute fair use. The Supreme Court ultimately ruled in favor of 2 Live Crew, stating that using the original song in the parody was transformative and thus included fair use. The Court held that "a parody may fairly use an original work to 'conjure up' the original," and that the use of the original work must be "reasonably necessary" to create the parody (*Campbell v. Acuff-Rose Music, Inc.*, 1994). This ruling has been crucial in establishing the principle that parodies are generally considered fair use under copyright law, which has implications for creating memes. Memes often involve using copyrighted material in a transformative way, such as by parodying the original work (Marciszewski, 202).

Other than that, The "parody" branch of the fair use doctrine is seen as a way to promote the creativity that is protected by copyright law, as noted in *Tin Pan Apples, Inc. v. Miller Brewing Co, Inc.* Additionally, courts have recognized the importance of the free flow of criticism in society

and have exempted parodies from the restrictions granted to authors of original works through copyrights. This is because the free flow of criticism has been found to improve the store of knowledge, which is why derivative works that are both entertaining and critical and which borrow from original copyrighted works are being provided with more protection (Hampy, 2012).

Determining whether a work will be considered a parody and therefore qualify for fair use protection can be a complex process. In the past, courts have focused on two main factors when evaluating a given parody: first, the degree to which it borrows from the original work; and second, its impact on the market value of the original work. Highly commercial parodies, substantially borrow from copyrighted works, or reduce the market value of copyrighted works are typically not considered entitled to fair use protection (Hampy, 2012).

2. Singapore

At the end of 2021, Singapore passed the Singapore Copyright Act 2021 as an amendment to the Singapore Copyright Act 1987. The legislation has implemented several modifications in response to technological advancements, aiming to equip copyright owners with additional means to safeguard and profit from their intellectual property. Moreover, it seeks to specify and broaden certain

exemptions for educational and fair use purposes (Reed Smith, 2021). One of these changes is the regulation on fair use which is regulated in Article 190 to Article 194 of the Singapore Copyright Act 2021, as shown in the following:

1) Article 190 Singapore Copyright Act 2021

“Fair use is permitted use

(1) *It is a permitted use of a work to make a fair use of the work.*

(2) *It is a permitted use of a protected performance to make a fair use of*

—
(a) *the performance;*
or

(b) *recording of the performance.*
”

2) Article 191 Singapore Copyright Act 2021

“Relevant matters in deciding whether use is fair

Subject to sections 192, 193 and 194, all relevant matters must be considered in deciding whether a work or a protected performance (including a recording of the performance) is fairly used, including —

- (a) *the purpose and character of the use, including whether the use is of a commercial nature or is for non-profit educational purposes;*
- (b) *the nature of the work or performance ;*
- (c) *the amount and substantiality of the portion used in relation to the whole work or performance ; and*
- (d) *the effect of the use upon the potential market for, or value of, the work or performance.*
”

3) Article 192 Singapore Copyright Act 2021

“Additional requirement for sufficient acknowledgment where

use is for certain purposes

- (1) *Where a work or a protected performance (including a recording of the performance) is used for the purpose of reporting news, the use is not fair unless —*
 - (a) *the work or performance is sufficiently acknowledged;* or
 - (b) *sufficient acknowledgment is impossible for reasons of practicality or otherwise.*
- (2) *Where a work or protected performance (or a recording of the performance) is used for the purpose of criticism or review (whether of that work or performance or another work or performance), the use is not fair*

unless the work or performance is sufficiently acknowledged.”

- 4) Article 193 Singapore Copyright Act 2021

“Deemed fair use where work or recording included in fairly-used work

- (1) *This section applies where —*
- (a) *any of the following works is used for the purpose of criticism or review:*
- i. sound recording;*
 - ii. a film;*
 - iii. a broadcast;*
 - iv. a cable programme; and*
- (b) the use is fair.*
- (2) *A work or a recording of a performance that is included in the work mentioned in subsection (1)(a) is deemed to be fairly used (and*

section 191 does not apply).

- (3) *To avoid doubt, this section does not limit what would otherwise be a fair use”*

- 5) Article 194 Singapore Copyright Act 2021

“Deemed fair use where reasonable portion of article copied for research or study

- (1) *Making a copy of a literary, dramatic or musical work for the purpose of research or study is deemed to be a fair use (and section 191 does not apply) if —*
- (a) the work is an article in a periodical publication; or*
 - (b) no more than a reasonable portion of the work is copied.*
- (2) *Subsection (1) does not apply to making a copy of an article in a periodical publication if —*

(a) another article in that publication is also copied; and
(b) the copied articles deal with different subject matters.

(3) To avoid doubt, this section does not limit what would otherwise be a fair use."

Under Section 190 of the Singapore Copyright Act 2021, it states that using a work in a fair use way is an acceptable practice. This provision protects works in the digital world, such as internet memes, to be protected and treated as not infringing copyright. Furthermore, in determining whether a work is used in fair use or not, Article 191 of the Singapore Act 2021 regulates similar provisions as those that apply to the United States. The factors for such determination are "*the purpose and character of the use, including whether the use is of a commercial nature or is for non-profit educational purposes; the nature of the work or performance; the amount and substantiality of the portion used in relation to the whole work or performance; and the effect of the use*

upon the potential market for, or value of, the work or performance."

In addition, Articles 192 Singapore Copyright Act 2021 and 193 Singapore Copyright Act 2021 set out provisions that can protect internet memes. Article 192 Singapore Copyright Act 2021 regulates fair use of performance rights in terms of review or criticism as long as the work of performance is recognized. This article can protect internet memes that use the work of performance as material, whereas internet memes do not eliminate the recognition of the work of performance. Furthermore, Article 193 Singapore Copyright Act 2021 regulates that using a sound recording, a movie, a broadcast, or a cable program is considered fair use in terms of criticism or review. This article can also protect internet memes.

According to Kenny Chee (Chee, 2021), changes to Singapore's copyright law could make it easier for individuals to defend their use of copyrighted material in the form of memes. The current "fair-dealing" term has confused, as it is unclear what specific uses are allowed under this provision. The change to "fair use" would align Singapore's copyright laws more closely with those of the United States, which do not rely on predetermined uses.

However, this amendment does not imply that individuals can distribute or repost copyrighted content they did not produce on

social media without any restrictions. Reposting such content may be deemed fair use for members of the public, but for celebrities, influencers, and businesses with a commercial aspect to their online accounts, reposting may infringe copyright. The determination of fair use will depend

CONCLUSION

Internet memes are a form of media for people in the digital era to pour out their expressions which are basically humor or criticism. Internet memes become problematic because they use pre-existing work materials already protected by copyright. In Indonesia, internet memes are difficult to classify as creations because determining the level of originality is difficult. However, it is also not classified as copyright infringement because there is a fair use doctrine enshrined in Articles 26, 43, and 46 of the Indonesian Copyrights Law. Keep in mind that this doctrine does not apply to internet memes for commercial purposes.

The same thing with United States and Singapore also consider internet memes not as a form of copyright infringement because of the doctrine of fair use. In the United States and Singapore, both regulate the factors determining whether a work can apply the doctrine of fair use, namely "the purpose and character of the use, including whether the use is of a commercial

on various factors, such as whether the original work's meaning is transformed, such as through parody or criticism. The proposed change to the Copyright Act would also require the original author or performance to be identified (Chee, 2021).

nature or is for non-profit educational purposes; the nature of the work or performance; the amount and substantiality of the portion used concerning the whole work or performance; and the effect of the use on the potential market for, or value of, the work or performance." In the case of internet memes, based on the opinions of academics as well as court decisions there that internet memes do not constitute copyright infringement.

The fair use regulations in the United States and Singapore regarding the factors for determining fair use are well established. Indonesia should adopt the fair use provisions as in the United States and Singapore. It is also necessary to explicitly recognize the fair use doctrine in the Indonesian Copyright Law as in the Singapore Act 2021. It is intended that Indonesia is not left behind when facing a problem related to copyright in the digital era as it is today.

REFERENCES

Books

Dawkins, R. (2006). *The Selfish Gene: 30th Anniversary Edition, 3rd ed.* Oxford: Oxford University Press.

Direktorat Jenderal Kekayaan Intelektual. (2020). *Modul Kekayaan Intelektual.* Jakarta: Kementerian Hukum dan Hak Asasi Manusia Direktorat Jenderal Kekayaan Intelektual.

Huntington, H. (2017). *The Affect and Effect of Internet Memes: Ascending and Influence of Online User-generated Political Discourse as Media.* Colorado: Colorado State University.

McLuhan, M. (2012). *Elektronski Mediji i Kraj Kulture Pismenosti.* Beograd: Karpos.

Journal Articles

Bury, B. (2016). Creative Use of Internet Memes in Advertising. *World Scientific News* 57, 33-41.

Cannizzaro, S. (2016). Internet memes as internet signs: A semiotic view of digital culture. *Sign Systems Studies*, 562-586.

Thesis

Akhdan, F. K. (2022). Tinjauan Yuridis Terhadap Karya Gambar Fan Art dengan Pendekatan Doktrin Fair Use. *Skripsi Sarjana Fakultas Hukum Universitas Indonesia*, 1-180.

Koponen, M. (2021). Copyright Exceptions and Internet Memes: A Comparative Study of Finland and The United States. *Master's thesis, University of Eastern Finland's Law School*, 1-111.

Takasdo, K. (2013). Fair Use dalam Sistem Perlindungan Hak Cipta: Suatu Studi Perbandingan antara Undang-Undang Hak Cipta Indonesia dengan Copyright Law Amerika Serikat. *Skripsi Sarjana Fakultas Hukum Universitas Indonesia*, 1-104.

Law and Regulations

Marciszewski, M. (202). The Problem of Modern Monetization of Memes: How Copyright. *Pace Intellectual Property, Sports, and Entertainment Law Forum* 61, 1-48.

Mielczarek, N., & Hopskin, W. W. (2021). Copyright, Transformativeness, and Protection for Internet Memes. *Journalism & Mass Communication Quarterly* 98(1), 37-58.

Milosavljević, I. (2020). The Phenomenon of The Internet Memes as A Manifestation of Communication of Visual Society - Research of The Most Popular and The Most Common Types. *Media Studies and Applied Ethics*, 9-27.

Obravodic, N., Milosavljevic, I., & Vujovic, M. (2017). Instagram

as a New Platform for Media Content - Students' Stance. *International Scientific Conference eLearning and Software for Education* (p. 181). National Defence University.

Patel, R. (2013). First World Problems: A Fair Use Analysis of Internet Memes. *UCLA Entertainment Law Review*, 20(2), 235-256.

Case Law

Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (Supreme Court of the United States 1994).

Folsom v. Marsh, 9 F. Cas. 342 (United States District Court for the District of Massachusetts 1841).

Website

Annur, C. M. (2022, December 08). *Ada Berapa Pengguna Internet dan Media Sosial di Seluruh Dunia?* Retrieved from Databoks:
<https://databoks.katadata.co.id/infografik/2022/12/08/ada-berapa-pengguna-internet-dan-media-sosial-di-seluruh-dunia#:~:text=aktivitas%20online%20mereka.-,Seiring%20dengan%20pertumbuhan%20pengguna%20internete%2C%20pengguna%20media%20sosial%20di%20seluruh,0>

Chee, K. (2021, July 13). *Fair Use Changes to Law in Singapore Could Make It Easier to Defend Memes.* Retrieved from The Straits Times:
<https://www.straitstimes.com/tech/tech-news/fair-use-changes-to-law-could-make-it-easier-to-defend-memes>

Hampy, T. (2012, December 13). *The Fair Use Doctrine: Does A Parody Qualify?* Retrieved from Wideman Malek Attorneys at Law:
<https://www.legalteamusa.net/the-fair-use-doctrine-does-a-parody-qualify/>

Reed Smith. (2021, December 8). *Singapore Adopts New Copyright Laws to Support Innovation.* Retrieved from Reed Smith:
<https://www.reedsmith.com/en/perspectives/2021/12/singapore-adopts-new-copyright-laws-to-support-innovation>