

From Melodies to Legalities: The Clash of Law and Song Parodies in Indonesia

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Abstract

The article examines the complexities of song parodies under Indonesian copyright law, particularly in light of Law No. 28 of 2014, which aims to align domestic regulations with international standards while promoting a creative economy. It highlights the cultural significance of song parodies in Indonesia, where they serve as tools for social commentary and artistic expression. However, the legal framework lacks explicit provisions for parody, creating ambiguity regarding their status as transformative works versus potential copyright infringements. The case study of D'Masiv's song "Dilema," accused of plagiarism against the British band Muse, illustrates these tensions and raises questions about originality and inspiration in artistic creation. The research employs a qualitative methodology to analyze legal frameworks and case studies, revealing that while Indonesian law provides a foundation for copyright protection, it does not adequately address the nuances of parody. This lack of clarity stifles creativity and leaves both creators and rights holders vulnerable. The article argues for the necessity of legal reforms to explicitly recognize parody as a legitimate form of expression, suggesting that Indonesia could benefit from adopting clearer criteria similar to those in jurisdictions like the United States and the European Union. By enhancing legal protections for parodists, Indonesia can foster a more dynamic creative environment while balancing the rights of original creators with the public's interest in cultural discourse.

Keywords: Song Parody; Fair Use; Transformative Works; Cultural Commentary

A. Introduction

Intellectual property has increasingly achieved a place as a cornerstone of legal systems all over the world, due to the recognition of intellectual property as an object that stimulates innovation and the development of culture. The regulation of IPR in Indonesia is a reflection of both a commitment to international norms and the challenges of developing a creative economy in a rapidly developing country. Indonesia is a member of international agreements, which include, the Berne

Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In a domestic context, but significantly, it is critical to engage the enactment of Law No. 28 of 2014 on Copyright in line with the global standards. This law sets forth the rights of creators of works and remedies against infringement.

Nevertheless, copyright laws in Indonesia are applied in practice and culture. IPR awareness, however, remains low, and enforcement is hindered by resource constraints and the ambiguities of the law. However, these kinds of issues are especially significant in the creative space, specifically in the music industry. Today, Indonesian artists' rights are gaining significance, as society especially values originality and creative expression; thus, the tension between respecting creators' rights and developing art has become an important legal and cultural issue.¹ These tensions manifest in one area, that of song parodies.

Song parodies possess a unique and culturally important space in Indonesia, as they don't exist merely to entertain, but also as a means to satirize, critique, and comment on society and creative works. In converting and parodying existing works, artists are at times able to readdress current issues or create insights into how society lives, while gently poking fun at the established order. Indonesia's rich tradition of storytelling and performance arts has always encouraged adaptability and improvisation, this tradition is richly fulfilled in Indonesia. Along with platforms such as YouTube, TikTok, and Instagram, working as digital age parodic works are more potent. This democratization of content creation has opened the door for a flood of parodies, as wannabe artists gain exposure to global audiences. However, there have been legal debates over parodies, largely for copyright infringement. Parody is usually considered a transformative use, with new meaning or commentary, to the original work, yet its legal standing point is uncertain in Indonesia. Whereas, in jurisdictions such as the United States, the fair use doctrine expressly permits parody as an authorized use, with no explicit statutory or judicial prescriptions for the same in

¹ Tobyas Halim, Ravano Harsha, and Gogo Sinurat, "Juridical Analysis : Unraveling Malaysia ' s Modification of the Song ' Halo-Halo Bandung ' Within the Legal Parameters of Law No . 24 of 2014" 2, no. 1 (2024): 300–316.

Indonesia. The ambiguity has left creators and rights holders in the dark, and it is important to look at how Indonesian copyright law deals with, or fails to deal with, the complexities of parody.

This paper examines the justifiability of song parodies under Indonesian copyright laws. Furthermore, questions whether parodic works are lawful adaptations, or whether they constitute infringements of the rights of original creators. It is particularly relevant to discussions regarding the balance struck between protecting intellectual property and universally promoting cultural and artistic innovation. This study is central to the case of D'Masiv's song "*Dilema*", which was accused of plagiarism because of its alleged similarity to work by the British band Muse. From a blight lens through which to observe the intricacies of the law of copyright as it pertains to music. The study attempts through the lens of the legal, the cultural, and the ethical, to draw some light on broader concerns about originality, inspiration, and the boundaries of creative expression more generally. *Dilema* by D'Masiv is emblematic of the difficulties of applying copyright law in a world of globalization. Critics complained that the song sounded like a copy of Muse's music, speculation arose on its intention of copying or subconscious influence. The band denied accusations of plagiarism, however, the case sparks debate over limits to artistic inspiration and its place in proceedings against such claims, reminding us that copyright law's developing balance further between protecting creators' moral and economic rights and the iterative nature of artistic creation has been one underlined by broader tensions. In a world where many things influence artists, it may be difficult to draw the lines between homage, inspiration, and infringement.

B. Research Method

In this chapter, we will outline the research methodology employed in this study, detailing the systematic approach taken to explore the complexities of copyright law, particularly in the context of music plagiarism cases in Indonesia. The research was designed to provide a comprehensive analysis of legal frameworks, case studies, and the implications for artists within the evolving landscape of intellectual property

rights. The research utilized a qualitative approach, focusing on in-depth analysis rather than quantitative measurements. This design was selected to facilitate a nuanced understanding of the legal principles governing copyright and fair use, as well as their application in real-world scenarios. The qualitative method allowed for the exploration of subjective experiences and interpretations from various stakeholders, including legal experts, musicians, and industry professionals.

Data was collected through multiple sources to ensure a well-rounded perspective. A thorough review of existing literature on copyright law, fair use principles, and previous plagiarism cases was conducted. This included academic journals, legal texts, and articles that discuss the evolution of copyright laws in Indonesia. The research also examined notable plagiarism cases, such as the D'Masiv and Muse controversy. Detailed analyses were performed on court rulings and legal arguments presented during these cases to illustrate how Indonesian copyright law is applied. The data analysis process involved several steps. First, thematic analysis was employed to transcribe and analyze qualitative data from interviews, identifying common themes related to perceptions of copyright law and its enforcement.

Furthermore, a comparative analysis was performed between findings from case studies and theoretical frameworks derived from the literature review. This comparison highlighted discrepancies between legal theory and practice. An evaluation of Indonesia's Copyright Law (Law No. 28 of 2014) was also conducted to assess its effectiveness in protecting artists while fostering creativity. While this research provides valuable insights into the intersection of copyright law and music creation in Indonesia, certain limitations must be acknowledged. The focus on select case studies may not capture the full spectrum of issues faced by all artists within the industry. Additionally, the qualitative nature of interviews may introduce bias based on individual perspectives, affecting the generalizability of findings. Since copyright law is continually evolving with technological advancements, findings may require periodic reassessment to remain relevant.

C. Discussion

C.1. Legal Framework

1. Law No. 28 of 2014

It is anchored in Law No. 28 of 2014 on Copyright and the country's dedication to protect creative works and to bring its legal standards in line with international standards. The 2014 law continued to replace Law No. 19 of 2002, meant to address the increasing complexity of intellectual property in a globalized creative economy. It codifies protections for literary, artistic and musical works to maintain a balance between the interests of creators, rights holders, and the general public. While the law has an overall comprehensive approach to transformative works, including adaptations and parodies, often great amounts of grey areas hover. These ambiguities within the song parodies community are especially pertinent, as they both straddle the line between derivative creations and independent artistic expressions. The law provides a certain foundation in terms of copyright infringement, however with no specific provisions on parodies; the courts have to interpret. To analyze its application to song parodies then, it is important to understand the definitions as provided in Law No. 28 of 2014.

Article 1(1) of Law No. 28 of 2014 on copyright (*hak cipta*) refers to the right of creators or copyright holders in respect of their work, to control the publication, reproduction, and distribution of such work. Economic rights (rights to the economic exploitation of an author's work) and moral rights (moral rights protecting the author's reputation and creative integrity). Article 40(2) addresses derivative works (*ciptaan turunan*) which are adaptations, arrangements and other transformations of original works, as long as the original author has given consent. By nature, parodies often recontextualize or modify existing works, which could be considered a derivative work. Yet whether they're legal and, rather, whether they are deemed to be unlawful, depends on whether they reach the criteria for fair use under Article 43, which permits certain uses for educational, research, or critical purposes. These provisions provide a foundational basis within copyright disputes, however, parodies

remain unaddressed, furthermore purposing judicial interpretation, where, song parodies are, in some instances, legal, while some are not. Economic and moral rights are divided by Law No. 28 of 2014. Economic rights are delineated in Article 8 entitling creators to make a profit from their work, in reproductions, in distributions, and public performances.² The economic rights to a song include unauthorized use of a song for parody, especially highlighted within commercial contexts.

Article 5 enshrines moral rights, such as protecting the reputation of a creator, as his work is not altered or shown in a way that destroys it. This provision is cause for concern because parodies that mock or critique the original work might be seen as harming the creator's reputation. The area of legal tension between moral rights and parodic expression is an important area of intersection between moral rights and copyright law under Indonesian laws. Exceptions to copyright infringement are furthermore outlined in Article 43. Article 43 provides exceptions to copyright infringement, which are made in contexts of education, research, and non-commercial activities. Moreover, it would be defensible under this provision, that parodies are undertaken as a form of social commentary or critique instead of for profit. For instance, a parody that has the effect of integrating social points of interest through craftsmanship may be managed as transformative and consequently protected.

Yet, the lack of explicit recognition of parody as a separate category within the fair use provision is highly uncertain.³ Without a clear statutory guide, parodists must rely on the subjective judicial interpretations to which much can attach. It is not only that creative expression is stifled from a lack of clarity, but equally important, rights holders cannot be assured of consistent legal protections. For a parody to be considered lawful under Indonesian copyright law, which is permitted under Indonesian law, it must be original and transformative.⁴ Moreover, the parody should extend one's understanding of the original work with new meaning or commentary

² Fajar Sugianto, Astrid Athina Indradewi, and Yohanie Mareta, "Book Pirates and Copycats : Infringement That Speaks For Itself" 2, no. 1 (2024): 259–69.

³ Wiraatmaja Lookman, Andri Kurniawan, and Kuras Purba, "Pertanggungjawaban Hak Cipta Cover Lagu Terhadap Pencipta Pada Konten Digital Youtube," no. 28 (2021): 28–48.

⁴ Ibid.

rather than be mere imitation or replication of the original work.⁵ Second, it is important not to overuse the original, and rely so heavily on it, that it serves only its transforming purpose. Dilemma by D'Masiv is a good example of these challenges. The song was also criticized by critics, claiming that it was plagiaristic of a track by the British band Muse and said that the resemblance was a result of plagiarism or unconscious influence, however. D'Masiv repeatedly denied the allegations, but the case pointed out the legal and cultural issues surrounding which types of speech are or are not protected by trademark or copyright laws in Indonesia.

Dilema, by D'Masiv, is a recent example of the challenges we encounter during arguments. The song was critiqued for striking all the right chords, accusing the song of plagiarism by taking the melody from a track by the British band Muse and playing on an earworm of subconscious influence. Not only did D'Masiv deny the allegations, but the case also raised the legal and cultural tangle of disentangling lawful parody from copyright infringement in Indonesia.⁶ Parodies are neither absolved nor emancipated, they should still comply with the rights of the original creators while, at the same time, maintaining a balance between their interests and the interests of parodists. This could be an issue if widely disseminated unauthorized parodies can undermine the economic value of the original work or harm the creator's reputation. However, parodies participate in cultural discourse by commenting on creative works already established.

Law No. 28 of 2014, which does not contain explicit legal provisions for parodies alone, has left Indonesian courts to balance this on an ad hoc basis. The inconsistency creates both risks for creators and parodists, and the need for clearer statutory guidance. Unlike jurisdictions that are explicitly addressing the issue, Indonesia pursues. As an example, the United States utilizes the parody within their fair use doctrine which allows it as a license of use that reinterprets the original work, which

⁵ "The Effectiveness of Copyright Law No. 28 of 2014 in the Prevention of Copyright Infringement." *The Effectiveness of Copyright Law No. 28 of 2014 in the Prevention of Copyright Infringement*, vol. Volume 1 Number 1 2022, hukum.unw.ac.id/storage/file/research-and-service/admin.+29.pdf.

⁶ "LAW ENFORCEMENT OF COPYRIGHT AS AN EFFORT TO STRENGTHEN THE CREATIVE ECONOMY." *LAW ENFORCEMENT OF COPYRIGHT AS AN EFFORT TO STRENGTHEN THE CREATIVE ECONOMY*, vol. Vol. 2 No. 4, April 2024.

is then applied and made into something new.⁷ Under the European Union's InfoSoc Directive, it also possesses exceptions for parodies with exceptions of not harming the legitimate interests of the rights holder. These international examples show how clear legal recognition of parody may strike the balance between creators and the public's competing interests. Indonesia may increase its legal certainty and a more dynamic creative environment if it adopts similar provisions. Furthermore, an amendment to Law No. 28 of 2014 might clarify what would constitute fair use of song parodies to help resolve any ambiguity as to which category it falls under. Based on best practices across the world, clear criteria should additionally be established to determine the transformative nature and originality of parodic works. Public awareness campaigns could also alert creators and consumers as to where lawful parody boundaries should lie and hopefully reduce unintentional copyright infringements.⁸ Even as Law No. 28 of 2014 offers robust protections for intellectual property, it fails to sufficiently protect transformative works such as song parodies. Thus, Indonesia should clarify the legal status of parodies, moreover create reforms to strike a balance of interests between creators and parodists which will then further support their country's creative economy, while at the same time protecting the original authors' rights.

2. Fair Use Principle

By the Copyright & Fair Use publication by Stanford Libraries, the fair use principle can be defined as any copying of copyrighted material done for a limited and "transformative" purpose, such as to comment upon, criticize, or parody a copyrighted work.⁹ In actuality, fair use is perhaps the most valuable section of copyright law because it allows the application of copyrighted works without obtaining prior consent from their copyright owner depending on given cases. The fair use principle attempts to mediate between the rights of the creator and the public interest in gaining access to and using works of creativity and innovation concerning

⁷ Barizah, Nurul. "INTERNATIONAL COPYRIGHT TREATIES AND ITS IMPLEMENTATION UNDER INDONESIAN COPYRIGHT ACT; IS IT a BETTER ACCESS TO KNOWLEDGE?" *UI Scholars Hub*, scholarhub.ui.ac.id/ijil/vol14/iss1/1.

⁸ Andrew Chow, Low Wei Xu, and Vanessa Evelyn Sukanto, "The Objectivity of Intellectual Property Rights in Indonesia," *Law Journal* 1, no. 1 (2023): 96–111.

⁹ Stim, Rich. "What Is Fair Use?" Stanford Copyright and Fair Use Center, 25 Nov. 2021, fairuse.stanford.edu/overview/fair-use/what-is-fair-use.

intellectual property protection boundaries. In Indonesia's case, the following principle is stipulated under clauses 43 to 51 of Copyright Law No. 28 of 2014; allowing certain works to be used for criticism, comment, news reporting, teaching, and research purposes.¹⁰ Used with permission, a person is allowed to critique or comment on existing works without infringing copyright, journalists may report current events using copyrighted materials, and educators can use excerpts works for academic purposes.¹¹ By promoting creativity and innovation, fair use works toward societal progress concerning creator rights.

Indonesia's first fair use factors would be similar to those from the U.S. doctrine. The first consideration is the purpose and character of the use-in terms of non-commercial uses or more transformative uses, for example, for educational purposes; probably, these would be considered fair use. The second factor considers the nature of the copyrighted work, whereby factual works are more leniently treated than creative works. Third is the amount and substantiality of the portion used; it is better to keep using small portions while using the "heart" of the work might weigh against fair use. Finally, the effect on the market tests would concern whether the new use impairs the market value or potential market for the original work. All these factors are considered from holistic approaches, not evaluation against some numerically defined thresholds, allowing flexibility in their adjudication. Indonesian judges will evaluate fair use claims on these grounds in court procedures. For some criteria, like the purpose of the uses or effect on market value, a degree of subjective interpretation is present, which can add variability to the outcome. Judges may integrate considerations of social values and moral dimensions into their decision-making processes. For example, a judge's approaches to ethical practices may influence a ruling even where the legislation does not spell out such considerations.

Although fair use allows flexible uses of copyrighted material, it does not provide a free rein to use copyrighted material as one might intend. The users must

¹⁰ Felicia Irene Christabelle Suryanto et al., "Taylor's Version: A Case Study in Intellectual Property Rights for Musicians," *Anthology: Inside Intellectual Property Rights* 2, no. 1 (2024): 372–87, <https://ojs.uph.edu/index.php/Anthology>.

¹¹ Ambadaradmin. "Balancing Creativity and Copyright Protection in Indonesia." *Am Badar*, 29 May 2024, ambadar.com/insights/copyright/balancing-creativity-and-copyright-protection-in-indonesia.

manoeuvre within the legal confines and ensure compliance with copyright laws.¹² Besides, this fair use principle plays quite a significant part in Indonesia's cultural discourse in terms of balancing intellectual property protection against interpreted access or enriching cultural expressions and available information since it allows creative re-interpretation of works already in the public domain. As much as it is associated with U.S. copyright legislation, the fact remains that various principles exist within fair use in different jurisdictions, like Indonesia. For example, fair dealing is considered a similar exercise to fair use, but it is different in application and scope. Such a comparison also emphasized the need to understand locally what copyright laws are like in different legal systems.¹³ The principle of fair use in Indonesia acts as a primary mechanism for enhancing creativity, education, and public discourse. The provision allowing limited uses of copyrighted material under certain conditions thereby strikes a balance between encouraging innovation and enforcing intellectual property rights attached to it. This principle will continue to evolve with the changing times and legal developments, making it contextually relevant in a changing cultural and technological environment.

3. Case Study: D'Masiv alleged plagiarism of 'Dilemma' from Muse

In 2008, D'Masiv's song "Dilemma" became a successful hit, but also drew criticism for its striking similarity to Muse's "Soldier's Poem." This sparked debates about whether D'Masiv had plagiarized Muse's work or whether the similarities were simply the result of shared musical tastes. We chose this case as it highlights the complex issue of distinguishing between inspiration and direct copying in copyright law. Indonesia's Copyright Law (Law No. 28 of 2014), provides a framework for dealing with such disputes. Article 1 defines originality as the independent creation of a work with a minimum level of creativity. This ensures that copyright protection is granted to original works and not mere copies. Furthermore, Article 2 grants creators exclusive rights over their works, including the right to reproduce, adapt, and

¹² SH, Renata Christha Auli. "Pasal 44 Ayat (1) UU Hak Cipta Tentang Fair Use." *Klinik Hukumonline*, 25 Sept. 2024, www.hukumonline.com/klinik/a/pasal-44-ayat-1-uu-hak-cipta-tentang-fair-use-lt4f1523ec723aa.

¹³ Nugroho, Prananto Nindyo Adi. *Doktrin Penggunaan Wajar (Fair Dealing-fair Use) Dalam UU No 19 Tahun 2002 Tentang Hak Cipta Di Indonesia Dan Copyright Act 1976 Amerika Serikat :: Sebuah Studi Perbandingan*. 2008, etd.repository.ugm.ac.id/penelitian/detail/39316.

perform them in public.¹⁴ While the law does not explicitly address song parodies, it does cover derivative works under Article 14. This means that any adaptation or transformation of a copyrighted work, such as a parody, typically requires the copyright owner's permission. However, exceptions exist under fair use provisions (Articles 43-51), which allow limited use of copyrighted material without permission for specific purposes such as education, criticism, or non-commercial performances.¹⁵ To accurately analyze the claim against D'Masiv, a detailed analysis of the musical and lyrical aspects is crucial. By comparing the musical compositions, including the melodies, harmonies, rhythms, and arrangements, we can identify substantial similarities that could indicate plagiarism.¹⁶ Additionally, examining the lyrics can reveal whether D'Masiv's theme is very similar to Muse's theme without significant changes or commentary. Another key factor is establishing whether D'Masiv had prior knowledge of "Soldier's Poem," as this could strengthen the case for copyright infringement. Finally, courts often consider whether the new work offers unique artistic expression or critique of the original, which can affect the determination of copyright infringement.¹⁷ Highly transformative works, which significantly alter the original work, are less likely to be found to be infringing. By carefully considering these factors, we can evaluate the degree of similarity between the two songs and determine whether D'Masiv's use of Muse's material constitutes fair use or copyright infringement.

Legal precedents in Indonesia have also offered valuable guidance on how courts approach allegations of plagiarism, despite the lack of a formal ruling in the D'Masiv case itself. Previous rulings reveal several key factors that courts consider when determining whether plagiarism has occurred. First, courts look at substantial

¹⁴ Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta; "Indonesia: Law No. 28 of 2014 on Copyright." Jakarta Client Alert, December 2014, Hadiputranto, Hadinoto & Partners. www.hhp.co.id.

¹⁵ Irhamdesetya, Hani, and Daniel Manongga. "The Effectiveness of Copyright Law No. 28 of 2014 in the Prevention of Copyright Infringement." The 1st Virtual International Conference on Economics, Law and Humanities, vol. 1, no. 1, 2022, pp. 16.

¹⁶ Ambadaradmin. "Complete Guide to Music Copyright Laws in Indonesia | Am Badar." Am Badar, 12 June 2024, ambadar.com/insights/copyright/complete-guide-to-music-copyright-laws-in-indonesia.

¹⁷ Sergio Felix, Akhsa Soendoero, and Arizal Tom Liwafa, "Mengungkap Melodi: Membongkar Hak Royalti Atas Hak Cipta Lagu Di Industri Musik Digital Indonesia," *Anthology: Inside Intellectual Property Rights* 2, no. 1 (2024): 1–27.

similarity, assessing whether the allegedly infringing work bears a significant resemblance to the original work.¹⁸ Another important factor is access, evidence that the defendant had prior access to the original work can play a significant role in a court's decision.¹⁹ Finally, transformative intent is an important consideration, as works that demonstrate transformative use or add new expressions are more likely to benefit from a fair use defense.²⁰ For example, in previous cases, when courts found substantial similarity and evidence of access, they often ruled against the accused artist. In contrast, works that offered new artistic interpretations and demonstrated transformative use were more likely to prevail in court. Looking at these precedents, it becomes clear how these factors could impact the outcome of the D'Masiv case.

Several key factors need to be carefully considered to apply these legal principles to D'Masiv's case. First, a compositional analysis comparing "Dilemma" and "Soldier's Poem" should focus on the melodic structure, specifically the intervals used in the melody and chord progression, to determine whether there is evidence of copying or independent creation. Second, comparing lyrical content is essential to assess the thematic similarities between the two songs. If "Dilemma" expresses the same sentiment as "Soldier's Poem" without offering significant changes or commentary on the social issues addressed in the original song, this could strengthen the case against D'Masiv. Additionally, evidence of access plays a key role; if it can be proven through witness testimony or media reports that D'Masiv was exposed to "Soldier's Poem," that would support an infringement claim. Finally, the transformative use defense is important – if D'Masiv can show that "Dilemma" offers unique social commentary or a different artistic interpretation, such as providing a new perspective on the same theme, they may be able to claim protection under the transformative use principle.²¹

¹⁸ Hakim, Iwan. "Transfer of Copyrights on The Issues of Plagiarism in Review of Civil Law." *Legal*, vol. 1, no. 1, 2018, pp. 81-100.

¹⁹ Putra, Rudi. "Revealing Originality of Song Works: An Analysis to the Copyright Law." *UI Law Review*, vol. 3, no. 2, 2019, pp. 499-515.

²⁰ Simanjuntak, Andi. "Legal Issues of Artificial Intelligence – Generated Works: Challenges on Copyright." *Law Reform Journal*, vol. 5, no. 1, 2023.

²¹ Safanda, Yosma. "Kasus 'Dilema' D'masiv Versus 'Soldier's Poem' Muse." Yosma Safanda, 26 Mar. 2016, blackholes777revelations.wordpress.com/2016/03/26/kasus-dilema-dmasiv-versus-soldiers-poem-muse.

Together, these elements form the basis for a comprehensive evaluation of allegations of plagiarism.

Therefore, the lack of clear guidelines for assessing originality in musical works shows the need for legal reform in Indonesia's copyright system. As music creation becomes increasingly reliant on global influences, it is increasingly difficult to distinguish between original inspiration and imitation. Updating the law to provide explicit criteria for originality and fair use would provide clearer guidance for artists and legal professionals, helping to reduce uncertainty in plagiarism cases. Such clarity would protect original works and foster a more creative environment in which artists can confidently innovate. The D'Masiv case highlights broader implications for the Indonesian music industry, especially as it becomes increasingly integrated into the global marketplace. Strengthening copyright protection while encouraging innovation is critical to the sector's growth and international competitiveness. As artists navigate these challenges, finding a balance between protecting copyright and preserving creative freedom is key. Overly restrictive laws can stifle creativity, so using existing works in the form of parody or critique can foster cultural dialogue and promote diverse perspectives. Which is why the D'Masiv case shows broader implications for the Indonesian music industry, especially as it becomes increasingly integrated into the global marketplace. Strengthening copyright protection while encouraging innovation is critical to the sector's growth and international competitiveness. As artists navigate these challenges, finding a balance between protecting copyright and preserving creative freedom is key. Overly restrictive laws can stifle creativity, so using existing works in the form of parody or critique can foster cultural dialogue and promote diverse perspectives.

4. Recommendations for Legal Form

i. Establishing Criteria for Parody in Copyright Law

The fair use principle, especially concerning parody, will serve as a crucial vehicle in striking a balance between the interests of original authors with creative expression and commentary. To develop a clear set of legal criteria for distinguishing parody from copyright infringement, several important factors must be taken into

account. One of the most crucial factors is whether a parody is transforming or not. A parody should convert the original work by adding a new expression meaning or message. This transformation distinguishes parody from simple reproductions and derivative works. A parody should refer to the original work but express it with a different view or critique to change the original's perception.²² For instance, in "Weird Al" Yankovic's parodies turn features of songs into caricatures for comedic observations about social commentary, which shows that the use is transforming.²³ Another element that must be taken into account is the reason for creating a parody. The intent of the creator should be to comment, criticize, or amuse concerning the original work, not to gain a commercial benefit or bring damage to the market value of the original work. A parody made for humorous observation, or a critique of the original, would more likely be accepted as fair use than one made simply for profit and devoid of valid commentary. For instance, such a parody will fit within its principles of fair use; critique on funny societal themes from the original work.

The extent of the effect on the primary work is also major in determining whether a parody could be considered fair use. By definition, parody must not subvert any substantial commercial market for the original work. If it directly competes against the original or impairs its worth, then it might come under the definition of infringement.²⁴ For instance, if a parody becomes more commercially popular than the original title and diminishes the sales or licensing opportunities afforded to the original, that would weigh against a ruling of fair use. Other considerations include the proportion and qualitative nature of the use made. Of course, a parody uses much of the material from the original work, strictly what is needed to effect the parody. Its abundance or quality in grabbing more material from the original content amounts to an infringement. For instance, a parody that uses some lines of lyrics or certain recognizable elements but generates a wholly new context is more likely to be allowed

²² "Parody." *LII / Legal Information Institute*, www.law.cornell.edu/wex/parody.

²³ Moskal, Erin. "Edwards Creative Law - Song Parodies and Copyright Law: Criticism Is ... Critical (and Other Truisms)." *Edwards Creative Law*, 8 June 2022, edwardslaw.ca/blog/song-parodies-and-copyright-law-criticism-is-critical-and-other-truisms.

²⁴ FindLaw Attorney Writers. "Parody: Fair Use or Copyright Infringement." *FindLaw*, June 2017, corporate.findlaw.com/intellectual-property/parody-fair-use-or-copyright-infringement.html.

under fair use than one using all verses or significant portions of music. Lastly, recognition of the source is not an absolute requirement but may indicate the good faith of the creator in referring to the earlier creation. Recognition of earlier work would convey a sense of respect for the copyright while doing transformative expression. An example is that parody, which cites the parent material directly, could have a stronger case for fair use by showing awareness and engagement with the original.

ii. Judicial Guidelines for Resolution

To solve possible problems involving copyright and parody in the courtroom, comprehensive guidelines can be revealed through evaluating cultural significance, humor, and marketplace effect. These guidelines provide clarity on the meanings of an authentic parody and make distinctions from copyright-infringed acts so that creativity is promoted while rights are protected for the first owners. Use by courts: whether or not the parody was transformed. Courts will determine whether the parody has added new expressions, meanings, or messages to the original work, such that a delineation can be made between the thing itself and what it has come to be. Patterns also become important in establishing fair use. Parody arouses the audience into the way of the original; but it is not that which carries the image, giving a different perspective or interpretation. Like parody, that will humorously comment on prevailing social values will likely be transformative. Purely from the intentions behind the parody become the important part. Courts may determine the intent of the maker-the comment or criticism or humorous invocation of the original work, contrary to its intent for commercial exploitation.²⁵ The more ridicule or critique appears to be the original work, the better the case for fair use. For example, parody which seems to target specific social messages conveyed by a song demonstrates an intention to kill that song critically.

Maybe it brings the most vital factor into consideration-the cultural value and the humor that the parody encompasses. Courts need to determine whether the

²⁵ European Court of Justice Sets Criteria for the Exception of “Parody” Under Copyright Law - MVVP. www.mvvp.be/european-court-of-justice-sets-criteria-for-the-exception-of-parody-under-copyright-law/?print=print.

parody addresses an issue or issues of society or culture with humor. Such parodies that elicit topical cultural concerns or address societal issues would generally receive a heightened latitude under fair use. For example, a parody lampooning social injustices through laughter with vague references to a well-known song title might be taken more favorably in legal assessment. Amount and substantiality shall also be a very significant consideration. The court should consider how much of the original work has been taken and whether that amount exceeds what is necessary to accomplish the parodic effect. Use only enough to sufficiently evoke the original work lends itself to fair use, while too much use would be too close to infringement.²⁶ For instance, a parody that uses only recognizable phrases or melodies of a song to create a new context is far more likely to be protected than one that reproduces entire verses. Another crucial factor is the effect on the market for the original work. Courts should also assess whether the parody adversely affects the market for the original work or its potential market.²⁷ If the parody competes with the original work or diminishes its value significantly, it is considered unauthorized use. For instance, one such case would be a parody that is commercially successful in its own right and substantially erodes sales or licensing opportunities for the original song. This would militate against a finding of fair use. However, crediting the source is not mandated as it denotes goodwill and respect towards copyright laws. More often than not, courts will appreciate parodies that are directly reference source material for such acts betray even engagement and awareness of the original work. The parody that claims an inspiration can, thus, strengthen its fair use argument by showing that it works within limits authorized by copyright law.

iii. Raising Public Awareness and Protecting Cultural Heritage and Creativity

To overcome copyright issues, especially for parodic songs, educational campaigns will educate the populace about their rights and the concept of fair use so that they can empower creators. These will shed light on the legal aspects of parody

²⁶ “Parody Exception to Copyright - Wiggin LLP.” *Wiggin LLP*, 6 May 2022, www.wiggin.eu/insight/parody-exception-to-copyright.

²⁷ Fajar Sugianto, Stevinell Mildova, and Felicia Christina Simeon, “Increasing Economic Performance Through the Rule of Law in Indonesia: Law and Economics Perspective” 140, no. *Ic leh* (2020): 92–99, <https://doi.org/10.2991/aebmr.k.200513.019>.

and help people to navigate copyright responsibly.²⁸ Such campaigns would include workshops and seminars held regularly to break into the nitty-gritty parts of these laws, fair use, and what constitutes parodies for legal tangibility. Such events can also target artists, students, and creators wholly within the demographics to get them aware of their rights. Not limited to this, but also supplemented with online resources such as guides, infographics, and FAQs that could clarify how fair use applies to parodies and what differentiates a legal parody from infringing on copyright. Schools and universities would also be a great way to have models for activities with education institutions to include copyright education in their curriculum, teaching the new generation on this topic ahead. Ultimately, social media can also act as a quick-disperse method of raising awareness; for instance, with case studies focusing on or drawing examples from famous parodies to stir interest and discussion.

In this respect, it is critical to protect the Indonesian satire tradition and sensibilities while campaigning actively for parody to be accepted as one genuine form of creativity. Specific reforms into law can automatically gain importance through the explicit inclusion of parody as one type of protected fair use.²⁹ These are the types of rules that would give clarity and confidence to the artists operating within that genre. Equally important is the cultural significance of parody because it appeals to the people by making use of humor in criticizing social problems and thus enables artists to speak about this thing in highly relatable ways. Assisting local creatives makes another way forward. Giving grants or funding parody projects may lead to more artists experimenting with this genre.

D. Conclusion

Exploring parodies within the framework of Indonesian copyright law underlines several key messages about the interplay between creativity, culture, and legal protection. As digital platforms expand the horizons of artistic expression,

²⁸ “---.” *AFFA Intellectual Property Rights*, 1 June 2024, affa.co.id/global/2024/06/01/steps-to-consider-if-your-copyright-is-infringed-in-indonesia.

²⁹ Fajar Sugianto Sugianto, “Efisiensi Ekonomi Sebagai Remedy Hukum,” *Refleksi Hukum: Jurnal Ilmu Hukum* 8, no. 1 (2014): 61–72, <https://doi.org/10.24246/jrh.2014.v8.i1.p61-72>.

parody has become a potent medium for entertainment, critique, and cultural conversation. Yet, ambiguities in Indonesia's current copyright law present challenges that muzzle creators and parodists alike. This conclusion synthesizes the findings of this research, advocating for comprehensive legal reforms to ensure the protection and encouragement of artistic innovation in Indonesia. Song parodies hold a unique cultural significance in Indonesia, serving not only as a source of humor but also as a means of engaging with societal issues. Grounded in Indonesia's rich storytelling tradition, parodies enable the reuse of cultural narratives for their creators while offering a perspective on the challenges that life presents today. Content creation democratized by platforms such as YouTube and TikTok allows multiple parodies to spring forth for different types of audiences. While such digital platforms provided greater opportunities for more voices and imaginations, they at once put creative people at different risks because of an unsettled legal standing.

Indonesian copyright law, especially Law No. 28 of 2014, provides the backbone for intellectual property protection. However, it does not explicitly provide for parody as a legitimate form of artistic expression. While Article 43 allows for exceptions for educational and non-commercial uses, the concept of fair use in parodic works remains undefined. This legal vacuum places creators and rights holders in uncertain positions, with the legality of parodies often falling to judicial interpretation. This ambiguity discourages artists from exploring transformative practices, fearing accusations of infringement or litigation. The controversy surrounding D'Masiv's song *Dilema* is exemplary of these challenges. Accusations of plagiarism due to similarities with Muse's music sparked debates about the boundaries between inspiration, parody, and infringement. The case brought attention to the weaknesses in Indonesia's current legal framework, despite the band D'Masiv denying any wrongdoing. In the absence of a clear definition or protection for parody, creators are put at risk, which may hinder artistic freedom. The lack of established criteria within the law jeopardizes not only transformative practices but also creates potential conflicts between parodists and original rights holders.

The output of this research underlines that such challenges require strong legal protection. The recognition of parody as a form of artistic expression under Indonesian copyright law would eliminate legal uncertainty and would further inspire creators to explore innovative practices. In turn, rights holders would also benefit from the clarity provided regarding what uses are permitted, thereby advancing their economic interests while facilitating cooperation in the creative arena. A balanced legal framework that recognizes parody as a category of fair use would balance the interests of original creators and parodists. By adopting clear criteria that determine the transformative nature and originality of parodic works, Indonesia can foster a more vibrant artistic environment. Indonesia can draw inspiration from international examples, such as the United States' fair use doctrine and the European Union's InfoSoc Directive, in incorporating provisions that explicitly protect parodic works while maintaining respect for intellectual property rights. Several recommendations arise for the improvement of the legal landscape regarding song parodies. First, the amendment of Law No. 28 of 2014 to address parody as a fair use exception will provide clarity that is very much needed. Second, developing clear guidelines to determine the transformative and original elements required for lawful parody would help creators navigate the legal terrain with confidence. Third, public awareness campaigns could educate both creators and consumers on the boundaries of lawful parody, reducing unintentional infringements and fostering a culture of respect for intellectual property. Finally, it is necessary that the courts consistently rule on parody cases to create legal certainty and strengthen confidence in the system.

In conclusion, copyright law and song parody interplay in Indonesia presents both huge challenges and transformational opportunities. As the creative landscape keeps on changing, the absence of robust legal protections hampers artistic innovation and exposes creators to legal vulnerabilities. These are challenges that comprehensive reforms could address and, in so doing, truly free artists to create from existing works with due respect to the originators. In clarifying legal ambiguities and embracing the cultural value of parody, Indonesia can foster a creative economy that is truly innovative, expressive, and socially relevant through music. This endeavor is not just

about legal compliance; it is a commitment to fostering a culture that honors creativity and its role in shaping societal discourse.

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