



## Optimizing the “Fair Use” Policy on Copyright Utilization on Digital Platforms in Support of Academic Innovation

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### ABSTRACT

Rapid digital transformation has introduced new challenges related to copyright regulation, especially in the fields of education and research. Rigid copyright policies limit open access to scientific resources, hinder collaboration, and slow down innovation. This study analyzes the impact of “fair use” policies on the accessibility of copyrighted digital resources by academics and the weaknesses of their implementation in Indonesia, accompanied by a reformulation of policies that are more in line with global demands and accelerate access to knowledge. This study fills a gap in copyright research in Indonesia by examining the application of “fair use” policies in the digital context for education and research. Unlike previous studies, this research compares Indonesia's legal system with international best practices, offering more flexible and adaptive policy solutions to digital dynamics. Using a legal-normative approach, combining analysis through legislative, conceptual, and comparative approaches to formulate more relevant copyright policy recommendations. The research shows that “fair use” policies in Indonesia are still limited, causing legal uncertainty in accessing non-commercial scientific materials. Unlike more flexible legal systems in countries such as the US, policies in Indonesia need to be reformed to support open access, innovation, and international collaboration in the academic world.

### INTRODUCTION

In the ever-evolving digital age, the utilization of digital resources, including scholarly journals, textbooks, and teaching materials, has become an essential element in education and research activities. However, a challenge that comes along with this is the rigidity in copyright regulations that often hinders the full utilization of the potential of such resources. Such resources are often protected by copyright, which raises questions regarding the limits of access and legal use of such materials. This creates an urgent need to review and optimize fair use policies to better support academic innovation without compromising the rights of creators.

Existing fair use policies are often inconsistent or even contradictory, especially across jurisdictions, which results in legal uncertainty and limits scholarly collaboration and inhibits the full

potential of academic and research activities.<sup>1</sup> Studies by the American Library Association (2021) show that 65% of academics experience difficulties in accessing materials needed for research due to copyright restrictions.<sup>2</sup> Copyright is recognized as part of human rights protected by the 1945 Constitution of the Republic of Indonesia and international treaties. This conformity is contained in Article 28 of the 1945 Constitution, as well as Article 19 paragraph 2 of the International Covenant on Civil and Political Rights (ICCPR), and Article 27 paragraph 2 of the Universal Declaration of Human Rights (UDHR). Furthermore, Law No. 28 of 2014 has implemented the provisions in Article 28 of the 1945 Constitution related to copyrights.<sup>3</sup>

Copyright protection is not granted without limitations and exceptions. First, a work only receives copyright protection for a specified period of time; once that period expires, the work becomes free for public use. Second, during that period of protection, there are some exceptions and limitations that allow the use of copyrighted works without the need for permission from the copyright owner, especially for purposes that benefit the public interest. A policy that includes these exceptions and limitations aims to create a balance between the private rights of the creator or copyright holder and the public interest that expects freedom of expression and benefit from the work for non-commercial and scientific purposes.<sup>4</sup> The implementation of this policy is crucial in ensuring that copyright law does not hamper the accessibility and distribution of knowledge and information that benefit society at large.

In the broader context, exceptions and limitations in copyright allow for the use of copyrighted works in situations such as education, scientific research, and other activities that are not intended for commercial gain. This not only supports the spread of knowledge and education but also enriches culture and social innovation by allowing people to experiment and innovate more with existing works. These exceptions are recognized in various international regulations such as the Berne Treaty for the Protection of Literary and Artistic Works, which states that member states can make certain exceptions to copyright for education and research. A similar policy is also found in TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights), which allows countries to formulate exceptions that suit their local needs, as long as the exceptions do not conflict with the provisions of the agreement.<sup>5</sup>

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<sup>1</sup> Caitlynn Nadya Aurelia et al., "Enhancing Fair Use in Protecting Appropriated Artworks: A Comparative Analysis of Safeguarding Indonesian Copyright Law," *Lex Scientia Law Review* 9, no. 1 (2025): 1, <https://doi.org/10.15294/lsr.v9i1.20570>.

<sup>2</sup> John Cullinan et al., "The Disconnected: COVID-19 and Disparities in Access to Quality Broadband for Higher Education Students," *International Journal of Educational Technology in Higher Education* 18, no. 1 (2021): 26, <https://doi.org/10.1186/s41239-021-00262-1>.

<sup>3</sup> Tasya Syafira Ramli et al., *Hak Cipta dalam Perspektif Cyber Law* (PT. Refika Aditama, 2023).

<sup>4</sup> Sudjana Sudjana, "Sistem Perlindungan Atas Ciptaan Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta Dalam Perspektif Cyber Law," *Veritas et Justitia* 2, no. 2 (2016): 253, <https://doi.org/10.25123/vej.2267>.

<sup>5</sup> Inge Dwisvimiari, *Penerapan Kepentingan yang Wajar (Fair Use) Mengenai Materi Hak Cipta di Internet*, 11, no. 2 (2021).

In this context, the doctrine of fair use can be considered as a double-edged sword. On one hand, the doctrine facilitates individuals to create as freely as possible and use copyrighted works in educational activities that support national progress. However, on the other hand, it also has the potential to cruelly deprive creators of their rights. Academic literature, such as textbooks and journal articles, is an intellectual product that requires significant investment in research, editing, peer review, and publication distribution. If the reproduction and distribution of such works occur on a large scale without adequate compensation mechanisms, the primary market for these works may decline. A number of studies on the economics of scientific publishing indicate that the expansion of practices involving the copying and reproduction of copyrighted works has the potential to reduce publication sales and make it difficult for publishers to finance the production and dissemination of scientific works.<sup>6</sup>

Nevertheless, the expansion of fair use will not necessarily destroy the academic literature market. Studies on the economics of scholarly publishing show that the academic publishing ecosystem continues to evolve through various new business models, such as open access and institutional funding schemes, which seek to balance open access to knowledge with the economic sustainability of publishers. Therefore, the primary challenge in modern copyright law is not to eliminate the fair use doctrine, but to define its boundaries proportionally so as to protect publishers' economic incentives while ensuring public access to knowledge.<sup>7</sup>

This description of the fair use doctrine indicates that Indonesia needs a legal instrument that can protect copyright while balancing the interests between creators and society. Based on existing conditions, Indonesia does not yet have adequate provisions to meet this need, and the application of the fair use defense doctrine may directly harm creators. Meanwhile, some previous research on intellectual property law and copyright protection is highly relevant for further consideration in order to understand and possibly reform the copyright regime in Indonesia.

By analyzing international best practices and existing theories, using the Juridical-Normative method and statutory, conceptual and comparative approaches, this research seeks to uncover the objectives in the analysis of the impact of the current "fair use" policy on the access and utilization of copyrighted digital resources by the academic community and evaluate its adequacy in supporting academic innovation. This objective involves an in-depth assessment of the way the "fair use" policy is implemented in educational and research contexts, as well as identifying the limitations that hinder its effectiveness in supporting access and use of copyrighted digital resources. It then formulates

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<sup>6</sup> Colin Day, *The Economics of Publishing: The Consequences of Library and Research Copying*, 1999, <https://hdl.handle.net/2027.42/34256>.

<sup>7</sup> Asunción Esteve, "Copyright and Open Access to Scientific Publishing," *IIC - International Review of Intellectual Property and Competition Law* 55, no. 6 (2024): 901–26, <https://doi.org/10.1007/s40319-024-01479-z>.

recommendations for improving and optimizing Indonesia's fair use policy to better support open access and use of digital resources for academic purposes. This objective includes developing evidence-based policy recommendations that will enable policymakers to amend or adapt copyright law to ensure that educational and research interests are accommodated more effectively and fairly, in line with international standards and local needs.

Regarding the fair use doctrine policy itself, there have been two previous research results that are related and relevant to this study. First, research by Rika Ratna Permata, Tasya Safiranita Ramli, et al., (2021) which reveals that Indonesian regulations have stipulated that fair use will not harm the legitimate interests of the creators, but does not provide clear parameters regarding what is meant by fair use.<sup>8</sup> Second, research by Putu George Matthew Simbolon (2023), the results show an urgent need for Indonesia to integrate the doctrine of “fair use” in the utilization of copyright material, even this can be applied in copyright dispute resolution. While the doctrine is still unfamiliar in Indonesia, its use is in line with the principle of minimum standards and the principle of fair and equitable treatment (FET) set out in the TRIPs Agreement. This analysis is supported by the legal findings of the US Supreme Court which validated the proportionality of this doctrine under Section 107 of the US Copyright Act.<sup>9</sup>

However, the two previous studies did not specifically highlight the implementation of the fair use doctrine in the use of digital resources in education and academic research. This is where the novelty of this study lies, namely conducting an in-depth analysis of how current fair use policies affect the accessibility and use of copyrighted digital resources by the academic community in supporting innovation and research. Furthermore, this study offers evidence-based policy recommendations aimed at strengthening the application of the fair use doctrine in the context of education and research in Indonesia. Thus, this study is expected to make a real contribution to the development of academic literature and policy practice, paving the way for fair use regulations that are more equitable, effective, and in line with local needs and international standards.

## METHODS

This research uses juridical-normative legal research methods, with conceptual, statutory and comparative approaches.<sup>10</sup> Related to the doctrine of “fair use” in copyright, especially in the context

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<sup>8</sup> Permata, Rika Ratna, Tasya Safiranita, Yuliana Utama, and Reihan Ahmad Millaudy. 2021. “Penerapan Doktrin Fair Use Terhadap Pemanfaatan Hak Cipta Pada Platform Digital Semasa Covid 19 di Indonesia.” *Dialogia Iuridica*; Vol. 13 No. 1 (2021): *Journal Dialogia Iuridica* Vol 13, No.1 Year 2021; 130-148 ; 2579-3527 ; 2085-9945, November. <https://journal.maranatha.edu/index.php/dialogia/article/view/3750>.

<sup>9</sup> Putu George Matthew Simbolon, “Implementation of the Fair Use Defense Doctrine and Minimum Standards Principle in Copyright Dispute Settlement,” *SIGN Jurnal Hukum* 5, no. 1 (2023): 74–90, <https://doi.org/10.37276/sjh.v5i1.263>.

<sup>10</sup> Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021).

of education and academic research on digital platforms. This method involves qualitative analysis of secondary data in the form of scientific literature, applicable legislation, court decisions, and other relevant official documents. The approaches used are statutory, conceptual and comparative. The statutory approach is used to understand the existing legal framework as well as how the doctrine of “fair use” is regulated in Indonesian copyright law and its comparison with the legal system in the United States. The conceptual approach is applied to define and interpret key concepts relating to “fair use”, while the comparative approach helps in comparing the implementation and interpretation of “fair use” across jurisdictions. The results of the analysis will be integrated to identify gaps in current policies and formulate more effective policy recommendations, which support open access and use of copyrighted material in academic and research settings. The analysis aims to provide concrete and applicable suggestions for stakeholders in formulating or revising copyright-related policies in Indonesia.

## DISCUSSION

### **The Effect of 'Fair Use' Policy on the Accessibility of Copyrighted Digital Resources in an Academic Environment**

The doctrine of 'fair use' in policy is an important legal instrument designed to balance the rights of creators with the needs of the general public in accessing information and knowledge.<sup>11</sup> In the academic context, this policy plays a vital role in determining the extent to which faculty, researchers, and students can access and use copyrighted materials without violating copyright laws. The importance of this policy is especially apparent in today's digital age, where access to scholarly journals, digital books, and other teaching materials is often restricted by copyright.

The term “fair use” is often used in countries that adopt common law legal systems (such as the US and Anglo Saxon countries), while the term “fair dealing” is usually applied in the UK and countries with commonwealth and civil law legal systems. Paul Goldstein explains that in general, fair use is defined as the privilege for a party other than the copyright owner to make reasonable use of copyrighted material without requiring permission from the owner, even though a monopoly right over the material has been granted to the owner through copyright law.<sup>12</sup>

The term “fair use” in Indonesia, refers to a restriction that allows another party to reuse a work in a different category, with restrictions, without seeking the copyright owner's permission. According to Article 1(1), Law No. 28 of 2014, copyright is an exclusive right for the creator, which automatically arises under the principle of declaration after the work is realized in material form, without prejudice

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<sup>11</sup> Patricia Aufderheide, *Contributors and Arguments in Australian Policy Debates on Fair Use and Copyright: The Missing Discussion of the Creative Process*, 2017.

<sup>12</sup> Dwisvimiar, *Penerapan Kepentingan yang Wajar (Fair Use) Mengenai Materi Hak Cipta di Internet*.

to compliance with legal provisions. The regulation and application of “fair use” under Indonesian copyright law, is regulated in Chapter IV Copyright Restrictions of Copyright Law No.28 of 2014, specifically articles 43 and 49.

Based on these articles, there are acts that are not considered as copyright infringement related to the development of science, which is contained in point (d) which states that:

*“(d) The creation and dissemination of Copyright content through information and communication technology media that is non-commercial in nature and/or benefits the Creator or related parties, or the Creator states that he has no objection to the creation and dissemination.”*

Reflecting on this, the dissemination and distribution of written works such as articles or journals on the internet by academics or researchers, which integrate the opinions or works of other parties, are not considered copyright infringement as long as access to such publications is not subject to royalty fees by those who access them. However, the application of the condition stating that dissemination can take place “as long as the original creator does not object to the practice” is often met with practical obstacles as, in most cases, the creators generally do not give an explicit objection as long as they are acknowledged through the inclusion of their name in the disseminated work.

Theoretically, 'fair use' allows limited use of copyrighted material without the need to obtain permission from the rights holder, particularly for purposes such as criticism, comment, news, teaching, scholarship, or research.<sup>13</sup> However, the application of this policy is often ambiguous and subjective, depending on the interpretation of the four assessment factors laid down by law, namely the purpose and character of the use, the nature of the copyrighted work, the amount and substance of the part used, and the impact of the use on the market value of the original work.

Studies of existing academic literature show that lecturers and researchers often face uncertainty in the application of 'fair use', resulting in limitations in the use of digital resources for teaching and research activities.<sup>14</sup> For example, in a study conducted by the Association of Research Libraries, it was found that many academic institutions restrict the use of copyrighted materials due to concerns over potential copyright infringement, which in turn hinders learning and innovation.

The fair use policy in the context of copyright in Indonesia is still an area that requires significant development, especially to support the accessibility and utilization of digital resources in academic settings. In general, this policy aims to balance the interests of creators with the needs of the public

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<sup>13</sup> Annemarie Bridy, “Four Fair Use Takeaways from Cambridge University Press v. Patton,” *Freedom to Tinker*, July 7, 2024, <https://freedom-to-tinker.com/2014/10/23/four-fair-use-takeaways-from-cambridge-university-press-v-patton/>.

<sup>14</sup> Ni Made Rai Dwikayanti et al., “Legal Protection of Copyright on Digital Creative Works in Indonesia Based on Law Number 28 of 2014 Concerning Copyright,” *International Journal of Judicial Law* 4, no. 2 (2025): 01–06, <https://doi.org/10.54660/IJL.2025.4.3.01-06>.

in accessing information and knowledge for educational and research purposes. In Indonesian copyright law, which is regulated under Law No. 28 of 2014 on Copyright, the doctrine of 'fair use' has not been explicitly defined as clearly as it is in legal systems such as that of the United States.<sup>15</sup> This often leads to uncertainty in implementation.

In addition, differences in fair use policies between countries add to the complexity of international accessibility. For example, in the United States, this policy is more flexible compared to some European countries that apply a stricter "exception and limitation" system. This often requires researchers collaborating internationally to be very careful in utilizing copyrighted material, which can hamper global scientific exchange.

Indonesia's Copyright Law recognizes the importance of access to copyrighted works for educational and research purposes,<sup>16</sup> However, the policy does not elaborate on the conditions that fulfill the fair use criteria. Unlike in the United States, where fair use is determined through a four-factor evaluation, Indonesian law requires more concrete guidelines that can facilitate the effective and consistent application of this policy, especially in the fast-paced and volatile digital context.

The application of this doctrine in Indonesia often leads to confusion due to the lack of clear parameters. For instance, the Indonesian Copyright Law does not explicitly state the quantitative or qualitative limitations that define the use that can be considered fair, unlike the legal system in the United States that utilizes a four-factor assessment to guide the interpretation of fair use, i.e. in the provisions of Article 107 of the United States Copyright Act (17 U.S.C. § 107), the criteria that determine exclusion are quite clear, viz:

- (1) it is not intended for commercial gain;
- (2) it does not change the original essence of the copyright;
- (3) the amount of material used; and
- (4) does not affect the market value of the copyrighted work.

Whereas in Indonesia, the provisions regarding fair use, in terms of considering the legitimate rights of the creators, still have unclear boundaries, thus requiring reinterpretation in the settlement of legal disputes that may arise in the future. According to Bambang Pratama, the criterion of 'fair' (which in this context is interpreted as reasonable or adequate) can be linked to the principle of propriety that applies in the framework of intellectual property law in Indonesia. Furthermore, the act

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<sup>15</sup> Budi Agus Riswadi, *Pembatasan Dan Pengecualian Hak Cipta Di Era Digital* (Citra Aditya Bakti, 2017).

<sup>16</sup> Hari Sutra Disemadi and Cindy Kang, "Self-Plagiarism dalam Dunia Akademik Ditinjau dari Perspektif Pengaturan Hak Cipta di Indonesia," *Legalitas: Jurnal Hukum* 13, no. 1 (2021): 1, <https://doi.org/10.33087/legalitas.v13i1.236>.

of using a copyrighted work can be classified as fair use if it has non-profit, educational, research, and developmental characteristics.<sup>17</sup>

**Table 1.**  
 Comparison of Laws on Fair Use Regulations in Several Countries

Aspect	Indonesia (Law No. 28 of 2014)	United States (Copyright Act of 1976)
<b>Definition of Fair Use</b>	Fair Use without an explicit definition.	There is an explicit definition of “Fair Use” in Section 107 of the Copyright Act.
<b>Limitations</b>	Does not harm the copyright owner’s market.	There are four main factors: purpose and character of the use; nature of the protected work; amount and substance used; and effect on the market for the original work.
<b>Purpose of Use</b>	Not explained in detail.	Prioritizes balance between the rights of copyright holders and public needs.
<b>Existence of License</b>	There are no explicit licensing provisions for fair use.	No license is required if the use meets the criteria for Fair Use.
<b>Flexibility</b>	Limited use without harming the copyright owner or infringing on the market for the original work.	Must not damage the commercial value or market for the work.

Development in the context of science and technology refers to activities that aim to improve the functions, benefits, and applications of existing science and technology, or create new technologies.<sup>18</sup> These activities are based on the utilization of scientific principles and theories that have been verified. On the other hand, science is defined as a collection of knowledge that is processed and developed through a systematic process. This process uses a specific approach, supported by a scientific methodology that includes quantitative, qualitative and exploratory approaches. These approaches aim to prove and explain certain natural or social phenomena.

One of those who has the mandate of this development is the lecturer. This lecturer is an essential element in the academic environment, which acts as a professional educator and scientist with the main mandate to transform, develop, and disseminate science, technology, and art through three main pillars: education, research, and community service. In the context of research, lecturers function as researchers, namely individuals who conduct research activities in accordance with systematic scientific rules and methods in order to obtain relevant information, data and information to verify the truth or error of an assumption and/or hypothesis in the field of science and technology, and produce scientific conclusions that contribute to the development of science and technology.<sup>19</sup> As

<sup>17</sup> Sulasno Sulasno and Inge Dwisvimiari, “Penerapan Kepentingan yang Wajar (Fair Use) Mengenai Materi Hak Cipta di Internet,” *Humani (Hukum Dan Masyarakat Madani)* 11, no. 2 (2021): 2, <https://doi.org/10.26623/humani.v11i2.4355>.

<sup>18</sup> Ira Suryani et al., “Defenisi Etika Akademik,” *Hukum dan Demokrasi (HD)* 23, no. 2 (2023): 58–67, <https://doi.org/10.61234/hd.v23i2.17>.

<sup>19</sup> Ntimi Nikusuma Mtawa, “Community Engagement and Service-Learning in Higher Education: A General Overview,” in *Human Development and Community Engagement through Service-Learning: The Capability Approach and Public Good in*

for community service, it is defined as an activity carried out by the academic community with the aim of utilizing science and technology to improve the welfare of society and advance the education and intelligence of the nation.

However, lecturers, researchers, and students are often unsure whether a particular use infringes copyright or not, which in turn can hamper educational and research initiatives. Indonesia's fair use provisions, in terms of taking into account the legitimate rights of the creators, still lack clear boundaries, requiring reinterpretation in the resolution of legal disputes that may arise in the future. This often makes it difficult for academic institutions that wish to use copyrighted material in courses or scholarly publications, for fear of violating copyright law. This hinders academic progress and innovation as academics and researchers become hesitant to integrate potentially valuable material into their work.

The doctrine of 'fair use' in the Indonesian context requires more explicit and detailed guidelines for its effective and sustainable application. This is especially important in supporting open access to scientific and educational resources, which are increasingly locked behind paywalls in scientific journals and publications. Clear restrictions and comprehensive guidelines can help educational and research institutions to more freely use copyrighted material for non-commercial purposes, thus helping to improve the quality of education and research in Indonesia.

In the global context, the need for harmonization of 'fair use' policies between countries is becoming increasingly important. With increased international collaboration in research and teaching, there is a need for a framework that allows for easier use of copyrighted material across national borders. International cooperation in standardizing the doctrine of 'fair use' can help reduce the legal barriers often faced by researchers and academics, thereby enriching scientific and technological exchanges.

Furthermore, the 'fair use' policy also needs to better accommodate the rapid development of digital technology. With new technologies such as artificial intelligence and machine learning often using large amounts of copyrighted data, the policy needs to adapt so as not to stifle technological innovation. This requires rethinking how the policy can be applied in the digital age, where copyrighted works and their uses are often much more complex compared to the previous era.

Adopting a more flexible and adaptive policy towards 'fair use' could also provide economic benefits. For example, by reducing copyright restrictions for non-commercial use, universities and research institutions can more freely access and utilize resources needed for innovation and

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*Education*, ed. Ntimi Nikusuma Mtawa (Springer International Publishing, 2019), [https://doi.org/10.1007/978-3-030-34728-4\\_1](https://doi.org/10.1007/978-3-030-34728-4_1).

development. This can ultimately contribute to economic progress through increased research and development output that can be commercialized.

The development of a 'fair use' policy that meets contemporary needs and challenges is therefore crucial. This is not only important to support access to knowledge and innovation, but also to ensure that copyright law does not become a barrier to scientific and technological progress, but rather an effective enabler in maintaining a balance between the rights of creators and the needs of the public.

### **Reformulation of 'Fair Use' Policy to Support the Utilization of Digital Resources in the Context of Education and Research in Indonesia**

The Berne Convention was the first international convention to regulate copyright and the doctrine of "fair use", therefore prior to this convention, each country applied their own national copyright rules. As a result of this lack of international uniformity, for example, a copyrighted work published in the UK by a British citizen would receive copyright protection in that country, but the same work might be reprinted and sold freely by others in France.<sup>20</sup> Similarly, works created in France by French nationals are protected by French copyright law, but they can be reprinted and sold by others in the UK without infringing copyright in that country.<sup>21</sup>

For effectiveness in the application of the fair use doctrine, it is important for one to deeply understand the philosophical underpinnings of copyright protection. Copyright protection has three main philosophical reasons, namely:

- (1) protect the property rights of the author or copyright holder of the work;
- (2) as a manifestation of legal recognition of the work of individuals; and
- (3) as an economic incentive that encourages the creation of new works.

Each of these philosophical aspects, both individually and collectively, form the foundation of the intellectual property regime that governs copyright. At its core, the nature of copyright is non-material or intangible, copyright challenges the traditional concept of ownership which is usually tied to physical objects. In this context, copyright aims to protect copyrighted works without hindering the wider dissemination of knowledge and culture.<sup>22</sup>

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<sup>20</sup> Ricketson, Sam, and Jane C Ginsburg, 'Origins of the Berne Convention', *International Copyright and Neighbouring Rights: The Berne Convention and Beyond*, 3rd edn (Oxford, 2022; online edn, Oxford Academic, 23 June 2022), <https://doi.org/10.1093/oso/9780198801986.003.0002>.

<sup>21</sup> Aufderheide, Patricia, and Aram Sinnreich. 2022. "The Copyright Claims Board: Good News or Bad News for Communication Scholars?" *International Journal of Communication*; Vol 16 (2022); 14; 1932-8036, October. <https://ijoc.org/index.php/ijoc/article/view/19763>.

<sup>22</sup> Ramadhan, Panji Rystho, Umar Al-Haddad, and Asrori S. Karni. 2019. "Implikasi Doktrin Kepentingan Yang Sewajarnya Pada Media Streaming Online Youtube.Com." *Journal of Legal Research*; Vol 1, No 3 (2019) ; 2715-7164 ; 2715-7172, March. <https://journal.uinjkt.ac.id/index.php/jlr/article/view/13069>.

In United States Law, the doctrine of fair use is regulated through 17 U.S. Code § 107 which explains the limitations on the exclusive right of Fair Use. Regulations regarding the fair use doctrine in the United States tend to be abstract, in contrast to the regulations applicable in Indonesia which are more concrete. In the context of fair use in Indonesia, the regulations do not include the four determining factors as mentioned in the United States Copyright Law. These four factors play a crucial role in evaluating whether an act can be categorized or cannot be categorized as fair use. The four factors stipulated in the United States Copyright Law are more clearly detailed as follows:

(1) The purpose and character of the use:

This includes whether the use is commercial or for non-profit educational purposes. Uses that are educational, critical, or parodic in nature are often considered more likely to be considered fair use

(2) The nature of the copyrighted work:

actual or non-fiction works are more likely to be considered as fair use compared to highly original works of fiction or art

(3) The quantity and importance of the material used:

Relative to the whole work. The use of a small part of a work may be considered fair use, especially if the part used is not the 'heart' of the work.

(4) The effect of the use upon the potential market or value of the copyrighted work.

If the use reduces the copyright holder's ability to profit from the original work, it will most likely not be considered fair use

In Indonesia, copyright regulations do not explicitly outline these four factors. Indonesian regulations tend to be more prescriptive and specific in determining the types of uses that are considered fair without infringing copyright. For instance, the Indonesian Copyright Law specifically mentions the types of uses that are exempted from copyright infringement, such as uses for educational purposes, research, or critical reviews.

A comparison between these two systems shows the difference in flexibility and firmness of the law. The four fair use factors in US law allow judges the discretion to judge on a case-by-case basis, which can be seen in a number of court decisions. For example, the case of *Campbell v. Acuff-Rose Music, Inc.* is a landmark in American jurisprudence, where the Supreme Court ruled that the use of musical works in the form of parodies met the criteria of fair use based on the assessment of the four factors.

In contrast, in the Indonesian legal system, judicial decisions may not require extensive consideration of the context of use due to the more prescriptive provisions. However, this may lead to a lack of flexibility in dealing with cases that are unique or outside the existing provisions.

In global practice, these dynamics are evident in the digital course reserve case involving *Cambridge University Press v. Patton* in the United States. This case arose when several major academic publishers accused universities of providing copies of book chapters and scholarly articles in digital learning systems (e-reserves) that students could access without a license. The court then evaluated the practice using the fair use approach, taking into account educational purposes, the amount of material used, and its impact on the academic book market. The ruling demonstrates that in a more flexible system, the court conducts a detailed contextual analysis before determining whether a digital use in an academic setting infringes copyright or constitutes fair use.<sup>23</sup>

Unlike that case, to date there have not been many court disputes in Indonesia that specifically address the distribution of academic literature through university digital platforms. However, the potential for such disputes is very real. For example, the practice of uploading fully copyrighted textbooks or journal articles to campus repositories, learning management systems, or online document-sharing groups that students can access without the publisher’s permission.<sup>24</sup> This situation has the potential to create conflict between educational institutions and academic publishers if such distribution is deemed to exceed the limits of the educational exception stipulated in Law No. 28 of 2014 on Copyright. In this context, although there are no significant court precedents yet, the widespread practice of sharing digital book files and journal articles within the Indonesian academic community could escalate into a copyright dispute if rights holders deem such distribution to be disrupting the commercial market for the works in question. Analysis of this potential conflict is also extensively discussed in studies on digital book piracy within Indonesia’s higher education sector.<sup>25</sup>

These two approaches reflect different legal philosophies: one with wide room for interpretation and one with clear and well-defined rules. Each system has advantages and disadvantages, depending on the social, economic and cultural context in which it is applied. In practice, an in-depth understanding of these two systems is important for legal practitioners and policy makers to develop and implement effective and fair regulations in the field of copyright. The reformulation of the 'fair use' policy in the context of digital resource utilization in the academic environment in Indonesia requires a more in-depth and structured approach to ensure that with these dynamics, the question arises, is the regulation able to support the education and research sector?

'Fair use' is a legal doctrine that permits limited use of copyrighted material without permission from the copyright holder, primarily for the purposes of criticism, comment, news, teaching,

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<sup>23</sup> Justia Law, “*Cambridge University Press, et al. v. Albert, et al.*, No. 12-14676 (11th Cir. 2014),” Justia Law, 2018, <https://law.justia.com/cases/federal/appellate-courts/ca11/12-14676/12-14676-2014-10-17.html>.

<sup>24</sup> Mohamad Hanif Naufal Maemunah, “Hak Cipta Atas Karya Digital: Kajian Yuridis Terhadap Pembajakan Konten Di Media Sosial,” *Jurnal Riset Ilmu Hukum*, December 13, 2025, 89–94, <https://doi.org/10.29313/jrih.v5i2.7618>.

<sup>25</sup> Nadine Fatih Elsilmi<sup>1</sup> et al., “Analisis Hukum Terhadap Penggunaan Buku Digital Bajakan di Kalangan Mahasiswa,” *Jurnal Hukum Saraswati (JHS)* 6, no. 1 (2024): 620–27, <https://doi.org/10.36733/jhshs.v6i1.8819>.

scholarship, or research.<sup>26</sup> In Indonesia, this concept is regulated in Law No. 28 of 2014 on Copyright, specifically in Chapter IV covering Copyright Restrictions, which needs to be clarified and updated to address the challenges posed by new technologies and the need for wider access in the education and research sectors.<sup>27</sup> These articles currently provide a framework, but are often too rigid or do not cover sufficiency in addressing digital use.<sup>28</sup> For example, provisions on limits on use for education and research are often insufficient in the context of online courses or open access to scholarly publications, where materials can be easily shared and used beyond the traditional boundaries of the classroom or research laboratory.

Therefore, reformulation should include more detailed guidance on the scale and limits of fair use, and integrate principles that take into account advances in learning technologies and information dissemination. In addition, the provisions governing 'fair use' need to be adjusted to ensure that the use of copyrighted material is not only limited to non-commercial activities but also takes into account aspects of redistribution in digital media that are often part of the learning and research process. This includes an explanation of how works can be quoted, processed, and shared in digital formats without infringing copyright.

At the global level, the importance of open access to scientific resources has been recognized as a critical catalyst for driving innovation and knowledge dissemination. Organizations such as the Organization for Economic Cooperation and Development (OECD) and UNESCO have emphasized that policies supporting open access can significantly improve the quality of research and education. In its 2019 report, the OECD described how countries with open access policies perform better in terms of international collaboration and citation rates. Open access not only facilitates the wider dissemination of knowledge, but also encourages synergy between scientists, researchers, and institutions in various countries, which in turn accelerates the innovation process. Therefore, this research is not only academically relevant but also significant in the context of public policy, providing guidance for legislative reforms that support the development of science and technology.

Therefore, Indonesia is no exception; the principle of fair use must be applied wisely, considering that the income or earnings of creators are greatly influenced by the number of viewers or users of their work. By implementing policies that clarify the limits of fair use, creators can benefit from their works, while on the other hand, wider access to scientific and creative material can encourage progress in various fields. This is important to create a balanced ecosystem between

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<sup>26</sup> Siti Hapsah Pahira et al., "Analisis Hak Kekayaan Intelektual pada Pengembangan Teknologi Pendidikan," *Journal of Economics and Business UBS* 12, no. 4 (2023): 2596–604, <https://doi.org/10.52644/joeb.v12i4.500>.

<sup>27</sup> Bagus Gede Ari Rama et al., "Urgensi Pengaturan Artificial Intelligence (AI) Dalam Bidang Hukum Hak Cipta Di Indonesia," *JURNAL RECHTENS* 12, no. 2 (2023): 209–24, <https://doi.org/10.56013/rechtens.v12i2.2395>.

<sup>28</sup> Pinter Hukum, *Urgensi Hak Cipta di Era Digital, Bagaimana Tantangan Hukum dan Penegakannya?* - pinterhukum, Opini, June 28, 2023, <https://pinterhukum.or.id/urgensi-hak-cipta-di-era-digital/>.

copyright protection and the need for open access, so that creators can continue to earn income from their works, while the public can also utilize knowledge and innovation for mutual progress.

The integration of flexible copyright policies with strong support for open access creates an ecosystem where scientific resources can be used more efficiently and effectively. This leads to faster development of innovative solutions and a general improvement in the quality of education and research, in line with the global goal of advancing knowledge and technology. Therefore, a review and adjustment to copyright policies in ensuring that they support open access and fair use is an important step that policymakers must take to meet these global demands.

A concrete example of this need is seen in the case of 'Authors Guild v. Google', where the court ruled that digitization of books for search and preview access by Google was a form of fair use and had significant educational benefits. This decision not only affirms the importance of access to educational materials, but also shows how fair use policies can be applied to support academic activities and innovation.<sup>29</sup> On the other hand, the “Cambridge University Press vs. Patton” case highlights the conflict that may arise between publishers' rights and educational needs. In this case, the court ruled that a university's use of copyrighted material without permission can still infringe copyright, suggesting that fair use policies still have a lot of room for improvement in support of educational interests.<sup>30</sup>

This copyright protection can be analyzed through the lens of utilitarianism theory developed by Jeremy Bentham and later interpreted by Wagner. According to this theory, intellectual property rights, including copyright, are designed to produce maximum benefits for society. In contrast to the theory of natural rights that places the rights of the creator above all else, the theory of utilitarianism prioritizes the interests of society with the main objective of encouraging individuals to create works that actively contribute to sustainable social progress.

Based on this, Indonesia requires the implementation of utilitarianism theory in the framework of copyright protection to maximize the welfare of the society.<sup>31</sup> This approach should be integrated both in the judicial process and in the use of alternative dispute resolution methods. Concrete implementation of the utilitarianism theory in copyright dispute resolution can be done by incorporating the doctrine of fair use defense into the regulations. In this context, the analysis can be enriched by the transformative copyright theory proposed by Ahmad M. Ramli, which emphasizes that the copyright regime must be able to adapt to digital technological disruption and changes in the distribution patterns of works on online platforms. This transformative approach asserts that copyright protection can no longer be understood solely as the protection of the creator's exclusive

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<sup>29</sup> Stanf. Copyr. Fair Use Cent., “Authors Guild v. Google, Inc.”

<sup>30</sup> Bridy, “Four Fair Use Takeaways from Cambridge University Press v. Patton.”

<sup>31</sup> Bernard Naingolan, *Teori Hukum* (Publika Global Media, 2024).

rights, but also as an instrument to maintain a balance between the creator's economic interests and the public interest in accessing digital knowledge and innovation.<sup>32</sup>

Within this framework, the fair use doctrine can be viewed as a normative mechanism that reflects both utilitarian principles and a transformative approach. The limited use of copyrighted works for educational, research, critical analysis, or scientific advancement purposes essentially constitutes a form of utilization that yields broader social benefits compared to overly restrictive limitations on access to information. Therefore, the integration of utilitarian theory and the transformative approach can provide a conceptual foundation for the formulation of copyright policies that are more adaptive to developments in digital technology, particularly in the context of the use of works through digital platforms, academic repositories, and online learning systems. This approach is also in line with the evolving discourse on copyright law, which emphasizes that regulations in the digital age must balance the protection of creators' economic rights with the public's need for access to information and the advancement of knowledge.<sup>33</sup>

For reference, this doctrine arrangement has been effectively implemented in Section 107 of the United States Copyright Act. This provision stipulates that fair use of copyright by a party other than the creator without the authorization of the creator can only be allowed after considering a number of factors. These factors include the purpose and character of the use, the nature of the copyrighted work, the proportion and substantiality of the part used in the context of the work as a whole, as well as the impact of the use on the potential market or value of the copyrighted work. These factors are useful to guide the judge in making a decision whether an infringement of copyright can be justified through the application of the doctrine of fair use defense claimed by the defendant. Thus, this judgment will determine whether the copyright use can be defended on the grounds of fair use.

In Indonesia, the provisions on fair use in Law No. 28 of 2014 tend to be more rigid because they are formulated in specific points. Article 44(1) states that use for educational and research purposes is not considered an infringement as long as it "does not prejudice legitimate interests." However, the lack of strong case law in Indonesia regarding the definition of "harming legitimate interests" creates legal uncertainty. In practice, many educational institutions in Indonesia feel safe engaging in mass reproduction under the guise of education, without realizing that, cumulatively, such actions undermine the national textbook publishing ecosystem.

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<sup>32</sup> Gabrielle Bening Kalbu et al., "Protection of Economic Rights Through Royalty Optimization on Film Content in Digital Platforms," *Reformasi Hukum* 28, no. 2 (2024): 126–41, <https://doi.org/10.46257/jrh.v28i2.1064>.

<sup>33</sup> Utami Argawati et al., "Expert: Digital Platforms Must Detect Contents Copyright-Infringing Contents," *En.Mkri.Id*, Jakarta, 2024, [https://en.mkri.id/news/details/2024-01-30/Expert:\\_Digital\\_Platforms\\_Must\\_Detect\\_Contents\\_Copyright-Infringing\\_Contents](https://en.mkri.id/news/details/2024-01-30/Expert:_Digital_Platforms_Must_Detect_Contents_Copyright-Infringing_Contents).

The urgency of this reformulation is also rooted in the need to protect the interests of creators while promoting innovation and public access.<sup>34</sup> This demands a careful balance between copyright protection and fair use, which allows creative use of existing resources to support academic and social innovation.<sup>35</sup> Thus, policy reformulation should consider the economic, educational, and social impacts of using copyrighted material.

In the context of education and research, fair use policies should be formulated in such a way that they enable faculty, researchers, and students to access and use copyrighted materials effectively and legally. The use of digital resources, which include electronic journals, digital books, and research databases, is crucial in today's digital age.<sup>36</sup> Therefore, it is important for the policy to provide clear guidance on what constitutes fair use, with a focus on non-commercial, educational and research aspects.

Normatively, this framework is already incorporated in Articles 14 through 23, and specifically Article 44, of Law No. 28 of 2014 on Copyright, which provides exceptions for the use of works for educational, research, critical, and news reporting purposes. However, an analysis of this legal framework indicates that while these provisions appear comprehensive, their implementation in practice still faces serious challenges due to the absence of clear quantitative and qualitative parameters regarding usage limits and criteria for determining what constitutes "harm to the legitimate interests" of the creator. This ambiguity creates a broad scope for interpretation by users of works, particularly within the academic digital ecosystem that relies on electronic journals, digital books, and research databases as primary sources for scholarly activities. Without a systematic framework for assessing the economic impact of a work's use, the fair use doctrine risks becoming a double-edged sword: on one hand, it opens access to knowledge, but on the other, it may undermine the sustainability of the academic publishing industry, which has long played a role in the processes of curation, scientific validation, and the distribution of knowledge.

This complexity becomes increasingly apparent in the way educational institutions utilize digital works, particularly with the emergence of technology-based knowledge distribution models such as Controlled Digital Lending (CDL). This practice allows libraries to digitize physical books in their collections and lend digital copies to users on a one-to-one ratio between books owned and books lent. For some in the library and academic communities, CDL is viewed as a logical evolution of the

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<sup>34</sup> Admin, "Prinsip Fair Use Dalam Hak Cipta -," *A & A Law Office*, July 13, 2021, <https://aa-lawoffice.com/prinsip-fair-use-dalam-hak-cipta/>.

<sup>35</sup> Muhammad Habibi et al., "Tinjauan Yuridis tentang Doktrin Fair Use dalam Undang-Undang Hak Cipta Indonesia dan Implikasinya terhadap Pengembangan Software," *Jurnal Hukum Lex Generalis* 6, no. 4 (2025): 4, <https://doi.org/10.56370/jhlg.v6i4.860>.

<sup>36</sup> Andriana Putri, Nafila. 2023. "Copyright Protection for Internet Memes: The Doctrine of Fair Use in Indonesia." *JIPRO: Journal of Intellectual Property*; JIPRO, Vol. 6, No.2, 2023; 81-99 ; 2654-2889, October. <https://journal.uui.ac.id/JIPRO/article/view/28295>.

traditional library's role in providing access to knowledge in the digital age. However, from the perspective of academic publishers, this practice can create a very strong market substitution for the distribution of commercial digital books, thereby potentially reducing the economic incentives for publishers and authors to continue producing high-quality scholarly works.

Therefore, a key aspect of reformulating fair use policy in Indonesia must be to clarify the limits and conditions of its application, including by establishing more specific criteria regarding the proportion of the work used, the purpose of the use, and its impact on the market value of the original work. In this regard, the law must provide legal certainty and protect all parties, including academics and researchers, by establishing clear and easily understandable guidelines regarding what constitutes "fair use." Establishing these criteria not only provides space for creative freedom and innovation but also prevents potential unintentional copyright infringements, which could harm the parties involved. These parameters not only provide legal certainty for academics, researchers, and educational institutions in utilizing works legally, but also provide adequate protection for publishers and creators as the parties bearing the intellectual and economic investment in the process of producing scholarly works.

Policies should proactively support innovation and the development of educational technologies. This means integrating fair use policies with the latest technological developments, such as online learning and the use of AI in education. As such, fair use policies need to be dynamic and adaptive to technological change, ensuring that regulations support not just legal compliance but also growth and innovation in education and research. This reformulation must also consider international cooperation and harmonization. With many digital resources being global in nature and research collaborations crossing national borders, fair use policies in Indonesia must be able to synchronize with international standards. This will facilitate scientific exchange and access to educational resources across countries, enriching the quality of education and research in Indonesia on a global scale.

Therefore, copyright law must balance the rights of creators with the public interest. This is done through the application of clear time limits, during which creators are granted exclusive rights to commercially exploit their works. Once this period expires, the work enters the public domain and can be freely used by the public. This process reflects the basic principle of copyright, which is to reward the creativity of creators, while ensuring that the knowledge and culture produced can be accessed by the wider community after a reasonable period of time. Thus, copyright not only serves as a means of protection for creators, but also as a means of ensuring the long-term sustainability of scientific and cultural development.

In a broader context, the protection of academic publishers’ economic incentives should not be understood as an attempt to restrict public access to knowledge. Rather, such protection serves as a mechanism to ensure that institutions responsible for verifying, curating, and preserving knowledge retain sufficient resources to fulfill their scientific functions. If the fair use doctrine is applied indiscriminately as a justification for unlimited free access to digital academic works, it risks becoming an instrument that undermines the sustainability of the academic publishing industry. However, if this doctrine is properly managed through collective licensing mechanisms, fair digital distribution models, and a system of remuneration for secondary use, then fair use can actually function as an instrument that expands access to knowledge without sacrificing creators’ economic rights. The current transformation of the academic literature market indicates that the publishing industry is not heading toward extinction but is undergoing a shift from a product-ownership economy to an access-service economy, such as open access models, scientific database subscriptions, and royalty schemes through collective management organizations.

In this context, legal certainty is a key factor for the sustainability of the knowledge ecosystem. National regulations such as Regulation of the Minister of Law and Human Rights No. 15 of 2024 on the Management of Copyright Royalties represent a first step toward a remuneration system that is more adaptable to the digital economy. Therefore, as *ius constituendum*, stakeholders overseeing the registration, management, and termination of copyrights, particularly the Directorate General of Intellectual Property under the Ministry of Law and Human Rights of the Republic of Indonesia, need to strengthen a fair use policy framework that is adaptable to technological developments, harmonized with international standards, and capable of balancing creators’ exclusive rights with the public interest in accessing knowledge. This includes adapting the concept of fair use to accommodate technological advancements and the public’s need for open and easily accessible information. Therefore, the role of the DJKI as the agency responsible for this matter is crucial in ensuring that copyright serves not only as a tool to protect creators but also as a means to promote social, educational, and cultural progress in the digital age.

In addition, the existence of the principle of fair use in copyright law in various jurisdictions, including in Indonesia, allows the work to be used in certain contexts without requiring permission from the copyright holder.<sup>37</sup> This allows the use of such works for educational purposes, criticism, or parody, all of which support the free circulation of ideas and promote innovation and creativity.<sup>38</sup>

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<sup>37</sup> Muzayyanah Griselda Amelia Bandini and Dr. Yenny Eta Widyanti, “Analisis Karakteristik dan Batasan Fair Use dalam Pembuatan Video Parodi (Studi Perbandingan Berdasarkan Undang-Undang Hak Cipta No 28 Tahun 2014 Dengan Copyright Act of 1976 Amerika Serikat).” (sarjana, Universitas Brawijaya, 2024), <https://repository.ub.ac.id/id/eprint/216658/>.

<sup>38</sup> Wahdah, Siti. 2020. “Perpustakaan Digital, Koleksi Digital dan Undang-Undang Hak Cipta.” *Pustaka Karya : Jurnal Ilmiah Ilmu Perpustakaan dan Informasi*; Vol 8, No 2: Desember 2020; 75-84 ; 2723-7699 ; 2089-5216, September. <http://jurnal.uin-antasari.ac.id/index.php/pustakakarya/article/view/5132>.

Therefore, understanding the philosophy behind copyright helps to understand how the law is designed to promote a balance between protecting the rights of creators and ensuring that society at large can access and utilize creativity freely. Copyright, thus, is not just a tool to protect economic interests but also a means to maintain and promote the intellectual and cultural health of a society. Thus, the fair use doctrine is no longer viewed as a threat to the creative industry, but rather as a legal instrument that can constructively remove barriers to knowledge access while protecting the very heart of creativity that forms the foundation of civilizational progress.

## **CLOSING**

Fair use policies play a vital role in accommodating the needs of education and research in the digital age, where access to scholarly resources is becoming increasingly important. However, the rigidity of copyright regulation in Indonesia still creates legal uncertainty and hinders the full utilization of digital resources for academic purposes, in contrast to the more flexible framework in the United States. To address this, Indonesia needs to reformulate its fair use policy by adopting clearer guidelines that explicitly include assessment factors similar to the four determinants used in U.S. law, while still aligning with local legal philosophy, because the law must provide legal certainty and protect everyone, ensuring that the policies implemented are understood and accepted fairly by all parties. The potential application of such reform lies in enabling lecturers, researchers, and students to confidently use digital resources for teaching, learning, and research without fear of legal repercussions, thereby strengthening academic innovation and international collaboration. In practical terms, this reformulation should lead to the establishment of national guidelines on fair use interpretation, the development of institutional protocols in universities and research bodies for the lawful use of copyrighted works, and integration with open access initiatives to maximize the dissemination of knowledge. Thus, a balanced approach between protecting creators' rights and ensuring equitable scientific access can not only improve the quality of education and research in Indonesia but also support the nation's competitiveness in global scientific and technological advancement.

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