

# LEGAL COMPARISON OF USER-GENERATED CONTENT RESPONSIBILITY FOR MUSIC COPYRIGHT INFRINGEMENT IN INDONESIA AND THE EUROPEAN UNION

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## ABSTRACT

The increasingly massive development of technology has now given rise to platforms filled with user-generated content. This system, known as UGC (user-generated content), has created new issues, particularly regarding intellectual property rights for uploaded works and their various attributes, such as music. This article will examine the application of copyright law in the European Union and Indonesia. This application will be examined based on the theory of legal systems, which divides law into three analytical components: structure, substance, and culture. The method used is a comparison of copyright law between the European Union and Indonesia, particularly Article 17 of the EU Directive on Copyright on the Digital Single Market and the Copyright Law. Based on this comparison, it was found that the European Union has a more accommodating legal system for copyright, both in terms of oversight mechanisms, complaints, and the existence of a *lex specialis* for copyright on digital platforms. In terms of oversight and complaints mechanisms, Indonesia still relies on platform initiatives. Indonesia also does not yet have a *lex specialis* regarding copyright on digital platforms. This condition is related to the differences in the legal cultures of the European Union and Indonesia. The European Union's legal culture is more respectful of copyright, both externally and internally. In Indonesia, copyright is unclear due to an internal legal culture that prioritizes enforcement and an external legal culture that is less familiar with copyright and tends to be Eurocentric.

**Keywords:** Copyright, Intellectual Property Rights, Legal System, Legal Culture, User-Generated Content Digital Platform

## ABSTRAK

Perkembangan teknologi yang makin masif kini menghadirkan platform yang diisi konten-konten buatan penggunanya. Sistem yang disebut UGC (user-generated content) ini menghasilkan masalah baru, terutama berkaitan dengan hak kekayaan intelektual terhadap karya-karya yang diunggah dan berbagai atributnya, seperti musik. Artikel ini akan mengkaji penerapan hukum hak cipta pada Uni Eropa dan Indonesia. Penerapan tersebut akan dikaji berdasarkan teori sistem hukum yang membagi hukum dalam tiga komponen analisis: struktur, substansi, dan budaya. Metode yang digunakan adalah perbandingan hukum mengenai hak cipta antara Uni Eropa dengan Indonesia, terutama Article 17 EU Directive on Copyright on Digital Single Market dan UU Hak Cipta. Berdasarkan perbandingan tersebut, ditemukan bahwa Uni Eropa telah memiliki sistem hukum yang lebih akomodatif terhadap hak cipta, baik dari segi mekanisme pengawasan, pengaduan, sampai adanya *lex specialis* untuk hak cipta dalam platform digital. Dalam mekanisme pengawasan dan pengaduan, Indonesia masih bergantung pada inisiatif platform. Indonesia juga belum memiliki *lex specialis* mengenai hak cipta dalam platform digital. Kondisi ini berkaitan dengan perbedaan budaya hukum Uni Eropa dan Indonesia. Budaya hukum Uni Eropa lebih menghormati hak cipta, baik dari sisi eksternal maupun internal. Di Indonesia, hak cipta memperoleh

ketidakjelasan karena budaya hukum internal yang mengutamakan penindakan serta budaya hukum eksternal yang kurang mengenal hak cipta yang cenderung Eurosentris.

**Kata Kunci:** Hak Cipta, Hak Kekayaan Intelektual, Sistem Hukum, Budaya Hukum, Platform Digital User-Generated Content

## I. INTRODUCTION

### 1.1. Background

Since prehistoric times, humans have always explored their creative potential. They have been able to create cave paintings, carve stone statues, and even compose poems and stories. Creativity is one of the defining characteristics that distinguishes humans from other living creatures. In Indonesia, copyright has its roots in the colonial period when the Auteurswet 1912, the Dutch copyright law, was enacted in the Dutch East Indies.<sup>1</sup> This law was continental in nature, granting automatic protection without registration. However, in practice, it did not extend to local artists whose works were not documented in the formal colonial system. Post-independence, Indonesia continued to use the Auteurswet principle of *koncordantie*, ultimately issuing Law No. 6 of 1982, the first national copyright law. Following Indonesia's participation in the WTO and ratification of the TRIPS Agreement in 1994, copyright law underwent major reforms. Through a series of revisions (1987, 1997, 2002), the scope of protection was expanded and the sanctions system tightened. Law No. 28 of 2014 refined the framework by extending the copyright protection period to 70 years, strengthening institutions such as the National Collective Management Institute (LMKN), and opening a compulsory licensing pathway.<sup>2</sup>

On the other hand, in the case of the European Union (EU), at the beginning of the European Economic Community (EEC), copyright was entirely a domestic matter for member states and was not considered part of common economic policy. However, internal market pressures and technological developments began to shift this perspective from the early 1980s.<sup>3</sup> The first steps toward EU copyright harmonization began with the European Commission's Green Paper on Copyright and the Challenge of Technology in 1988. This document recognized that national copyright systems were unable to address digital challenges in isolation and required a common legislative framework. This was soon followed by a number of directives aimed at harmonizing key aspects of copyright protection. One of the most significant was EU Council Directive 91/250/EEC of 14 May 1991 on the Legal Protection of Computer Programs, which equates the protection of computer software to literary works.<sup>4</sup>

In the digital era, technological developments have had a significant impact on intellectual property rights (IPR). One reason is the emergence of digital platforms. According to Feld (2019), a digital platform is defined as:<sup>5</sup>

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<sup>1</sup> Dina Nurusyifa, "Prinsip Deklaratif Dalam Regulasi Hak Cipta Di Indonesia," *UNES Law Review* 6, no. 2, (2023), p. 6362.

<sup>2</sup> Direktorat Jenderal Kekayaan Intelektual, "Sejarah DJKI," <https://www.dgip.go.id/tentang-djki/sejarah-djki>, accessed on June 7, 2025.

<sup>3</sup> Tatiana-Eleni Synodinou, "The Desirability of Unification of European Copyright Law," in *The Routledge Handbook of EU Copyright Law*, ed. Eleonora Rosati (London: Routledge, 2021), 44.

<sup>4</sup> Sarvenaz Tavakoli, *A Study of EU Copyright Law and Open-Source Licensing* (Master's thesis, Lund University, 2007), 23.

<sup>5</sup> Harold Feld, *The Case for the Digital Platform Act: Market Structure and Regulation of Digital Platforms* (New York: Roosevelt Institute, 2019), 4.

- “(1) services accessed via the internet;*
- (2) the service is two-sided or multi-sided, with at least one side open to the public that allows members of the public to produce content, buy and sell goods or services, or interact in other ways that enable them to be more than passive consumers of goods and services; and*
- (3) therefore, the platform enjoys a type of a certain strong network effect.”*

This platform includes various forms, such as social media, websites, mobile applications, and cloud services, all of which are designed to facilitate communication and collaboration in cyberspace.

Along with the growth of digital platforms, a phenomenon has emerged, User-Generated Content (UGC), which is content that is created and shared by users voluntarily. Naeem & Okafor<sup>6</sup> defines UGC as content published by users on various online platforms, such as photos, reviews, videos, podcasts, forum content, comments, and blog content that is generated, circulated, and consumed by public users. UGC can easily involve copyrighted works. Therefore, there are potential legal issues related to copyright infringement. Users often upload or use the unauthorized use of another person's work, whether music, films, video clips, images, or text protected by copyright law. This can lead to widespread copyright infringement, which is difficult for platform providers to control due to the sheer volume of content and high upload speed.

In the past five years, the Directorate General of Intellectual Property (DJKI) has received numerous reports of copyright infringement originating from various digital platforms, with the majority relating to the sale of counterfeit goods and digital content piracy.<sup>7</sup> Despite ongoing monitoring, these law enforcement efforts still face significant obstacles. The legal approaches to digital platform liability in the European Union and Indonesia differ. In the European Union, Article 17 of Directive 2019/790 stipulates that Online Content Sharing Service Providers (“OCSSPs”), such as YouTube and Facebook, are directly responsible for the content uploaded by their users if that content violates copyright.<sup>8</sup> To avoid this liability, platforms must make “best efforts” to obtain authorization from copyright holders or, if that is not possible, take steps such as blocking unauthorized content and preventing its re-upload. These steps include the use of automated filtering technologies, such as upload filters, which are designed to detect and prevent copyright infringement before content is published. This approach marks a shift from the “notice-and-takedown” to “notice-and-stay-down” which demands platforms to be more proactive in preventing copyright infringement.<sup>9</sup>

Initially, the European Union Directive 2000/31/EC of 8 June 2000 on E-Commerce provides digital platforms with protection from liability for user content, provided they act quickly after being notified (notice-and-takedown), similar to Indonesia today, based on the safe harbour doctrine. The safe harbour doctrine is a legal

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<sup>6</sup> Muhammad Naeem dan Sebastian Okafor, “User-Generated Content and Consumer Brand Engagement,” dalam *Leveraging Computer-Mediated Marketing Environments*, ed. Muhammad Naeem (Hershey, PA: IIGIGlobal, 2019), p. 193–220.

<sup>7</sup> Direktorat Jenderal Kekayaan Intelektual, “Tantangan Membasmi Pelanggaran Kekayaan Intelektual di Era Digital,” <https://www.dgip.go.id/artikel/detail-artikel-berita/tantangan-membasmi-pelanggaran-kekayaan-intelektual-di-era-digital?kategori=liputan-penyidikan-ki>, accessed June 8, 2025.

<sup>8</sup> Axel Metzger and Martin Senftleben, “Understanding Article 17 of the EU Directive on Copyright in the Digital Single Market – Central Features of the New Regulatory Approach to Online Content-Sharing Platforms,” *Journal of the Copyright Society* 67 (2020): p. 287.

<sup>9</sup> Metzger and Senftleben, Understanding Article 17, p. 287.

principle that provides limited protection against legal liability for digital platforms for copyright infringement by their users.<sup>10</sup> This concept was first explicitly regulated in United States law through Section 512 of the Digital Millennium Copyright Act (“DMCA”) in 1998. However, this approach is considered no longer adequate in the context of large platforms with billions of users and massive amounts of content. Therefore, Article 17 of the CDSM Directive changed that approach, explicitly stating that platforms must proactively obtain licenses or ensure unlicensed content is not available.<sup>11</sup> According to Lemley's view, in modern digital structures, platforms have great control over the distribution of digital content, including data analytics about content consumption and popularity.<sup>12</sup> When platforms allow or even monetize pirated content, they directly profit from the infringement without compensating the rights owners. This reinforces the argument that they are not economically neutral.

This approach is different from Indonesia, which still follows the safe harbour doctrine, where Article 10 of Law Number 28 of 2014 concerning Copyright (“**Copyright Law**”) initially only regulated the prohibition for managers of trading places to allow the sale or duplication of goods resulting from copyright infringement in the places they manage commercially.<sup>13</sup> However, with the development of technology and the emergence of digital platforms based on content created for reuse or UGC, such as TikTok and YouTube, there is a need to expand the scope of legal liability. In Constitutional Court Decision No. 84/PUU-XXI/2023, the Constitutional Court interpreted Article 10 of the Copyright Law to include UGC-based digital service platforms. This means that digital platform managers are currently prohibited from allowing the display or duplication of copyright-infringing content on their platforms.<sup>14</sup>

## 1.2. Problem Identification

Based on the background of the problem that has been explained, the following is a summary of the problem that will be displayed:

1. How do laws and regulations in Indonesia and the European Union regulate the liability of UGC digital platforms in cases of music copyright infringement?
2. How does the implementation of comparative law between Indonesia and the European Union relate to the responsibility of UGC digital platforms for music copyright infringement?

## 1.3. Research Purposes

Based on the problem formulation that has been explained, the following are the research objectives:

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<sup>10</sup> Pamela Samuelson and Members of the Copyright Principles Project, “The Copyright Principles Project: Directions for Reform,” *Berkeley Technology Law Journal* 25, no. 3 (2010): hal. 1195.

<sup>11</sup> Christina Angelopoulos et al. *Articles 15 & 17 of the Directive on Copyright in the Digital Single Market – Comparative National Implementation Report*, University of Cambridge Faculty of Law Research Paper No. 29/2024 (2024), p. 38.

<sup>12</sup> Mark A. Lemley, “The Surprising Virtues of Treating Trade Secrets as IP Rights,” *Stanford Law Review* 61, no. 2 (2008): 311.

<sup>13</sup> Ady Thea DA, “MK Perluas Makna ‘Tempat Perdagangan’ Termasuk Platform Digital,” <https://www.hukumonline.com/berita/a/mk-perluas-makna-tempat-perdagangan-termasuk-platform-digital-lt65e6ae46281b5/>, accessed June 9, 2025.

<sup>14</sup> Mahkamah Konstitusi Republik Indonesia, “Perluasan yang Dimaksud dengan Mencantumkan Pelarangan bagi Platform Layanan Digital berbasis User Generated Content (UGC),” <https://www.mkri.id/index.php?page=web.Berita&id=20076&menu=2>, accessed June 9, 2025.

1. To present a comparison of the laws and regulations in Indonesia and the European Union that currently regulate the responsibilities of digital platforms in cases of copyright infringement on digital platforms.
2. To resolve the comparative legal issues between Indonesia and the European Union in determining the responsibility of digital platforms for copyright infringement in content on digital platforms.

## 2. METHOD

This study adopts a normative legal research design, which examines law as a set of binding norms and principles governing society.<sup>15</sup> The research focuses primarily on the analysis of codified legal norms found in legislation, court decisions, and doctrinal writings. Within this design, the study specifically employs a comparative law approach. Comparative legal research enables the systematic comparison of legal regimes across jurisdictions, in this case between Indonesia and the European Union, in order to identify differences, similarities, and potential best practices that may be adapted within the national legal framework.

In addition to doctrinal analysis, this research incorporates the use of secondary data. Secondary data refers to information obtained indirectly through existing sources such as official documents, reports, scholarly publications, and statistical data.<sup>16</sup> The reliance on secondary data strengthens the normative inquiry by situating the analysis within both academic discourse and policy developments. The methodological orientation of this study can thus be categorized as a non-judicial case study, where selected legal cases and regulatory frameworks are examined without direct involvement in judicial proceedings. The data analyzed in this research consists entirely of secondary sources, collected through extensive library-based research.

The methodological approach is rooted in normative legal research, as articulated by Soerjono Soekanto and Sri Mamudji,<sup>17</sup> which encompasses analysis through legal principles, systematic structure, horizontal and vertical synchronization of laws, case studies, and comparative methods. Of these, the comparative law approach forms the central analytical framework of this study. Comparative law is treated not merely as a technical tool for borrowing foreign legal concepts but as a distinct discipline in its own right, with epistemological significance. Following Konrad Zweigert and Hein Kötz, this research applies the functional method, comparing legal institutions based on their social functions rather than solely on textual or formal attributes.<sup>18</sup> In addition, theoretical perspectives from Esin Örüçü<sup>19</sup> and Mark Van Hoecke<sup>20</sup> are incorporated to underscore that comparative law bridges national legal systems with global legal realities, serving both analytical and practical purposes.

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<sup>15</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: RajaGrafindo Persada, 2010), p. 13.

<sup>16</sup> Soekanto and Mamudji, *Penelitian Hukum Normatif*, p. 15.

<sup>17</sup> Soekanto and Mamudji, *Penelitian Hukum Normatif*, p. 14.

<sup>18</sup> Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, 3rd ed., trans. Tony Weir (Oxford: Oxford University Press, 1998), p. 3.

<sup>19</sup> Esin Örüçü, "The Enigma of Comparative Law: Variations on a Theme for the Twenty-First Century," in *Comparative Law: A Handbook*, ed. Esin Örüçü dan David Nelken (Oxford and Portland, OR: Hart Publishing, 2007), p. 22.

<sup>20</sup> Mark van Hoecke, "Methodology of Comparative Legal Research," *Law and Method*, 2015, p. 10.



### 3. RESULT AND DISCUSSIONS

#### 3.1 Research Results

The paradigm shift in global music consumption since the beginning of the 21st century has brought significant legal implications, particularly regarding copyright protection and the accountability of digital intermediaries. Since the advent of UGC-based digital platforms, music distribution has become decentralized and interactive. This model provides easy access and democratization of production, but also increases the risk of infringement of creators' exclusive rights.<sup>21</sup>

In Indonesia, based on data from the Koalisi Seni in 2022, more than 56.7% of internet users in Indonesia use digital platforms to listen to music, with consumption growing by 20.1%.% per year.<sup>22</sup> Another survey showed that about 59.6% of musicians don't know who collects their royalties, and 77.9% have not yet joined LMKN, showing the inequality in access to royalties.<sup>23</sup>

In Indonesia, platforms operating with a UGC model fall into the category of Electronic System Providers (ESPs) under applicable laws and regulations. This status is not affected by the fact that the content displayed originates from user initiatives and uploads. Within the national legal framework, any entity that provides and operates an online electronic system remains qualified as an ESP, and is therefore subject to all legal obligations inherent in ESPs.<sup>24</sup>

General obligations for ESP are regulated in Article 15 of the ITE Law as amended. This article contains three main provisions. First, paragraph (1) emphasizes that every ESPs is obliged to organize electronic systems reliably and securely, and is responsible for the proper operation of electronic systems. Based on the explanation of the latest amendment to the ITE Law, reliability is defined as the ability of an electronic system to meet the needs of its users. Security includes both physical and non-physical system protection. Meanwhile, the phrase "operating properly" means that the system has the capabilities according to the specified specifications, including compliance with governance obligations as stipulated in laws and regulations.<sup>25</sup> Second, Article 15 paragraph (2) stipulates that ESPs is responsible for the implementation of the electronic system it operates. The explanation of this article confirms that this responsibility is inherent in ESPs as a legal subject. Third, Article 15 paragraph (3) provides an exception if it can be proven that the violation occurred due to force majeure, errors, or negligence on the part of the user of the electronic system. Specifically, the category of ESPs that facilitate UGC is regulated in Article 1 number 7 of the Minister of Communication and Information Regulation 5/2020. This provision states that ESPs with a Private Scope of UGC are ESPs whose provision, display, upload, and/or exchange of electronic information or electronic documents is carried out by electronic system users. This

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<sup>21</sup> Nur Amany Burhan, "The Liability Of User-Generated Content-Based Digital Service Platforms For Copyright Infringement Following Constitutional Court Decision No. 84/PUU-XXI/2023," *Journal of Research in Social Science and Humanities* 5, no. 2 (2025), p. 1.

<sup>22</sup> Koalisi Seni, "Siaran Pers: Pasar Potensial Musik, Sudahkah Kebijakan Pemerintah Pro-Musisi?," <https://koalisiseni.or.id/pasar-potensial-musik-sudahkah-kebijakan-pemerintah-pro-musisi/>, accessed August 20, 2025.

<sup>23</sup> Koalisi Seni, "Siaran Pers,"

<sup>24</sup> Fadlan Maulana Pramudya, *Hak Cipta dan Safe Harbor Policy di Indonesia: Analisis Putusan Pengadilan Jakarta Pusat No. 60/Pdt.Sus-Hak Cipta/2021/PN Jkt.Pst dan Putusan Mahkamah Konstitusi Nomor 84/PUU-XXI/2023* (Bachelor's thesis, Universitas Indonesia, 2024), 20.

<sup>25</sup> Sahib, Nathania Salsabila Marikar, Soesi Idayanti, and Kanti Rahayu, "Problematisasi aturan penyelenggara sistem elektronik (PSE) di Indonesia." *Law Journal (PLJ)* 1, no. 1 (2023): 65.

definition confirms that even if the organizer does not produce the content itself, they are still included in the ESP regulatory regime and are required to comply with applicable legal provisions.

Based on Article 11 of Permenkominfo 5/2020, ESP can be exempted from legal responsibility for the distribution of prohibited Electronic Information or Electronic Documents, as long as it meets three cumulative requirements. First, the ESP has carried out the obligations stipulated in Article 9 paragraph (3) and Article 10 of Permenkominfo 5/2020, which states that prohibited Electronic Information and/or Electronic Documents include information classified as violating the provisions of laws and regulations. Thus, the qualification of "prohibited content" covers all forms of illegal content under Indonesian law, including copyright infringement. Second, ESP provides subscriber information who upload prohibited content, for the purposes of monitoring and/or law enforcement. Third, ESP terminates access (take down) regarding the prohibited content. If any of these requirements are not met, the ESP may still be held legally responsible for the existence of the infringing content.

The second reference, namely Article 10 of Permenkominfo 5/2020, contains detailed obligations for ESP in handling prohibited content. In paragraph (1) ESP is required to have governance regarding Electronic Information and/or Electronic Documents, as well as provide reporting facilities that can be used by the public. This governance, as regulated in paragraph (2), must at least include provisions regarding the obligations and rights of electronic system users, the obligations and rights of ESP in service operations, accountability regulations for content uploaded by users, and a mechanism for providing complaint services.

Furthermore, Article 10 paragraph (3) stipulates that reporting facilities must be publicly accessible and used to submit complaints or reports on prohibited content. Further obligations are regulated in paragraph (4), which requires PSE: (a) to provide a response to incoming complaints, (b) to conduct independent checks or request verification from the relevant authorities, (c) to notify users whose content is reported, and (d) to reject complaints if the content is not prohibited content. Failure to carry out the obligations in paragraphs (1) and (4) may result in sanctions in the form of termination of access (*access blocking*) to the managed electronic system, as regulated in paragraph (5).

The series of provisions in Article 9, Article 10, and Article 11 of Permenkominfo 5/2020 form the safe harbor national framework for UGC ESP. In principle, ESP is not automatically responsible for all illegal content uploaded by users, as long as it actively implements governance mechanisms, responds quickly to reports, provides user data to law enforcement authorities, and carries out take down against prohibited content. This scheme regulates the relationship between platform responsibilities and the prevention and handling of legal violations that occur through its electronic systems.

In PP 71/2019, Article 96 classifies the types of content for which ESPs are required to terminate access into three main categories. First, content that violates statutory provisions. Second, content that disturbs the public and disrupts public order. Third, content that provides information on how to or provides access to content prohibited by applicable law. In the case of copyright infringement, such actions fall into the first category. Article 98 of PP 71/2019 clarifies the legal subjects responsible for this obligation. Paragraph (1) stipulates that every ESP is required to terminate access to content as referred to in Article 96. Furthermore, paragraph (3) of Article 98 stipulates that ESPs that do not fulfill their obligation to terminate access may be subject to legal liability based on statutory provisions.

However, the regulations regarding ESP follow the copyright rules stipulated in the Copyright Law, especially Article 10. The Copyright Law has been expanded following Constitutional Court Decision Number 84/PUU-XXI/2023. The applicants, namely PT Aquarius Pustaka Musik (Applicant I), PT Aquarius Musikindo (Applicant II), and Melly Goeslaw (Applicant III), filed a lawsuit alleging that a number of their songs, or songs under their copyright management, were being used by UGC-based digital platforms without permission. One of the cases that drew attention was the lawsuit filed by the "Likee" application, managed by Bigo Technology Ltd, in the Commercial Court at the Central Jakarta District Court, alleging that Likee broadcast copyrighted songs without permission. However, the panel of judges dismissed the lawsuit on the grounds that the UGC video content in the Likee application was entirely uploaded by users, not created by Bigo, thus deeming the company not liable. This decision highlights a legal loophole related to the interpretation of Article 10 of the Copyright Law, which has not anticipated developments in digital technology. Previously, Article 10 of the Copyright Law only referred to "trading place managers," meaning the definition was limited to the trade in physical products and excluded digital products, which are currently traded. The previous Article 10 read:

*"Managers of trading premises are prohibited from allowing the sale and/or duplication of goods resulting from infringement of Copyright and/or Related Rights in the trading premises they manage."*

Now it is interpreted as:

*"Trading place manager and/or User Generated Content (UGC) based Digital Service Platform prohibited from allowing the sale, display and/or duplication of goods resulting from violations of Copyright and/or Related Rights in the trading places and/or Digital Services that they manage"*

Following Constitutional Court Decision Number 84/PUU-XXI/2023, this expansion includes the prohibition on the display, duplication, and sale of copyright-infringing UGC content within the scope of Article 10 of the Copyright Law. Thus, copyright infringement becomes one of the categories of "prohibited content" as referred to in Article 9 paragraph (3) of Ministerial Regulation 5/2020.

In its deliberations, the Constitutional Court highlighted that Article 10 of the Copyright Law uses the terms "goods" and "trading place," which are relevant in the era of physical commerce, but inadequate in the context of trading digital content such as music, films, and other works now marketed through online platforms. In practice, the distribution of musical works has shifted from physical forms such as cassettes or CDs to digital formats traded in the virtual space. The Constitutional Court emphasized the need to expand the meaning of these two terms so that Article 10 remains relevant to current developments and in line with the objectives of Law 28/2014, namely to provide fair protection and legal certainty for creators and related rights holders. The Court referred to the spirit of protection in the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights, which recognize the moral and material rights of every creator.

Furthermore, the Constitutional Court held that UGC-based digital platform operators should not be able to hide behind the excuse that the content is user-generated. With their technological capabilities, platforms can detect copyright infringement early, so the obligation to prevent or remove illegal content should rest with them. The principle applied by the Constitutional Court here is similar to that of strict liability,



namely the burden of responsibility and proof lies with the technology owner (platform manager), not with the victim of the violation.<sup>26</sup> This is different from the liability based on fault principle which requires proof of the perpetrator's fault. Thus, Article 10 of Copyright is interpreted broadly to encompass both physical and virtual spaces, and digital platforms can be viewed as "trading venues" subject to the prohibition on tolerating copyright infringement.

The Court also emphasized that to protect the moral and economic rights of creators, Article 10 must be expanded to include UGC-based digital services. Content containing copyrighted works may only be displayed with the permission of the rights holder, and violation of this creates unfair legal uncertainty. Therefore, the petitioners' request for a broader interpretation of Article 10 was deemed legally justified, and the Constitutional Court conditionally established a new interpretation of the article.

Regarding Article 114 of the Copyright Law, which regulates criminal sanctions for managers of trading venues who allow copyright infringement, the Constitutional Court considers this provision a secondary norm that relies on Article 10 as its primary norm. With the new interpretation of Article 10, the application of Article 114 must also follow the expanded scope, so that law enforcement officials can ensnare managers of UGC-based digital platforms who allow copyright infringement to occur. The Constitutional Court stated that lawmakers still need to immediately adjust Article 114 to align with the new interpretation of Article 10.

In the European Union, prior to the CDSM Directive, the rules governing the responsibilities of online service providers in the EU referred to the E-Commerce Directive. Article 14 of Directive E-Commerce sets a safe harbor policy model which in principle frees service providers from responsibility for content uploaded by users, as long as they do not have actual knowledge of any infringement or, upon being notified, act expeditiously to remove or block access to such content.<sup>27</sup> This model places platform providers in a passive position where they are not required to proactively monitor all content, but only respond to reports (notice-and-takedown). However, the development of the UGC-based digital content ecosystem shows that this passive regime is not effective enough to address copyright infringement. Many violations occur repeatedly, with the re-upload pattern even though it has been takedown.<sup>28</sup> It was at this point that the CDSM Directive was born, which specifically separated the category of OCSSPs from other online service providers and introduced more proactive responsibilities.

Article 17 of the CDSM Directive occupies a special position as *lex specialis* which explicitly regulates the communication to the public in the form of OCSSPs. However, this provision does not create new copyrights, but rather substantially refers back to the legal framework already set out in Article 3 of the InfoSoc Directive. If Article 3 InfoSoc Directive affirms the exclusive rights of creators and content producers over the communication and availability of works online, Article 17 of the CDSM Directive further regulates the responsibilities of online platforms in ensuring that these exclusive

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<sup>26</sup> Goold, Patrick R, "Moral Reflections on Strict Liability in Copyright," *Colum. JL & Arts* 44 (2020): 126.

<sup>27</sup> Alexandre de Streel and Martin Husovec, *The E-commerce Directive as the Cornerstone of the Internal Market: Assessment and Options for Reform* (Study for the Committee on Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, May 2020), 16.

<sup>28</sup> U.S. Copyright Office, *Section 512 of Title 17: A Report of the Register of Copyrights* (Washington, D.C.: U.S. Copyright Office, 2020), 78.

rights are protected through preventive and licensing mechanisms. The main difference is that Article 17 provides sectoral regulations, adapting the norms of the InfoSoc Directive to the technical and operational characteristics of online content sharing platforms.<sup>29</sup> The provisions of Article 17(3) also remove the application of liability exemption as stipulated in Article 14 of the E-Commerce Directive, so that OCSSPs cannot claim legal immunity of hosting if the obligations in Article 17 are not fulfilled.<sup>30</sup>

However, Recitals 64 and 65 emphasize the limitations. The recital states that Article 17 does not affect the application of the concept of communication to the public outside the scope of the CDSM Directive, and that the safe harbor regime in Article 14 of the E-Commerce Directive remains applicable to activities that fall outside the scope of the CDSM Directive.<sup>31</sup> Thus, the legal consequence is that EU member states have an obligation to carry out specific implementation of Article 17 through national legislation, and cannot solely rely on the existing provisions in Article 3 of the InfoSoc Directive. In the frame CDSM Directive, Article 17 establishes a comprehensive liability regime for OCSSPs, which states that any UGC platform, when providing access to copyrighted works uploaded by users, is automatically deemed to have committed an act of communication to the public as mandated in Article 17(1) and (2). OCSSP can no longer be given leniency as in the safe harbor framework. For a long time, they were required to first obtain authorization in the form of a direct license or other type of explicit permission from the rights holder before distributing such content.<sup>32</sup>

If an OCSSP fails to obtain such authorization, Article 17(4) introduces an alternative, safeguard-based regime. There are three cumulative conditions that must be met for a platform to not be considered infringing:<sup>33</sup> Under Article 17, platforms are required to show best efforts to obtain authorization with documented proof, with proportional tolerance for small or new providers, where reasonable contact or offers – even if rejected – may suffice. They must also apply professional-level controls, such as filtering technology, to prevent uploads of infringing content, but only when rights holders provide the necessary and specific information as stipulated in Article 17(4)(b), since without sufficient data the platform has no duty to act. Furthermore, upon receiving substantiated notice, platforms must act swiftly to remove or block access to the infringing material and ensure it does not reappear, implementing the “stay-down” policy outlined in Article 17(4)(c). However, the scope of this obligation must not be excessive, because Article 17(5) emphasizes the principle of proportionality as a compass in assessing whether what best efforts the platform does is appropriate.<sup>34</sup> This evaluation takes into account the size and type of service, the type of user content, the cost of implementing the technology, and the effectiveness of the effort.

Furthermore, Article 17 paragraph (7) explicitly states that cooperation between platforms and rightholders in preventing the circulation of illegal content must not result

<sup>29</sup> Federico Ferri, "The dark side(s) of the EU Directive on copyright and related rights in the Digital Single Market," *China-EU Law Journal* 7, no. 1 (2021): 32.

<sup>30</sup> Ferri, "The dark side(s)," 34.

<sup>31</sup> Christophe Geiger and Bernd Justin Jütte, "Platform liability under Art. 17 of the copyright in the digital single market directive, automated filtering and fundamental rights: an impossible match," *GRUR international* 70, no. 6 (2021): 30.

<sup>32</sup> Geiger and Jütte, "Platform Liability," p. 31.

<sup>33</sup> Kati Store, *OCSSPs' obligations under Article 17(4) of Directive 2019/790 on Copyright and Related Rights in the Digital Single Market: - a roadmap to ensure compliance with the prohibitions of automated decision-making and general monitoring* (Master's thesis, Stockholm University, 2021), 21.

<sup>34</sup> Store, *OCSSPs' obligations*, 21.

in the removal or blocking of access to works that are legitimate and not in violation of the law. In other words, the automated systems used must still take into account legitimate uses, such as for parody, criticism, or quotation.<sup>35</sup> Successfully maintaining access to legitimate content is the ultimate goal that must be achieved (obligation of result), although the methods or steps taken may vary. Article 17 paragraph (8) emphasizes that the implementation of this provision may not change into a general monitoring obligation. This means that the use of mass filters or the practice of comprehensive surveillance without clear targets is prohibited, and member states are obliged to ensure that the implementation of these rules does not develop into a form of institutionalized censorship that is repressive.<sup>36</sup>

Furthermore, Article 17 paragraph (9) provides an additional, very important layer of protection. This article emphasizes that the provisions of the CDSM Directive must not interfere with or limit legitimate uses as stipulated in the exceptions and limitations of copyright, including for the purposes of education, research, criticism, or similar interests recognized by law. In addition, this provision also prohibits any form of individual identification or arbitrary processing of users' personal data, except where expressly permitted by law.<sup>37</sup> This affirmation is in line with Recital 85, which places the protection of privacy and personal data as a fundamental right that must be maintained.

### 3.2. Comparison of the Structure and Substance of Indonesian and European Union Law

#### a. Copyright Infringement Monitoring and Verification Mechanism

The EU also clearly stipulates the importance of oversight mechanisms through the use of copyright management tools by platform. Copyright management tools is a digital detection tool that copyright owners can use to protect and manage their copyrighted content on YouTube.<sup>38</sup> The practice of UGC platforms can be seen in YouTube's practices. Copyright management tools are designed for a wide range of creators, from casual uploaders to established media companies. The platform implements a copyright protection system known as Content ID and the Copyright Match Tool. Content ID is a digital identification technology designed to identify copyrighted content, both fully and partially.<sup>39</sup> Since its launch in 2007, Content ID has been considered a pioneering technology in copyright protection in the digital realm. Through this system, YouTube can detect when a user uploads material that matches the Content ID database. If a match is identified, the system notifies the copyright holder, who then has several options, such as removing the content or monetizing it to generate revenue from video views.

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<sup>35</sup> Federico Ferri, "The dark side (s) of the EU Directive on copyright and related rights in the Digital Single Market," *China-EU Law Journal* 7, no. 1 (2021): 35.

<sup>36</sup> Ferri, "The dark side (s)", p. 33.

<sup>37</sup> Ferri, "The dark side (s)", p. 33..

<sup>38</sup> YouTube, "Overview of copyright management tools," <https://support.google.com/youtube/answer/9245819?hl=en>, accessed August 31, 2025.

<sup>39</sup> YouTube, "How Content ID works," <https://support.google.com/youtube/answer/2797370?sjid=15870547411956916058-NC>, accessed August 31, 2025.

Meanwhile, the Copyright Match Tool was developed as an update to Content ID.<sup>40</sup> Unlike Content ID, which works automatically without an initial report, the Copyright Match Tool requires an initial step from the user or copyright holder to submit a removal request. Once the request is submitted, the system will search for and identify other uploads containing similar content. The reporting copyright holder can then determine the next step, whether to remove the content or monetize it. The implementation of this technology has proven effective in curbing the practice of re-uploading or re-uploading unauthorized content on the YouTube platform.

Both Content ID, the Copyright Match Tool, and similar digital technologies can be categorized as technological control tools, namely devices or technical components used to prevent or limit copyright infringement. The existence of these technological control tools expands protection mechanisms that were previously passive and relied on reports (notice and takedown) to be a system capable of actively detecting violating content.<sup>41</sup> Thus, UGC service providers like YouTube fulfill their obligations to maintain adequate information governance in accordance with applicable regulations, including through collaboration with copyright holders in the form of licensing agreements. These licensing agreements grant written permission to another party to use the economic rights to a work according to agreed-upon terms.

Meanwhile, in Indonesian law, the relevant provisions are contained in Chapter VII of the Copyright Law. Specifically, Article 52 stipulates that any person is prohibited from damaging, destroying, removing, or rendering inoperative any technological control means used to protect creations or related rights products and safeguard copyright or related rights, except in the interests of national defense and security, and other reasons in accordance with statutory provisions, or as otherwise agreed. Article 53 paragraph (1) stipulates that creations or related rights products that use information technology-based production and/or data storage facilities must comply with licensing regulations and production requirements set by authorized agencies. The explanation of the article provides concrete examples such as optical discs, servers, cloud computing, passwords, barcodes, serial numbers, and encryption/decryption technology.

Understanding structure means mapping institutions and their functional relationships and tracking how they interconnect in everyday practice. In UGC platforms, the structure encompasses regulatory bodies (EU/national authorities), platform entities (technical teams, content policy teams, licensing units), rights holders (individuals and corporations), and users who are subject to regulation. The structure also encompasses the technical tools used to execute oversight functions, such as databases, fingerprinting, pipeline automatic detection, reporting modules, monetization and removal mechanisms, and appeal and audit channels. By placing these tools as structural components, there is a shift from reactive mechanisms (notice-and-takedown) to active detection mechanisms that change the distribution of authority and process burdens in the private-public legal system that regulates online content.

In the structural arrangement, actors occupy different positions that determine their capacity to trigger, control, or restrain enforcement actions.<sup>42</sup> At the apex are public

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<sup>40</sup> YouTube, "Use the Copyright Match Tool," <https://support.google.com/youtube/answer/7648743?sjid=15870547411956916058-NC>, accessed August 31, 2025.

<sup>41</sup> Fadlan Maulana Pramudya, *Hak Cipta dan Safe Harbor Policy*, pp. 73-74.

<sup>42</sup> Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 49.

regulators (EU and national authorities) that establish the framework for platform obligations to exercise technical oversight and information governance. At the operational level, platforms hold the technical infrastructure, reference databases, access to metadata, and enforcement mechanisms (takedown/monetization). Rights holders act as triggers for actions, supplying references to databases, submitting handling requests, and selecting remedial options. However, their access and ability to influence outcomes depend on their contractual relationship with the platform (e.g., access to Content ID or other mechanisms). Creators and users are at the edge of the process, with the structure placing them as reactors to automated or semi-automated decisions, often with weaker appeal capacity in terms of both resources and technical capabilities. This power relationship, while regulators establish obligations, platforms operationalize detection, and the uploader faces the consequences, forming a hierarchical but private model of control.<sup>43</sup>

When the structure places the algorithm in gatekeeper position and the platform as the main executor, a number of structural failures can easily arise. First, the overblocking risk when automated detection flags fair use or protected material for other exceptional reasons. Second, fragmented access leads to unequal rights management; large actors can exert full control, while smaller actors, such as ordinary individual users, rely on slower and less effective manual procedures. Third, operational capacity, in the form of unavailability of data on algorithms, matching parameters, and data for appeals, reduces the ability for external oversight and assessment of structural effectiveness.

b. Copyright Infringement Complaint and Dispute Resolution Mechanism

Friedman explains that the legal structure functions as an institutional framework that allows the law to “work” in practice. Article 17(9) establishes procedures that are mandatory and not merely recommendatory. The European legal structure emphasizes that any user whose content is removed or blocked has a legal avenue to challenge or challenge the platform's decision.<sup>44</sup> These stages begin with initial notification, an internal complaints mechanism, human review, and the possibility of escalation to an out-of-court dispute resolution mechanism and ultimately to a national court. Without such a structure, the norm in Article 17, which places responsibility on platforms, will only create unequal power relations, as users lack institutional channels to defend their interests.

Chapter 17(9) establishes a binding procedural framework for all EU member states to ensure that users whose content is blocked or removed by OCSSPs will have access to effective complaints and dispute resolution mechanisms. The background to this article is inseparable from the fundamental changes brought about by Article 17 as a whole, where OCSSPs are positioned as communication to the public actors for all content uploaded by users and thus bear direct responsibility for copyright infringement, unless they can prove that they have fulfilled certain prevention obligations.<sup>45</sup>

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<sup>43</sup> Friedman, *The Legal System*, p. 196.

<sup>44</sup> Eric Goldman and Sebastian Schwemer, “How the DMCA Anticipated the DSA’s Due Process Obligations,” *VerfBlog*, February 20, 2024, <https://verfassungsblog.de/how-the-dmca-anticipated-the-dsas-due-process-obligations/>, <https://doi.org/10.59704/3cadaa0214bb419f>.

<sup>45</sup> Eleonora Rosati, “When Does a Communication to the Public Under EU Copyright Law Need to Be to a ‘New Public’?” *European Law Review* 802-823 (2020): 2.

The legal structure is also reflected in how procedures regulate the flow of legal events. There are two main models: *ex ante* blocking and *ex post* removal. These two paths reflect institutional choices about when to take preventive action and when to take reactive action. From Friedman's perspective, this pattern shapes the legal system's workflow, a scheme that regulates the stages, points of intervention, and opportunities for actor participation.<sup>46</sup> This structure ensures that regardless of whether the action is taken preventively or reactively, users are still guaranteed the right to receive notification, file a complaint, and demand human review.

Procedurally, the process begins with the platform blocking or removing content, which can occur through two main channels. The first is preventive blocking (*ex ante blocking*), namely the refusal to publish content before it is available to the public, generally due to automatic detection by filters which compares content against a database of protected works.<sup>47</sup> The second is post-publication deletion (*ex post removal*), which occurs after content was available, but was removed due to a violation notice (*takedown notice*) from the rights holder. In both scenarios, the platform is required to notify users that their content has been blocked or removed, state the basis for the infringement claim, and explain the user's right to file a complaint.

Based on Recital (58) and Article 20 Regulation (EU) 2022/2065 – Digital Services Act, users who feel aggrieved have the right to file a complaint with the platform through an internal mechanism that must be made free and easily accessible. Member states typically require platforms to provide a dedicated, simple but comprehensive online form that allows users to explain the reasons for their objection, for example, that the use falls within a copyright exception such as quotation, parody, or criticism, or that the work is entirely their own. There is no single deadline set at the EU level, but the without undue delay principle requires member states to set a reasonable timeframe for users to file complaints after receiving a notification. In practice, this timeframe can vary between member states, with a common model being between seven and fourteen business days from receipt of the notification.

Once a complaint is received, the platform is required to conduct a human review, so that decisions are not based solely on automated systems.<sup>48</sup> This examination includes an evaluation of the facts and context of the use of the content, as well as an assessment of whether the infringement claim filed by the rights holder is sufficiently substantiated. The rights holder itself has a legal obligation to provide adequate justification and may not simply repeat information already provided in the initial notification. At this stage, there is a procedural interaction between the platform and the rights holder, namely the platform can request additional evidence, such as a copyright certificate or examples of infringement, while the rights holder is obliged to respond within a reasonable time period. If the rights holder does not provide a response within the specified time, the platform has the right to make its own decision based on the available evidence. During this process, the status of the content remains unavailable,

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<sup>46</sup> Friedman, *The Legal System*, p. 76.

<sup>47</sup> João Pedro Quintais, Christian Katzenbach, Sebastian Felix Schwemer, Daria Dergacheva, Thomas Riis, Péter Mezei, István Harkai, and João Carlos Magalhães, "Copyright Content Moderation in the European Union: State of the Art, Ways Forward and Policy Recommendations," *IIC-International Review of Intellectual Property and Competition Law* 55, no. 1 (2024): 161.

<sup>48</sup> Geiger and Jütte, "Platform Liability," p. 42.



except in certain cases stipulated in Article 17(7) for content that is clearly not infringing, which can be temporarily restored while waiting for the results of the examination.

The result of the internal review may be the restoration of the content or confirmation of removal. In the case of restoration, the platform is required to restore public access to the content without delay. In the case of confirmation of removal, the platform must provide users with a clear written reason and information about available next steps, including filing a case with an out-of-court dispute resolution mechanism.<sup>49</sup> This mechanism requires member states to establish or appoint an impartial body with expertise in digital copyright disputes. This mechanism must be independent of platforms and rights holders, free of charge, easily accessible, and provide a fair process to all parties.<sup>50</sup> The process typically begins with a written submission by the user, followed by formal notification to the platform and the rights holder to provide a response and evidence. This mechanism can take the form of mediation, adjudication, or a combination of both, depending on the implementation of national law, and must resolve the dispute within a relatively short timeframe, generally between thirty and sixty days, to prevent further harm to freedom of expression.

If the outcome of an out-of-court dispute resolution is unsatisfactory to either party, they still have the right to file a lawsuit in a national court in accordance with applicable procedural law. This litigation route is subject to the guarantee of the right to a fair trial as stipulated in Article 47 of the Charter of Fundamental Rights of the European Union. In court proceedings, judges not only assess evidence of copyright infringement but also consider the principles of proportionality, freedom of expression, and the prohibition of general surveillance.

All these stages are bound by the principles:

- (1) proportionality (actions must not exceed what is necessary),
- (2) speed (to prevent further losses),
- (3) transparency (every decision must be accompanied by written reasons),
- (4) accessibility (free and easily accessible mechanisms for all users), as well as
- (5) personal data protection (complying with the General Data Protection Regulation/GDPR).

These principles form the due process framework mechanism of Article 17(9) of the CDSM Directive which balances the interests of copyright holders with the fundamental rights of users in the digital space.

Friedman emphasized that legal structures include procedural rules that determine how institutions function.<sup>51</sup> Without these principles, complaint mechanisms would lose their effectiveness, for example if platforms were allowed to delay responses indefinitely or if they were made payable. Therefore, these principles should be seen as constitutive components of the legal structure that guarantees justice in the digital realm.

In Indonesia, there are no specific procedural regulations regarding the responsibility of UGC platforms towards users, but the entire reporting procedure is delegated to the application first and if no satisfactory answer is found, then the user can sue the Commercial Court as occurred in the Central Jakarta Court Decision No. 60/Pdt.Sus-Hak Cipta/2021/PN Jkt.Pst between PT Aquarius Pustaka Musik as the plaintiff and Bigo Technology Pte. Ltd as the defendant.

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<sup>49</sup> Geiger and Jütte, "Platform Liability," p. 60.

<sup>50</sup> Geiger and Jütte, "Platform Liability," p. 38.

<sup>51</sup> Friedman, *The Legal System*, p. 16.

Within Friedman's framework, this means that Indonesia's legal structure in the UGC realm remains weak, as it lacks a multi-layered procedural framework that allows for proportionate and expeditious dispute resolution. Consequently, this places a heavy burden on the courts, while accessibility for lay users is low. Compared to the EU, Indonesia's legal structure places a greater emphasis on formal litigation rather than adaptive multi-level mechanisms.

### c. Hierarchy of Norm and Regulatory Consistency

Legal substance is an element that regulates the content of the law, namely the rules, norms and principles that are outlined in formal legal products.<sup>52</sup> Substance is the normative heart of law, determining rights, obligations, and procedures. Therefore, comparisons need to be examined in terms of the hierarchy of norms, the consistency of the rules, and the normative quality of the legal products that govern them.

The most fundamental difference between the EU and Indonesia's regimes in regulating complaint mechanisms and terminating access to copyright-based content lies in the level of norm hierarchy and the consistency of the regulations used. The EU, through the CDSM Directive, has established a legal framework that is *lex specialis* at the legal level equivalent to statutes, because in the European legal system, directive is a secondary legislative instrument that binds member states to adopt it into national law with equal weight to the law. This means that all aspects related to platform obligations, complaint mechanisms, and human review obligation, up to out-of-court dispute resolution, is explicitly and comprehensively regulated in a legal framework that has the highest degree after the European Union treaty.

The legal substance formulated at the legislative level provides certainty and high normative weight, so that all legal actors have a clear understanding of their respective rights and obligations. In other words, the legal substance in the EU not only provides recommendations but also specifies in detail how procedures should be carried out.<sup>53</sup> Furthermore, any changes or corrections to norms in the EU are rewritten in formal legislative instruments equivalent to laws, ensuring that the legal substance is always updated and consistent. This reflects a positivistic legal system, where written norms serve as the primary reference, while also guaranteeing normative consistency among the rules that apply.<sup>54</sup>

This is different from Indonesia, which does not yet have *lex specialis* regulations that regulates in detail the complaint mechanism, termination of content access, and user rights in digital copyright disputes. Copyright Law only regulates in general terms the rights and obligations of rights holders, exceptions, and legal enforcement channels (civil and criminal). The Copyright Law does not contain an administrative procedure mechanism for digital content takedown. This gap was then filled by the ITE Law (Law No. 11 of 2008 in conjunction with Law No. 19 of 2016), specifically Article 40, which authorizes the government, in the form of the Minister of Communication and Information Technology, to terminate access. However, this is not a *lex specialis* for copyright, but rather general norms regarding illegal content in electronic systems. A more technical implementation was only introduced through Ministerial Regulation

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<sup>52</sup> Friedman, *The Legal System*, p. 14.

<sup>53</sup> Lorenzo Grossio and Davor Petrić, "EU Procedural Law Revisited: The Reformed EU Judicial Architecture between the Statute of the Court of Justice and the Rules of Procedure," *European papers* 10, no. 2 (2025): 302.

<sup>54</sup> Grossio and Petrić, "EU Procedural Law Revisited," p. 298.

5/2020, which is essentially a ministerial regulation at the lowest level in the hierarchy of laws and regulations. In other words, in Indonesia, the instrument that regulates copyright-based content takedown is still at the administrative, not legislative, level, so it is vulnerable to being questioned in terms of formal legality and substantive legitimacy.<sup>55</sup>

In relation to normative consistency, in Constitutional Court Decision Number 84/PUU-XXI/2023, the Court emphasized that criminal sanctions in Article 114 of Law No. 28 of 2014 are ineffective in reaching UGC-based digital platforms because the meaning of "trading place manager" is too narrow, but because Article 114 is a secondary norm attached to Article 10 of the Copyright Law as its primary norm, its application must adjust to the new meaning of Article 10 which has been expanded through this decision. However, the Court did not immediately annul Article 114 because the article systematically depends on Article 10, so law enforcement officers in implementing Article 114 must be bound by the new meaning of Article 10. This is where the legal problem arises that the text of Article 114 in the Copyright Law has not been changed until now, even though the Court has provided a broader constitutional interpretation.

On the one hand, law enforcement officers must normatively comply with the final and binding interpretation of the Constitutional Court (vide Article 24C paragraph (1) of the 1945 Constitution in conjunction with Article 10 paragraph (1) of the Constitutional Court Law). However, on the other hand, the text of Article 114, which is still formally valid, can still give rise to limited interpretations if read literally by officers, academics, and digital industry players. In other words, there is a difference between law in books (unamended text of Article 114) with law in action (new interpretation resulting from the Constitutional Court Decision's interpretation). This difference creates legal uncertainty because the application of Article 114 is always in the shadow of interpretation, not legislative certainty.

This disharmony shows that Indonesia is still facing problems in terms of normative consistency.<sup>56</sup> This difference reflects the gap between rule of law based on *lex specialis* written norms with administrative discretion which relies on technical regulations. The European Union has built a system based on legal positivism with strict procedural certainty, while Indonesia still relies on administrative discretion and judicial correction.<sup>57</sup> Lack of *lex specialis* makes Indonesian law vulnerable to regulatory fragmentation and overlapping norms, for example, when the criminal norms in the UU Hack Cipta which have been partially annulled by the Constitutional Court have not been corrected by legislators, while at the same time the Minister of Communication and Information's Circular Letter 5/2016 continues to be used as a basis for justifying administrative action. This ultimately raises the issue of certainty, because the government's extensive administrative actions are not supported by *lex specialis* which is clear at the legal level.

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<sup>55</sup> Gilbert El Falah, *Tinjauan Yuridis Pemberitahuan dan Penghapusan Konten Dalam Internet Terkait Perlindungan Hak Cipta Pasal 55 dan 56 Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta (Studi Perbandingan Hukum Undang-Undang Hak Cipta 2014 dengan U.S Digital Millennium Copyright Act 1998)* (Bachelor's thesis, Universitas Brawijaya, 2019), 73.

<sup>56</sup> Ari Wibowo, Asep Rohman Dimyati, and Junaedi Junaedi, "Mewujudkan Sistem Hukum Nasional yang Adil dan Efektif: Urgensi Penataan Regulasi dalam Perspektif Politik Hukum di Indonesia," *Journal of Contemporary Law Studies* 2, no. 3 (2025): 233.

<sup>57</sup> Laurent Pech, "The rule of law as a well-established and well-defined principle of EU law," *Hague Journal on the Rule of Law* 14, no. 2 (2022): 112.

### 3.3. Comparison of Indonesian and European Union Legal Culture: Safeguard Implementation in the case of Overblocking

Friedman emphasized that legal culture “binds” the legal system and determines the “position” of that system in the culture of society as a whole; he also distinguished between internal (legal actors) and external (society at large) legal culture.<sup>58</sup> This framework has a significant impact on how we explain variations in legal behavior across countries and over time, for example regarding why rates of reporting violations, use of the courts, or administrative compliance differ across societies due to differences in these areas of attitudes and value orientations.<sup>59</sup>

On the other hand, David Nelken asserts that what we call “legal culture” is best understood as a relatively stable pattern of legally oriented behavior and attitudes; but “stable” does not mean unchanging, and variations are often nested at the level of subcultures (professions, organizations, social classes) rather than the nation as a whole.<sup>60</sup> Nelken's core point is the need to link empirical indicators (attitude surveys, institutional practices, behavioral statistics) to institutional contexts, rather than equating culture with national stereotypes.<sup>61</sup>

Legal culture has been viewed as a lens for understanding variations across structure, substance, and value orientations. This reflects the differences in legal culture between the EU and Indonesia in formulating copyright policies and decisions. In Indonesia's regulatory landscape, the primary focus is on copyright law and its derivative frameworks, particularly following Constitutional Court Decision No. 84/PUU-XXI/2023, which overrides the principle of safe harbor, more directed at protecting the economic and moral rights of creators, while the issue of balance with freedom of expression almost never arises.<sup>62</sup> However, none of these instruments contain *ex ante* obligations in automatic filtering. In this instrument, only a reactive mechanism is available in the form of deleting or terminating access after a report or request from the authorities, without any safeguard specifically designed to prevent the erroneous deletion of legitimate content.

In Indonesia, all relevant legal regulations, from the ITE Law, Government Regulation 71/2019, to the Minister of Communication and Information Regulation 5/2020, only emphasize the general obligations of ESPs to maintain a secure and reliable system and not facilitate prohibited content, but do not address the impact of the use of automation in erroneous content removal. Article 15 of the ITE Law emphasizes the responsibility of ESPs for the operation of electronic systems, while the Minister of Communication and Information Regulation, Part II-V, letter C5/2020, outlines obligations such as providing reporting facilities and terminating access to prohibited content.

On the other hand, the European Union through the CJEU Decision in the case of Poland v. Parliament and Council acknowledged that the use of filtering tools become

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<sup>58</sup> Friedman, *The Legal System*, p. 193.

<sup>59</sup> Friedman, *The Legal System*, p. 94.

<sup>60</sup> David Nelken, “Using the Concept of Legal Culture,” *Australian Journal of Legal Philosophy* 29 (2004): 1.

<sup>61</sup> Nelken, “Using the Concept,” 20.

<sup>62</sup> Faiza Tiara Hapsari, “Eksistensi hak moral dalam hak cipta di Indonesia,” *Masalah-Masalah Hukum* 41, no. 3 (2012): 464.

"inevitable" to fulfill stay down obligations.<sup>63</sup> Poland's lawsuit against the Parliament and the Council of the European Union in Case C-401/19 is rooted in concerns that certain provisions in Article 17(4) letters (b) and (c) of the CDSM Directive would, in practice, create ex ante obligations for online content sharing platforms to perform automated filtering against all user uploads, which have a high risk of leading to over-blocking legitimate content. Poland requested that the two provisions be repealed, or if they cannot be separated, the entire Article 17 be repealed.

The Republic of Poland submitted an action for annulment to the CJEU against the Parliament and the Council of the European Union. The lawsuit seeks the annulment of Article 17(4)(b) and (c), or if they are not severable, the annulment of Article 17 in its entirety. Poland argues that the obligations to prevent re-uploading and ensure unavailability without prior permission before upload, in practice, can only be met through prior review automatically on all user uploads.<sup>64</sup> According to Poland, this is a form of general monitoring obligation prohibited by EU law, as well as a violation of the right to freedom of expression and information as guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union.

This challenge positions the CJEU to assess the balance between two fundamental rights that are often in tension: on the one hand, the right to freedom of expression and information (Article 11 of the Charter of Fundamental Rights of the European Union), and on the other hand, the right to the protection of intellectual property (Article 17(2) of the Charter of Fundamental Rights of the European Union).<sup>65</sup> The ruling, handed down on April 26, 2022, marks a significant milestone in the evolution of European digital platform law. The CJEU not only had to address purely legal questions regarding the constitutionality of EU legislation regarding the Charter of Fundamental Rights, but also confronted the practical implications of implementing content filtering technology on a global scale.

According to Polish arguments, the mechanism "best efforts to ensure the unavailability" (letter b) and "best efforts to prevent future uploads" (letter c) essentially forces online content sharing service providers (OCSSPs) to rely on automated filtering technology to avoid legal liability. This will result in a prior review of all content before uploading, which is actually a form of general monitoring obligation, namely something that is prohibited under European Union law as referred to in Article 15 of the E-Commerce Directive and Article 17(8) of the CDSM Directive.<sup>66</sup> Poland considers this obligation to limit the right to freedom of expression and information as protected by Article 11 of the Charter of Fundamental Rights of the European Union.

The CJEU began by formulating the legal question that had to be answered very concretely regarding whether the exception/responsibility conditions set out in Article 17(4)(b) and (c) of the CDSM Directive, which require OCSSPs do best effort to prevent the availability and re-uploading of works without authorization, constitutes a

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<sup>63</sup> Willemijn Kornelius, "Prior Filtering Obligations after Case C-401/19: Balancing the Content Moderation Triangle: A Comparative Analysis of the Legal Implications of Case C-401/19 for Filtering Obligations Ex Ante and the Freedom of Expression in Europe," *J. Intell. Prop. Info. Tech. & Elec. Com. L.* 14 (2023): 125.

<sup>64</sup> Lucas Blackwell, "The Death of Article 17: How the CJEU in Poland v. Parliament Created a Framework Which Prevents Holding YouTube Liable for Copyright Infringement under Directive (EU) 2019/790," *Sw. J. Int'l L.* 30 (2024): 201.

<sup>65</sup> Blackwell, "The Death of Article 17," p. 202.

<sup>66</sup> Blackwell, "The Death of Article 17," p. 202.

restriction on the right to freedom of expression (Article 11 of the Charter of Fundamental Rights of the European Union) and whether such restriction is justified under the test of restriction of the right (provided by law, not impaired in essence, and meets the principle of proportionality). The CJEU noted explicitly that Poland argued that Article 17(4)(b) and (c) require a prior review to user uploads and that, given the volume and nature of uploads, such review would require the use of automated filtering which poses a great risk over-blocking legitimate content; therefore, Poland considered the norm unclear, giving “*carte blanche*” to the platform, and violates the ban general monitoring and the principle of freedom of expression.<sup>67</sup>

Having acknowledged the existence of the restriction, the CJEU examined its proportionality under Article 52(1) of the Charter of Fundamental Rights of the European Union. At this stage the judge made several key points: (a) the restriction was provided for by law because it stemmed from a directive provision implemented at the European Union level; (b) a legitimate aim was clearly present, namely the protection of intellectual property rights (Article 17(2) of the Charter of Fundamental Rights of the European Union) and the interests of the internal market to ensure rightholders can receive remuneration; and (c) the restrictions must meet the requirements of being necessary and proportional (there must be a rational relationship between the objective and the instrument, and there must be no less restrictive alternative that is equally effective).<sup>68</sup> The decision confirms that the purpose of intellectual property protection is strong legitimacy so that restrictions can be considered normatively justified, provided by effective safeguards.

The CJEU emphasized that filters may only be used in cases of “manifestly infringing” and must be limited by safeguards which guarantee the rights of users.<sup>69</sup> Platforms should not be encouraged to make their own legal assessments of content that is complex in nature, as this would give rise to general monitoring legal obligations prohibited by European law

In *Poland v Parliament*, the CJEU found that Article 17(4)(b)–(c) of the CDSM Directive require platforms to prevent the availability of certain works and prevent re-uploading (stay-down), and due to the volume of uploads, such precautions would likely require an automated/filtering mechanism. The CJEU stated that prior review/automated filtering restricts the dissemination of information and therefore constitutes a restriction on the right protected by Article 11 of the Charter of Fundamental Rights of the European Union regarding freedom of expression.

*“Freedom of expression and information*

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*
2. *The freedom and pluralism of the media shall be respected.”*

In more detail, the difference between the requirements of the CJEU and the provisions applicable in Indonesia can be explained as follows. First, the CJEU demands clear legal certainty, namely that any restrictions must be “provided for by law” and its scope is expressly defined by legal instruments. In addition, there is an explicit obligation to protect exceptions to copyright, such as use for parody, criticism, or

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<sup>67</sup> Judgment of 26. 4. 2022 – Case C-401/19, *Poland v Parliament and Council*, p. 17.

<sup>68</sup> Blackwell, “The Death of Article 17,” p. 202.

<sup>69</sup> Case C-401/19, *Republic of Pol. v. Parliament*, ECLI:EU:C:2022:297, ¶ 90 (Apr. 26, 2022).



quotation.<sup>70</sup> In Indonesia, there are no regulations governing the use of works in these three cases..

In Europe, safeguards were born from a long-standing legal custom that places freedom of expression as a fundamental right.<sup>71</sup> Whenever a new legal instrument is introduced, the first question on the desks of legislators and judges is how it impacts Article 10 of the European Convention on Human Rights or Article 11 of the Charter of Fundamental Rights of the European Union. In other words, freedom of expression has become a "legal culture." This is shaped by Europe's long history of dealing with information repression (whether under authoritarian regimes, wartime censorship, or post-1970s democratic transitions). This legal culture has been institutionalized through regional courts that practice proportionality tests.

In Indonesia, the legal culture related to copyright and digital regulation can be viewed from two perspectives: internal (the state and legal bureaucracy) and external (the public as users of the law). Internally, legal officials and the legal bureaucracy in Indonesia tend to use the law as an apparatus to maintain power.<sup>72</sup> This effort even starts from the paradigm of "fear of chaos" rather than protecting citizens' rights.<sup>73</sup> When governments talk about the internet, the starting point is not "whether citizens' freedoms are protected," but "whether harmful content can be quickly removed for the sake of order."

A long history of horizontal conflict, ethnicity, religion, race, and intergroup relations issues, and political unrest has led the state to consistently prioritize the "risk of instability" over individual freedom. As a result, when regulating the internet, the state's logic is risk avoidance. It has different nuances from Europe in which digital rights civil societies (e.g., EDRI, Access Now, BEUC) are very active and have formal channels to parliament and the Commission. They act as "guardians" who ensure safeguards really get into the legal text and decisions. In Indonesia, freedom of speech activist groups' advocacy capacity often clashes with bureaucratic structures that do not open formal channels for consultation.<sup>74</sup> As a result, criticism of freedom of expression often ends up as NGO reports, not binding norms. Consequently, Indonesia's digital regulatory culture lacks a feedback loop which forces regulators to pay attention to citizens' expressions.

From an external perspective, according to Abdul Bari, former Director General of Intellectual Property, music piracy has become commonplace in Indonesia.<sup>75</sup> This leads society to never see copyright as a right related to the dignity of expression, but merely as an industrial commodity. As a result, the internalization of norms fails. This situation again brings to mind criticisms of the conceptualization of intellectual property

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<sup>70</sup> Henri Mattila, *Parody and Copyright in the European Union Law* (Master's thesis, Tampere University, 2019), 15.

<sup>71</sup> Henri Mattila, *Parody and Copyright*, p. 32.

<sup>72</sup> Fachrizal Afandi, *Maintaining Order Public Prosecutors in Post-Authoritarian Countries, the case of Indonesia* (Ph.D. dissertation, Leiden University, 2021).

<sup>73</sup> William Hurst, *Ruling Before the Law: The Politics of Legal Regimes in China and Indonesia* (Cambridge: Cambridge University Press, 2018), 84.

<sup>74</sup> Tim Mann, *Defending Legal Freedoms in Indonesia: The Indonesian Legal Aid Foundation and Cause Lawyering in an Age of Democratic Decline* (London: Routledge, 2025), 208.

<sup>75</sup> Arya Utama, Titin Titawati, and Aline Febryani Loilewen, "Perlindungan hukum terhadap hak cipta lagu dan musik menurut Undang-Undang Nomor 28 Tahun 2004," *Ganec Swara* 13, no. 1 (2019): 79.

or copyright which are still Eurocentric.<sup>76</sup> For many Indonesians, talking about copyright doesn't mean talking about freedom of expression, but about state regulations and payment obligations. Butt & Lindsey<sup>77</sup> estimates four contributing factors, namely the limited benefits obtained from IPR enforcement, the potential for price increases, threats to the sustainability of industry and employment, and the less than optimal impact of IPR in attracting foreign investment. So when Constitutional Court Decision Number 84/PUU-XXI/2023 came into effect, the public did not feel that their freedom of expression was being compromised through copyright mechanisms.

This is also what makes the development of IPR discourse in Indonesia and the European Union inversely proportional. In Europe, the discourse is starting to develop towards a discussion about safeguards. The CJEU outlined that the complaints procedure must be equipped with human review as a form of safeguard procedure. This means that any disputes related to blocking or removing content cannot be resolved automatically. In Indonesia, prevailing practice often relies on automated execution by platforms, which is more determined by the internal policies of each service provider. Regulation Circular Letter of the Ministry of Communication and Information Technology No. 5/2016 does not mention any human review obligation.

Following the Constitutional Court Decision Number 84/PUU-XXI/2023, the legal position regarding platform responsibility for UGC has become more difficult, because there is no safeguard mechanism preventive measures as required in Europe. The absence of safeguard creates an increasing over-blocking, namely a situation where platforms choose to remove or block too much content to avoid potential legal liability. This condition has the potential to create a chilling effect, namely users become reluctant to express themselves for fear of their content being deleted, while they have no remedy which is effective to challenge the deletion.<sup>78</sup>

Furthermore, because definitions and administrative practices in Indonesia remain vague, the responsibility for verifying the legality of content may shift to platforms or even government authorities. This shifting burden opens up new vulnerabilities, where freedom of expression could be threatened if takedown orders are given arbitrarily, for example due to political interests or due to an overly broad interpretation of the category of "negative content."

Thus, the most important lesson from the CJEU Decision for Indonesia is that safeguards must be operational and measurable. The CJEU relies on the text of the Directive (Article 17(7)-(9), recital) as a guarantee, but many academics demand concrete technical criteria such as minimum accuracy standards for filter systems, SLAs for human review (how many hours/day), over-blocking metrics which are reported to the public periodically, compensation procedures for over-blocking victims, and independent audit mechanisms.<sup>79</sup> Without these indicators, safeguards risks becoming a mere verbal bridge that provides procedural legitimacy without real protection.

If Indonesian policymakers want to approach the protection standards required by the CJEU, then the changes required are not only textual legislation but also (1)

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<sup>76</sup> Rosemary J. Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Durham: Duke University Press, 1998), 5.

<sup>77</sup> Simon Butt & Tim Lindsey, "Intellectual property, civil law and the failure of law in Indonesia: can criminal enforcement of economic law work in developing countries?" In Tim Lindsey (Ed.) *Law Reform in Developing and Transitional States* (London: Routledge, 2007), 403-404.

<sup>78</sup> Henri Mattila, *Parody and Copyright*, p. 52.

<sup>79</sup> Kornelius, "Prior Filtering Obligations," p. 145.

technical regulations that require human review standard & SLA, (2) algorithmic transparency and over-blocking reporting, (3) affordable access to independent remedies, and (4) explicit protections for creative expression exceptions.

#### 4. CONCLUSION

This study concludes that the emergence of UGC platforms has fundamentally reshaped the modes of distribution and consumption of copyrighted works, particularly in the music sector, while simultaneously posing significant challenges for the copyright protection regime. In Indonesia, the regulatory framework demonstrates a discernible shift from a passive model of protection toward the imposition of active obligations upon platforms to prevent infringements, a development further reinforced by judicial decisions that expand their scope of liability. The European Union, in contrast, has established a more comprehensive and technically sophisticated legal framework that emphasizes preventive duties, licensing mechanisms, and the deployment of technological monitoring tools. Both jurisdictions, despite following different trajectories, reflect a broader convergence in which digital platforms are no longer regarded as neutral intermediaries but are instead positioned as legal actors bearing affirmative responsibilities to safeguard the copyright ecosystem. The European model provides stronger institutional support for rights holders, while Indonesia, though historically reliant upon normative obligations and regulatory intervention, has increasingly moved toward stricter liability standards that approximate European practice.

#### BIBLIOGRAPHY

##### Books

- Butt, Simon, and Tim Lindsey. "Intellectual Property, Civil Law and the Failure of Law in Indonesia: Can Criminal Enforcement of Economic Law Work in Developing Countries?" In *Law Reform in Developing and Transitional States*, edited by Tim Lindsey, 403–404. London: Routledge, 2007.
- Coombe, Rosemary J. *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law*. Durham: Duke University Press, 1998.
- Feld, Harold. *The Case for the Digital Platform Act: Market Structure and Regulation of Digital Platforms*. New York: Roosevelt Institute, 2019.
- Friedman, Lawrence M., *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation, 1975.
- Hurst, William. *Ruling Before the Law: The Politics of Legal Regimes in China and Indonesia*. Cambridge: Cambridge University Press, 2018.
- Mann, Tim. *Defending Legal Freedoms in Indonesia: The Indonesian Legal Aid Foundation and Cause Lawyering in an Age of Democratic Decline*. London: Routledge, 2025.
- Naeem, Muhammad, and Sebastian Okafor, "User-Generated Content and Consumer Brand Engagement," in *Leveraging Computer-Mediated Marketing Environments*, ed. Muhammad Naeem (Hershey, PA: IIGIGlobal, 2019), p. 193–220.
- Örücü, Esin. "The Enigma of Comparative Law: Variations on a Theme for the Twenty-First Century." In *Comparative Law: A Handbook*, edited by Esin Örücü and David Nelken, 22. Oxford and Portland, OR: Hart Publishing, 2007.
- Shoemaker, Pamela J., and Tim P. Vos. *Gatekeeping Theory*. New York: Routledge, 2009.
- Soekanto, Soerjono, and Sri Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: RajaGrafindo Persada, 2010.

- Synodinou, Tatiana-Eleni. "The Desirability of Unification of European Copyright Law." In *The Routledge Handbook of EU Copyright Law*, edited by Eleonora Rosati, 44. London: Routledge, 2021.
- Zweigert, Konrad, and Hein Kötz. *An Introduction to Comparative Law*. 3rd ed. Translated by Tony Weir. Oxford: Oxford University Press, 1998.

### Journal

- Ari Wibowo, Asep Rohman Dimyati, and Junaedi Junaedi. "Mewujudkan Sistem Hukum Nasional yang Adil dan Efektif: Urgensi Penataan Regulasi dalam Perspektif Politik Hukum di Indonesia." *Journal of Contemporary Law Studies* 2, no. 3 (2025): 223-236.
- Blackwell, Lucas. "The Death of Article 17: How the CJEU in *Poland v. Parliament* Created a Framework Which Prevents Holding YouTube Liable for Copyright Infringement under Directive (EU) 2019/790." *Southwestern Journal of International Law* 30 (2024): 190-215.
- Burhan, Nur Amany. "The Liability Of User-Generated Content-Based Digital Service Platforms For Copyright Infringement Following Constitutional Court Decision No. 84/PUU-XXI/2023." *Journal of Research in Social Science and Humanities* 5, no. 2 (2025).
- Ferri, Federico. "The Dark Side(s) of the EU Directive on Copyright and Related Rights in the Digital Single Market." *China-EU Law Journal* 7, no. 1 (2021): 21-38.
- Geiger, Christophe, and Bernd Justin Jütte. "Platform Liability under Art. 17 of the Copyright in the Digital Single Market Directive, Automated Filtering and Fundamental Rights: An Impossible Match." *GRUR International* 70, no. 6 (2021).
- Goold, Patrick R. "Moral Reflections on Strict Liability in Copyright." *Columbia Journal of Law & the Arts* 44 (2020): 123-156.
- Grossio, Lorenzo, and Davor Petrić. "EU Procedural Law Revisited: The Reformed EU Judicial Architecture between the Statute of the Court of Justice and the Rules of Procedure." *European Papers* 10, no. 2 (2025): 295-326.
- Hapsari, Faiza Tiara. "Eksistensi hak moral dalam hak cipta di Indonesia." *Masalah-Masalah Hukum* 41, no. 3 (2012): 460-464.
- Hoecke, Mark van. "Methodology of Comparative Legal Research." *Law and Method* (2015): 1-35.
- João Pedro Quintais, Christian Katzenbach, Sebastian Felix Schwemer, Daria Dergacheva, Thomas Riis, Péter Mezei, István Harkai, and João Carlos Magalhães. "Copyright Content Moderation in the European Union: State of the Art, Ways Forward and Policy Recommendations." *IIC – International Review of Intellectual Property and Competition Law* 55, no. 1 (2024): 157-177.
- Kornelius, Willemijn. "Prior Filtering Obligations after Case C-401/19: Balancing the Content Moderation Triangle: A Comparative Analysis of the Legal Implications of Case C-401/19 for Filtering Obligations Ex Ante and the Freedom of Expression in Europe." *Journal of Intellectual Property, Information Technology and Electronic Commerce Law* 14 (2023): 123-147.
- Lemley, Mark A. "The Surprising Virtues of Treating Trade Secrets as IP Rights." *Stanford Law Review* 61, no. 2 (2008): 311-353.
- Metzger, Axel, and Martin Senftleben. "Understanding Article 17 of the EU Directive on Copyright in the Digital Single Market – Central Features of the New Regulatory Approach to Online Content-Sharing Platforms." *Journal of the Copyright Society* 67 (2020): 279-312.

- Nurusyifa, Dina. "Prinsip Deklaratif Dalam Regulasi Hak Cipta di Indonesia." *UNES Law Review* 6, no. 2 (2023): 6361-6367.
- Nelken, David. "Using the Concept of Legal Culture." *Australian Journal of Legal Philosophy* 29 (2004): 1-26.
- Rosati, Eleonora. "When Does a Communication to the Public under EU Copyright Law Need to Be to a 'New Public'?" *European Law Review* (2020): 802-823.
- Pech, Laurent. "The Rule of Law as a Well-Established and Well-Defined Principle of EU Law." *Hague Journal on the Rule of Law* 14, no. 2 (2022): 107-138.
- Samuelson, Pamela, and Members of the Copyright Principles Project. "The Copyright Principles Project: Directions for Reform." *Berkeley Technology Law Journal* 25, no. 3 (2010): 1175-1246.
- Sahib, Nathania Salsabila Marikar, Soesi Idayanti, and Kanti Rahayu. "Problematisasi Aturan Penyelenggara Sistem Elektronik (PSE) di Indonesia." *Law Journal (PLJ)* 1, no. 1 (2023): 61-74.
- Utama, Arya, Titin Titawati, and Aline Febryani Loilewen. "Perlindungan hukum terhadap hak cipta lagu dan musik menurut Undang-Undang Nomor 28 Tahun 2004." *Ganec Swara* 13, no. 1 (2019): 78-83.

### Thesis

- Afandi, Fachrizal. *Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia*. PhD dissertation, Leiden University, 2021.
- El Falah, Gilbert. *Tinjauan Yuridis Pemberitahuan dan Penghapusan Konten dalam Internet Terkait Perlindungan Hak Cipta Pasal 55 dan 56 Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta (Studi Perbandingan Hukum Undang-Undang Hak Cipta 2014 dengan U.S. Digital Millennium Copyright Act 1998)*. Bachelor's thesis, Universitas Brawijaya, 2019.
- Maulana Pramudya, Fadlan. *Hak Cipta dan Safe Harbor Policy di Indonesia: Analisis Putusan Pengadilan Jakarta Pusat No. 60/Pdt.Sus-Hak Cipta/2021/PN Jkt.Pst dan Putusan Mahkamah Konstitusi Nomor 84/PUU-XXI/2023*. Bachelor's thesis, Universitas Indonesia, 2024.
- Mattila, Henri. *Parody and Copyright in the European Union Law*. Master's thesis, Tampere University, 2019.
- Sarvenaz Tavakoli, A. *Study of EU Copyright Law and Open-Source Licensing*. Master's thesis, Lund University, 2007.

### Reports and Policy Studies

- Angelopoulos, Christina, et al. *Articles 15 & 17 of the Directive on Copyright in the Digital Single Market – Comparative National Implementation Report*. University of Cambridge Faculty of Law Research Paper No. 29/2024, 2024.
- de Streel, Alexandre, and Martin Husovec. *The E-commerce Directive as the Cornerstone of the Internal Market: Assessment and Options for Reform*. Study for the Committee on Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament. Luxembourg: May 2020.
- U.S. Copyright Office. *Section 512 of Title 17: A Report of the Register of Copyrights*. Washington, D.C.: U.S. Copyright Office, 2020.

## Website

- Ady Thea DA. "MK Perluas Makna 'Tempat Perdagangan' Termasuk Platform Digital." Hukumonline, June 9, 2025. <https://www.hukumonline.com/berita/a/mk-perluas-makna-tempat-perdagangan-termasuk-platform-digital-lt65e6ae46281b5/>.
- Direktorat Jenderal Kekayaan Intelektual. "Sejarah DJKI." Accessed June 7, 2025. <https://www.dgip.go.id/tentang-djki/sejarah-djki>.
- Eric Goldman and Sebastian Schwemer. "How the DMCA Anticipated the DSA's Due Process Obligations." *VerfBlog*, February 20, 2024. <https://verfassungsblog.de/how-the-dmca-anticipated-the-dsas-due-process-obligations/>.
- Koalisi Seni. "Siaran Pers: Pasar Potensial Musik, Sudahkah Kebijakan Pemerintah Pro-Musisi?" Accessed August 20, 2025. <https://koalisiseni.or.id/pasar-potensial-musik-sudahkah-kebijakan-pemerintah-pro-musisi>.
- Mahkamah Konstitusi Republik Indonesia. "Perluasan yang Dimaksud dengan Mencantumkan Pelarangan bagi Platform Layanan Digital berbasis User Generated Content (UGC)." Accessed June 9, 2025. <https://www.mkri.id/index.php?page=web.Berita&id=20076&menu=2>.
- Techdirt, "SoundCloud Troll Getting DMCA Takedowns Shows The Weakness Of Notice And Takedown Systems," <https://www.techdirt.com/2018/11/20/soundcloud-troll-getting-dmca-takedowns-shows-weakness-notice-takedown-systems/>, accessed June 8, 2025.
- YouTube. "Overview of Copyright Management Tools." Accessed August 31, 2025. <https://support.google.com/youtube/answer/9245819?hl=en>.
- — —. "How Content ID Works." Accessed August 31, 2025. <https://support.google.com/youtube/answer/2797370?sjid=15870547411956916058-NC>.
- — —. "Use the Copyright Match Tool." Accessed August 31, 2025. <https://support.google.com/youtube/answer/7648743?sjid=15870547411956916058-NC>.

## Law

- Council Directive 91/250/EEC of 14 May 1991 on the Legal Protection of Computer Programs
- Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, 112 Stat. 2860 (1998)
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on electronic commerce
- Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC
- Law No. 11 of 2008 on Electronic Information and Transactions
- Law No. 28 of 2014 on Copyright
- Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions
- Regulation of the Minister of Communication and Informatics No. 5 of 2020 on Private Electronic System Operators

Case C-401/19: Republic of Poland v. European Parliament and Council  
Central Jakarta District Court Decision No. 60/Pdt.Sus-Hak Cipta/2021/PN Jkt.Pst  
Constitutional Court Decision No. 50/PUU-XI/2023  
Constitutional Court Decision No. 84/PUU-XXI/2023  
Regulation Circular Letter of the Ministry of Communication and Information  
Technology No. 5/2016