

**CASE NO. 10  
COPYRIGHT  
“BUNG KARNO: INDONESIA MERDEKA MOVIE SCRIPT”**

**THE RULING OF JAKARTA COMMERCIAL COURT  
AND  
THE RULING OF THE SUPREME COURT OF THE REPUBLIC OF INDONESIA**

<b>Case Title</b>	<i>BUNG KARNO: INDONESIA MERDEKA MOVIE SCRIPT</i>
<b>Summary Of Verdict</b>	<p><b>At the Commercial Court Level</b></p> <ol style="list-style-type: none"> <li>1. Granted Plaintiff's lawsuit partly;</li> <li>2. Declared that the Plaintiff is the original author of “BUNG KARNO: INDONESIA MERDEKA” screenplay;</li> <li>3. Punished the Defendant I, the Defendant II and the Defendant III to jointly and severally liable to remunerate economic loss about Rp 1,- (one rupiah) and immaterial damage about Rp 1,- (one rupiah) toward the Defendant;</li> <li>4. Rejected Plaintiff's lawsuit in part and the rest;</li> <li>5. Rejected the Plaintiff of Original Claim's lawsuit</li> <li>6. Punished the Defendant in Original Claim/the Plaintiff in Counter Claim to pay for legal proceeding fees about Rp 32.116.000,00 (thirty-two million and one hundred and sixteen thousand Rupiah) in original claim and counter claim.</li> </ol> <p><b>At the Supreme Court Level (Cassation)</b></p> <ol style="list-style-type: none"> <li>1. Granted the Cassation Application from the Cassation Applicant/the Defendant;</li> <li>2. Overruled the Commercial Court Level No 93/Pdt/Sus HAK-CIPTA/2013//PN.NIAGA JKT.PST, dated 10 March 2014;</li> <li>3. Instructed the Cassation Recipient to give Soekarno's screenplay back to the Plaintiff of Counter Claim;</li> <li>4. Punished the Cassation Recipient/the Plaintiff of Original Claim/the Defendant of Counter Claim to pay for legal proceeding fees as much as Rp 5.000.000,00 (five million Rupiah).</li> </ol>
<b>Case Number</b>	Commercial Court: 93/Pdt/Sus HAK-CIPTA/2013//PN.NIAGA JKT.PST Supreme Court Level (Cassation): 305 K/Pdt.Sus-HKI/2014
<b>Regulation References</b>	The Law Number 19 of 2002 Regarding Copyright
<b>Keyword</b>	Author; Work; Infringement of Copyright; Script

## A. CASE FACTS

The Plaintiff is the author of "Soekarno" or known as "BUNG KARNO: INDONESIA MERDEKA" screenplay. The Plaintiff is also one of heir from former first President of Indonesia, Soekarno. The Plaintiff had intention to make "BUNG KARNO: INDONESIA MERDEKA" screenplay as a movie. This movie has purpose to give history value and introduction of Soekarno as the first President of Indonesia to public.

To achieve her intention, the Plaintiff encountered to the Defendant III, the Director, by

Widyawati who is one of Indonesian senior actress, to direct and scout actors and actresses for "BUNG KARNO: INDONESIA MERDEKA" movie. Afterwards, the Defendant III encountered the Plaintiff to the Defendant II, the movie producer. The Plaintiff, the Defendant II, and the Defendant III finally had consent to make "BUNG KARNO: INDONESIA MERDEKA" movie hereinafter set to Cooperation Agreement in which the Defendant I represented by the Defendant II.

The Plaintiff, the Defendant II, and the Defendant III scouted the main actor to play the movie and agree choose Aryo Bayu. After had a conversation between the Plaintiff and Aryo Bayu, Aryo Bayu stated that he had no characteristic and nationalism to play the movie. The Plaintiff, the Defendant II, and the Defendant III agree not had him to play the movie as the main character, yet the Defendant II and the Defendant III had done shooting without the Plaintiff's permission and play Aryo Bayu as the main character.

The Plaintiff stated pursuant to Article 67 of Law Number 19 of 2002 Regarding Copyright:

Upon a request from the party who might have suffered a loss, the Commercial Court may immediately issue a provisional decision that is effective:

1. To prevent the continuation of infringement on Copyright, particularly to prevent the entry of products allegedly infringing the Copyright or Related Rights into the trade channel, including importation;
2. To keep the evidence relating the infringement of Copyright or Related Rights in order to prevent the elimination of evidence;
3. To request the party who might have suffered a loss to provide evidence that the party is truly entitled to the Copyright or Related Rights and that such rights are being infringed.

Based on this legal basis, in order not to cause any loss for the Plaintiff and not to mislead public upon Soekarno movie, which was produced, published, and copied by the Defendant I, the Defendant II, and the Defendant III, the circulation of the movie had to be stopped at least be prevented and also keep the evidences which relevant to infringement on Copyright or other relevant rights in order to prevent the omission of evidences.

Furthermore, the Plaintiff claimed that Defendant II and Defendant III, which had used the Defendant's work, is infringement on copyright that cause of loss for the Plaintiff. Therefore, it would be solemnly concerning if the Defendants would launch, air, publish and copy Soekarno Movie made by the Defendants, without any permission and awareness from the Plaintiff. According to fact, the Plaintiff had committed:

1. Limited launching to certain people;
2. Planning to conduct "show premiere"

The Plaintiff said these actions had been causing lots of loss both material and immaterial.

## B. JUDGES CONSIDERATION

### At The Commercial Court Level

Based on the Plaintiff's lawsuit, Motion of Dismiss from the defendant, and evidences submitted in the Court process, The Judges considered things as follows:

- Whether the Plaintiff is the author of Soekarno or known as "BUNG KARNO: INDONESIA MERDEKA" movie. To prove this, the Judges considered regulation as follows Article 1 Paragraph (1), (2), and (3) of Law Number 19 of 2002 Regarding Copyright:
  1. Copyright shall mean an exclusive right for an Author or the recipient of the right to publish or reproduce his Work or to grant permission for said purposes, without decreasing the limits according to the prevailing laws and regulations;
  2. Author shall mean a person or several persons jointly upon whose inspiration a Work is produced, based on the intellectual ability, imagination, dexterity, skill or expertise manifested in a distinctive form and is of a personal nature;
  3. Work shall mean any result of works of an Author, which shows originality in the field of science, arts and literature.

The Judges considered documentary evidence from "Dharma Gita Maha Guru 2011" theater script (P-1B), "Dharma Gita Maha Guru 2012" theater script (P-2B), "Bung Karno" Timeline From 1901 until 1931 (P-3A), "Bung Karno" Timeline From 1949 until 1970 (P-3B), and also witnesses testimony from Widyawati Sophiaan, Kresna Edy, and Ristiayanto. Based on these evidence, the Judges considered had obtained a fact that "Soekarno" filmmaking script created the Plaintiff from Dharma Gita Maha Guru 2011 and 2012 theater script and "Bung Karno" Timeline From 1949 until 1970, which was written by the Plaintiff, then from the work script of the Plaintiff is made movie scenario by Ben Sihombing as screenwriter with the Defendant III as the Director.

The Judges considered not all of Soekarno movie is the Plaintiff's work, but the Plaintiff's work only part of it, which is "BUNG KARNO INDONESIA MERDEKA" script, and later on the Defendants create the script as a movie. Regarding Plaintiff's lawsuit shall be granted partly;

- Whether the Defendants had committed the infringement of copyright toward Soekarno movie produced by the Defendants. The Judges considered the elucidation of General Provision of Paragraph 5 of Copyright Law, it can be concluded that besides having copyright of Soekarno movie script the Plaintiff has also moral rights attached to the Plaintiff because the Plaintiff is one of biological children of Soekarno and being one of the heir of Ir. Soekarno.

The Judges considered that Soekarno movie script produced by the Defendants is the work of the Plaintiff, which came from Dharma Gita Maha Guru and Soekarno timeline written by the Plaintiff. The Plaintiff did not involve to Cooperation Agreement with the Defendants anymore because the Plaintiff did not agree with actor selection and irrelevant movie scene to Plaintiff's script yet the Plaintiff still continue Soekarno movie process;

According to expert testimony from Dr. Vincensius Henry Soelistyo Budi, SH. LLM, if the parties conducted agreement about filmmaking and one of party did not participate in agreement anymore, so filmmaking supposed not to be continued. If it was still continued, the infringement of copyright already occurred. Therefore, the Defendants

had infringed copyright, economic rights, and moral rights of the Plaintiff by without attaching the Plaintiff's name to filmmaking.

### **At the Supreme Court Level (Cassation)**

After being unsatisfied with the Commercial Court verdict, the Defendants filed a Cassation to the Supreme Court, and hereby called "CA (Cassation Applicant)". On the Cassation, the Judges concluded that the Objection from CA could be justified with consideration as follows:

- The Judges considered the witness testimony from Ben Shihombing which is stated Soekarno movie script did not use Dharma Gita Maha Guru theater script or make it as foundation story for Soekarno movie. Therefore, according to the Law Number 19 of 2002 Regarding Copyright the Plaintiff shall no be categorized as the Author "Soekarno" movie script, and the authorization of "Soekarno" script and master movie by the Plaintiff without valid fundamental rights;
- The Judges considered that Soekarno is a real figure and character who profoundly born, live and died in Indonesia. Therefore, Soekarno and his life is not a Work of certain person. Lots of Works, such as books and writings have been written and made by writers as well to explain his figures and humanity. Those work has become copyright to each authors.

Therefore, scriptwriter, director, and movie producer cannot be concluded as people who act against the law if they use various of source of writing and information as their references to make scenario in film production and making about the life of Soekarno and to be their copyright at the end.

Regarding to the Cooperation Agreement conducted by the Cassation Applicants and Cassation Recipient, it cannot be concluded as the infringement of copyright but it more to the breach of contract, which is included in civil law dispute aspect and not Intellectual Property dispute aspect

## **C. THE VERDICT**

### **At The Commercial Court Level**

1. Granted Plaintiff's lawsuit partly;
2. Declared that the Plaintiff is the original author of "BUNG KARNO: INDONESIA MERDEKA" screenplay;
3. Punished the Defendant I, the Defendant II and the Defendant III to jointly and severally liable to remunerate economic loss about Rp 1,- (one rupiah) and immaterial damage about Rp 1,- (one rupiah) toward the Defendant;
4. Rejected Plaintiff's lawsuit in part and the rest;
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