

THE COPYRIGHT INFRINGEMENT IN CINEMATOGRAPHY (LEGAL STUDY ON INDONESIAN AND KOREAN DRAMA)

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Abstrak

Drama yang berjudul “Kau Yang Berasal Dari Bintang” yang diproduksi oleh SinemArt dan disiarkan oleh Stasiun TV RCTI pada 28 April 2014 dianggap sebagai suatu plagiarisme terhadap salah satu drama populer Korea yang berjudul "You Who Came from the Stars", menyebabkan penyiaran drama tersebut ditunda sampai negosiasi antara pihak rumah produksi Korea dan Indonesia diselesaikan. Penelitian ini membahas apakah Hukum Hak Cipta di Indonesia memberikan perlindungan terhadap karya sinematografi baik yang diproduksi oleh WNI ataupun WNA lainnya. Untuk menjawab permasalahan ini, teori perlindungan hukum oleh Phillipus M. Hadjon digunakan sebagai dasar untuk menjawab hal tersebut, menganalisa efektifitas implementasi hukum menggunakan Teori Efektifitas Hukum oleh Satjipto Rahardjo. Selain itu, penelitian ini juga membahas penyelesaian sengketa yang dilakukan oleh rumah produksi dari pihak Indonesia dan Korea. Untuk mendapatkan temuan yang konkret, penelitian ini menggunakan metode penelitian normatif (metode doktrinal) dengan menggunakan data sekunder sebagai sumber data. Data yang telah dikumpulkan kemudian dianalisa dengan menggunakan pendekatan kualitatif. Hasil penelitian ditemukan bahwa karya sinematografi merupakan salah satu karya yang dilindungi berdasarkan Undang-undang Hak Cipta; oleh karena itu drama Indonesia tersebut telah melanggar Undang-undang Hak Cipta tersebut karena adanya kesamaan cerita, plot, dan peran yang dimainkan dengan drama Korea. Namun Undang-undang tersebut belum diimplementasikan dengan efektif karena pelaksanaan yang lemah oleh pihak yang berwenang dan kurangnya kesadaran masyarakat akan hal tersebut. Hasil penelitian juga menjawab bahwa negosiasi merupakan penyelesaian sengketa yang tepat untuk menyelesaikan kasus tersebut.

Kata Kunci: Kekayaan Intelektual, Hak Cipta, Sinematografi, Plagiarisme.

Abstract

The drama entitled “Kau Yang Berasal Dari Bintang” produced by SinemArt and aired by RCTI TV station on 28 April 2014 was claimed as a plagiarism of the most popular South Korean drama "You Who Came from the Stars". Consequently, the screening of the drama was pending until the negotiation of the Korean and Indonesian production house was settled. This research advanced a question whether the Indonesian Copyright Law provides sufficient protection to the works of cinematography either produced by Indonesian or foreign nationals. To answer this research question, the legal

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protection theory of Phillipus M. Hadjon was used as a platform. It also analyzed the effective implementation of the Law by adopting the Effectiveness of Law Theory of Satjipto Rahardjo. Furthermore, it reviewed the settlement made by the Indonesian and South Korean production house. In order to obtain concrete findings, this research adopted a normative research method (doctrinal method) by using secondary data as its sources. Data collected were analyzed based on its content (a content analysis) by using the qualitative approach. The research found that cinematographic work is one of the protected works under the Indonesia Copyright Law; therefore the Indonesian drama violated the Law because of the similarities of stories, plot, and roles played with the Korean drama. However, the Law was not effective in its implementation due to its weak enforcement by those responsible and a lack of public awareness. It was also found that the amicable settlement through negotiations were the best solution to resolve the infringement of Copyright Law relating to cinematography.

Keywords: Intellectual Property, Copyright Law, Cinematography, Plagiarism.

A. Background

The development of knowledge and technology had led us to the globalization era. In this globalization era, people are always faced with technology because of the high demand of free trade, which require to produce high quality goods which led us to the development of technology that provide the needs. Especially in art and literature, the development of technology facilitate the access for people either to produce or to enjoy the artistic works.

The development of technology in the globalization era have helped the growth and development in art and literature. But it also led to the misuse of the technology which ended up to the violation of the rights in art and literature, which known as violation of copyrights, occurs when a third party violates one or more of the copyright's holder or author exclusive rights as explained under the law.¹

World Intellectual Property Organization (WIPO) is one of the 17 specialized agencies of the United Nations as the global forum for intellectual property services, policy, information and cooperation.² With currently 188 member states, including Indonesia and South Korea,³ it was created in 1967 to encourage creativity and to promote the protection of intellectual property throughout the world,⁴ such as Copyright, Patents, Trademarks, Industrial

¹ Marshall Leaffer, *Understanding Copyright Law* (US: LexisNexis, 2005), fourth edition, pg.407.

² "What is WIPO?", *World Intellectual Property Organization*, accessed January 15, 2016, <http://www.wipo.int/about-wipo/en/>.

³ "Member States", *World Intellectual Property Organization*, accessed January 15, 2016, <http://www.wipo.int/members/en/>.

⁴ Convention Establishing the World Intellectual Property Organization, Signed at Stockholm on July 14, 1967, Preamble, second paragraph, accessed January 15, 2016, http://www.wipo.int/treaties/en/text.jsp?file_id=283854.

Designs, and Geographical Indications. Copyrights itself is the exclusive legal right, given to an originator or an assignee to print, publish, perform, film, or record literary, artistic, or musical material, and to authorize others to do the same. In Indonesia, copyrights is the exclusive legal right given to the copyright's owner which automatically comes based on declarative principle after an art work was made follows the regulations⁵ which regulated under the Regulation of Republic of Indonesia Number 28 of 2004 on Copyrights Law. While in South Korea, the regulation regarding to copyrights is regulated under the Copyright Act 2009 which regulate the protection of artistic and literary works, either written or published such as books, songs, movies, links, and art works.⁶ Beside of the national regulation of Indonesia and South Korea, there are also some international conventions regarding to copyrights such as Berne Convention for the Protection of Literary and Artistic Works 1886 (Berne Convention), Universal Copyright Convention 1952 (UCC Geneva) as revised as Universal Copyright Convention 1971 (UCC Paris), Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS), and WIPO Copyright Treaty 1996 (WCT). Both countries are the member of Berne Convention 1886 and had already ratified the convention on 5 September 1977 by Indonesia and on 21 Agustus 1996 by South Korea.⁷ Both countries are also the member of TRIPS 1994, ratified the agreement on 1 January 1995,⁸ and WCT 1996 which have been ratified on 6 March 2002 by Indonesia and 24 June 2004 by South Korea.⁹ Those three conventions are some of the basis for the form of the regulation regarding to copyrights in Indonesia and South Korea. For UCC Paris 1971, only South Korea ratified the convention on 1 October 1987,¹⁰ while Indonesia did not.

As the knowledge and technology developed, there were so many cases on the violation of copyrights happened, especially in cinematography. Cinematography is the art of making motion pictures. It is the science or art of motion picture photography by recording light or other electromagnetic radiation, either electronically by means of an image sensor, or chemically by

⁵ Indonesia, "Regulation of the Republic of Indonesia Number 28 of 2014 on Copyright," Art.1 Number 1.

⁶ "Intellectual Property Rights in the Republic of Korea," *Intellectual Property Office*, accessed January 15, 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306125/ipkorea.pdf.

⁷ "Berne Convention for the Protection of Literary and Artistic Works - Contracting Parties", *World Intellectual Property Organization*, accessed January 15, 2016, <http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/berne.pdf>.

⁸ "Members and Observers", *World Trade Organization*, accessed January 15, 2016, https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

⁹ "WIPO-Administered Treaties > Contracting Parties > WIPO Copyright Treaty", *World Intellectual Property Organization*, accessed January 15, 2016, http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=16.

¹⁰ "Universal Copyright Convention 1971 > Contracting Parties/Signatories", *World Intellectual Property Organization*, accessed January 15, 2016, http://www.wipo.int/wipolex/en/other_treaties/parties.jsp?treaty_id=205&group_id=22.

means of a light-sensitive material such as film stock.¹¹ Cinematography is one of the protected works, not only according to Indonesian national law which regulated under the Article 40(1) of the Regulation of Republic of Indonesia Number 28 of 2014, but also according to South Korean national law which regulated under the Article 4(1) of the Copyright Act 2009, and according to the Berne Convention 1886 which regulated under the Article 2(1), Article 9 of TRIPS 1994, and Article 1(4) of WCT 1996. One of the case happened related to the violation of copyrights in cinematography was the plagiarism case of Indonesian drama "Kau yang Berasal dari Bintang" which was considered plagiarized one of the most popular South Korean drama "You Who Came from the Stars". The Indonesian drama was considered plagiarized the South Korean drama because of the similarities on stories, plot, and roles played.¹² From the fact, it can be assumed that there are still some violation on copyrights which involved two big countries in Asia - Indonesia and South Korea - regarding to cinematography eventhough there are laws that regulates it such as the Berne Convention 1886, both national law of Indonesia and South Korea, and another international treaties which explain that cinematography is one of the protected works and plagiarizing the protected works without the consent or permission of the owner of the artwork is categorized as violation on copyrights.

B. Research Question

1. What aspect of Indonesian drama "*Kau yang Berasal dari Bintang*" which violated the Copyrights Law of Berne Convention 1886, TRIPS 1994, WIPO Copyright Treaty 1996, and the National Law of Indonesia regarding to Cinematography on plagiarism of South Korean drama "You Who Came From the Stars"?
2. What legal action that can be applied by South Korean parties regarding to the plagiarism case of Indonesian drama "*Kau yang Berasal dari Bintang*" and South Korean drama "You Who Came From the Stars"?
3. What solutions have been established by Indonesia and South Korea parties regarding to the plagiarism case of Indonesian drama "*Kau yang Berasal dari Bintang*" and South Korean drama "You Who Came From the Stars"?

C. Research Methodology

This research uses a normative research method (doctrinal method) by focusing on the analytical and decriptive study of what lawyers or people who

¹¹ Douglas Arthur Spencer, "The Focal Dictionary of Photographic Technologies," Focal Press, ISBN 978-0133227192 , (1973) : p. 454, quoted in Wikipedia, *Cinematography*, last modified February 26, 2016, https://en.wikipedia.org/wiki/Cinematography#cite_note-1.

¹² "Indonesian Drama Accused of Plagiarizing 'Man From the Stars', SBS to Take Action", Soompi, April 30, 2014, accessed January 15, 2016, <http://www.soompi.com/2014/04/30/indonesian-drama-accused-of-plagiarizing-man-from-the-stars-sbs-to-take-action/>.

practice in law should do.¹³ According to Amiruddin and Zainal Asikin, there are seven types of legal research including clinic law, which explain that the research conducted by describing the legal facts, finding the solution through positive law, and in concreto to solve the case.¹⁴ This research adopts a descriptive research with the clinic law because this type of research aims to describe and reveal the legal facts of the past and try to find the solution and in concreto by analyzing the norms and positive laws in order to solve the case.

This research uses the secondary data, which consists of primary, secondary, and tertiary legal materials. Primary legal materials used in this research are Berne Convention for the Protection of Literary and Artistic Works 1886 (Berne Convention), Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS), WIPO Copyright Treaty 1996 (WCT), Regulation of the Republic of Indonesia Number 28 of 2014 on Copyrights, and South Korea Copyright Act 2009. Secondary legal materials used in this research are journals, books, reports, and internet-based sources and the Tertiary legal materials such as law dictionary, English dictionary, Indonesian dictionary, Korean dictionary, etc.

Since this research utilizes a normative legal research, it relies mostly in the use of library research method which means that all data, with the secondary data from the conventions, journals, books, websites, dictionary, etc. relating to the research become the main data research used by the researcher.¹⁵ Data collected were analyzed based on its content (a content analysis) by using the qualitative approach which generate words, rather than numbers, as data for analysis.¹⁶

D. Research Findings and Discussion

1. Plagiarism Aspects of South Korean TV Drama "You Who Came From the Stars" v. Indonesian Drama "Kau yang Berasal dari Bintang"

As the modernization and technology developed rapidly, especially in Asian countries, a term *Hallyu* or also known as Korean Wave is used to refer to the popularity of Korean entertainment and culture all over the world, such as music, dance, and even drama/soap opera. In the late 2007, the Korean creative industry was uniquely influenced by the growth of social media, which initiated and supported the popularity of Korean local culture in many countries. With the help of social media innovations in Social Network Sites (SNS), which become the major parts of expanding the Korean Wave, it allows people anywhere in the

¹³ John Bell, "Legal Research and the Distinctiveness of Comparative Law," *European Academy of Legal Theory Series*, Vol.9 (2011), pg.156.

¹⁴ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT Raja Grafindo Persada, 2006), pg.125-126

¹⁵ Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris* (Yogyakarta: Pustaka Pelajar, 2010), pg.157.

¹⁶ Michael Quinn Patton and Michael Cochran, "A Guide to Using Qualitative Research Methodology", ed. Noura Bricki and Judith Green (2007), https://evaluation.msf.org/sites/evaluation/files/a_guide_to_using_qualitative_research_methodology.pdf.

world to access and enjoy the diversity. With youth consumer groups as central figures, SNS have become the fastest growing platforms to circulate global cultural products.¹⁷

Soap opera, or usually known as drama, is one of the type of the Korean Wave which is gaining popularity in Southeast Asia and abroad. The variety of it, from trendy shows to epic series, stories about an era or nowadays century, grace the television from morning till late night.¹⁸ It has spilled not only in Korea but also in other countries, where some dramas made hit, which resulting to the sold of broadcast rights to several Asian countries, including Indonesia. One of the biggest hit of Korean drama is "You Who Came from the Stars".

The drama "You Who Came from the Stars" has been known for its popularity and successful achievement, not only in Korea but also overseas, including Indonesia. The story of an alien who fell in love with human was successfully made the fans delirious about it. Indonesian people was also excited about that. The popularity of the drama successfully hypnotized Indonesian viewers, until one of Indonesia's broadcasting system produced a drama, titled "Kau yang Berasal dari Bintang", starring Morgan Oey as the main actor and Nikita Willy as the main actress. The drama was first aired on April 28, 2014,¹⁹ when on its third episode, many news stated that it plagiarising the Korean drama "You Who Came from the Stars".



Figure 4.1 Comparison Posters of "Kau yang Berasal dari Bintang" and "You Who Came from the Stars"

Source: <http://www.kompasiana.com>

¹⁷ Dal Yong Jin, "Hallyu 2.0: The New Korean Wave in the Creative Industry," *International Institute Journal University of Michigan*, vol.2, (2012): pg.6.

¹⁸ Kwon Mee-Yoo and Rachel Lee, "K-Drama Leads Hallyu", *The Korean Times*, August 21, 2012, http://www.koreatimes.co.kr/www/news/art/2012/08/201_117894.html.

¹⁹ Soompi, Indonesian Drama Accused of Plagiarizing 'Man From the Stars', SBS to Take Action", *Loc. Cit.*



Figure 4.2 Comparison Scenes of "Kau yang Berasal dari Bintang" and "You Who Came from the Stars"
Source: [http:// www.kompasiana.com](http://www.kompasiana.com)

Indonesian drama "Kau yang Berasal dari Bintang" was a story about an alien, who came to the earth 400 years ago, fell in love with an actress, a girl whom he saved 7 years ago. Not only the same story line, even some of the scene line were also the same with the Korean drama. For example, in the first episode of "You Who Came from the Stars", there is a scene when Joon Ji Hyun, the main actress, ask for the help of the main actor, Kim Soo Hyun, which his line is:²⁰

"Once I help you, then there's going to be a second time and a third time, you're going to mooch off of me for more help. That is the way people live. And there won't be a day you pay me back. Because life is too short for people to grow up."

The scene was also appear in the first episode of Indonesian drama "Kau yang Berasal dari Bintang". With the same location, which is in a classroom, and same situation when the main actress is asking for the main actor help, the line of the main actor is:²¹

"Kamu minta bantuan saya? Setelah minta bantuan pertama, manusia biasanya akan meminta bantuan kedua ketiga. Kamu nggak kan sempet mikir balas budi soalnya hidup manusia terlalu singkat."

²⁰ Korean Drama "You Who Came from the Stars," ep.1.

²¹ Indonesian Soap Opera "Kau yang Berasal dari Bintang," ep.1.



Figure 4.3 "You Who Came from the Stars" - Episode 1
Source: <http://youtube.com>



Figure 4.4 "Kau yang Berasal dari Bintang" - Episode 1
Source: <http://youtube.com>

Both of the scene are really similar, even the line in the Korean drama is literally translated in the Indonesian drama. The representatives of Seoul Broadcasting System (SBS) Contents Hub, which is responsible for managing the publication rights of the drama, revealed that Indonesian drama "Kau yang Berasal dari Bintang" has not been made after acquiring the legal publication rights from SBS.²² Since it did not obtain the legal publication rights, the representatives stated that the it can be considered as plagiarism.²³ The representatives also stated that they were currently in talks with another Indonesian company regarding the official publishing rights, but then the drama has begun

²² Soompi, "Indonesian Drama Accused of Plagiarizing 'Man From the Stars', SBS to Take Action", *Op.Cit.*

²³ All K-Pop, "Indonesian 'You Who Came from the Stars' Revealed to be Plagiarism, Not a Remake," April 30, 2014, accessed May 21, 2016, <http://www.allkpop.com/article/2014/04/indonesian-you-who-came-from-the-stars-revealed-to-be-plagiarism-not-a-remake>.

airing.²⁴ Because of the plagiarism issue, the Indonesian drama was temporarily stopped after its third episode, on April 30, 2014, until the settlement was reached between the parties, since the representatives from SBS met up with the Indonesian production team of the drama to discussed the case.²⁵

No.	Scenes	Similarities	Differences
1.	Handsome Alien arrives on Earth	<ul style="list-style-type: none"> - Happen in 1600s. - The aliens have lived for hundred years. - They met their first love. - They saved their first love. - Same act when they remove the leaves when they were walking towards the girl. 	<ul style="list-style-type: none"> - In Korean drama, the situation was in the Joseon Dynasti while Indonesian drama in Batavia. - The Korean alien wore black suit while Indonesian alien wore white suit. - The location scene is in the valley for Korean drama while Indonesian drama is in the lake.
2.	The girl	<ul style="list-style-type: none"> - Both are famous actresses in their country. - Both posing with food and share it to social media. - Instead of eating it, both give the food to their assistance. - Both happened after the shooting break time. 	<ul style="list-style-type: none"> - Korean girl poses with cappucinno while Indonesian girl poses with cheeseburger.
3.	The alien	<ul style="list-style-type: none"> - Both are professors in a university. - Both are the actresses professors. - Both live alone. - Both are tidy and neat. 	<ul style="list-style-type: none"> - No differences.

²⁴ Soompi, "Indonesian Drama Accused of Plagiarizing 'Man From the Stars', SBS to Take Action," *Op.Cit.*

²⁵ Kompas, "Sempat Dihentikan, 'Kau yang Berasal dari Bintang' akan Kembali ke Layar Kaca," June 1, 2014, accessed May 21, 2016, <http://entertainment.kompas.com/read/2014/06/01/1445305/Sempat.Dihentikan.Kau.yang.Berasal.dari.Bintang.Akan.Kembali.ke.Layar.Kaca>.

4.	First meeting	<ul style="list-style-type: none"> - Both actors and actresses happened in an elevator. - Both actors and actresses live in the same apartment. - Apartment numbers of both actors and actresses are same, 2001 and 2002. 	- Outfits are different.
5.	The girl go crazy in her apartment	<ul style="list-style-type: none"> - Both stress because of their jobs. - Both singing and dancing in their room. - Both holding a hairdryer as microphone. 	- Outfits are different.
6.	Second Main Actor	<ul style="list-style-type: none"> - Both played as the actress' friend, who has crush on her. - Both are rich. 	- No differences.
7.	Two antagonist characters	<ul style="list-style-type: none"> - Man role : Both played as the brother of the main girl's friend. - Woman role : Both played as the girl who has crush with the main girl's friend. 	- No differences.
8.	Classroom	<ul style="list-style-type: none"> - Both actresses ask the actors for help. - Both actors do not want to help. - Happen in the classroom. 	- Outfits are different.
9.	Flashback - Years ago when teenage actress was almost hit by a car	<ul style="list-style-type: none"> - Both actresses were teenagers. - Both actresses were almost hit by a car. - Both actors saved the actresses. 	- Outfits are different.

Table 4.1 Scenes Similarities and Differences of Korean drama "You Who Came from the Stars" vs. Indonesian drama "Kau yang Berasal dari Bintang." (Episodes 1-3).

Indonesian drama "Kau yang Berasal dari Bintang" was broadcasted in news and tv infotainment said this drama plagiarized Korean drama "You Who Came from the Stars", because of the similarities on stories,

plot, and roles played. The Korean drama as a cinematographic work is protected under international conventions, such as Berne Convention 1886,²⁶ TRIPS 1994,²⁷ and WIPO Copyright Treaty 1996,²⁸ which all had been ratified by both Indonesia and South Korea. This shows that both Indonesian and Korean parties knew the regulations related to copyrights; in this case cinematographic works, the drama; and the rights related to it, including the rights of the author. While they knew about the rules, the violation remains occur.

Indonesian drama, which was accused doing the plagiarism act, was violating some of the international conventions, such as Article 14 of the Berne Convention 1886, Article 9(1) of TRIPS 1994 and Article 1(4) of WIPO Copyright Treaty 1996.²⁹ Not only international conventions, the Indonesian drama was also violated Article 9(2) of Indonesian Copyright Act No. 28 of 2014. All of those regulations generally explain that cinematographic work is one of protected works under the laws, and works made based on it, such as the adaptation, derivation, and any other kinds of it have to had the permission from the original author or rights holder.

According to the regulations mentioned above, Indonesian party has violated those regulations. Berne Convention 1886, for example, the elements of Article 14³⁰ are:

- a. Exclusive rights of Author or Copyright Holder of the cinematographic works;
- b. The exclusive rights is to authorized the work related to his/her original work;
- c. The works related are including adaptation, reproduction, and also derivative work of the original work.

From those three elements of Article 14 of Berne Convention 1886, the first element is fulfilled, as SBS as the Copyright Holder of the Korean drama "You Who Came From the Stars" as a cinematographic work has its exclusive rights, which is to authorized its work as explained in the second element. But the fact was Indonesian party has not get any consent or authorization from SBS related to its work, as the Copyright Holder of the Korean drama, which is to make the derivative work of the drama, as the Indonesian drama and the Korean drama have similar plot, stories, characters, etc., as it is explained in the third element.

From the explanation above, it can be assumed that Indonesian party has violated those elements, which based on the fact explained in the subchapter before, they did not have the authorization from the author of the original work, which is the Korean party who produce the Korean

²⁶ Berne Convention 1886, Art.2(1).

²⁷ TRIPS 1994, Art.9(1).

²⁸ WIPO Copyright Treaty, Art. 1(4).

²⁹ Both articles comply with Articles 1 through 21 of the Berne Convention.

³⁰ Also complied with Article 9 of TRIPS 1994 and Article 1(4) of WIPO Copyright Treaty 1996.

drama "You Who Came from the Stars", to make the derivative work of it, which is the Indonesian drama "Kau yang Berasal dari Bintang."

Not only Berne Convention 1886, Indonesian parties has also violated another international conventions, such as TRIPS 1994 and WIPO Copyright Treaty 1996, as Article 9 of TRIPS is *Mutatis Mutandis* to Berne Convention Article 1 to 22. And same goes to WIPO under its Article 1(4). Which means that Indonesian parties also violating both conventions.

Not only international conventions, the regulation violated by the Indonesian party is also its national law on Copyright, Article 9, which elements of the article are:

- a. Author or Copyright Holder has the economic rights of their works;
- b. The economic rights include the making of adaptation, derivation, and transforming the work;
- c. Any person may also make those economic right;
- d. To make those economic rights, they must have the authorization from the Author or Copyright Holder of the original work.

Quite the same with international conventions which elements have been mentioned above, under its elements of Article 9, Indonesia Copyright Act also explains the needs of authorization from the Author of original work to make a derivative works of it. Indonesian party which made the Indonesian soap opera once again violated a law, which is Indonesia Copyright Act, by making the simillar soap opera to the Korean drama with no authorization from the Korean party.

The aspect which was violated by Indonesian party the drama had "the similarities on stories, plot, and roles played" and they did not have the "authorization" from the Korean party to made the drama, while the drama itself is a look-alike drama with the Korean version. Derivative work is a work which is modified in order to create another work based on the original work, or may also be called as the secondary work of the original work. The Korean drama, as the cinematographic works which is protected under the international conventions and also the national law of Indonesia where the accused Indonesian soap opera was aired, in every derivative work based on it must have the authorization from the author or the rights holder before the derivative work is made by other parties. The Indonesian party actually did not have the authorization or permission from the Korean party regarding to the adaptation of the drama. It produced the same plot drama series in Indonesia while having no permission from the Korean party beforehand.

The creator or the rights holder of the Korean drama, which in this case is SBS, has every right on its cinematographic work, the drama. It has moral rights to defends its work, to claim authorship of the work and to object in case of distorsion for example the modification of the work, or any other derogatory action in relation to the work which would be prejudicial to the author's honor or influence its reputation. It also has the exclusive economic rights, provided by international conventions and

also national laws on copyright, of authorizing adaptations, arrangements and other alterations of their works, to enjoy the benefit gained from the work, which can be related to the Law of Nature theory by John Locke. The law of nature concept existed long before Locke as a way of expressing the idea that there were certain moral truths that applied to all people, regardless of the particular place where they lived or the agreements they had made. He argued that people have rights, such as the right to life, liberty, and property, that have a foundation independent of the laws of any particular society.³¹ He explained that Copyright law gives an exclusive right of a work or creation to its author or copyright holder, that law of nature demands person to oversee his/her works or creations and fairly compensated it for the contribution of society.³²

Law of nature demands person to oversee his/her works or creations and fairly compensated it for the contribution of society. In this case, SBS has the right to whether give or not the authorization on the derivative work of the Korean drama, and also the economic rights, which is the royalty of the benefit gained by the derivative work, which is the Indonesian soap opera. The Indonesian party whom produced the accused same plot drama series while did not have the authorization from the Korean party was indeed violated not only international conventions but also the national regulation of Indonesia itself which protect the cinematographic works and rights of the author or rights holder, both moral and economic rights.

2. Legal Action Applied by South Korean Parties Regarding to the Plagiarism Case of South Korean TV Drama "You Who Came From the Stars" v. Indonesian Drama "Kau yang Berasal dari Bintang"

Because of the plagiarism accusation of the Indonesian drama, the Korean parties, SBS, under its representatives, took a legal action related to the case. To settle a dispute related to copyright, under international conventions, it may be settled using litigation and non-litigation dispute resolution. Litigation dispute resolution is a dispute resolution which goes in court of law, which proceeding initiated between parties goes through the public court system. While the non-litigation dispute resolution is a dispute resolution outside the court of law, which proceeding initiated between parties is not using the court system, but with the negotiation between parties, with the help of third neutral party, whom help the parties to find the win-win solution to solve the problem. Berne Convention 1886³³ and TRIPS 1994³⁴ regulate that any dispute

³¹ Alex Tuckness, "Locke's Political Philosophy," in *Stanford Encyclopedia of Philosophy*, First published Nov. 9, 2005; Substantive revision Jan. 11, 2016, <http://plato.stanford.edu/entries/locke-political/>

³² Hendra Tanu Atmadja, "Hak Cipta Musik atau Lagu," *Disertasi Doktor Universitas Indonesia* (2003): pg.18-19.

³³ *Berne Convention 1886*, Art.33(1).

³⁴ *Agreement on Trade-Related Aspects of Intellectual Property Rights*, Art.64(1).

related to copyright may be settled with negotiation, mediation, or any dispute settlement based on the related parties agreement. If the parties do not want to use the non-litigation system, the dispute may be settled using the International Court of Justice. Under its national law, Indonesia also regulates the same provision, that any dispute related to copyright may be settled using alternative dispute resolutions, arbitration, or through court.³⁵

Litigation system which uses court to settle the dispute between parties, can be done using the international forum by International Court of Justice as explained in Article 33(1) of Berne Convention 1886 and Article 64(1) of TRIPS 1994 if the dispute is between two or more countries, or using the national forum by Commercial Court according to Indonesia Copyright Act, Article 95(2). Since the case was not between Indonesia and South Korea as a country, but between parties which are broadcasting companies domiciled in Indonesia and South Korea, and since the *loci actus* was in Indonesia since the soap opera was broadcasted by Indonesian party in Indonesia, so if the case wanted to be solved using the litigation system, it shall be solved under the Commercial Court of Indonesia. The parties related may apply their claims to the Commercial Court, and the court will process it. The procedure itself explained in Articles 100 to 105 of Indonesia Copyright Act.

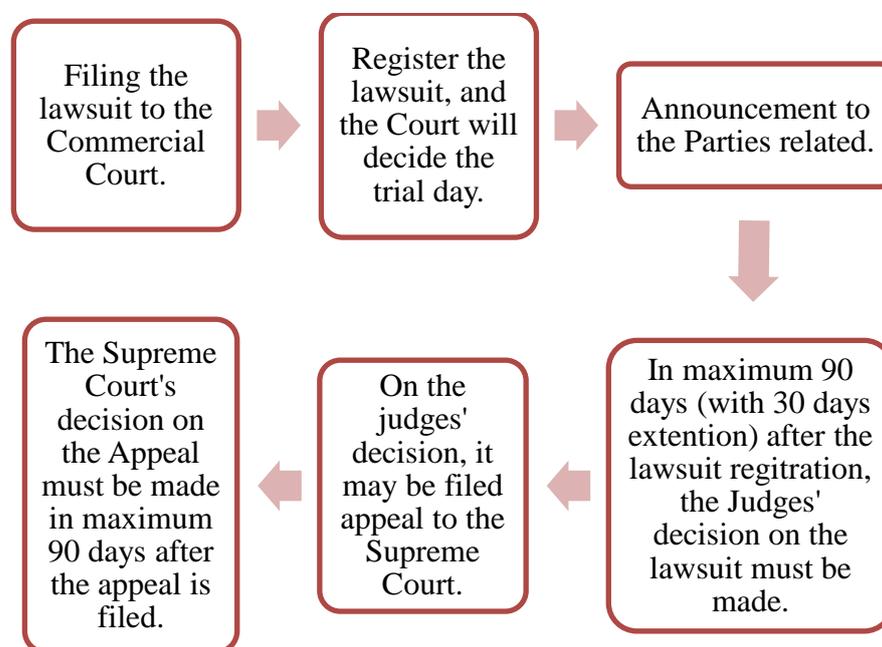


Figure 4.5 Procedure of Lawsuit Filing in Indonesia Commercial Court.
Source: Indonesia Copyright Act, Article 100 to 105.

³⁵ Indonesia, "Regulation of the Republic of Indonesia Number 28 of 2014 on Copyright, Art.95.

Non-litigation dispute resolution such as Negotiation, Mediation, Conciliation, and Arbitration are usually used to solve disputes between parties. Negotiation, as an informal alternative, allows parties to negotiate the solution which they think will solve their problem, without the help of third party. It uses two sides communication between parties in order to reach agreement in order to solve their case. In negotiation, there is no need the formal procedure, just the willingness of both parties to discuss their problems and find the solution based on their agreement.

Mediation, as one of the most preferable system used by parties as dispute resolutions, allows parties to discuss their interests and uses mediator as a third neutral party to help them find the win-win solution to solve the problem. Same as mediation, conciliation also uses the third neutral party as facilitator to help parties find their solution. Solutions from mediation and conciliation come from the decisions of both parties, which decisions are agreed by them, not a decision from the mediator or conciliator. In those dispute resolutions, the mediator or conciliator which have been appointed by both parties will formalize the case and set the schedule agenda for the meeting. The mediator and conciliator will then try to analyze the case from both sides of the parties, and then will recommend the best solution for the case. But the final decision is still from the agreement of both parties, mediator and conciliator will only be the third neutral party to help them find the solution they both may agreed.

While in Arbitration, it uses arbitrators³⁶ as third neutral parties to decide the solution, which solution are final and binding for both parties. The procedure of arbitration is quite the same with the procedure in court such as lawsuit filing to the arbitration agreed by both parties, arbitrator appointment, and the proceedings. The difference with litigation system using court is that the decision of arbitration is final and binding, while court's decision may be appealed by both parties.

So, it can be concluded that any copyrights dispute may be settled either using the litigation system, such as court, or non-litigation system, which is dispute resolution outside the court, such as negotiation, mediation, arbitration, and any other type of alternative dispute resolutions, based on the agreement of the parties related.

According to Phillipus Hadjon's theory on legal protection, there are two types of legal protection, such as Preventive Legal Protection and Repressive Legal Protection.³⁷ The preventive legal protection is aiming to prevent conflicts using the rules and regulations, while the repressive legal protection is aiming to prevent conflicts using the agreement of the parties.³⁸ It means that legal protection is a protection given to a society or subject of law according to the rules or regulations of law, even if it is

³⁶ In arbitration, parties can choose one or three people as arbitrators.

³⁷ Phillipus Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia*, first edition, limited edition, (Surabaya: Peradaban, 2007), pg.2.

³⁸ *Ibid*, pg.3-5.

the preventive legal protection or repressive legal protection, written or unwritten, in order to establish the rule of law. Preventive legal protection was already done by making the related laws and regulations on copyrights. International communities already did legal protection efforts in order to protect subjects of the law, the author or creator of the works, in this case is the Korean parties as one of the parties related to the related issue, which are stipulated under international conventions such as Berne Convention 1886, TRIPS 1994, and WIPO Copyright Act 1996. Countries like Indonesia and South Korea were also already did the prevention action by ratifying the international conventions and also established their own national law related to copyrights. But eventhough the preventive action was already done, the violation was still happened.

As explained in Article 5 of Berne Convention 1886 that Copyrights is universally accepted, that the rights of the Copyright Holder is guaranteed either inside or outside their original countries, South Korean parties is protected under this Article, eventhough the plagiarism case happened in Indonesia, as the accused plagiarism drama was aired in Indonesia. And South Korean parties may applied legal actions to settle the case, in this case using the National law, as explained under Article 16 of Berne Convention 1886. In this case, the Korean parties did another effort, which was the repressive legal protection, by taking the non-litigation system to settle the dispute with Indonesian parties, using a conclave negotiation, in order to prevent conflicts in the future. It is being reported that representatives from Korean TV network SBS met up with the Indonesian production team of the drama accused of plagiarizing the hit Korean drama "You Who Came from the Stars". According to the interview on May 12, 2014, with *Dongah.com*,³⁹ the Korean representatives revealed that both parties had a meeting and agreed to deal with the situation amicably.

3. Solutions Established by Indonesia and South Korean Parties Regarding to the Plagiarism Case of South Korean TV Drama "You Who Came From the Stars" v. Indonesian Drama "Kau yang Berasal dari Bintang"

After the negotiation based on the interview reported by media, both parties of the plagiarizing issue of Korean drama "You Who Came from the Stars" and Indonesian drama "Kau yang Berasal dari Bintang", both parties agreed to settle the case amicably. The representatives also stated in the interview that the Indonesian parties acknowledged their fault and it was a wrong act to be done, and since they admitted their fault both parties were continuing the negotiations regarding publication and copyrights.

³⁹ Soompi, "SBS Meets with Production Team of Indonesian Drama Accused of Plagiarizing "Man from the Stars," May 12, 2014, accessed June 1, 2014, <http://www.soompi.com/2014/05/12/sbs-meets-with-production-team-of-indonesian-drama-accused-of-plagiarizing-man-from-the-stars/>.

Indonesian parties, represented by Tika Oktavianigsih as the Media Relation of Indonesian broadcasting system who aired the accused soap opera, stated in her press conference on Friday, May 30, 2014, reported by Tribun News,⁴⁰ that because of the meeting and settlement reached by both Indonesian and Korean parties, the soap opera "Kau yang Berasal dari Bintang" will aired again in the television. She also stated that after the negotiation reached by both parties, Indonesian parties will buy the license and pay the royalty to the Korean parties as it was their rights. The Indonesian parties actually did their obligation of the agreement with the Korean parties by remaking the advertisement posters of the soap opera, which contains the sentence "Indonesian Version of 'You Who Came from the Stars'" (see further Figure 4.11 and 4.12). Besides, they also promised the simillar and better quality of visual effect from the original drama. And also because of this accusation of plagiarism act did by them, which already been settled, they hope that this case will strenghten the cooperation bond of both parties to produce more derivation works.

Hans Kelsen, in the Legal Responsibility theory explains that a person is legally responsible for a certain behaviour or that he bears the legal responsibility therefore means that he is liable to a sanction in case of contraty behaviour.⁴¹ The sanction is deliquent, which means that it is because of the person own behaviour for which he/she is responsible. In this case, the subject of legal responsibility and the subject of legal duty is coincide.

Traditionally, there are two kinds of responsibility (or liability). It distinguished as responsibility based on fault (culpability) and absolute responsibility (liability).⁴² They are characterized by the fact that the conduct which constitute the delict is psychologically conditioned. Failure to exercise the care prescribed by the law is called negligence, and negligence is usually considered to be another kind of fault. In the case of the person foresaw clearly the possibility of infringement and intended to do it then it classified as culpability.⁴³ While absolute responsibility is constituted when the person do the violation of law without the main intention to do it on the first place.⁴⁴

Legal responsibility related to the act against the law. In civil law, especially according to Indonesian law, any act against the law which bring damage to other person, obliged the person who did the act to pay

⁴⁰ Info KPop, "Sinetron 'Kau yang Berasal dari Bintang' Kembali Tayang, Sudah Beli Lisensikah?," May 31, 2014, accessed June 1, 2016, <http://infokpop.com/news/2014/05/31/sinetron-kau-yang-berasal-dari-bintang-kembali-tayang-sudah-beli-lisensikah/>.

⁴¹ Hans Kelsen, *General Theory of Law and State* (New Jersey: The Lawbook Exchange, Ltd., 2009), pg.65.

⁴² *Ibid.*

⁴³ *Id.*, pg.66.

⁴⁴ *Id.*, pg.67.

compensation to the damaged person.⁴⁵ There are several elements existed such as act did by the person, which is against the law; damages or losses; and also the relation between the act did and the damages.

As the explanation of the Legal Responsibility theory by Hans Kelsen, the solution reached defines the legal responsibility of Indonesian parties in order to redeem the plagiarism they did to the Korean drama. Those solutions reached by both parties are appropriate since they used the negotiation system in order to settle the case. Because under negotiation, decision reached by both parties is the decision of their own agreement, with no pressure whatsoever from other parties. So, both parties, Indonesian and Korean parties, have to respect and obey the solutions made by them under the negotiation.

The Indonesian drama finally aired again in June 4, 2014, and ended in July 16, 2014 with 42 episodes, not as many episodes as regular Indonesian soap operas which end with hundreds or even thousands episodes. It was actually produced a longer story line than the original drama, which only contains 21 episodes. Eventhough it already gained the lisencc and authority from the Korean parties who produced the original work, the Indonesian soap opera did not get the positive feedback from Indonesian society whom opined that the soap opera was absurd, since the main actor, Morgan Oey, retreated from his role after 21 episodes. His retreat was reportedly caused because he only wanted to play the role based on the original work, which was only 21 episodes, and will not continue to play if the soap opera lasted for more than 21 episodes.⁴⁶ Because of that, the Indonesian house production then suddenly changed the story line and casted a new main actor, Rezky Aditya. And with the plot twist, many viewers dissapointed with it, opined that with the sudden change of main actor and twist of the story made the soap opera ended with absurd and anti-climax ending.⁴⁷

E. Conclusion

The Indonesian drama "Kau yang Berasal dari Bintang" was accused plagiarizing one of Korean most famous drama "You Who Came from the Stars". It was violating some of the international conventions, such as Article 14 of the Berne Convention 1886, Article 9(1) of TRIPS 1994 and Article 1 of WIPO Copyright Treaty 1996. And not only international conventions, it also violated Article 9(2) of Indonesian Copyright Act No. 28 of 2014, because the soap opera was aired in Indonesia. Those regulations generally explain that cinematographic work is one of protected works under the laws, and works made based on it, such as the adaptation, derivation, and any other kinds of it have to had

⁴⁵ Indonesia, "Indonesian Civil Code", KUH Perdata, Art.1365.

⁴⁶ Wow Keren, "Rezky Aditya Bakal Gantikan Morgan Oey di 'KYBDB'?", June 23, 2014, accessed June 1, 2016, <http://www.wowkeren.com/berita/tampil/00053399.html>.

⁴⁷ Wow Keren, "Netter Komentari 'Kau yang Berasal dari Bintang' Tamat Mendadak," July 17, 2014, accessed June 1, 2016, <http://www.wowkeren.com/berita/tampil/00054744.html>.

the permission from the original author or rights holder. The aspect which was violated by Indonesian party are the drama had "the similarities on stories, plot, and roles played" and they did not have the "authorization" from the Korean party to made the drama, while the drama itself is a look-alike drama with the Korean version.

Preventive legal protection was already done by making the related laws and regulations on copyrights, either through international conventions or domestic laws, but cases related to copyrights infringements still occur. Another effort still can be done by the parties to settle the dispute, called the represive legal protection, which settlement may be done using litigation, which goes in court of law, and such proceeding initiated between parties goes through the public court system; or non-litigation, which is a dispute resolution outside the court of law, and such proceeding initiated between parties is not using the court system, but with the negotiation between parties, with the help of third neutral party, whom help the parties to find the win-win solution to solve the problem. The Korean parties, under its representatives, took a legal action related to the case, by taking the non-litigation system to settle the dispute with Indonesian parties, using a conclave negotiation, in order to prevent conflicts in the future.

The negotiation of both parties of the plagiarizing issue ended with the agreement to settle the case amicably. The Indonesian parties acknowledged their fault and it was a wrong act to be done, did their obligation of the agreement with the Korean parties by remaking the advertisement posters of the Indonesian drama, which contains the sentence "Indonesian Version of 'You Who Came from the Stars'" and also promised the viewers for simillar and better quality of visual effect from the original drama.

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