

**CASE NO. 6
COPYRIGHT CASE
“BEHAVIORAL ASSESMENT TOOLS”**

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

Case Title	BEHAVIORAL ASSESMENT TOOLS
Summary Of Verdict	<p>At the Commercial Court Level</p> <ol style="list-style-type: none"> 1. Rejected Plaintiff’s lawsuit; 2. Grant the Defendant’s Objection in part; and 3. Punished the Plaintiff to pay for legal proceeding fees as much as Rp 516.000,- (five hundred sixteen thousand Rupiah). <p>At the Supreme Court Level (Cassation)</p> <ol style="list-style-type: none"> 1. Rejected the Cassation Application from the Cassation Applicant (The Plaintiff) entirely; 2. Punished the Cassation Applicant to pay for legal proceeding fees as much as Rp 5.000.000,00 (five million Rupiah).
Case Number	<p>Commercial Court: 61/Pdt.Sus/Hak Cipta/2013/PN.Niaga.Jkt.Pst. Supreme Court Level (Cassation): 306 K/Pdt.Sus-HKI/2014</p>
Regulation References	<p>Copyright Law No. 19/2002, Article 2 paragraph (1), Article 9, Article 12 paragraph (1) point b, Article 56 paragraph (1), Article 57 jo. the Elucidation of Article 15 point a, Article 76 point c (iii); Presidential Decree No. 18/1997 on Ratification of Berne Convention for Protection of Literary and Artistic Works, Article 5.</p>
Keyword	Behavioral assessment tools; copyright infringement

A. CASE FACTS

In this case, The Institute for Motivational Living, Inc (the Plaintiff), a company that established under the United States law sued Yon Nofiar for the copyright infringement by Yon Nofiar, the Defendant. The Plaintiff, in the lawsuit stated that the company has been registered to the Ministry of Law and Human Rights in Indonesia, and the business of the company is in the area of behavioral assessment tool. The tools are made in the form of books, computer program, and Compact Discs (CD). The Plaintiff claimed that the company is the founder and the creator of the behavioral assessment tools that had been created from DISC (Dominance, Inducement, Submission, and Compliance) theory. The Plaintiff also claimed that the assessment tools had been registered and certified by the Copyrights Registry in the United States, and had been registered in Directorate General of Intellectual Property Rights.

According to the business from the Plaintiff, in Indonesia the Plaintiff has certified agents that has the right to sell the behavioral assessment tools for commercial purpose. The Defendant was once the certified agent for the people assessment tools. But, when the dispute occurred, the Defendant was no longer the work as an agent for The Plaintiff. The Plaintiff claimed that the Defendant has done a copyright infringement by using, translating, multiplying and distributing the books, computer program, and the CD without any permission from the Plaintiff. In accordance to the copyright infringement done by the Defendant, the Plaintiff claimed that such infringement caused economic and immaterial loss for the Plaintiff

Contrary with the Plaintiff's claimant, the Defendant stated that the Plaintiff has no legal standing, because the Plaintiff could not prove that the Plaintiff is a legal entity in Indonesia. The Defendant also stated that The Plaintiff do not own the copyright for the books, computer program, and the CD because in the Plaintiff's lawsuit, the Plaintiff failed to mention the registration number from Directorate General of Intellectual Property Rights for the books, computer program, and the CD.

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:

- The Plaintiff has no legal standing because the Plaintiff fail to prove that the Plaintiff is a authorized legal entity in Indonesia;
- The Judges also considered that the lawsuit has an incorrect and incomplete Defendant;
- According to the legal basis that the Plaintiff used, the Judges considered that the Plaintiff's lawsuit is *obscuur libel* because the Plaintiff's also mentioned provision 1365 of Indonesian Civil Code, whereas that provision is the legal basis for civil lawsuit in Indonesia not for commercial case;
- The usage, multiplication, and distribution of the books, computer program, and the CD without permission from the Plaintiff or without mentioning the source of the books, computer program, and the CD could be considered as a copyright infringement caused the Plaintiff gain economic and immaterial loss. According to the copyright infringement, the Judges concluded that the Defendant had done the infringement, but in the lawsuit, the Plaintiff failed to specifically elaborate which points has been violated by the Defendant and because of that the Judges concluded that the lawsuit is *obscuur libel*

In accordance to the consideration above, The Judges concluded that the lawsuit could not be granted and punished the Plaintiff to pay for legal proceeding fees.

At the Supreme Court Level (Cassation)

After being unsatisfied with the previous verdict, that Punished The Plaintiff to pay for legal proceeding fees, The Plaintiff filed a Cassation to the Supreme Court, and hereby the

Plaintiff is called “CA (Cassation Applicant)”. On the Cassation, The judges concluded that the Objection from CA could not be justified with consideration as follows:

- The Judges considered that the Plaintiff’s lawsuit was proven as incomplete and so the Judges at this Cassation stage agreed with the previous Verdict;
- According to the consideration above, The Judges concluded that the previous Verdict didn’t contrary to the law.

Based on the above consideration, the Judges at this stage decided to reject the CA’s objection and punished the CA to pay for legal proceeding fees in the Cassation stage.

C. THE VERDICT

At The Commercial Court Level

1. Rejected Plaintiff’s lawsuit;
2. Grant the Defendant’s Objection in part; and
3. Punished the Plaintiff to pay for legal proceeding fees as much as Rp 516.000,- (five hundred sixteen thousand Rupiah).

At the Supreme Court Level (Cassation)

1. Rejected the Cassation Application from the Cassation Applicant (The Plaintiff) entirely;
2. Punished the Cassation Applicant to pay the case costs as much as Rp 5.000.000,00 (five million Rupiah).