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Copyright Infringement: What a Coincidence, or Is It?

Elias bin Idris v Mohd Syamsul bin Md Yusof & Ors [2019] 1 AMR 105

| by Lim Zhi Jian and Fatin Akmal Binti Hassim |

Copyright protects expression in a work and not idea, procedure,
method of operation or mathematical concept. ^[1]

The author of a book published in 1995 titled *Aku Bohsia* had filed a claim for copyright infringement against the director, producer and distributor of a film titled "*Bohsia: Jangan Pilih Jalan Hitam*". The High Court had dismissed the claim for copyright infringement and allowed the counterclaim for defamation against the novelist. The novelist then appealed to the Court of Appeal.

Copyright infringement

The novelist claimed his copyright in the novel was infringed by the actor, director, producer and distributor (collectively, "the defendants") of the film as the defendants had taken, without his consent, several of the novel's contents, themes, plot and characters for the production of their film.

The defendants argued that they had not read, purchased or heard of the novelist's work, and that there were many dissimilarities between both works, and any similarity was purely coincidental due to a similarity of ideas; that is, the common social issues involving "*boh sia*" girls.

The Court of Appeal held that there was substantial similarity between both works that were not "merely coincidental" and mere "similarities in ideas". Both works discussed the "*boh sia*" phenomenon and the issue of "*mat rempit*", which are common social issues that existed even before the novel's publication and continue to be relevant today. The similarities between the novel and the movie were so numerous and related not just to the general theme, plot, names of characters and

places, but more importantly, character traits — even specific events and relationships in the lives of the characters — that overall, were not simply “general ideas” that were “commonplace” or “unoriginal”. The film had essentially reproduced the novel.

While the novelist did not establish a causal connection between the two works, the Court of Appeal held that there was an indirect causal connection between both works, leading to the inescapable conclusion that the movie had copied the novel on the following grounds:

- (a) the novel was published and made available to the public, including the defendants, prior to the making of their film;
- (b) the similarities between the novel and the movie were too numerous and cumulatively could not be termed as “*commonplace, unoriginal or consist of general ideas*”.

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^[1]

Copyright Act 1987, s 7(2A); *Ultra Dimension Sdn Bhd v American Home Assurance Company; RewardStreet.com (Malaysia) Sdn Bhd* [2009] 9 CLJ 589 (HC) at para 16