

Entertainment Law 101

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OVERVIEW

Like it or not, it is inevitable that Korean K-Pop and similar pop culture continue to arrive. In particular, after decades of constant hard work, the South Korean entertainment industry has finally succeeded in spreading its style of pop culture to throughout the world. Similar to Hollywood,¹ South Korean pop culture exports also contribution considerably to the state revenue. In 2014, this contribution reached USD 5 billion which is targeted to be doubled by 2017.²

Inspired by Hollywood and Hallyu³ successes, President Joko Widodo also has a plan to boost the Indonesia's creative economy.⁴ Through this industry, Indonesia also seeks to

gain economic growth by exposing its many diverse and unique cultures to other countries through its music, film, television, radio, and performing arts as part of the creative economy sector.

To better support an atmosphere conducive to is healthy development, creative industries generally require laws and regulations that are both supportive and sufficiently comprehensive,⁵ a legal field commonly referred to as entertainment. Interestingly, it is hard if not impossible to find a definition for entertainment law, not even in the United States as a pioneering in this field of law. Common sense, however, tells us that entertainment law covers the legal realm related to the entertainment industry although how broadly one chooses to define the entertainment industry has a degree of subjectivity.

¹ The entertainment business is central to the lives of many Americans and to the United State economy. According to Variety Magazine, entertainment recently supplanted food as the country's greatest export earner. (page 1 of Entertainment Law in a Nut Shell by Sherri L. Burr)

² See "[Soap, sparkle and pop: How a Really Uncool Country Became The Tastemaker of Asia](#)"

³ Hallyu is a term by South Koreans for their pop culture wave. (See the aforementioned article)

⁴ There are 15 sectors included under the creative economy industry covering: (i) architecture, (ii) design, (iii) film, videos, photography, (iv) culinary, (v) handcrafts, (vi) fashion, (vii) music, (viii) publishing, (ix) interactive games, (x) advertisement, (xi) research and development, (xii) arts, (xiii) performing arts, (xiv) information technology, as well as (xv) television and radio. (page vii of [Ekonomi Kreatif: Kekuatan Baru Indonesia Menuju 2025](#) by Minister of Tourism and Creative Economy)

⁵ See section 4.5.3 titled *Atap Model Pengembangan Ekonomi Kreatif* (page 294, *Ekonomi Kreatif: Kekuatan Baru Indonesia Menuju 2025*)

As a hybrid of many areas of law and at its broadest, entertainment law includes the application of laws and regulations in more traditional legal fields related to the entertainment industry, potentially covering such diverse fields as intellectual property law, labor law, tax law, insurance law, bankruptcy law, immigration, securities law, security interests, agency, rights of privacy and defamation, trade unions, industry custom and usage, breach of contract claims and remedies, and dispute resolution or arbitration requirements, even criminal law.⁶ In the United States, however, entertainment law is generally narrower in scope and more directly covers the showbiz industry.

In Indonesia, however, entertainment law seems to cover a broader scope as Law [No. 28 of 2009](#) on Regional Tax and Levies (“**Regional Taxes and Levies Law**”) defines the term as every show, performance, game and/or festival enjoyed by paying a certain fee,⁷ including: (i) movie shows, (ii) performing arts, music, dance and/or fashion shows, (iii) beauty pageants, bodybuilding contests, and the like, (iv) exhibitions, (v) discotheques, karaoke, night clubs, and the like, (vi) circus, acrobats, and magic shows, (vii) billiards, golf, and bowling games, (viii) horseracing and motor racing, (ix) massage/reflexology parlors, spas, fitness centers, as well as (x) sports game.⁸

Based on the above, it becomes evident that in Indonesia the entertainment field crosses with tourism activities. Entertainment lawyers in Indonesia are generally associated with divorce cases of celebrities. If the government aims to take Indonesian cultures to the world, there will need to be a better understanding of entertainment law in terms of the showbiz industry, not only for entertainment industry stakeholders, but also the public in general as a source of ideas and creativity for the industry.

PURPOSE

This Indonesian Law Digest (ILD) will describe laws and regulations in Indonesia that govern the core aspects of entertainment law related to the showbiz industry.

As a multidisciplinary area of law, although entertainment law potentially covers a wide ambit, this ILD limits its discussion to the following core areas of law that relates to entertainment law:

- a. Laws which apply generally to the Indonesian showbiz industry, with a focus on intellectual property law and labor law as the core legal fields related to the industry; and
- b. Related unions which play an important role in supporting the Indonesian showbiz industry.

⁶ See <http://research.lawyers.com/areas-of-law-definitions.html>

⁷ Art. 1 (25), Regional Taxes and Levies Law

⁸ Art. 42 (2), Regional Taxes and Levies Law

RELEVANT LAWS TO INDONESIAN SHOWBIZ INDUSTRY

Intellectual Property Law

The core of the entertainment industry is ideas which are realized into concrete products, such as films, television shows, and songs. As a consequence, intellectual property law is the heart of the entertainment industry as it protects creativity as well as determining the rights and obligations of interested parties over creative works to prevent their violation.

Indonesian intellectual property law covers a number of intellectual property rights covering copyright, patents, trademarks, protection of plant varieties, trade secrets, industrial design, and integrated circuit location design. For the entertainment industry, copyright is the most relevant intellectual property right as it protects works in the field of science, art, and literature.⁹

In Indonesia, copyright is regulated under Law [No. 28 of 2014](#) on Copyright (“Copyright Law”),¹⁰ and is defined as the exclusive rights granted to the creators of copyrighted works to use, distribute, perform, and prevent others from reproducing or announcing their works. The scope of copyrighted works is set out under Article 40 of Copyright Law which specifically refers to the following items for the entertainment industry:

- a. Songs or music (with or without text);
- b. Drama, musical drama, dance, choreography, puppetry, and pantomime;
- c. Cinematography works; and
- d. Translations, interpretation, paraphrasing, anthologies, databases, adaptations, arrangements, modifications, and other forms of work that are the result of transformation.

Copyright covers two types of rights, moral rights and economic rights.¹¹ Provided that the economic right has not been transferred to another party,¹² the author or copyright holder is authorized to conduct the following:¹³

- a. Publish their work;
- b. Duplicate their work in any form, including activities to record the work using a camcorder in a movie theatre or from live performances;¹⁴
- c. Translate their work;
- d. Adapt, arrange, or transform their work;
- e. Distribute the work and/or a copy of it;
- f. Perform their work;
- g. Announce their work;
- h. Communicate their work; and/or
- i. Lease their work.

⁹ Recital letter a, Copyright Law

¹⁰ For more information, see ILB [No. 2479](#) and ILD [No. 376](#)

¹¹ Art. 4, Copyright Law

¹² Art. 17, Copyright Law

¹³ Art. 9 (1), Copyright Law

¹⁴ Elucidation of Article 9, Copyright Law

Note entitled parties may only arrange the aforementioned activities after securing a license from the respective author or copyright holder.¹⁵

In addition to copyright, the law also regulates matters on related rights, referring to exclusive rights for performers, phonogram producers, or broadcasting agencies in relation to copyright.¹⁶ Related rights cover the following:¹⁷

- a. Moral and economic rights of performers, including the right to be attributed to a performance and preserve the integrity of a work from alteration, distortion, modification and any action that may diminish the author's dignity or reputation (moral rights)¹⁸ as well as rights to broadcast and communicate a performance, fixate the performance then duplicate, distribute, lease or provide the fixed works to the public (economic rights)¹⁹;
- b. Economic rights of producers of phonograms, including the right to duplicate phonograms, distribute original or duplicated phonograms, lease phonogram copies, and publish the phonogram (by wire or wireless means);²⁰ and
- c. Economic rights of broadcasting agencies, including the right to re-run, communicate, and fixate the broadcast, as well as to duplicate a fixed broadcast.²¹

These related rights may be transferred to other parties which results in the original right holders not being able execute their related economic rights. Specific for works in the form of songs and music (with or without text), a transfer is only be valid for 25 years after which the transferee must return the right over the transferred work to the original right holder (either copyright holder or related right holder).²²

The follow examples illustrate the above principles.

A is a singer who sings a song created by B and recorded by C. In this example, B is the songwriter thus holds copyright over the song, with A and C holding related rights as a performer and phonogram producer (respectively). If A performs the song at D's television station, then D will also hold the related right as broadcasting agency.

In addition to copyright, trademark and trade secrets are also relevant to the entertainment industry.

Trademark generally refers to words, designs, or combination of both which are used by a manufacturer to identify its goods and/or services. A trademark also represents the source of commercial goods and/or services, guarantees quality, advertises the manufacturer, and describes a product thus attracting customers.²³ In the showbiz industry, a trademark usually protects merchandise produced to generate profits from the music and film industry, e.g. souvenirs at music concerts.

¹⁵ Art. 9 (2), Copyright Law

¹⁶ Art. 1 (5), Copyright Law

¹⁷ Art. 20, Copyright Law

¹⁸ Art. 22, Copyright Law

¹⁹ Art. 23 (2), Copyright Law

²⁰ Art. 24 (2), Copyright Law

²¹ Art. 25 (2), Copyright Law

²² Arts. 18 and 30, Copyright Law

²³ Page 173, Entertainment Law in a Nutshell by Sheri L. Burr

In Indonesia, trademark is regulated under Law [No. 15 of 2001](#) on Trademarks which covers, amongst others, types of trademarks that are prohibited from being registered, the procedures and requirements to request a trademark registration, registration procedures, as well as transfer of trademark rights.

Related, the trade secret law protects information concealed during a process of creation and gains its value by being unavailable or unknown by the public. The underlying principle is protection of undisclosed ideas, information, and/or technology that is important for the artists, producers, studios, networks, recording companies, and other related parties in the entertainment industry. One concrete measure to protect trade secrets is the signing of a non-disclosure agreement to keep parties involved in related discussions from revealing confidential information. On this point, reference should be made to Law [No. 30 of 2000](#) on Trade Secrets.

Labor Law

Another important area needed to support the Indonesian showbiz industry is the establishment of conducive working environment for creative workers, not only for artists but the whole team of creative work productions. As a starting point, it can simply be said that the entertainment industry and its workers must comply with all applicable laws and regulations on labor. However, in practice, however, the reality is that many artists do not enjoy the benefit of certain privileges mandated under labor law, such as social security.

The fundamental law govern industrial relations in Indonesian is the well-known Law [No. 13 of 2003](#) on Manpower (“Labor Law”). Needless to say, all employment relationships in the entertainment industry must comply with the Labor Law as artists fall under the definition of an employee who are employed by employers and receive certain payments under an employment agreement.

As a result, all of the rights and obligations of employees and employers under the Labor Law apply to workers in the entertainment industry. However, the employment in the entertainment industry is usually under a fixed-term employment agreement (contract) to which the criteria under Article 59 of the Labor Law applies as follows:

- a. The work is temporary in nature;
- b. The working period is predicted to finish within three years (maximum);
- c. For seasonal work; or
- d. The work relates to new products, activities, or testing.

Fixed-term employment agreements must be made in writing in Indonesian with a possible one-time extension provided that the extension is only for one year (maximum).

A common issue for employment in the entertainment industry is the issue of employment of minors. Under the Labor Law, a minor refers to everyone aged below 18 years-old.²⁴ In general, the Labor Law prohibits minors from working,²⁵ except under the following circumstances:

²⁴ Art. 1 (26) Labor Law

²⁵ Art. 68, Labor Law

- a. Minors aged 13 - 15 year-old may carry out light work which must not harm their physical and mental health, as well as their social life and provided that: (i) the employer secures a license from the respective minor's parents and enters into an employment agreement with the parents, (ii) working hours are limited to three hours (maximum), (iii) the work must be carried out in the afternoon and must not harm schooling activities, (iv) employer must provide work health and safety facilities, (v) the employment has a clear scope, and (vi) the respective minor must be paid;²⁶
- b. The work is part of a school curriculum which has been approved by authorized officials, provided that: (i) the minor must be 14 years-old (minimum), and (ii) the employer provides sufficient and clear guidance on how to conduct the task, and further provides work health and safety facilities;²⁷
or
- c. The work aims to develop the minor's talents and interests.

The last point "c" is the basis used to employ minors in the entertainment industry, for which the Labor Law further requires the employment to comply with the following:²⁸

- a. The work is conducted under parental supervision;
- b. Working hours are three hours per day (maximum); and
- c. Working environment must not harm the development of the respective minor's physical and mental health as well as their social life.

The employment of minors in the entertainment industry is further regulated under Minister of Manpower and Transmigration Regulation [115 of 2004](#) on Protection of Minors Employed to Develop Their Talent and Interests.

Another feature of the industry is that most talents/celebrities often engage third parties to represent them such as agents, managers, lawyers, and unions.²⁹ Learning from practices in the United States, talent agents and personal managers traditionally perform distinct yet similar roles in the entertainment industry. However, the industry usually draws a distinction between the roles to prevent conflicts of interest. In general, agents arrange and negotiate every possible employment opportunity for a talent, while personal managers suggest which opportunity is better for the sake of the talent's development.³⁰

In addition, talent agents earn money from commission, hourly fees, or based on a flat fee, which can be regulated by a government issued regulation, or by a union. Fees for personal managers on the other hand, are more often purely by negotiation between the client and personal managers.

In California, the government has enacted Talent Agents Act (TAA) which provides that anyone other than a licensed talent agent must not procure, or even merely attempting to procure, employment for

²⁶ Art. 69, Labor Law

²⁷ Art. 70, Labor Law

²⁸ Art. 71, Labor Law

²⁹ Page 186, Entertainment Law in a Nutshell by Sheri L. Burr

³⁰ Page 20, Entertainment Law by Adam Epstein

a talents. The TAA also requires talent agents to be bonded and secure a license from the Labor Commissioners.³¹

In Indonesia, there is generally no clear distinction between the practices of talent agencies and personal managers distinction and lack of sufficient regulations covering this point. However, this lack of formal rules is in practice substituted by regulations or agreements made by entertainment industry unions/association, as commonly practiced in the USA.

INDONESIAN SHOWBIZ INDUSTRY UNIONS

It is common practice in the United States' entertainment industry to establish numerous unions/associations to represent their members. These unions may lobby for and strive to expand the wages and benefits of members, also to protect artists from unethical or improper activities by employers, limiting the fees that talent agents can charge for their services and utilizing standard contracts, etc.³²

As mentioned above, the lack of specific regulations covering the entertainment industry is supplemented by regulations and agreements made by entertainment industry unions/association. Below is a list of some of the existing associations in the Indonesian entertainment industry:³³

Association	Function	Website
National Film Consideration Board - <i>Badan Pertimbangan Perfilman Nasional</i> (BP2N)	The association provides considerations for the government to develop the national film industry.	http://perfilman.pnri.go.id/lembaga_perfilman/detail/71
Indonesian Motion Picture Companies Association - <i>Persatuan Perusahaan Film Indonesia</i> (PPFI)	<p>The association has the following functions:</p> <ul style="list-style-type: none"> - Strives to review related laws and regulations on the film industry, with a focus to assert television stations as broadcasting agencies, not production houses; - Suggests laws and regulations to protect production houses as well as creating innovative measures to market its members' films in national and/or international markets 	<p>http://perfilman.pnri.go.id/lembaga_perfilman/detail/67</p> <p>or</p> <p>http://ppfindonesia.blogspot.com/p/tentang-kami.html</p>

³¹ Page 26, Entertainment Law by Adam Epstein.

³² Page 24, Entertainment Law by Adam Epstein.

³³ For complete list, see <http://www.parekraf.go.id/userfiles/file/ASOSIASI%20PAREKRAF%202012%281%29.pdf>

<p>Indonesian Motion Picture Artists Association - <i>Persatuan Artis Film Indonesia</i> (PARFI)</p>	<p>The association is a medium for motion picture actresses and actors which provides training and education to guide its members, as well as organizes social activities to establish good relations between motion pictures artists and the public.</p>	<p>http://perfilman.pnri.go.id/lembaga_perfilman/detail/66</p>
<p>Indonesian Recording Music Arrangers, Songwriters, and Singers Association - <i>Persatuan Artis Penyanyi, Pencipta Lagu, dan Penata Musik Rekaman Indonesia</i> (PAPPRI)</p>	<p>The association acts as the official conduit for copyright owners (songwriters and music arrangers) to gather.</p>	<p>http://pappri-ykci.blogspot.com/</p>
<p>Indonesian Video Recording Association - <i>Asosiasi Industri Rekaman Video Indonesia</i> (ASIREVI)</p>	<p>The association organizes the import of video recordings conducted by its members and protects members from video piracy.</p>	<p>http://perfilman.pnri.go.id/lembaga_perfilman/detail/72</p>
<p>Indonesian Mobile Cinema Screening Companies Association - <i>Persatuan Perusahaan Film Keliling</i> (PERFIKI)</p>	<p>The association has handles all kinds of festive events (e.g. weddings and other ceremonies) due to its ability to reach remote areas.</p>	<p>http://perfilman.pnri.go.id/lembaga_perfilman/detail/78</p>
<p>Indonesian Content and Animation Industry Association - <i>Asosiasi Industri Animasi & Konten Indonesia</i> (AINAKI)</p>	<p>The association strives to develop Indonesia's animation industry, by educating, promoting and managing Indonesian animator talent.</p>	<p>www.ainaki.or.id</p>
<p>Indonesian Recording Industry Association - <i>Asosiasi Industri Rekaman Indonesia</i> (ASIRI)</p>	<p>The association fights for the interests of the Indonesian recording industry, at the level of regulation development by the government and in the international market and also the protection of recorded works.</p>	<p>www.asiri.or.id</p>

CONCLUSION

Unlike other areas of law, the term entertainment law was initially established to consolidate the use of laws and regulations related to the entertainment industry. However, this area of law does not have a distinct formal system compared to other specific sector. This being the case, Indonesia would do well to learn from, observe and apply the laws and regulations related to entertainment industry as applied by other countries, especially the United States.