

Protection of Pertamina Logo Intellectual Property Rights against Brand Use outside the Collaboration Network

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ABSTRACT

This research aims to show rights protection and sanctions for brand use outside the collaboration network. The research method used is normative legal research using a statute approach and a conceptual approach and analyzing by deduction. The results of this research show that the use of the Pertamina logo as a brand use or symbol outside the cooperation network is not permitted or violates the provisions and can be filed as a lawsuit or compensation by Article 83 of the Trademark and Geographical Indications Law. This is because the use of the Pertamina logo as a brand can only be used by the brand owner or other parties based on a written agreement (license). So the perpetrator can be subject to imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of IDR 2,000,000,000.00 (two billion rupiah) because they have fulfilled the elements as intended in Article 100 paragraph (1) of the Trademark Law. and Geographical Indications. Apart from that, the perpetrator must also stop all actions related to the use of PT Pertamina's logo because they do not have legal rights to use the logo. If in this case the perpetrator does not stop all his actions, the brand owner can file a lawsuit in the form of a lawsuit for compensation and a lawsuit to stop all actions related to the use of the logo/brand as regulated in Article 83 paragraph (1) of the Trademark and Geographical Indications Law and the Directorate General of Property. Intellectuals will also reject the brand if the Pertamina business actor registers the brand.

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1. INTRODUCTION

In this era of globalization, many companies use logos as their company identity. A logo is an identity that has its characteristics. Based on the Big Indonesian Dictionary, a logo has the meaning of a letter or symbol that contains meaning, consisting of one or more words as a symbol or company name and so on. Apart from that, according to Wheeler's theory, Katz says that the logo must

represent the vision and mission of the company, and be in accordance with the targeted segmentation. Every logo on a brand reflects the image and persona of that brand. The logo, which is part of rebranding, can be made more attractive and simpler so that it makes it easier for people to remember and recognize a brand. Thus, a company logo must not have similarities, this is to make it easier for consumers to differentiate between

products. Therefore, it is necessary to protect brand logos. Considering that Indonesia is a legal country, there are already laws and regulations governing logos. As stipulated in Law Number 20 of 2016 about Hak Merek dan Indikasi Geografis, Article 1 Number (1). According to the article, two-dimensional images, logos, names, words, characters, numbers, and color combinations are examples of the visuals that are included in trademarks. If the configuration of these components serves to differentiate the products or services of other businesses, then it might be considered a trademark. Based on this article, it is known that a logo can be categorized as a brand. To get protection, brand holders need to register their logo. By registering a logo as a brand, the brand holder has legal protection and rights to the brand. Like PT Pertamina, which has an iconic logo. Just by looking at the color combination, it can be identified as the PT Pertamina logo. The PT Pertamina logo was registered on December 10, 2005. As a company operating in the oil and gas sector, PT Pertamina distributes processed oil and gas products throughout Indonesia. With this company, the distribution of oil and gas energy can be spread evenly throughout Indonesia at controlled prices. However, apart from the equalization efforts carried out by PT Pertamina, some challenges could materially harm PT Pertamina in the context of misuse of the PT Pertamina logo. Many business actors use the PT Pertamina logo as an effort to increase their sales. Usually, these business actors call themselves Pertamina which is likened to a mini (small) version of Pertamina. Actions carried out by business actors can be categorized as violations of the law. This is because business actors possess no authorization to utilize the PT Pertamina logo for economic activities. PT Pertamina also stated that there was no cooperative relationship between PT Pertamina and Pertamina, and that Pertamina was not a subsidiary of PT Pertamina. In line with the actions of Pertamina business actors, the formulation of the problem found by the author is what protection is obtained by PT Pertamina as the holder of rights to

intellectual property. What sanctions and legal consequences can be imposed on perpetrators of misuse of trademark rights. And what legal remedies can be taken by intellectual property rights holders.

2. LITERATURE REVIEW

2.1 *Scope of Intellectual Property Rights*

According to Kholis Rouisah, (2015, p. 6) clarifying the understanding of IPR is: "Mental Property Rights are at first rights inferred from the creation of a capacity of human considering control that's communicated to the common open in different shapes that have financial benefits, unused IPRs exist when the human mental capacity has shaped something that can be seen, listened, studied, or can be utilized". Substantively, the definition of IPR can be explained as the correct to proprietorship as works that emerge or are born due to human mental capacity within the areas of science and innovation. In common, IPR comprises of 2 (two) major parts, namely:

1. Copyright is regulated in Law Number 28 of 2014 concerning Copyright;
2. Industrial Property Rights, which incorporate:
 - a. Licenses are directed in Law Number 13 of 2016 concerning Licenses;
 - b. Trademarks are controlled within the same Law, specifically, Law Number 20 of 2016 concerning Trademarks and Topographical Signs;
 - c. Mechanical plan is controlled in Law Number 31 of 2000 concerning Mechanical Plan;
 - d. Coordinates circuit format plan is directed in Law Number 32 of 2000 concerning Coordinates Circuit Format Plan;
 - e. Exchange insider facts are directed in Law Number 30 of 2000 Concerning Exchange Insider facts;
 - f. Geographical indications are controlled within the same Law,

to be specific, Law Number 20 of 2016 concerning Trademarks and Geological Signs.

2.2 Definition, Types and Rights of Trademarks

Tim Lindsey (2006) Brand is something either in the form of images or names that can be used to identify a product or company in the market, while the definition of a brand according to KBBI is a sign worn by entrepreneurs such as factories, manufacturers, and so on the goods produced as an identifying mark. This proves that with the brand, producers or brand owners are able to protect their products and can show the characteristics and origin of a good or service with other trade goods, then entrepreneurs can gain public trust which results in the owner of a brand will get a big advantage.

The definition of trademark agreeing to Article 1 number 1 of Law Number 20 Year 2016 on Trademarks and Geological Signs (hereinafter alluded to as the Trademark and Topographical Signs Law) clarifies that:

"Tanda yang dapat ditampilkan secara grafis berupa gambar, logo, nama, kata, huruf, angka, susunan warna, dalam bentuk 2 (dua) dimensi dan/atau 3 (tiga) dimensi, suara, hologram, atau kombinasi dari 2 (dua) atau lebih unsur tersebut untuk membedakan barang dan/atau jasa yang diproduksi oleh orang atau badan hukum dalam kegiatan perdagangan barang dan/atau jasa."

Trademarks under the Trademark Act and Geographical Indications are divided into 3 (three) types, namely:

- a. Trademark
- b. Service Brand
- c. Collective Brands

The definition of Trademark Rights agreeing to Article 1 number 5 of the Trademark and Geological Signs Act is:

"hak eksklusif yang diberikan oleh negara kepada pemilik Merek yang terdaftar untuk jangka waktu tertentu dengan menggunakan sendiri merek tersebut atau memberikan izin kepada pihak lain untuk menggunakannya."

As an exclusive right, the right to trademark prohibits other parties to use the trademark without the permission of the owner of the trademark because it is part of a

person's property that needs to be maintained, maintained and protected. Trademark transfer is a legal act performed by the owner / holder of Trademark Rights which aims to transfer the Trademark Rights he has to another party. Thus, in this case the party who transfers the Trademark Rights to another party automatically has legal consequences in the form of losing his rights and those rights move to the party who received the Trademark Rights. Transfer of Trademark Rights is described in Article 41 paragraph (1) of the Trademark Act and Geographical Indications, which explains that:

(1) Rights to a registered Trademark may be transferred or assigned due to:

- a. inheritance;
- b. will
- c. waqf;
- d. grant
- e. agreement; or
- f. other causes justified by laws and regulations.

2.3 Legal Protection of Trademark Rights

Rahmi Jened (2015) clarifies that the rights to the trademark is gotten after the trademark is enlisted, subsequently trademark enrollment is a commitment in arrange to get the rights to the trademark. Without enrollment, the state will not deliver rights to the trademark to the proprietor of the trademark, hence the framework embraced by Indonesia may be a constitutive framework implies that enlistment is expecting to donate birth to rights, so that trademark assurance is gotten by the party who to begin with enlisted the trademark (to begin with to record). Trademarks that have been enrolled are given a period of security as stipulated in Article 35 section (1) of the Trademark and Topographical Signs Act, for 10 (ten) a long time from the date of receipt and can be amplified for the same period of 10 (ten) a long time.

3. RESULTS AND DISCUSSION

3.1 Use of Pertamina Logo Brand Outside the Cooperation Network in Terms of Intellectual Property Law

Until presently, there are still numerous commerce on-screen characters, particularly Pertamina (the oil form of Pertamina) who do everything they can to induce more benefits without paying consideration to existing controls. These cases incorporate those happening in a few ranges, one of which is what happened in Denpasar City, where in this case numerous trades performing artists offering Pertamina Fuel Oil utilize the PT Pertamina symbol when carrying out their trade exercises. In spite of its position, the Pertamina commerce on-screen character did not get a allow or did not have lawful participation agreeing to law with PT Pertamina as the party that has the official obvious rights. Another truth that was uncovered was that Pertamina was not portion of PT Pertamina and was not a backup of Pertamina Fuel Oil. In a roundabout way, Pertamina's commerce itself has a few unsafe impacts, counting motorbikes that can capture fire when refueling at Pertamina since Pertamina isn't subsidiary with PT Pertamina and Pertamina does not take after benchmarks like Pertamina gas stations.

Based on the depiction of the chronology of the case over, the infringement in this case, are:

To begin with, the Pertamina Fuel Oil (BBM) vender does not have the proper to utilize PT Pertamina's symbol since there is no authorization or participation from Pertamina to utilize PT Pertamina's company symbol. Moment, in a roundabout way, trade on-screen characters offering Pertamina fuel oil (BBM) have caused misfortunes to Pertamina and shoppers. In this case, customers are hurt since the security benchmarks given by Pertamina trade on-screen characters don't meet SNI (Indonesian National Measures) which can have deadly results. to be specific, the quality of fire and fuel oil (BBM) sold by Pertamina isn't ensured, a few indeed have the measurement diminished in order to induce more benefit. Third, there's a misfortune in terms of fabric. Pertamina has had its rights confiscated by Pertamina since its employments the trademark rights claimed by PT Pertamina. Fourth, there's a misfortune from an ethical viewpoint, the public will

accept that Pertamina features an agreeable relationship with Pertamina since its employments Pertamina's symbol which can discolor the title of the Pertamina company as a huge worldwide company. Untrustworthy competition is carried out by business people who have good eagerly by creating merchandise. merchandise utilizing brands that are broadly known in society to which they don't have rights.

Based on the portrayal of the four misfortunes over, the sanctions that can be forced on commerce performing artists offering Pertamina Fuel Oil (BBM) as culprits are planning as lawful security from infringement they have committed. Considering that the rights to a trademark are gotten after the trademark is enrolled, subsequently enrolling a trademark is a commitment in arrange to get rights to the trademark. Without enlistment, the state will not give rights to the brand to the brand proprietor, in this way the framework received by Indonesia is constitutive, meaning that enrollment is planning to form rights, so that brand protection is gotten by the party who to begin with enrolled the brand (to begin with to record). In truth and legally, the PT Pertamina symbol may be a symbol that was enrolled and formally endorsed on October 10 2005 at the Directorate of Copyright, Mechanical Plan, Coordinates Circuit Layout Design and Exchange Privileged insights, Division of Law and Human Rights of the Republic of Indonesia. As a result, enrolled Marks are given a period of assurance as controlled in Article 35 passage (1) of Law Number 20 of 2016 concerning Hak Merek dan Indikasi Geografis, for 10 (ten) a long time from the Acknowledgment Date and can be amplified for the same period of 10 (ten) a long time. In expansion, PT Pertamina as the proprietor of a enrolled trademark can give a permit to another party to utilize the trademark for a few or all sorts of merchandise and/or administrations. A license could be a allow allowed by the proprietor of a enrolled trademark to another party based on a composed assention taking after statutory controls. welcome to utilize a enrolled check

as portrayed in Article 41 passage (1) of Law Number 20 of 2016 tentang Hak Merek dan Indikasi Geografis, which states that:

(1) Rights to a registered Trademark may be exchanged or allotted due to:

- a. inheritance;
- b. will;
- c. waqf;
- d. allows;
- e. agreement; or
- f. other causes advocated by laws and regulations.

Considering that brands play an awfully critical part in exchange, the function of brands is isolated into 3 (three) parts according to Yurida Zakky, (2016, page. 114-115) that:

1. Distinctive work Brands give personality to merchandise or administrations stamped with a brand conjointly work to distinguish these goods or services from products or administrations delivered and exchanged by other makers.
2. Quality item work Trademarks obtained by customers will give the impression in consumers' minds that the trademark could be an image of the quality of the goods delivered. The existing symbol has the result that the brand could be a ensure to shoppers that the products acquired will be of the same quality from begin to wrap up.
3. Advancement and impression function Brands too work to draw in and promote merchandise and administrations, more often than not, brands are made of appealing and simple to keep in mind colors in arrange to attract the consideration of buyers so that business visionaries will get most extreme benefits. So, the activities of trade performing artists offering Pertamina Fuel Oil (BBM) as on-screen characters who utilize the Pertamina symbol as their brand without a substantial allow can certainly be interesting or as a shape of advancement, quality confirmation, and distinguishing proof, which of the three makes the culprit pick up benefits numerous times over. overlay by gradually giving misfortunes to PT

Pertamina. In this manner, the party who endures misfortunes due to acts that damage the law as confirmed in Article 1365 KUH Perdata can record a claim or compensation as explained in Article 83 section (1) around Merek dan Indikasi Geografis.

3.2 Sanctions for Business Actors Who Use the Pertamina Logo Outside the Cooperation Network

Article 1 number (1) of Law Number 20 of 2016 about Hak Merek dan Indikasi Geografis governs brand rights with reference to logos. In this article, it is explained that logos can be categorized as brands. The brand needs to be registered so that it can have legal protection. The procedures for trademark applications, Articles 4 through 8 of Law Number 20 of 2016 Concerning Hak Merek dan Indikasi Geografis control it. As PT Pertamina did regarding its logo which was registered as a brand. So, business actors who want to use the PT Pertamina Logo must obtain permission from the brand rights holder. Permission granted by the brand owner can be as specified in Article 1 number 18, in the form of a license. In this article, the owner of a registered trademark can give permission to a third party pursuant to a legally binding written agreement to use the registered trademark. Understanding these laws and regulations, Pertamina business actors should stop using the PT Pertamina logo. However, due to the lack of understanding by Pertamina business actors, they violated the brand rights owned by PT Pertamina. Therefore, it is deemed that Pertamina business actors have broken the law if they do not have authorization to use the PT Pertamina brand.

This article shows that Pertamina business actors who use the PT Pertamina logo by changing the name to Pertamina are an act of misuse of a logo that is similar to the PT Pertamina logo. Supported by business actors who misuse the PT Pertamina logo and do not get permission to use the logo from PT Pertamina. Therefore, Pertamina business actors can face fines and/or criminal penalties. Pertamina business actors face a maximum term of four years in prison and/or a fine of Rp 2,000,000,000.00 (two billion rupiah).

3.3 Legal Actions That Can Be Taken By The Owner Of Intellectual Property Rights

If look at the chronology of the case that has been reviewed that PT Pertamina based on the reference in the Directorate of Industrial Design Copyright and Integrated Circuit Layout of the Republic of Indonesia is the legal owner of the Pertamina logo based on this, then Pertamina can take legal action if necessary, the legal action taken is by referring to existing regulations, namely Law No. 20 of 2016 concerning Merek dan Indikasi Geografis, The regulation provides legal remedy steps for the implementation of a just law for all Indonesian people.

1. Through Civil

Its conception, civil law provides a private order to the existing problems by taking into account the applicable provisions, if in this case referring to Article 83 that the owner of a registered trademark and / or registered licensee has the right to file a lawsuit against other parties who in its implementation knowingly and obviously do and use a trademark that has elements of similarity and in essence or entirely illegally for goods and / or services consisting of a. a lawsuit that is compensation b. stop an action that has a correlation with the use of the trademark if there are certain parties who use the trademark without permission. In this case, the lawsuit is filed with the commercial court that has absolute competence in the case and in this case there are also legal remedies of cassation and judicial review. In the process of examining the matter, the owner or licensee can file a production stoppage process to prevent the losses experienced from getting bigger.

2. Through Criminal

In addition to the civil path in this case there is another path that is criminal in the implementation of the legitimate owner of the trademark is given the right to take the criminal path if the trademark is violated. When referring to the provisions that apply criminally to violations in the realm of trademarks that occur is an

offense of complaint, it can be clearly understood that in article 103 that violations that occur in the trademark in its implementation will be processed if there is a complaint from the trademark owner or licensee legally and will be acted upon by the obliged. In terms of calculating the loss in Article 100 in the event of trademark infringement that occurs exactly and has the same type, it will be subject to imprisonment for a maximum of 5 (five) years and subject to a maximum fine of 2 (two) billion rupiah. However, it is different if there is a trademark infringement that the goods are similar threatened with imprisonment for a maximum of 4 (four) years and a fine of a maximum of 2 (two) billion rupiah. When looking at a criminal threat that occurs a lot of articles that can be ensnared in providing a deterrent effect on the perpetrators and violators of trademark rights in which if it is known that the goods cause environmental pollution, health problems and even cause deaths that occur, which can be subject to imprisonment for a maximum of 10 (ten) years and subject to a fine of up to 5 (five) billion rupiah. This also applies to people who circulate the brand resulting from imitating both goods and services can be subject to imprisonment for a maximum of 1 (one) year or a maximum fine of 200 (two hundred) million rupiah the provisions that have been described can be seen in Article 102 in Law Number 20 Year 2016.

3. Through Alternative Dispute Resolution

In the process of resolving disputes the legal path is not the only method that can be done criminally or civilly in Article 93 of the Trademark Law also explains that there are clearly efforts to resolve disputes as an alternative way. When looking at the article that the definition of alternative dispute resolution consisting of negotiation, mediation and conciliation which can occur if done with an agreement between the two parties in providing an opinion in resolving a case by deliberation together with the selection

of this method in its implementation provides an advantage that occurs for the existing parties. For example, the trademark owner can offer the legitimate use of its trademark to the trademark infringer through a trademark license mechanism. It can be done with the negotiation of both parties. Resorting to alternative means does not take much time and cost. If this method remains deadlocked, it is better to proceed to criminal or civil proceedings to provide a deterrent effect for trademark infringers and restore the losses of legitimate trademark owners by knowing the advantages of alternative dispute resolution which is very beneficial for the parties because it does not require a very long cost and time but still get a wish filed if it can prove legally and correctly.

4. CONCLUSION

We can conclude that the use of the Pertamina logo that occurs in some cases in its implementation there are various violations that are regulated in the existing regulations, starting from the business actors selling Pertamina fuel oil (BBM) do not have the right because there is no permission or cooperation from Pertamina to use the company's logo, then indirectly the business actors selling Pertamina fuel oil (BBM) in the process of buying and selling are certainly not in accordance with SNI (Indonesian National Standards) which can have fatal consequences, even though if you look at the material side that Pertamina takes brand rights owned by Pertamina which is done without permission and applicable regulations are not obeyed, In addition, if we look morally that in reality there will arise a lot of negative thoughts or in this case the assumption is built that there is a legal relationship in the work on the part of Pertamina and Pertamina that exists with the use of the logo that occurs in addition to the assumption that the big company Pertamina is used by its logo, it will become a matter of public discussion known that it has international standards of competition that does not apply good faith actions by using

methods that are not legally supported by producing goods by using a brand that does not have rights and is done illegally.

In the regulation of an Intellectual Property Rights issue in this case there are regulations that regulate the principal implementation in this case in Law No. 20 of 2016 concerning Trademark Rights and Geographical Indications. Law No. 20 of 2016 concerning Trademark Rights and Geographical Indications in this case as the legally recognized owner in the eyes of the law that PT Pertamina as the owner of the logo brand that occurs regarding the actions of business actors who use the logo without permission or license in the act of using the logo without a license or illegal can be declared as an unlawful act with this when referring to the applicable regulations, namely Article 100 paragraph 2 of the Trademark Law to the applicable regulations, namely Article 100 paragraph 2 of the Trademark Law that in the implementation of the existing business actors or individuals in doing so have similarities in essence with registered trademarks belonging to other parties both services or similar goods that circulate or are made then may be subject to a criminal penalty of imprisonment for a maximum of 4 (four) years and / or a maximum fine of 2 (two) billion rupiah.

With an action that occurs PT Pertamina can submit legal remedies to overcome these problems, namely in the process of resolving Intellectual Property Rights disputes given efforts through the green table in a civil manner, namely by submitting to the Commercial Court, then also given criminal action with a threat of imprisonment of 4 years to a fine of 5 billion. Meanwhile, dispute resolution other than through civil and criminal legal channels can be done through Alternative Dispute Resolution which consists of negotiation, mediation, conciliation and so on, the methods given can be chosen by the parties which in its implementation can benefit the existing parties, besides that it is known that criminal action is basically an action that is expected to create a deterrent effect and

enforce the law for social justice without exception.

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