

RINGKASAN

TINDAK PIDANA DAN PERTANGGUNGJAWABAN PIDANA DI BIDANG MEREK DALAM SISTEM HUKUM PIDANA INDONESIA

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Ada 3 isu hukum yang menjadi fokus permasalahan dalam penelitian ini yaitu (1) apakah pelanggaran merek dapat dikualifikasikan sebagai tindak pidana, (2) apakah ketentuan pidana dalam Undang-undang Nomor 15 Tahun 2001 tentang Merek (UU No. 15/2001) telah sesuai dengan sistem hukum pidana Indonesia, (3) apakah pertanggungjawaban pidana di bidang merek telah sesuai dengan sistem hukum pidana Indonesia. Pendekatan yang digunakan dalam penelitian ini yaitu pendekatan konsep, pendekatan perundang-undangan dan didukung dengan studi kasus.

Sesuai dengan manfaat penelitian hukum, melalui penelitian ini ada 2 (dua) manfaat yang hendak dicapai yaitu (1) Secara khusus, diharapkan dapat memberikan masukan dan rekomendasi berupa kualifikasi tindak pidana di bidang merek dan ketentuan pidana berdasarkan UU No. 15/2001 dalam sistem hukum pidana Indonesia., serta dapat memberikan masukan dan rekomendasi pertanggungjawaban pidana di bidang merek dalam sistem hukum pidana Indonesia, (2) dari aspek praktek atau praktis, melalui penelitian ini diharapkan dapat ikut memberikan masukan tentang pemecahan kasus-kasus yang terjadi di masyarakat yang berkaitan dengan tindak pidana di bidang merek.

Temuan pertama yang dihasilkan dalam penelitian ini yaitu fungsi merek sebagai (1) Tanda pengenal untuk membedakan produk perusahaan yang satu dengan produk perusahaan yang lain, (2) Sarana promosi dagang. (3) Fungsi indikator kualitas (Jaminan

atas mutu barang atau jasa) (4) Penunjukkan asal barang atau jasa yang dihasilkan. (5) Fungsi sugestif, artinya merek memberikan kesan akan menjadi kolektor produk-produk tertentu, (6) Menempatkan nama/symbol yang dipergunakan dan yang telah dikembangkan oleh perusahaan dalam pasar. (7) Merek dapat mencegah terjadinya persaingan tidak sehat.

Perlindungan hukum merek diperlukan dalam rangka menjamin agar merek yang sudah terdaftar tidak ditiru, dibonceng, dibajak oleh pihak lain yang tidak bertanggungjawab. Perlindungan hukum merek juga memberikan arah dan sarana bagi pemilik merek yang terdaftar atau penerima lisensi merek terdaftar yang mereknya ditiru, dibonceng, dibajak oleh orang yang tidak bertanggungjawab.

Pelanggaran yang dicantumkan dalam UU 15/2001, yaitu pelanggaran administratif, perdata, dan pidana. Sanksi pelanggaran administratif yaitu berupa (1) penolakan pendaftaran merek, (2) penghapusan pendaftaran merek, dan (3) pembatalan pendaftaran merek; Sanksi perdata, dengan mengajukan gugatan ke Pengadilan Niaga berupa ganti kerugian dan/atau penghentian semua perbuatan yang berkaitan dengan penggunaan merek tanpa hak. Sanksi pidana kumulatif yang berupa pidana penjara dan pidana denda diancamkan kepada pelaku tindak pidana di bidang merek yang melanggar ketentuan Pasal 90, Pasal 91, Pasal 92 dan Pasal 93 UU No. 15/2001. Sedangkan pidana yang berupa pidana kurungan atau denda diancamkan kepada pelaku tindak pidana di bidang merek yang melanggar ketentuan Pasal 94nya.

Tindak pidana di bidang merek, menurut UU No.15/2001 merupakan tindak pidana aduan. Hal ini dapat menimbulkan problem oleh karena jika pemilik merek tidak mengadakan pengaduan berarti tidak akan terjadi tindak pidana di bidang merek. Selain

itu, tidak diatur peluang korban (masyarakat) tindak pidana di bidang merek untuk dapat mengajukan pengaduan atau laporan bahwa telah terjadi tindak pidana di bidang merek. Tidak adanya pengaduan tersebut menyebabkan pelaku tindak pidana di bidang merek dapat lolos dari pertanggungjawaban pidana, yang pada akhirnya pelaku tindak pidana di bidang merek tidak dapat dipidana

Temuan kedua, fungsi hukum pidana dalam kaitannya dengan pengaturan sanksi pidana, berdasarkan UU No. 15/2001, oleh karena tindak pidana di bidang merek dapat menimbulkan kerugian materiil yang cukup besar. Di sisi yang lain, dengan didaftarkan dan diumumkan merek terdaftar di berita umum, maka masalah merek sudah memasuki wilayah hukum publik, sehingga keberadaan sanksi pidana merupakan salah satu bentuk perlindungan kepada publik. Fungsi ancaman sanksi pidana yang diatur oleh UU No. 15/2001 merupakan fungsi yang bersifat ultimum remedium.

Pidana yang dapat dijatuhkan kepada pelaku tindak pidana di bidang merek merupakan pidana kumulatif yaitu pidana penjara dan pidana denda. Sesuai dengan karakteristik yang diatur oleh UU No. 15/2001, sanksi pidana kepada korporasi itu tidak diatur, sehingga korporasi tidak dapat dijatuhi pidana. Pidana dijatuhkan kepada pelaku manusia alamiah dan pengurus korporasi.

Temuan ketiga, ada karakteristik tertentu untuk pertanggungjawaban pidana antara subyek hukum pidana manusia alamiah dengan subyek hukum pidana yang berupa korporasi. Pertanggungjawaban pidana di bidang merek yang pelakunya adalah korporasi, maka unsur-unsur kesalahan tidak perlu dibuktikan lagi. Secara otomatis unsur pertanggungjawaban pidana yang lain, yakni di atas umur tertentu dan mampu

bertanggungjawab, dilakukan dengan kesengajaan atau kealpaan, tidak alasan pemaaf, sudah melekat pada pelaku tindak pidana yang berupa korporasi.

Pertanggungjawaban secara perdata tidak menutup pertanggungjawaban pidana, sebaliknya pertanggungjawaban pidana dapat dipergunakan sebagai dasar memperkuat melakukan gugatan secara perdata. Terjadinya perdamaian dalam perkara perdata untuk pelanggaran merek, tidak menutup dilakukannya pertanggungjawaban secara pidana.

Dengan kelemahan-kelemahan yang terdapat dalam UU 15/2001 tersebut di atas, maka perlu diajukan rekomendasi supaya UU No. 15/2001 diubah, khususnya terhadap ketentuan Pasal 95 yaitu diubah menjadi tindak pidana biasa. Artinya, dalam rangka meminta pertanggungjawaban pidana kepada pelaku tindak pidana di bidang merek, tidak perlu menunggu pihak pemilik merek yang terdaftar melakukan pengaduan. Hal ini mengingat korban tindak pidana di bidang merek selain pemilik merek yang terdaftar atau penerima lisensi merek terdaftar, juga menyangkut masyarakat, kredibilitas atau harkat dan martabat bangsa serta negara Republik Indonesia di dunia internasional. Untuk itu bentuk tindak pidana di bidang merek seharusnya berupa tindak pidana biasa dan bukan tindak pidana aduan.

Juga perlu diatur ketentuan tentang sanksi yang dapat dijatuhkan kepada korporasi sebagai pelaku tindak pidana di bidang merek, selain pengaturan sanksi kepada pengurus atau pemilik korporasi itu sendiri. Sesuai dengan karakteristik yang melekat pada korporasi, maka sanksi pidana yang dapat diancamkan kepada korporasi adalah pidana pokok denda, dan juga perlu diatur ancaman pidana tambahan yang berupa pengumuman keputusan hakim dan pencabutan ijin usaha.

SUMMARY

CRIMINAL ACT AND CRIMINAL RESPONSIBILITY IN TRADEMARK IN THE INDONESIAN CRIMINAL LEGAL SYSTEM

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This research is focused on three legal issues (1) trademark infringement is qualified to be a criminal act, (2) criminal provisions in Act. No. 15 of 2001 on Trademark (Act No. 15/2001) to are consistent with the Indonesian Criminal Legal System, (3) criminal responsibility in Act. No. 15/2001 is consistent with the Indonesian Criminal Legal System. Conceptual, statute, and case study approaches are used in this research.

In the same manner as the legal research used, there are two aims in this research (1) In particular, by this research could input and recommend about qualification of criminal act in trademark, the criminal provisions, as well as criminal responsibility in Act. No. 15/2001 in the Indonesian Criminal Legal System; (2) From practical aspect, this research recommends to solve the cases happened in society which relate to criminal act in trademark.

There are three things are found in this research. First, the functions of trademark are (1) to distinguish a product of a company from that of another company; (2) as a means of promotion of a product; (3) as an indicator of the quality of goods and services; (4) as an indication of where the goods and services come from; (5) as suggestion to impress collectors of certain products; (6) to put a name/symbol used and developed by a company at the market place; (7) to avoid unfair competition.

Legal protection for the trademark is made to prevent the registered trademark from being counterfeited, paced, and pirated by irresponsible people. In addition, the

legal protection is significant for holders and holders of license of the registered trademark that is counterfeited, paced, and pirated by irresponsible people.

There are three types of infringement trademark, i.e. administrative, civil, and criminal act. Administrative sanctions are (1) file annulling registration of trademark, (2) file deleting registration of trademark, and (3) file canceling of registration of mark. Civil sanction is the registered trademark file a civil lawsuit with Commercial Court, about financial loss substituted and/or to stop all activity that related with illegal used trademark. The cumulative punishment, i.e. jail and vengeance threatened to the actors of criminal act in trademark that infringe Article 90, 91, 92 and 93 Act No 15/2001. Whereas, the alternative punishment, i.e. confinement or vengeance were threatened to the actors of criminal act in trademark that infringe Article 94 of Act No 15/2001.

Act No. 15/2001 prescribes criminal act in trademark as a delict that warrants a complaint instead of an ordinary crime. Without a report, the actor of criminal act in trademark can bolt from criminal responsibility.

The second finding is, as the function of Criminal Law, considering the criminal acts in trademark cause severe material damages, therefore, there are criminal provision in Act No. 15/2001. Further, with registering and declaring registered-trademark, it means trademark has entered public law area. As a consequence, the punishment sanction provided in the Act No. 15/2001 is one of types on public protection. The function of the threat punishment mentioned in criminal provision of Act No. 15/2001 is *ultimum remedium*.

The punishment sentenced to the actors of criminal act in trademark are cumulative, i.e. jail and vengeance. The Act No. 15/2001 does not regulate punishment

sanction for the corporation as a legal entity, so the corporation as a legal entity could not be punished. The punishment is sentenced to natural persons and the organ of corporation.

The third finding is concerning specific characteristic on criminal responsibility hold by natural person and corporation. If the actor of trademark crime is a corporation, elements of guilty in criminal responsibility shall not be necessarily proved. Other elements of criminal responsibility, i.e. legal age, capability, malicious or negligent conduct, and the absence of excusable and justifiable reason, are considered to be inherent in the corporate act.

As recommendations, firstly, the weakness found in Act No. 15/2001 need to be changed, a specially article 95 which regulate a delict warrants must be changed to the ordinary crime. It means a demand to the criminal responsibility to criminal actor in trademark can be done without initially waiting for a report from a holder of a registered trademark or holders of license. It is because the victim of the trademark counterfeit has legal basis to report or complain to a criminal act once it occurs. Moreover, the victims of criminal act in trademark are the society, credibility, dignity, and prestige of Republic of Indonesian as a nation and a state in the international sphere.

Secondly, it is a need to regulate sanction to a corporation as a legal entity once it conducts criminal act in trademark. The Act No. 15/2001 currently has sanction regulation is for organ of corporation or owner corporation. Related to the characteristic of corporation, the sanction threat to it are vengeance as a main punishment added with extra punishment such as declared of judge decision and revoke of permission.

ABSTRACT

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This research is focused on three legal issues (1) trademark infringement is qualified to be a criminal act, (2) criminal provisions in Act. No. 15 of 2001 on Trademark to be consistent with the Indonesian criminal legal system, (3) criminal responsibility in Act. No. 15 of 2001 on Trademark is consistent with the Indonesian criminal legal system. Conceptual, statute and case study approaches are used in this research.

The functions of trademark are (1) to distinguish a product of a company from that of another company; (2) as a means of promotion of a product; (3) as an indicator of the quality of goods and services; (4) as an indication of where the goods and services come from; (5) as suggestion to impress collectors of certain products; (6) to put a name/symbol used and developed by a company at the market place; (7) to avoid unfair competition.

This research, there are three things are found. First, Act No. 15 of 2001 prescribes criminal act in trademark as a delict that warrants a complaint instead of an ordinary crime. If a conflict between a holder of a registered trademark and a counterfeiter of the trademark is resolved amicably, a victim of the trademark counterfeit has no legal basis to report or complain that a criminal act in trademark occurs. Second, punishment sanction are (1) cumulative punishment, i.e. jail and vengeance for article 90, 91, 92 and 93 (2) alternative punishment, i.e. confinement or vengeance for article 94. Sanction punishment in Act No. 15 of 2001 on Trademark, that to the actors are natural person and organ of corporation, but in this act not to regulated punishment sanction the legal entity corporation itself. Thirds, if the actor of criminal act in trademark is a corporation, elements of guilty mind in criminal responsibility shall not be necessarily proved. Other elements of criminal responsibility, i.e. legal age, capability, malicious or negligent conduct, and the absence of excusable and justifiable reason, are considered to be inherent in the corporate act. Kind of criminal responsibility, if the actor of criminal act in trademark is corporation, is intentionally. Civil responsibility does not cover criminal responsibility.

The recommended firstly, the article 95 must be change become the ordinary crime, victim of the trademark counterfeit has legal basis to report or complain that a criminal act in trademark occurs. Second, be needed to regulate about sanction that to pass legal entity corporation itself, expect organ of corporation, this sanction like main punishment that vengeance, extra punishment like to declared decision of judge and revoke of permission.

Key words: Trademark, delict that warrants a complaint, corporation, cumulative punishment, criminal responsibility.