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JURIDICAL REVIEW OF INFRINGEMENT OF TRADEMARK RIGHTS ON SOCCER CLUB MERCHANDISE PLAGIARISM

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ABSTRACT

Sport is an activity to regularly train and move body parts that must be carried out by every human being. It is important to do exercise to maintain health and fitness. One of the sports that is a favorite among the people is football. This is none other than because football is a sport that is easy to play and can unite various groups. It is not only a sporting event of choice to maintain health. Currently, football has also become a quite popular industry among various groups, both artists and local entrepreneurs. In fact, this game can be said to be the most popular. The high public interest in football certainly has an impact on the economic and creative fields. Where various football events have indirectly provided great opportunities for artists and local merchandise entrepreneurs to be able to develop their businesses. However, unfortunately, apart from providing positive opportunities, industrial developments in the sport of football have also had a negative impact on a number of groups. Namely in the form of increasingly high levels of plagiarism on other people's merchandise brands. This research was carried out with the aim of finding out the impacts of plagiarism on artists and local entrepreneurs who create merchandise.

Keywords: *Football, Plagiarism, Merchandise*

1. Introduction

The game of soccer is considered one of the most popular sports in the world, and Indonesia is no exception. Conversations about soccer have become commonplace and a daily staple in Indonesian society. It is a great passion and a deep feeling when talking about this sport. Football supporters in Indonesia are the largest supporters ranked third in the Asian region. Based on the results of a survey in 2022, 69 percent of people in Indonesia are interested in soccer. Indonesia is ranked third behind Vietnam with 75 percent and the United Arab Emirates (UAE) with 70 percent of its population who like soccer.[1] From these data, the large number of Indonesian soccer supporters certainly raises the enthusiasm of Indonesian youth to become soccer

[1] D. L. Pristiandaru, "Suporter Sepak Bola Indonesia Peringkat 3 Paling Banyak di Asia," Kompas.com, November 6, 2022, https://www.kompas.com/global/read/2022/11/06/103100270/suporter-sepak-bola-indonesia-peringkat-3-paling-banyak-di-asia

players. This does not only affect the conditions in the soccer field, but will certainly affect conditions outside the field, including in the economic and creative fields.[2]

It is undeniable that soccer is a profitable business opportunity for business people. Through the procurement of football events both at the national and international levels, various business fields such as hospitality, transportation, culinary, and craft businesses are also affected by the "splash" of these benefits. The economic flow certainly does not only stop at big businessmen but involves local artists and entrepreneurs as well, such as the production of jersey (merchandise).[3] Through the 2022 world cup event held in Qatar, based on a report from aljazeera, the world soccer organization FIFA submitted a report that the Qatar World Cup brought enormous profits, which reached US $ 7.5 billion or around 117.75 trillion. This profit does not include the Qatar World Cup broadcast agreement received by FIFA and various countries.

Today, most soccer clubs that already have many supporters have opened up a new business field related to financial matters. When viewed from a business perspective, soccer itself is a potential industry that offers products that can reach a global audience. There is also a variety of business talk about soccer, whether in the form of player transfer fees, player salaries, or the revenue earned by television broadcasting soccer matches. Big-name soccer clubs can "exploit" their popularity to sell accessories and jerseys (merchandising). Of course, it must be accompanied by licensing or permission to use the name of the football club to obtain economic value. Merchandising activities are important to support the development of an entertainment or sports business, including soccer. In a soccer club, merchandising has a function as a club revenue stream. No less important is that through the sale of accessories and jerseys (merchandising) it becomes a profitable business for football clubs. This case merchandising can also be a branding medium for a soccer club to be

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[2] Asma'ul Khomsiyah and Sanaji, "Pengaruh Loyalitas dan Fanatisme Supporter pada Klub terhadap Keputusan Pembelian Merchandise Orisinal: Studi pada Supporter Persela Lamongan," Jurnal Maksipreneur: Manajemen, Koperasi, dan Entrepreneurship 10, no. 2 (2021): 242–257, https://doi.org/10.30588/jmp.v10i2.756

[3] Nielsen, The 2022 World Football Report (2022), https://www.nielsen.com/insights/2022/discover-what-world-cup-fans-really-want/

increasingly recognized by the general public. Where every football club fan who wears a shirt or accessories from a club indirectly presents the value of the football club itself.[4]

2. Methods

This research employs normative legal research, which examines law as a system of norms consisting of legal principles, statutory provisions, court decisions, agreements, and legal doctrines.[5] It uses statutory and conceptual approaches to analyse trademark infringement involving unauthorized reproduction and distribution of soccer club merchandise, particularly under Law Number 20 of 2016 concerning Trademarks and Geographical Indications. The legal materials consist of primary, secondary, and tertiary sources collected through library research and analysed qualitatively using prescriptive legal analysis to determine the legal protection and consequences of trademark infringement.[6]

3. Result and Discussion

3.1 Sport Trinkets on Football Club

Brand Protection on Football Club Merchandise or better known as sports trinkets, is a work or product produced by every football club which is generally used as a promotional tool of a club or to be sold for profit.[7] According to Sujana (cited by ikhwanuddin, mediantono) merchandise itself is defined as products that retailers sell to consumers in their outlets to consumers (Muslim, 2018). Merchandise sales from each soccer club itself vary in types such as jackets, scarves, player jerseys, etc. One of the biggest revenues of football clubs is from merchandise sales specifically for jersey sales from each club. Quoting from transfermarkt.co.id a list of 20 clubs with the biggest income from the sale of costumes in 2023 where in the first position is filled by the Spanish club, Barcelona, whose own costume or jersey is supplied by Nike where the sale benefits 179 million euros. Furthermore, the second position is filled by

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4 Muhammad Rinaldy Kasim, "Tinjauan Kriminologis terhadap Kejahatan Pelanggaran Hak Cipta dan Hak Merek (Pembajakan Merchandise Klub Sepak Bola Sriwijaya FC) (Studi Kasus di Kota Palembang Tahun 2014–2016)" (Undergraduate Thesis, Universitas Hasanuddin, Makassar, 2017).

5 Peter Mahmud Marzuki, Penelitian Hukum, revised ed. (Jakarta: Kencana, 2017).

6 Muhaimin, Metode Penelitian Hukum (Mataram: Mataram University Press, 2020).

7 Muhammad Rinaldy Kasim, "Tinjauan Kriminologis terhadap Kejahatan Pelanggaran Hak Cipta dan Hak Merek (Pembajakan Merchandise Klub Sepak Bola Sriwijaya FC) (Studi Kasus di Kota Palembang Tahun 2014–2016)" (Undergraduate Thesis, Universitas Hasanuddin, Makassar, 2017).

rivals Real Madrid whose jersey is supplied by Adidas and recorded an income of 155 million euros.[8]

The high value of revenue from each club should be even greater, considering that many of the merchandise products of foreign football clubs that are sold and marketed, especially in developing countries such as Indonesia, are counterfeit or imitation products. The high selling price of the original jersey compared to its counterfeit goods and the income inequality of developed countries and developing countries that cause the rampant sale of imitation jerseys. Jersey (Merchandise) license or licensing of a football team itself has actually been protected by law, as stipulated in Article 2 Paragraph (3) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications which states:

> "A protected trademark consists of a mark in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more elements that distinguish goods and/or services produced by a person or legal entity in the course of trading goods and/or services."

Through the article, it is known that the rights to a trademark can be obtained for the trademark that has been registered as stipulated in the Act. Registration of the trademark itself needs to be done in order to create a legal protection for the owner of the trademark, because it is not impossible in the future a trademark made and used by individuals, groups or a legal entity is used and claimed also by other parties as belonging. After registration of the trademark in the Directorate General of IPR, the use of logos and trademarks of a football team cannot be used carelessly and must obtain permission from the team concerned where generally registered trademark owners grant licenses to other parties to be able to use the trademark by paying royalties to the team. Seeing the rampant sale of imitation merchandise, especially soccer team jerseys (merchandise), in the Indonesian market is a serious violation. Against the Act where the act may be subject to criminal provisions as stipulated in Article 100 paragraph (1) of Law No. 20 Year 2016 on Trademarks and Geographical Indications:

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[8] Rahmi Jened, Hukum Merek (Trademark Law) dalam Era Global dan Integrasi Ekonomi (Jakarta: Kencana, 2015).

> "any person who intentionally and without right uses the same mark in its entirety or is substantially similar to a registered mark owned by another person for similar goods and/or services, shall be liable to a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp2,000,000,000.00 (two billion rupiah)."

This act of counterfeiting or plagiarism of football club merchandise not only harms the legitimate brand holders, but also consumers who may not realize that they are buying counterfeit products. For this reason, it is important for consumers to ensure that they purchase merchandise from the official stores available at the respective base camps of their favorite clubs. Aside from supporting their favorite teams, they are indirectly helping to eliminate illegal businesses circulating in the community at large.

3.2 Factors Causing Plagiarism in Football Club Merchandise

Jersey sales have become an important revenue source for soccer clubs, driven by supporters' interest in purchasing new designs each season. However, original jerseys produced by major brands such as Adidas and Nike can cost around IDR 1 million, making them less affordable for many Indonesian supporters, particularly middle-class and younger consumers. The social perception to always look fashionable following the latest fashion encourages supporters to look for alternative jerseys at a more affordable price than the original. Based on this phenomenon, counterfeit manufacturers take advantage of the opportunity to make imitation jerseys and sell them at a lower price to supporters who are unable or unwilling to pay for the official jersey (merchandise) offered by the soccer club.[9]

That is one of the driving factors for the act of jersey plagiarism in circulation today. Some other factors that cause the rampant sale of plagiarized jerseys are the lack of accessibility for the public to buy original jerseys managed by the club directly. So that counterfeit jersey products are often easier to find in traditional markets and through e-commerce compared to jerseys managed directly by soccer clubs. Through e-commerce media that has grown rapidly also makes consumers less aware of the goods purchased is the original jersey or not.

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[9] Asma'ul Khomsiyah and Sanaji, "Pengaruh Loyalitas dan Fanatisme Supporter pada Klub terhadap Keputusan Pembelian Merchandise Orisinal: Studi pada Supporter Persela Lamongan," Jurnal Maksipreneur: Manajemen, Koperasi, dan Entrepreneurship 10, no. 2 (2021): 242–257, https://doi.org/10.30588/jmp.v10i2.756

3.3 Categories of Brand Counterfeiting in Football Club Merchandise

The development of technology, more and more people are easily trading unlicensed goods in the wider community, either directly through the market or online through e-commerce applications at a price that is much more affordable than the original product. The goods mentioned above can be categorized as plagiarism, where they meet various criteria, including deliberately using the same brand as someone else's with the aim of competing and setting a lower price to attract buyers. However, the seller uses lower quality materials than the original product. Indirectly in addition to competing in the market with the original brand owner, this act of plagiarism can also reduce the reputation of the original owner's product due to inappropriate materials that make consumers feel less satisfied with the quality of the product used by the brand counterfeiter. This can cause losses if supporters as consumers cannot distinguish between original products and those that are not.[10]
According to Sastroasmoro, written in his book entitled "Some notes on plagiarism", in the book there are categories of brand counterfeiting which are divided into several aspects, including:

A. Counterfeiting based on aspects stolen
   a. Plagiarism of ideas
   b. Content plagiarism
   c. Plagiarism of words, sentences, paragraphs
   d. Total plagiarism
B. Forgery based on the element of intent
   a. Intentional plagiarism
   b. Unintentional plagiarism
C. Forgery based on similarity of words, sentences, or paragraphs with the original
   1. Mild plagiarism (<30%)
   2. Moderate plagiarism (30%-70%)
   3. Severe plagiarism (>70%)

[10] Andi Ratu Bulqis, Marilang, and Erlina, "Penegakan Hukum terhadap Pemalsuan Merek di Kota Makassar," Alauddin Law Development Journal 1, no. 2 (2019), https://doi.org/10.24252/aldev.v1i2.11067

Plagiarism of soccer club jerseys is widespread in Indonesia, involving both domestic and international clubs. Counterfeit jerseys are widely sold at affordable prices, attracting consumers despite their inferior quality. Most involve total imitation, reproducing club logos, lettering, and jersey designs almost identically, with the main difference being the materials used.

In the world of Indonesian football, jersey plagiarism has long been an unavoidable phenomenon. Based on data taken from jawapos.com, The management of the Persipura Jayapura club made a movement to eradicate traders who sold imitation jerseys because the turnover of selling imitation jerseys would be taken by the seller himself, the seller also did not have permission from PT Persipura Papua.[11] Then, another example in 2021 from Tribunnews.com, Football fans criticized the jersey manufacturer Warrix because the Thai national team jersey designed by him had the same pattern motif as the Indonesian national team jersey during 2020, the pattern used was still the same, namely the Indonesian archipelago pattern. This certainly caused various reactions from Indonesian football fans, ranging from those who were angry due to the placement of the Indonesian archipelago pattern on the Thailand jersey to those who felt ridiculous about the decision of Warrix itself.[12]

3.4 The Impact of Plagiarism on th Owner of Brand Rights in Football Club Merchandise

Plagiarism in the context of brand rights on soccer club merchandise is a serious act that violates intellectual property law. Football clubs, as brand rights owners, have the exclusive right to use logos, names, and symbols associated with their identity. When other parties unauthorizedly use these elements on products sold, such as jerseys, scarves, or other items, it can be considered a violation of brand rights. This act not only hurts the football club financially due to lost potential revenue. But it can also damage their reputation if the plagiarized merchandise is of low quality. Moreover,

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[11] Agus Dwi W, "Nekat Jual Jersey Palsu, Persipura: Tenggelamkan!" Jawa Pos, April 3, 2018, https://www.jawapos.com/sepak-bola-indonesia/1804020240/nekat-jual-jersey-palsu-persipura-tenggelamkan

[12] Hasiolan Eko P. Gultom, "Fenomena Jersey Timnas Thailand 'Jiplak' Seragam Timnas Indonesia, Tuai Berbagai Komentar Pedas," June 1, 2021, Transfermarkt, https://www.transfermarkt.co.id/daftar-klub-dengan-pendapatan-penjualan-jersey-terbanyak-di-dunia-musim-ini/view/news/434720

consumers who purchase such products may not realize that they are supporting illegal practices and not providing financial support to the actual club. Furthermore, brand rights plagiarism can also have a negative impact on the merchandise industry as a whole. Plagiarized products on the market can lower quality standards and disrupt fair competition between manufacturers. This ultimately harms consumers, who may end up with products that are not of the quality they paid for.

To combat plagiarism themselves, football clubs often take legal steps to protect their brands. This can include filing a lawsuit against the manufacturer or seller of counterfeit goods, as well as working with the authorities to stop the distribution of such goods. Educating supporters or fans about the importance of buying official merchandise is also an important part of the fight against the sale of counterfeit merchandise. Overall, brand plagiarism on football club merchandise is a serious problem that requires decisive action and cooperation between brand rights owners, consumers, and law enforcement to tackle. Thus, the integrity and value of football club brands can be maintained, thereby supporting a healthy and fair football ecosystem.

4. Conclusion

Based on the discussion, this research concludes that plagiarism of soccer club merchandise, particularly jerseys, causes significant financial and reputational harm to football clubs, consumers, and the sports industry. Such practices also expose consumers to low-quality products and indirectly support illegal activities. Therefore, stronger trademark protection, law enforcement, and consumer education are necessary. Football clubs should also provide official licenses to authorized merchandise stores to distinguish genuine products from counterfeits and protect both consumers and trademark owners. Effective prevention requires cooperation among football clubs, business actors, consumers, and law enforcement authorities.

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