

# Analisis perbandingan penerapan doktrin likelihood of confusion dalam penyelesaian sengketa merek di Indonesia, Amerika Serikat, dan Uni Eropa = Comparative analysis of the application of the likelihood of confusion doctrine in trademark dispute resolution in Indonesia, The United States, and the European Union

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## Abstrak

Doktrin Likelihood of Confusion sebagai doktrin yang terkandung dalam Article 16 (1) TRIPs Agreement telah menjadi dasar pertimbangan Majelis Hakim di beberapa negara seperti Amerika Serikat dan Uni Eropa dalam menentukan suatu pelanggaran merek. Namun demikian, Doktrin Likelihood of Confusion saat ini belum dianut oleh Indonesia dalam Undang-Undang Nomor 20 Tahun 2016 Tentang Merek dan Indikasi Geografis. Meski begitu, beberapa Majelis Hakim dalam menyelesaikan sengketa merek di Indonesia telah berusaha memberikan pertimbangan terkait Likelihood of Confusion seperti Pada Putusan Nomor 30/Pdt.Sus-Merek/2020/PN.Niaga.Jkt.Pst antara pemilik merek "FORMULA STRONG" melawan pemilik merek "PEPSODENT STRONG 12 JAM" serta pada Putusan Nomor 10/PDT.SUS.MERREK/2020/PN.NIAGAJKT.PST. antara merek "PUMA" melawan merek "PUMADA". Untuk itu, penelitian ini akan menganalisis terkait penerapan Doktrin Likelihood of Confusion dalam penyelesaian sengketa merek di Indonesia, serta membandingkannya dengan pengaturan dan penerapannya di Amerika Serikat dan Uni Eropa. Adapun penelitian ini dilakukan dengan metode yuridis-normatif dengan data yang diperoleh melalui studi kepustakaan. Kesimpulan yang dapat diambil adalah Majelis Hakim dalam menerapkan Doktrin Likelihood of Confusion di Indonesia masih bersandar kembali dengan hanya menitikberatkan pada ada atau tidaknya persamaan pada pokoknya atau keseluruhannya antara kedua merek. Padahal, adanya kesamaan antara kedua merek tidak serta merta menimbulkan kebingungan bagi konsumen, yang berujung pada kerugian bagi pemilik merek. Kedua merek juga tetap dapat dibedakan satu sama lain, dan fungsi utama merek sebagai daya pembeda masih terpenuhi. Oleh karenanya, Indonesia diharapkan dapat memperhatikan syarat Likelihood of Confusion dalam penentuan pelanggaran merek dengan cara merumuskannya ke dalam Undang-Undang ataupun menyatukan pemahaman penegak hukum dalam memberikan pertimbangan hukum guna mewujudkan keadilan dalam perlindungan hak atas merek.

.....The doctrine of Likelihood of Confusion as a doctrine contained in Article 16 (1) of the TRIPs Agreement has become the basis for consideration by the Panel of Judges in several countries such as the United States and the European Union in determining a trademark infringement. However, the Likelihood of Confusion doctrine is currently not adopted by Indonesia in Law Number 20 of 2016 concerning Marks and Geographical Indications. Even so, several Panel of Judges in resolving trademark disputes in Indonesia have tried to provide considerations related to Likelihood of Confusion such as in Decision Number 30/Pdt.Sus-Merek/2020/PN.Niaga.Jkt.Pst between the owner of the trademark of "FORMULA STRONG" against owner of the trademark of "PEPSODENT STRONG 12 HOURS" as well as in Decision Number 10/PDT.SUS.MERREK/2020/PN.NIAGAJKT.PST. between the trademark "PUMA" against the trademark "PUMADA". For this reason, this study will analyze the application of the Likelihood of Confusion Doctrine in the trademark disputes resolution in Indonesia, and compare it with the regulation and

implementation in the United States and the European Union. This research was conducted using a juridical-normative method with data obtained through a literature study. The conclusion that can be drawn is that the Panel of Judges in implementing the Likelihood of Confusion Doctrine in Indonesia still relies on and by only focusing on whether or not there are similarities in substance or in its entirety between the two trademarks. In fact, the similarities between the two trademarks do not necessarily cause consumers confusion, which leads to the trademark owner's loss. The two trademarks can also still be distinguished from one another, and the main function of the trademark to distinguish goods and/or services is still fulfilled. Therefore, Indonesia is expected to be able to pay attention to the terms of Likelihood of Confusion in determining trademark infringement by formulating it into the law or uniting the understanding of law enforcer in providing legal considerations in order to realize justice in the protection of trademark rights.