

**CASE NO. 25  
COPYRIGHT CASE  
“PERPIT’s LOGOS”**

**THE RULING OF JAKARTA COMMERCIAL COURT  
AND  
THE RULING OF THE SUPREME COURT OF THE REPUBLIC OF INDONESIA**

<b>Case Title</b>	<b>PERPIT’s LOGOS</b>
<b>Summary Of Verdict</b>	<p><b>At the Commercial Court Level</b></p> <p><b><u>At The Commercial Court Level</u></b></p> <ol style="list-style-type: none"> <li>1. <b>In the Original Claim:</b> Declared the lawsuit of Plaintiff is unacceptable.</li> <li>2. <b>In the Counterclaim:</b> Declared lawsuit of the Counter plaintiff is rejected entirely.</li> <li>3. <b>In the Counterclaim and Original Claim:</b> Imposed the sanction to Plaintiff in Counterclaim/ Defendant in Original Claim to pay the statutory fee as amount 1.116.000, - (one million one hundred sixteen rupiah);</li> </ol> <p><b><u>At the Supreme Court Level (Cassation)</u></b></p> <ol style="list-style-type: none"> <li>1. Declared reject the cassation of cassation applicant.</li> <li>2. Imposed the sanction to cassation applicant to pay the statutory fee in cassation level as amount Rp. 5.000.000,- (Five Million Rupiah).</li> </ol>
<b>Case Number</b>	<p>Commercial Court:</p> <p>Nomor 15/HAK CIPTA/2012/PN. NIAGA. JKT. PST</p> <p>Supreme Court Level (Cassation) :</p> <p>Nomor 874 K/Pdt.Sus/2012</p>
<b>Regulation References</b>	Article 1365 Indonesian Civil Code Law, Copyright Law, Article 1 paragraph (2) & (4), Article 3 paragraph (2), Article 5 paragraph (1), Article 24, Article 56 & Article 58.
<b>Keyword</b>	Copyright, Logos; PERPIT;

**A. CASE FACTS**

- The Plaintiff is the party who is appointed by Founding Board of organization namely PERHIMPUNAN PENGUSAHA INDONESIA TIONGHOA (PERPIT) based on the Deed of Establishment Number 169 dated 29 April 2010 created before a notary Humberg Lie, S.H., S.E., M.Kn., Notary in Jakarta. Based on the Deed of

Establishment, Founding Board shall consist of 25 (twenty-five) people whose names are listed in Deed Number 96 dated 12 October 2001 which was created before a notary Misahardi Wilamarta, S.H., Notary in Jakarta and Deed Number 43 dated 5 November 2009 which was created before a notary Robert Purba, S.H., Notary in Jakarta, as follows:

1. Halim Jusuf;
  2. Hendry Jusuf;
  3. Muljadi Senjaya;
  4. Djoesinta Law;
  5. Chandra Chandikun;
  6. Ang, Andi Bintoro;
  7. Ny. Liu Sui Khian;
  8. Jondras Kasrian;
  9. Willy Tamblin;
  10. Hendrik Linan;
  11. Doktor Indra Wahidin;
  12. Untung Sastrawijaya;
  13. Hasan Ridwan;
  14. Haryanto;
  15. Peter Suryono;
  16. Haji Max Mulyadi Supangkat;
  17. Sukanta Tanudjaja;
  18. Hengky Tranku;
  19. Soegiarto Hanafi;
  20. Dokter Daniel Tay;
  21. Adijanto;
  22. Adil A. Nurimba;
  23. Frankie Nurimba;
- PERPIT is an organization which is established dated 11 August 2001 based on Deed Establishment Number 54 created before Misahardi Wilamarta, S.H., Notary in Jakarta;
  - To strengthen PERPIT's position as a valid organization, then PERPIT decided domicile/ permanent office placed at Gedung Menara Sudirman, 10C Floor, Jl. Jenderal Sudirman Kav. 60, Jakarta Selatan, based on *Surat Keterangan Domisili Perusahaan Nomor 0655/1.824.5/09*, dated 17 November 2009, which realised by Kantor Kelurahan Senayan, Kec. Kebayoran Baru in *Surat Keterangan Terdaftar Nomor PEM-02488/WPJ.04/KP.0403/2009*, dated 19 November 2009;
  - The Defendant was not present meeting Founder Board of PERPIT dated 1 September 2008. Then Defendant with another Founders who were not present the meeting, conducted other meeting which listed in Deed No. 84, dated 18 November 2008, which was created before DR. Irawan Soerodjo, S.H., M.Si., Notary in Jakarta, then has changed with Deed No.15, dated 11 December 2009, which was created before Fransiskus Yanto Widjaya, S.H., Notary in Jakarta;
  - Even though the Plaintiff is a legal administrator who has filed earlier the ratification legal entity (that is dated 18 November 2009) than filed ratification legal entity by the Defendant (that is dated 22 December 2009), however the General Directorate Law Administration has given the ratification to the application ratification which is filed by

Defendant through Fransiskus Yanto Widjaya, S.H., Notary in Jakarta. That ratification legal entity is in accordance with the Ministerial Decision of Law and Human Rights of Republic of Indonesia, No. AHU.146.AU.01.00.Tahun 2009, dated 30 December 2009 regarding Ratification of Organization;

- As an organization which established since dated 11 August 2001, based on Deed Number 54, which created before Misahardi Wilamarta, S.H., Notary in Jakarta, then one of the Founder that is Hasan Ridwan, whose voluntarily and his own initiative made the Logos which form globular with a globe which surrounded by chains of interlocking, with Red & White Flag in the middle of the globe. The surrounded by Kanji and Indonesian "*Perhimpunan Pengusaha Indonesia tionghoa*", with color red, white and yellow;
- The logos creation voluntarily and by his own initiative is done by Hasan Ridwan consider his position as one of the Founder and as a Secretary Board of Administration which is appointed and validated by Deed No. 65 dated 21 August 2002 which created before Misahardi Wilamarta, S.H., Notary in Jakarta;
- Then, to get the Legal Certainty, Hasan Ridwan assigned the right of the logos created by him to PERPIT and filed the registration of the logos on behalf PERPIT to the General Directorate of Intellectual Property of Republic of Indonesia dated 27 August 2003 with the agenda Registration of Creation No. C00200301238 – 1305;
- Then, Hasan Ridwan has changed the Logos with revised the title of the Logos from *Perhimpunan Pengusaha Indonesia Tionghoa (PERPIT)* became Indonesian Chinese Entrepreneur Organization which Hasan Ridwan assigned to the PERPIT as the holder of the logos copyright and listed it to the General Directorate of Intellectual Property dated 26 November 2007 (Registration Number C00200705753);
- Based on the facts above, the Plaintiff is a legal exclusive copyright of the logos, and has the right to publication, announced and copied the logos for PERPIT's interest or included the logos in stamp, head of letter and another documents;
- Since 2009, the Plaintiff founded the logos has been used by the Defendant in the stamp, head of letter, name cards and letter of invitation which is made by the Defendant without a permission of the Plaintiff;
- The action of Defendant has been confusing and has made disputes and discordance between Indonesian-Tionghoa Entrepreneur because Defendant pretending as the Founder of the organization which he was not a Founder of the organization and does not have knowledge regarding the organization;
- The Plaintiff is the non-profit organization, so thus the losses of Defendant's action which has explained above, gave the non-material losses effect;
- Pursuant Article 56 Law No. 19 of 2002 regarding Copyright, The Plaintiff has the right to stop the Defendant action which has used the logos of PERPIT without permission of the Plaintiff included for stamps, letters, letters of invitation, name card and etc;

## **B. JUDGES CONSIDERATION**

### **At The Commercial Court Level**

After The Judges had received the lawsuit from the Plaintiff and exception from Defendant and the Defendant filed the Counterclaim, so thus Judges in the Consideration, consider as following:

- Judges consider the Plaintiff in the lawsuit argue that he is as the creator of the logos and has assigned the copyright of the logos of to PERPIT as organization and PERPIT has become the holder of copyright of the logos;
- Pursuant to the fact, it is clarifying that PERPIT is the holder of copyright of the logos of organization;
- Consider to the Deed of Establishment of PERPIT, there is not determined and stipulated regarding eligibility of Founder to represented Organization within and/or outside of the court. Deed of Establishment of PERPIT has determined and stipulated that the Administrator of organization which eligible to represented the organization within and/or outside of te court.
- So thus, even though the Plaintiff is the Founder of PERPIT who has the opinion eligible to represented the organization within and/or outside of the court, however the Judges consider the Plaintiff has no the right and not eligible to represented the organization within the court include filed the lawsuit on behalf organization;
- The Judges consider pursuant to the Article 24 *Jo.* Article 58 Law of Copyright, if a creator has assigned the copyright to the other Party, it is not mean the creator has loss the right entirely, however the creator still has the right to filed lawsuit of the holder right to should not change the creation and remains listed name of creator in the creation;
- Pursuant to the lawsuit of the Plaintiff, the Plaintiff has not to argue the Article 24 *Jo.* Article 58 Law of Copyright, however the Plaintiff only argued pursuant to the Article 56 Law of Copyright.
- So thus, pursuant to the Article 56 Law of Copyright, the Party who has a right to filed the lawsuit on behalf organization is the holder of copyright that is PERPIT as organization and represented by the administrator;
- Consider to the fact, the Judges have the opinion the lawsuit of the Plaintiff is legal error and declared error in persona because has been filed by the Party who's not eligible to represent the organization;
- So thus, pursuant to the Supreme Court Regulation No. 3175 K/ Pdt/ 1983 dated 17 January 1985, the Judges has accepted the exception of the Defendant and declare the lawsuit of the Plaintiff is *Niet Ontvankelijke Verklaard* and the lawsuit in the Original Claim has been not needed to consider by Judges;
- Pursuant to the Supreme Court Verdict No. 1527 K/ Sip/ 1973 dated 6 February 1985 stipulated if the original lawsuit declared rejected so thus the counterclaim lawsuit should be also declared rejected. However, the Judges consider in some literature there is a lawsuit which is filed by the Plaintiff has the purpose to embarrass the other party (Defendant), which has known as *Vexatious Litigation*, where the Plaintiff has knowledge his lawsuit does not have the legal bases but the Plaintiff still filed the lawsuit continuously even though the Plaintiff known the Plaintiff would be loss. In that condition, the Defendant has the right to filed the counterclaim of the Plaintiff;
- In the counterclaim, the Judges considered the Defendant could not able to proven that the Plaintiff has the purpose to embarrass the Defendant, so thus, The Judges consider to declared rejected the counter lawsuit which is filed by the Defendant

### **At the Supreme Court Level (Cassation)**

After being unsatisfied with the previous verdict, The Plaintiff filed a Cassation to the Supreme Court, and hereby the Plaintiff is called "CA". In the Cassation Verdict, the Judges consider:

- The Judges considered that the Judges in the District Court has had implemented the law correctly because the exception is could not be correct by the Judges.
- Consideration of Judges which considered that the Founder of the organization does not have the right to represented the organization within and/or outside of the court, so thus the law implementation of the Judges has corrected.
- So thus, the Judges in the District Court has had implemented the law correctly.

## **C. THE VERDICT**

### **At The Commercial Court Level**

1. **In the Original Claim:**

Declared the lawsuit of Plaintiff is unacceptable.

2. **In the Counterclaim:**

Declared lawsuit of the Counterclaim Plaintiff is rejected entirely.

3. **In the Counterclaim and Original Claim:**

Imposed the sanction to Plaintiff in Counterclaim / Defendant in Original Claim to pay the statutory fee as amount 1.116.000, - (one million one hundred sixteen rupiah);

### **At the Supreme Court Level (Cassation)**

1. Declared reject the cassation of cassation applicant
2. Imposed the sanction to cassation applicant to pay the statutory fee in cassation level as amount Rp. 5.000.000, - (Five Million Rupiah)