



JLPH: Journal of Law, Politic and Humanities

E-ISSN: 2962-2816
P-ISSN: 2747-1985<https://dinastires.org/JLPH> ✉ dinasti.info@gmail.com ☎ +62 811 7404 455DOI: <https://doi.org/10.38035/jlph.v5i2>
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Legal Certainty of Fulfilment of Registered Trademark Rights Owned by the Company for the Similarity of Trademarks in Principal

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Abstract: The main function of a brand is to differentiate a company's products. A brand can create a reputation regarding quality, quantity and distinctiveness that is only owned by the party attached to the brand rights which are exclusively owned by the brand holder. However, it cannot be denied that later it was discovered that there were two brands that were fundamentally similar, causing disputes. The aim of this research is to explore the legal certainty of fulfilling a company's registered trademark rights for the existence of substantially similar brands by examining the concept of the element of "substantial similarity" in brands and efforts to overcome the existence of essentially similar brands. The research method used is normative juridical, with a statutory, legal conceptual and case approach. Data comes from secondary data, including primary legal materials, secondary legal materials and tertiary legal materials. Data analysis is descriptive analytical. The results of the research found that the concept of the element of "substantial similarity" in a brand has been regulated in statutory regulations, which shows that legal certainty has been sought. Efforts to overcome legal enforcement of trademark disputes based on similarities in essence which actually injure the actual rights of brand owners can be realized by standardizing law enforcement procedures, strengthening laws and regulations, supervision and outreach. Efforts to overcome this require synergy between the government, law enforcement, brand owners, and even the general public.

Keyword: Legal Certainty, Registered Trademark Rights, Basic Brand Equality.

INTRODUCTION

In the modern business world, the success of a company in carrying out activities to produce goods or services is highly dependent on the strategies implemented to ensure smooth operations. One very important strategic element is the brand, which functions as a unique identity of the product or service offered by Ulfah Company (Amirah Khairi et al., 2024). This

brand acts as an identifier that distinguishes the company's products from its competitors' products. Along with technological developments, trade is no longer limited to conventional methods, but has expanded to the digital realm, allowing companies to reach consumers more widely through online platforms.

Every company active in trading goods or services generally has a brand that aims to give their products or services a unique identity. This brand differentiates the product from other companies' products and strengthens the company's position in the market competition. Based on Law No. 20 Year 2016 on Trademarks and Geographical Indications, a trademark is defined as a graphic mark that may include a specific image, logo, name, word, letter, number, or colour. In addition, the mark may be present in two or three-dimensional form, sound, hologram, or a combination of some of these elements, all of which aim to create a distinctive feature and distinguish the product in the market (Abd Thaliba, et al., 2023).

With its unique elements, a brand becomes an important differentiating tool in the competitive business world. A registered trademark gives a company an identity and reputation, and provides exclusive legal protection to the owner. This protection helps prevent others from using the same or similar marks without authorisation, which can cause confusion among consumers and harm the company. Therefore, maintaining the uniqueness of the mark is very important for the company in order to avoid the risk of infringement or legal disputes that may arise due to the similarity of the mark in essence.

In the midst of increasingly fierce business competition and the development of digital commerce, companies are required to manage their brands more carefully. Brands are no longer just marketing tools, but also strategic assets that play an important role in strengthening a company's competitiveness and value. With a deep understanding of brand regulations and the implementation of appropriate protection strategies, companies can ensure their exclusive rights are fulfilled, maintain a strong position in the market, and build consumer loyalty through a consistent and trusted brand identity.

The vulnerability of trademark problems in the form of similarity in essence then becomes an urgency for parties who are legally attached to trademark rights to be legally protected. The legal certainty of the fulfilment of the company's registered trademark rights over the similarity of the trademark in essence with this should be explored, considering that according to Sudikno Mertokusumo that legal certainty includes the conditions that must exist in the law enforcement process (Nugraha, 2020). The certainty is shown by the application that the provisions of the law are carried out and the party attached to the right according to the law can obtain its rights. The purpose of this research is to explore the legal certainty of the fulfilment of the company's registered trademark rights over the similarity of the trademark in essence by examining the concept of the element of 'similarity in essence' in the trademark and countermeasures for the similarity of the trademark in essence.

Companies when registering a brand, of course, basically cannot have similarities in essence with other brands that have been registered at the Directorate General of Intellectual Property (DJKI) (Afif & Sugiyono, 2021). This is because considering the main function of the brand is as a differentiator of a company's product. Trademarks can create a reputation for quality, quantity, and distinctiveness that is only owned by parties with trademark rights attached. The right is exclusive, where only the brand holder has. Brands are also a social level differentiator. Trademark function is very strategic to cause competition between companies, often then found the existence of trademarks that have been registered in advance, but later found that there are other parties who register a trademark with an element of similarity in essence with the trademark that has been registered in advance. However, in reality, there is a law enforcement of trademark disputes over the existence of similarities in essence which actually injures the rights of the actual trademark owner. The enforcement of the law as shown in the case in Decision No. 71/Pdt.Sus-HKI/Merek/2021/PN Niaga Jkt.Pst., in which the plaintiff is the

registrant of the trademark for the first time who then injured the rights to the trademark because there are other companies that have a trademark that resembles the defendant's trademark (there is similarity in principal), but the lawsuit is rejected.

The vulnerability of trademark problems in the form of similarity in essence then becomes an urgency for the party attached to the trademark rights can legally be protected. The legal certainty of the fulfilment of the company's registered trademark rights over the similarity of the trademark in essence with this should be explored, considering that according to Sudikno Mertokusumo that legal certainty includes the conditions that must exist in the law enforcement process (Nugraha, 2020). The certainty is shown by the application that the provisions of the law are carried out and the party attached to the right according to the law can obtain its rights. The purpose of this research is to explore the legal certainty of the fulfilment of the company's registered trademark rights over the similarity of the trademark in essence by examining the concept of the element of 'similarity in essence' in the trademark and countermeasures for the similarity of the trademark in essence.

METHOD

The method used in this research is to use normative juridical research type. Normative juridical research focuses on examining the application of rules or norms contained in positive law. (Efendi & Rijadi, 2022). The research approaches used are the statute approach, the conceptual approach, and the case approach. The statutory approach is an approach by examining legal rules related to the legal issues raised in this research. The legal conceptual approach is to analyse legal concepts fundamentally while exploring the values contained in the norms in legal provisions related to the overall concept that is the basis. The approach to cases is to examine cases in court decisions (Efendi & Rijadi, 2022).

The source of legal material in this research is sourced from secondary data, which includes 3 legal materials in it. The legal materials are primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal material is having binding as well as authoritative properties, such as laws and regulations, official records, minutes of drafting laws and regulations, and decisions. Secondary legal materials are literature with basic legal principles as well as the views of legal experts. Tertiary legal material itself is as a guide as well as an explanation of primary and secondary legal materials. The collection of legal materials in the study used a literature study method, with content analysis techniques which were from written legal materials, which were then analysed with a qualitative analytical descriptive method. Descriptive is the intention by describing the content as well as the structure of positive law in order to determine the meaning of the rule of law as a reference in solving the legal problems raised. This method of analysis is based on deductive logic, namely describing it from general to specific. The analysis also uses systematic legal interpretation, namely interpreting legal provisions in laws and regulations. (Kadarudin, 2021).

RESULTS AND DISCUSSION

The Concept of 'Similarity in Principal' Element in Trademark

The element of 'similarity in essence' in trademarks is basically regulated in the provisions of the explanation of Article 21 Paragraph (1) of the Law of the Republic of Indonesia Number 20 Year 2016 on Trademarks and Geographical Indications, which reads that 'What is meant by "similarity in essence" is similarity caused by the existence of a dominant element between one trademark and another trademark so as to create the impression of similarity, both regarding the form, the way of placement, the way of writing or the combination between elements, as well as the similarity of speech sounds, contained in the Trademark.' Due to the continuous development, the legal regulation on trademarks is then updated as stated in the Law of the Republic of Indonesia Number 6 of 2023 on the Stipulation of Government

Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law in Chapter IV on Ease of Doing Business in the Fourth Section. Regarding the element of ‘equality in essence’, the law stipulates that ‘equality in essence’ is a similarity caused by the presence of dominant elements between one Trademark and another Trademark so as to create the impression of similarity, both regarding the form, the way of placement, the way of writing or a combination of elements, as well as the similarity of speech sounds, contained in the trademark. The characteristics of a trademark that fulfils the element of similarity in essence or as a whole according to Jurisprudence, as the Decision of the Supreme Court of the Republic of Indonesia Number 279 PK/Pdt/1992 is that there are similarities in the following matters:

1. Similarity of form
2. Similarity of composition
3. Similarity of combination
4. Similarity of elements
5. Sound similarity
6. Phonetic similarity
7. Similarity of appearance.

The existence of arrangements regarding ‘equality’ basically shows that legal certainty has been sought. This is as the theory of legal certainty according to Nurhasan Ismail, that legal certainty requires an effort to regulate the law in the law made by the authorities, so that the rules are attached to the juridical aspects and can guarantee the certainty that the law has a function as a regulation that must be obeyed by the community. The rules regarding the element of ‘similarity in essence’ as contained in the Law of the Republic of Indonesia Number 20 of 2016 concerning Trademarks and Geographical Indications and Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law are efforts of legal regulations that have been made by the authorities. These rules must be adhered to by the community, especially those who will register a trademark for their products. This is because the trademark is the identity of a product owned by a party, which as a differentiator of their products with products owned by other companies. In line with one of the functions inherent in the trademark itself, namely as an identifier to distinguish the production produced by a person or several people together or a legal entity with the production of other people or other legal entities (Hartati, 2018). Trademarks have the main element, which is to have distinguishing power (Utama, 2021). The party who will register a trademark must pay attention that the trademark to be registered does not fulfil the element of ‘similarity in essence’ with other registered trademarks. Thus, it is a form of complying with the rules regarding the element of ‘substantially similar’ in the trademark.

Parties who will register their trademarks, of course, need to pay attention to whether the trademark has been registered by a party who has an element of similarity at its core. Except if the trademark by the party who has registered it is transferred to a new party. The Law of the Republic of Indonesia Year 2016 on Trademarks and Geographical Indications regulates as in Paragraph (1) that the rights to registered trademarks can be transferred or transferred due to inheritance, wills, waqf, grants, agreements or other causes justified by laws and regulations. Paragraph (2) then stipulates that the transfer of rights to a registered trademark by a trademark owner who owns more than one registered trademark that is substantially or wholly similar for similar goods and/or services, can only be done if all of the registered trademarks are transferred to the same party. The transfer is then applied for recording along with supporting documents to the Minister. The transfer is then announced in the official trademark news.

Countermeasures for the Similarity of Trademarks in Principal as an Effort of Law Enforcement

Legal certainty is basically a guarantee that the law is carried out as it should, keeping in mind the main purpose of the law is the certainty (Hulman Panjaitan, 2021). The embodiment of legal certainty then needs to be explored in law enforcement of trademark disputes with similarities in essence. This is because considering the embodiment of legal certainty affects the fulfilment of legal protection to the party attached to the right as it should be in accordance with the view according to Satjipto Rahardjo that basically legal protection is an effort to provide protection to one's interests by giving human rights power to him in order to take action on his interests. According to Sudikno Mertokusumo, legal certainty is a condition that must exist in the law enforcement process.

Law enforcement is an effort to realise the ideas of justice, legal certainty and social benefit into reality. Law enforcement is the process of making efforts to uphold or function legal norms in reality as guidelines for actors in traffic or legal relations in the life of society and the state. Law enforcement is a process that involves many things (Asshiddiqie, 2016). Law enforcement is carried out before and after the occurrence of acts committed by people who violate the law. Law enforcement is often carried out in a state of law so that the law is always maintained sovereignty. Legal sovereignty must be recognised by all people because law is a means to change society for the better, to achieve certainty justice and benefits in law enforcement. Law enforcement itself can be interpreted as an activity that harmonises the relationship between the values contained in the legal rules that exist in society and manifests an attitude of disrespect for the series of final stage value elaboration to maintain and maintain peaceful living in society.

Disturbances to law enforcement may occur, if there is a mismatch between values, rules and patterns of behaviour. The disturbance arises when there is a mismatch between paired values, which incarnate in confusing rules and undirected patterns of behaviour that disturb the peace of life. Soerjono Soekanto stated that there are several inhibiting factors in law enforcement, namely:

1. Legislation Factors

There are several principles in the Law whose purpose is that the Law has a positive impact. That is, so that the law achieves its objectives effectively in people's lives.

2. Law Enforcement Factor

Law enforcers have a position and role. Law enforcers are one of the most important pillars in the law enforcement process, often taking various actions that are contrary to legal provisions, causing various problems.

3. Means or Facility Factors

Law enforcement law enforcement is unlikely to run smoothly without the means or facilities factor. These facilities include educated and skilled human resources, good organisation, adequate equipment and sufficient finance.

4. Community Factors

Law enforcement comes from society. Aims to achieve peace in society, therefore viewed from a certain angle society can affect law enforcement.

5. Cultural Factors

Community legal culture is a process of internalisation of values in order to understand the law and strive to apply it properly for the common good. Culture basically includes values that underlie the applicable law, values that are abstract conceptions of what is considered good and what is considered bad.

The existence of law enforcement of trademark disputes over the existence of similarities in essence which actually injures the rights of the actual trademark owner as shown in the case in Decision No. 71/Pdt.Sus-HKI/Merek/2021/PN Niaga Jkt.Pst., in which the plaintiff is a

trademark registrant for the first time who then injured the rights to his trademark because there are other companies that have a trademark that resembles the defendant's trademark (there are similarities in essence) but instead the lawsuit is rejected is to show that law enforcement has not been realized as it should. The existence of such law enforcement shows that legal certainty has not been realised. Legal arrangements or norms regarding trademarks related to 'similarity of trademarks in essence' as stipulated in the Law of the Republic of Indonesia Number 20 of 2016 concerning Trademarks and Geographical Indications and Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law show that it has not been adhered to and applied to law enforcement. This is considering the theory of legal certainty according to Sudikno Mertokusumo, that it should be shown by the application that the provisions of the law are carried out and the party attached to the right according to the law can obtain its rights. The legitimate holder of trademark rights in the verdict has not obtained its rights as it should. The existence of law enforcement on trademark disputes by fulfilling the element of 'similarity in essence' that has not been realised as it should, it becomes urgent to realise countermeasures so that nothing like that happens again. This can be realised by the following:

1. Standardisation of Law Enforcement Procedures

Standardisation of law enforcement procedures becomes urgency to be realised in order to prevent the occurrence of improper law enforcement on trademark disputes in the form of similarity of trademarks by fulfilling the element of 'similarity in essence'. This is because the occurrence of such law enforcement is caused by differences in legal interpretation. With this, the standardisation of the procedure can be a way out to prevent inconsistencies in law enforcement. The standardisation of procedures can be in the form of establishing Standard Operating Procedures (SOP) in a law enforcement agency, by regulating clearly and in detail.

2. Strengthening of Legislation

Strengthening the legislation in order to prevent the occurrence of improper law enforcement on trademark disputes in the form of similarity of trademarks by fulfilling the element of 'similarity in essence' is that it can be done by making changes to the legislation by regulating more strictly related to the prohibition of registering trademarks with similarities in essence with registered trademarks owned by other parties. It is necessary to regulate more stringent sanctions so that the party who will register the trademark can be more careful so that there is no similarity of the trademark. In addition, so that trademark rights holders can better comply with all existing laws, given the strict sanctions. Parties who have violated the provisions of the trademark also in order to get a deterrent, so that the similarity of the trademark by fulfilling the element of 'similarity in essence' does not happen again.

3. Supervision

The trademark rights holder must actively monitor the use of its trademark in the public life. This can be done by monitoring the media, markets, and digital platforms to ensure that there are no parties using the trademark with 'substantially similar'. The government must also maximise supervision, in order to realise the orderly implementation of the trademark with no similarity of trademarks that meet the elements of 'similarity in essence' to confuse the public and harm the trademark rights holders.

4. Socialisation

The government needs to maximise socialisation by providing an understanding to the public and business people about the importance of trademark protection and the legal consequences of trademark infringement, including when it meets the elements of 'substantially similar' to the trademark of another party. This is an urgency to prevent the occurrence of similarity of trademarks that lead to disputes that are prone to inconsistencies in the law enforcement process.

CONCLUSION

The concept of the element of ‘similarity in essence’ in trademarks is as regulated in the Law of the Republic of Indonesia Number 20 of 2016 concerning Trademarks and Geographical Indications and Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. The regulation stipulates that similarity in essence is where there is similarity caused by the existence of dominant elements between one trademark and another trademark so as to create the impression of similarity, both regarding the form, the way of placement, the way of writing or the combination of elements, as well as the similarity of speech sounds, contained in the trademark. The existence of such legal arrangements indicate that the legal certainty has been pursued. This is as the theory of legal certainty according to Nurhasan Ismail, that legal certainty requires an effort of legal rules in the law made by the authorities, so that the rules are attached to the juridical aspects and can guarantee the certainty that the law has a function as a rule that must be obeyed by the community. Countermeasures against the law enforcement of trademark disputes over the similarity in essence that actually injure the rights of the actual trademark owner as shown in the case in Decision No. 71/Pdt.Sus-HKI/Merek/2021/PN Niaga Jkt.Pst., can be realised by standardising law enforcement procedures, strengthening legislation, supervision, and socialisation. Countermeasures for the enforcement of trademark disputes over the similarity in essence that actually injure the rights of the actual trademark owner is the need for cooperation between the government, law enforcement, trademark owners, and even the general public.

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