



Preventive Legal Protection of Trademarks in Indonesia Based on Law Number 20 Of 2016 Concerning Marks and Geographical Indications

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Abstract: The legal system of intellectual property rights in Indonesia requires the registration of marks regulated in Article 1 paragraph 5 of the Trademark Law, namely, the right to a mark is an exclusive right granted by the state to registered trademark owners for a certain period of time by using the mark themselves or giving permission for others to use it. The emphasis in the article is that the right to a mark is created due to registration and not because of the first use, as stipulated in Law Number 20 of 2016 concerning Marks and Geographical Indications. Intellectual Property Rights have provided legal protection for individuals who have made discoveries or inventions, putting these individuals in the position of holders of Intellectual Property Rights and granting them exclusive rights to reproduce, manufacture, sell, and distribute his inventions. Apart from giving exclusive rights to inventors, intellectual property rights also provide protection for brand holders, which are usually used to describe reputation (quality), indicating differences between one company and another regarding the existence and goods it produces.

Keywords: Trademarks, Exclusive Rights, Intellectual Property Rights

INTRODUCTION

Intellectual property rights are rights that stem from human creativity and the ability to think, that are expressed to the general public in a variety of ways, and that have benefits and are useful in supporting human life while also having economic value. True intellectual work ability can be found in the fields of technology, science, art, and literature.¹

According to the convention that Indonesia has ratified, the role of brand and geographical indication is very important, especially in guarding healthy, fair, and consumer-protecting competition businesses, as well as protection efforts at the micro, small, and medium level and in domestic industry. For more information, see Upgrade service and

¹ Anne Gunawati, *Perlindungan Merek Terkenal Barang dan Jasa Tidak Sejenis Terhadap Persaingan Usaha Tidak Sehat*, Bandung : P.T. Alumnus, 2015, hlm. 56

deliver certainty law for industry, trade, and investment, in the face of development economies local, national, and regional.²

Regulation law in the field of intellectual property rights, with both international and national characteristics, protects ideas from counterfeiting (imitation). In fact, Right Riches Intellectual is divided into two major groups:

1. Copyright (copy rights) and related rights (neighbouring rights) include, among other things, the following: creation write, work music, recording sound, show music, actors, plays, and singers, paintings, sculptures, broadcasts, computer software, and data bases.
2. Industrial property rights (industrial property rights) are distinguished in terms of context protection. Becomes six parts, namely: patent (invention technology), brand, industrial design, confidential trade, indication of geographic location, and layout design circuit integration.

Consumers purchase visible products from brands because they believe the brand represents quality or safety for consumption due to its reputation. Customers may feel duped if a company uses the brand of another company because the company purchased a higher-quality product.³ Losses will have a direct impact on the company. Consumers are duped by goods that almost exactly resemble the brand original, resulting in low-quality goods. As a result, owners of famous brands in general do a variety of things to prevent people or other companies from using their brand on a product. Attempts made by the owner of a brand to prevent another party from using that brand are very important, because building a brand's reputation requires both small and large investments.⁴

Trademark rights are a type of intellectual property protection provided by Riches Intellectuals, who grant the owner of a registered brand exclusive rights to use the brand in trading goods and/or services for a set period of time, depending on the class and type of goods and/or services and the registered brand, or grant permission to another party to use the brand.⁵

Registration is something a brand does to identify goods and/or services produced or distributed by a company, and certain rights are granted to the company to use in a way that is unique to the brand. Registered brand owners have the right to prevent unauthorized third-party use of their brand. A brand is a well-known and increasingly valuable commodity. Build connection Creating a valuable reputation, or "good will," among products and businesses, is the foundation of most international trading.⁶

A brand that has no legitimate use is one that is equal in essence or overall to someone else's brand. The meaning of overall equality is that a second brand's facet form and form are not exactly the same, whereas an owned brand has similarities in substance and form, as well as form resemblance. Use a brand in a way that is not authorized by Article 83, paragraph 1 of Law Number 20 of 2016 Concerning Brands and Indications Geographically stated, "that" means:

"The owner or recipient of a registered brand may file a lawsuit against other parties who, without the right, use brands that are identical in essence or in whole for goods and/or similar services."

Deeds are not valid because they are performed without the owner's permission. A registered brand can be imitated or used by others as long as the owner grants permission in

² Tommy Hendra Purwaka, ed, *Perlindungan Merek*, Jakarta: Yayasan Pustaka Obor Indonesia, 2017, hlm. 1-2.

³ Tim Lindsey, *Hak Kekayaan Intelektual Suatu Pengantar*, P.T.ALUMNI, Bandung 2013, hlm. 13--15

⁴ Suyud Margono & Amir Angkasa, *Komersialisasi Aset Intelektual Aspek Hukum Bisnis*, Jakarta: PT. Gramedia Widayarsana Indonesia, 2002, hlm. 147.

⁵ Undang-Undang Nomor 20 Tahun 2016 Tentang Merek dan Indikasi Geografis, Pasal 1 ayat 5.

⁶ Hery Firmansyah, *Perlindungan Hukum Terhadap Merek: Panduan Memahami Dasar Hukum Penggunaan dan Perlindungan Merek*, Yogyakarta: Pustaka Yustisia, hlm. 12.

the form of a license agreement. His actions are a violation of my brand if done without my knowledge.⁷

There are two types of inspection case violations for a brand violation. If both conditions are met, the plaintiff will win. Plaintiff must demonstrate that Defendant is a brand:

1. Have essentially equal rights to the brand "plaintiff"; or
2. Consumer purchases a product or service from the defendant at the time.

This is known as a Pass Off violation brand. Passing off is an effort or action or actions undertaken by someone or a group of people that results in a competition or field violation. However, because there is no governing law regarding passing off at the moment, this is not yet a violation. Moments like this, "Passing Off," could be characterized as competition cheating by other entrepreneurs, with no responsible response.

Competition There were numerous businessmen who were involved in the Pass Off incident in Indonesia. However, because it has not yet been arranged in a clear and specific manner in the Constitution about competition cheating, anti-law deeds, and trademark rights violations, The DG of Rights, Riches, and Intellectual Property then only handled cases of passing off, which is also an indication of a brand name violation; passing off was not used to finish cases of reputational violation in Indonesia. In Indonesia, however, there is a base law for carrying out these matters. According to Article 7 of Law Number 8 of 1999 Concerning Consumer Protection, the perpetrator "must do his efforts with faith."

The negative impact of competition on creation is not healthy in the businesses of the perpetrators. When interpreted as competition, competition effort is unhealthy. Effort in operating activity, production, and/or marketing goods and/or services is performed by perpetrators with no honest or opposing intent. Aim for safety and right riches. To ensure that something business is done with honest practice by competitors in trade, intellectual to competitive effort is required.⁸

With existing entrepreneur competition and brand imitation from something product, good, and/or service, as well as system registration in Indonesia that has not walked as it should, it can be seen that there are still many violations to the protection brand that has been registered in Indonesia.⁹

This implies that, in time, all forms of effort such as plagiarism, piracy, and rigging, among others, will reclaim and be displaced from the phenomenon of life between nations. In the name brand trade, "p such, effort protection, preventive" Attention, interest, and concern are generated in order to create favourable conditions for growth as well as development activity for innovative and creative beings; however, these conditions limit growth ability implementation, development, and mastery of technology.¹⁰

The implementation of a brand protection law demonstrates that the State of Indonesia is aware of the importance of intellectual property rights on a brand name trade role in something product goods and/or services to the company trade. A company is entitled to protection for its owner brand, particularly protection from laws prohibiting brand trade in Indonesia.

The use of resembling brands with other registered brands, as well as the use of the same brand and/or resembling brands with another brand, raises consumer perceptions of

⁷ Chandra Gita Dewi, *Penyelesaian Sengketa Pelanggaran Merek*, Yogyakarta: DEEPUBLISH, 2019, hlm. 7.

⁸ Anne Gunawati, *Perlindungan Merek Terkenal Barang dan Jasa Tidak Sejenis Terhadap Persaingan Usaha Tidak Sehat*, Bandung : P.T. Alumni, 2015, hlm. 56.

⁹ Dwi Atmoko, *Perlindungan Hukum Terhadap Pemegang Hak Merek Menurut Undang-Undang Nomor 20 Tahun 2016 Tentang Merek dan Indikasi Geografis*. *Jurnal Hukum Sasana*, 5(1), 2019, 78-79

¹⁰ Hery Firmansyah, *Perlindungan Hukum Terhadap Merek: Panduan Memahami Dasar Hukum Penggunaan dan Perlindungan Merek*, Yogyakarta: Pustaka Yustisia, hlm. 12.

error. A brand violation occurs when the brand, its logo, and ingredients that resemble the original brand are installed. This is known as a Pass Off violation brand. This is not yet organized in a legal manner. As a result, this is not yet a violation. ition cheating by other businessmen; who is to blame?

RESEARCH METHODS

The method used is study qualitative with the use of study law normative. The concept used in research on normative law is what is written and contained in regulations and legislation, or what is becoming the norm for how men should behave in society. That is, when researching normative law, only use secondary data, which consists of classifieds (primary laws) and materials (secondary or tertiary laws).

Method data collection is accomplished through methodological studies of the literature to obtain both primary and secondary law (regulation legislation, books law, articles, and related journals) with an object study.

FINDINGS AND DISCUSSION

Brand holders with other parties is the same brand registered in the same register. Law will provide protection to the owner of a valid brand through mechanisms and efforts. Protection under the law is something that motivates people to take action to prevent a violation or dispute. The goal is to reduce the number of opportunities for violation while also limiting what a brand can do under obligation. The protection here focuses on supervisor usage of the brand, protection for the rightful exclusive holder on brand trade, and suggestions to the brand owner to register the brand to protect the rights.¹¹

The must-have elements observed in effort-prevention:

1. Legal Factors The purpose of Constitutional Amendment No. 20 of 2016 is to provide legal protection for brand owners' rights. In relation to the aforementioned issue, Article 20 of the Law on Brands and Geographical Indications states that a brand cannot be registered if it contains one of the following elements:
2. in opposition to state ideology, regulations, legislation, morality, religion, decency, or general order;
3. equal to, related to, or only mention goods and/or requested services in its registration?
4. Loading elements that can: (i) mislead the public about the origin, quality, type, size, type, purpose, or use of goods and/or requested services; (ii) constitute registration; (iii) are pest variety protected plants for goods and/or similar services; and (iv) constitute registration.
5. Load information that is not in accordance with the quality, benefits, or efficacy of goods and/or services produced;
6. There is no power differentiator; and/or
7. Is General the owner of the name "General" and/or the symbol "General"?

Aside from the foregoing, Article 21 paragraph (1) states that an application will be rejected if a brand is identical in essence or entirety to a brand registered and owned by another party, or if the other party requests more in advance for goods and/or services of that kind, and if a brand is famous and owned by another party for goods and/or services of that kind. Provision can be overly strict for non-kind goods and/or services.

Factor apparatus, Directorate of Branding Apparatus Directorate Brand and Directorate General, Righteous Intellectual Property are in charge of reviewing brand

¹¹ Hery Firmansyah, Op Cit, hlm. 67

registration applications. The most fundamental aspect that the Directorate of Brand must examine is:¹²

1. Registration of something specific that is the same as or resembles a famous brand owned by the other party can occur for a variety of reasons, including a weakness in the apparatus of the Directorate of Brand in performing the filtering process at the beginning of the community's submission of the brand. Quality improvement was required in this matter among the source power people in the directorate brand, particularly in the examination brand. Repair as well as upgrading the quality of the source power used by humans in the environment (Directorate Brand) to become more professionals in their field through training programs, seminars, and encouragement for officers in the environment (Directorate Brand) to continue S2 education (Star 2) are possible steps taken to resolve the matter.
2. This becomes problematic separately when done inspection brand, and mastery technology in today's era should also become an ingredient that requires attention.

Indonesia uses "system constitutive" or "system first to file" branding for system registration. System constitutive requirements exist for registration, brand order, and brand protection. In principle, this good, whose brand is registered in the General Register of Mark Offices, is entitled to the mark "." This system ensures that there is certainty in law that is profitable to the registrant (owner or holder of the legal mark) that registration of the brand is accepted as proof right on the brand at a time when the registered mark is considered the user first.¹³

Arrangement brand: the goal is to provide effective protection for preventing all forms of infringement in the form of imitation, using the same name as the brand, and other forms of infringement. The Constitution brand serves a purpose: to drive fluency and improvement in trading goods and/or services to the brand, as well as to promote the brand to society for enjoyment. Because brand is synonymous with creation, consider producing humans to be the creation of something (a product or process) useful to humans.

The government provides protection law to brand trade registration holders and users' rights on brands to ensure certainty, try for producers, and attract investors. Foreign brand trade, while local brand trade protection laws are expected to develop in a way that expands internationally at some point. You can improve your investment in Indonesia by using the existing protection law. So, investors are competing to embed the investment as well as upgrade growth in the business world.

The protection law in Indonesia is not particularly unique. Brand protection and brand trade in Indonesia will be critical for the progress and development of industry in Indonesia, as will effort law to provide a sense of security and comfort, as well as certainty law for the entire perpetrator business in Indonesia.

Something brand could be recognized by registering an application with the Ministry of Law and Human Rights' Directorate of IPR General. The registration of a brand is a method of security for the owner brand to benefit from the government's protection. In Article 5 of Law Number 20 of 2016 concerning Brands and Indications, intellectuals with system law rights in Indonesia seek registration of a regulated brand. Geographical rights to a brand are granted solely by the state to the registered brand's owner for a set period of time during which the owner may use the brand alone or grant permission to another party to use it.

If requested, registration at the office must include the requested type of registration. Similarly, goods and/or services must mention type and/or requested service "protection" under "Request registration." The office brand could not receive a trademark if there was no

¹² Ibid

¹³ Dwi Atmoko, Op Cit, hlm. 78-79.

mention of type goods and/or services in the registration. The requested brand must be used in activities involving trading goods and/or services.¹⁴

Brand protection laws only apply to brands that have been registered. The registration of a brand gives it greater protection, especially if it is in conflict with an owned brand of similarity. Although a portion of the large perpetrator business understands the value of using brand to differentiate its products from those of its competitors, not all parties understand the value of protecting their brand through registration.¹⁵

In accordance with Article 20 of the 2016 Constitution on Brands and Geographical Indications, an application for a brand will be rejected if the brand is identical in essence or in whole to a brand well-known for goods and/or similar services.¹⁶ In this matter, which is meant with equality in essence and in its entirety, namely:¹⁷

1. In principle, equality may be difficult to define. According to Drucker, the equation is already in place:
2. The crowding of the audience creates an impression. Consumers were unable to compare the relevant brand side by side with others, as was the case in advance court, which is important for consumers to remember when comparing brands A and B.
3. The resulting chaos in the middle of a large audience may become "consumer goods with relevant branding." In this case, a brand must be seen as a whole, not just the parts.
4. If the way words are written is the same, the brand is considered to be essentially the same.
5. Overall matter equality is easy to establish because it is evident in writing, form, and color. To determine the complete equation: "Among one brand owned by somebody, another brand belongs to someone else mine the complete equation: "Among one brand owned by somebody, another brand belongs to someone else," namely:
6. One brand has total imitation of another brand using the method "copy from the original or produce from the original."
7. Equality type goods and protected goods from one brand should be treated the same as existing items in one class.
8. Equality track marketing and line marketing may be considered synonymous because they cover the same geographic area and target the same consumer.

As a result, protection law is preventive when something that violates the previous law occurs to a brand. If someone or a legal entity wants the brand to be protected under the law based on the brand, it must first be registered.¹⁸ In order to submit an application registration for a brand, the applicant must meet the material and formal requirements. Contrary to reason absolute and reason relative, requirements material are requirements for registered brands, whereas requirements formal are related requirements for document administration.¹⁹

¹⁴ Ema Wahyuni, et al. *Kebijakan dan Manajemen Hukum Merek*. Yogyakarta : Yayasan Pembaharuan Administrasi Publik Indonesia (YPAPI). 2006. hlm. 133.

¹⁵ Tommy Hendra Purwaka, ed, *Perlindungan Merek*, Jakarta: Yayasan Pustaka Obor Indonesia, 2017, hlm. 39-40.

¹⁶ Anne Gunawati, *Op Cit*, hlm. 99.

¹⁷ Hertanti Pindayan, *Tanggung Jawab Direktorat Jenderal Hak Kekayaan Intelektual Terhadap Pemegang Hak Atas Merek Dalam Hal Ada Putusan Pembatalan Merek*” *Jurnal Authentica* Vol.1 No. 1, 2018, hlm. 45

¹⁸ Diyas Rifka Annisa, *Perlindungan Hukum Terhadap Pemegang Merek Dagang Asing Di Indonesia (Analisis Putusan Pengadilan Niaga Nomor: 69/PDT.SUS/Merek/2013/PN.Niaga.Jkt.Pst)*, *Jurnal ilmiah (untuk memperoleh gelar sarjana pada Fakultas Hukum Universitas Mataram)*, 2017, hlm. 138.

¹⁹ Gatot Supramono, *Menyelesaikan Sengketa Merek Menurut Hukum Indonesia*, Jakarta: Rineka Cipta, 2008, hlm. 25.

The provision is found in Article 35 of Law No. 20 of 2016, concerning Brands and Geographic Indications, and states:

1. Registered brands are protected by law for ten (ten) years from the date of registration.
2. Protection for a set period of time, as defined in paragraph (1), can be extended for the same period of time.

CONCLUSION

Protection law preventive gives protection to the owner of a valid brand. Protection law preventive is something that provides protection that leads to actions that prevent some violation or dispute. The goal is to limit opportunities for violation while also limiting what can be done under obligation to the brand. The principle adopted by the system registration Indonesian brands are the first to file (constitutive). The principle where owner rights on a considered legitimate brand are registered, particularly formerly at the Directorate General of HAKI, KEMENKUMHAM RI, is system constitutive. This system ensures that there is certainty in law that the registrant (owner or holder of a legal mark) profits from the registration of the brand accepted as brand in the form of a certificate as proof right on brand at a time considered as user first from the registered mark. Registration of a brand must be proven; registration of a brand is done on faith, for better or worse. A brand could only be registered under Article 4 paragraph 1 of Law Number 20 of 2016 concerning Geographical Indications and Brands. According to Article 21 paragraph 1 of the Constitution, an application for brand protection will be denied if the brand is identical in essence or in whole to a brand registered by another party and owned by another party for goods and/or services, as well as a brand famous by another party for goods and/or services. The protection law for brands is arranged based on Constitution Number 20 of 2016 concerning brands and indications of geographic origin.

Passing off is an effort or action or actions undertaken by someone or a group of people that results in some form of competition or brand violation. The provisions for passing off are found in state regulations and adhere to system common law, i.e., about law competition cheat. However, settings concerning the pillion's current reputation in the governing country with the common law system could be implemented immediately in Indonesia. Because Indonesia follows the civil law system. The term "passing off" is not arranged clearly on the inside of the Constitution brand; however, in this matter, we use the term "pillion brand." Constitutional Amendment Number 20 of 2016 concerning Brands and Indications Geographical adhere system protection is provided by a system constitutive, in which the owner's right to a considered legitimate brand is registered, particularly the first. System constitutive only give protection under law for registered brands because the registered mark could be used as tool evidence. Efforts made by the government as a party to prevent passing off, or what is known as "competition cheating," in the context of brand building are to impose strict and clear sanctions on perpetrators who violate brand building in accordance with the applicable brand in the Constitution, as well as to have them carried out by the authorities in a consistent manner. It was done to more fully guarantee legal protection for the holder's right on brand legal trade from third-party interference.

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