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Implementation of Good Faith Principles in Trademark Registration in Indonesia

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Abstract: In the era of globalization and free trade, trademarks play a strategic role as the identity, reputation, and quality assurance of products and services. Therefore, the trademark registration system must provide fair and effective legal protection. The principle of good faith is one of the fundamental pillars of Indonesia's trademark registration system, as stipulated in Article 21 paragraph (3) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications. This principle aims to prevent trademark registrations made in bad faith, such as copying or exploiting the reputation of existing trademarks. This study employs a normative legal research method with statutory, conceptual, and case approaches. The findings indicate that the application of the good faith principle is implemented through administrative and substantive examinations by the Directorate General of Intellectual Property (DJKI), third-party objection mechanisms, and judicial oversight. Cases such as Pierre Cardin, VANS, and Geprek Bensu illustrate the importance of this principle in upholding substantive justice and protecting legitimate trademark owners. However, its implementation faces several challenges, including difficulties in proving bad faith, limited institutional capacity, and low awareness among business actors. Therefore, strengthening technical regulations, enhancing institutional capacity, and utilizing information technology are strategic steps to optimize the implementation of the good faith principle in Indonesia's trademark registration system.

Keyword: Good Faith Principle, Trademark Registration, Trademark Law, Indonesia.

INTRODUCTION

In the era of globalization and free trade, brands have become a crucial element in determining the success of a product or service in the marketplace. Brands serve not only as distinguishing marks but also as symbols of reputation and guarantees of quality for consumers. Therefore, legal protection for brands plays a crucial role in safeguarding business interests and fostering a healthy competitive environment (Rahmi Jened, 2015). The trademark protection system in Indonesia is based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which replaced Law Number 15 of 2001. This law regulates the registration, protection, and enforcement mechanisms for trademark rights as part of Intellectual

Property Rights (IPR). In this context, trademark registration plays a crucial role because it grants exclusive rights to registered trademark owners.

However, the trademark registration system is also vulnerable to abuse, particularly when certain parties apply for trademark registration in bad faith, such as by imitating or piggybacking on the popularity of another party's trademark for economic gain. Such practices often lead to disputes between new trademark applicants and owners of well-established brands in the public domain (Edmon Makarim, 2019). To address this issue, Indonesian trademark law adopts the principle of good faith as a fundamental requirement for trademark registration. This principle is reflected in Article 21, paragraph (3) of the Trademark and Geographical Indications Law, which stipulates that trademark registration applications must be rejected if submitted by parties acting in bad faith. This provision embodies the principle of honesty and compliance with legal norms within the IPR protection system.

The principle of good faith is fundamentally derived from the general principles of civil law, namely that every legal action must be done in good faith and without causing harm to other parties (Subekti, 1996). In the context of intellectual property rights (IP), good faith implies that trademark registrants must respect the rights and interests of others and must not exploit the registration system for purposes contrary to morals, ethics, or the law. The application of the principle of good faith in trademark registration is also in line with international provisions, such as the 1883 Paris Convention for the Protection of Industrial Property and the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which emphasize the protection of well-known trademarks and prohibit the registration of trademarks with dishonest intent.

In practice, the issue of bad faith often arises in cases of trademark squatting, where certain parties register well-known trademarks belonging to foreign or domestic parties before the original owner registers them in Indonesia. Cases such as "Pierre Cardin" and "Supreme" are concrete examples of how legal loopholes can be exploited by parties acting in bad faith (Putusan Mahkamah Agung Nomor 556 K/Pdt.Sus-HKI/2012). This issue highlights the challenges in upholding the principle of good faith in practice. Although the law explicitly prohibits trademark registration in bad faith, proving this in court is often difficult because the element of good faith is subjective and depends on the judge's assessment and the evidence presented.

Furthermore, the mechanisms for preventing and enforcing bad-faith trademark registrations are also suboptimal. Authorized institutions, such as the Directorate General of Intellectual Property (DJKI), face limitations in assessing the intent of each trademark registration application. As a result, many trademarks are registered and certificated despite indicating bad faith. This situation creates legal uncertainty for business actors acting in good faith, as they can lose their rights to long-standing trademarks simply because another party formally registered them first. This situation contradicts the primary purpose of IPR protection, which is to provide certainty and fairness to creators and innovators (Philipus M. Hadjon, 2007). Therefore, an in-depth analysis of the regulation and application of the good faith principle in the trademark registration system in Indonesia is necessary to ensure that legal protection truly favors parties acting in good faith. This is crucial so that the trademark legal system is not merely formalistic but also guarantees substantive justice for all parties.

The study of the application of the good faith principle is also relevant in the context of strengthening legal certainty and the integrity of the national IPR system. By understanding how this principle is regulated and implemented, weaknesses and potential improvements in the trademark registration mechanism in Indonesia can be identified. Based on this description, this study aims to analyze the regulation and application of the good faith principle in trademark registration in Indonesia and examine legal remedies that can be taken to address the practice of bad faith trademark registration, ensuring effective and equitable legal protection for trademarks.

METHOD

The research method used in this paper is a normative legal research method, namely; research focused on the study of legal principles, positive legal norms, and court decisions related to trademark registration and the application of the good faith principle. The approaches used are the statute approach, the conceptual approach, and the case approach.

RESULTS AND DISCUSSION

Regulation of the Good Faith Principle in Trademark Registration in Indonesia

The principle of good faith is one of the fundamental principles of the trademark registration system in Indonesia. This concept serves as a normative basis for preventing trademark registration practices intended to harm others, such as copying or exploiting the popularity of existing trademarks. Historically, the principle of good faith has been recognized since the enactment of Law Number 15 of 2001 concerning Trademarks, but its provisions became more detailed and explicit in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, specifically in Article 21 paragraph (3), which states that trademark registration applications must be rejected if submitted by parties acting in bad faith.

The transition from the 2001 Trademark Law to the 2016 Trademark Law demonstrates the legislator's increased attention to the good faith of trademark applicants. The 2016 Trademark Law emphasizes that trademark applicants must act honestly and not exploit weaknesses in the registration system to harm others (Rahmi Jened, 2015). It is crucial considering the growth of the creative economy and digital commerce, which poses a risk of increased trademark squatting practices, namely the opportunistic registration of trademarks for commercial purposes or to hinder other parties.

Legally, the principle of good faith requires trademark applicants to respect the rights of others who have previously used or registered their trademarks. This concept is rooted in the general principles of Indonesian civil law, which emphasizes that every legal action must be carried out in good faith and without harm to others (Subekti, 1996) . In the context of trademark registration, good faith serves as a preventive instrument to ensure the trademark registration system functions fairly and rationally.

In addition to being regulated nationally, the principle of good faith also aligns with Indonesia's international obligations. The Paris Convention on the Protection of Industrial Property (Paris Convention) and the TRIPs Agreement emphasize the protection of well-known trademarks and the prohibition of trademark registration in bad faith. It emphasizes that national regulations must be consistent with international practice to ensure effective legal protection for trademark owners.

In the 2016 Trademark Law, the principle of good faith is linked to the exclusive rights of trademark owners. Article 21 paragraph (1) emphasizes that exclusive rights are granted to the owner of a registered trademark; therefore, any party registering a trademark with the intention of violating these exclusive rights is deemed to have violated the principle of good faith. Thus, the principle of good faith serves as a preventive filter before issuing a trademark certificate and serves as a basis for rejecting registration if indications of bad faith are found.

In addition to this preventive aspect, the 2016 Trademark Law also provides a repressive legal mechanism. Article 83 provides an opportunity for injured parties to file objections or lawsuits for cancellation of trademarks registered in bad faith. This mechanism demonstrates the dual dimensions of the good faith principle: as a preventative measure and as a means of law enforcement to protect well-intentioned trademark owners.

In practice, indicators of the implementation of the good faith principle can be seen from several aspects. First, trademark applicants must not imitate or infringe on another party's well-known trademark. Second, applicants must register trademarks with honest intentions and not to harm others. Third, applicants must provide complete and transparent information regarding trademark registration (Sudargo Gautama, 2017). This indicator serves as a reference for DJKI officials in assessing trademark applications and for judges in assessing trademark disputes related to good faith.

Several real-life cases demonstrate the relevance of the good faith principle in practice. For example, the Pierre Cardin case, where a third-party trademark registration was deemed opportunistic and in violation of the exclusive rights of the international trademark owner (Putusan Mahkamah Agung Nomor 556 K/Pdt.Sus-HKI/2012). A similar case occurred with the Supreme Indonesia trademark, where a third party's registration gave rise to a legal dispute due to indications of bad faith. Analysis of these cases demonstrates that although the principle of good faith is normatively regulated, its application requires careful assessment by the relevant institutions.

The primary challenge in applying the principle of good faith is assessing the applicant's intent. Judges and DJPI officials must interpret the evidence and context of the registration to determine whether bad faith has occurred (Edmon Makarim, 2019). It requires clear examination standards, technical guidelines, and adequate institutional capacity to ensure consistent and fair decisions. Furthermore, the prevention and enforcement mechanisms for bad-faith trademark registrations are not yet fully optimized. Many trademarks are registered and certified despite indicating bad faith, due to limitations in assessing the applicant's intent and the complexity of the evidence that must be reviewed (Direktorat Jenderal Kekayaan Intelektual, 2023). This situation demonstrates the need for strengthening regulations and institutional capacity, including technical guidelines for the Directorate General of Intellectual Property Rights (DGIP) and training for judges in handling trademark disputes.

The good faith principle, as stipulated in the 2016 Trademark Law, can be broken down into three functions. First, it serves as a preventive instrument, rejecting trademark registrations made with bad intentions. Second, it serves as a repressive instrument, providing a mechanism for cancellation or lawsuits for injured parties. Third, it serves as an instrument for legal harmonization, bridging national practices with globally recognized international standards. These functions demonstrate the importance of good faith in creating a just, effective, and consistent legal system.

Thus, the regulation of the good faith principle in trademark registration in Indonesia not only provides legal certainty for brand owners acting in good faith but also plays a role in creating a healthy competitive climate, protecting innovation, and preventing opportunistic practices that harm others. Its effectiveness depends heavily on consistent, transparent, and professional law enforcement, making strengthening the institutional capacity of the DGIP and the courts a strategic step towards achieving these goals (Philipus M. Hadjon, 2007).

Application of the Good Faith Principle in Trademark Registration Practices under Law No. 20 of 2016

The application of the good faith principle in trademark registration practices in Indonesia is a normative implementation outlined in the trademark application examination procedures conducted by the Directorate General of Intellectual Property (DJKI). This principle is applied at every stage of the examination, from verification of administrative documents to substantive evaluation, to ensure that trademark applicants act honestly and do not harm other parties. The application of the good faith principle is not merely an administrative formality but reflects the state's efforts to maintain legal certainty, substantive justice, and the protection of legitimate intellectual property rights.

The examination stage begins with a formal examination, which aims to assess the completeness of the documents, the applicant's identity, and the application's compliance with applicable legal provisions. This formal examination serves as an initial filter to reject applications that clearly do not meet administrative requirements, such as forged documents, inconsistencies in the classification of goods/services, or invalid applicant identities (Rahmi Jened, 2015). This stage also allows the Directorate General of Intellectual Property Rights (DJKI) to identify early indications of bad faith, for example, when an applicant attempts to register a trademark identical to a well-known trademark without permission.

After the formal examination, the DGKI conducts a substantive examination, which is more complex and evaluative in nature. At this stage, DGKI officials assess whether the trademark registration could harm other parties, particularly owners of registered or well-known trademarks. Aspects analyzed include visual, phonetic, and conceptual similarities between the applied trademark and the trademark of another party, as well as the applicant's intention in using the trademark. The substantive examination is at the heart of the application of the good faith principle, as it is where the assessment of good faith is conducted in-depth and systematically.

In addition to DGKI's internal procedures, the third-party objection mechanism is an important instrument in implementing the good faith principle. Article 83 of the Trademark Law grants aggrieved parties the right to file objections to trademark registration applications or file a lawsuit for the cancellation of registered trademarks. This mechanism allows third parties to act as additional supervisors, ensuring that any potentially detrimental applications can be prevented or canceled before they have broader legal repercussions.

The application of the good faith principle can also be analyzed through trademark dispute cases. One prominent case concerns Pierre Cardin, where a third party opportunistically registered a trademark with the intention of capitalizing on the brand's international popularity. The Supreme Court affirmed that this action violated the principle of good faith and canceled the trademark registration. This case demonstrates that the application of the principle of good faith is not only normative but also enforced by the courts, which requires an analysis of evidence and the applicant's subjective intentions.

However, the application of the principle of good faith faces substantial challenges in practice. Assessing the applicant's preferences is subjective and complex, as the motivation for registering a trademark is not always evident from the application documents. DJIP officials must rely on documents, the trademark's history of use, and an analysis of the commercial context to assess good faith (Edmon Makarim, 2019). This requires specialized expertise, consistent assessments, and a clear framework to ensure that the interpretation of the good faith principle does not create legal uncertainty.

In addition to the challenges of subjective assessments, workload and institutional capacity are significant factors. The increasing number of trademark applications each year puts the Directorate General of Trademarks (DGIP) under pressure to complete examinations within a limited timeframe. As a result, some applications with indications of bad faith are still issued certificates, which can lead to future legal disputes. To address this, strengthening the capacity of the DGIP through technical guidelines, examiner training, and the use of information technology is essential to effectively uphold the good faith principle.

Furthermore, applicant behavioral indicators serve as a crucial reference in implementing the good faith principle. These indicators include (Sudargo Gautama, 2017): (1) conformity of the brand with the existing rights of other parties, (2) transparency and honesty in submitting documents, (3) absence of attempts to manipulate registration procedures, and (4) intention to use the brand legally and without harming other parties. Assessment of these indicators helps the DJKI and the courts determine whether a brand application meets the principle of good faith, thereby protecting the rights of legitimate brand owners. Furthermore, the application of the principle of good faith has a strategic function in creating legal certainty and substantive justice. A brand registration system that upholds this principle is able to protect the innovation, reputation, and exclusive rights of legitimate brand owners, while preventing opportunistic practices that harm other parties. This function is part of the objective of the 2016 Trademark Law to build a climate of healthy competition in the domestic and global markets (Philipus M. Hadjon, 2007).

Despite the existence of normative and practical mechanisms, the implementation of the good faith principle still faces obstacles in legal disputes. Court proceedings often take a long time, resulting in economic impacts for the injured party before the dispute is resolved. Furthermore, judges' interpretations of good faith can vary, creating legal uncertainty for applicants and third parties. To optimize the implementation of the good faith principle, several strategic recommendations can be made. First, the Directorate General of Intellectual Property Rights (DJIP) should establish clear technical guidelines for assessing applicants' good faith. Second, ongoing training for DJIP officials and judges to ensure a more consistent interpretation of the good faith principle. Third, the use of information technology, such as international trademark database systems, to trace trademark history and identify potential infringements of the rights of others. With these steps, the good faith principle can be applied more effectively, consistently, and fairly.

Thus, the application of the good faith principle in trademark registration practices in Indonesia demonstrates a balance between legal norms, institutional mechanisms, and the protection of legitimate party rights. This principle not only provides legal certainty but also ensures that the trademark registration system functions as an effective instrument of substantive justice amidst the dynamics of global trade, innovation, and competition.

Legal Remedies for Bad Faith Trademark Registrations

Trademark registrations in bad faith are practices that harm legitimate trademark owners and create legal uncertainty in the trademark protection system. To address this, the Indonesian legal system provides several legal remedies that can be taken by the injured party.

One example of a case illustrating the application of legal remedies for bad faith trademark registrations is the dispute between the trademarks "VANS" and "OTOVANSCLASSIC." In this case, the Supreme Court, through Decision Number 1850 K/Pdt.Sus-HKI/2022 invalidated the registration of the trademark "OTOVANSCLASSIC" filed by the party suspected of bad faith (Putusan Mahkamah Agung Nomor 1850 K/Pdt.Sus-HKI/2022). The Supreme Court ruled that the "OTOVANSCLASSIC" trademark bore a fundamental similarity to the well-known and previously registered "VANS" trademark and was filed in bad faith to profit from the trademark's reputation.

Another case involved the dispute between Ruben Onsu's "Geprek Bensu" and PT. Ayam Geprek Benny Sujono's "I Am Geprek Bensu." The Commercial Court ruled that Ruben Onsu's "Geprek Bensu" trademark registration be revoked due to its similarity to the previously registered "I Am Geprek Bensu" trademark (Putusan Pengadilan Niaga Jakarta Nomor 123/Pdt.Sus-HKI/2021). Furthermore, Ruben Onsu was previously a promotional ambassador for "I Am Geprek Bensu," indicating an intention to exploit the brand's existing reputation.

One legal remedy is to file an objection against a trademark registration application filed in bad faith. Article 83 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications grants any party who feels aggrieved the right to file an objection against a trademark registration application filed by another party. This objection can be filed if there is an allegation that the proposed trademark is fundamentally similar to a previously registered trademark and was filed in bad faith (Edmon Makarim, 2019).

Furthermore, if a trademark has been registered and it is later discovered that the registration was made in bad faith, the aggrieved party can file a lawsuit for trademark cancellation with the Commercial Court. Article 83, paragraph (1) of the Trademark Law provides the legal basis for an aggrieved party to file a lawsuit for cancellation of a trademark registered in bad faith. In practice, the court will assess whether there is an element of bad faith in the trademark registration.

Although the Indonesian legal system provides mechanisms to address trademark registrations in bad faith, several obstacles exist in enforcing this law. One major obstacle is the subjectivity in assessing bad faith. The assessment of the applicant's intent in registering a trademark is often subjective and dependent on the available evidence. It can make it difficult for the court to determine whether a trademark registration was made in bad faith.

Furthermore, a lack of understanding and awareness among business actors regarding the importance of trademark registration and the potential legal risks resulting from trademark registration in bad faith also poses a barrier. Many business actors are unaware that trademark registrations made in bad faith can harm other parties and give rise to legal disputes.

CONCLUSION

Based on the research results, it can be concluded that the principle of good faith in trademark registration in Indonesia plays a strategic role both normatively and practically. Normatively, this principle is regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications as the basis for legal ethics and legal certainty, which requires trademark applicants to act honestly, not to harm others, and not to abuse registration procedures to obtain illegitimate benefits. Practically, the application of the principle of good faith is conducted through formal and substantive examinations by the Directorate General of Intellectual Property (DJKI), third-party objection mechanisms, and court oversight, which collectively assess the eligibility of trademark registration and the applicant's motives. Real-life cases, such as those of Pierre Cardin, VANS, and Geprek Bensu, demonstrate how this principle functions to uphold substantive justice, protect legitimate trademark owners, and prevent opportunistic practices. However, the implementation of this principle still faces obstacles, including subjectivity in assessing applicant intent, limited evidence, the DJKI's workload, and a lack of business awareness of legal risks.

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