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**JURIDICAL REVIEW OF LEGAL PROTECTION FOR REGISTERED TRADEMARK RIGHTS OWNERS: CASE  
STUDY DECISION NUMBER 242 K/Pdt.Sus-HKI/2022**

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**ABSTRACT**

Brand disputes are a matter that still frequently occurs in Indonesia. As in the case of the ARRA + LUKISAN brand and the COCO ARRA brand. ARRA + LUKISAN filed a lawsuit at the Commercial Court because its brand had been imitated and was substantially similar. The formulation of the problem in this research is the first to file principle in terms of the MIG Law and legal protection for first to file data collectors in the case of Decision Number 242 K/Pdt.Sus-HKI/2022. The method applied is normative juridical. The results of research regarding the first to file principle in the MIG Law are that it provides legal protection for the first registrant. Furthermore, regarding legal protection for the first trademark registrant in the case of Decision Number 242 K/Pdt.Sus-HKI/2022, namely the ARRA + LUKISAN trademark, obtained through the results of a decision at the cassation stage which has permanent legal force, namely approving the cassation request by the Cassation Petitioner, canceling the Decision. Commercial Court at the Central Jakarta District Court Number 70/Pdt.Sus-HKI/Merek/2019/PN Niaga Jkt. Pst, then instructed the co-defendants to cancel the registration of the COCO ARRA mark.

**Keywords:** Legal Protection, Registered Brand, First To File.

**INTRODUCTION**

Humans have different intellectual capacities to process their thoughts, and those thoughts create things in the form of ideas or ideas and imagination. This form of idea or concept is then referred to as Intellectual Property Rights (IPR).<sup>1</sup> A trademark is an inseparable part of IPR, meaning that trademark rights originate from discoveries in other parts of IPR, for example copyright. In a brand there are several parts of the creation, such as the logo or letter design. For manufacturers, a brand is a representation and good name for the company, nothing more than an element of business strategy.<sup>2</sup>

Business in the era of globalization is currently growing rapidly. The business world has a big influence on business development, especially for business people. The progress of the world of business, trade and marketing, both domestic and international, requires entrepreneurs or entrepreneurs to pay attention to the objects of their trade.<sup>3</sup> Because trade also contains economic aspects. IPR based on economic aspects has important value, part of the important value in IPR is the brand.<sup>4</sup> In the world of trade, the business sector in each business certainly has intellectual property that deserves to be protected.<sup>5</sup>

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<sup>1</sup> Darwance, Yokotani & Wenni Anggita, "Dasar-Dasar Pemikiran Perlindungan Hak Kekayaan Intelektual", *Progresif: Jurnal Hukum*, Vol 14 No.2, 2020, hal. 194.

<sup>2</sup> Zaenal Arifin & Muhammad Iqbal, "Perlindungan Hukum Terhadap Merek Terdaftar", *Jurnal Ius Constituendum*, Vol. 5 No. 1 (2020), hal. 49.

<sup>3</sup> Nur Febry Rahmadhiani & Catharina Ria Budiningsih, "Analisis Hukum Penghapusan Merek IKEA". *Jurnal Syiar Hukum UNISBA*, Vol 15 No. 2, 2017, hal 140.

<sup>4</sup> Yusuf Gunawan, "Penyelesaian Sengketa Merek Terdaftar Dan Merek Terkenal Dalam Mewujudkan Perlindungan Hukum", *IBLAM Law Review* Vol. 2 No. 02 (2022), hal.142.

<sup>5</sup> Wizna Gania Balqis & Budi Santoso, "Arti Penting Perlindungan Merek Terdaftar Bagi Komunitas Penghasil Produk Ekonomi Kreatif", *Jurnal Pembangunan Hukum Indonesia* Vol. 2 No 2 (2020), hal. 206.

Current business strategies no longer address the problem of how to market products and services well, improve quality to appropriate standards, and protect goods and service brands against other competitors.<sup>6</sup> Regarding the brand itself, it has been regulated in the regulations of the law, namely in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Article 1 paragraph 1 of the MIG Law explains about brands in the form of signs displayed graphically to differentiate goods and services produced during goods and services sales activities.<sup>7</sup> The state grants exclusive rights to registered trademark holders for a limited period of time for personal use of their trademark or to allow other parties to use it, called trademark rights.<sup>8</sup>

Brands receive protection as long as the brand owner registers their brand with the representative country, namely the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights.<sup>9</sup> The principle (good faith) of good faith on the part of the trademark registrant is the basis for the protection of registered trademark rights, so those who receive legal protection based on the provisions of the MIG Law are only trademark registrants who have good behavior.<sup>10</sup> The applicant has good intentions, namely registering his trademark properly and honestly, not imitating, piggybacking on or plagiarizing the popularity of other parties' trademarks.<sup>11</sup> In accordance with statutory regulations, parties who wish to use a trademark from a registered trademark must obtain permission from the owner of the registered trademark with a written agreement, this is regulated in the MIG Law Article 1 paragraph 18.<sup>12</sup>

There has been a problem in the dispute in Decision Number 242 K/Pdt.Sus-HKI/2022 that the mark "ARRA + LUKISAN" (IDM000638551) belonging to the Plaintiff and COCO ARRA (IDM000640197) belonging to the Defendant registered with the DJKI are substantially similar to the ARRA + Mark PAINTING belongs to Sugeng Hariyadi, the Defendant's trademark was registered based on bad faith. Where business competition should be based on good faith. This action has created bad business competition.

### Formulation of the problem

Based on the background explanation of the problem above, the problem formulation is obtained:

1. How is the first to file principle viewed from Law Number 20 of 2016 concerning Trademarks and Geographical Indications?
2. What is the legal protection for the first registrant (first to file) in the case of Decision Number 242 K/Pdt.Sus-HKI/2022?

### RESEARCH METHODS

This research article applies normative juridical research methods by examining library materials, namely primary and secondary legal materials.<sup>13</sup> The data collection technique uses library research, by collecting data and information or legal materials related to the substance of the research. After the legal materials are collected, analysis is carried out and appropriate conclusions are drawn regarding the problems contained in the problem formulation. This research applies data analysis techniques using deductive logic. This conclusion is based on an analysis of the trademark dispute between ARRA DAN

<sup>6</sup> Zaenal Arifin & Muhammad Iqbal, "Perlindungan Hukum Terhadap Merek Terdaftar", Jurnal Ius Constituendum, Vol. 5 No. 1 (2020), hal.49-50.

<sup>7</sup> Pasal 1 ayat 1 Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis.

<sup>8</sup> Pasal 1 ayat 5 Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis.

<sup>9</sup> Yusuf Gunawan, "Penyelesaian Sengketa Merek Terdaftar Dan Merek Terkenal Dalam Mewujudkan Perlindungan Hukum", IBLAM Law Review Vol. 2 No. 02 2022 Hal 141-164.

<sup>10</sup> Abdulkadir Muhammad, 2010, *Hukum Perusahaan Indonesia*, Bandung: Citra Aditya Bakti, hal 418.

<sup>11</sup> Rahmi Jened, 2015, *Hukum Merek (Trademark Law) Dalam Era Globalisasi dan Integrasi Ekonomi*, Jakarta: Kencana, hal 133.

<sup>12</sup> Pasal 1 ayat 18 Undang-Undang Nomor 20 Tahun 2016 Tentang Merek dan Indikasi Geografis.

<sup>13</sup> Khudzaifah Dimiyati & Kelik Wardiono, 2004, *Metode Penelitian Hukum*, Surakarta: Fakultas Hukum UMS, hal. 4.

LUKISAN and COCO ARRA which has become a court decision and has permanent legal force. This brand dispute will be analyzed according to existing regulations, from a brand law perspective in order to understand its essence and intent in resolving the legal problems discussed in this research.

## RESULTS AND DISCUSSION

The MIG Law is the newest law regarding brands in Indonesia. According to Satjipto Raharjo, legal protection is the protection of human rights (HAM) given to people who have been harmed by other people, to obtain rights guaranteed by law.<sup>14</sup> Legal protection relating to brands is usually attempted after a dispute occurs, one of which is through a civil lawsuit. One of the trademark disputes that has been filed with a civil lawsuit in the district court is the brand "ARRA + LUKISAN" with the brand "COCO ARRA". These trademark disputes are explained below.

Sugeng Hariyadi is the owner and first registrant of the "ARRA + LUKISAN" brand who sued Mohammed Naji Mohammed Bageri as the owner of the "COCO ARRA" brand. The trademark owned by the Defendant is substantially similar to the trademark "ARRA + LUKISAN" and was registered in bad faith. Apart from that, there is a Co-Defendant, namely (DJKI), to declare the cancellation of the trademark registration in the Defendant's name by removing the trademark registration from the general register of trademarks with all the legal consequences.

Sugeng Hariyadi is the sole owner and the first party to register his brand at the DJKI office, registered with certificate number IDM000638551 registration date 31 January 2019 class of goods 4 types of goods: briquettes, coal briquettes, coal, wood briquettes, coconut shell briquettes, pear briquettes (fuel). The Plaintiff is aware that the Defendant has registered the mark "COCO ARRA" at the Co-Defendant's office with details IDM000640197, registration date March 26 2019, class of goods 4, type of goods: charcoal.

The following is an attached image of the logo between the brands "ARRA + LUKISAN" and "COCO ARRA"



Image of the logo "ARRA + LUKISAN" and "COCO ARRA"<sup>15</sup>

It is clear from the comparison table that the Defendant's "COCO ARRA" brand has essentially the same appearance as the Plaintiff's "ARRA + LUKISAN" brand, which is explained below:

- The style of writing the words "ARRA" and "COCO ARRA" looks the same, namely using white capital letters.
- There is a logo/painting with a picture of a "world map" above the writing of each brand.
- There is a picture of "charcoal" in the form of a neatly arranged box of 3 (three) pieces with the same color (bright red) which is printed on the Plaintiff's "ARRA + LUKISAN" brand and the Defendant's "COCO ARRA".

If we look closely at the dominant element in the two marks, it is found in the sound of the word "ARRA", so remembering that the dominant element in the form of the word "ARRA" is phonetically the

<sup>14</sup> Satjipto Raharjo, Ilmu Hukum, PT. Citra Aditya Bakti, Bandung, 2000, hlm.53

<sup>15</sup> Logo Merek diambil dari Direktori Putusan Mahkamah Agung Republik Indonesia Putusan Nomor 70/Pdt.Sus-HKI/Merek/2019/PN Niaga.Jkt.Pst

same, so according to the law both marks contain similarities in essence, therefore they should be The Defendant's "COCO ARRA" must be cancelled.

Also, the Defendant in his duplicate can be seen in Decision Number 70/Pdt.Sus-HKI/Merek/2019/PN Niaga.Jkt.Pst that the two marks have differences, including in the shape, method of placement, appearance and sound of the words in both that brand. With no similarities between the two brands, it is certain that the two brands can be registered side by side and will not deceive or mislead consumers. The Defendant's trademark with number IDM000640197 cannot be categorized as a trademark registered in bad faith because it has gone through formal and substantive examination, meets the elements of distinguishing power, and has received ministerial approval for a certificate to be issued.

At the trial at the Central Jakarta Commercial District Court, it can be seen from Decision Number 70/Pdt.Sus-HKI/Merek/2019 that the Panel of Judges rejected the claim for trademark cancellation filed by the Plaintiff in its entirety, considering that the Plaintiff was unable to prove the argument of his claim that the Defendant had registered the mark. based on bad faith and also cannot prove that there is a substantial similarity between the Plaintiff's "ARRA + LUKISAN" brand and the Defendant's "COCO ARRA". Because the lawsuit submitted by the plaintiff was rejected by the Panel of Judges at the Central Jakarta Commercial District Court level, the Plaintiff filed a cassation at the Supreme Court where the cassation was stated in Decision Number 242 K/Pdt.Sus-HKI.

#### **1. The first to file principle is reviewed from Law Number 20 of 2016**

The Constitutive Stelsel principle adopted in trademark registration in Indonesia is the principle called first to file, where trademark registration is granted to the first person who submits an application for trademark registration and the state does not grant registration for a trademark by not registering a similar trademark to a previously applied trademark. on similar goods or services by other parties.<sup>16</sup>

This statement is as stated in Article 3 of the MIG Law where trademark rights are obtained after trademark registration. Meanwhile, the first to file system, namely trademark registration, is given to the first person who submits an application for trademark registration. Registration of a trademark is one form of protection under the Trademark Law. The first to file principle is that the first registrant obtains the rights to the trademark and obtains exclusive rights, meaning that no one can use the trademark for commercial purposes for the exclusive right without permission from the holder or owner of the trademark rights.

Trademark registration carried out by the trademark owner gives the exclusive right to use the trademark himself or allow others to use the trademark based on an agreement for a limited period of ten years, which can be extended every 10 years.<sup>17</sup> Prevention of violations of registered trademark applications can be implemented through the first to file principle. This principle focuses protection on trademark rights owners who have good intentions or who were previously registered as first-time applicants.<sup>18</sup>

The trademark registration system has changed, namely a declarative or first to use system to a constitutive or first to file system. The change from a declarative system to a constitutive system is contained in the general explanation of the 1992 Trademark Law because the constitutive system guarantees legal certainty better than the declarative system. One of the changes to the revision of the Trademark Law is regarding legal certainty, where originally the Trademark Law followed a declarative or first to use system, providing legal protection for the party who used the mark for the first time, but regarding this the guarantee of legal certainty is still lacking and can cause problems if

<sup>16</sup> Nurhasanah Sudaryat, 2010, *Hak Kekayaan Intelektual*, Bandung: Oase Media, hal 68.

<sup>17</sup> Angga Panggih Pangestu, *Pelaksanaan Prinsip First To File Dalam Perlindungan Merek Asing Yoshimura Di Indonesia*, Jurnal Ilmiah Universitas Mataram Fakultas Hukum Universitas Mataram, hal. Iv.

<sup>18</sup> Humaedi Abdurahman, "Asas First To File *Principal* Dalam Kasus Hak Merek Nama Terkenal Benu", *AKTUALITA*, Vol.3 No. 1, 2020, hal. 431.

there is a dispute.<sup>19</sup>

Meanwhile, in the constitutive system (first to file), legal protection is given to people who register their marks in good faith with DJKI. One form of protection under the Trademark Law is the registration of a mark, because the first to file principle is used in Indonesia, that is, the person entitled to the mark is the first registered party who has the rights to the mark and obtains exclusive rights so that other parties are not permitted to use the mark for commercial purposes without permission from the trademark rights owner.<sup>21</sup>

## 2. Legal protection for the first registrant (first to file) in the case of Decision Number 242 K/Pdt.Sus-HKI/2022

As an element of IPR law, brands are protected in their application and use. In order for a brand to receive protection, the brand needs to be registered first with DJKI. Registration is important to obtain trademark rights. Trademark legal protection will be obtained after trademark registration in accordance with the provisions of Article 3 of the MIG Law.

There are two types of legal protection, namely preventive and repressive legal protection. Preventive legal protection is prevention so that legal violations do not occur. Repressive legal protection aims to deal with every violation that occurs.<sup>22</sup> Legal protection under the first to file principle system is provided to owners of registered trademark rights 'in good faith' in a preventive or repressive manner. Preventive legal protection is implemented by registering a trademark, and repressive legal protection is provided if there is a trademark violation in a civil lawsuit or criminal lawsuit by reducing the opportunity for alternative resolutions outside of court.<sup>23</sup>

If a party without rights or unlawfully uses a mark that has similarities in essence or in its entirety to similar products and services that have been registered, the owner of the registered mark can file a claim for compensation and/or termination of all activities and actions related to the implementation of the mark to the Commercial Court.<sup>24</sup>

In the trial at the Central Jakarta Commercial District Court, it can be seen from Decision Number 70/Pdt.Sus-HKI/Merek/2019 that the Panel of Judges rejected the trademark cancellation lawsuit submitted by the Plaintiff in its entirety, on the basis that the Plaintiff could not or failed to prove the argument of the claim that the Defendant registering the mark was based on bad faith and was also unable to justify the existence of substantial similarities between the mark "ARRA + LUKISAN" belonging to the Plaintiff and "COCO ARRA" belonging to the Defendant. Because the lawsuit submitted by the plaintiff was rejected by the Panel of Judges at the Central Jakarta Commercial District Court level, the Plaintiff filed a cassation with the Supreme Court (MA) where the cassation was stated in decision Number 242 K/Pdt.Sus-HKI.

Based on the cassation memorandum received on March 30 2021. In the cassation memorandum, the cassation respondent did not submit a counter cassation memorandum. The Supreme Court's opinion is that these reasons can be justified, after examining the Cassation

<sup>19</sup> Angga Panggih Pangestu, *Pelaksanaan Prinsip First To File Dalam Perlindungan Merek Asing Yoshimura Di Indonesia*, Jurnal Ilmiah Universitas Mataram Fakultas Hukum Universitas Mataram, hal. iv.

<sup>20</sup> Ibid.

<sup>21</sup> Rizal Nugraha, Hana Krisnamurti, "Sengketa Merek Terdaftar Di Direktorat Jenderal Hak Kekayaan Intelektual Berdasarkan Undang-Undang Nomor 20 Tahun 2016 Tentang Merek dan Indikasi Geografis", Wacana Paramarta: Jurnal Ilmu Hukum, Vol 18, No 2, 2019, hal 97.

<sup>22</sup> Dendy Widya Chandra, Budi Santoso & Novira Maharani Sukma, "Perlindungan Merek Terkenal Asing yang Belum Terdaftar di Indonesia (Studi Kasus Sengketa Merek KEEN)", NOTARIUS, Vol. 13 No. 1 (2020), hal 316.

<sup>23</sup> Syahriyah Semaun, "Perlindungan Hukum Terhadap Merek Perdagangan Barang Dan Jasa", Jurnal Hukum Diktum, Volume 14, Nomor 1, Juli 2016: hal 118.

<sup>24</sup> Rizal Nugraha, Hana Krisnamurti, "Sengketa Merek Terdaftar Di Direktorat Jenderal Hak Kekayaan Intelektual Berdasarkan Undang-Undang Nomor 20 Tahun 2016 Tentang Merek dan Indikasi Geografis", Wacana Paramarta: Jurnal Ilmu Hukum, Vol 18, No 2, 2019, hal 99

Memorandum dated March 30 2021 and linking it to the considerations of *Judex Facti* (the judge who examined the facts of the trial) in this case the Commercial Court at the Central Jakarta District Court had wrongly applied the law in the *a quo* case in particular in implementing the MIG Law, taking into account:

The Plaintiff's "ARRA + LUKISAN" brand was previously registered with the Co-Defendant on January 31 2019 with goods class 4 (four) and was then registered with certificate number IDM000638551 while the Defendant's mark was registered on March 26 2019 with goods class 4 (four) with registration number IDM000640197 so that the plaintiff is first to file, in fact, when compared, the dominant element is the capital letters ARRA, which phonetically and conceptually come from the word ARRA, meaning charcoal, this can deceive consumers which can harm the plaintiff economically and reputationally.

Based on these considerations, the Supreme Court is of the opinion that there are sufficient reasons to grant the cassation petition from cassation applicant Sugeng Hariyadi and cancel the Commercial Court Decision at the Central Jakarta District Court Number 70/Pdt.Sus-HKI/Merek/2019/PN Niaga Jkt. Pst March 4 2021. This decision is a decision that already has permanent legal force so that no further legal action can be submitted.

The result of the writing is in the form of legal protection obtained by the party who first registered their brand at DJKI through cassation decision Number 242K/Pdt. Sus-HKI/2022 which cancels the Defendant's trademark, namely the "COCO ARRA" trademark with registration number IDM000640197 in class 4 with a type of charcoal product registered with the DJKI on March 26 2019.

## CONCLUSION AND SUGGESTION

### Conclusion

The trademark registration system in Indonesia based on the MIG Law follows a constitutional system on the principle of "first to file", the first registrant obtains protection and exclusive rights for the trademark. The first to file system can be understood as meaning that trademark registration is given to those who register their trademark first and in good faith. In the dispute over the marks "ARRA + LUKISAN" and "COCO ARRA" where the first registrant has the right to obtain legal protection as regulated in article 3 of the MIG Law which states that the rights to a mark are obtained after the mark is registered and in accordance with the first to file principle registration system.

### Suggestion

1. The government can provide outreach regarding the requirements for trademark registration and the importance of registering a trademark in order to obtain protection.
2. DJKI must be more thorough and selective in checking trademark registration applications so that there are no longer any disputes regarding the similarity of brands in essence, for example the brands "ARRA + LUKISAN" and "COCO ARRA"

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