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**ANALYSIS OF THE SUPREME COURT RULING 557 K/PDT.SUS-HKI/2015 RELATED TO INTELLECTUAL  
PROPERTY DISPUTES IN INDONESIA**

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**ABSTRACT**

A brand can be thought of as the image of a company or product, and can include elements such as a logo, slogan, colors, sounds, and even scents associated with the brand. One of the trademark cases involved French Cardin, who discovered that the same trademark as his was registered, namely the Pierre Cardin trademark and logo, owned by an Indonesian businessman named Alexander Satryo Wibowo, for the same type of trademark. Class 3 cosmetic products, especially Pierre Cardin perfume. The research uses normative legal research which focuses on legal studies from an internal perspective with the research object focusing on legal norms. To explore the legal issues being researched, several approaches are used, namely the statutory approach, case approach, historical approach and conceptual approach. The Pierre Cardin (France) brand is registered with the Directorate General of Intellectual Property with registration number IDM000192198. Apart from that, the brand was renewed with the number R002008005130 through an extension application submitted by Pierre Cardin, a French citizen, who was authorized to an IPR consultant named Ludyanto, SH, MH, MM, WNI, from the Drewmarks Intellectual Property Services Office, Jakarta. On December 15 2008. In this decision, the Supreme Court confirmed that the Pierre Cardin mark had been legally registered in Indonesia by Pierre Cardin Indonesia and had received legal protection since its registration in 1997. The registration of the mark had been carried out in accordance with the provisions of the Trademark Law and Geographical Indications, as well as their implementing regulations. Therefore, Pierre Cardin Indonesia has exclusive rights to use the mark in Indonesia.

**Keywords:** Dispute, Brand, Decision**INTRODUCTION**

A brand is a symbol, name or design used to identify products or services by a particular company or manufacturer. In a broader sense, a brand can be thought of as the image of a company or product, and can include elements such as logos, slogans, colors, sounds and even scents associated with the brand.

In the business world, a brand is a very valuable asset, because it can help differentiate a product or service from its competitors, increase brand awareness and company credibility, and strengthen the emotional bond between the company and consumers.

The use of brands has existed since ancient times, when traders used signs and symbols to mark their products. However, the modern brand concept only developed in the 19th century.

The industrial revolution allowed manufacturers to produce goods in large quantities and distribute them throughout the world. At that time, brands began to be used to differentiate these products from their competitors, and to strengthen brand image and brand awareness.

Intellectual property is a creative creation owned by a person or group. IPR includes copyright, patents, trademarks, trade secrets, industrial designs, as well as database protection and integrated circuit topography.

Intellectual property protection aims to encourage innovation and creativity as well as provide respect and protection to creators, owners and users of intellectual property. Copyright is a right that protects creative works such as books, music, art, films and computer programs.

The inventor is granted a special right to control the reproduction, distribution and publication of the work for a certain period of time.

A patent is an IPR that gives the owner exclusive rights to produce, sell or import an invention for a certain period of time. Patents protect inventions that are the result of inventive activity and can be applied to industry.

Intellectual property protection has an important role in encouraging innovation and creativity as well as increasing a country's competitiveness and economic growth. With the protection of intellectual property rights, creators and owners of intellectual property will feel more secure and respected, which will encourage more creativity and innovation.

One of the trademark cases involved French Cardin, who discovered that the same trademark as his was registered, namely the Pierre Cardin trademark and logo, owned by an Indonesian businessman named Alexander Satrio Wibowo, for the same type of trademark. Class 3 cosmetic products, especially Pierre Cardin perfume. Therefore, Cardin (France) filed a lawsuit at the Central Jakarta Commercial Court. On June 9 2015, the Central Jakarta Commercial Court rejected Cardin's (France) case. The jury found that the Pierre Cardin (Indonesia) trademark and its logo were not words or logos commonly used in Indonesia and had similar pronunciations to the Pierre Cardin (France) trademark.

Pierre Cardin (France) appealed to the Supreme Court after the Court of First Instance rejected his lawsuit. However, the appeal was rejected by the Supreme Court through Decree 557 K/Pdt.Sus-HKI/2015.

Judex juris MA assessed that the District Court applied the correct law if at the time of registration of the Pierre Cardin mark belonging to Alexander Satrio Wibowo, the Pierre Cardin mark belonging to Pierre Cardin (France) was not registered and known to Indonesians. audience Thus, the registration of the Pierre Cardin (Indonesia) trademark can be accepted according to the law on the first application principle. However, Judex juris does not take into account that the Pierre Cardin (France) trademark was known and traded in various countries long before the Pierre Cardin (Indonesia) trademark was registered at the Trademark Office.

## RESEARCH METHODS

The research uses normative law, namely focusing on legal research from an internal perspective through research objects oriented to legal norms.

Several approaches are used in examining problems, namely the legal approach, case approach, historical approach and conceptual approach. Supporting sources include books, journal articles and court decisions related to the subject matter discussed.

A historical approach to legal research is carried out by examining the background and development of legislation regarding the issues discussed (Marzuki, 2016: 134).

In this ongoing discussion, the historical approach is important because it is necessary to obtain information about the Pierre Cardin (Indonesia) brand which was registered at the Patent and Trademark Office at the time of acquiring the trademark rights in 1977. non-declarative (used first).

Research legal materials use several types of legal materials, namely primary legal materials, secondary legal materials and non-legal materials. The main legal materials used are the Paris Convention of Trade Unions for the Protection of Industrial Property, TRIPS Agreement, Common Recommendations on Regulations for the Protection of Famous Brands, Law No.21 of 1961 concerning Marks and Trademarks, Law No.15 / 1961 regarding Brands, Supreme Court Decision No. 557 K/Pdt.Sus-HKI/2015 and Central Jakarta District Court Commercial Court Decision No. 15/Pdt.SusBrand/2015/PN.Niaga.Jkt.Pst.

Legal secondary materials such as textbooks, legal dictionaries and legal journals are also used. As non-legal material, the book Big Indonesian Dictionary and Marketing Management is used which is related to the research topic.

Collecting legal materials uses the method of searching and collecting legal materials related to the discussion and grouping them according to sections. The collected legal materials are then studied in analyzing a problem.

The research uses legal material analysis techniques known as prescriptive techniques. The technique of evaluating legal facts or events to determine whether something is true, false, or legal.

This was done to assess whether the judge's opinion in the Pierre Cardin trademark case was in accordance with applicable trademark law. If the judge's discretion is deemed insufficient, advice is given on what the judge should consider.

## RESULTS AND DISCUSSION

### Judge's Consideration

#### The Supreme Court has the following views:

That the main dispute in the lawsuit relates to a request from the Cassation Petitioner to cancel the PIERRE CARDIN class 03 Mark from the general register of Marks and to announce it in the official gazette of the Ministry of Patents and Trademarks, Ministry of Trademarks, with the justification that the use and registration of the Mark was carried out in bad faith, namely imitating and plagiarizing the popularity of the Plaintiff's Mark which has been registered in various countries;

That the Cassation Respondent/Defendant, who registered the mark on July 29 1977, is recognized as the first user and registrar of the PIERRE CARDIN mark in Indonesia based on the evidence. therefore, the registration is basically acceptable;

That it turns out that the mark mentioned by the Plaintiff and the mark registered in the name of the Defendant are different because the Respondent has a distinction by always including the words Product by PT. Gudang Rejeki as a differentiator, in addition to other information as an Indonesian product, to protect trade commodities for the PIERRE CARDIN brand. hence supporting the fundamental idea that brands are not dependent on the success of other brands;

Thus, the registration of the mark does not intend to infringe the Plaintiff's mark, and therefore based on Law 15/2001, the registration of the mark cannot be considered to have been carried out in bad faith;

That the registration of Defendant I's PIERRE CARDIN mark has complied with applicable legal procedures, was carried out in accordance with applicable laws and regulations, and was carried out in accordance with first to file provisions;

#### Considering that in the deliberations of the Panel of Judges there was a dissenting opinion from one of the Supreme Court Justices, with the following opinion:

Considering, that the reasons for the cassation of the Petitioner's cassation by the Plaintiff can be justified, because based on the existing facts Judex Facti does not provide sufficient consideration;

Considering, that based on facts, things have been proven, namely:

1. That it is true that the Plaintiff's real name is "PIERRE CARDIN";
2. That it is true that the Plaintiff's real name is the name used as the Plaintiff's trademark with the "Pierre Cardin" logo, which is well known and registered in various countries;
3. Whereas it is common knowledge that the "Pierre Cardin" mark is a trademark that is known and well-known in various countries;

Considering that, based on the matters above, the application and cancellation of the PIERRE CARDIN mark submitted by the Plaintiff cannot be accepted, especially since this lawsuit is the second application for cancellation after the rejection of the first application by Judex Juris on 22 December 1981;

Remembering that a product trademark is more than just a name or writing, it can also have meaning and intent that is directly related to the product in question. Apart from that, the brand or name written on a product can also be a characteristic or distinction of where and which country the product comes from. In this case, the Plaintiff uses the original name of the product, "Pierre Cardin," as the name or writing, which is a trademark for the product. Even though the product name or writing used by the

Plaintiff is also "Pierre Cardin" which is proven to be identical in concept, it is also shows that the two names and writings are not in Indonesian language or writing, but in Indonesian. foreign language, namely the language of the plaintiff's country of origin;

Considering that the registration of the mark "Pierre Cardin" by the Defendant under the pretext of being the first user and having been registered in Indonesia cannot be justified based on the considerations mentioned above, without having to prove that there was bad faith in terms of ethics and morals, because it has been proven that the Defendant registered the mark " Pierre Cardin" in bad faith by piggybacking, imitating or copying many of the "Pierre Cardin" marks which are owned simultaneously with the Plaintiff's real name which have been previously registered in their country of origin and in various countries, and because from the start there was no evidence of cooperation between the Plaintiff and the Defendant;

Considering, based on the considerations above, it turns out that the Plaintiff has succeeded in proving the truth of the arguments in his claim, whereas the Defendant has not succeeded in proving the truth of his arguments in denial. For this reason, the cassation petition can be granted, by canceling the decision of the Judex Facti (Commercial Court at the Central Jakarta District Court), adjudicating itself; "grant" the Plaintiff's lawsuit;

Considering, that because there were differences of opinion within the Panel of Judges and efforts had been made seriously but no consensus was reached, then in accordance with Article 182 paragraph (6) of the Criminal Procedure Code, the Panel of Judges, after deliberation, took a decision by majority vote, namely rejecting the cassation petition from the Cassation Petitioner: PIERRE CARDIN, said;

As a result of the factors mentioned above, it has been decided that the decision of the Commercial Court at the Central Jakarta District Court in this case does not conflict with the law, so that the cassation petition submitted by the Cassation Petitioner "Pierre Cardin" must be rejected;

Considering that the Cassation Applicant is obliged to pay the court costs at the cassation level because the cassation petition is rejected;

#### **Legal Effects Of The Decision For The Parties**

Supreme Court Decision No. 557 K/PDT.SUS-HKI/2015 which rejects the appeal of the owner of the famous French trademark Pierre Cardin against Pierre Cardin Indonesia, which has significant legal implications.

The legal consequence is that Pierre Cardin Indonesia still has the rights to the Pierre Cardin trademark in Indonesia and can continue to use it even though there is a claim from Pierre Cardin France as the owner of the global brand.

In this decision, the Supreme Court confirmed that Pierre Cardin Indonesia had legally registered the Pierre Cardin mark in Indonesia and obtained legal protection through its registration in 1997. Thus, Pierre Cardin Indonesia has the exclusive right to use the mark in Indonesia.

Meanwhile, Pierre Cardin France cannot claim rights to the Pierre Cardin brand in Indonesia, because it does not have a registered brand in Indonesia and does not have a license or agreement with Pierre Cardin Indonesia. Even though Pierre Cardin France is the owner of the global brand, its rights only apply in countries where the brand is registered or registered internationally through the PCT (Patent Cooperation Treaty).

The legal consequence of this decision is that Pierre Cardin Indonesia can still use the Pierre Cardin brand in Indonesia without any obstacles from Pierre Cardin France. However, it should be noted that the Supreme Court decision only applies to Indonesia and does not apply to other countries.

As a result of this decision, the Pierre Cardin Indonesia trademark must still obtain legal protection for a trademark in other countries where the trademark can be used or is intended to be used.

## CONCLUSION AND SUGGESTION

### Conclusion

In this decision, it was stated that as discussed above, the cassation request from the owner of the famous brand Pierre Cardin France was rejected against Pierre Cardin Indonesia. This is because there is no proven violation of intellectual property rights by Pierre Cardin Indonesia in registering its trademark. Nevertheless, this decision still shows the importance of protecting intellectual property rights in avoiding unfair business competition, especially in the context of globalization and free trade.

In conclusion, this decision confirms that when submitting a trademark application, you must pay attention to and comply with the applicable provisions in the Intellectual Property Rights Law and avoid violating other people's property rights. Therefore, trademark registration must be carried out carefully and thoroughly to avoid lawsuits that could harm the company.

### Suggestion

- 1) Owners of well-known foreign trademarks who wish to register their trademarks in Indonesia are advised to register their trademark from the start. This will minimize the risk of actions carried out by irresponsible parties.
- 2) For brand owners in Indonesia, it is recommended to pay attention to the applicable provisions in the Trademark Law and the Goods and Services Classification Index issued by the Ministry of Law and Human Rights. This will facilitate the trademark registration process and minimize the risk of trademark piracy.
- 3) In the event of a trademark dispute between a well-known foreign trademark owner and a trademark owner in Indonesia, it is recommended to immediately resolve it amicably or by alternative means that do not involve litigation in court. This will be more beneficial for both parties and can speed up the resolution of brand disputes.

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