
**Trademark Dispute Resolution in Indonesia: Case Study of the Dispute between the Trademarks
"Pure Kids" and "Pure Baby"**

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ABSTRACT

Brands can result in unhealthy trade competition because similar products can be distinguished by their origin, quality and guarantee that the product is original. So efforts to provide protection for brand rights are only given to business actors or companies whose brands already exist. For brands that are already available after and proven to imitate or plagiarize brands that have already been established. Therefore, there will be an opinion regarding sanctions for cancellation and deletion of the brand in accordance with Article 76 to Article 79 of Law Number 20 of 2016. The problem in this research is that there are similarities in essence or overall in the Pure Kids brand and the Pure Baby brand which results in losses for one of the parties. This research will also discuss brand protection in Indonesia. Researcher this is using normative juridical research methods which means that in this research it refers to legal norms contained in statutory regulations. The resolution of the trademark problem between the Pure Kids brand and the Pure Baby brand can be done by filing a lawsuit with the Commercial Court in accordance with Article 83 of Law Number 20 of 2016. The results of this research show that the Brand pricing in Indonesia is by system first to file as well as the Regional Applicant Brands must act in good faith. In the dispute over the Pure Kids brand with Pure Baby, the judge granted the Plaintiff's lawsuit because the Plaintiff's brand was already established as well as the Defendant's brand and many similarities with the Plaintiff's trademark.

Keywords: Brand Registration, Legal Protection, Trademarks

INTRODUCTION

Intellectual Property Rights or often called IPR are property rights that arise from the birth of human intellectual abilities which must be protected.¹ Therefore, with intellectual abilities that require a sacrifice in the form of energy, thoughts, time, and even quite a lot of money to produce intellectual works that can be enjoyed and have economic value, then this sacrifice should be appreciated. A brand is a type of Intellectual Property.

A brand is an identifying mark of a product and can be the distinctiveness or difference between the goods and goods produced by other people. A brand is also a right that arises from human intellectual abilities.² Due to increasingly widespread trade competition, it is not surprising that brands have an important role as a sign of a particular product among the public.

Brands can result in unhealthy trade competition because similar products can be distinguished by their origin, quality and guarantee that the product is original. So efforts to provide protection for brand rights are only given to business actors and companies whose brands already exist. Brand piracy is an act that is very detrimental to the brand owner, and even detrimental to consumers. Some of the causes of brand infringement in the world of trade that often occur in Indonesia are:

Lack of public understanding regarding the prohibition of brand piracy.

¹ Budi Agus Riswandi dan M Syamsudin, 2005, Hak Kekayaan Intelektual dan Budaya Hukum, PT Raja Grafindo Persada, Jakarta, h, 5

² Harsono Adisumarto, Hak Milik Intelektual Khususnya Hukum Paten dan Merek, (Jakarta, Akademika Pressindo, 1990), hlm. 19

Many people still choose to buy goods with fake brands and at cheaper prices because of economic conditions.

Lack of attention to the quality of a product.

The issue of brand piracy must be resolved immediately with legal measures to protect brands as human intellectual works. Protection of brand rights has been more regulated in Law no. 20/2016 starting from regulating the system, what are the requirements for submitting a trademark application to the rules. The method. Then legal protection in Indonesia for trademarks is explained in Article 35 paragraph (1) Law no. 20/2016 concerning Brands and Geographical Indications. It explained that the Brand is registered and has legal protection for a period of 10 years from the date of receipt.³

Brand protection period is extended by submitting application for trademark extension within 6 months before the end of the trademark protection period. It is subject to a fee. The sanctions for trademark disputes have been confirmed, apart from the sanctions for payment of compensation, there are also criminal sanctions.

On IPR especially for brands, there are various legal cases, one of which is a case between PT. ANTARMITRA SEMBADA as the owner of the "PURE KIDS" brand with PT. BOGAMULIA NAGADA as the owner of the "PURE BABY" brand as stated in Court decision Number: 72/Pdt.Sus-Merek/2019/PN Niaga Central Jakarta. In the lawsuit PT. ANTARMITRA SEMBADA as the plaintiff and owner of the "PURE KIDS" brand explained that the "PURE BABY" brand owned by PT. BOGAMULIA NAGADA as the defendant was similar in essence and/or in its entirety to the "PURE KIDS" brand. The "PURE KIDS" brand and the "PURE WIPES" brand are available ahead of time, resulting in losses in a way material and immaterial to the plaintiff as user and user of the trademark.

Based on the background above, the problems can be found as follows:

How is Trademark legal protection in Indonesia?

How is the trademark dispute resolved in the case between the brands "Pure Kids" and "Pure Baby"?

RESEARCH METHODS

Researcher this is using normative juridical research methods which means that in this research it refers to legal norms contained in statutory regulations. To get in the organization being sought in this research also uses several approaches such as a statutory approach which refers to Law no. 20/2016 Concerning Brands and Geographical Indications and the case approach is carried out by examining cases that are currently being faced and have become court decisions that have permanent legal force, as in court decision no. 72/Pdt.Sus-Merek/2019/PN Niaga Central Jakarta regarding the trademark dispute between the brands "Pure Kids" and "Pure baby".

RESULTS AND DISCUSSION

Trademark Legal Protection in Indonesia

Is brand bed marka in an item which can be in the form of images, logos, names, words, letters, numbers, color arrangements, in 2-dimensional and/or 3-dimensional form, or a combination of 2 (two) or more these elements.⁴ Business actors create brands with the aim of differentiating the goods and/services they produce. Apart from that, consumers can also judge whether the quality of a product is good or not through the brand made by the manufacturer. Brands are also the result of intellectual work that has economic value and plays a role in trade activities, both individual and company-owned businesses.

The current increasingly widespread trade competition does not rule out the possibility that brands

³ Sudargo Gautama dan Rizawanto Winata, 2012, Undang-Undang Merek Baru, PT. Citra Aditya Bakti, Bandung, h. 47.

⁴ Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis, Pasal 1 ayat (1)

that are already well-known and of good quality will have the potential to be imitated. Therefore, regulations in law are needed to protect brands as human intellectual works and to provide action against perpetrators of legal violations in the field of brands. The importance of having regulations can also provide a sense of security for brand owners to use their brand more freely.

Protector and about trademark in Indonesia it is regulated in Law no. 20/2016 concerning Brands and Geographical Indications is. In order for a brand to receive legal protection then the brand owner must first target the brand to the Ministry of Law and Justice's DJKI. Later, the brand owner will get a certificate of the brand after it is officially available as the brand owner. Apart from that, Indonesia also implements "first to file" in the brand system. Brand rights or what can also be called pure brand rights at exclusion which means whoever is the business actor or the company that wins market the brand first and if the application is pending, if the request is granted, then the business actor or company gets the rights to the trademark that has been granted.

There are already brand disputes in Indonesia as existed for a long time and has given rise to various issues such as brand similarity, piracy of well-known brands, licensed brand status, and so on. We cannot currently limit trade competition and cannot estimate the number of foreign products entering the country. The brand of a product is also a company asset that can generate a lot of profits with good business management.

To realize law enforcement regarding brands is not enough only relying on special trademark laws, but also requires support from institutions or bodies in the field of branding. Legal protection of trademark absolutely granted by the government to holders and users of trademark rights to guarantee :⁵

Business certainty for producers; And

Attracting investors for foreign trademarks, while it is hoped that the legal protection given to local trademarks will one day develop in a way widespread internationally.

Dispute Resolution between the Brands "Pure Kids" and "Pure Baby"

Based on searches for the latest brand at the Directorate General of Intellectual Property Rights, the Pure Kids brand belongs to PT. Antarmitra Sembada has been established. The targets for class 3 and class 5 are:

No	Brand	Date of Dateftar	Penda Numberftaran	Class	Types of goods
1.	Pure Kids	May 23, 2008	IDM000231015	3	Suppliesapan for bleach and mwashlaundry needs, cleaning supplies, scrubbing and scraping.
2.	PUREKIDS	September 22, 2010	IDM000430264	3	Persedmeans for cleaning the body such as bath soap, shampoo, conditioner, hair oil, pavum, lotion, cosmetics, tissue.
3,	PUREKIDS	September 22, 2010	IDM000338679	5	Persedproducts for health such as medicines, balms, anti-mosquito or insect lotions.

⁵ Hery Firmansyah, Perlindungan Hukum Terhadap Merek, Yogyakarta, Pustaka Yustisia, 2011, hal 38

4.	PUREWIPES	July 16, 2010	IDM000329809	3	Persedgreat for wet wipes and cosmetics.
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Based on pendaftaran four brands in above can prove that the Plaintiffs is tetap or not fluctuating in use the word "Pure" first and as a differentiator from similar products sold by other parties.

In 2012 PT. Bogamulia Nagada also won market its brand at the Directorate General of Intellectual Property with the Pure Baby brand for classes 3 and 5, as follows:

No.	Brand	Date of Dateftar	Penda Numberftaran	Class	Types of goods
1.	Pure baby	January 27, 2012	IDM000598334	5	Health supplies such as various medicines, patches, balms, telon oil, vitamins, sanitary napkins, baby diapers.
2.	Pure baby	January 27, 2012	IDM000598335	3	Persedtools for cleaning the body and clothes such as bath soap, shampoo, conditioner, body lotion, clothes freshener, cosmetics, baby oil, hwater oil, wet wipes, detergent.
3.	Pure baby	October 24, 2012	IDM000598336	3	Persedaan for cleanliness of body and clothing such as soap, powder, shampo, conditioner, lotions, softeners, cosmetics, parvum, hair oil, toothpaste, mouth freshener, detergent, clothes freshener.
4.	Pure baby	October 24, 2012	IDM000598337	5	Persedfoods for health such as medicine, vitamins, massage oil, telon oil, anti-mosquito lotion, patches, wet wipes, sanitary napkins, baby diapers, milk for babies, milk for formula, antiseptic.

That based on the investigation of the Plaintiff who knows there is a against the Pure Baby brand and the Plaintiff strongly objected, so in this case they filed a lawsuit against PT. Bogamulia Nagada as owner of the Pure Baby brand. According to Article 83 of Law 20/2016 concerning Marks and Geographical Indications There are 2 types of lawsuit contents, namely:

In the form of compensation, and/or;

Penda termination the level of the brand in question.

This lawsuit is based on the Defendant's brand because it has similarities, similarities, and there are dominant elements in the word "Pure" like the Plaintiff's brand. Therefore, the panel of judges will compare the Pure Kids brand with the Pure Baby brand.

Based on the results of the brand comparison, the Panel of Judges was of the opinion that the Plaintiff's lawsuit should be granted and ordered the Defendant as the owner of the Pure Baby brand to cancel the mark with the Penda Numberftaran IDM000598334, Penda Numberftaran IDM000598335, Penda Numberfrate IDM000598336, and Penda Numberftaran IDM000598337, cancellation can be done after obtaining a copy of the decision from the Commercial Court regarding the dispute over the brand "pure baby", then removing the brand "pure baby" from the dafteral mark of the mark including the reasons and date of cancellation of the mark.

The following are the reasons why the lawsuit was granted Plaintiff:

The plaintiff is a criminal The first tar under the Pure Kids brand Penda Numberftaran IDM000231015, brand PUREKIDS Number Pendaftaran IDM000430264, brand PUREKIDS Number Pendaftaran IDM000338679, brand PUREWIPES Number Pendafrate IDM000329809.

The Plaintiff objected to the Defendant's brand, namely "Pure Baby", because it was essentially and/or completely similar to the "Pure Kids" brand. According to Article 21 paragraph 1 of Law Number 20 of 2016 concerning Trademarks, what is meant by "similarity in essence" is:

"similarity caused by the existence of a dominant element between one brand and another brand, giving the impression of similarities, both in terms of form, method placement, method writing or combination of elements, or sound similarities saying, contained in the brand".

The following is proof of the Plaintiff's objection:

The similarity of the placement of the word "Pure", the placement of this word in the Plaintiff's brand is always at the beginning, such as "Pure Kids", "PUREKIDS", "PUREWIPES". Likewise, the Defendant's brand also places the word at the beginning of the "Pure Baby" brand, so it is clear that there are similarities in the word PURE as the dominant element in the Plaintiff's and Defendant's marks.

The writing equation, in the Plaintiff's writing of the word "Pure", consists of 4riotfnamely riots P,U,R,E and this was also done by the Defendant to form the word "Pure" in his "pure baby" brand.

The sound of the word "Pure" is the same, there is absolutely no difference in the pronunciation of the word between the Plaintiff's mark and the Defendant's mark, whether the pronunciation is in English or Indonesian.

Defendant's propertyanthe brand "pure baby" is similar to the goods owned by the Plaintiff which have been stolenTarkanfirst with the brands Pure Kids, PUREKIDS, and PUREWIPES. Dengit exists the same type of goods, then the goods/products will be placed in the display case or placed with a group of similar products when on the market, this can clearly make consumers confused and can even lead to thinking about both brands in the market.onthey are indeed the same and produced by the same company.

Whereas based on the similarity in substance and/or in its entirety between the Pure Baby brand owned by the Defendant and the Pure Kids brand, the PUREKIDS brand, and the PUREWIPES brand owned by the Plaintiff in similar goods, it is proven that the Defendant obtained with drawing his brand on the basis of bad faith in accordance with the explanation of Article 21 paragraph 3 of Law no. 20/2016.

Based on the reasons above, it is clear that the Defendant has just been married if his brand has many similarities to the Plaintiff's brand which could mislead consumers, the Defendant must cancel the Pure Baby brand with the License Number.ftaran IDM000598334, Penda Number IDM000598335, Penda Numberfrate IDM000598336, and Penda Numberftaran IDM000598337, apart from that the Defendant must also pay court costs amounting toRp. 1,161,000 due to telAhgive rise to trademark disputes.

CONCLUSION AND SUGGESTION

Conclusion

Based on the research above, it can be concluded that every trademark is mandatory did a submit it to DJKI so that the brand receives legal protection and avoids imitation or plagiarism of the brand by other parties. In Law Number 20 of 2016 concerning Marks and Geographical Indications is It also explains

the sanctions regarding brand cancellation due to existing brand plagiarism.

Penda system Brand v pricing in Indonesia is by system *first to file* which means pendaftar gets first the brand will receive protection, however, according to Article 21 of Law No. 20 of 2016, it is explained to the Applicant Brands must act in good faith. So for pendaftar the first brand to receive protection for its trademark rights is registrant in good faith.

Based on the trademark dispute between the Plaintiff's Pure Kids brand and the Defendant's Pure Baby brand, the Judge decided to grant the Plaintiff's lawsuit based on the legal reasons found. Therefore, the Defendant must cancel his trademark and pay the specified court costs.

Suggestion

To minimize brand disputes in the current trading era, it is necessary to have strict regulations regarding trademark protection and the need to improve the performance of DJKI in terms of thoroughness in examining penda applications. Trademark challenges from every business actor or company because there are more and more cases of trademark disputes regarding trademarks which is not in accordance with the provisions of Law Number 20 of 2016.

REFERENCES

1. Asyhadie, H. Z. (2020). Hukum Keperdataan dalam Perspektif Hukum Nasional KUH Perdata (BW) Hukum Islam dan Hukum Adat. Rajawali Pers.
2. Dianggoro, W. (1997). Pembaharuan Undang-Undang Merek dan Dampaknya Bagi Dunia Bisnis. Jakarta: Yayasan Perkembangan Hukum Bisnis.
3. Djumhana, M., & Djubaedillah, R. (2014). Hak Milik Intelektual, Bandung, Citra Aditya Bakti.
4. Jonaedi Efendi, Johnny Ibrahim. (2018). Metode Penelitian Hukum : Normatif dan Empiris. Prenada Media.
5. Indriyanto, A., & Yusnita, I. M. (2017). Aspek Hukum Pendaftaran Merek. Rajawali Press
6. Dogan, S. (2016). Bullying and Opportunism in Trademark and Right of Publicity Law.
7. Boston University Law Review, Volume 96 No 3.
8. Fandi H. Kowel, Pelindungan Hukum Terhadap Penerima Lisensi Merek Di Indonesia, Jurnal Lex et Societatis, Volume V
9. Jannah, M. (2018). Perlindungan Hukum Hak Kekayaan Intelektual (HAKI) Dalam Hak Cipta Di Indonesia. Jurnal Ilmiah Advokasi, 6(2), 55-72.
10. Mirfa, E. (2016). Perlindungan Hukum Terhadap Merek Terdaftar. Jurnal Hukum Samudra Keadilan, 11(1), 65-77
11. Putusan Pengadilan Niaga Nomor. 72/Pdt.Sus-Merek/2019/PN Niaga Jakarta Pusat
12. Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis