

LEGAL PROTECTION FOR TRADEMARK RIGHTS HOLDERS ACCORDING TO INDONESIAN LAWMuhamat Farera Syahbria Hutama¹, Moh. Indra Bangsawan²¹Fakultas Hukum, Universitas Muhammadiyah Surakarta (C100190025@student.ums.ac.id)²Fakultas Hukum, Universitas Muhammadiyah Surakarta (mib136@ums.ac.id)**ABSTRACT**

Basically, humans must always use their minds to think, because thinking is an activity that humans cannot avoid in life. 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 called Intellectual Property Rights (IPR). A trademark is part of Intellectual Property Rights which cannot be separated from the meaning that trademark rights originate from discoveries in other parts of Intellectual Property Rights, 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. This writing article also applies normative juridical writing methods by researching library materials, namely primary and secondary legal materials.¹The data collection technique uses library research, by collecting data and information or legal materials related to the substance of the research. After the legal material has been collected, an analysis is carried out and a suitable core is drawn from the problems contained in the problem formulation. This writing also applies data analysis techniques through deductive logic. The trademark registration system in Indonesia based on the MIG Law follows a constitutional system on the "first to file" principle, the first registrant obtains protection and exclusive rights for the trademark. Privilege rights are rights obtained after registration of a trademark, these rights can be used by the owner of the registered trademark to use or exploit the registered trademark, other parties do not have the right to use the trademark.

Keywords: Trademark, Registration, Infringement.

INTRODUCTION

Basically, humans must always use their minds to think, because thinking is an activity that humans cannot avoid in life. 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).²A trademark is a part of Intellectual Property Rights which cannot be separated from the understanding that trademark rights originate from findings in other areas of Intellectual Property Rights, 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.³

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.⁴Because trade also contains economic aspects.

Intellectual Property Law based on economic aspects has important value, part of the important

¹ Khudzaifah Dimiyati & Kelik Wardiono, 2004, *Metode Penelitian Hukum, Surakarta:Fakultas Hukum UMS, hal. 4.*

² Darwance, Yokotani & Wenni Anggita, "Dasar-Dasar Pemikiran Perlindungan Hak Kekayaan Intelektual", *Progresif: Jurnal Hukum* XV No.2 (2020), hal. 194.

³ Zaenal Arifin & Muhammad Iqbal, "Perlindungan Hukum Terhadap Merek Terdaftar", *Jurnal Ius Constituendum*, Vol. 5 No. 1 (2020), hal. 49.

⁴ Nur Febry Rahmadhiani & Catharina Ria Budiningsih, "Analisis Hukum Penghapusan Merek IKEA". *Jurnal Syiar Hukum UNISBA*, Vol 15 No. 2 (2017), hal. 140.

value in Intellectual Property Rights is brands.⁵ Intellectual property rights as an invisible asset currently have a very vital position in trade. In the world of trade, the business sector in each business certainly has intellectual property that deserves to be protected.⁶ Protection of products that arise from ideas and everything related to intellectual property rights, for example product brands, product designs, etc. so that they are not used by other people for personal benefit and causing misery to the rights holder.⁷

Current business strategies no longer solve problems such as distributing goods or services well or selecting quality with good standards, but in protecting the brand of goods or brands from other competitors.⁸ Regarding the brand itself, it has been regulated in statutory regulations, namely in Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

Article 1 paragraph 1 of Law Number 2016 concerning Marks and Geographical Indications states that "a brand is a sign that can be displayed graphically in the form of a name, word logo, number, color arrangement of images in two dimensions or three dimensions, a sound hologram or a hologram of two or more aspects for the purpose of distinction between goods or services processed by individuals or legal entities in the activity of buying and selling goods or services."⁹

Trademark rights are special rights granted by the state to brand holders who have registered it within a certain time by using the brand name or granting permission to other people to use it.¹⁰ A brand can be used as a sign or guide to identify the origin of a product or service that is similar or dissimilar from one company to another company.

Law Number 20 of 2016 in Article 1 paragraph 18 states that "A license is the ability delegated from a registered rights holder to another party based on a written agreement in accordance with statutory regulations to use a mark from a registered mark holder without permission, therefore it violates the law. If there is a violation of registered trademark rights, it will trigger legal problems between the rights holder and other people who intentionally use the trademark.

Even though brand regulation in Indonesia has been regulated in the MIG Law, it cannot be denied that brand disputes still often occur.¹¹ A trademark dispute is a matter that is detrimental to one party.

Then, in a situation like this, the author is interested in writing with a problem formulation explaining the meaning of a trademark and the maintenance of trademark rights owners who are affected by infringement.

RESEARCH METHODS

This research article applies normative juridical research methods by examining library materials, namely primary and secondary legal materials.¹² 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

⁵ Yusuf Gunawan, "Penyelesaian Sengketa Merek Terdaftar Dan Merek Terkenal Dalam Mewujudkan Perlindungan Hukum", *IBLAM Law Review* Vol. 2 No. 02 (2022), hal.142.

⁶ 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..

⁷ Angga Panggih Pangestu, *Pelaksanaan Prinsip First To File Dalam Perlindungan Merek Asing Yoshimura Di Indonesia*, Jurnal Ilmiah Universitas Mataram Fakultas Hukum Universitas Mataram, hal. i.

⁸ Zaenal Arifin & Muhammad Iqbal, "Perlindungan Hukum Terhadap Merek Terdaftar", *Jurnal Ius Constituendum*, Vol. 5 No. 1 (2020), hal.49-50.

⁹ Pasal 1 ayat 1 Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis

¹⁰ Pasal 1 ayat 5 Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis

¹¹ Luthfiana Permata Utami, 2022, Tinjauan Yuridis Sengketa Merek Dagang Terkenal Starbucks Di Indonesia: Studi Kasus Sengketa Merek Dagang "Starbucks" Pada Putusan MA Nomor 836 K/Pdt.Sus-HKI/2022, *Skripsi*, Surakarta: Fakultas Hukum Universitas Muhammadiyah Surakarta, hal. 5.

¹² Khudzaifah Dimiyati & Kelik Wardiono, 2004, *Metode Penelitian Hukum*, Surakarta:Fakultas Hukum UMS, hal. 4.

deductive logic. This conclusion is based on an analysis of the problematics of Trademark Rights Violations accompanied by how to handle Trademark Rights Violations. Brand issues will be analyzed according to existing regulations, from a brand law perspective in order to understand their essence and intent in resolving the legal issues discussed in this research.

RESULTS AND DISCUSSION

Understanding Brand

Law Number 20 of 2016 concerning Marks and Indications (UU MIG) regulates brands. Trademark rights are special rights granted to the owner of a trademark registered in the state's general register of trademarks to use the trademark as a mark or give permission to other parties to use it. A brand is a piece of intellectual property in the form of a sign attached to goods and/or services produced or sold by other parties. Brands themselves are divided into trademarks and service marks. A trademark is a brand used for traded goods as a differentiator from other similar goods. A service brand is a brand used for a service as a differentiator from other similar services.¹³ A brand (trademark) is a form of other characteristics used for goods or business activities. Therefore, a brand must have characteristics, including a sign as its distinguishing power, this sign must be used for business activities for goods or services.

Referring to HMN, a brand can be interpreted as an object by which a particular object is personalized so that it can be differentiated from other similar objects. Then "a brand is a marker with a name attached to it so that it can be differentiated from other similar objects."¹⁴

Apart from being a differentiating factor, brands have functions such as identification marks to differentiate results produced by one person from another, as an advertising tool to promote products, guarantee product quality, and ensure the origin of the product produced.¹⁵

Brand functions for producers include the following:

- a) Identification means that make it easier to control or track company products, especially in supply management and accounting.
- b) Form of legal protection for the character or characteristics of a product.
- c) A way to create unique associations and meanings that differentiate the product from competitors.
- d) The source of competitive advantage, most importantly through the legal protection of customer loyalty is also the unique image formed in the consumer's memory.
- e) Source of financial returns, especially in terms of future revenue and opportunities for brand expansion.¹⁶

The types of brands regulated in the Indonesian Trademark Law consist of trade marks, service marks and collective marks. A trademark is a brand that is used to differentiate between other similar goods that are bought and sold by one person or more legal entities. A service mark is a mark used to differentiate other similar services that are traded by one or more people or legal entities. A collective mark is a mark that is used to differentiate other similar goods or services traded by several or more people or legal entities together.¹⁷

¹³ Pasal 1 ayat 2 dan 3 UU No. 20 Tahun 2016.

¹⁴ Muhamad Djumhana dan R. Djubaedillah, 2014, *Hak Milik Intelektual, Sejarah, Teori, Dan Praktiknya Di Indonesia*, Bandung: Citra Aditya Bakti, hal. 121.

¹⁵ Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum & HAM, *Merek dalam* <https://dgip.go.id/menu-utama/merek/pengenalan> dilihat pada 3 April 2023 pukul 12:15.

¹⁶ Kika Nurmalia, 2018, *Tindakan Passing Off Terhadap Sengketa Merek Dagang Matsunaga Vs Pro Matsunaga (Studi Kasus Putusan Nomor 972 K/Pdt.Sus-HKI/2017)*, *Skripsi*, Jakarta: Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, hal. 17.

¹⁷ Ibid hal. 19.

Types of brands, based on the brands used in trade, are divided into two types, namely the object being traded and the user of the brand.¹⁸

- 1) In terms of what is traded, it is divided into two, namely trademarks and service marks. A trademark is a brand used on an item to differentiate it from other goods, whether sold by an individual, a group of people, or a legal entity. A service mark is a trademark used in a product or service to differentiate it from other services offered by any person, group or legal entity.
- 2) From the point of view of the brand user, it is a collective trademark. A collective brand is a brand that is used for goods or services that have the same criteria and is traded through several people or legal entities to differentiate similar goods or services.¹⁹

Brand Protection Steps for Brand Rights Holders

Brand protection is given to foreign or domestic brands, well-known or not well-known and is only given to registered brands. Brand owners are expected to register their brand with the Directorate General of Intellectual Property Rights (DJKI) in order to obtain legal protection for their brand.²⁰ Brand registration will provide very valid protection if it is against an authentic or similar brand. The presence of this protection shows that the state has an obligation to establish trademark law. Therefore, if there is a registered violation, the trademark holder can file a lawsuit with the competent court.

Article 35 Law no. 20 of 2016 in paragraphs 1 and 2 states that "Registered marks receive legal protection for a period of time from the date of receipt and the protection period as referred to in paragraph 1 can be extended for a period of time."

Registered trademarks receive legal protection for a period of 10 years and are valid from the date of receipt of the trademark application in question. Based on the request of the brand holder, the protection period for a registered mark can be extended each time for the same period of time. The regulation of the time period and extension of registered marks is in article 36 of law number 20 of 2016.

The MIG Law is a form of intellectual property protection that grants exclusive rights to registered trademark holders to use the trademark in the world of trade or services that correspond to the class and type of goods. Brands can be used as identification marks for a product to differentiate it from similar products and indicate the origin of the manufacturer. Legal protection can be classified into two, namely preventive and repressive legal protection. The government provides preventive legal protection with the aim of preventing violations before they occur. This chapter is also contained in statutory regulations which are intended to avoid problems and provide guidance or finality to fulfill certain requirements. Meanwhile, repressive protection is final protection in the form of sanctions, for example imprisonment as well as fines and additional penalties when disputes or disputes and violations arise. This repressive legal protection is intended to deal with problems.²¹

CONCLUSION

The trademark registration system in Indonesia based on the MIG Law follows the constitutional system of "first to file", the previous registrar obtains exclusive protection and rights for the trademark. Exclusive rights are rights obtained after registration of a trademark, these rights can be used by the registered trademark holder to use or exploit the registered trademark, other parties do not have the right to use a trademark that has similarities to all of them or is the same in essence for goods or services. The first to file system can be understood as meaning that brand registration is given to those who register their brand first and in good faith.

¹⁸ Chandra Gita Dewi, Op. Cit., hal 20.

¹⁹ Enny Mirfa, "Perlindungan Hukum Terhadap Merek Terdaftar", *Jurnal Hukum Keadilan*, Vol. 11 No. 1 (2016), hal 66..

²⁰ Meli Hertati Gultom, "Perlindungan Hukum Bagi Pemegang Hak Merek Terdaftar Terhadap Pelanggaran Merek", *Jurnal Warta* Edisi 56 (April 2018), hal. 7.

²¹ Muchsin, Op.Cit., hal. 20.

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