

THE IMPORTANCE OF BRAND REGISTRATION TO REDUCE UNFAIR COMPETITION IN THE WORLD OF TRADE

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ABSTRACT

Objective: The purpose of this study is to find out the legal solution to the importance of trademark registration to reduce the occurrence of unfair competition in the world of trade and provide sanctions for parties who imitate and copy marks.

Method: The Research methods carried out in a systematic way in carrying out analysis and data collection activities in striving for certain goals to be achieved are definitions for research, For the realization of this research, the method applied is the analytical descriptive method. The purpose of this method is intended to be able to deliver a bright picture as a whole, carry out an assessment of positive legal norms and dig deeper into legal facts. The type of research that is then also applied in this research is normative juridical.

Results: With a multitude of product brands in the market, it often confuses consumers when making choices. Sometimes, consumers choose products based on their budget, leading to the circulation of many counterfeit brands with significantly lower prices but identical names and appearances to genuine products. This is what is referred to as a violation of trademark rights. Therefore, for a trademark to be valid, it needs to be registered. Registration is carried out to provide valid proof of ownership of the trademark, to challenge counterfeit brands in circulation, and to reject trademarks with identical appearances registered by others. Thus, trademark registration is conducted to obtain protection and legal certainty for a brand.

Keywords: product, business, trademark, commerce.

Received: 24/07/2023

Accepted: 16/10/2023

DOI: <https://doi.org/10.55908/sdgs.v11i10.1453>

A IMPORTÂNCIA DO REGISTRO DE MARCA PARA REDUZIR A CONCORRÊNCIA DESLEAL NO MUNDO DO COMÉRCIO

RESUMO

Objetivo: O objetivo deste estudo é descobrir a solução jurídica para a importância do registro de marcas para reduzir a ocorrência de concorrência desleal no mundo do comércio e prever sanções para quem imita e copia marcas.

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Método: Os métodos de pesquisa realizados de forma sistemática na realização de atividades de análise e coleta de dados na busca por determinados objetivos a serem alcançados são definições para a pesquisa. Para a realização desta pesquisa o método aplicado é o método analítico descritivo. O objetivo deste método é ser capaz de fornecer uma imagem brilhante como um todo, realizar uma avaliação das normas jurídicas positivas e aprofundar os fatos jurídicos. O tipo de pesquisa que também é aplicado nesta pesquisa é jurídico normativo.

Resultados: Com uma infinidade de marcas de produtos no mercado, muitas vezes confunde os consumidores na hora de fazer escolhas. Por vezes, os consumidores escolhem produtos com base no seu orçamento, o que leva à circulação de muitas marcas contrafeitas com preços significativamente mais baixos, mas com nomes e aparência idênticos aos dos produtos genuínos. Isso é chamado de violação dos direitos de marca registrada. Portanto, para que uma marca seja válida, ela precisa ser registrada. O registro é realizado para fornecer prova válida de propriedade da marca, para contestar marcas falsificadas em circulação e para rejeitar marcas com aparência idêntica registradas por terceiros. Assim, o registro da marca é realizado para obter proteção e segurança jurídica para uma marca.

Palavras-chave: produto, negócio, marca, comércio.

1 INTRODUCTION

In Indonesia, business activities are increasingly developing along with increasingly developing globalization. It cannot be denied that the existence of a business will always be associated with the business people and the products they produce. In order to achieve profits and strengthen their position in the business market, business people will continue to strive to build the profile of their business.

Along with an increasingly good business profile, a "trust" can be born among the public to be able to use the products that business people have produced. Meanwhile, business people will also create products with high quality or superior products which will ultimately be in demand by consumers.

Business actors are not only limited to a business venture in the form of a factory, which in its production involves machines or technology and is mass produced, but businesses can also take the form of art, writing, music, education, photos, books, and others which constitute creativity.

The results of factory production in the form of a product, as well as products from art, literature, education, as well as all products produced with high creativity and intellectual power, at the expense of time, energy or relatively high costs must be given protection, because there will be value high economic value from the form of these works, thus the producers of these works are very deserving of enjoying the results of these works, and worthy of experiencing the economic benefits of using the products they have produced for use by other people.



With the success of a product from a company that has developed and is well known, both their name and product among the public, then the letters, words and images that exist to symbolize the company will also have high economic value. This distinctive symbol can be offered for use by other parties, of course in exchange for economic value.

Thus, everything that has been produced and can be useful for other people, the person or producer or creator of the product or art will be given the right to be able to protect their product, and be able to enjoy the results of the product they have produced.

2 METHOD

Research methods are a stage for answering the question of how to make research a reality. In the discussion of research methods, research implementation is reviewed through procedures. A way of working that is related to a scientific activity, in order to obtain an understanding that will be given to research material in the form of objects or subjects, in an effort to obtain an answer and be given scientific accountability for the answer, including a validity known as a method. Meanwhile, the process carried out in a systematic way in carrying out analysis and data collection activities in seeking certain goals to be achieved is the definition for research (Efendi & Ibrahim, 2016: 2-3).

In order to realize this research, the method applied is the analytical descriptive method. The aim of this method is to provide a clear picture as a whole, carry out an assessment of positive legal norms and dig deeper into legal facts. The type of research that is then applied in this research is normative juridical. All legal materials in the form of various types of regulations that apply in Indonesia are the things that are focused on the analysis in this research, as well as being the main basis for this research.

3 RESULT AND DISCUSSION

3.1 THE IMPORTANCE OF THE EXISTENCE OF INTELLECTUAL PROPERTY RIGHTS IN A WORK

Powerful intellectuals who produce works of high quality and economic value need to receive protection, as a form of providing a sense of justice to the owners or producers of these works. Thus, so that the owners of works can be given protection to obtain a sense of justice, in this situation the law is present to provide fulfillment of this protection (Donandi, 2019: 2).

The results of these intellectual works are provided by law with a place where they



can be further utilized and receive assistance and protection. As time goes by, the rights to intellectual work results are formulated with the term intellectual property rights or "IPR".

RightIntellectual property is defined as a right that can arise as a result of ideas from human thought patterns which ultimately result in processes and products that can benefit human life.

Intellectual property rights (HKI) is a term for improvement or revision of intellectual property rights, in the Decree of the Minister of Law and Legislation of the Republic of Indonesia Number M.03.PR.07.10 of 2000 and the Approval of the State Minister for Administrative Reform, in letter Number 24/M/PAN/1/2000, the term "Intellectual Property Rights" (without "above") can be shortened to "HKI", which has been formalized for use (Atsar, 2018:2).

Since the beginning of intellectual works being created, these works have had to receive protection, and need to be protected by business actors. If at any time there is negligence and delay caused by business actors in order to provide protection for their intellectual work, this could inadvertently cause large potential profits to be lost (Donandi, 2019: 3).

ForA company's most valuable and valuable assets are intellectual property rights or IPR. Where IPR can provide economic compensation in the form of profits of large value. In fact, in a company the existence of IPR can have a big influence on the company's position in being able to compete in the world of business markets it is entering (Donandi, 2019: 3).

The existence of intellectual property carries the potential for it to be misused, which in the end can cause a number of losses to the owner. Thus, in order to enforce violations of IPR, it is necessary to have strict regulations. Bearing in mind that the use of IPR is global in nature, efforts to enforce such violations are the responsibility of the international community. From a situation like this, awareness has emerged from several countries in the world to work together to provide protection for IPR (Donandi, 2019: 4).

InIn terms of IPR protection, the thing that is protected is not an idea that is in the mind, but rather an idea that has been channeled in the form of a work, both two-dimensional and three-dimensional. There are two forms of IPR whose protection exists in Indonesia, the first is IPR which is communal in nature, where this IPR is given to people who live in groups in a certain area by residing in that place, with the scope of



rights consisting of: knowledge from the community in the form of traditional knowledge, traditional cultural expressions (folklore), geographical indications, and biodiversity. Furthermore, the second type is personal IPR,

With the existence of IPR, it is not only aimed at providing high economic value to the owners of works, but also in order to provide motivation to be able to produce other intellectual works for artistic artists.

Basically it is stated that, in economic growth, IPR plays a very important role. In relations between people and between countries, the existence of IPR is something that cannot be avoided. In general, there are various benefits in the existence of an IPR, which include:

- 1) Can help improve a position in trading and investment activities;
- 2) Can help develop technology;
- 3) Can provide encouragement to be able to compete internationally for a company;
- 4) Can provide assistance to an invention in terms of commercialization;
- 5) Can develop social culture and in the interests of exports international reputation can be maintained (Atsar, 2018: 6).

The characteristic of an IPR system is that it is characterized by private rights. In order to submit an IPR application, a person has the freedom to register or not in relation to the results of their intellectual work. Apart from that, IPR has a system to be able to support the provision of a good documentation system for all forms of human creativity, so that it can prevent the possibility of the resulting works and technology being similar to existing ones (Damian, 2019:2) .

There is an agency that was formed specifically to handle IPR issues internationally, namely the World Intellectual Property Organization (WIPO) which is a UN specialized agency. Indonesia is a member based on the ratification of the Convention Establishing the World Intellectual Property Organization (Damian, 2019: 3).

In the eyes of the international world, the position of IPR has become a theme that is considered very essential and has received attention both nationally and internationally. The World Trade Organization which received approval to be established in 1994 was a sign that a new era of IPR development throughout the world would begin. Currently, the world of trade and investment is something that is always related to issues relating to IPR. IPR, which has an important role in economic development and trade activities, has



spurred IPR to begin its new era in international and national regulations which include participating countries that have agreed to the WTO with Trade Related Aspects of Intellectual Property Rights (TRIPs), which in this case is Appendix IA to the WTO Agreement (Damian, 2019: 3).

3.2 LEGAL PROTECTION FOR INFRINGEMENT OF A BRAND

The scope of an IPR is very broad, where it is not only limited to one form, but consists of various forms, where these forms generally include copyright and related rights as well as industrial property rights which include other forms, such as one of them is brand.

In this case, in particular, the right to a trademark is a right delegated to the registered trademark owner to be able to utilize their trademark in carrying out trade and service activities, as well as granting permission to use the trademark to other people, of course with a license.

Nowadays in Indonesia, various types of trading practices start from small traders such as street vendors to supermarkets which provide many products with well-known brands, even though it is known that these brands are counterfeit brands. In Indonesia, cases regarding brands are dominated by violations of well-known brands, but this does not mean that there are no local brands that are used by other parties unlawfully (Faradz, 2008: 1).

As international business transactions grow more rapidly, there is a need for a global or international regulation, which can provide guarantees for legal protection and certainty, especially in the field of brands. Until finally, in 1883, the Paris Convention was agreed upon, where the convention contained regulations regarding brand protection. Meanwhile, improvements and changes have been made to Law No. 19 of 1992 in matters relating to brands, so that they can adapt to the Paris Convention (Faradz, 2008: 1).

Furthermore, the law on brands continues to undergo changes and additions to become Law Number 12 of 1992, and then undergoes further changes to become Law Number 15 of 2001, with ongoing changes indicating that brands have a very essential role. (Semaun, 2016:2).

Along with the rapid development of the business world, a more flexible arrangement is now needed. Brands are valued as prestigious. In certain circles, people place their prestige on the goods they use or the services they use. Often, there are several



reasons put forward, such as for quality, then bona fides, or investment. Sometimes a brand can also become a lifestyle. A person can be more confident with a brand, not only that, even a person's social class can be determined by the brand they use. Consumers who can use goods with well-known brands will be proud of themselves,

However, nowadays brand violations often occur among businesses, business actors will act dishonestly, with the aim of ensuring that no losses are suffered by them. They will make products by copying existing brands and then market them at much lower prices, sometimes also with lower quality. However, as a result, people will be more tempted by fake brand products because the selling price is lower than original brands.

Businesspeople who commit fraud will market products with fake brands to the public without having to spend large amounts of money on the grounds that the products being offered are already well-known among the public. In this way, these business people will reap maximum profits.

Fraud committed by these business people will cause losses to the original brand owner. As a result of the low prices offered by counterfeit product businesses, businesspeople who produce genuine products are hampered in marketing, and people who are economically hampered will definitely not buy genuine products. On the other hand, brand counterfeiting activities can also result in a decrease in transaction turnover, so that the benefits of original brands that are more well-known will decrease. Not only that, it can even cause a decline in public confidence in the brand's products, this is because people feel that the product used to have good quality until finally the quality decreased drastically.

Business competition law can be defined as the legal framework governing all aspects pertaining to competition within the business sector (Pitofsky, 2017).

Violation of brand rights not only harms the original brand producer, but can also present various losses for buyers, where the quality of labor and products that buyers will receive is lower compared to the original brand which is a well-known and first brand, not only that. These counterfeit products can also endanger buyers both in terms of health and life (Prameswari, et al. 2021: 279).

With so many brands of a product on the market, ultimately people are confused about choosing. Sometimes people choose products according to their economy, resulting in many fake brands circulating on the market at a much cheaper selling price, but the name and shape are exactly the same as the original product. This is what is called a



violation of brand rights.

Thus, in order for a trademark to be valid, it is necessary to register the trademark. Registration is carried out so that it can become valid evidence against the brand owner and can refute counterfeit marks in circulation, as well as reject marks with the exact same form registered by other people. Thus, trademark registration is carried out to obtain legal protection and certainty for a trademark.

To register a brand, it must be done at the Directorate General of Intellectual Property Rights. Registration is carried out in accordance with the regulations contained in the Law. The purpose of registration is so that the registrant can obtain status as the first registrant until there is proof to the contrary from someone else. Because, if someone can provide proof that there is a registered mark and with that he obtains a brand certificate indicating that he has the rights to the mark, then other parties are prohibited from using the same mark for similar goods (Semaun, 2016: 4).

Basically, in the literature there are two types of trademark registration, including the constitutive (attributive) system and the declarative system. The constitutive system means that rights to a trademark can be obtained and granted through registration. In other words, trademark registration in the constitutive system is an absolute must. A new brand will receive legal protection if it is registered. Meanwhile, the declarative system does not require registration of a mark, so it is not mandatory. In this declarative system, registration is carried out solely for validation purposes, that the trademark registrant is the first user of the trademark in question. So the registration is not intended to be able to issue a right, but only to be able to provide legal allegations or preemption iuris, namely the party who has authority over the mark and as the first user is the party whose mark is registered. Initially, trademark registration activities were carried out using a declarative system, based on Law no. 21 of 1996. However, as the Trademark Law developed, it became Law no. 20 of 2016, since then trademark registration has implemented a constitutive system, because the constitutive system is considered to provide more guarantees of legal certainty when compared with the declarative system (Uktolseja & Yosia: 2021, 58-59). Initially, trademark registration activities were carried out using a declarative system, based on Law no. 21 of 1996. However, as the Trademark Law developed, it became Law no. 20 of 2016, since then trademark registration has implemented a constitutive system, because the constitutive system is considered to provide more guarantees of legal certainty when compared with the declarative system



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By registering a brand, at that time the owner of the brand will be given responsibility for the name of their brand. In this way, other parties who are interested in seeing a mark that has not been registered and registering it, will get a legal guarantee, so that the main party who wants the mark will be hampered, but will not be able to take action because the mark has not been registered.

However, if it is indicated that the mark could cause the entire population to be injured, then the mark will not be able to be registered. In other words, the registration will be terminated if the mark could harm other parties. Or it can be said clearly that a mark whose registration cannot be carried out is a mark that is deemed not to be suitable for use. Business actors who do not register their brand means that the brand does not have valid insurance. Where, there is an important role of legal insurance, which aims to provide guarantees for the brand so that it cannot be imitated and misused by other parties, and that other demonstrations do not occur that could violate the law (Prameswari, et al.

Against business people who have committed violations against brand names, apart from being based on the Trademark Law, it can also be based on exploitative competition which is subject to criminal demonstration in accordance with Article 382 bis of the Criminal Code. Material demonstrations are threatened with a sentence of 1 (one) year and a maximum fine of Rp. 900,000,000.00 (900,000,000 rupiah), is carrying out fraudulent demonstrations to deceive the general public or someone in particular. Then, the use and copying of a trademark by another party, when the trademark has just been registered by the owner of the rights to the trademark, can have legal consequences as a form of criminal action, as intended in Article 200 paragraph (2) of the Law on Marks and Geographical Indications which regulates that every person who is not entitled to chooses to use a mark which is basically the same as a registered mark which has a place with another party for comparable work and similar products. made or exchanged, will be rejected with detention for a period of 4 (four) years. long time and a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah) (Prameswari, et al. 2021:280).



Furthermore, the parties who have caused losses to the first party, the owner of the brand referred to, can file a lawsuit. It is stipulated in Article 1365 of the Civil Code that a lawsuit can be filed by the main owner of a brand, to an authorized court, especially a business court, in the same way as a non-lawsuit (Prameswari, et al. 2021: 280 - 281).

Thus, a trademark that has been registered must be directly used by the trademark owner. As for the use of a mark that is indicated to be in conflict with and exceeds the provisions of the applicable laws and regulations, the mark will be immediately cancelled.

4 CONCLUSION

As globalization and technology develop, many businesses are growing in society. The business can be in the form of services and goods. The development of this business has created a lot of competition among business people. Various competitions occur in the form of healthy and unhealthy competition. The occurrence of unhealthy competition is caused by a lot of fraud in doing business.

Fraud that occurs among business people occurs due to brand imitation. This imitation results in fake products with the same brand, but of course of lower quality. Counterfeit products tend to be marketed at relatively lower prices, so people will choose these products, considering that genuine products are difficult to obtain because they are expensive. This imitation will actually result in a decline in the original product of the brand in question, the original product will be hampered in the market.

Meanwhile, counterfeit products marketed with low quality will cause people to lose trust in the brand and of course will have a big impact on genuine products. To avoid this from happening, a brand must be registered. After the trademark is registered by the trademark owner, the owner obtains the rights to the trademark in question. By registering a brand, it will be legally valid and can provide sanctions against people who have violated the brand.



REFERENCES

- Donandi, Sujana. (2019). Intellectual Property Rights Law in Indonesia (Intellectual Property Rights Law in Indonesia). Yogyakarta: Publisher Deepublish.
- Banindro, Baskoro Suryo. (2015). Implementation of Intellectual Property Rights (Copyright, Brands, Patents, Industrial Designs) Fine Arts, Crafts and Design. Yogyakarta: BP ISI.
- Atsar, Abdul. (2018). Get to know more about Intellectual Property Rights Law. Yogyakarta: Publisher Deepublish.
- Efendi, Jonaedi and Johnny Ibrahim. (2016). Normative and Empirical Legal Research Methods (First Edition). Depok: Prenadamedia Group.
- Ali, Zainuddin. (2009). Legal Research Methods (1st Edition). Jakarta : Sinar Graphics.
- Damian, Eddy. (2019). Copyright Law (Fifth Edition) (Print. 1). Bandung: PT Alumni Publisher.
- Hawin, M and Budi Agus Riswandi. (2017). Important Issues of Intellectual Property Rights in Indonesia. Yogyakarta : Gadjah Mada University Press.
- Uktolseja, Novyta and Josia Hetharie. (2021). Textbook of Intellectual Property Rights. Klaten: Lakeisha Publisher.
- Novianti, et al. (2018). Brand Protection (Cet.2). Jakarta: Indonesian Obor Library Foundation.
- Arifardhani, Yoyo. (2020). Intellectual Property Law An Introduction (Ed.1) (Cet.1). Jakarta : Kencana.
- Firmansyah, Hery. (2013). Legal Protection of Brands (Cet.1). Yogyakarta: Medpress Digital Publisher.
- Marzuki, Peter Mahmud. (2021). Introduction to Legal Studies (Cet.13). Jakarta : Kencana.
- Is, Muhammad Sadi. (2017). Introduction to Legal Studies (Ed.1) (Cet.2). Jakarta : Kencana.
- Pranadita, Nugraha. (2018). Protection of Intellectual Property Rights Based on Sharia Principles and Their Implementation in Welfare States. Yogyakarta: Publisher Deepublish.
- Zaki, Muhammad Reza Syarifuddin. (2022). Introduction to Legal Science and Legal Aspects in Economics. Jakarta : Kencana.
- Faradz, Haedah. (2008). Protection of Trademark Rights. Journal of Legal Dynamics: Faculty of Law, Jenderal Soedirman University, 8 (1), 38-43.
- Semaun, Syahriyah. (2016). Legal Protection of Trade Marks for Goods and Services.



Dictum Law Journal. 14(1), 107 – 123.

Prameswari, Ni Made Ratih Prameswari, I Nyoman Putu Budiarta and Desak Gde Dwi Arini. (2021). Violation of Trademark Rights Law in Relation to Unfair Business Competition in Indonesia. *Journal of Legal Analogy*, 3(3), 277–281.