



## Conceptualization of Legal Protection of Registered Trademark Rights in Realizing Just Legal Certainty

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### ABSTRACT

Article 21 paragraph (1) letters b and c and Article 21 paragraph (3) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications provide protection and regulations for well-known brands in Indonesia. According to Article 21 paragraph (1) letter b of the MIG Law, if a brand is conceptually or completely identical to a well-known brand that belongs to another party for products and/or the like, DJHKI must reject the application. According to the explanation of Article 21 paragraph (1) letter b of Law Number 20 of 2016 concerning Geographical Indications, a brand's popularity must be assessed by taking into account the public's general awareness of the brand in the relevant industry as well as its reputation as a well-known brand that has been earned through extensive marketing campaigns, owner investments in multiple countries, and documentation of the brand's registration in multiple countries. If the aforementioned factors are deemed insufficient, the Commercial Court may mandate that an impartial organization carry out a study in order to reach a determination on the level of popularity of the brand that serves as the foundation for the denial. Furthermore, as long as they fulfill specific standards that will be further outlined by government regulation, commodities and/or services that are not of the same kind may also be covered by Article 21 paragraph (1) letter c. Furthermore, paragraph (3) of Article 21 clarifies that a brand cannot be registered based on an application filed by a party acting dishonestly.

## **INTRODUCTION**

One important resource that may boost a country's economy is intellectual property, or IP for short. In many industries, brands that are a part of intellectual property play a significant role. Brands are intangible or non-physically identifiable assets. This indicates that although a brand's existence is only an intangible symbol, its worth and impact are highly significant in terms of the brand owner's financial stability and the way of life of their customers. The brand associated with a product will change the more sophisticated the consumer's viewpoint and impression of it. Customers may therefore more easily perceive the brand as a product identity.

As industrialization grew, trademarks started to play a significant role, and ever since, brands have emerged as a crucial component of the contemporary commerce and market-oriented economy. As a result of industrialization and the development of a market-oriented economic system, producers and traders began to compete with one another to offer consumers a variety of goods. At this point, brands started to serve as a means of differentiation, allowing consumers to identify the identity, source, and origin of goods. For manufacturers, on the other hand, brands are emblems and representations of the company's positive reputation that is still upheld by customers.

As a developing nation, Indonesia must recognize the circumstances and take action that will enable it to deal with any future changes and developments. Intellectual property protection significantly contributes to future national development by offering legal protection for an individual's and a community's work.

Customers find it simpler to choose which products or services to employ when they are associated with a brand since the product is immediately identifiable and serves as a difference from other products. Trademarks are growing in popularity, and their forms are evolving as well. The public is more familiar with brands due to the ever-increasing speed at which technology is developing, which makes it simpler for consumers to recognize a product or brand of products or services. With the use of technology, consumers can quickly look up information sources and determine the brand's product quality, making it easier to sort and select the items they will use. Therefore, brand owners compete with one another.

The brand, also known as the product's identity, makes the product to be sold easily recognizable and distinguishable from other items. In the business realm, brands are also crucial since they provide the product being sold a unique personality.

From an economic perspective, brands are a significant component of intellectual property rights. A brand is a name or symbol that is used to identify products or services. The quality of the products is guaranteed by the brand itself. Brands are valuable to both manufacturers and consumers. In addition to helping producers differentiate their items from those of others, brands also let customers see the quality of the commodities being exchanged, preventing them from making the wrong choice. Additionally, individuals often purchase

and utilize goods that are already widely available in society due to their high quality..<sup>6</sup>

Despite the lengthy history of brand regulation, many brands remain unregistered with the Ministry of Law and Human Rights' Directorate General of Intellectual Property Rights (henceforth referred to as DJKI), which is the sole organization in Indonesia that manages brand registration and protection.

In essence, a brand is a product that often has a unique feature that sets it apart from other products. In order to identify goods and/or services produced by a person or legal entity in the trading of goods and/or services, a sign may be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in two (two) or three (three) dimensions, sound, holograms, or a combination of two (two) or more of these elements. This is defined by Law Number 20 of 2016 concerning Brands and Geographical Indications.<sup>7</sup> The unique feature that sets this brand apart is typically present in brands that are purposefully designed to grab consumers' attention.

The Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights of the Republic of Indonesia is where the owner of a trademark or service mark that has been developed and is anticipated to have legal protection should register the mark. In order to keep other parties from wishing to use the mark that we have registered, the legal protection is meant to be able to grant the owner of the trademark or service mark exclusive (special) rights.

Due to Indonesia's adoption of the first-to-file principle, which grants legal protection to the first registrant, there are still numerous violations against well-known trademarks and against foreign trademarks, despite the fact that the foreign products and brands are well-known and have been registered in multiple countries. This is because Indonesia's trademark laws and regulations have not been able to fully provide legal protection.

Any individual or legal entity that first registers their trademark for a particular class and type of goods or services is deemed the owner of the rights to that trademark for that class and type of goods or services. This is the case in Indonesia, where the trademark or service mark registration system follows the First to File Principle System. Put another way, if there are no objections or rebuttals from other parties during the registration process, the person who first registers a trademark or service mark can be granted legal certainty and legitimacy that they are the rightful owner of the registered trademark until the certificate is issued.

Conflicts between business players are a common occurrence in the business sector due to the intense rivalry. Brand-related violations are probably going to keep happening. This has to do with dishonest business practices that demand competitiveness and are profit-driven, which creates the possibility of dishonest or illegal company operations. It also has to do with the incentives behind brand breaches, particularly the desire to make money from one's business operations. Litigation dispute resolution, or settlement through the courts, is one way to try to settle issues in the sphere of brands based on the requirements of Law No. 20 of 2016 governing Trademarks and Geographical

Indications. It can also be taken through administrative, civil, or criminal settlements. Law No. 20 of 2016 respecting Trademarks and Geographical Indications has precise regulations pertaining to the resolution of brand disputes. Legal protection for brands is based on Law No. 20 of 2016 regulating Trademarks and Geographical Indications. The dispute resolution procedure is where brands may actually witness the effects of legal protection. One method of resolving conflicts through the legal system is litigation.

Article 83 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications provides the following guidelines for filing trademark infringement cases: a. The owner of a registered trademark may sue a third party who uses a trademark that is similar in principle or in its entirety for similar goods or services without authorization for the following reasons: 1) A lawsuit for damages, and/or 2) Cessation of all acts related to the use of the trademark. b. Depending on the court, the owner of a well-known trademark may also bring the case mentioned in paragraph (1). c. The Commercial Court is where the case mentioned in paragraph (1) is filed.<sup>24</sup> According to Article 83, paragraph (1), there are many kinds of litigation for registered trademark breaches, including claims for damages or to stop using the infringed brand. Both tangible and immaterial compensation are possible forms of compensation in this situation. Real losses with a monetary value serve as material compensation. On the other hand, immaterial compensation takes the shape of a claim for damages incurred by the unauthorized use of a trademark, resulting in moral losses for the entitled party.

According to Law No. 20 of 2016 governing Trademarks and Geographical Indications, litigation is one of the methods utilized in this situation to resolve trademark disputes. The Commercial Court is the venue for the complaint alleging registered trademark infringement under Article 83 paragraph (2) of Law No. 20 of 2016 respecting Trademarks and Geographical Indications. This indicates that the Commercial Court, a unique judicial entity, has the power to decide cases involving trademark infringement. The purpose of the Commercial Court's authority is to expedite the resolution of trademark disputes. This is due to the fact that trademarks are a component of business and economic activity, which means that a unique judicial body—the Commercial Court—is needed to settle trademark disputes. While the examination is still in progress, the judge has the authority to take specific steps under Law No. 20 of 2016 respecting Trademarks and Geographical Indications. According to Article 84, the trademark owner and/or licensee acting as the plaintiff may ask the judge to halt the manufacture, sale, and/or distribution of products and/or services that use the trademark without permission while the matter is still being investigated and to avoid further damages. The sole way to challenge the Commercial Court's ruling is to submit a cassation, as stated in Article 87 of Law Number 20 of 2016 respecting Trademarks and Geographical Indications. This is consistent with the whole trademark system, which sends appeals straight from the court to the Supreme Court rather than to the High Court. Only the process of bringing a case before the Commercial Court is governed by the Trademark Law; the method of presenting evidence during a

trademark dispute trial is not. Additionally, the Commercial Court is not governed by Indonesian laws and regulations. Book II of the Guidelines for the Implementation of Duties and Administration of the Court has this information. It specifies that the processes used to examine IPR matters are identical to those used to examine regular civil cases. The colonial-era HIR (Revised Indonesian Regulation) continues to be cited as the legal foundation for the civil trial procedure itself. As a result, the standard of proof in trademark dispute cases is identical to that of regular civil proceedings. Decisions from commercial courts may be filed immediately for cassation, but they cannot be appealed. Decisions that are crucial for the corporate world as a whole may become simpler and faster as a result. Articles 90 to 95 of the Trademark Law contain criminal provisions, and Article 95 of the Trademark Law states that trademark-related crimes are complaint offenses. Complaint offenses are crimes that, according to criminal law, can only be punished if they are reported to the police by a person that feels wronged. A formal statement, either in writing or verbally, from the person who has the right to do so (the complainant) and is submitted to an investigating officer (the Indonesian National Police) about a crime committed by an individual, along with a request for an examination to be conducted in order to pursue further prosecution in the appropriate court, is known as a complaint.

In order to provide business operators in Indonesia with a secure and pleasant industrial and commercial environment, legal protection for trademark rights is crucial. Then, in order to offer legal clarity to all parties, severe penalties that have the potential to dissuade those who violate Indonesia's well-known trademark rights must also be granted.

## **THEORETICAL REVIEW**

Theory Legal protection is limited and that the appreciation of intellectual property is left to the strength of the right and the appreciation of society, and depends on the ability of thinkers and the tolerance of society to prevent imitation. According to Hegel, property as personal identification also provides benefits to society. Market share is the referee through which the individual market tries to place and protect self-identity through voluntary exchange of property that reflects individual will. Society in this case has limited rights to prevent reasonable individual interests in the accumulation, control, and granting of permission for its property. The needs of society alone (as such) will not justify the takeover of someone's property, without proper compensation.

## **METHODOLOGY**

This type of research is normative legal research using normative case studies in the form of legal behavioral products. The main topic of study is law conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal discoveries in in concreto cases, legal systematics, synchronization levels, comparative law and legal history. In legal research there are several approaches, with this approach

researchers will obtain information from various aspects regarding the issue that is being tried to find an answer. The approach method in this research is the statute approach. A normative research must of course use a statute approach, because what will be studied are various legal regulations that are the focus and central theme of a research.

## **RESEARCH RESULTS AND DISCUSSION**

The first to register concept governs trademark registration in Indonesia, where the first registrant is acknowledged as the trademark's legitimate owner. Due to the fact that local producers have already registered their brands, internationally recognized businesses are unable to do so in Indonesia. Due to their inability to be utilized independently, this is extremely harmful to foreign manufacturers whose brands are already well-known. Furthermore, this may lead to unfairness and discourage international manufacturers from entering Indonesia.

Nevertheless, despite the fact that trademarks have been and are expressly controlled, many trademark infractions nevertheless make it to the court stage. These instances are specifically found in the Commercial Court, which is an organization that handles trademark disputes. Reviewing a number of trademark disputes that occurred in Indonesia prior to the revision of the trademark law. Here are a few instances of trademark infringement that have happened in Indonesia:

### **1. Sambal Dua Belibis and Sambal Pohon Cabe**

Subandy Rachman's parents were the founders of Sambal Dua Belibis. His mother then passed this company on to his younger brother. But once Subandy's younger brother made the decision to go to New Zealand, Subandy carried on with the chili sauce company. This chili sauce company was so developed under his leadership that it could export through trade channels. Subandy neglected to expand his chili sauce brand in 1997. His nephew quickly took advantage of this weakness to register the trademark and claim it for himself. Subandy's dissatisfaction ultimately led to legal action. But because he lost the trial, he was forced to grudgingly relinquish the brand. Subandy was compelled to cease manufacturing his chili sauce.

### **2. Goto**

In 2021, Gojek and Tokopedia, two major brands that had chosen to unite, also faced the next trademark conflict. After these businesses merged, they adopted the new GoTo Group identity, which made them the biggest tech firm in Indonesia. Shortly thereafter, the issues began. A fintech startup called PT Terbit Financial Technology filed a lawsuit against GoTo over trademark rights they had previously registered in 2020. Up to \$2 trillion in compensation expenses were also associated with the litigation. The Commercial Court, however, dismissed PT Financial Technology's case after many trials and cleared GoTo of the 2 trillion Rupiah claim.

### **3. I Am Geprek Benu dan Geprek Benu**

Jordi Onsu, Ruben Onsu's younger brother, and Benny Sujono's I Am Geprek Benu brand collaborated to start the litigation involving the Ayam Geprek Benu trademark. Ruben Onsu was appointed as the brand's symbol and

ambassador. They departed shortly after and started a new company called Geprek Benu. Additionally, Ruben filed his name's abbreviation, Benu, as his property with the South Jakarta District Court. Because the public has come to recognize Ruben Onsu by that moniker as a celebrity. However, because I Am Geprek Benu had been registered since May 24, 2019, the court determined that Benny Sujono was the rightful proprietor of the Benu trademark. This lawsuit is still ongoing, though. Despite winning the Supreme Court's ruling, Benny Sujono's party sued the Ministry of Law and Human Rights' Director General of Intellectual Property in 2020 for sending a letter requesting the removal of his PT Ayam Geprek Benny Sujono trademark.

#### 4. Wafer Superman dan DC Comics

As the public is well aware, DC Comics is a company that publishes superhero comics like Superman, Batman, and Wonder Woman. However, the name Superman has been used in Indonesia for a long time, dating back to 1993, when PT Marxing Farm Makmur began selling its wafer product. The conflict started in 2017 when DC Comics discovered that the Directorate General of Intellectual Property of the Ministry of Law and Human Rights had denied their application to register a trademark in Indonesia. The explanation for this was that Indonesia had long used a similar trademark name. In order to get the only right to use the Superman moniker, DC Comics then hurried to sue PT Marxing Farm Makmur. But before they appealed to the Supreme Court, the District Court denied their plea. The Supreme Court also dismissed the December 21, 2018, cassation hearing, citing the lawsuit's ambiguity and vagueness.

#### 5. IKEA dan IKEA Intan Khatulistiwa Esa Abadi

A brand with its headquarters located in Hullenbergweg, Netherlands, is the subject of the next trademark dispute. IKEA filed a lawsuit against PT Ratania Khatulistiwa, a local IKEA business in Surabaya. The Supreme Court subsequently ruled that the Indonesian IKEA brand is owned by the Surabaya-based local company. This ruling is founded on the legal principle that brands that have not been used by their owners for three years in a row after the date of registration may be struck from the General Trademark Register in response to the findings of a market survey, without taking the survey institution's reputation into account.

Naturally, the intricacy of the aforementioned trademark rights issue highlights the significance of trademark registration. The aforementioned issues adequately clarify that the trademark dispute arose as a direct result of the discrepancy in the trademark registration standards that applied in Indonesia, namely the First to File Principle System. In fact, there is no difference between registering our trademark and not registering it at the Directorate General of Intellectual Property (DJKI) Law and Human Rights of the Republic of Indonesia if trademark disputes that are closely related to the question of who has more rights to the trademark if one of them adheres to the first registrant or the First to File Principle continue to arise. Because there will undoubtedly be a significant loss of time and money if this type of harmful activity persists. Analyzing the modernization of digital law and society requires an understanding of the notion of good governance. As previously stated, Henk's notion of good governance is

helpful in monitoring government regulation, policy, and action concerning the evolution of digital law and society. Sometimes it is still evident that the government is not responding to the criminal tendency and economic growth in the digital age by putting the values of properness, transparency, effectiveness, responsibility, participation, and human rights into practice. However, there are still a lot of methods to improve Indonesia's digital legislation and social structure. Practically speaking, good governance may be applied as a theory or strategy to address e-business and cybercrime in the digital age.

Proper process in conformity with the principles of legal clarity, carefulness, reasonability, and so forth was stressed by good governance. The democratic rule of law may be used to combat cybercrime if certain good governance criteria are followed. Therefore, avoiding arbitrary decisions, power abuses, poor management, or maladministration can assist in combating cybercrime law enforcement. Additionally, with proper regulation and oversight of e-commerce, fintech, and other e-businesses, excellent governance may be used to improve the digital economy by bolstering the enforcement of cybercrime laws. In addition to offering greater consumer protection and legal certainty for direct or indirect investments in the technology sector, excellent governance allows the entire society to recognize the role of government agencies.

## **CONCLUSIONS AND RECOMMENDATIONS**

In Indonesia, there is a strong association between intellectual property and MSMEs. MSMEs play a crucial role in the economy and are strategically positioned to represent the national economic system. As a representation of people's economic businesses, MSMEs must be given opportunities, support, protection, and development. By establishing legal certainty, this may be accomplished. Law Number 11 Year 2020 on Job Creation (UU Cipta Kerja), Law Number 20 Year 2008 on Micro, Small, and Medium Enterprises (UU UMKM), and Government Regulation Number 7 Year 2021 as UU Cipta Kerja conduct guidelines all uphold legal clarity. The government regulation differs greatly (simply) from the MSMEs' requirements in Article 6 UU UMKM. By creating, revising, and reforming some rules, UU Cipta Kerja was able to streamline MSME laws. It is anticipated that the establishment of UU Cipta Kerja and the empowering of MSME legislation would result in an integrated set of regulations. It is crucial that MSMEs' owners safeguard their products with intellectual property. This is due to the fact that MSMEs play crucial roles in national development and make a substantial contribution to national economic growth. In essence, MSMEs' owners need to safeguard their intellectual property immediately since it provides legal protection for them and their assets, allowing them to freely explore and exploit the assets' economic value. It is a way to foresee intellectual property violation or disputes, and it also increases MSMEs' target markets and competency. MSMEs can be developed through the utilization of intellectual property rights. Since intellectual property is recognized as a tangible item that can be transferred, it can be used as supplementary security for bank lending. The problem, though, is that there isn't a solid legal foundation that may be utilized to reference intellectual property rights as collateral. Thus, the study's

conclusion is that new legal interpretations be made about the legitimacy of using intellectual property as collateral for loans.

### FURTHER STUDY

To provide deeper insights and wider applications, more study is invited to explore this area further, addressing any potential limits and broadening the scope of analysis.

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