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## Legal Annotation of Court Decision Number 75 / Pdt.Sus – Ipr / Merek / 2022 / Pn Niaga Jkt.Pst in Administrative Certainty for Famous Brands in Indonesia

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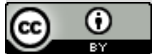
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### ABSTRACT

Review of the trademark determination in court decision Number 75/Pdt.Sus-Hki/Merek/ 2022/Pn Niaga Jkt.Pst rejection of the application for the trademark GENHALILINTAR + Painting by Anofial Asmid because it was registered by PT SOKA CIPTA NIAGA on October 23 2017 with a Notification of Rejection Registration of the Mark "GENHALILINTAR + Painting" Agenda Number D002018027834 dated 31 December 2019 by the Directorate General of Intellectual Property and Decision of the Mark Appeal Commission / Defendant Number 375 / KBM / IPR / 2020 dated 8 September 2020. This turns out to be interesting because in Halilintar Anofial Asmid has registered the GENHALILINTAR + Painting brand in several classes, which of course contradicts the arguments in the Notice of Rejection and Decision of the Mark Appeal Commission. This paper uses normative legal research methods. With the conclusion Based on the legal annotation of the Decision that there are problems that occur in granting well-known trademark rights to certain people or civil legal entities, especially if the trademark holder is not the initial initiator of its popularity. In terms of administrative certainty of the GENHALILINTAR + Painting mark, state administrative legal action in trademark disputes can be filed against the decision to delete a registered mark at the initiative of the Minister. If there has not been an administrative Judge's Decision, the first principle is that the registered mark has a stronger position compared to the popular indication of a mark

## INTRODUCTION

In this modern era, to ensure that you can meet your living needs, it is not enough to just have one job. This is due to various factors, one of which is the ability of the workplace to meet wage standards, work targets that are greater than the income provided so that the workers' time runs out and they cannot undertake other activities. Not to mention that the characteristics of the work currently being done are mixed with technology and we are currently reaching the era of Society 5.0. Fulfilling jobs that are in line with the characteristics of inclusive economic growth is one of the concerns for the government as well as paying attention to the availability of jobs with the working age population. To increase consumption of domestic products, this can be done through a brand that becomes the identity of a product from a particular business to make it easier for people to identify claims according to market needs. In this case, the government encourages consumers to prioritize local products for their basic daily needs. Branding is one of the things facilitated by the state which is based on the principle of legality, the principle of protection of human rights and the general principles of good governance in accordance with article 5 of Law Number 30 of 2014 concerning Government Administration. Promotional activities are easier to carry out with the uniqueness of branding a product with a brand, especially one that is already categorized as a well-known brand. Based on Article 1 paragraph (1) of Law Number 20 of 2016 concerning Marks and Geographical Indications, it is stated that a brand is a sign that can be displayed publicly. graphics in the form of images, logos, names, words, letters, numbers, color arrangements, in 2 (two) dimensions and/or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to differentiate goods and/or services produced by a person or legal entity in the course of trading goods and/or services" The following factors are an indication of whether the mark is a well-known mark or not (MENTERI HUKUM DAN HAK ASASI MANUSIA and INDONESIA 2016)

The level of knowledge or recognition of the brand in the relevant public sector;

1. Duration, extent and geographical area of each use of the Mark;
2. The duration, reach and geographic area of any brand promotion, including advertising or publicity and presentation, at exhibitions or exhibitions, goods and/or services to which the mark applies;
3. The duration and geographical area of any registration, and/or any application for registration, of the mark, to the extent it reflects the use or recognition of the mark;
4. Records of successful enforcement of trademark rights, in particular, the extent to which the trademark is recognized and known by the competent authority;
5. The associated value of the brand. Based on the reputation and progress of a brand, brands can be divided into three types, namely normal marks, well-known marks and famous marks. Ordinary brands are classified as not having a high reputation. This ordinary brand is considered to not provide a symbolic emanation of a good lifestyle in terms of use and technology, the consumer community sees this brand as low quality. This brand is also considered to not have drawing power which is able to provide a mythical touch and power of suggestion to the consumer community, and is unable to form market layers and users (Harahap 1996). Several previous studies related to well-known brands such as Analysis of Famous Brand Trade Disputes Between Tbl Licensing Llc With Timberlake Indonesia (Case Study of Supreme Court Decision Number 42/Pdt.Sus-Merek/2020/PN.Niaga.Jkt.Pst) (Diyani and Sardjono 2022)

Based on the reputation and progress of a brand, brands can be divided into three types, namely normal marks, well-known marks and famous marks. Ordinary brands are classified as not having a high

reputation. This ordinary brand is considered to not provide a symbolic emanation of a good lifestyle in terms of use and technology, the consumer community sees this brand as low quality. This brand is also considered to not have drawing power which is able to provide a touch and mythical power of suggestion to the consumer community, and is unable to form market layers and users. With Timberlake Indonesia (Case Study of Supreme Court Decision

Number 42/Pdt.SusMerek/2020/PN.Niaga.Jkt.Pst) only concludes about the implementation of well-known trademark protection as regulated in Article 4, Article 6 paragraph 1 letter b and Article 6 paragraph (2) of Law Number 15 of 2021 which adheres to the first to file principle to facilitate the registration of trademarks of applicants who are in good faith without plagiarizing or using the fame of a brand name. Apart from that, well-known brands have many threats, such as the French Pierre Cardin brand, which has fulfilled the elements of a well-known brand, including a brand that has a well-known reputation. However, due to weak regulations in Indonesia, this brand has suffered losses due to violations committed by local brand companies, so there is a need to synchronize regulations first. relating to the trademark registration process which is supported by stakeholders, especially in the harmonization of trademark regulations in Indonesia, which is the conclusion of the article entitled Legal threats against the existence of famous brands a study on the dispute of the brand Pierre Cardin in Indonesia(Pujiyono, Waluyo, and Manthovani 2020).

The registration of this famous brand becomes very interesting to study when reading the court decision Number 75/Pdt.Sus-Hki/Merek/2022/Pn Niaga Jkt.Pst that the court decision relates to the annulment of the decision of the Mark Appeal Commission / Defendant Number 375 / KBM / HKI / 2020 dated September 8 2020 and ordered DJKI (Directorate General of Intellectual Property\_ to accept the application for registration of the Mark "GENHALILINTAR + Painting with Agenda Number D002018027834 and issue a Brand

Certificate GENHALILINTAR + Painting" in the name of Halilintar Anofial Asmid. This case started with the rejection of the application for the mark GENHALILINTAR + Painting by Anofial Asmid because it was registered by PT SOKA CIPTA NIAGA on October 23 2017 because there are similarities in essence in accordance with Law Number 20 of 2016 in accordance with article 21 paragraph (1) letter a. namely the application is rejected if the mark has similarities in essence or in its entirety with a registered Mark belonging to another party or previously applied for by another party for similar goods and/or services. The next legal remedy is the submission of a trademark appeal application which was also rejected on the basis of Article 21 paragraph (1) letters b and c, Article 21 paragraph (2) letter a and Article 21 paragraph (3) with decision Number 375/KBM/HKI/2020 dated 8 September 2020. This turned out to be interesting because at Halilintar Anofial Asmid had registered the GENHALILINTAR + Painting mark in several classes which of course contradicted the arguments in the Notification Letter of Refusal to Registration of the Mark "GENHALILINTAR + Painting" Agenda Number D002018027834 dated 31 December 2019 by the Directorate General of Wealth Intellectual and Decision of the Mark Appeal Commission / Defendant Number 375 / KBM / HKI / 2020 dated September 8 2020.(Anon 2022).

Legal harmonization to respond to the complex needs of society must cover many aspects both in terms of legal substance where there is no overlap between one legal product and another, there is synergy between institutions/parts that play a role in the manifestation of the legal product and the culture of society that responding to it is one of the right ways to achieve the value of legal certainty, usefulness and fairness of a legal event, including administrative certainty of brands, especially with well-known indications, therefore the author is interested in discussing.

1. What are the results of the legal annotation of Court Decision Number 75/Pdt.Sus HKI/Merek/2022/PN Niaga Jkt.Pst?
2. What is the administrative certainty of famous brands based on Court Decision Number 75/Pdt.Sus-HKI/Merek/2022/PN Niaga Jkt.Pst?

## **METHODS**

This research uses normative legal research so that it focuses on legal discovery in cases in concreto which uses judicial case studies where legal case studies due to conflicts that are resolved through court decisions or usually called jurisprudence studies (Abdulkadir Muhammad 2004) This was chosen by analyzing cases that have become decisions with a *decidendi ratio* or reasoning regarding the court's considerations.

## **RESULTS AND DISCUSSION**

Anofial Asmid as the plaintiff registered the mark "GENHALILINTAR + Painting" with Agenda Number D002018027834 Class 25 dated June 5 2018, which was subsequently rejected by the Trademark Directorate based on a letter dated December 31 2019 which was received on February 14 2020 on the grounds that it was substantially similar to the GEN HALILINTAR mark. Registration number: IDM000764189 (Agenda Number DID2017054190) belonging to another party which has previously been registered for similar goods (Article 21 paragraph (1) letter a of Law Number 20 of 2016 concerning Marks and Geographical Indications. Likewise, rejection by the Mark Appeal Commission dated whose rejection was based on the Mark Appeal Commission Decision Number 375/ KBM/ HKI / 2020 dated September 8 2020 which was received on May 10 2022.

## **CONCLUSION**

Write a conclusion based on your interpretation of the findings and discussion. The conclusion presents critical points that explain the answers to research questions. In this section, the author can provide input and recommendations. Suggestions present advanced ideas to be developed in subsequent research or practical improvement.

In fact, based on the definition of a brand in Law Number 20 of 2016 article 1 number 1 that a brand can be made in any form, these elements can stand alone or be a combination of them, while the function of a brand is as an element that marks or has differentiating power for something. goods or services with other products and has functions such as guaranteeing consumer quality for a product or service as well as advertising attractiveness functions so that both the brand and the packaging can be attractive.

The Supreme Court's jurisprudence in its decision Number 279 PK / 1992 dated January 6 1998, with the legal principle: marks used that have similarities in essence can be described as follows, namely the same form (Similarity of Form, Same Composition), Same Combination ( Similarity of Combination, Similarity of Elements, Similarity of Sound, Similarity of Speech (Phonetic Similarity), Similarity in Appearance with these guidelines then the right way to determine whether a brand has similarities in essence with whether there are other brands or not is by comparing the two brands, visually seeing the similarities and differences, paying attention to the important characteristics and the impression of similarities or differences that arise so that if the brands are confirmed to be the same, then an incident of brand infringement has occurred.

Lenggogeni as the wife of Anofial Asmid is a nickname/abbreviation for the name GENHALILINTAR and is known to the wider community. Apart from that, when compared to the GENHALILINTAR brand, when compared with the GEN HALILINTAR brand, if you look at it visually, phonetically and conceptually, it has distinctiveness so it doesn't give the same impression and has characteristics. Family pictures/paintings are the


dominant/essential element so they have no similarities so they do not mislead consumers based on the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 2451 K/Pdt/1989 in conjunction with the Central Jakarta District Court Decision dated 16 March 1989 Number 545/Pdt/1989 in conjunction with the PN Decision. Central Jakarta dated March 16 1989 Number 545/Pdt / G.D/ 1988/ PN Jak.Pus states that in determining whether or not there are similarities in essence between a brand and another brand, the mark in question must be viewed as a whole as a unified whole, without breakdown of parts of the brand. Because there is no correct way to determine whether a brand is substantially similar to another brand or not, namely by comparing the two brands, visually seeing the similarities and differences, paying attention to important characteristics and the impression of similarities or differences that arise so that if If the brands are confirmed to be the same, then there has been a trademark infringement.

Based on the existing evidence of Court Decision Number 75/Pdt.Sus-HKI/Merek/2022/PN Niaga Jkt.Pst, it is stated that the GENHALILINTAR + Painting brand in classes 41, 16, 35 and 43 has been accepted and registered by the Directorate General of Intellectual Property and has received certificate as

well as the naming of the book using the name of the GENHALILINTAR Team which has also been registered by the Directorate General of Intellectual Property (DJKI) and published via YouTube and electronic media since 2015, there has never been any objection and the name is attached to the very popular Halilintar family. The definition of popular according to the Big Indonesian Dictionary is known and liked by many people or the general public. Apart from that, it is defined as being in accordance with the needs of society in general, easily understood by many people and liked and admired by many people. This has been around since July 2015 with the publication of the novel "GENHALILINTAR KESEEELEASAN My Family My Team" whose story was then enjoyed by the public via social media and YouTube. The following are detailed data on brand registration that has been carried out by Halilintar Anofial Asmid.

Halilintar Anofial Asmid has registered the GENHALILINTAR + Painting mark in another class, with the label / label "Brand" and the same "date of receipt" as No. Agenda: D002108027834

Table 1. Brand

<u>Merek Gen Halilintar + Lukisan</u>	<u>Deskripsi</u>
	No. Agenda : J002018027817 No. <u>Daftar</u> : IDM000860661 <u>Kelas</u> : 41 <u>Tanggal Penerimaan</u> : 05 -06-2018 <u>Pemohon</u> :Tn. <u>Halilintar Anofial Asmid</u>

a. Apart from that, because there is an affiliated relationship between Halilintar Anofial Asmid according to company standards based on Law Number 40 of 2007 concerning Limited Liability

Companies as the owner or shareholder (majority) of PT Suqma Corpora Indonesia which has submitted an application for trademark registration with a "brand label" and "date receipt" which is the same as No. Agenda D002108027834 and accepted as follow

Table 2. Brand

<u>Merek Gen Halilintar + Lukisan</u>	<u>Deskripsi</u>
	No. Agenda : D002018027821 No. Daftar : IDM000717629 Kelas : 16 Tanggal Penerimaan : 05 -06-2018 Pemohon : PT Suqma Corpora Indonesia
	No. Agenda : J002018027833 No. Daftar : IDM000717558 Kelas : 35 Tanggal Penerimaan : 05 -06-2018 Pemohon : PT Suqma Corpora Indonesia
	No. Agenda : D002018027819 No. Daftar : IDM000717663 Kelas : 43 Tanggal Penerimaan : 05 -06-2018 Pemohon : PT Suqma Corpora Indonesia

Apart from that, the considerations of the Mark Appeal Commission/geographical indications of the Ministry of Law and Human Rights are incorrect and incorrect because they did not carry out a substantive examination which is a special examination there are elements that contain functional forms. GENHALILINTAR Brand + Class 25 Painting becomes something interesting with the following image: With a comparison brand entitled "Gen Halilintar" No. Agenda: DID2017054190 (IDM000764189) acceptance date 23 October 2017

appointed by the Ministry of Law and Human Rights based on articles 20 and 21 of Law Number 20 of 2016 which was supplemented by Omnibus Law, namely Law Number 11 of 2020 concerning Job Creation, namely that in class 25 on behalf of PT Soka Cipta Niaga with the following description: Apart from that, as a reference, there are many other registered brands containing the elements "GEN" and "Halilintar" in Class 25 as follows:

Table 3. Brand



No	<u>Merek</u>	<u>Pemilik</u>	<u>No. Daftar</u>	<u>Status</u>
1	<u>Fateh Halilintar + Lukisan</u>	<u>Halilintar Anofial Asmid</u>	IDM000843468	<u>Didaftar</u>
2	<u>Gen C</u>	<u>PT . Bakrie Swasakti Utama</u>	IDM000274442	<u>Kadaluarsa</u>
3	<u>Gen Zet</u>	<u>Kuat Urip</u>	IDM000233703	<u>Kadaluarsa</u>
4	<u>Gen V</u>	<u>Gani</u>	IDM000301993	<u>Kadaluarsa</u>
5	<u>Gen XT</u>	<u>Andri Gunawan</u>	IDM000476600	<u>Didaftar</u>
6	<u>Gen Why</u>	<u>PT. Televisi Transformasi Indonesia</u>	IDM000632662	<u>Didaftar</u>
7	<u>Gen Bread</u>	<u>PT Nippon Indosari Corpindo. Tbk</u>	IDM000879942	<u>Didaftar</u>
8	<u>Gen Puza</u>	<u>Emi Nurhaemi</u>	IDM000932666	<u>Didaftar</u>
9	<u>Gen Y</u>	<u>Rusly</u>	IDM000276243	<u>Kadaluarsa</u>
10	<u>ATTA HALILINTAR HABIT + Logo</u>	<u>Muhammad Attamimi J</u>	IDM000897622	<u>Didaftar</u>

As the description above shows, the DJKI (Directorate General of Intellectual Property) considers that a brand that uses the name "GEN" and/or Halilintar with the tone of the words that follow it is considered to have sufficient distinguishing power with the name being widely known in Indonesia and abroad.

Based on the description above, it can be said that only the application for the

GENHALILINTAR + LUKISAN Class 25 mark by Halilintar Anofial Asmid was rejected with the Notice of Refusal to Register the Mark "GENHALILINTAR + Painting" Agenda Number D002018027834 dated 31 December 2019 by the Directorate General of Intellectual Property and the Decision of the Appeals Commission

Table 4. Comparison

<u>Pembanding</u>	<u>Anofial Asmid</u>	<u>PT Soka Cipta Niaga</u>
<u>Merek Gen Halilintar + Lukisan</u>		
<u>Deskripsi</u>	No. Agenda : D002018027834 Kelas : 25 Tanggal Penerimaan = 05 - 06 - 2108 Pemohon : Tn. Halilintar Anofial Asmid	No. Agenda : DID2017054190 No. Daftar : IDM000764189 Tanggal Penerimaan = 23 -10 - 2017 Pemohon : PT SOKA CIPTA NIAGA
<u>Jenis Barang</u>	Baju, kemeja, kaos - kaos, pakaian dalam, pakaian olahraga, rompi, jaket, jas, baju hangat (sweater), piyama, gaun, celana Panjang, celana pendek, kaos kaki, topi - topi, dasi, kopia, pakaian jadi, alas kaki, tutup kepala, sarung tangan (pakaian), sorban, kerudung kepala (pakaian), cadar, syal - syal, sepatu sandal, sepatu olahraga	Alas kaki, baju hangat, baju mantel luar, baju stelan, bandana, busana muslim, celana anak - anak dan bayi, celana jeans, celana ketat, celana pendek, celana pria, celana Wanita, dasigamis, hijab, ikat kepala, ikat pinggang, jaket, jas panjan, kaos kaki, kaos oblong, kemeja, kerudung, kerudung kepala, kimono, kopiah, mnset, mantel, pakaian, anak - anak dan bayi, pakaian dalam, pakaian kerja, pakaian pria, pakaian seragam, pakaian tidur, pakaian wanita, rok, rompi, sandal, sarung, sarung sarung tangan, sepatu, sepatu sandal, stoking, syal, topi, shirt, turban, tutup kepala.

Trademark / Defendant Number 375 / KBM / IPR / 2020 dated September 8 2020 on the grounds that there is a comparable mark which was previously registered on October 23 2017 even though it has been explained that the popularity of GENHALILINTAR by Halilintar Anofial Asmid began around 2015 with the novel "My GENHALILINTAR KESELAHAN Family My Team". In the Court Decision Number 75/Pdt.Sus-

HKI/Merek/2022/PN Niaga Jkt.Pst it is correct because it only declares the decision of the Mark Appeal Commission / Defendant Number 375 / KBM / HKI / 2020 dated September 8 2020 as annulled and orders the Directorate General of Intellectual Property to accept the application for registration of the mark "GENHALILINTAR + Painting" Agenda Number D002018027834. Meanwhile, in order to seek legal certainty from a

historical and philosophical perspective on the existence of the GENHALILINTAR + Painting brand, state administrative legal action in trademark disputes can be filed against the decision to delete a registered trademark at the initiative of the Minister of Law and Human Rights. Because if there is no administrative Judge's Decision, then the principle is first Previously, registered trademarks had a stronger position compared to the popular indication of a trademark. The brand itself is part of Intellectual Property Rights. Where administrative certainty has an important function to protect against fraudulent competition, plagiarism, exploiting other people's popularity to achieve certain parties' profits, whether in the form of counterfeiting or fraud, which is one of the problems with well-known brands. Trademark deletion is the competence of the State Administrative Court in accordance with article 72 paragraph (7) of Law Number 20 of 2016. In trademark matters which are classified as public law, they relate to the registration, deletion and cancellation of trademarks. The characteristics of the brand rights granted are a form of state administrative decision with the analysis that the written determination given by the State Administrative Official who is currently the Minister of Law and Human Rights contains acts of State Administrative Law where the actions of the Minister of Law and Human Rights in the decision are concrete, individual and final and give rise to legal consequences for the person or civil legal entity which in this case is the holder of the trademark rights even though it is determined otherwise by the Trademark Law that the competence of the State Administrative Court is only the deletion of the trademark while the authority to handle registration and cancellation disputes brand is the Commercial Court. The principle of administrative certainty is in accordance with the mandate of Article 5 of Law Number 30 of 2014 (Pemerintah RI 2014) It is stated that the implementation of government administration is based on 3 (three) things, namely the principle of legality, the principle of protection of human rights and the general principles of good governance.(Setiadi 2020) Where in the discussion

related to administrative certainty in well-known brands, Law Number 15 of 2021(Pemerintah Pusat 2016) jo Law Number 20 of 2016 and Law Number 30 of 2014 are instrumental forms where the meaning of instrumental value itself is a manifestation of basic values, and this is in the form of articles of the 1945 Constitution, legislation, decrees and other regulations that function as guidelines, rules, instructions for the public to obey them. (Putri, Syahuri, and Ibrahim 2024).

## CONCLUSION

1. Based on the legal annotation of Court Decision Number 75/Pdt.Sus-HKI/Merek/2022/PN Niaga Jkt.Pst, it can be seen that there are problems that occur in granting well-known trademark rights to certain people or civil legal entities, especially if the holder the brand was not the initial initiator of its popularity. This is a common problem both nationally and internationally. Then in this decision Anofial Asmid only received rejection from the GENHALILINTAR + LUKISAN Class 25 mark with a Notification Letter of Refusal to Registration of the Mark "GENHALILINTAR + Painting" Agenda Number D002018027834 dated 31 December 2019 by the Directorate General of Intellectual Property and Decision of the Mark Appeal Commission / Defendant Number 375 / KBM / IPR / 2020 dated 8 September 2020. even though the GENHALILINTAR + Painting brand in classes 41, 16, 35 and 43 has been accepted and registered by the Directorate General of Intellectual Property and has received a certificate as well as naming books using the name of the GENHALILINTAR Team which has also been registered by the Directorate General Intellectual Property (DJKI) on the grounds that it has no distinguishing power.



2. In terms of administrative certainty of the GENHALILINTAR brand + Painting of state administrative legal action in trademark disputes, a lawsuit can be filed against the decision to delete a registered trademark at the initiative of the Minister of Law and Human Rights. position is stronger than the popular indication of a brand. The brand itself is part of Intellectual Property Rights. Where administrative certainty has an important function to protect against fraudulent competition, plagiarism, exploiting other people's popularity to achieve certain parties' profits, whether in the form of counterfeiting or fraud, which is one of the problems with well-known brands. Trademark deletion is the competence of the State Administrative Court in accordance with article 72 paragraph (7) of Law Number 20 of 2016. In trademark matters which are classified as public law, they relate to the registration, deletion and cancellation of trademarks. The characteristics of the brand rights granted are a form of state administrative decision

with the analysis that the written determination given by the State Administrative Official who is currently the Minister of Law and Human Rights contains acts of State Administrative Law where the actions of the Minister of Law and Human Rights in the decision are concrete, individual and final and give rise to legal consequences for the person or civil legal entity which in this case is the holder of the trademark rights even though it is determined otherwise by the Trademark Law that the competence of the State Administrative Court is only the deletion of the trademark while the authority to handle registration and cancellation disputes brand is the Commercial Court. The principle of administrative certainty in accordance with the mandate of Article 5 of Law Number 30 of 2014 states that government administrative administration is based on (three) things, namely the principle of legality, the principle of protection of human rights and the General Principles of Good Government (AUPB).

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