

Legal Protection For Trademark Owners

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ABSTRACT

According to Law Number 20 of 2016 concerning Trademarks and Geographical Indications, to obtain rights to a trademark, the trademark must be registered with the Directorate of Trademarks of the Ministry of Law and Human Rights of the Republic of Indonesia according to the constitutive system. Indonesia adopts a first to file system, namely where the first party to submit an application for trademark registration gets priority to first register the trademark rights, then will get exclusive rights to their trademark and receive legal protection. So this provision is different from the norm adopted in Law Number 28 of 2014 concerning Copyright which adopts the principle of first to use. Exclusive rights can be defined as the right to "provide protection guarantees to the owner of the trademark and is the sole owner who has the right to use and use and prohibit anyone from having and using it.

Keywords: Legal Protection, Trademark Owners.

A. Introduction

The understanding of a brand as part of IPR cannot be separated from the understanding that brand rights begin with findings in other IPR fields, such as copyright. In a brand there are elements of creation, such as logo design or letters. There is copyright in the field of art, but in brand rights it is not copyright in the field of art that is protected but the brand itself and brand rights are limited only to its use or usage on marketed products and have economic value.¹

For manufacturers, a brand is an image and a good name for a company, and is also part of a business strategy. There is no manufacturer that does not use a brand as an identity for the goods it produces or the services it provides. The identity

¹ Sulastrri, Satino, dan Yuliana Yuli W, "Perlindungan Hukum Terhadap Merek (Tinjauan Terhadap Merek Dagang Tupperware Versus Tulipware)", *Jurnal Yuridis Fakultas Hukum Universitas Pembangunan Nasional "Veteran" Jakarta*, Vol. 5., No. 1, Juni 2018, hlm. 162

embodied in the brand is an identifier and at the same time a differentiator between a particular company's brand and the brands of other companies. The right to a brand is a special (exclusive) right granted by the state to its owner to use the brand themselves or to give permission to others to use it. The granting of special rights by the state has the consequence that to obtain it must go through a registration mechanism, so that the nature of registration is mandatory (compulsory). In order for the brand rights to receive protection and recognition from the state, the brand owner must register it with the state. If a brand is not registered, then the brand will not be protected by the state. Consequently, the brand can be used by anyone.²

Brands are part of the scope of Intellectual Property. IPR is the right to property that arises or is born from human intellectual ability. IPR is categorized into 2 groups, namely Copyrights and Industrial Property Rights consisting of Patents, Trademarks, Industrial Designs, Trade Secrets, and Integrated Circuit Layout Designs. The purpose of the IPR classification is to maintain the creativity and identity that has been built by a company so that it is better known by the wider community. Basically, brand owners want to achieve consumer loyalty, namely the peak consumer behavior towards the brand, where consumers are willing to do anything to maintain their chosen brand.³

B. Research Methods

Legal research is a series of systematic mechanisms in conducting research.⁴ In this case, legal research is conducted to find solutions and answers to a problem that has been determined in the legal issue that is used as the object of research. The research method used to answer the problem. This research is a type of normative

² Agung Sujatmiko, "Tinjauan Filosofis Perlindungan Hak Milik Atas Merek", *Jurnal Media Hukum Fakultas Hukum Universitas Muhammadiyah Yogyakarta*, Vol. 18., No. 2, Desember 2011, hlm. 177

³ Insan Budi Maulana, *Pelindungan Merek Terkenal Di Indonesia Dari Masa Ke Masa*, Bandung, Citra Aditya Bakti, 2010, hlm. 91.

⁴ Abdulkadir Muhammad. *Hukum dan Penelitian Hukum*. Cetakan I. (Bandung: Citra Aditya Bakti, 2004), hlm. 57.

legal research.⁵ This study uses secondary data sources. Secondary data sources, This research data consists of secondary data. Secondary data is data obtained from literature studies that are relevant to this study. Secondary data is "data sourced from literature studies (library research) related to publications, namely library data listed in official documents.

C. Analysis And Discussion

In addition, the owner of a well-known brand can also cancel the brand. In relation to well-known brands, in many cases the court has expanded the legal protection of the brand, namely including legal protection for well-known brands for both similar and non-similar goods. The seriousness of the government in efforts to protect Intellectual Property Rights, especially Trademark Rights in Indonesia, has been proven by perfecting the applicable legal regulations, one of the real forms of which is the birth of Law Number 20 of 2016 concerning Trademarks and Geographical Indications which is an amendment to Law Number 15 of 2001 concerning Trademarks, where the provisions of the new Law concerning Trademarks are better than the old Trademark Law, especially in efforts to protect well-known Trademarks that are not registered in Indonesia.

Registration does not create rights to a brand, but registration here describes a statement that rights to a brand can be obtained through use. The use also describes the provisions in the application for brand registration. The applicant must create a statement containing a desire to continue a brand through the principle of "use in commerce". Brand registration has the purpose of obtaining legal certainty and legal protection for brand rights that can be proven by a Brand certificate. Registration means that exclusive rights to a brand are granted because of registration. Constitutive system, brand registration is an absolute matter. Brands that are not registered will automatically not receive legal protection. Brands that can be registered are those that

⁵ Jhonny Ibrahim, *Teori & Metode Penelitian Hukum Normatif*. (Malang: Bayumedia Publishing, 2008), hlm. 47

meet certain requirements, not all brand applications can be registered, for example because the application submitted by the applicant is in bad faith. The applicant is considered to be in bad faith if the brand applicant is dishonest, because there is a hidden intention to imitate or piggyback on the fame of another person's brand.⁶

Indonesia adopts a constitutive registration system where this system requires registration of a Trademark so that a Trademark can get protection. This system is known as the first to file system. Which in this system emphasizes that the person who first registers a Trademark is the person who has the right to the Trademark. Although Indonesia adopts a constitutive system, protection of well-known trademarks that have not been registered in Indonesia will still be protected because Indonesia has ratified the Paris Convention and the TRIPS agreement. The change in the registration system adopted by Indonesia from the initial "declarative system" to the "constitutive system" which began to be implemented with the enactment of Law No. 19 of 1992 concerning Trademarks, is considered to have more legal certainty. Trademarks that have been registered will have legal protection from the date of receipt of the trademark registration. However, this causes no protection for unregistered trademarks because registration is required to obtain legal protection from the state. However, in fact the implementation of this constitutive system will only give rise to bad intentions, this is completely contrary to the purpose of the law itself, where the law has a target to be achieved, namely creating order, balance and an orderly society. Through the creation of order in society, it is hoped that human interests will be protected. In order to achieve this goal, the law has the task of distributing rights and obligations between individuals in society, distributing authority and making arrangements related to how to solve legal problems and maintaining legal certainty.

The regulation regarding the registration process regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications has been shortened

⁶ Muchtar A H Labetubun, "Penyelesaian Sengketa Hak Atas Logo (Suatu Kajian Overlapping Hak Cipta Dan Merek)", *ADHAPER: Jurnal Hukum Acara Perdata*, Vol. 5., No. 1., Oktober 2019, hlm. 96.

compared to the registration process regulated by Law Number 15 of 2001. In the new Trademark Law, the process is shortened to an application, then a formal examination, then an announcement that will be given for 2 months to wait if there are any objections and then a substantive examination that is carried out for 150 days and then certification. Whereas in the old Trademark Law, after the application was submitted, a formal examination was carried out, then a substantive examination that took a longer time of around 9 months and then an announcement that took place for 3 months and then certification. The Trademark Law regulates 2 methods of trademark registration, namely registration with priority rights and registration in the usual way. Applications for rights with priority are regulated in articles 9 and 10 of the Trademark Law. Meanwhile, the definition is regulated in Article 1 letter, which means that the right of authority is the applicant's right to submit an application originating from a country that is a member of the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization with a maximum approval period of 6 months from the date of receipt of the first trademark registration application received in another country that is a member of the Paris Convention or a member of the Agreement Establishing the World Trade Organization". Trademarks adhere to the territorial principle, which means that trademark protection only applies in the country where the trademark is applied for and is granted rights to the trademark. To obtain trademark protection in Indonesia, the trademark owner must submit a trademark application in Indonesia, but by registering a trademark in Indonesia, the trademark does not necessarily receive legal protection for its trademark in other countries. To obtain protection abroad, the applicant must register individually in each desired country by appointing a registered IPR consultant whose work area covers the country to be the attorney for the trademark registration application. Within 6 months from the date of first receipt in Indonesia, the applicant can apply for registration of the same trademark for similar goods/services in other countries that are also members of the Paris Convention and obtain the same receipt date as the receipt date in Indonesia

by using Priority Rights as explained above. The main purpose of granting priority rights when obtaining trademark registration in Indonesia is to protect trademark owners from trademark violations such as imitation, piracy.⁸ Several countries have implemented a centralized trademark registration system, for example in Benelux (Netherlands, Belgium, Luxembourg) where the trademark will be registered and receive legal protection in the three countries. Likewise, in the European Union through the OHIM system, a similar system is also implemented for around 22 countries in Europe. However, this system has a weakness, namely if during the examination period the registered trademark is rejected in one member country, it will affect all applications. So many applicants prefer to register individually in each country. In Article 52 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, provisions regarding "international trademark registration applications" are added, namely regarding applications originating from Indonesia addressed to the International Bureau and applications addressed to Indonesia as one of the destination countries of the International Bureau.

D. Conclusion

Indonesia adopts a first to file system, where the first party to apply for trademark registration gets priority to register the trademark, then they will get exclusive rights to their trademark and get legal protection. So this provision is different from the norm adopted in Law No. 28 of 2014 concerning Copyright which adopts the principle of first to use. Exclusive rights can be defined as the right to "provide protection guarantees to the owner of the trademark and is the sole owner who has the right to use and use and prohibit anyone from having and using it".

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