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Authority of the Commercial Court in Settling Trademark Rights Disputes

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Abstract

Trademark rights are regulated in Law No. 20 of 2016 concerning Trademarks and Geographical Indications. According to Law No. 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, in other words, to obtain legal protection for trademark rights, the trademark must be registered by its owner with the Trademark Directorate and after being officially registered in the name of the owner, a trademark certificate will be issued. Law No. 20 of 2016 concerning Trademarks and Geographical Indications, specifically in Article 21 paragraph (1) letters b and c, Article 83 paragraph (2), and reinforced by the Explanation of Article 21 paragraph (1) letter b, Explanation of Article 76 paragraph (2), and Explanation of Article 83 paragraph (2). Indonesia adopts a Trademark registration system with a constitutive system. This system requires trademark registration so that a trademark can receive protection, this system is also known as the first to file system. The applicable procedural law in the process of filing a dispute in the field of intellectual property rights is the Civil Procedural Law as with the civil procedural law in civil cases handled by the District Court in the general judicial body environment. The process of filing a lawsuit for an intellectual property rights dispute has been regulated through laws and regulations in Indonesia, in accordance with the provisions of the applicable law on each intellectual property right, where the lawsuit is processed through the Commercial Court.

Key words

Authority; Commercial Court; Trademark Rights.

INTRODUCTION

Intellectual Property Rights (IPR) are the results of human intelligence which are manifested in the form of creations or discoveries[1]. IPR is a property right that is within the scope of technology, science, art, and literature. The object of IPR is not the goods, but rather the results of human intellectual ability, namely in the form of intangible objects. IPR will have economic meaning if it is realized by its owner in the form of an invention or creation to be enjoyed by its consumers.

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 trademark rights it is not the copyright in the field of art that is protected but the trademark

[1] Abdul kadir Muhammad, *Kajian Hukum Ekonomi Hak Kekayaan Intelektual* (Bandung: Citra Aditya Bakti, 2007).

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itself. and the trademark rights are limited only to its use or application on marketed products and which have economic value [2].

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 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 [3].

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. [4].

Trademark rights are part of IPR, just like copyright, patents and other IPR. The registered trademark must be a trademark that has met the requirements and procedures according to Law Number 20 of 2016 concerning Trademarks so that it obtains legal protection. Trademark registration is carried out by the applicant or his/her attorney in accordance with the requirements and procedures stipulated in the Trademark Law to the Directorate General of Intellectual Property Rights (Ditjen HKI). Trademark rights are obtained from the date of issuance of the trademark certificate by the Directorate General of IPR. The Directorate General of IPR is an institution tasked with providing protection for IPR such as logo copyright. The task of protecting IPR was born because the Directorate General of IPR is an institution that provides legitimacy for trademark registration. [5].

In resolving disputes in the field of IPR, the first level judicial body that is given the authority to handle it is the Commercial Court as a special court within the general judicial system and for legal remedies to appeal against the decision of the Commercial Court can only be done through legal remedies of cassation to the Supreme Court as the final level court in the

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2 Sulastri, Satino, and Yuliana, "Perlindungan Hukum Terhadap Merek (Tinjauan Terhadap Merek Dagang Tupperware Versus Tulipware)," *Jurnal Yuridis Fakultas Hukum Universitas Pembangunan Nasional "Veteran" Jakarta* 5, no. 1 (2018): 162.

3 Agung Sujatmiko, "Tinjauan Filosofis Perlindungan Hak Milik Atas Merek," *Jurnal Media Hukum Fakultas Hukum Universitas Muhammadiyah Yogyakarta* 18, no. 2 (2011): 177.

4 Insan Budi Maulana, *Pelindungan Merek Terkenal Di Indonesia Dari Masa Ke Masa* (Bandung: Citra Aditya Bakti, 2010).

5 Surianto Ruslam, *Mendesain Logo* (Jakarta: Gramedia Pustaka Prima, 2009).

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process of resolving IPR disputes. The procedural law that applies in resolving disputes in the field of IPR, including Copyright disputes, is Civil Procedural Law as with civil procedural law in civil cases handled by the District Court within the general judicial system.

METHODS

Research cannot be said to be research if it does not have a research method because the aim of research is to reveal a truth systematically, methodologically and consistently. [6]. Judging from its nature, this research is descriptive analytical, namely describing all symptoms and facts and analyzing current problems. [7]. Descriptive research is research that merely describes the condition of an object or event without any intention of drawing generally applicable conclusions..

RESULT, DISCUSSION AND ANALYSIS

Regulations Concerning Trademark Rights in Indonesia

Brands play an important role in the smooth running and improvement of trade in goods or services in trade and investment activities. Brands with their brand images can meet consumer needs for a very important sign or distinguishing power and are a guarantee of the quality of a product, because brands become a kind of "initial seller" for a product to consumers. In today's competitive era, it is no longer possible to limit the entry of products from abroad into the country, or vice versa from within the country to abroad. Brands as company assets will be able to generate large profits if utilized by paying attention to business aspects and good management. With the increasing importance of the role of this brand, it is necessary to place legal protection on the brand, namely as an object to which the rights of individuals or legal entities are related.[8]

Brands as a form of intellectual work have an important role in the smoothness and improvement of trade in goods or services in trade and investment activities. Brands with their brand image can meet consumer needs for identification marks or distinguishing features that are very important and are a guarantee of product or service quality in a free competitive atmosphere. Brands are economic assets for their owners, both individuals and companies (legal entities) that can generate large profits, of course if utilized by paying attention to business aspects and good management processes. The role of this brand is so important that legal protection is attached to it, namely as an object of it related to the rights of individuals or legal entities [9].

Brands are very important in the world of advertising and marketing because the public often associates a quality or reputation of goods and services with a particular brand. A brand can be a very valuable asset commercially. A company's brand is often more valuable than the

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6 Rahimah and Ismail Koto, "Implications of Parenting Patterns in the Development of Early Childhood Social Attitudes," *IJRS:International Journal Reglement & Society* 3, no. 2 (2022): 129–33.

7 Winarno Surakhmad, *Dasar Dan Teknik Research* (Bandung: Tarsito, 1978).

8 Fitri Ida Laela, "Analisis Kepastian Hukum Merek Terkenal Terdaftar Terhadap Sengketa Gugatan Pembatalan Merek," *Jurnal Hukum Dan Keadilan* 7, no. 2 (2020): 82.

9 Adrian Sutedi, *Hak Atas Kekayaan Intelektual* (Jakarta: Sinar Grafika, 2009).

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company's real assets. Brands are also useful for consumers. They buy certain products (which are seen from their brands) because they think the brand is of high quality or safe to consume because of the reputation of the brand. If a company uses another company's brand, consumers may feel cheated because they have bought a product with lower quality. With the existence of a brand that makes one product different from another, it is hoped that it will make it easier for consumers to determine the products they will consume based on various considerations and create loyalty to a brand (brand loyalty). Consumer loyalty to a brand is from recognition, choice and adherence to a brand.

The enactment of Law Number 20 of 2016 concerning Trademarks and Geographical Indications is intended to provide protection to brand owners for the results of a production from acts of brand counterfeiting, because with the increasing population and the need for original goods, then the brand in addition to being a sign to distinguish the origin of goods, the brand also becomes an exclusive right for the brand owner to obtain added value, so that the same goods using a well-known brand, the goods traded can be sold at a higher price and of course more profitable. According to Law Number 20 of 2016 concerning Trademarks and Geographical Indications, to obtain rights to a brand, the brand 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, in other words that to obtain legal protection of rights to a brand, the brand must be registered by its owner with the Directorate of Trademarks and after being officially registered in the name of the owner, a brand certificate will be issued.

Business strategies in trade are increasingly competitive, triggering business actors to solve the problem of how to market a product or service well by determining the quality that has good quality standards, but also how a brand of goods or services they own can be protected or protected from competitors of other business actors. Therefore, competition in business is not only about how to get attention from consumers, but also competing in a brand that has value in a product or service being traded. A brand with an attractive name and is very widely known to the public and of course it is the desire of business actors so that their products or services are also easily remembered and recognized by every consumer who buys them [10].

Trademark registration will create exclusive rights for the owner of the relevant trademark to use the trademark themselves for a certain period of time or to grant permission to other parties to use it. Trademark piracy and imitation have caused the business world to slump due to unhealthy business competition which has resulted in rampant bad faith behavior from adventurous business actors. A situation like this will further complicate the Indonesian business world. From a global perspective, conditions like this do not rule out the possibility of foreign investors being lazy to do business. In turn, Indonesia's business competitiveness at the global level will also weaken due to the declining level of world trust in Indonesian brands and products.

[10] Zainal Arifin and Muhamamd Iqbal, "Perlindungan Hukum Terhadap Hak Merek Yang Terdaftar," *Jurnal Ius Constituendum* 5, no. 1 (2020): 50.

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We can imagine how damaged Indonesia's image would be if fake brands or brands that piggyback on famous brands, both world-famous and local, were rampant in this country.

Indonesian Intellectual Property Rights (IPR), Trademark Rights are a form of IPR protection that provides exclusive rights for registered trademark owners to use the trademark themselves in the trade of goods and services, or allow others to use the trademark through a license. Obtaining Trademark Rights does not mean that you get permission to use the trademark yourself. By registering a trademark, you have the right to prohibit anyone from using the same trademark as the registered trademark, especially in the same type of goods or services. Trademark rights are regulated in Law No. 20 of 2016 concerning Trademarks and Geographical Indications. This law was created to maintain healthy, fair business competition, consumer protection and protection for Micro, Small and Medium Enterprises (MSMEs).

A brand is one of the intellectual property protected in business trade in addition to copyright, patents, industrial designs, integrated circuit layout designs, trade secrets, plant varieties, trade secrets, and geographical indications. A brand is indicated for intellectual property in the form of a sign displayed on goods or services traded to distinguish goods or services made and produced by other parties.

Products with well-known brands will be easier to market, so they can be sold more easily and provide greater financial benefits. The definition of a well-known brand is when a brand has circulated beyond regional boundaries to international boundaries, where it has circulated outside its country of origin and is proven by the registration of the relevant brand in various countries. Thus, legal protection is needed for Well-known Brand Rights to ensure legal certainty for brand inventors, brand owners and brand rights holders. In addition, it is also to prevent violations and crimes against Brand Rights and provide benefits to the community so that the community is more encouraged to create and manage the registration of their business brands. For well-known brands, the protection provided for the brand is carried out in two ways, namely preventive legal protection and repressive legal protection.

Article 1 number 1 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications (hereinafter referred to as the Trademark and Geographical Indication Law), defines a trademark as a sign that can be displayed graphically in the form of a logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by a person or legal entity in the trade of goods and/or services. Based on these provisions, it can be distinguished into 2 (two) things which state that traditional/conventional trademarks are those that form images, logos, names, words, letters, numbers, color arrangements or brands that take the form of 2 (two) dimensions; and non-traditional/electronic media trademarks, namely trademarks in the form of sound, 3 (three) dimensional trademarks, or hologram trademarks [11].

[11] Nurul Naomi Yuli EsterHidayati, "Urgensi Perlindungan Merek Melalui Protokol Madrid (Treadmark Protection Urgency Through The Madrid Protocol)," *Jurnal Legislasi Indonesia* 14, no. 2 (2017): 172.

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Procedural Law in the Resolution of Intellectual Property Rights Disputes

The procedural law used in trials that hear cases regarding IPR is by using ordinary civil procedural law which has been used in trials of cases in the general court environment. Thus, a common understanding of civil procedural law is needed. The Judicial Power has been divided into 4 (four) bodies of the judicial environment, namely General Courts, Religious Courts, Military Courts, and State Administrative Courts. The discussion in this article is more directed at General Courts which include Commercial Courts that use Civil Procedural Law which is the main topic of this article related to IPR disputes.

In line with developments in the field of intellectual property rights, the authority to adjudicate disputes in the field of IPR has also changed, because IPR disputes that were originally examined and decided by the District Court, with the new IPR Law, the authority to adjudicate IPR disputes has shifted to the authority of the Commercial Court, except for Trade Secret Rights. The Commercial Court was first stipulated in Government Regulation in Lieu of Law No. 1 of 1998 concerning amendments to the Bankruptcy Law which was then stipulated in Law No. 4 of 1998.

In general, the procedural law used in IPR lawsuits in the Commercial Court is:

1. Lawsuits regarding intellectual property rights disputes, including cancellation of intellectual property rights registration, are submitted to the Head of the Commercial Court in the jurisdiction of the Defendant's residence or domicile, and if the Defendant resides outside the territory of Indonesia, the lawsuit is submitted to the Central Jakarta Commercial Court.
2. The clerk examines the completeness of the lawsuit and then registers the lawsuit for cancellation on the date the lawsuit in question was filed and the plaintiff is given a written receipt signed by the clerk with the same date as the date of registration of the lawsuit.
3. The clerk submits the cancellation lawsuit to the Chairman of the Commercial Court within a maximum period of 2 days from the date the lawsuit is registered, while for the Patent Law it is 14 days.
4. No later than 3 days from the date the lawsuit is registered, the Commercial Court will study the lawsuit and determine the trial date, while in patent cases the trial date will be determined no later than 14 days after the lawsuit is registered.
5. The summons of the parties is carried out by the bailiff no later than 7 days after the lawsuit is registered and the hearing on the lawsuit is held no later than 60 days after the lawsuit is registered.
6. The decision must be pronounced no later than 90 days after the lawsuit is registered and can be extended for a maximum of 30 days with the approval of the Chief Justice of the Supreme Court, while in the field of Patents it must be pronounced no later than 180 days after the date the lawsuit is registered. The decision can be executed in advance even if a legal action is filed, except in Patent disputes.

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7. The Commercial Court's decision must be delivered by the Bailiff to the parties no later than 14 days after the cancellation decision is pronounced.
8. Although the Commercial Court decision is determined to only be appealed, because it is not expressly regulated that a prohibition on PK is carried out, the provisions as regulated in Law No. 14 of 1985 concerning the Supreme Court apply, namely that all decisions that have permanent legal force can be appealed for PK if there are sufficient reasons for it. The Intellectual Property Rights Law does not regulate judicial review, so in this case the Supreme Court refers to Law No. 14 of 1985 which is linked to Article 284 (1) of the Bankruptcy Law regarding the reasons, time limit and other things that apply to judicial review as regulated in Articles 66 to 75 of Law No. 14 of 1985.
9. A cassation application must be submitted no later than 14 days after the date the decision was pronounced or notified to the parties, while the cassation memorandum must be submitted to the Clerk within 7 days from the date of the cassation application.
10. In cases of patent cancellation, according to Article 119 (1) of the Patent Law, a reverse burden of proof system is applied, namely that the Defendant is first burdened with proving the arguments of his objection, whereas in Copyright cases, the Judge is required to be careful in proving who actually has the right to a creation because there is no obligation for the creator to register his creation, so that the holder of a Copyright certificate who does not act in good faith, the actual creator, will likely have difficulty proving that his creation is true and original.

In Law Number 28 of 2014 concerning Copyright, the authority of the Commercial Court in resolving copyright disputes can be seen in Chapter XIV and Chapter XV from Article 95 to Article 109. Article 95 determines:

1. Settlement of copyright disputes can be done through alternative dispute resolution, arbitration, or the courts.
2. The competent court as referred to in paragraph (1) is the Commercial Court.
3. Courts other than the Commercial Court as referred to in paragraph (2) do not have the authority to handle the resolution of Copyright disputes.
4. Apart from violations of Copyright and/or Related Rights in the form of Piracy, as long as the disputing parties are known to exist and/or are located in the territory of the Unitary State of the Republic of Indonesia, they must first seek dispute resolution through mediation before bringing criminal charges.

CONCLUSSION

Trademark rights are regulated in Law No. 20 of 2016 concerning Trademarks and Geographical Indications. According to Law No. 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

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Indonesia according to the constitutive system, in other words, to obtain legal protection for trademark rights, the trademark must be registered by its owner with the Directorate of Trademarks and after being officially registered in the name of the owner, a trademark certificate will be issued. Law No. 20 of 2016 concerning Trademarks and Geographical Indications, specifically in Article 21 paragraph (1) letters b and c, Article 83 paragraph (2), and reinforced by the Explanation of Article 21 paragraph (1) letter b, Explanation of Article 76 paragraph (2), and Explanation of Article 83 paragraph (2). Indonesia adopts a Trademark registration system with a constitutive system. This system requires trademark registration so that a trademark can receive protection, this system is also known as the first to file system.

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