



Legal Protection of Trademarks of Goods and Services in Indonesia

Surahmad, Muhammad Helmi Fahrozi^(✉), and Andriyanto Adhi Nugroho

Faculty of Law, Universitas Pembangunan “Veteran” Jakarta, Depok, Indonesia
helmi.fakhrazi@upnvj.ac.id

Abstract. The digital world makes many things easy, fast, and effective. Many activities can be developed with technology, one of which is business activities. Many innovative and creative works in business can be developed in the digital era. A brand is one aspect that can be developed so that those who become consumers are easily interested in consuming the business. However, the problem is that there are more and more disputes between several parties because of similarities and plagiarism related to the brand. Therefore, the role of intellectual property rights is very necessary so that the dispute can be resolved. In writing this journal, the author uses normative juridical research methods, namely legal research conducted using library materials or secondary data methods. The collection of legal materials is carried out using existing documents, namely by collecting data and information in the form of books, quotes, scientific essays, statutory regulations, and other written materials related to this research. The results of this study confirm that the government has accommodated the legal protection of trademarks through law number 21 of 1961, which was later changed to law number 12 of 1992. This regulation proves that the government is very concerned about the role of brands in the business world. Without the registration of a mark through the procedures that have been written down in positive law in Indonesia, legal protection will not function either. Even the state cannot help if the registration procedure is not carried out at the beginning by business actors who have trademarks.

Keywords: Legal Protection · Trademarks · Indonesia

1 Introduction

Entering the current era of global trade, in fact it must be faced with many violations of trademarks for goods and services. Therefore, the legal role of Intellectual Property Rights (IPR) is very important in maintaining fair business competition and preventing the possibility of fraudulent competition, either in the form of imitation, piracy, or the use of Intellectual Property Rights that are not accompanied by the rights of the previous owner. Intellectual Property Rights (IPR) are rights that arise from the results of the brain's thinking that produce a product or process that is useful for humans. Intellectual Property Rights in law are divided into two (2) groups, namely: Copyright and Industrial Property Rights, in which they consist of Patents, Trademarks, Industrial Designs, Countering Fraudulent Competition Practices (Repression of Unfair Competition), Circuits (Layout Design of Integrated Circuits), and Trade Secrets.

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A product's brand is very important because it is a means of distinguishing one product from another as well as an indication of the quality and identity of a product. However, the use of a mark for goods and services often finds violations that can cause harm to the owner of the mark. In fact, the use of a good and correct brand can be a very valuable asset commercially and often makes the price of a product more expensive and even more valuable than the other way around. On the other hand, the use of brands can also be a lifestyle in a society where wearing goods with well-known brands becomes a matter of pride for consumers. Trademark protection is especially needed considering that a brand as a means of individual identification of goods and services is the center of the "soul" of a business, very valuable from "various aspects". Therefore, the government, through Law Number 21 of 1961, which was later changed to Law Number 12 of 1992, and which was later changed again to Law Number 15 of 2001, has proven that the government cares and recognizes that the role of trademarks is very important for business competition. So, in this study, a fundamental question arises whether the legal protection of the mark is in accordance with the applicable laws and regulations in its implementation. Then the practice of legal protection can certainly lead to legal consequences for violators of trademarks and services in Indonesia, as long as the legal consequences can be accepted by the violators. This study will reveal more and further define these two questions.

2 Legal Materials and Methods

To obtain data or information in writing this paper, we used a research method normative juridical (normative legal research), namely legal research conducted by library materials or secondary data. The collection of legal materials is carried out using existing documents, namely by collecting data and information in the form of books, quotations, scientific essays, government regulations, legislation and other written materials related to this research. By searching, studying, and recording and interpreting matters relating to the object of the paper.

3 Result and Discussion

3.1 Legal Protection of Trademarks of Goods and Services in Indonesia

Indeed, brands are things that should be considered in the world of trade. This is very fundamental to distinguishing other products, whether similar or dissimilar, considering how many businesses and services have emerged, grown, and developed. Therefore, it is necessary to register a brand so that it is valid and valid both in the general public and in the legal world. This is also useful as a basis for rejecting entrepreneurs who initially apply for the same brand. This brand is a part of intellectual property rights (IPR). IPR itself is defined as the right to ownership of works that arise or are born due to human intellectual abilities in the fields of science and technology. Intellectual Property Rights has a mission, namely to be able to protect the creations made by someone from imitation and plagiarism committed by others in the fields of science and technology, art and literature, and brands. The functions of a brand, according to the Directorate General of Intellectual Property Rights, are:

- a. become an identifier or identity to distinguish one product from another (*product identity*)
- b. guarantee on the quality of goods and services sold (quality guarantee).
- c. A medium for promoting a business (trade promotion). This is one of the important factors in attracting consumers to buy the seller's merchandise.
- d. Being a designation of the origin of goods and services produced (source of origin).

This legal protection can be pursued if a seller has not legalized his trademark and business, namely by registering his business and trademark. This registration has several systems, called the declarative registration system, and the constitutive registration system. The declarative registration system is a scheme in which those who get legal protection are those who first registered the brand. This is adopted in Law no. 21 of 1961. It can be concluded that it is the first user in Indonesia who can create the right, and not the registration that creates the right. This system makes it easier for the seller, because of its nature to prove, which means that if the seller has a registration letter, it will be very easy to prove that the seller does have ownership of the brand that the seller has created for the first time. This declarative registration has been in use for a long time, but because it has legal uncertainties, the declarative system has no longer been used since the enactment of Law no. 19 of 1992 concerning brands.

While constitutive registration is a required registration in order to obtain rights to a brand. In the absence of registration as a requirement, the seller will not be given legal protection if another seller uses the same brand. This registration replaces the declarative registration contained in Law No. 19 of 1992, whose legal basis is based on the principle of good faith, which is also contained in Law No. 20 of 2016, which provides that brands cannot be registered by applicants who do not have good faith.

3.2 Legal Consequences for Violators of Trademarks and Services in Indonesia

The right to a brand, company, or person will receive exclusive rights granted by the state to the registered owner for a certain period of time by using their own or giving permission to other parties to use them. The trademark already registered, of course, gets legal protection for a period of 10 years from the date of receipt and can be extended for the same legal period. The legal consequences that can be incurred for violators if the brand has been registered are:

- a. Civil Law Steps, The owner of a registered brand can file a lawsuit through the Commercial Court for the unauthorized use of a brand with similarities in principle or in its entirety to similar goods and services. This lawsuit can also be in the form of compensation and/or termination of all acts of using the brand.
- b. In addition, the aggrieved parties can resolve disputes through arbitration or alternative dispute resolution.
- c. Criminal Law Steps, The unauthorized use of the same brand as a registered brand may be subject to criminal sanctions based on Article 100 paragraphs (1) and (2) of the Law on brands and Geographical Indications which reads.

- 1) Any person who unlawfully uses the same brand entirely with a registered brand belonging to another party for similar goods and/or services produced and/or traded, shall be punished with imprisonment for a maximum of 5 years and/or a fine of a maximum of Rp 2 billion.
- 2) Any person who unlawfully uses a brand which is essentially the same as a registered brand belonging to another party for similar goods and/or services produced and/or traded, shall be punished with imprisonment for a maximum of 4 years and/or a fine of a maximum of Rp2. Billion

And if there is an incident where the defendant does not know that the brand has been registered, then Article 102 of the Trademark and Geographical Indications Law states that “Everyone who trades goods and/or services and/or products that is known or reasonably suspected to know that the goods and/or services and/or the product are the result of a criminal act as referred to in Article 100 and Article 101 shall be punished with imprisonment for a maximum of 1 year or a fine of a maximum of Rp. 200 million.” This can only be done if the owner of the registered mark can be processed if there is a complaint from the owner. This is also called a complaint offense. The legal basis used here is Law Number 20 of 2016 concerning Brands and Geographical Indications.

4 Conclusion and Suggestion

In today’s era of globalization, the use of brands is very important in running a business. This is because its function can provide clarity and protection for business actors if legal consequences are found in the future. When talking about a brand, it is necessary to understand that the brand is part of the intellectual property rights and is given protection within them. Through Law Number 21 of 1961, which was later changed to Law Number 12 of 1992, and which was later changed again to Law Number 15 of 2001, it has been proven that the government cares and recognizes that the role of brands is very important for business competition. Therefore, it is necessary to register a brand so that it is valid and valid both in the general public and in the legal world. This is useful as a basic milestone against entrepreneurs who initially applied for the same brand. As for the rights to the company’s brand or a person, they will get the exclusive rights granted by the country to the registered owner for a certain period of time.

So, if there are any legal issues with the brand in the future, the parties who are displeased can resolve the matter through civil or criminal legal channels, arbitration, or other alternative dispute resolution.

Based on the results of the research, discussion, and conclusions that have been explained, there are several suggestions and recommendations that can be given regarding the legal protection of trademarks of goods and services in Indonesia, namely:

1. Further regulation of trademarks is needed. Although it has undergone several renewals, it still contains several weaknesses. For example, on the one hand, it does not regulate overt brand counterfeiting (imitation of the brand as a whole) with disguised brand counterfeiting.

2. There needs to be strict law enforcement of the law against trademark infringement, based on how similar the brands are and how similar the products they make are, the field and terms of competitive use, the level of consumer caution, actual confusion, and the intent to trick.

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