



Reviewing the Legality of the Use of Religious Names and Symbols for Trademarks

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Abstract. Entrepreneurs use religious names and symbols to trademark their businesses so that they are easy to remember and have commercial value. A trademark is a symbol used by a wholesaler, becoming a recognizable name or symbol to identify a product or service distributed to the marketplace. Trademarks make a product easily recognizable because it is unique and different from other businesses. A trademark identifies a product as belonging to a specific firm and recognizes the company's ownership of the mark. In Indonesia, religious names and symbols have been used as trademarks. Even if utilizing religious symbols generates discontent and outrage among the public, many enterprises already hold trademark certificates. The study seeks to determine whether religious names and symbols can be used as trademarks, as well as the legal ramifications of objections to utilizing holy names and symbols as trademarks. According to Article 20 of the Law of the Republic of Indonesia No. 20 of 2016 on Marks and Geographical Indications, a mark cannot be registered if it is incompatible with state ideology, rules, regulations, morality, religion, decency, or public order. As a result, using names and religious symbols in business is against the law. In this situation, it may be considered religious blasphemy, as defined in Article 156a of the Criminal Code concerning Blasphemy/Defamation of Religion jo. President of the Republic of Indonesia Stipulation Number 1 of 1965, changed into Law Number 1 of 1965 Concerning Religious Abuse and/or Blasphemy.

Keywords: Name and Symbol · Religion · Trademark

1 Introduction

A trademark is an intangible item having monetary worth that can be managed. Trademarks are a type of intellectual property right that currently has legal protection. According to its history, intellectual property rights protection began with the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement, which is part of the World Trade Organization (WTO) and was ratified by the Law of the Republic of Indonesia Number 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization. One of the three General Councils in the WTO institutional system is the Trade-Related Aspects of Intellectual Property Rights Council. The adoption of

the World Trade Organization Agreement “places Indonesia as a country that must integrate its national laws with WTO accords, particularly in this respect, in the realm of intellectual property rights” [1].

One of the harmonizations of laws carried out by the The Republic of Indonesia’s government regulates trademarks under the Law of the Republic of Indonesia No. 20 of 2016 Concerning Marks and Geographical Indications. According to the General Elucidation of the Law of the Republic of Indonesia No. 20 of 2016 on Trademarks, one of the trends in the trademark sector is the introduction of protection for new types of trademarks, also known as non-traditional trademarks. The scope of protected trademarks in this statute covers acoustic, three-dimensional, and holographic trademarks that are included in non-traditional trademarks. In this scenario, the trademark serves as a differentiating power between a certain item or service and other manufacturers as rivals. As a result, in an environment of free competition, a trademark with its “brand-image” becomes a crucial identifying or differentiating force, as well as a guarantee of product or service quality [2].

Business competition is so tight that entrepreneurs choose a name easily recognized by people to name their place of business. One of the efforts is to use religious names and symbols for trademarks. This case occurred in the use of religion and Buddhist symbols on the Buddha Bar. Buddha Bar manager went to the Central Jakarta District Court. The plaintiff’s attorney sued because the bar manager had desecrated Buddhism using Buddhist symbols in the bar’s interior. The evidence of blasphemy is the use of a Buddhist symbol bearing the Chinese characters meaning Buddha, at the bottom of the Buddha Bar’s cigarette ashtray [3]. This study will discuss the legality of using religious names and symbols for trademarks and the legal consequences of objections to using holy names and symbols for trademarks.

2 Result and Discussion

2.1 Legality of the Use of Religious Names and Symbols for Trademarks

Mark, according to the provisions of Article 1 point 1 of Law Number 20 of 2016 concerning Marks and Geographical Indications, is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color composition, 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 persons or legal entities in goods and/or services trading activities. Every brand owner has brand rights. According to Article 1 point 5, the right to a mark is an exclusive right granted by the state to the owner of a registered mark for a certain period by using it or giving permission to another party to use it.

According to Harsono Adisumarto, a brand is an identifier that distinguishes one’s property from another. For instance, cattle ownership by putting a stamp on the back of a cow, which is then released in a large shared grazing area. Such a stamp is indeed an identifier to indicate that the animal belongs to a specific person. Usually, to distinguish a sign or brand, the owner’s initials are used as a mark of distinction [4]. To signify a product or service, the brand owner makes a particular design as a symbol of the product.

Creating a trademark can then produce unique associations and meanings that distinguish a product from competitors so that the brand can become a source of competitive advantage, primarily through legal protection, customer loyalty, and a unique image formed in the minds of consumers. In addition, trademarks can also be a source of financial benefits, especially for future income. They can also be used as identification tools to facilitate the processing or tracking of products for businesses, especially in the organization of inventory and accounting records. Moreover, a trademark can be a form of legal protection for a product's unique characteristics or aspects. Trademarks can be protected by intellectual property [5].

A trademark can be considered a brand if it meets the absolute criteria of being distinguishable. This means that the sign is stated to have the ability to differentiate one company's goods or services from those of other firms. In order to have this distinguishing power, the brand must be able to provide determination or individualization of the goods or services concerned [6]. As a product marker, the law protects brand rights holders from other parties who intend to use existing brands for profit by imitating the public's already known products. Trademark is one characteristic or sign that distinguishes one product from another. A trademark can also make it easier for consumers to identify the product they want, so registering a trademark will be very beneficial for producers and consumers. Therefore, disputes regarding trademark infringement trade will significantly affect a company, especially on the economic value of a product. The era of globalization, the opening of markets, and the free entry of foreign products into a country require maintaining that every product and resource produced is feasible and able to compete globally and has legal protection [7].

Trademarks are helpful for trade promotion and advertisements for producers or entrepreneurs trading the goods or services in question. In foreign markets, brands are often the only way to create and maintain consumer goodwill. The trademark is a symbol by which the merchant expands his market overseas and also maintains that market. Goodwill on the brand is "an invaluable thing in expanding the market" [8]. Concerning product introduction, not all proposed brand names and symbols can be registered. Article 20 states that a mark cannot be registered if: it is contrary to the state ideology, laws, regulations, morality, religion, decency, or public order.

The case of the Buddha Bar brand is an example of a trademark case against religious morality. Buddha Bar is a restaurant, including a bar selling liquor (alcohol), and the music used is disco music (people usually call it a place of immorality). Disco music is the music performed by the disc jockey so that visitors dance because they are carried away by the music. This is considered contrary to religious values by the Indonesian people, especially the Buddhist community because Buddhism is one of the recognized and respected religions in Indonesia. It is contrary to the values living in Indonesian society, in which religion should be respected and one of them as a way of life. However, by looking at the case, it can be said that Buddhism has been abused by the way the Buddha Bar brand uses the Buddhist symbol as a symbol of the restaurant. The decoration then has the character "Fo," which is the word Buddha in Chinese characters printed on nameplates, menu books, plates, ashtrays, and more [9].

2.2 Legal Consequences for Objections to the Use of Religious Names and Symbols for Trademarks

The right to a mark is a unique (exclusive) granted by the state to the owner to use the Mark himself or to permit others to use it. The granting of special rights by the state has the consequence that obtaining it must go through a registration mechanism. Therefore, the nature of registration is compulsory. For the state's trademark rights to be protected and recognized, the trademark owner must register it with the state. If a mark is not registered, it will not be protected by the state [10]. Trademarks are obtained through registration, meaning that special rights to a brand are given due to registration. Thus, it can be said that trademark registration is absolute because unregistered brands will not receive legal protection. Besides, there is an opinion that the trademark must have comparisons so that the quality and reputation of the brand are considered original, and there is no copying [11].

Mark registration serves as evidence for the owner who is entitled to the registered Mark; The basis for rejection of a Mark which is the same in its entirety or the same request for registration by another person for similar goods/services; The basis for preventing other people from using the same Mark in its entirety or essentially the same in circulation for similar goods/services [12]. The urgency of trademark registration in Indonesia is given to the owner of the Mark who registers the Mark, meaning that the right to the Mark is born from the date of receipt of the trademark application (filing date). Confirmation of trademark registration is at the Directorate General of Intellectual Property Rights. Intellectual Property has the following functions, such as evidence for brand owners; as a basis for rejection of a mark that is the same in its entirety or the same in principle, and another person is requested for registration for similar goods and/or services; as a basis to prevent other people from using the same brand in its entirety or essentially the same in circulation for similar goods and/or services [13]; The use of a mark is to maintain a trademark registration and the exclusive rights arising from such registration. If a registered mark is proven not to be used for three consecutive years in the trade of goods and/or services from the date of registration or last use, the consequence is that the registration may be abolished [14].

Article 31 of Law Number 20 of 2016 concerning Marks and Geographical Indications states that if a registered mark violates state ideology, laws and regulations, morality, religion, and public order, the Mark Appeal Commission provides recommendations to the Minister for deletion. The *legem ratio* of mark deletion is to prevent the brand owner from abusing his rights, such as trademark registration which is done to close the market, even though the registered Mark is not used or there are no products on the market. This trademark deletion ensures that the brand holder uses his trademark. The legal principle is that a trademark is protected for use so that when it is not used for three consecutive years, the state can take over it by removing it [15].

Article 72 of Law Number 20 of 2016 concerning Marks and Geographical Indications regulates the deletion of trademarks as follows:

- (1) The deletion of a registered mark may be submitted by the owner of the mark concerned to the Minister.

- (2) The application for deletion as referred to in paragraph (1) may be submitted by the mark owner or through his Proxy, either for part or for all types of goods and/or services.
- (3) In the event that the Mark as referred to in paragraph (1) is still bound by the License agreement, the deletion can only be carried out if it is approved in an agreement letter by the Licensee.
- (4) The exception to the agreement as referred to in paragraph (3) is only possible if in the License agreement, the Licensee expressly agrees to waive the existence of such agreement.
- (5) The deletion of mark registration as referred to in paragraph (1) shall be recorded and announced in the Official Gazette of Marks.
- (6) The deletion of a registered mark may be carried out at the initiative of the Minister.
- (7) The deletion of a registered mark on the initiative of the Minister may be carried out if:
 - a. has similarities in principle and/or in its entirety with Geographical Indications;
 - b. contrary to state ideology, laws and regulations, morality, religion, decency, public order; or
 - c. have similarities in their entirety with traditional cultural expressions, intangible cultural heritage, or names or logos that have been passed down from generation to generation.
- (8) The deletion as referred to in paragraph (6) and paragraph (7) may be carried out after obtaining a recommendation from the Mark Appeal Commission.
- (9) The Mark Appeal Commission shall provide recommendations as referred to in paragraph (8) based on the request of the Minister.

Article 77 of Law Number 20 of 2016 concerning Marks and Geographical Indications also regulates the lawsuit for the cancellation of mark registration. A lawsuit for cancellation of a mark registration may only be filed within 5 (five) years from the date of registration of a mark. However, a lawsuit for cancellation can be filed indefinitely if there is an element of bad faith and/or the mark in question is contrary to state ideology, laws and regulations, morality, religion, decency, and public order. Thus, for registered trademarks, entrepreneurs who use the name and religious symbol for their trademark can be deleted and canceled.

Factually, in the judge's judge's consideration of the decision of the State Administrative Court Number 97/G/2009/PTUN.JKT, in the case of the Buddha Bar trademark, the judge has given the correct decision and is following Law Number 15 of 2001 concerning Marks. The judge rejected the lawsuit from the Buddha Bar trademark owner and still approved the Directorate General of Intellectual Property Rights decision on withdrawing the Buddha Bar registered trademark certificate. The Buddha Bar trademark has been proven to be against religious morality. In the decision of the State Administrative Court, in this case, there is no precise measure of the meaning of being contrary to religious morality. The judge's judge's decision is only based on Article 5 letter (a) of Law Number 15 of 2001 concerning Marks.

The use of names and religious symbols in business activity is a violation of the law. In this case, it can be suspected as blasphemy of religion as referred to in Article 156a of the Criminal Code concerning Blasphemy/Defamation of Religion jo. Stipulation of the President of the Republic of Indonesia Number 1 of 1965, amended into Law Number 1 of 1965 concerning the Abuse and/or Blasphemy of Religion. Article 156a of the Criminal Code does not originate from the Netherlands's *Wetboek van Strafrecht* (WvS). However, it comes from Presidential Decree No. 1 of 1965 concerning the Prevention of Abuse and/or Blasphemy of Religion [16]. Article 156a of the Criminal Code, the elements are 1) Whoever; 2) On purpose; 3). In public, expressing feelings or committing acts essentially enmity, abuse, or blasphemy against a religion professed in Indonesia. Therefore, article 156a is designated as an article on blasphemy or blasphemy, which is included in the category of religious offenses. Therefore, article 156a of the Criminal Code is used as a reference for judges deciding a blasphemy case. So far, this can be used as a basis, where perpetrators of blasphemy are generally punished with five years in prison [17]. Regarding the element of "blasphemy of religion," this requires the role and expert witnesses to assist law enforcers, whether in acts that contain hostility or blasphemy against religion. Expert testimony is usually presented according to the knowledge so that expert testimony can complement each other and become evidence in the court. An expert in the field who is presented in court usually has the competent legal knowledge to convey or provide his views on a case from a legal point of view according to the applicable laws and regulations [18].

3 Conclusion

Religious names and symbols cannot be used in trademark registration as referred to in Article 20 of the Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Geographical Indications. The provision states that a mark cannot be registered if it contradicts the state's ideology, laws, regulations, morality, religion, decency, or public order. Therefore, the legal consequence of using religious names and symbols as trademarks is that the trademarks can be deleted and canceled. Furthermore, religious names and symbols in a trademark can be suspected of blasphemy of religion as referred to in Article 156a of the Criminal Code concerning Blasphemy/Defamation of Religion jo. Stipulation of the President of the Republic of Indonesia Number 1 of 1965, amended into Law Number 1 of 1965 concerning Abuse and/or Blasphemy of Religion.

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