



Liability for Electronic Mark Holders Regarding Trade Commercialization in Electronic Business Transactions

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Abstract

Issues related to unlawful acts by using a brand without the permission of another person (brand holder) and without a written agreement stating that it is permissible to use the mark to be marketed through social media or electronic business transactions and the brand holder can be held liable for all legal actions carried out by individuals as stipulated in act No.20/2016 concerning trademarks and act No.19/2016 concerning Information and Electronic Transactions. In connection with the type of research used, normative legal research, several approaches to the problem will be used in this study, as follows: The statutory approach, the conceptual approach, the philosophical approach, the comparative approach, and the case approach are all examples. These five approaches are carried out to solve problems that occur in connection with the nature of the mark, the legal ratio of cancellation of trademark rights, and the legal consequences of trademark cancellation for licensees so that in the future business actors, especially in Indonesia, can use their trademark rights as one of the supporting pillars of a successful business as he did. The results of this study obtained findings about the legal protection of brands that are given either to foreign or local brands, well-known or not well-known, only given to registered brands. For this reason, every brand owner is expected to register his trademark with the Director General of Intellectual Property Rights to obtain legal protection. A registered mark receives legal protection for a period of 10 (ten) years and is retroactive from the date of receipt of the application for the mark concerned. At the request of the trademark owner, the protection period for a registered mark can be extended each time for the same period. Legal protection based on the first-to-file principle system is given to registered trademark rights holders who have good faith, and are preventive or repressive in nature. Preventive legal protection is carried out through trademark registration, and repressive legal protection is provided in the event of a trademark violation through civil lawsuits or criminal charges by reducing the possibility of alternative settlements out of court.

Keywords: *Accountability; Electronic Brand Holders; Electronic Business Transactions*

Introduction

Indonesia is one of the promising countries in the online business market, existing trading activities have used it as an instrument or tool for trading businesses with electronic media called electronic commerce (e-commerce) or electronic transactions. E-commerce has 2 (two) segments in its business activities including (1) business-to-business e-commerce (trade between business actors and consumers) and (2) business-to-customer e-commerce (trade between business actors and consumers). In this era of globalization, there are lots of online media that can be used as online trading media, so at the level of the digital world, there is a need for a law and it is also necessary that the law can be enforced if something is inappropriate and obeys the laws set by the government.

In this era of free trade, there are two things related to consumers. First, consumers benefit because, with this free trade, the flow of goods in and out becomes smoother and is not hampered by regional or country boundaries. Therefore, consumers have more choices in determining various needs, whether in the form of goods or services, in terms of the type and type of goods, quality, brand, and price. Second, the position of consumers in developing countries is disadvantaged, this is due to weak supervision in the field of standardization of quality of goods, and weak product legislation (Putra & Nugroho, 2021).

Law of the Republic of Indonesia Number 19 of 2016 Concerning Electronic Information and Transactions (hereinafter abbreviated as Law No.19/2016) especially in Article 1 Point 2, it is stated that Electronic Transactions are: "Legal actions carried out using computers, computer networks or media other electronics, electronic buying, and selling transactions is one of the embodiments of the provisions above. Business actors offering goods or services electronically are required to provide complete and correct information regarding contract terms, producers, and products (Apandy et al., 2021). This is in line with Article 17 of Law No.19/2016 paragraphs 1 and 2. related to electronic contracts in electronic business transactions in the field of trade and of course in the form of commercialization of electronic business trade confirms that electronic contracts in the electronic transaction must have the same legal force as contracts conventional. Therefore, electronic contracts must also bind the parties as Article 18 Paragraph (1) of Law No.19/2016 states that "electronic transactions contained in electronic contracts are binding on the parties"(Rongiyati, 2019). Before carrying out electronic transactions, the parties agree on the electronic system that will be used to carry out transactions.

If you have looked normatively at the laws and regulations of Law No. 19/2016, it is also necessary to pay attention to the legal protection of trademark rights holders through e-commerce electronic business trade, so that it is not only the issue of brand objects that need to be protected, the rights of the brand holder or when the holder of the rights to the brand through e-commerce trading based on electronic business transactions can be held responsible corporately (company) and accountable individually or personally. However, this special right is a monopoly, meaning that the right can only be exercised by the brand owner. Without permission from the brand owner, other people may not use the special rights. If other parties use rights without permission from the owner of the trademark rights, then there has been a violation that can be subject to certain sanctions (Muslim & Akbarina, 2016).

A new problem arises when the trademark rights holder is used by individuals to market through electronic commerce (e-commerce) and electronic business transactions without a specific agreement or permit. This can include issues related to unlawful acts by using a brand without the permission of another person (brand holder) and without a written agreement stating that it is permissible to use the mark to be marketed through social media or electronic business transactions, and the brand holder can take responsibility for all legal actions carried out by individuals as stipulated in the Law of the Republic of Indonesia Number 20 of 2016 concerning Trademarks (hereinafter referred to as Law No.20/2016) and Law No.19/2016.

Research Methods

Jenis penelitian yang digunakan dalam penelitian ini ialah penelitian yang mengarah pada hukum normatif (Soekanto & Mamudji, 2015). Dengan menggunakan bahan hukum primer dan sekunder, beserta bahan hukum tersier sebagai bahan pendukung. In connection with the type of research used, normative legal research (Mahmud Marzuki dan Peter Mahmud, 2011), several approaches to the problem will be used in this study, as follows: The statutory approach, the conceptual approach, the philosophical approach, the comparative approach, and the case approach are all examples. These five approaches are carried out to solve problems that occur in connection with the nature of the mark, the legal ratio of cancellation of trademark rights, and the legal consequences of trademark cancellation for licensees so that in the future business actors, especially in Indonesia, can use their trademark rights as one of the supporting pillars of a successful business as he did.

Results & Discussion

1. Legal Protection for Holders of Electronic Mark Rights Against Commercialization of Individual Trade in Electronic Business Transactions

Talking about Intellectual Property Rights (IPR) especially discussing the issue of marks certainly becomes interesting when there are acts or legal actions both individuals and associations such as counterfeiting marks, signs, or symbols on brands that are the same as the originals so that in the end this can be said to be an act against law in business activities, especially in the field of Intellectual Property Rights (Sinaga & Ferdian, 2020). Another thing that can happen when in today's era of digitalization is growing advanced in Indonesia as one of the objectives is to gain profits through business activities by using electronic business transactions in the trade sector by registering trademarks with the Directorate General of Intellectual Property Rights. As a good citizen, of course, the holder of the rights to the mark that is first recognized by the state and is given special rights to be recognized by the state as the holder of the mark when there is a brand that is the same, there must be permission from the holder of the first brand or is subject to royalties for marketing the mark.

Some people misuse the mark by imitating other types of marks, both individuals and associations, resulting in illegal acts. This is the need for protection for holders of rights to electronic brands in the e-commerce business so that they can provide a sense of comfort and security for the brand holder to provide recognition and royalties.

Trademark legal protection given to foreign or local, well-known or unknown brands is only given to registered brands. For this reason, every brand owner is expected to register his trademark with the Director General of Intellectual Property Rights to obtain legal protection. A registered mark receives legal protection for a period of 10 (ten) years and is retroactive from the date of receipt of the application for the mark concerned. At the request of the trademark owner, the protection period for a registered mark can be extended each time for the same period. Legal protection based on the first-to-file principle system is given to registered trademark rights holders who have good faith, and are preventive or repressive in nature. Preventive legal protection is carried out through trademark registration, and repressive legal protection is provided in the event of a trademark violation through civil lawsuits or criminal charges by reducing the possibility of alternative settlements out of court (Purba, 2013).

Such legal protection can be in the form of preventive or repressive protection (Philipus M. Hadjon, 1987), namely as follows:

1. Preventive legal protection

Preventive legal protection here is protection before a criminal act or violation of law occurs against a well-known mark and mark. In this case, it is very dependent on the trademark owner to register his trademark to get legal protection. Article 3 of the Trademark Law it is stated that the right to a mark is exclusively granted by the state to the owner of a Mark registered in the general register of marks for a certain period by using the mark himself or by permitting other parties to use it. Furthermore, Article 28 of the Trademark Law states that registered marks receive legal protection for a period of 10 (ten) years and are retroactively valid from the filing date of the marks concerned and can be extended. Thus, if a person/legal entity wants their mark to receive legal protection under trademark law, the mark concerned must be registered first.

2. Repressive legal protection

Repressive legal protection is carried out if there is a violation of trademark rights through civil lawsuits and or criminal charges. Whereas the owner of a registered mark receives legal protection for violation of rights to the mark, either in the form of a claim for compensation or termination of all actions related to the use of the mark or based on criminal lawsuits through law enforcement officials. The use of products with certain brands in addition to the goodwill that is owned by the brand itself, as well as the fanatical nature of consumers towards these brands are considered to have advantages or advantages over other brands. The fanatical nature of consumers is not only to fulfill their needs but also to prioritize prestige and give a distinct impression from the wearer so that using their perception is a "symbol" that will give rise to a new lifestyle. The existence of different perceptions in society regarding brands has given rise to various interpretations, but even so, it means that the actions of people who produce goods by using other people's fame cannot be justified, because allowing irresponsible actions will indirectly produce and justify someone to cheat and enrich themselves dishonestly.

2. Liability for Electronic Brand Rights Holders Against Commercialization of Individual Trade Actions in Electronic Business Transactions

E-commerce transactions involve several parties, both directly and indirectly, depending on the complexity of the transactions. This means whether all transaction processes are carried out online or only a few stages are carried out online. If all transactions are carried out online, starting from the transaction process to payment.

According to Mariam Darus Badruzaman, the parties to an electronic trading contract are as follows (Chandrika, 2019): 1) Internet service providers (ISP) and 2) Developers (intellectual agents) are business people who enter into e-contracts directly with ISPs.

The legal basis for e-commerce is regulated in Law No.19/2016. In this provision, there is recognition of electronic documents and electronic systems contained in the provisions of Articles 1 number 4, and 5 of Law No.19/2016. So e-commerce transactions are also one of the contractual activities carried out in conventional trade, but the agreements used in e-commerce are agreements between the parties made through an electronic system or are called electronic contracts. This is confirmed by the

provisions of Article 1 point 17 of Law No.19/2016, that: Electronic Contracts are agreements between parties made through an Electronic System.

According to Yudha Hernoko, liability is the obligation to bear the burden of compensation as a result of default or unlawful acts. In principle, liability is attached to the guilty party or the party who bears the risk as a result of a default or unlawful act. The existence of an agreement raises an obligation to perform an achievement. If you do not carry out these obligations, not because of a coercive situation, then it is considered a default or broken promise (Siagian et al., 2021). Default originates from an agreement and is desired by the parties. The forms of default, it is divided into 4 (four), namely not fulfilling the achievement at all, fulfilling the achievement late, fulfilling the achievement not as promised, or doing something that should not have been carried out.

Several things happen when individuals commit e-commerce violations in electronic business transactions usually occur when (Rabbani et al., 2021) : (1) Payments made by buyers in e-commerce business transactions occur if both parties have agreed on the goods to be purchased, then the buyer is required to make payment to the seller first; (2) The seller in fulfilling his achievement exceeds the previously agreed time so that the buyer suffers a loss due to the late delivery because the value of the goods ordered has been lost; (3) In buying and selling through electronic media, the buyer does not know the condition of the goods offered, he only knows the condition or condition of the goods from the seller's explanation because the buyer only sees pictures and does not see them directly and (4) Every time an order is made, as an initial condition for ordering is provide complete identity information of the buyer, while the seller is obliged to store and use it properly. If the seller commits an act of misuse of the buyer's identity, in this case, the dissemination of personal information, it can be detrimental to the buyer, especially credit card information.

Conclusions

Departing from what has been described above, the principle of proportionality is an alternative solution for holders of rights to electronic brands (e-commerce), in which providing legal protection based on the first-to-file principle system is given to holders of registered trademark rights in good faith. preventive or repressive. On the other hand, there needs to be a guarantee of legal certainty to be able to provide accountability when there are ties or agreements in electronic business transactions in the field of trade and other trading businesses, to guarantee a sense of security and comfort in investing and doing business in the world of digitalization and e-commerce.

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