



Infringement of Brand Rights on Different Products Is an Illegal ACT

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Abstract

The study aims to find out how the provisions of the law are in violation of brand rights to nongender products and their protective forms, as well as how legal efforts should be made in violation of their laws. Legal protection for legitimate brands' owners is regulated within brand laws intended to give their owners exclusive rights. Legal measures that rights holders can make on broken brands can be made either by civil law or criminal law. Indonesia's brand registration system is a constituent system, and it is recommended that all efforts be quick to register a trademark or service brand for the creditor of intellectual property rights. The holding of a brand would be wise to appeal to the court immediately if there is any indication that a brand offense is committed by another and the cost is not greater.

Keywords: *Brands Infringement; Products of No Kind; Unlawful Conduct*

Introduction

protecting brand rights Indonesia already has a rule of law about brands. The brand was first incorporated into the 1961 bill of commerce and commerce. The first to use the system system (first to use the system). Furthermore, the 1961 statute number 21 was amended to the '1 92-year' 'bill. In the acquisition of rights, using the conservative frist to use principle or stelses became the first system of registration (first to file system atau stesel konstitutif).¹ Further in regard to the adjustments to the trade property rights on trips goods (TRIPs) we see improvements in the amended article 19 in 1992 through the 1997 14-1997 law on changing the law of the law. Then for the consummation and application of the single text by act 15 2001. Fifteen years later Indonesia issued another new law on brand: the 2016 statute of brands and geographical indications.

Having a brand set in some legislation, one is that a brand's understanding is intended for a common perception of the matter to be carried out. The brand according to chapter 1 figure 1 of brand

¹ Rahmi Jened, *Hukum Merek (Trademark Law)*, (Prenadamedia Group, 2015, Jakarta), hal. 15

mark is "a brand that is of pictures, names, words, letters, Numbers, colors or combinations of those elements that have different power and are used in products or services. By the brand understanding of the constitution, you can attract the most important elements of the brand, which is:

1. The brand used as a sign
2. They should have different power
3. They are used in the trade activities of goods and/or services

A product of course has a brand, so people know what it will consume. Legal protection against brand is necessary because with the trade world growing, there will be more and more of them to infraction. Regarding them, of course, they were made exclusively exclusive so that others could not use the shape of their writing.

Brand existence is intended to distinguish an item and/or service of another goods and/or service.² In such circumstances a brand begins to play the role of a distinguished tool, whether for an item or a service. Brand reputation affects the sale of goods and/or services. On the basis of brand reputation many consumers are becoming familiar with the brand, and a brand name has emerged. This brand becomes the ideal and the primary choice of all layers of consumer.³

The reason behind the backlog of popular brands in Indonesia is that Indonesia, a developing country, cannot prevent people from giving more credit to goods from overseas because they are more confident and highly valued,⁴ In addition to the high level of public consumption, Indonesia has become a fertile land for those who are irresponsible enough to enrich themselves improperly by their characteristic brand.

The brand - name problems that are used for goods are not the kind that get attention from different sides, As for Indonesia's position as a party state TRIPs agreement that has obligations to provide protection against the famous brands for goods of no kind, commerce will not develop well if brands famous for goods of no kind get adequate legal protection in a country. The popular brand impersonation of goods of the same type is detrimental to the owners of popular brands, which leads to distrust of foreigners to the security of the famous brand, given by the government of Indonesia.

A rule is made to create certainty of the law, but in practice there are still many brands of dispute occurring in Indonesia. One is the brands of the clash between the German car company bayerische motoreen werke (BMW) with a fashion goods tyke named henrywo yuwijono from prison, north Jakarta with body man wear (BMW), which started when the German BMW sued henrywo. The company based in Munich, Germany would not approve of henrywo producing BMW and trousers so that the current German BMW through commercial court on the Jakarta state court sued and managed to cancel the henrywo version of the BMW.

Further, the case between the inter IKEA system which is a Dutch company against the local IKEA. In ruling number 264 k/PDT. Sus-hki /2015, the council won the local IKEA party from surabaya. The judge declared the judges' Chambers in the first degree courts to be right in implementing the law. "The commerce court of pn central is right and not wrong applying the law," It is based on a consideration of some that according to the 2001 no. 15 year law on brands, which their owners had not used for 3 years in a row could be removed from the brand general list, What is evident in the case a quo is that, according

² Indirani Wauran, Pengantar Hukum Kekayaan Intelektual (Tisara Grafika, Jakarta 2017),hal .7.

³ Anne Gunawati, Perlindungan Merek Terkenal Barang dan Jasa Tidak Sejenis Terhadap Persaingan Usaha Tidak Sehat (Alumni 2015),hal. 100

⁴ Sudargo Gautama, Aneka Masalah Hukum Perdata Internasional, (Bandung, PT. Alumni, 1985), hal. 59-60.

to the evidenced evidence that the IKEA class for the 21st and 20th classes of goods/services has been registered under the defendants' names and has been unused by the defendants for 3 (three) consecutive years since it was registered to the brand's directorate.⁵

In this regard this writing is designed to correct the fact that they should avoid infringing upon their likeness even if the product is of a different kind and can minimize any infringement of brand rights toward a product that is not of the same, since brand rights are associated with illegal ACTS and legal efforts in case of wrongdoing if action is committed against the law of their offense.

Hence the descriptions and terms above the researcher are interested in writing and reviewing the issues presented in this journal's work under the title Infringement Of Brand Rights On Different Products Is An Illegal ACT.

Formulation Of the Problem

1. What kind of protection would the legal holder have against the infringement of the product brand?
2. How will legal efforts be made if deeds that violate the law violate?

Research Methods

The research method used in writing the law is the normative-juridical approach. The normatitic juridical approach is the approach made based on the main legal material by studying the theories, concepts, principles of law and the regulations of legislation related to the study. It is also known as the approach to literature, that is, by studying books, regulations of legislation and other documents relating to the study.⁶

Research approaches in normative legal research are very varied, some approaches used: current law legislation (approach approach) and comparative approach (approach approach) are approaches that compare concepts, views and doctrines that develop in legal science.

Discussion

1. Legal Protection For Proprietary Holders Of Product Brands Is Not The Same Thing

Building a brand reputation costs a lot of money and takes a considerable amount of time, a brand's reputation to increase a sense of trust from the consumer and thus continue to use the product of a brand. With the protection of their rights to prevent one or another from using the brand for its products. Some prohibited works include brand rights scope:

- a. The actions performed by anyone in this matter deliberately and without the right to use the same brand in its entirety as the registered name of another person for goods and or services of the same kind produced and traded.
- b. Of the actions done by anyone in this matter intentionally and without the right to use the same brand in any case with the registered name of another person for goods and or of a kind produced and traded.

⁵ Klik Legal, <https://kliklegal.com/lima-kasus-merek-terkenal-di-pengadilan-indonesia/>, diakses pada tanggal 10 April 2023, pukul 10.30.

⁶ Johnny Ibrahim. *Teori Dan Metodologi Penelitian Hukum Normatif*. (Malang: Banyumedia Publishing, 2006). hlm. 27

c. The doing of anyone in this matter is deliberate and without the right to use the same sign.

Legal protection for legitimate brand owners is governed within the 2016 statute of brands and geographical indications. Brand registration would have to go through long phases and considerable process, registration of this brand would be a step to gain legal protection, an action that would have to be taken to gain legal protection, among other things:

- 1) Certainty of the arrangement about the brand
- 2) Registration against the brand
- 3) The denial of registration by the brand office through brand law, the legal protection mechanism against the notorious brand
- 4) Registered brand cancellation

Brand protection against branding from any competitor with a no-such product that leads to dishonest cheating, is actually being run in the 2001 15th law on brands, although not directly stating brands of dishonest competition. But we can see it in chapters that have arranged the matter of bad faith and the basic equations or complexity. Therefore, according to the authors, dishonest competition cannot be separated from the bad CARDS and the equations in a brand either equation at any point or in the whole.

If brands of a similar product can be implemented and implemented, removal of brand registration from the brand general directorate initiative can be done if: 1) Merek tidak digunakan selama 3 (tiga) tahun berturut-turut dalam perdagangan barang dan/atau jasa sejak tanggal pendaftaran atau pemakaian terakhir, kecuali apabila ada alasan yang dapat diterima oleh Direktorat Jenderal; atau

The brand is used for types of goods and/or services that do not match the type of goods and/or services proposed by enrollment, including inappropriate brand use. The request for removal of brand registration by the owner of the brand or its power, whether part or all kinds of goods and/or services, is submitted to the directorate general

This brand nullification suit corresponds to article 68 of brand law stating that "brand nullification suit may be brought by concerned parties on the basis of the reasons given in article 4, chapter 5, or chapter 6."

As for the content of those chapters:⁷

- 1) Chapter 4 that the defendants applied for registration in a bad way;
- 2) Chapter 6 verse (1) letter (b) brand law states that the defendants' brands have in common and/or overall with the well-known brands milled by the plaintiff's class of items;
- 3) Article 6 verse (2) brand law states that the defendants' brand has a commonality at all and/or at all with the brand name milqued by the plaintiff for nongrade items.

Under article 28 of act number 20 in 2016, the brand mentions that a registered brand receives legal protection for a period of ten (10) years since the date of receiving and protection means to provide protection against the brand registered in the brand general list, the time period may be extended again by applying for an extension of protection against the same brand. Legal protection against registered rights of the brands provides legal protection for both civil and criminal alike, for legitimate owners of the brands.

⁷ Ahsanti Salsabila, Perlindungan Hukum Merek Terkenal Yang Tidak Sejenis Bmw (Bayerische Motoreen Werke) Vs Bmw (Body Man Wear) (Studi Kasus: Putusan Mahkamah Agung Nomor 29 Pk/Pdt.Sus-Hki/2016).-- Skripsi, hal.33

Article 16 of this chapter (3) provides legal protection against the popular brand for goods or services of no kind, which is used by other manufacturers so that consumers will assume that the purchase of an item is under their brand. Chapter 16 verses (3) trips agreement reports chapter 6bus of the Paris convention. Chapter 16 verse (3) trips agreement states that:

Article 6 bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interest of the owner of the registered trademark are likely to be damaged by such use.

On 16 verses (3) trips agreement, it therefore constitutes an extension of legal protection against a popular brand, which regulates goods or services which are not similar), and it builds on an impression of a close link between the item using the brand and its producer, and if use or registration by others on the same item could affect the interests of the owner of the famous brand. The "confusion of business connection" factor is considered to determine if the same brand as the well-known brand but is registered for nongrade items can be rejected or canceled.⁸

2. Legal Efforts Made in Case Action Went Against the Law of Their Infraction

Unlawful ACTS are defined as deeds contrary to the rights of others, the rights of others here are subjective rights of others, governed by the law, hence subjective rights here are limited to a number of those in the law only.⁹

Unlawful ACTS are governed in article 1365 of the book of civil law (KUHPERDATA), which reads: "any act that violates the law and brings injury to another person makes it compulsory for the offending one to make up for the loss."

From the sound of the chapter, then can be drawn the elements of the PMH as follows"

a. Element no Deeds Against the Law

Unlawful ACTS mean action or action of a transgressor. In the past, unlawful understanding was interpreted as narrow, that is, only a written law, that is, the law. So a person or a corporation can only be charged if he breaks a written law.

b. Elements of Error

These were 2 (two), either by accident or by negligence. Deliberateness means there is an awareness that a normal person must have known the consequences of his actions would harm others. While negligence refers to some act of omissions, or failure to be careful or careful in order to inflict harm on others, some circumstances may at times remove an element of error, as in force (*overmacht*) or insanity.

c. Elements of Causality Link between Loss and Deed (Causality)

That is, there is a causal link between the action done and the effect that arises. For example, the harm caused by the act of the perpetrator or in other words would not have occurred if the person had not committed the unlawful act.

⁸ Suyud Margono, *Hak Milik Industri, Pengaturan dan Praktik di Indonesia*, (Bogor: Ghalia Indonesia, 2011), hal. 106.

⁹ J. Satrio, *Hukum Jaminan, Hak-hak Jaminan Kebendaan, Hak Tanggungan Buku 1*, (PT Citra Aditya Bakti, Bandung:1993).hal.168

d. Element of Harm

The perpetrators' actions have brought harm. The damage here is divided into 2 (two) which is material and immaterial. Materials include car crashes, loss of profits, lost goods, expenses, expenses, and so forth. Faith, such as fear, disappointment, regret, pain, and the loss of a life that will be practiced in the form of money¹⁰

According to Suryadiningratan warning that this issue is divided into five kinds:

- 1) Rejection of their application for registration. If a formal application for registration of a brand that meets formal requirements is denied by copyright law, basic patents and equations in all or in any case with a brand registered for the same type of goods, then the applicant can claim the patent rights, the patent and brand that the director's head be ordered to register the one that the application is denied, The requirement must be carried out within a three-month period following the date of the rejection of their registration.
- 2) The brand's first owner demands the registration of another brand. If the brand is registered in all or in any case has anything in common with the latest brand new one from the owner of the first brand, that brand is within 9 (nine) months after the day of the announcement of their registration in addition to state news may claim copyright, patent and brand, and the owner of the registered brand before central Jakarta state court. In order that the court would cancel their registration and order the directorate to remove the registered brand from the brand general list, and to register the first owner's brand after the first owner had applied for their registration.
- 3) Demands of an owner of a personal name or trade name demanding a cancellation of brand registration, may also be performed by a person whose personal name or the name of a trading company is used in the registered label belonging to a person or another corporation.
- 4) The prosecution's claim for a cancellation of brand registration required by the prosecutor, the prosecutor's right to require the cancellation of the brand in the case of the items bearing the brand was not consistent with the example or information of the applicant, and the prosecution's claim was to be carried out within nine months of its registration date.
- 5) The claim of a registered brand owner of fraudulent rivals. a registered brand owner can demand payment of damages to a fraudulent rival, who copies the bill before a public court from his residence under article 1365 kuhcivl, and article 382 clause 393 The civil code of law.¹¹

Furthermore, article 76 of act no. 15 of 2001 also arranged for a compensation suit, as a settlement effort on brand dispute, which can be explained as follows:

- 1) Registered brand owners may appeal to others who have no right to use the same brand in common or in common for goods or services of the same kind:
 - a) Compensation suit, and/or.
 - b) Cease any action associated with the use of the suit brand.
- 2) The lawsuit referred to in verse (1) was brought to the commercial court.¹²

There is one notable thing in the application of this 76 clause, which, in the foregoing, has been alluded to that brand rights are property rights and therefore can be maintained upon anyone. The sign that the brand's rights bear absolute rights is that the bill passes to its constituents, in addition to criminal charges against those who violate that right.

¹⁰ Prihati Yuniarlin, Penerapan unsur perbuatan melawan hukum terhadap kreditur yang tidak mendaftarkan jaminan fidusia, Jurnal Media Hukum.2012 Vol.19, No.1

¹¹ RM Suryadiningrat. *Aneka Hak Milik Perindustrian*. (Bandung: Tarsito, 1994), hal.201.

¹² Ibid, hal.202.

If the violation of that right is solely to the rights contained in the 2001 law on brand no.15, then the suit can be categorized as an act of unlawful action (onrechismatigedaad), (vide chapter 1365 kuhcivil), but if the violation is a license agreement, the parties of the agreement do not fulfill the terms of the agreement either in its entirety or in part, The suit is therefore categorized as a lawsuit in the events of women (vide section 1234 The civil code of law).

The 2001 statute of no.15 on brands, stipulates that there are The two forms or content of the suit's claim, which is:

- a) Request damages
- b) Termination of brand usage

He determined the commerce court as a formal judicial institution to The suit's a silver one, it's a wide open opportunity Brand holder to maintain his right, without the institution's annulment Justice like on the old law. Especially after it's obvious that this brand right is It's part of the law of things, and it certainly won't be any different from the internal demands Punish other things. The event is also a civil event that is ranged About onrechismatigedaad or women's achievements. Apart from completion They can also be assessed with aspects of silver Criminal charges. Chapters 90, 91, 92, 93, and 94 laws 15 years 2001 Classify delics in the protection of this brand's rights as crime delics And delic violation. Delik the offense is clearly mentioned in chapter 94 Verses (1) the brand law: "Whoever trades goods and/or services which It is known or well known that such goods and/or services are The results of such offenses as those referred to in chapters 90, 91, 92, and or 93 were sentenced to maximum penal cages 1 (one) years or a maximum of \$70 (U.S.). In addition to delic violation, there is delic crime, which means that the attempts to commit delic, classified as crime, continue to be threatened with criminal penalties. As for any criminal crime can be seen by criteria that are set within:

- a. Article 90 reads: "anyone who deliberately and without the right to use the same brand in its entirety with the same brand registered to another person for goods and/or services of the same kind produced and/or traded, is sentenced to prison prison maximum 5 (five) years and/or \$10,000 10,000) and/or \$10,000 on a maximum fine."
- b. Article 91 reads: "anyone who deliberately and without the right to use the same brand on the basis of a registered name of another person for goods and/or services of the same kind produced and/or traded, is sentenced to prison crime no. 4 (four) years at most and/or \$10,000 in fine. 800,000,000,00 (U.S.):
- c. Article 92 reads: "anyone who deliberately and without the right to use the same mark on the whole as the geographical property of the other party on the same item or some type of item registered is sentenced to prison prison maximum 5 (five) years and/or a maximum fine rp 1,000,000,000,00 (a billion rupiah)."
- d. Article 93 reads: "anyone who deliberately and without the right to use a protected sign on the basis of materials or services can deceive or mislead the public about the origin of the goods or services, is sentenced to prison by no means 4 (four) years and/or a maximum fine by rp 800,000,000,00 (U.S.).¹³

Their infraction Conducted by those with bad intentions and irresponsibly responsible for the well-known brands they miss, no doubt causing harm to the established manufacturers or entrepreneurs. As an offending party, surely the rightful owner of the brand would go along with the legal path to resolve the case of their infractions. The aim is to eliminate the perpetrators of their infractions from using a distinctive brand or whole brand or even discontinuing their production activity. Brand misconduct is not

¹³ Undang-undang Nomor 15 Tahun 2001, tentang Merek

only regulated within brand law, it can also be punishable by criminal, civil, or administrative law.¹⁴ The most wronged party will go to law enforcement to complete the infringement of the right to the brand set in the 2016 constitution of the brand, which is:

a) Sanctioned by Civil Law

Unauthorized use of a brand can be challenged on the basis of violation of the law (isa chapter 1365 of the civil law code), that is, each unlawful act brings harm to another person, obliging someone for his or her wrongdoing to be held accountable.

b) Sanctioned by Criminal Law

As to the specific provision of criminal penalties of their own regulations, it is also found in the criminal law of competition a criminal is responsible for the unjustifiable act, under article 382 of the criminal law, which is punishable by a maximum of 1 year ora fine, as high as \$100 (U.S.) to carry out a measure of trickery in order to avoid the public ora certain person.

c) State Administration Sanction

In the event of a violation of intellectual property rights, state administration could use its power to protect its rightful brand owners by way of customs, industrial standards, the surveillance authority for the broadcasting agency, the advertising standard surveillance authority.

Conclusion

Brands' transgressions can be summed up by their mimicry (having in common with other brands) and trademark falsification (having in common with other brands). The protection of the legal owner of the brand is handled in the trademark act to exclusive rights on the exclusive. Legal actions made possible by the legal holders of the broken brand can be conducted under both civil and criminal laws.

Indonesia's brand registration system is now called a constituent system, so it is recommended that all efforts be quick to register a trademark and/or service brand to the directorate general of intellectual property rights. The owner of the brand would do well to appeal to the court if there is any indication of a brand offense committed by another, and neither the producer nor the consumer will suffer further losses.

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¹⁴ Muhamad Djumhana dan Djubaedillah.1997, *Hak Milik Intelektual Sejarah, Teori dan Prakteknya di Indonesia*. PT. Citra Aditya Bakti, Bandung, hal. 93.

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