



ANALYSIS OF LEGAL STATUS, LEGAL PROTECTION OF MARKS THAT HAVE BEEN REGISTERED (STUDY OF DECISION NUMBER 03/PDT.SUS-MEREK/2015/PN NIAGA MEDAN)

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Abstract

The purpose of this study is to analyze the legal position and legal protection of trademarks that have been registered (Study of Decision Number 03/Pdt.Sus-MEREK/2015/PN Niaga Medan). The type of research used in writing this thesis is normative juridical research. Normative juridical research, "is a research conducted by examining literature or secondary data such as laws and regulations, legal theory, and opinions of leading legal scholars". The data used as material for the analysis of this thesis research is secondary data, namely the data in this study consists of primary legal materials, secondary legal materials and tertiary legal materials. The analysis was carried out by means of qualitative analysis, namely an analysis that uses normative (juridical) aspects through a method that is descriptive in nature, an analysis that describes an overview of the legal materials obtained and links them to one another to obtain a general conclusion. The results of the study show that in a constitutive system, the legal protection of trademark rights is based on the registration of a mark (first to file system). Whoever registers a mark for the first time and is accepted, the applicant has the most right to a mark because registration creates rights to a mark, so that a mark is protected by law, the mark must be registered by the owner. In addition, it is also necessary to pay attention to the reputation of a well-known brand that is obtained due to vigorous and large-scale promotions, investment in several countries in the world made by the owner and accompanied by proof of registration of the mark in several countries. The law in Indonesia does not protect the first mark user, but the law protects the first mark registrant. Mark Registration is a must in order to obtain rights to a mark. Without registration, the state will not grant trademark rights to brand owners.

Keywords: *Legal Standing, Legal Protection, Trademark Registration*

1. INTRODUCTION

Intellectual Property Rights or known by the abbreviation IPR, comes from the translation of Intellectual Property Rights which comes from the Anglo Saxon legal system. Substantively, the notion of Intellectual Property Rights (IPR) can be said to be the right to ownership of works that arise or are born due to human intellectual abilities in the field of science and technology. Meanwhile, Helianti Hilman, in a paper entitled "The Benefits of Protecting Intellectual Work in the Intellectual Property Rights System" provides an understanding that what is meant by Intellectual Property Rights is an exclusive right granted by the state to a person or group of people or entities to hold a monopoly in using and benefiting from intellectual work that contains IPR.

IPR law is a law that must keep abreast of technological developments to protect the interests of creators. The word property or ownership in IPR has a more specific scope compared to the term wealth. This is also in line with the concept of Indonesian civil law which applies the term property to objects that are owned by a person. One type of IPR is a brand.

According to Article 1 paragraph (1) of the Law of the Republic of Indonesia Number 20 of 2016 Concerning Marks and Geographical Indications (hereinafter referred to as Law No. 20 of 2016), a Mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letters, numbers, color arrangements, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and or services produced by persons or entities law in trading activities of goods and/or services.

Brand discovery begins with findings in the field of other interrelated intellectual property rights. As in a brand, there are elements of creation, for example logo designs, letter designs or number designs. There is copyright in art, so what is protected is not copyright in art, but what is protected is the brand itself. Brands are very valuable in IPR because they are associated with the quality and desire of consumers in a product or service. With a brand, someone will be interested or not interested in consuming something. Something that is not visible in the brand can make users or consumers loyal to the brand.

Trademark rights will be obtained after registration. Mark owners will also receive legal protection if they have applied for registration of their mark in accordance with the provisions in Article 4 to Article 19 of Law no. 20 of 2016. In submitting a trademark application, the applicant must meet the material requirements and formal requirements. Material requirements are requirements in which the registered mark does not conflict with absolute reasons and relative reasons, while formal requirements are requirements related to administrative documents.

There are 2 (two) ways to apply for registration of a mark, namely the usual way and with priority rights. Applications for registration in the usual way are made because the mark being requested for registration has never been registered at all, while applications for registration with priority rights are made because the mark to be registered in Indonesia has already been registered in another country.

According to registration with the Constitutive (active) system with its doctrine of "prior in filling" that the party entitled to a trademark is the party registering the trademark, also known as the principle of "presumption of ownership". So the registration creates a right to the mark. The party that registers is the only one entitled to a mark and third parties must respect the rights of the registrant as absolute rights.

Article 21 Law no. 20 of 2016.

In practice, in business activities, it is often found that the same brand is used for several goods and/or services that are actually produced by different business actors. The use of a mark by several business actors can occur for the same class of goods and/or services or also for different classes of goods and/or services. If a trademark violation is found, the aggrieved party can complain about the violation through the Commercial Court. The commercial court is a special court that is within the scope of the general court of cases that become the competence of the commercial court is only handle cases of Intellectual Property Rights. The provisions of the Law on Trademarks and Geographical Indications Number 20 of 2016 use the Commercial Court channel as an institution to resolve trademark disputes.

The trading business is named "Toko REZEKI". The business license has been registered with the Medan City Government as evidenced by a Business License issued by the Department of Trade, Land and Building Tax on behalf of Toko REZEKI, as well as a certificate of domicile issued by the Head of the Central Market Village of Medan Kota District, Medan City.



This business has been running well for quite a long time, and is well known by the wider community and has many customers. Around 2005, a shop with the same name as the shop owned by Seniawaty Loeis was established, and it was located not far from "Toko REZEKI" which was owned by Seniawaty Loeis. Seniawaty Loeis has been economically disadvantaged by having a shop with the same name as hers. Not a few people go shopping at Ng Tek Seng's "REZEKI Shop" because they don't know the real "REZEKI Shop".

Seniawaty Loeis has known this. In 2006 Seniawaty Loeis gave a warning (subpoena) to Ng Tek Seng for using the name "Toko REZEKI". In the same year, Ng Tek Seng registered the brand "Toko REZEKI" with the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights of the Republic of Indonesia, under the name "Toko REZEKI", with certificate number IDM000137573.

Against this lawsuit the Medan District Court Judge decided to grant Seniawati Loeis' lawsuit, and stated that Seniawati Loeis was the sole owner of the mark who had the exclusive right or special right to use the mark in Indonesia, and ordered the Ministry of Law and Human Rights of the Republic of Indonesia to recorded the cancellation of the registration of the trademark "Toko REZEKI" with certificate No. IDM000137573.

Based on the description above, a study was conducted with the title "Analysis of Legal Position, Legal Protection of Registered Marks (Study of Decision Number 03/PDT.SUS-MEREK/2015/PN Niaga Medan).

2. IMPLEMENTATION METHOD

Types of Research and Nature of Research

The type of research used in writing this thesis is normative juridical research. Normative juridical research, "is a research conducted by examining literature or secondary data such as legislation, legal theory, and opinions of leading legal scholars". Normative legal research is "legal research that places law as a system of norms.

Data source

This research is contrary to the notion that research essentially includes data collection activities, data analysis and data construction, all of which are carried out systematically and consistently. The data used as material for the analysis of this research is secondary data, namely the data in this study consists of primary legal materials, secondary legal materials and tertiary legal materials.

Data collection technique

Data collection techniques used in this study are:

a. Library Studies (Library Research)

Literature study is the single method used in normative legal research.

b. Field Studies (Field Research)

Field studies are direct data collection using data collection techniques.

Data analysis

The analysis was carried out by means of qualitative analysis, namely an analysis that uses normative (juridical) aspects through a method that is descriptive in nature, an analysis that

describes an overview of the legal materials obtained and links them to one another to obtain a general conclusion. From the results of this analysis will be drawn deductive conclusions with the deduction method. That is a way of thinking that draws conclusions based on facts that are general in nature and then specific, that fact is the result of the Judge's decision which is analyzed in the case raised.

3. RESULTS AND DISCUSSION

Trademark Registration System in Indonesia

Along with the development of trademarks in Indonesia, the government, especially the Directorate General of Intellectual Property of the Ministry of Law and Human Rights (DJKI) as the agency responsible for matters related to the Intellectual Property system, considers it necessary to make improvements and improvements to the trademark law, replacing the trademark law. -The previous brand law, namely UU No.15/2001. As for the purpose of the improvement and refinement of Law no. 15/2001 is for:

1. Increasing service to the public applying for trademark registration;
2. Providing more convenience to the public in registering marks, namely by simplifying the processes and procedures for registering marks;
3. Provide more legal protection for registered trademark owners from possible trademark violations committed by other parties;
4. Adjust legal regulations in the field of marks with international provisions in the field of marks that have been ratified and/or acceded to by Indonesia

Based on these considerations, after going through a long process, finally on October 27, 2016, the government together with the People's Representative Council (DPR) passed Law no. 20 of 2016, which replaces the role of the previous brand law. Law No.20/2016 comes into effect on 25 November 2016.

Legal Position of the First Trademark User in the Trademark Rights Registration System in Indonesia

The first user of a mark is an individual or legal entity who uses a mark for the first time. Mark users who use a mark for the first time can still get legal protection, even if they are not registered. With the provision that it can be proven that the party registering has committed a violation in the registration of a mark.

The law in Indonesia does not protect the first mark user, but the law protects the first mark registrant. Mark Registration is a must in order to obtain rights to a mark. Without registration, the state will not grant trademark rights to brand owners. This means that without registering a mark, a person will not be given legal protection by the state if his mark is copied by someone else. Registration of marks used in Indonesia was finally regulated in Law no. 20 of 2016 is a Constitutive system. In this constitutive system, legal protection is based on the first applicant who has good faith.

To find out that a mark has been registered is with the provisions that the mark can be categorized and recognized as a mark, if:

1. Has a distinguishing function;
2. Is a sign on goods or services (picture elements, names, words, letters, numbers, color arrangements or a combination of these elements);
3. Does not meet the elements that are contrary to decency and public order;
4. Not public property;



5. Does not constitute a statement, or is related to the goods or services requested for registration.

Legal Protection for Brand Rights Holders in Indonesia

Legal protection for trademarks is absolutely given by the government to holders and users of trademark rights to ensure business certainty for producers and attract investors for foreign trademarks, while the legal protection given to local trademarks is expected to one day develop widely in the world. international.

To protect the legitimate trademark owner, this can be done by canceling a registered trademark that violates the trademark rights of others. as a result of a registration error made by a party who deliberately registers someone else's trademark in bad faith to obtain personal gain.

The scope of legal protection given to brand owners includes:

1. Protect the use of brand exclusive rights, including:
 - a) Using brand marks as logos, labels or images in correspondence, on goods or services, on packaging (packaging) in advertisements or promotions.
 - b) Enjoy exclusively the manifestations born of the brand, including goodwill or well-known, high reputation, source of origin, cultural touch and a touch of familiarity.
2. Protect the exclusive right to use the mark as a means of exploitation to gain profits in trade, including:
 - a) marketing goods or services in national, regional and global trade; And, keep goods protected by brand rights, as long as it does not conflict with monopoly provisions and speculation to increase prices.

Legal protection is given to brands not because they are seen as fundamentally an effort to act honestly in trading activities, but through product brands produced by business actors that can be identified based on their source of origin. The fundamental principle in the context of legal protection for well-known marks that applies universally is that always, and self-evident, there is or is contained an element of bad faith if there is a similarity in principle/in its entirety between a brand and a brand. famous.

In cases that have been decided by courts which have been won by judges, both the first user of the mark and the first registrant are those who comply with the applicable laws and regulations. There are several examples of cases where the trademark was canceled by the first user of the brand and the first user of the brand was defeated by the first registrant.

Table 1. Examples of Brand Owner Legal Protection in Indonesia

No	Case	Equality	Information
First Brand User Case Won			
1	Gudang Garam vs New Warehouse.	The painting has something in common with the Gudang Garam brand	Gudang Garam as the first brand holder felt disadvantaged because Gudang Baru produced the same product as Gudang Garam with Paintings, which had similarities in principle to the Gudang Garam brand, so that many consumers were deceived and the first brand holders felt disadvantaged. So that the first brand holder sued the Gudang Baru brand holder and finally the first brand holder won.
2	Dunkin' Donuts owned by	The Donats' Donuts brand, which has	Dunkin' Donuts owned by Dunkin' Donuts INC., USA as the first brand holder felt

	Dunkin' Donuts INC., USA vs Donats' Donuts in Yogyakarta	similarities in lettering and color combinations with the Dunkin' Donuts brand, is apparently also used in food and beverage packaging boxes.	disadvantaged because Donats' Donuts in Yogyakarta produced the same product as Dunkin' Donuts owned by Dunkin' Donuts INC., USA, so many consumers were deceived and the first brand holder felt disadvantaged. So that the first brand holder sued the first brand holder and finally the first brand holder won.
3	Barbie Dolls vs Babie Dolls	in the form of writing, sound, speech and color combinations with the BARBIE brand.	Barbie dollas the holder of the first brand felt disadvantaged because Babie Dolls produced the same product as Barbie Dolls, so many consumers were deceived and the holders of the first brand felt disadvantaged. So that the first brand holder sued the first brand holder and finally the first brand holder won
The First Brand User Case To Beat			
1	Pierre Cardin belongs to a French Fashion Designer and Pierre Cardin belongs to Alexander Satryo Wibowo	in the form of goods produced and the same brand	There was a business belonging to Alexander who allegedly hitchhiked owned by a designer from France who had registered and used his brand earlier than Alexander's brand, but the judge ruled in favor of Alexander's local Pierre Kardin because it had a differentiator by always including the words Product by PT. Gudang REZEKI as a differentiator, in addition to other information as an Indonesian product finally the first brand holder was defeated.
2	The Lexus brand is from Toyota Motor Corporation, a company founded on August 28, 1937 with Prolexus owned by an Indonesian businessman	in relation to the field of business and the brand used	The Lexus company sued Prolexus to court because it was deemed to have committed bad faith, namely using the Prolexus name with the aim of piggybacking on a well-known name. The panel of judges won the prolexus brand both at appeal and cassation level because the lawsuit filed by the owner of the lexus brand as a new car brand was filed on December 3, 2013, while the prolexus brand as a shoe or sandal brand was registered on September 29, 2000, and the judges won prolexus, finally the first brand holder was defeated.

Source : <https://etno06.wordpress.com/2010/01/10/exemplary-case-brand/> accessed July 1, 2019

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 in order to obtain legal protection for his trademark. The protection provided by the government to trademark owners who register their marks with the Director General of Intellectual Property Rights is to use the marks themselves and/or give permission to other parties to use them.



4. CONCLUSION

Based on the discussion that has been stated previously, the conclusions of this study are: in the constitutive system, the legal protection of trademark rights is based on the registration of a mark (first to file system). Whoever registers a mark for the first time and is accepted, the applicant has the most right to a mark because registration creates rights to a mark, so that a mark is protected by law, the mark must be registered by the owner. In addition, it is also necessary to pay attention to the reputation of a well-known brand that has been obtained due to vigorous and large-scale promotions, investments in several countries in the world made by the owner and accompanied by proof of registration of the mark in several countries. The law in Indonesia does not protect the first mark user, but the law protects the first mark registrant. Mark Registration is a must in order to obtain rights to a mark. without registration,

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