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Legal Policy in the Resolution of Trademark Rights Disputes Between Two Trade Companies from Different Countries

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ABSTRACT

Having a brand is a must and a necessity in the business world or business sector in Indonesia, if not the entire world. Apart from serving as a trade identity, it will also serve as a differentiator and a special attraction in the business world. So many entrepreneurs who create and market products that are nearly identical, if not identical, in terms of function and quality, so that people can choose which products they will use automatically. The descriptive qualitative method was used in this study, along with a literature review. According to the study's findings, the presence of a trademark will assist entrepreneurs in learning which products consumers prefer.

KEYWORDS: Trademark, Intellectual Property Rights, Brand Dispute

I. INTRODUCTION

Trade issues are more than just the problem of traders and buyers buying and selling. However, ownership issues such as brands are frequently a source of contention for business owners, both within and across borders. A business person's or company's brand aims to distinguish its goods or services from those of other businesses. A mark is an identifier of the origin of goods or services that are related to the purpose for which they are made. For manufacturers, the brand serves as a guarantee of the value of their product, which is linked to quality and customer satisfaction (Dianggoro, 1997). A brand becomes famous and realizes the quality assurance and reputation of a product takes a long time. Trademarks as a form of Intellectual Property Rights (IPR) have an important role in economic activities such as trade in goods or services. Brands are used to distinguish the origin of goods and services. A brand becomes a very valuable asset and has a high selling value. Therefore, a regulation on relevant brands is needed in line with the rapidly growing business world.

Intellectual Property Rights (IPR) are a private right that allows a creator/inventor to choose whether or not to register his intellectual work. The essence of IPR is based on a very basic viewpoint in which intellectual works produced by humans in the manufacturing process, of course, require a special skill or expertise as well as tenacity and, of course, a lot of effort and sacrifice (Djubaedilah, 2014). According to Saidin, intellectual property rights are material rights, rights to something derived from the brain's work, the work of ratios. The end result of human reasoning work. His work is manifested in the form of immaterial or intangible objects (Saidin, 2010). Understanding IPR is a fundamental requirement for all parties interested in utilizing and developing IPR for business purposes. It is known that Indonesia's first Trademark Law was born in 1961 with the promulgation of the Trademark and Commercial Mark Law, on October 11, 1961 and came into force on November 11, 1961, known as the nomenclature of Law Number 21 of 1961.

The promulgation and enactment of Law Number 21 of 1961, the Reglement Industriële Eigendom Kolonien 1912 (Colonial Industrial Property Rights Regulation 1912; S.1912-545 jo. S. 1913-214) is declared revoked and no longer valid. In 1992 there was a renewal of trademark law in Indonesia, with the promulgation and enactment of Law Number 19 of 1992 which revoked and replaced Law Number 21 of 1961. Then in 1997, there was another refinement of Law Number 19 of 1992 with enactment and enactment of Law No. 14 of 1997. Then in 2001, Law No. 19 of 1992 jo. Law Number 14 of 1997 was replaced with Law Number 15 of 2001. Then lastly in 2016 it was amended and refined by Law Number 20 of 2016 concerning Marks and Geographical Indications (hereinafter referred to as the MIG Law) (Usman, 2003). Meanwhile, violation of IPR is basically a human action caused by the existence of a relationship with the need to get profit with easy shortcuts (Mangowal, 2017).

The MIG Law protects IPR in the fields of Marks and Geographical Indications, marks include trademarks and service marks. A brand is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and/or three dimensions, sound, hologram, or a combination of two or more. This is done to distinguish goods and or services produced by individuals or legal entities in the activities of trading goods and/or services. While Geographical Indication is a sign indicating the area of origin of an item and product which due to geographical environmental factors including natural factors, human factors or a combination of these two factors gives reputation, quality, and certain characteristics to the goods and or products produced (UU No.28/ 2014).Regarding the issue of trademark infringement, it is mainly due to the desire to get big profits in trade which is usually done by using well-known brands in the community. In practice, there are many cases of infringement of well-known brands that aim to gain profits in a short time by falsifying or imitating the famous brand. The owner of a well-known brand in this case is of course very disadvantaged because it can reduce sales turnover and reduce consumer confidence in the quality of the famous brand (Tim Redaksi Tata Nusa, 2004).From the discussion above, the authors focus the research on two questions, namely; How is the regulation of brand protection in Indonesia, and how are efforts to resolve trademark rights disputes in Indonesia?

II. METHODS

In this discussion, the author attempts to describe the procedures and efforts used to resolve trademark disputes. This is a qualitative research using a normative juridical method, with the goal of studying legal doctrines related to the value of justice in a specific country (Yunus; Anggraeni; Rezki, 2019), which includes the value of justice in ideology as well as its guarantee in legislation (Rawls, 2019). This study makes use of library research methods. This study draws on data from literature searches, text books, newspapers, legal magazines, laws and regulations, jurisprudence, and other sources that are relevant to the topic under discussion.

III. RESULTS AND DISCUSSION

Trademark Registration Procedure in Indonesia: Aside from matters relating to violations and legal sanctions for those who violate the mark, the regulation of procedural mark registration is also very important in terms of trademark protection (Ukas& Jamba, 2018).Mark registration is carried out by complying with the requirements outlined in Law Number 15 of 2001. In trademark registration, two systems are used: the declarative system and the constitutive (attributive) system. The Trademark Law of 2001 follows the same constitutive system as the previous laws, namely Law Number 19 of 1992 and Law Number 14 of 1997, in its registration system. This is a significant change in Indonesian trademark law. Even though Indonesia follows a constitutive system for trademark registration, well-known marks that have not been registered in Indonesia will still be protected because Indonesia has ratified the Paris Convention and the TRIPS Agreement (the World Trade Organization's TRIPS Agreement).Law Number 20 of 2016 on Marks and Geographical Indications adds provisions on "Applications for International Mark Registration," namely that applications originating in Indonesia are addressed to the International Bureau, as are applications addressed to Indonesia as one of the International Bureau's destination countries. Furthermore, additional provisions concerning the international registration of Marks based on the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks shall be governed by a Government Regulation.

Article 52 of Law Number 20 of 2016 concerning Marks and Geographical Indications regarding the provisions on applications for international trademark registration states:

1. An application for international mark registration may take the following forms:
Applications originating from Indonesia are addressed to the international bureau through the Minister; or
Applications addressed to Indonesia as one of the destination countries received by the Minister from the international bureau.
2. Application for international Mark registration as referred to in paragraph (1) letter a may only be applied for by:
Applicants who have Indonesian citizenship
Applicant who has a domicile or legal domicile in the territory of the Unitary State of the Republic of Indonesia; or
Applicants who have real industrial or commercial business activities in the territory of the Unitary State of the Republic of Indonesia.
3. The applicant as referred to in paragraph (2) has filed an application or has a Mark registration in Indonesia as the basis for an application for international Mark registration.
4. A Government Regulation shall govern any additional provisions relating to the international registration of marks based on the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

Procedure for Filing A Trademark Lawsuit In Indonesia: The procedure for claiming trademark disputes and geographical indications at the Commercial Court, namely: first, the lawsuit is submitted to the chairman of the Commercial Court in the jurisdiction where the defendant lives or domiciles. If outside the territory of the Unitary State of the Republic of Indonesia, the lawsuit is submitted to the Head of the Central Jakarta Commercial Court. Second, the Registrar registers the lawsuit on the date the lawsuit is filed and the plaintiff is given a written receipt signed by the Registrar on the same date as the date of registration of the lawsuit. Third, the Registrar submits the lawsuit to the chairman of the Commercial Court within a maximum period of 2 days from the date the lawsuit is registered. Fourth, within a maximum period of 3 days from the date the lawsuit is submitted, the chairman of the Commercial Court studies the lawsuit and appoints a panel of judges to determine the trial day. Fifth, the summons of the parties is carried out by the bailiff no later than 7 days after the lawsuit is registered. Sixth, the examination session until the decision on the lawsuit as must be completed no later than 90 days after the case is received by the panel that examines the case and can be extended for a maximum of 30 days with the approval of the Chief Justice of the Supreme Court. Seventh, the decision on the lawsuit that contains the complete legal considerations underlying the decision must be pronounced in a trial open to the public. Eighth, the decision of the Commercial Court must be submitted by the bailiff to the parties no later than 14 days after the decision on the lawsuit is pronounced.

The provisions regarding the terms and procedures for the claim for a Mark as referred to in Article 85 shall apply *mutatis mutandis* to the terms and procedures for a claim for Geographical Indications. The decision of the Commercial Court in disputes over trademarks and geographical indications can only be appealed to. Provisions regarding the terms and procedures for a trademark lawsuit and cassation as regulated in the MIG Law apply *mutatis mutandis* to the terms and procedures for a Geographical Indication lawsuit. *Mutatis Mutandis* is a principle which states that it is basically in accordance with the procedures contained in the provisions of the MIG Law but has the authority to make changes to procedures on things that are needed or important according to urgent conditions. The lawsuit for trademark infringement Article 83 and Article 84 of Law no. 20 of 2016 concerning Brands and Geographical Indications. The owner of a registered mark and/or the recipient of a registered Mark License may file a lawsuit against another party who unlawfully uses a Mark that has similarities in principle or in its entirety for similar goods and/or services in the form of: 1) Claims for compensation; and/or, 2). Termination of all actions related to the use of the mark. In relation to Alternative Dispute Resolution, Article 93 states: "In addition to the settlement of claims as referred to in Article 83, the parties may resolve disputes through arbitration or alternative dispute resolution". In addition to dispute resolution in the Commercial Court, in Law no. 20 of 2016 concerning Marks and Geographical Indications, it is possible to have alternative efforts outside the court. This means that the disputing parties can also resolve the dispute through arbitration or alternative dispute resolution.

Benefits of Registering Trademarks in Global Competition: Patricia Loughlan mentions the function of a brand as a badge of origin, a piece of personal property, and as a cultural resource. As a badge of origin, it is a very important right in trade and shows the close relationship between the product and the origin of the goods (Sujatmiko, 2010). A product will be known by the public through a brand as an identifier (Fajar, 2018). In addition to being a trade identity, registering a mark will provide protection for Trademarks and Service Marks in this Law as well as protection against geographical indications, namely signs that indicate the area of origin of an item due to geographical environmental factors, including natural factors or human factors or a combination of these. These two factors give certain characteristics and qualities to the goods produced. In addition, it also regulates the indication of origin (Rafianti, 2013). In 2003, ASEAN member countries held a meeting in Bali with the idea of realizing the ideals of a region that has strong economic integrity, the initial steps were designed and are predicted to start in 2020. Furthermore, at the meeting in the Philippines which was held on January 13, 2007, ASEAN member countries agreed to accelerate the formation of the ASEAN Economic Community (in English terms: ASEAN Economic Community (AEC)), hereinafter referred to as MEA. The background of this formation is to prepare for the globalization of the economy and trade through the ASEAN Free Trade Area (AFTA) and to face global competition, especially from China and India. The acceleration of the decision of ASEAN countries to establish the MEA, which was initially set to start in 2020 to 2015 becomes a reference for immediately increasing economic growth and competitiveness among ASEAN member countries to face global competition (Rifai, 2016; Bappeda, 2015).

To welcome the MEA era, the development of trademark law is not only based on legal interests, both criminal and civil, but also national interests. Legal reform is Indonesia's awareness to be part of world globalization, so that it can provide the best benefits for the national economy. According to Riswandi, Marks are used in goods or services activities. The function of the brand is as: first, identification to distinguish one company's products from other companies' products (product identity). This function also connects goods or services with their

Producers as a guarantee of the reputation of their business results when traded. Second, means of trade promotion (means of trade promotion). Third, guarantee the quality of goods or services (quality guarantee). Fourth, the designation of the origin of the goods or services produced (source of origin). Fifth, ensure legal certainty for brand inventors, brand owners, or brand rights holders. Sixth, Preventing violations and crimes against trademark rights (Khoironi, 2013; Riswandi, 2005).

Settlement of Trademark Disputes of Different Countries: Because the meanings of Dispute and Conflict are so close, knowing the meanings of the terms Dispute and Conflict is essential for a thorough understanding. A squabble or dispute is referred to as a conflict. If the injured party only expresses dissatisfaction or concern, the conflict will not escalate into a dispute. A conflict will become a dispute if the aggrieved party has expressed his dissatisfaction or concern, either directly or indirectly (Usman, 2003). Individuals and individuals, individuals and groups, groups and groups, companies and companies, companies and the state, one country and another, and so on can all have disagreements. In other words, conflicts can be public or private, and they can occur locally, nationally, or internationally. There are three main elements in a dispute, namely: first, the existence of two or more parties involved. Second, there is a difference of will/opinion/or interest. Third, the unwillingness of one party to respond positively or to do the will (achievement) desired by the other party (default). Various models of dispute resolution, both formal and informal, can be used as a reference to answer disputes that may arise as long as it brings justice and benefit.

In order to anticipate the emergence of disputes as a consequence of the enactment of IPR legal protection in the territory of Indonesia, laws and regulations have provided several institutions that can be used to resolve disputes. The use of these institutions is determined based on the type of IPR dispute experienced by the parties involved. In normative rules, IPR disputes can be classified into three categories, namely (Sudjana & Permata, 2010):

First; Administrative Dispute : Administrative dispute is a dispute that occurs between the party applying for IPR (the applicant) and the Government (Directorate General of HKI), which is related to the rejection of the application made by the Director General of IPR due to non-fulfillment of several requirements as stipulated in the normative rules; or disputes between IPR holders and the Director General of Intellectual Property Rights with third parties, relating to a lawsuit for the cancellation of IPR due to an alleged error in an administrative decision that has been issued by the Director General of Intellectual Property Rights. For administrative dispute resolution, normative provisions have provided the Appeals Commission, the Commercial Court, and the Supreme Court, as a means to obtain a decision (Sulistiyono, 2004). In the statutory provisions in the field of intellectual property rights, the appeal commission is only intended to settle administrative disputes in the fields of patents, marks and protection of plant varieties, especially those relating to appeals due to rejection of registration requests. Meanwhile, in the case of administrative disputes regarding intellectual property rights related to the rejection of applications for registration of other types of intellectual property rights, there is no known appeal commission. The Appeals Commission is an independent special body and is within the relevant departments, for patents and trademarks it is the Ministry of Justice and Human Rights, while for PVP it is the Ministry of Agriculture (Sulistiyono, 2004).

For administrative disputes in the field of industrial design, the commercial court handles disputes between industrial design applicants and the Director General of Intellectual Property Rights, in which the disputed material relates to the rejection of the application for registration of industrial designs by the Director General of Intellectual Property Rights, and disputes between industrial design holders and interested parties. The disputed material relates to the cancellation of registration of industrial designs. As for the integrated circuit layout design dispute, the commercial court handles a dispute involving the integrated circuit layout design right holder against the interested parties, in which the disputed material relates to a lawsuit for cancellation of the integrated circuit layout design registration claim.

Second; Civil Dispute : In Civil Disputes in the field of Intellectual Property Rights, institutions that can be accessed by the public for justice are district courts, commercial courts, arbitration, and alternative dispute resolution. Civil disputes can arise because of different interpretations of the contents of the agreement, or one of the parties defaults on the agreement (license agreement) that they previously agreed. For this type of dispute, the party who feels aggrieved can file a lawsuit procedure through a judicial institution (district court, commercial court), arbitration, or non-litigation. For types of civil disputes that arise due to violations or piracy committed by individuals or legal entities who are not entitled to IPR, the settlement can also be done through a district court, commercial court, arbitration, or alternative dispute resolution. The use of one of the places for dispute resolution is determined by the object of the dispute or the will of the disputing parties to make a choice, through litigation or non-litigation.

Third; Criminal Dispute : For disputes over criminal acts in the field of IPR, which involve the state against perpetrators of criminal acts of IPR, based on the applicable rules, must be resolved through the general judiciary. In the legal system in Indonesia, all violations of intellectual property rights, be it copyrights, trademarks, patents, trade secrets, PVP, industrial designs, and integrated circuit layout designs, are categorized as criminal acts (Sulistiyono, 2004). Now only PVP is left whose crimes are classified as ordinary offenses. This implies that investigators must be pro-active in carrying out investigative activities when there is an allegation that a IPR crime has occurred. In fact, for the types of IPR crimes, the insight or knowledge of the majority of the police is still low, so that often an investigation into IPR crimes is only carried out when there are reports from IPR holders who have been harmed. Meanwhile, for trademarks, patents, trade secrets, industrial product designs, and integrated circuit layout designs, criminal acts are classified as complaint offenses. Brand Dispute Resolution and Geographical Indications include the following: first, a claim for compensation and/or, second, the termination of all actions related to the use of the mark.

Articles 83 and 84 of Law Number 20 of 2016 Concerning Marks and Geographical Indications state that the registered Mark Owner and/or registered Mark Licensee may file a lawsuit in commercial court against other parties who unlawfully use the mark. Submission of evidence that another party has used a mark that has similarities in principle or in its entirety for similar goods and/or services from the owner of the registered mark and/or the recipient of the registered Mark License. Second, the lawsuit filed seeks compensation and/or the cessation of all actions relating to the use of the Mark. Third, based on a court decision, the owner of a well-known mark may file a lawsuit. Fourth, the lawsuit is filed in Commercial Court. Fifth, as the plaintiff, the Mark Owner and/or Licensee may apply to the judge to halt the production, distribution, and/or trading activities of goods and/or services that use the Mark without rights while the case is being investigated in order to avoid further losses. Sixth, the judge may order the delivery of the goods or the value of the goods to be carried out after the court's decision has permanent legal force.

IV. CONCLUSIONS

Trademarks and service marks are the two types of brands. And, in fact, trademark registration is critical in product marketing. The registration of a well-known mark with a good image and reputation for various types and classes of goods or services is frequently not accompanied by the manufacturing and marketing process or the use of the mark in trade. This new Trademark Law also provides trademark owners with additional legal protection measures, such as a Temporary Court Decision, which aims to protect trademarks in order to avoid further losses. This Law includes provisions for Arbitration or Alternative Dispute Resolution to provide more options for dispute resolution. Indonesia follows a trademark registration system based on a constitutive system. This system requires the registration of a Mark in order for it to be protected; it is also known as the first to file system.

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