

PRODUCT TRADEMARK DISPUTE SETTLEMENT “BABY CARE” (STUDY OF DECISION NUMBER 89/PDT-SUS BRAND / 2022/PN.NIAGA /JKT.PST)

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Abstract

The development of information technology and transportation has supported the globalization of intellectual property rights. Globalization has opened the door for products and services to cross national borders and create new opportunities and challenges. Increasingly sophisticated technology and transportation enable the movement of goods and information quickly and efficiently around the world. The sustainability of economic growth depends strongly on the stability of public consumption and is supported by income growth in sectors such as agriculture, industry, and services. In the context of Intellectual Property Rights, such as brands, globalization has major implications. Products and brands that are already known locally can easily add to the global market. However, with this opportunity also comes the risk of counterfeiting and unfair competition. Therefore, the importance of protecting intellectual property rights is very important to ensure that innovation and intellectual works receive proper recognition and protection at the global level.

Keywords: Dispute Resolution, Trademarks, Products, and Baby Care

INTRODUCTION

The definition of Intellectual Property Rights according to OK Saidin is a property right, a right to something that originates from the work of the human brain, namely the reasoning that exists in humans and the results of this work are in the form of immaterial objects. Regarding human capabilities, OK Saidin stated that not everyone can and is able to use their brains (reason, ratio, intellectual) to the maximum. Legal protection in terms of Intellectual Property Rights is separate from the Intellectual Property Rights themselves with material results that are the physical manifestation of these Rights. Intellectual Property Rights are intangible assets, namely the Right to the ability to use one's brain creatively, rationally and rationally to produce intellectual works. Within the framework of Intellectual Property Rights, what receives legal protection (Exclusive Rights) is the Right, while the manifestation of these Rights is in the form of physical objects or tangible objects (material objects). For example, the Copyright of a book is the incarnation or material of the Copyright of a book which is manifested in the form of copies of the book, in this case the physical book receives legal protection as an object in the category of material objects (tangible objects).

Basically, IPR is a right that arises as a result of human intellectual ability in various fields that produce a process or product that is beneficial to humanity. Works in the fields of science, art, literature, or inventions in the field of technology are examples of creative works as a result of human intellectual creativity, through their creations, feelings, and desires. These creative works give rise to property rights for the creator or inventor.

The development of science and technology has a great influence on the issue of intellectual property rights and their legal protection. The problem is no longer purely in the

field of intellectual property rights alone because there are many interests related to intellectual property rights, namely the economic and political fields that have become inseparable elements in discussing the issue of intellectual property rights.

The need, capability and technological progress of a product today is a market for the production of entrepreneurs who own trademarks and services. Everyone wants their products to have the freest possible access to the market, therefore the development in the field of trade and industry which is so rapid requires increased protection of the technology used in the manufacturing process, if the product is then circulated in the market using a certain brand, then the need to protect the marketed product from various unlawful actions is ultimately the need to protect the brand. In this connection, the rights arising from intellectual property rights, especially the rights to a product brand will be very important, namely in terms of legal protection, therefore establishing and developing a brand of goods or services is done with difficulty, considering that it also takes a long time and expensive costs to promote the brand so that it is known and gets a place in the market. One way to strengthen a healthy trading system in developing a brand of a product or service is by carrying out legal protection for brand registration.

According to Insan Budi Maulana, a brand can be considered as a “spirit” for a product or service. A brand is a tool to differentiate one product from another, as well as an indicator of the quality of a product, in addition to being an identifier or identity that will make it easier for consumers to determine their choice.

Brands are the spearhead of trade in goods and services. Through brands, entrepreneurs can maintain and provide a guarantee of quality (a guarantee of quality) of goods and/or services produced and prevent unfair competition from other entrepreneurs who intend to piggyback on their reputation. Brands as a marketing and advertising device provide a certain level of information to consumers about the goods and/or services produced by entrepreneurs.

A trademark is a logo or symbol for a product or service that determines the quality of an item and has the power to distinguish between one trademark of goods and services and another. Brands have been used for hundreds of years to provide a sign of the product produced with the intention of indicating the origin of the goods (indication of origin). A trademark does not only indicate the origin of a product but is an expression of the producer's will to make an industrial effort. A person thus acquiring an asset must be protected by the constitutional guarantee of property.

Indonesia as one of the participating countries of the Agreement Establishing The World Trade Organization on April 15, 1994 in Marrakesh, Morocco has ratified the agreement in Law Number 7 of 1994 along with the attachments to the agreement under the management of the WTO, one of which is attachment 1 C, namely Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods, abbreviated as the TRIPs Agreement. The TRIPs Agreement aims to eliminate various barriers, especially to provide facilities that support efforts to increase economic growth and trade, both nationally and internationally. In this case, Indonesia has made several adjustments or improvements to the

laws and regulations on brands in Indonesia, namely by enacting Law Number 15 of 2001 concerning Brands, which simultaneously revokes and declares Law Number 14 of 1997 concerning Amendments to Law Number 19 of 1992 concerning Brands no longer valid.

It is a symbol used to distinguish products or services. A brand can be a word, logo, sound, three-dimensional shape, or hologram. In business activities, a brand is a unique characteristic that is essential to guarantee the quality of a product, so that its protection becomes an important thing. A brand is a form of intellectual property that is protected by the State after being registered with the Directorate General of Intellectual Property of the Ministry of Law and Human Rights. The role of a brand is not only limited to being a product identity, but also functions as a means of promotion and guarantee of the quality of an item.

The understanding of a brand as part of Intellectual Property Rights cannot be separated from the understanding that brand rights begin with findings in other Intellectual Property Rights, such as copyright. In a brand there are elements of creation, such as logo design or letters. There is copyright in the field of art, but in brand rights it is not copyright in the field of art that is protected but the brand itself and brand rights are limited only to its use or usage on marketed products and contain economic value. For producers, a brand is an image as well as a good name for the company, besides that it is also part of a business strategy. There is no producer who does not use a brand as an identity for the goods they produce or the services they provide. The identity embodied in the brand is an identifier and at the same time a differentiator between the brand of a particular company and the brands of other companies.

The definition of a brand in Article 1 point 1 of Law Number 20 of 2016 concerning Brands, defines a brand as a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in 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 obtained by a person/legal entity in the trading of goods/services.

Types of brands are explained in Article 2 of Law Number 20 of 2016 concerning Brands and Geographical Indications, namely brands as regulated in this law include trademarks and service marks. Article 1 number 2 explains that a trademark is a brand used on goods traded by a person or several people together or a legal entity to distinguish similar goods. While service marks are explained in Article 1 number 3, namely brands used on services traded by a person or several people together or a legal entity that distinguishes similar services.

This brand can be used as a shield by entrepreneurs to maintain their products in the world of free trade, and it is the right of the brand owner to defend it before the law. Therefore, the owner's rights to this brand are used to maintain unhealthy business competition in the world of trade.

A trademark as an Intellectual Property Right is basically a sign to identify the origin of goods and services (an indication of origin) from a company with goods and/or services from other companies. A trademark is the spearhead of trade in goods and services. Through

a trademark, entrepreneurs can maintain and provide a guarantee of the quality (a guarantee of quality) of the goods and/or services produced and prevent dishonest competition (concurrency) from other entrepreneurs with bad intentions who intend to piggyback on their reputation. A trademark as a marketing and advertising device provides a certain level of information to consumers regarding the goods and/or services produced by entrepreneurs.

Trademarks in Indonesia are increasingly diverse. Information and communication technology supports the development of various brands known to the public. The public can search for information on the advantages of products from certain brands so that they can choose the desired product. Therefore, between brand owners of a product will compete to gain the trust of the public as consumers. This condition is what drives inappropriate competitive actions such as counterfeiting or imitation of brands.

The registered trademark must be a trademark that meets the standards and procedures according to Law Number 20 of 2016 so that it obtains legal protection. The trademark registration is carried out by the applicant or his/her attorney in accordance with the terms and procedures stipulated in the Trademark Law. The right to a trademark is obtained from the date of issuance of the trademark certificate.

Based on the background above, several problem formulations can be taken as follows:

1. How to Settlement Trademark Disputes That Have Been Registered Regarding Decision Number 89/ PDT-SUS Merek/ 2022/ PN.NIAGA/ JKT. PST)?
2. Why Can a Registered Trademark Be Canceled by a Judge's Decision Regarding Decision Number 89/ PDT-SUS Trademark/ 2022/ PN.NIAGA/ JKT. PST)?
3. How is the Legal Certainty for Trademarks That Have Been Registered and Canceled in Decision Number 89/ PDT-SUS Trademark/ 2022/ PN.NIAGA/ JKT. PST) Related to the Baby Care Trademark Dispute?

METHOD

The research method used in this study is a type of normative legal research. Normative or doctrinal legal research is legal research that uses secondary data source research. Normative legal research is also called library research or document study, because it is more often carried out on secondary data in the library and in this study it is obtained by studying various research objects in the form of regulations and legal norms that are only related to legal protection of trademark registration and its relationship to trademark registration.

RESULTS AND DISCUSSION

Settlement of Registered Trademark Disputes Related to Decision Number 89/ PDT-SUS Trademark/ 2022/ PN.NIAGA/ JKT. PST)

Competition in trade in the current era is a common thing in society. In this case, people compete to create a brand that can attract purchasing power for consumption or daily use. Not only brands are used in a product, along with the development of technology, new ideas or concepts have emerged regarding online services that have quite a large appeal in society. This online-based service itself is in great demand by home entrepreneurs and

companies with legal entities or companies that are not legal entities. Often there are criminal practices in trade, one of which is imitation of a well-known brand that is then produced or used in applications by companies or medium to large/low businesses, which are not the original owners who first issued the brand.

Making a famous brand is not easy, it takes a long time and process, this makes other business producers do fraudulent ways to gain profit for their business by imitating famous brands so that their business is as famous as famous brands that are already known to the public. Brand counterfeiting damages the trade market because it is considered to disrupt marketing and cause conflict between several parties. Maintaining the balance of the rights of registered brand owners The law has provided protection to maintain the balance of trade.

The occurrence of brand imitation is a sign of unfair competition in the trade of goods or services, because brand imitation is an action that is quite detrimental to the owner of the brand. The reason is, the brand that is imitated is a brand that is already well-known in society. Everyone knows that even though not all famous brands in Indonesia are registered, because many people do not know how to register the brand they own in order to get a certificate of brand rights. Famous brand entrepreneurs are not only protected by a company, but are owned by some ordinary people or can be said to be home production that initially opened a small shop changed over time that they did not expect that their business would immediately be successful when the business they were running sold with the brand they had made, which then many business competitors imitated the same brand and the same production too, did not have the distinguishing power in the use of the brand with the aim of being a sign that cannot be achieved if other parties or consumers cannot distinguish one brand from another. The following are some of the disputes over imitation of well-known brands that have occurred in Indonesia: Cancellation of well-known marks which have been imitated by similarities or approaches to words, sounds, signs, seals and logos can be canceled at the Commercial Court or the Supreme Court as intended in article 68 paragraph (2). 20 of 2016 concerning Brands and Geographical Indications:

Article 68 paragraph (2), "In the event that the sign as referred to in paragraph (1) has been registered as a trademark, the Minister shall cancel and strike out the registration of the trademark for all or part of the same type of goods after a period of 2 (two) years from the time the sign is registered as a Geographical Indication."

Article 68 paragraph (3), "Cancellation and deletion of trademark registration as referred to in paragraph (2) must be notified in writing to the trademark owner or his attorney stating the reasons."

Cancellation of a trademark is done with a strong enough reason to cancel it because it has similarities as a whole or not as a whole that has similarities, in principle which means that the trademark is completely copied as a whole if it is felt that the imitation trademark is disturbing the market, it can request an appeal in the Commercial Court. Imitation of famous trademarks is indeed not uncommon in Indonesia, many people underestimate the protection of trademark rights in order to get their own benefits, harming other parties who have certificates of rights to the trademark.

Cancellation of a brand is done because of bad intentions using someone else's brand without permission and knowledge of the person who owns the brand rights, canceling the registration of a brand that without permission uses the same words or pronunciation and uses the same logo can be submitted to the commercial court to ask for justice, the use of a brand without permission then registered intentionally without the knowledge of the brand owner often happens like that causing conflict between other producers fighting for brand rights who believe each other that there is no element of imitating a well-known brand. Entrepreneurs who start their business by imitating a well-known brand but often change the vocabulary and add word management but still look the same because of the use of a logo that resembles which makes entrepreneurs believe that the brand created is not the same as a well-known brand, on average entrepreneurs who use the same brand words as well-known brands do not understand what sanctions they get when using a well-known brand.

Protection of a registered trademark does not require either “novelty” or “originality”, with this a trademark that has been used for years can still be registered, as long as it does not have any similarities either in whole or in principle with a trademark owned by another party that was previously registered and an application for registration was submitted to the Directorate General of Intellectual Property Rights (Dirjen HKI).

Disputes can arise anytime, anywhere, with anyone, whether it is a dispute between individuals, legal entities, or even the government (State). This can happen because of differences in thinking, views, interpretations, attitudes, behaviors and other differences that allow a situation where one party feels disadvantaged by an action taken by another party. For the party who feels disadvantaged, they will usually express their dissatisfaction to the other party who is in disagreement, which shows a difference of opinion.

The occurrence of disputes is also often caused by fraud from one individual to another in the form of violations of applicable legal rules or legal norms. Conflicts occur between one individual and another or occur between groups. In the Great Dictionary of the Indonesian Language, a dispute means a conflict or conflict that has the same relationship or interest in an object. The process of resolving disputes that occur in society by carrying out an informal process is called a process that uses an agreement from the disputing parties.

Dispute resolution can be done in several ways, namely as follows:

1. Dispute Resolution Through Litigation

"Litigation is a lawsuit from a conflict that is used to replace the actual conflict involving parties who give power to someone to make decisions from two conflicting ideas". Dispute resolution is carried out through the courts or often referred to as "Litigation," which is a dispute resolution carried out through a court process with the authority to regulate and decide which is carried out by a judge. Litigation is a dispute resolution process facing each other to defend all their rights in court. Dispute resolution through litigation is a decision that states a win-lose solution.

2. Dispute Resolution Through Non-Litigation

Litigation comes from the word Litigation which means court, Non-litigation outside the court is tasked with resolving disputes by making decisions (constitutive) making

decisions. Dispute resolution using Non-Litigation through alternative disputes or Alternative Dispute Resolution (ADR), is a dispute resolution outside the court based on an agreement of the parties that sets aside dispute resolution through litigation in court.

3. Dispute Resolution Through Arbitration

Dispute resolution using arbitration that resolves disputes outside the general court based on an arbitration agreement made in writing by the disputing parties. Arbitration is used to anticipate disputes that will occur again or experience disputes that cannot be negotiated or consulted by a third party and avoid dispute resolution through a judicial body that is considered to take a very long time to handle the dispute.

Law Number 20 of 2016 concerning Trademarks and Geographical Indications refers to Lawsuits for Trademark Infringement, namely in Article 83 paragraph (1) the owner of a registered trademark and/or recipient of a registered trademark license who files a lawsuit against another party who without the right uses a trademark that has similarities in principle or in its entirety for similar goods and/or services in the form of a lawsuit for damages and/or termination of all acts related to the use of the trademark. Paragraph (2) the lawsuit as referred to in paragraph (1) may also be filed by the owner of a well-known trademark based on a court decision. Furthermore, paragraph (3) the lawsuit as referred to in paragraph (1) is filed with the Commercial Court.

In resolving trademark disputes, parties suspected of violating trademark rights may be subject to criminal or administrative sanctions in accordance with applicable provisions. Parties who feel that their rights have been violated may submit an application to the Ministry of Law and Human Rights to take administrative action such as canceling the trademark or revoking the trademark from the list of registered trademarks.

Article 24 of the 1945 Constitution explains that dispute resolution that occurs in society is carried out through the courts (litigation). The judicial body is the holder of judicial power that realizes law and justice. However, the Indonesian legal system also opens up opportunities to resolve disputes outside the courts (non-litigation). Recently, the existence of the Commercial Court has been strongly highlighted, among other things because of the decline in the number of cases received. This decline is worrying, considering that the Commercial Court is also intended to resolve other problems in other business fields. This means that from the beginning the Commercial Court was designed to expand its competence. Currently, the expansion of competence includes the authority to examine problems related to IPR, which includes the authority to examine disputes over trademarks, patents, industrial designs, and integrated circuit layout designs. Initially, trademarks only functioned as a tool to identify goods and/or services.

As stated in decision number 89/pdt-sus/HKI/2022/PN.JKT PST, the resolution of trademark disputes through litigation where the Plaintiff has found a product in the form of a bag for baby needs with the same brand owned by the Plaintiff, namely the "Babby Care" brand which is produced and branded by the Defendant. that the Plaintiff is greatly disadvantaged because the Defendant has also registered a trademark and obtained a trademark certificate "bc babycare" with trademark label number: idm000866101 date of

receipt July 27, 2019 for class 18 goods, where the pronunciation of words and sounds are essentially the same as the trade name and trademark owned by the Plaintiff, namely "baby care" for class 18 goods. The use of the baby care trademark by the Defendant on goods sold by the Defendant, where the pronunciation of words and sounds are essentially the same as the trade name and trademark of the Plaintiff, can create an impression on the public as if the Defendant's baby care brand comes from the Plaintiff and/or has a close relationship with the Plaintiff, even though between the Plaintiff and the Defendant there is no legal agreement at all, that the trade name and trademark owned by the Plaintiff are already well-known in Indonesia, so that the Defendant is reasonably suspected of having the intention to piggyback on the fame of the trade name and trademark owned by the Plaintiff which has been pioneered for a long time, and has spent a lot of money to promote and invest.

Since the Defendant's trademark class 18 trade name circulated in the Indonesian market, sales of the Plaintiff's production goods have decreased significantly so that the Plaintiff has suffered a loss of Rp. 1,000,000,000 (one billion rupiah). The Plaintiff has found a product in the form of a bag for baby needs with the same brand owned by the Plaintiff, namely the "Babby Care" brand which is produced and branded by the Defendant. that the Plaintiff is greatly disadvantaged because the Defendant has also registered a trademark and obtained a trademark certificate "bc babycare" with trademark label number: idm000866101 date of receipt July 27, 2019 for class 18 goods, where the pronunciation of words and sounds are essentially the same as the trade name and trademark owned by the Plaintiff, namely "baby care" for class 18 goods. The use of the baby care trademark by the Defendant on goods sold by the Defendant, where the pronunciation of words and sounds are essentially the same as the trade name and trademark of the Plaintiff, can create an impression on the public as if the Defendant's baby care brand comes from the Plaintiff and/or has a close relationship with the Plaintiff, even though between the Plaintiff and the Defendant there is no legal agreement at all, that the trade name and trademark owned by the Plaintiff are already well-known in Indonesia, so that the Defendant is reasonably suspected of having the intention to piggyback on the fame of the trade name and trademark owned by the Plaintiff which has been pioneered for a long time, and has spent a lot of money to promote and invest.

The judge's decision is as follows:

Declaring that the Plaintiff is the Special Holder in Indonesia of the Trade Name and Trademark “Baby Care” Brand Label Number: IDM000572871 for class 18 goods and therefore has the sole or special right to use the trademark in Indonesia;

1. Declaring that the Defendant's registered Trademark with Trademark Label Number: IDM000866101 for class 18 goods is essentially similar to the Plaintiff's trade name and trademark;
2. Declaring cancellation of the registration of Trademark Label Number: IDM000866101 in the general register in the name of the Defendant, with all legal consequences.

Factors causing a registered trademark to be cancelled by a judge's decision related to decision number 89/ pdt-sus merek/ 2022/ pn.niaga/ jkt. Pst)

Cancellation and deletion of registered trademark registration due to similarities in principle results in the trademark no longer receiving legal protection and the trademark name no longer being in the General Register of Trademarks of the court for violation of its trademark rights. In addition, cancellation of a trademark also results in the trademark owner no longer requesting compensation. This is in accordance with Article 68 paragraph (5) of the Trademark Law, namely "Cancellation and deletion of Trademark registration as referred to in paragraph (2) results in the end of legal protection for the Trademark for all or part of the same type of goods".

Based on the example of the use of the trademark "Baby Care", for similar products, the court finally decided to declare that the trademark was legally void for trademark registration. The legal consequence of the cancellation of trademark registration based on a court decision that has permanent legal force is the removal of the relevant trademark from the General Register of Trademarks. The party that can remove a registered trademark after being decided by the court is the Director General of Intellectual Property by means of deletion. The certificate obtained from the trademark registration owned by the entrepreneur is ultimately no longer valid from the date of the deletion, so that it also directly results in the legal protection for the rights holder also ending.

The principle adopted by Indonesia in registration is the first to file principal principle. The application of this principle shows that the trademark holder is recognized by law after the first registration. This trademark registration will be able to provide legal force. Registered trademarks will receive exclusive protection and can only be canceled if proven to have violated the trademark.

The case of the use of trademarks containing similarities in principle has been proven to violate the provisions of Article 21 paragraph (1) specifically in the Trademark Law, indicating that the enforcement of trademark law in Indonesia is not yet effective. This is in accordance with the theory of legal effectiveness according to which states that the effectiveness of law enforcement can be influenced by certain factors:

1. Legal factors, in this case, trademark law in Indonesia will be effective if there are provisions of laws and regulations. In this case, there is a Trademark Law that is clearly and firmly related to registered trademarks that contain similarities in principle or in part (Article 21 paragraph 1). Therefore, the application for trademark rights with the name "Baby Care" as a trademark should not be granted which was registered first.
2. The law enforcement factor is a party that has the authority to enforce the law in society. Enforcement of trademark law such as the trademark "Baby Care", namely from the Director General of Intellectual Property Rights as the party issuing the trademark rights certificate, was less careful in examining the application for the trademark "Flameson" so that it granted the application for the trademark rights "Flameson" as a trademark.
3. Social factors, in the case of the "Baby Care" trademark, namely the existence of bad ethics from the applicant who already knows that "Lameson" is a trademark belonging to

someone else but continues to use it for his trademark even though generally the applicant is aware of the provisions prohibiting trademarks that contain similarities in principle as regulated in Article 21 paragraph (1) of Law Number 20 of 2016.

4. Cultural factors. Enforcement of trademark law in the case of the trademark "Baby Care" in this case has not been effective due to the inherent cultural factors in the form of a lack of public awareness of the importance of using trademarks, thus ignoring the trademark rights of other parties.

Legal certainty regarding registered trademarks in decision number 89/pdt-sus merek/2022/pn.niaga/jkt. Pst) regarding the baby care trademark dispute

The Plaintiff requested that the Defendant's registered trademark with brand label number: IDM000866101, for class 18 goods, be essentially similar to the Plaintiff's registered trademark and the Plaintiff requested that the Defendant's registered trademark be cancelled with all legal consequences; comparison of the registered trademark owned by the Plaintiff and the registered trademark owned by the Defendant as stated below as follows: The Plaintiff is greatly disadvantaged because the Defendant has also registered a trademark and obtained a trademark certificate "bc babycare" with a trademark label number: IDM000866101, date of receipt July 27, 2019 for class 18 goods, where the pronunciation of words and sounds are basically the same as the trade name and trademark owned by the Plaintiff, namely "baby care" for class 18 goods; that in the answer from the Co-Defendant stated that there are indeed similarities in principle between the Baby Care brand with the Merak label number IDM000572871 owned by the Plaintiff, with the registered trademark "bc babycare" with the label number IDM000866101 owned by the Defendant, but all of the Co-Defendant submitted to the Panel of Judges who examined and decided this case; "a lawsuit for cancellation can be filed without a time limit if there is an element of bad faith and/or the relevant Trademark is contrary to state ideology, laws and regulations, morality, religion, morality and public order" and in addition, based on Article 77 paragraph (1) of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, it is stated that a lawsuit for cancellation of trademark registration can only be filed within a period of 5 (five) years from the date of trademark registration. The judge's ruling in the decision is that the Plaintiff is the Special Holder in Indonesia of the Trade Name and Trademark "Baby Care" Trademark Label Number: IDM000572871 for class 18 goods and therefore has the sole or special right to use the trademark in Indonesia; The Defendant's Trademark is registered with Trademark Label Number: IDM000866101 for class 18 goods which is essentially similar to the Plaintiff's trade name and trademark; cancel the registration of Trademark Label Number: IDM000866101 in the general register in the name of the Defendant, with all legal consequences.

In this third formulation, the theory of legal certainty is used as an analytical tool as the theory of legal certainty is one of the objectives of law and it can be said that legal certainty is part of an effort to realize justice. Legal certainty itself has a real form, namely the implementation or enforcement of the law against an action that does not see who the

individual is doing. Through legal certainty, everyone is able to estimate what they will experience if they do a certain legal action. Legal certainty is also needed to realize the principles of equality before the law without discrimination. From the word certainty, it has a meaning that is close to the principle of truth. This means that the word certainty in legal certainty is something that can be strictly syllogized in a formal legal way.

With legal certainty, it will guarantee that someone can carry out a behavior that is in accordance with the provisions of the applicable law and vice versa. Without legal certainty, an individual cannot have a standard provision to carry out a behavior. In line with this goal, Gustav Radbruch also explained that legal certainty is one of the goals of the law itself.

Gustav Radbruch explains that in the theory of legal certainty that he put forward, there are four basic things that are closely related to the meaning of legal certainty itself, namely as follows.

1. Law is a positive thing, which means that positive law is legislation.
2. Law is based on a fact, meaning that the law is made based on reality.
3. Facts contained or stated in the law must be formulated in a clear manner, so as to avoid errors in meaning or interpretation and can be easily implemented.
4. Positive law must not be easily changed.

Gustav Radbruch's opinion on legal certainty is based on his view on legal certainty which means legal certainty itself. Gustav Radbruch stated that legal certainty is one of the products of law or more specifically is a product of legislation.

CLOSING

Conclusion

1. In the registration of a registered trademark if there is another party that registers a similar trademark while there has been a registered trademark first, the trademark holder can claim compensation for losses that have been experienced due to the violation of the trademark. Then it can also be done with a Lawsuit, where the trademark holder can take legal action against the party that violates the trademark. Legal actions that can be taken include through civil or criminal channels. Based on Article 35 of Law Number 20 of 2016, it states that registered trademarks receive legal protection for a period of 10 (ten) years from the date of receipt and the protection period can be extended and can be extended by the same period.
2. If a registered trademark if there is a dispute that is detrimental to the registered trademark holder in Indonesia can be resolved through a lawsuit in court or alternative dispute resolution such as arbitration. Such as the baby care trademark dispute where the plaintiff is the legal owner of the baby care trademark so that what is submitted is the cancellation or deletion of the trademark in order to create justice for the original trademark holder.
3. Legal certainty for registered trademarks related to decision number 89/pdt-sus/HKI/2022/PN.JKT. PST, is by filing a lawsuit with the court by showing evidence that the plaintiff is the holder of the baby care trademark which aims for the judge to cancel the imitated trademark.

Suggestion

1. Entrepreneurs should not take the logo or brand of someone who has registered it because it can harm the original brand holder and an important step for business owners to protect their intellectual property rights. In the context of intellectual property rights, a brand can include a name, logo, image, design, or a combination of these elements that are used to distinguish the products or services of a company from those offered by other companies. By registering their brand, business owners can ensure that their brand is protected by law and cannot be used by others without permission.
2. The Government is expected to strengthen supervision and protection: The Directorate General of Intellectual Property Rights can strengthen supervision and protection of registered brands to prevent violations of intellectual property rights. This can provide better protection for brand owners and ensure that their brands are not misused by other parties. Increase public awareness of the importance of brand registration and intellectual property rights.
3. To law enforcement officers, especially the panel of judges, to provide the fairest possible decision so that the same thing does not happen again to this trademark dispute where the original trademark holder will be harmed by the same trademark and will not lose their rights as the original trademark holder and it is hoped that this can minimize the occurrence of trademark disputes.

REFERENCES

- Ediwarman, 2016, Monograf Metodologi Penelitian Hukum, Cet. Ketiga, Yogyakarta: Genta Publishing.
- Jened, Rahmi, 2015, Hukum Merek Trademark Law, (Jakarta, Kencana Pranadamedia Group).
- Kansil, CST, 2009, Pengantar Ilmu Hukum dan Tata Hukum Indonesia, (Jakarta: Balai Pustaka).
- Kansil, CST, 1989, Pengantar Ilmu Hukum dan Tata Hukum Indonesia, (Jakarta: Balai Pustaka).
- Lexy J. Moleong, 2009, Metodologi Penelitian Kualitatif, Bandung: Remaja Rosdakarya.
- Lina Maulidiana, dkk, Perlindungan Hukum Hak Kekayaan Intelektual Merek Dagang, Jurnal Vol. 6. Nomor 2, 2024.
- Maulana, Insan Budi, 1997, Sukses Bisnis Melalui Merek, Paten dan Hak, (Bandung, Citra Aditya Bakti).
- Nasution, Bahder Johan 2008, Metode Penelitian Ilmu Hukum, Bandung: Mandar Maju.
- Nur Hidayati, “Perlindungan Hukum Bagi Merek yang Terdaftar”, Ragam Jurnal Pengembangan Humanivora, Vol. 11 Nomor 3, Desember (2011).
- Patrichia Weyni Lasut, “Penyelesaian Sengketa Gugatan Atas Pelanggaran Merek Menurut Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis”, Lex Et Societatis, Vol. 7 Nomor 1 Januari (2019).

- Phillipus M. Hadjon, 1987, *Perlindungan Hukum Bagi Rakyat Indonesia*, PT. Bina Ilmu, Surabaya.
- Putri Permata Amalia, “Perbedaan Penerapan Syarat Pembatalan Merek Terkenal Antara Pengadilan Niaga dan Mahkamah Agung Dalam Kasus Piaget dan Piaget Polo”, *Jurnal Mahasiswa Fakultas Hukum Universitas Brawijaya*, (2015).
- Putu Eka Krisna, “Perlindungan Hukum terhadap Hak Merek Terkenal di Indonesia”, *Jurnal Universitas Udayana*, Vol. 6 Nomor 11, 2018.
- Rahardjo, Satjipto, 2012, *Ilmu Hukum*, Bandung, Citra Aditya Bakti.
- Raharjo, Satjipto, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung.
- Rahmadia Maudy Putri Karina and Rinitami Njatrijani, “Perlindungan Hukum Bagi Pemegang Hak Merek Dagang IKEA Atas Penghapusan Merek Dagang,” *Jurnal Pembangunan Hukum Indonesia*, Vol. 1 Nomor 2 Tahun 2019.
- Riswandi, Budi Agus dan Syamsudin, (2004), *Hak Kekayaan Intelektual dan Budaya Hukum*, Jakarta: PT Raja Grafindo Persada.
- Rouf Fajrin Widianoro, “Pendaftaran Merek Sebagai Sarana Perlindungan Hukum”, *Jurnal*, Vol.7 Tahun 2022.
- Saidin, (2004), *Aspek Hukum Hak Kekayaan Intelektual*, Jakarta: RajaGrafindo Persada.
- Saidin, OK, (2010), *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, Jakarta: PT. Raja Grafindo Persada.
- Saidin, 2008, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, (Jakarta, Rajawali Press).
- Setiono, 2004, *Supremasi Hukum*, (Surakarta: UNS)
- Sita Nur Ramadhani Devi, dkk, *Analisis Perlindungan Hukum Terhadap Pemegang Merek Dagang Asing yang Terkenal dari Pelanggaran di Indonesia*, *Jurnal*, Vol.8. Nomor 2, 2024.
- Siti Nurul Intan Sari .D, “Perlindungan Hukum Terhadap Merek Terkenal Berdasarkan Konvensi Paris Dan Perjanjian Trips Serta Penerapannya”, *Jurnal Hukum*
- Sjahputra, Iman, 2010, *Perlindungan Konsumen dalam Transaksi Elektronik*, Bandung, Alumni).
- Soekanto, Soerjono, 2014, *Pengantar Penelitian Hukum*, Jakarta : Universitas Indonesia (UI-Press) Cet Ketiga.
- Soelistyo, Henry, (2014), *Hak Kekayaan Intelektual Konsepsi, Opini dan Aktualisasi*, Jakarta Selatan: Penaku.
- Soelistyo, Henry, 2014, *Hak Kekayaan Intelektual Konsepsi, Opini Dan Aktualisasi*, Jakarta Selatan, Penaku.
- Soeroso, 2011. *Pengantar Ilmu Hukum*, Jakarta, Pt. Sinar Grafika.
- Soeroso, R. 2006. *Pengantar Ilmu Hukum*, Jakarta: Sinar Grafika.
- Sudaryanto, Agus. 2015. *Pengantar Ilmu Hukum Pengertian dan Perkembangannya di Indonesia*, Malang: Setara Press.
- Sugiarto, Umar Said, (2013), *Pengantar Hukum Indonesia*, Jakarta Timur : Sinar Grafika.

- Sugiyono 2016. Metode Penelitian Kualitatif dan R&D, Bandung: Alfabeta.
- Sugiyono. (2005). Memahami Penelitian Kualitatif, Alfabeta, Bandung, 2005
- Suhendi, Hendi, Fiqh Muamalah, (2002), Jakarta: Raja Grafindo Perkasa.
- Sukiati, 2017, Metode Penelitian Suatu Pengantar, Medan: Perdana Publishing.
- Sulastri, Satino, Yuliana Yuli W, “Perlindungan Hukum Terhadap Merek (Tinjauan Terhadap Merek Dagang Tupperware Versus Tulipware)”, Jurnal Yuridis Vol. 5 No. 1 Juni 2018, Fakultas Hukum Universitas Pembangunan Nasional “Veteran” Jakarta, 2018.
- Sunarso, Siswanto, 2009, Hukum Informasi dan Transaksi Elektronik, (Jakarta: Rineka Cipta.
- Sunggono, Bambang. 2003. Metode Penelitian Hukum, Jakarta: PT. Raja Grafindo Perkasa.
- Sunyoto, Danang, 2014, Dasar-dasar Manajemen Pemasaran, (Yogyakarta: CAPS).
- Suryabrata, Sumadi. 1987. Metode Penelitian, Jakarta: Rajawali.
- Suryatin. 2004. Hukum Dagang I dan II, Jakarta: PT Raja Grafindo Persada
- Sutedi, Adrian. 2009. Hak Atas Kekayaan Intelektual, Jakarta: PT Alex Media Komputindo.
- Sutedi, Andrian. 2013. Hak Atas Kekayaan Intelektual, Jakarta: Sinar Grafika.
- Swastha, Basu Ibnu dan Sukotjo. 2002. Pengantar Bisnis Modern, Yogyakarta : penerbit Liberty.
- Syahriyah Semaun, “Perlindungan Hukum Terhadap Merek Perdagangan Barang Dan Jasa” Jurnal Hukum Diktum, Vol. 14, Nomor 1, Juli (2016).
- Syamsudin, M. 2007. Operasionalisasi Penelitian Hukum, Jakarta: Raja Grafindo Persada.
- Syarifin, Pipin & Deda Jubaeda 2004. Peraturan Hak Kekayaan Intelektual di Indonesia, Bandung: Alumni.
- Tirtaamidijaya. 2004. Pokok-Pokok Hukum Perniagaan, Jakarta: PT Raja Grafindo Persada.
- Undang-Undang Nomor 20 Tahun 2016 Tentang Merek dan Indikasi Geografis.
- Usaman, Rachmadi, Hukum Hak Atas Kekayaan Intelektual “Perlindungan Dan Dimensi Hukumnya Di Indonesia”, (2003), Bandung: PT Alumni.
- Usman, Rachmadi. 2003. Hukum Hak Atas Kekayaan Intelektual Perlindungan Dan Dimensi Hukumnya Di Dindonesia, Bandung: Alumni.
- Utomo, Tomi Suuryo, 2010, Hak Kekayaan Intelektual di Era Global, Yogyakarta, Graha Ilmu.
- Wijayanti, Asri. 2009. Hukum Ketenagakerjaan Pasca Reformasi, Jakarta: Sinar Grafika.