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## **OWNERSHIP DISPUTE RESOLUTION BRAND OWNERSHIP RIGHTS IN INDONESIA**

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### **Abstract**

Brand rights are one part of intellectual property rights that have an important role in the business world of trading of goods and services, especially in maintaining healthy business competition. The research method in this writing uses a normative juridical type of research. Normative legal research is also called literature law research. The approach used in this study is the Statue Approach method. The results of this research include the settlement of brand disputes can be resolved in two ways, namely through litigation and non-litigation. Judges are expected to have the ability to translate the values of justice in matters faced by him through his decisions. Settlement of trademark disputes in court is expected to be guided by the principles of justice, so that the settlement of trademark disputes can create legal certainty. Lawsuits in court or alternative dispute resolution such as arbitration. Furthermore, the legal implication for the decision may be to regulate "the cancellation or deletion of the registration of the Mark carried out by the Minister by striking out the mark concerned by giving defects about the reason and date of such cancellation or deletion". Dispute resolution through alternative dispute resolution is resolved in a direct meeting by the parties and the results are set forth in writing. The ideal concept in trademark dispute resolution in Indonesia, the author expects legal certainty for trademark dispute resolution in the Commercial court, District Court and State Administrative Court as well as in arbitration. The suggestions include the guarantee of a sense of justice and legal certainty in resolving brand disputes, both litigation and non-litigation. The Directorate General of Intellectual Property must be more careful and thorough through a more efficient trademark registration data collection system so that trademark ownership disputes do not occur.

**Keywords:** settlement; disputes; marks

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### **INTRODUCTION**

Philosophically, the concept of ownership of Intellectual Property Rights cannot be separated from the thought of John Locke who said every human being has himself as his own. No one has any rights to the person of others except the owner himself, including the work of his body and the work of his hands and five senses (Nizwana, 2022). This means that everyone naturally has the right to has all the potential inherent in himself and all the work he produces.

With innovations that have received legal protection, inventors will benefit if utilized. These benefits can be in the form of royalty payments and technical fees, with rewards or recognition of creations, works, charities and copyrights in the Intellectual Property Rights regulations, expected to arouse enthusiasm and interest to encourage the birth of new sustainable creations or innovations (Mastur, 2012).

Intellectual property rights are becoming increasingly interesting to study because of their role that increasingly determines the stage of accelerating national development, especially in the era of globalization. The era of globalization is marked by the wide opening of relations between nations and between countries supported by transparency in information.

In this increasingly sophisticated and fast access condition of information transparency, events or discoveries in one part of the world will be easily known and immediately spread to other parts of the world (Rentschler et al., 2022). Referring to this, the protection of Intellectual Property Rights is time to become the attention, concern, and concern of all parties in order to create conducive conditions for the growth and development of innovative and creative activities in the field of Intellectual Property Rights.

Brands are one example of Intellectual Property Rights that must be protected. Brand as a form of intellectual work has an important role for the smooth and increased trade of goods or services in trade and investment activities (Sutedi, 2013). A brand is a form of intellectual work, a work based on human thought, which is then transformed into immaterial objects (OK, 2015). A brand is always identified with an identity for a product produced by a producer, which then becomes an asset for the producer. In the market, these names and symbols are recognized as trademarks, business names, and company names. The differences between the three can sometimes be confusing, both for the entrepreneur himself and society (Jened, 2015).

The definition of a brand according to Article 1 paragraph (1) of Law Number 20 of 2016 concerning Marks and Geographical Indications Marks are signs in the form of images, names, words, letters, numbers, color arrangements, or combinations of these elements that have distinguishing power and are used in trading activities for goods or services (Rentschler et al., 2022).

The brand is part of the Intellectual Property Rights that transcend all boundaries. Everywhere there are efforts to provide more protection big. Especially for developed countries, such as the United States of America which wants the protection of the Intellectual Property Rights of their citizens from other countries, so that the flow of copyright invention technology and their well-known brands in the field of commerce, which have received careful "goodwill" at the cost and expense of much money and energy can be reasonably protected by other countries (Gautama & Winata, 1997).

The current trademark legal arrangement in Indonesia is not an instant arrangement, but has gone through a long and varied process. Starting from the regulation of the substance of trademark law to the regulation of trademark protection formalities, such as registration procedures, protection fees, protection periods, transfer of rights to brands, to trademark dispute resolution. Seeing the importance of brand regulation in the era of global trade, in line with international conventions that have been ratified by Indonesia, the role of Brands and Geographical Indications is very important, especially in maintaining healthy business competition, fairness, consumer protection, and protection of Micro, Small and Medium Enterprises and domestic industries, so that laws are made that are adjusted to developments and as a form of legal protection. The latest trademark law is Law Number 20 of 2016 concerning Marks and Geographical Indications (hereinafter referred to as the Trademark and Geographical Indications Law) in order to provide fair legal certainty related to brand issues.

There are difficulties and incompetence of the trademark registrant officer in determining whether the registrant is in good faith and the trademark submitted for registration contains similarities with other people's marks or not. The difficulty in determining whether a Brand contains similarities is due to the absence of clear standard criteria to judge that a proposed Mark contains similarities with someone else's Brand. It is time to evaluate the exemption from

the Constitutive System which still provides protection to owners of unregistered Marks by eliminating provisions that allow owners of unregistered Marks to apply for cancellation of Marks, to ensure fair legal certainty. In addition, the application of the Constitutive System does not only concern obligations that have aspects of civil rights for registrants, but also concerns aspects of public interest, by providing sanctions for Brand owners who do not register their Marks.

Law Number 20 of 2016 explains that the role of the brand that occurs is very important, especially to maintain competition for a good and healthy business. Brands can be used as a tool to explain the origin of a product, to find out the quality of the product, and the authenticity of a product. Therefore, very adequate regulation of brands is needed that can provide improved services for the wider community (Gautama & Winata, 1997).

Speaking of brands, this is one of the results of creative minds that must be protected, therefore it requires several stages and also applicable procedures where the regulations are in accordance with laws and government regulations. Trademark registration is carried out to the Directorate General of Intellectual Property Rights ("Director General of Intellectual Property Rights"). The Director General of Intellectual Property Rights is a trademark registration agency assigned to register a trademark for which the trademark owner requests registration.<sup>14</sup> Institutionally, the Director General of Intellectual Property Rights has the main task and function to carry out the administration of patent copyrights, trademarks, industrial designs, and integrated circuit layout designs, this body was formed in 1998 (Mutu, 2007).

In carrying out the registration process, there is one body formed by the government to accept all aspirations if the trademark to be registered is rejected by the Director General of KI. Since its establishment in 2005, hundreds of cases have been resolved through the Trademark Appeal Commission. There are so many types of judgments on the brands that are requested whether they are in accordance with the Law or even violate and must be rejected. The Trademark Appeal Commission is an independent specialized body within the ministry that administers government affairs in the field of law (Asni & Inayah, 2022).

Dissertation by Subagio, (2021) entitled "Reconstruction of Legal Protection in Trademark Registration Based on Justice Values". Doctoral Program (S3) in Law, Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang. The results of this study are concluded as follows: the current trademark registration system, using a constitutive principle (first to file), is often used by parties who do not have good intentions to register existing marks or brands owned by others. Only by registering the mark with the Directorate of Trademarks, the owner of the mark has privileges and is protected by law. This deviates from the purpose for which intellectual property rights are regulated. Regulation of intellectual property rights hopes to make people dare not. Plagiarizing / imitating the work of others in order to create their own work, then society becomes intelligent, so that if intelligent works will be created, the more works the welfare of the community will increase. This is the weak point of Law Number 20 of 2016, because people who are more entitled do not get protection, or because the regulation is too narrow so that it hinders the creativity of the community in developing their intellectual work. The legal reconstruction that will be suggested is the regulation about its registration system, as well as the regulation about its sanctions. So it is expected that the regulation of the brand is more based on the values of justice.

So based on the description above, it is important to conduct further research on trademark law both from the perspective of Indonesian business law so that owners or holders of trademark rights have legal protection in the form of research proposal seminars. Therefore, the author is interested in presenting a Research Results Seminar entitled "Resolving Trademark Property Rights Ownership Disputes in Indonesia" (Implications for Brand Dispute Decisions).

## **METHOD RESEARCH**

The type of research used is normative juridical, which is research conducted by examining library materials, which is focused on examining the application of rules or norms in relation to positive law. Normative legal research is also called literature law research, namely: "Legal research carried out by examining literature materials or mere secondary data". Normative legal research includes; research on legal principles, research on legal systems, research on vertical and horizontal synchronization, comparative law, legal history (Soekanto, 1985).

The approach method used in this study is the method (Efendi & Ibrahim, 2018). Furthermore, the cultural approach of society and the economic approach because the brand is related or related to the economy. The type of data in the study is secondary data supported by primary data in the form of interviews with brand appeal commissions and resource persons from the Directorate General of INTELLECTUAL PROPERTY RIGHTS, Brands in Jakarta. The source of secondary material comes from library research.

## **RESULT AND DISCUSSION**

### **Analysis of the Concept of Justice in Brand Dispute Resolution in Indonesia**

Trademark dispute resolution in Indonesia can be resolved in two ways, namely through litigation and non-litigation. Trademark disputes arise due to trademark infringement, namely: p use of marks that have similarities in principal or in whole with registered marks without rights. And without Rights, namely: without legal supervision of trademark rights.

The owner of trademark rights can file a civil lawsuit and/or lawsuit under criminal law provisions. For litigation, anyone who feels his rights have been violated can file a lawsuit with the Commercial Court, District Court and State Administrative Court for violations committed by other parties against his intellectual property.

In dispute resolution of Registered Marks and Famous Marks in an effort to find the concept of fairness in settlement. John Rawls' theory of justice as an analytical knife in this study is John Rawls' theory of justice in accordance with the wishes of researchers where these theories concern rights and freedoms, power opportunities, income and prosperity. The view of social justice is the same as the concept of justice proposed by John Rawls

Justice can only be understood if it is positioned as a state to be realized by law. The effort to bring justice to the law is a dynamic process that takes a lot of time. These efforts are often also dominated by forces fighting within the general framework of the political order to actualize it (John, 2011).

John Rawls further explains that in an ideal society, social institutions are no longer the power of seeking their own profit, but become. It means that people who live in that society and use those social institutions become united in pursuit of a common goal, or complementary goals become a whole. Here society is a life together where a balance is achieved between personal interests and common interests so that they complement each other. This social unity gets its rules through justice. Justice is a value that embodies a balance between the parts of

unity, between personal goals and common goals. Thanks to the justice of stability, life is assured. This value knows no compromise. In a just society, injustice is never permitted except to avoid a greater injustice.

One opinion is that law is a mechanism that integrates forces and processes in society. In connection with this opinion, the *passtilah* court is the institution that is primarily a supporter of the mechanism. It is in that institution that disputes that exist in society are resolved. While the work to realize the ideas and concepts of justice in concrete forms so that they are accepted by the community, is the work of law enforcement, especially judges. Judges are expected to have the ability to translate the values of justice in matters faced by him through his decisions. Settlement of trademark disputes in court is expected to be guided by the principles of justice, so that the settlement of trademark disputes can create legal certainty.

The importance of brand standing in a business, because the brand is a representative symbol of the product to be offered. Sometimes brand owners do not care about their business brand until later when they experience a legal conflict. Intellectual property rights arise when a work has been created, but this provision does not apply to certain conditions, so registration of intellectual property rights is not required. However, for some broader purposes, registration of a work is very important, because registering a work or work will obtain a license certificate, and the license is the only evidence needed to prove someone's right to the work or work. This legal protection serves to resolve disputes in the event of disputes, as well as a form of providing legal certainty so as not to cause unwanted problems.

A reconvention lawsuit is a counterclaim filed by a defendant against a plaintiff in an ongoing litigation. In the case of PT Ayam Geprek Benny Sujono versus I AM GEPREK BENSU Ruben Onsu, it is known that I AM GEPREK BENSU Ruben Onsu as the Defendant has been defeated by PT Ayam Geprek Benny Sujono as the Plaintiff, both at the first instance (District Court) as well as at the Cassation level (Supreme Court). As already described, the registration of the Defendant's trademarks has violated Article 21 paragraph (1) letter a, paragraph (2) letter a and paragraph (3) of Law Number 20 of 2016 concerning Marks and Geographical Indications juncto Article 16 paragraph (2) letter a, paragraph (3) letter a and paragraph (4) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 67 of 2016 concerning Trademark Registration, therefore, the application for registration of the marks belonging to the Reconciliation Defendants should be rejected or cancelled.

The marks belonging to the Reconciliation Plaintiff that have been registered in the Trademark Register are to protect the types of food in classes 43 and 29 produced by the Reconciliation Plaintiff, as well as the brands belonging to the Reconciliation Defendant which have similarities in principal or in whole with the marks belonging to the Reconciliation Plaintiff are to protect the types of food in classes 45, 43, 32, 35, 29 and 30 produced by the Reconciliation Defendant, therefore it is feared that consumers will be mistaken in distinguishing the Reconciliation Plaintiff's brand products from the Reconciliation Defendant's products especially since the type of food produced is the same.

It is known that the Reconciliation Plaintiff has incurred considerable costs to promote and introduce foods produced by the Reconciliation Plaintiff's brand, including by paying Golden Share money to the Reconciliation Defendant as a promotional ambassador so that a photo of the Defendant is posted.

Reconciliation in the first few branches/outlets of the food business brand "I AM GEPREK BENSU" owned by the Reconciliation Plaintiff.

Because there are similarities in principle or in whole between the brands owned by the Resuspension Plaintiff and the brands owned by the Reconstruction Defendant, the consumers of the Resuspension Plaintiff have been deceived and deceived into thinking that the food business produced by the Resuspension Plaintiff is the same as the food business produced by

the Resuspension Defendant, especially then many consumers of the Resuspension Plaintiff who after trying the food produced by the Reconciliation Defendant feel disappointed and assume the food that produced by Plaintiff Reconciliation is no longer tasty and no longer tastes good;

The reason the plaintiff filed the lawsuit is because:

That and it is certainly very detrimental to the Reconciliation Plaintiff, therefore it is reasonable that the legal registration of the marks belonging to the Reconciliation Defendant is cancelled in its entirety;

That and based on Article 83 paragraph (1) letter a of Law Number 20 of 2016 concerning Marks and Geographical Indications, it is very reasonable for the Reconciliation Defendant to be punished to pay compensation to the Reconciliation Plaintiff in the amount of Rp100,000,000,000.00 (one hundred billion rupiah), the payment of which is carried out immediately and all at once.

The panel of judges in applying the Doctrine of Likelihood of Confusion or cancellation in Indonesia still relies again by only focusing on the presence or absence of similarities in essence or in whole between the two brands. In fact, the similarity between the two brands does not necessarily cause confusion for consumers, which leads to losses for brand owners. The two brands also remain distinguishable from each other, and the main function of the brand as a differentiating force is still fulfilled. Therefore, Indonesia is expected to be able to pay attention to the requirements of Likelihood of Confusion in determining trademark infringement by formulating it into the Law or unifying the understanding of law enforcement in providing legal considerations in order to realize justice in the protection of trademark rights.

### **Analysis of the application of dispute resolution through court decisions and arbitration to the legal system in Indonesia over trademark rights ownership.**

The owner of a mark who has registered his mark will receive legal protection in case of infringement of trademark rights.<sup>185</sup> Property rights to trademark rights as intangible movable rights give freedom to the owner in the form of full sovereignty. This can be seen in the exclusive (special) nature attached to trademark rights. <sup>186</sup>There is a principle in the brand protection system in Indonesia, namely the first to file principle. This principle is the first registration system which means that the trademark registered qualifies as the first. <sup>6</sup> The application of this principle shall be based on a written statement made by the applicant for registration of the mark, as well as filed through an application. However, this application is not absolute because there is a possibility of a trademark cancellation lawsuit

Trademark legal protection for registered marks can be in the form of preventive legal protection and repressive legal protection. Preventive legal protection is carried out by registering a trademark with the Directorate General of Intellectual Property Rights, while repressive legal protection is carried out if there is a violation of a registered mark through a civil lawsuit or criminal prosecution.

Infringement of trademark rights can not only be resolved through civil law channels, namely through civil lawsuits, in the 2001 Trademark Law also regulates the settlement of trademark disputes through arbitration and alternative dispute resolution. The method of dispute resolution through arbitration and alternative dispute resolution is regulated in Law No. 30 of 1999. In this law, several ways of dispute resolution are known, namely: a. arbitration b. consultation c. negotiation d. mediation e. conciliation f. expert assessment. Among the six ways of dispute resolution outside the court, only dispute resolution through arbitration results in a coercive award handed down by a third party, namely the arbitrator or panel of arbitrators. The arbitral award shall be final and shall have permanent and binding force on the parties. The arbitral award is final meaning that the arbitral award is final and therefore cannot be appealed, cassated, or reviewed. While other means of settlement included in alternative dispute

resolution, the settlement is left to the parties, while the third party only provides advice and facilitates negotiations between the parties. According to Law no 30 of 1999 concerning Arbitration and Alternative.

Dispute Resolution, a dispute can be resolved through alternative dispute resolution based on good faith by overriding settlement by litigation in the Commercial Court. Dispute resolution through alternative dispute resolution is resolved in a direct meeting by the parties and the results are set forth in writing. If the parties are unable to resolve it, the parties upon written agreement may resolve it with the help of a third party. The role of third parties is only to facilitate the negotiation of the parties in order to reach an agreement. It is the agreement that binds the parties after it is signed and registered in the Commercial Court.

### **Analysis of ideal concepts in brand dispute resolution that meet the sense of justice and legal certainty**

The ideal concept of trademark ownership in Indonesia is based on the theory of justice where, Law is very closely related to justice, there is even an opinion that law must be combined with justice, so that it really means as law, because indeed the purpose of law is to achieve a sense of justice in society. A legal and judicial system cannot simply be formed without regard to justice, because justice includes the essential understanding of a legal and judicial system, therefore it must be guided by certain general principles. These principles are those that concern the interests of a nation and state, that is, they are beliefs that live in society of a just life, for the purpose of the state and law is to achieve the greatest happiness for everyone (Chatarina, 2019).

The ideal concept of trademark ownership rights in Indonesia is based on legal certainty where the regulation of trademark ownership and registration in Indonesia currently adheres to the constitutive system (first to file system) is the legal protection provided to the first applicant who applies for trademark registration. This system confirms that the person who first registers the mark, then he is the one who is entitled to the rights of the mark. The first registrant is the only person who has exclusive rights to the mark in question, and no other person can use it without their permission. The advantage of using the first to file principle in trademark registration is that there is legal certainty for the trademark owner, namely.

Legal certainty for the actual brand owner to protect; Legal certainty of proof, that a person or legal entity has rights to a mark is based only on the trademark certificate as the only main evidence; Realizing the legal allegation of who is most entitled to own the mark with certainty so as not to cause controversy between the first registrant and the first user. Legal certainty can be realized if the parties related to ownership and trademark registration, namely the Director General of Trademark Intellectual Property Rights can

Improve or change the registration system and regulations regarding marks so that there are no trademark dispute problems.

Against the ideal concept in trademark registration in Indonesia, the author encourages the Director General of Haki that trademark registration in Indonesia must have good faith, if there are business actors using and taking advantage by registering some of their businesses with foreign language marks and registering marks into Indonesian this according to the author is an act that has bad faith in trademark registration.

The application of the Constitutive System in the Trademark Law so far has only been limited to obligations that have aspects of civil rights interests for registrants. It is necessary to make changes in the implementation of the Constitutive System strictly and consistently, not only regarding obligations with civil aspects for the interests of registrants' rights, but also aspects of public interest. Registration obligations must be accompanied by sanctions for owners and use of Marks that do not register their Marks. By sanctioning owners who use the Mark but do not register the Mark, it is expected to provide fair legal certainty and can create

orderly administration of the Brand and will even increase state revenue. The system of regulating the registration of Marks with the Constitutive System in the Trademark Law is inconsistent, because it is still possible for the owner of an unregistered Mark to file a claim for cancellation of a registered Mark, without well-known conditions. This resulted in the implementation of a Constitutive System in registration

The mark is meaningless and the rights of the registered mark become weak / not strong and give rise to legal uncertainty. The ideal concept of ideal brand ownership in Indonesia according to the theory of the legal system can be applied in the regulation of brand ownership, where the three components in the legal system can be implemented, namely:

### **1. Structure**

Structures in brand law enforcement include policy makers such as the Director General of Intellectual Property, as well as judicial institutions, the need to improve the legal system in regulating brand ownership so that legal certainty in regulating and protecting brand law can run as objective and transparent to brand law in Indonesia, so that the quality of products related to regulation and legal protection of brands can be achieved. The Director General of Intellectual Property Rights as a supervisory institution for brand handling in Indonesia must be the spearhead in overcoming trademark law problems in Indonesia so that there are no more legal certainty problems in terms of brand ownership in Indonesia.

### **2. Substance**

The substance of a law is also influenced by the extent of community participation in formulating its various interests to be further regulated in a product of laws and regulations. Participation means participation or participation (supervising, controlling and influencing) community in a regulation formation activity, starting from planning to evaluating the implementation of the Law.

### **3. Culture**

A good community character is needed in order to be able to implement the principles and values contained in a law (legal norm) related to Brand Law. Related to this, the use of other norms outside legal norms is one alternative to support the implementation of legal norms in the form of laws and regulations. Legal awareness for people who want to register a trademark in Indonesia is still very lacking regarding the functions and advantages of trademark registration in Indonesia. Legal awareness also has a role in the process of legal certainty for the regulation and protection of brand law in Indonesia, the law does not depend on human will, but has existed on everyone's legal awareness. Legal awareness does not come, let alone imposed from outside, but is felt by everyone in him. Thus, awareness of the importance of regulation and protection in brand law is needed to support legal effectiveness and the form of trademark legal certainty in Indonesia

## **CONCLUSION**

Based on the discussion and analysis of the trademark ownership case, the conclusions are as follows Trademark dispute resolution can be resolved in two ways, namely through litigation and non-litigation. Judges are expected to have the ability to translate the values of justice in matters faced by him through his decisions. Settlement of trademark disputes in court is expected to be guided by the principles of justice, so that the settlement of trademark disputes can create legal certainty.

Trademark disputes can be resolved through a lawsuit in court or alternative dispute resolution such as arbitration. Furthermore, the legal implication for the decision may be to regulate "the cancellation or deletion of the registration of the Mark carried out by the Minister by striking out the mark concerned by giving defects about the reason and date of such cancellation or deletion". Dispute resolution through alternative dispute resolution is resolved in a direct meeting by the parties and the results are set forth in writing



The ideal brand ownership arrangement in Indonesia can be implemented with an ideal concept, namely by mechanism. Trademark registration arrangements to provide fair legal certainty, namely enforcing the Constitutive System or "First to File" strictly and consistently. The rights and protection of the Mark are only granted to the owner of the registered Mark, and a claim for cancellation can only be made by the owner of the Registered Mark. The ideal concept in trademark dispute resolution in Indonesia, the author expects legal certainty for trademark dispute resolution in Commercial courts, District Courts and State Administrative Courts as well as in arbitration

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