

IMPLEMENTATION OF HUMAN RIGHTS-BASED PUBLIC SERVICES AND BUSINESS WITH AN IMPACT ON JUSTICE

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Abstract. *The advancement of trade during the Era of Globalization and Era 4.0, characterized by the integration of digital technology and automation, has heightened rivalry in both national and international markets. In the realm of Intellectual Property, dominant trademarks serve as symbols and identities for products, enhancing the image of businesses. As integral components of Intellectual Property (IP), these brands necessitate legal protection and certainty to foster healthy competition and prevent counterfeiting and trademark infringement. Trademark protection is governed by Law Number 20 of 2016 regarding Trademarks and Geographical Indications. This study utilizes a normative legal research methodology, relying on secondary sources as the principal material, specifically legal statutes and judicial rulings. This study aims to examine the legal protection of registered trademarks in Indonesia as established by positive law and the application of the Trademark Law in trademark disputes, including the case of PT—Gudang Baru, which features a similar brand. Consequently, a research is required to investigate the function of Indonesian law enforcement in adjudicating trademark disputes. Trademark disputes may be settled through mediation prior to being presented to the commercial court. Criminal sanctions may be enforced if a civil settlement fails to resolve the problem, grounded in the principle of Ultimum Remedium, which posits that criminal penalties are employed solely as a last resort in legal matters, particularly in dispute resolution law.*

Key words: *human right, public service, impact justice*

1. INTRODUCTION

In the context of globalization and the digital epoch of Industry 4.0, convenience in business poses a considerable problem. The convenience provided is not as straightforward as it appears; in its execution, business entities must engage in fair competition to enhance product quality and foster public trust in delivering customer satisfaction, particularly in the selection of trademarks that serve as symbols for products marketed both nationally and internationally. Given that the advancement of trade has evolved swiftly, both domestically and internationally.

The pace of product promotion is rapid. Numerous commercial entities exercise caution in selecting trademarks that will embody their products and reflect their image, recognizing that the brand

constitutes an Intellectual Property (IP) asset derived from the intellectual efforts of the copyright holder. Intellectual property (IP) include copyright, particularly the exclusive rights to a trademark that incorporates creative aspects, such as logo design, which are conferred by the state to the legal owner of the brand. The enforcement of specific rights in favor of the trademark's lawful owner does not occur in isolation. The occurrence is attributable to the presence of a compulsory registration system for trademarks (first-to-file, or constitutive system), which confers legal protection and recognition upon the brand (Arifin & Iqbal, 2020). An unregistered trademark does not obtain special registration or protection from the state, resulting in its potential use or display by others, as protection is territorial in nature.

Hastuti (2019) asserts that legal protection is afforded to both local and renowned companies. The state offers legal protection to rightful owners that is both preventive and punitive, as stipulated in Law Number 20 of 2016 about Trademarks and Geographical Indications (hereafter referred to as Law Number 20 of 2016 respecting MIG). The implementation of brand protection aims to prevent imitation or brand infringement (Passing off).

Consequently, commercial entities must formulate a marketing strategy and improve the quality of their products to succeed in market competition and capture consumer interest. Furthermore, commercial entities are proactive in registering their trademarks with the Directorate General of Intellectual Property, so securing legal protection against competitors. This is especially significant, given that contemporary commercial competition is frequently employed to promote healthy rivalry. Numerous brand impersonations are employed on items, which is an unethical and illegal practice in the business realm due to its harmful effects.

Recently, multiple instances of trademarks have been registered without the consent of the rightful trademark owner, leading to disputes between the original trademark user and others who have also registered the identical trademark with the Director General of Intellectual Property. The repercussions of trademark registration left the legal owner feeling disadvantaged. A disagreement arose concerning the plagiarism of the Gudang Garam and Gudang Baru brands. According to prior studies, Gudang Garam and Gudang Baru have long contested allegations of copying regarding cigarette brand packaging. In 2012, Gudang Garam initiated its inaugural lawsuit against Gudang Baru, which persisted for several years. In 2015, the Supreme Court issued Decision Number 104 PK/Pid.Sus/2015 and Decision Number 119 PK/Pdt.Sus-HKI/2017, both in favor of Gudang Garam.

The proprietor of Gudang Baru is required to acknowledge his defeat by serving a 10-month prison sentence and paying a fine of Rp 50,000,000. Despite having completed his term, the proprietor of Gudang Baru remains undeterred and continues to operate his business. Gudang Baru persists in utilizing brand packaging that has certain resemblance to Gudang Garam. Persisting in this activity will incite turmoil between Gudang Garam and Gudang Baru. Consumers will be perplexed by the uniformity of cigarette packaging, which closely resembles one another. Consequently, Gudang Garam resolved to initiate legal proceedings for the annulment of Gudang Baru's trademark once more on March 22, 2021. The matter was adjudicated at the Surabaya District Court under case number 3/Pdt.SusHKI/Memerk/2021. Gudang Garam submitted a petition requesting the approval of all plaintiffs' lawsuits. Gudang Garam and its products are renowned brands, but the Gudang Baru brand and its offerings have wholly appropriated the Gudang Garam brand. 3 Sidik, S. (2021) The author seeks to explore the legal protection of registered trademarks in Indonesia, the repercussions for businesses that infringe trademark rights, and the application of the law in the cases of Gudang Garam and Gudang Baru.

The main problems in this paper are as follows:

1. What is the legal protection for registered trademarks in Indonesia as stipulated by Law Number 20 of 2016 about Trademarks and Geographical Indications?

2. What is the implementation of the branding system in accordance with Law Number 20 of 2016 about Trademarks and Geographical Indications?
3. How to address the prevalent issue of Trademark infringement.

2. RESEARCH METHODS

This study utilizes a normative legal research methodology that analyzes law as a normative standard. This research predominantly use secondary material, including statutes, regulations, and judicial rulings, due to the application of normative law.

3. DISCUSSION RESULTS

Legal Safeguarding of Registered Trademarks in Indonesia In accordance with Law Number 20 of 2016. A trademark represents the identity of a product. A trademark is a distinctive sign comprising images, logos, names, words, letters, numbers, color arrangements in two or three dimensions, sounds, holograms, or combinations of two or more such elements, utilized to differentiate goods and/or services offered by individuals or legal entities in commerce. A symbol that may be visually depicted, possesses differentiating capability, and is intended for commercial transactions. Alongside the aforementioned Traditional Brands, there exist non-traditional brands represented by non-verbal elements such as sounds, scents, holograms, or three-dimensional forms.

The utility and role of a trademark extend beyond mere identification, serving to differentiate products from competitors. It constitutes an intangible asset with increasing value, acts as a promotional tool that enhances visibility through brand mention, assures the quality of goods or services, indicates the origin of the produced goods or services, and facilitates the establishment of a company's reputation (brand image). The registered Trademark is granted legal protection for a duration of 10 (ten) years from the date of acceptance, with the possibility of extension for an equivalent term.

In the corporate realm, brands are essential as representations of products, fostering robust rivalry among producers. Technological advancements significantly impact the corporate landscape, since competition in the 4.0 era has transcended traditional limits. This is apparent in the multitude of markets and e-commerce platforms that facilitate engagement (Sheilindry et al., 2021). The intense competition often compels business professionals to adopt various strategies to ensure their products or services get traction among the community and elicit favorable reactions. Typically, the approach involves emulating reputable brands by providing a product of reasonably assured quality at a reduced price relative to the original, hence optimizing earnings. This occurs due to the persistent comparative nature and malfeasance (Gultom, 2018).

The impact of brands on national and international trade is substantial in influencing a company's production success rate. Trademarks constitute a component of intellectual property; therefore, to prevent counterfeiting and trademark infringement, they require protection and legal assurance. This aims to prevent neglect, which may result in legal infractions, hence rendering national and international trademark protection crucial. (Shaleh & Trisnabilah, 2020).

Law Number 7 of 1994 about the ratification of the WTO (Agreement Establishing The World Trade Organization) clarifies that the word IP is a translation of Intellectual Property Rights (IPR). In Indonesia, the legal framework governing intellectual property is continually evolving in accordance with

contemporary advancements. Intellectual property is a privilege that originates from the outcomes of an individual's private thoughts (privacy) 7. Sinaga, 2020. Trademarks, as a component of intellectual property, embody the Principle of Natural Justice, which pertains to the equity of the rights and benefits accorded to the inventor of the trademark for their generated work. According to Law Number 15 of 2001, Indonesia follows the First to File principle, signifying that only brands that initially register their trademarks with the Directorate General of Intellectual Property will obtain legal protection. (Yessiningrum, 2015).

Indonesia once employed a declarative system for securing legal protection, predicated on the principle that the party who first utilized the trademark was the rightful owner. This system has failed to meet all legal requirements, has not offered certainty, and has generated numerous assumptions that impede corporate development. The transition from the registration system to the constitutional system is deemed more efficacious in delivering legal protection, as the constitutional system exclusively affords legal protection to the initial party registered as the trademark holder, as outlined in Law Number 19 of 1992 regarding Trademarks (Arifin & Iqbal, 2020). Subsequently, it progressed with the enactment of Law Number 15 of 2001 regarding trademarks and further advanced into Law Number 20 of 2016 involving MIG. A regulation is amended if deemed incapable of meeting the community's requirements.

The state grants executive rights for registered trademarks. Consequently, trademark rights remain encompassed within the tangible rights that may be conveyed to others. Transfer may occur via inheritance, will, hibah, agreement, waqf, or other legally permissible circumstances. The certification of trademark rights serves as evidence of ownership of the trademark. The purpose of trademark registration is to secure legal protection and assurance. The possibility for disputes about brand ownership between parties remains substantial. In a civil law jurisdiction, documentary proof is paramount. Nopiana and Disemadi, 2021.

Case Analysis

- a. Salt Warehouse. Gudang Garam is a company that probably ranks among the largest cigarette manufacturers in Indonesia, established in 1985 in Kediri, East Java. This reality is indisputable, as demonstrated by the diverse range of Gudang Garam goods distributed throughout the archipelago and extensively utilized. Gudang Garam holds the second place, commanding a 20.7% market share in Indonesia. Eleven. Abrianti, R. P. (2016). Notable Gudang Garam products include GG Surya, Djaja, GG International, Gudang Garam Merah, GG Mild, among others. Gudang Garam manufactures a range of clove cigarettes, encompassing low-tar and nicotine (LTN) varieties as well as classic hand-rolled clove cigarettes (SKT). 12 Hajizi, M. I., Wafa, M. A., and Yasir, M. Gudang Garam's primary product, known as kretek, is crafted from premium ingredients to ensure an enjoyable experience for consumers.
- b. PT. Surya Madistrindo (SM), established in 2002, is a subsidiary of Gudang Garam and operates as its distributor, employing individuals with prior experience in distribution from other organizations. In 2009, it became the exclusive distributor for Gudang Garam, overseeing the brand's distribution and field marketing from Sabang to Merauke. Surya Wonowidjojo, the founder of Gudang Garam, is acknowledged for his sagacity and dedication to the well-being of his employees. Moreover, he advocates for the Catur Dharma principles at Gudang Garam, which assert that contributing to and being meaningful for the community is a source of fulfillment, that success requires diligence and integrity, that accomplishment is impossible without cooperation, and that employees are the foremost and most valuable asset of the enterprise. Thirteen. PT. Salt Warehouse

- c. New Warehouse. The company was established by Saman Hoedi in 1967. Gudang Baru remains under the ownership of Ali Khosin, the proprietor of the company. Like Gudang Garam, Gudang Baru is a cigarette manufacturing firm headquartered in Malang, Eastern Java. This Gudang Baru corporation is headquartered in Indonesia and has grown across the Asia Pacific, the Middle East, and Europe. This corporation oversees two subsidiaries: PT. Bintang Sayap Utama, which serves as a domestic distributor, and PT. Gudang Baru Berkah Indonesia, responsible for international distribution in the Asia Pacific, Middle East, and Europe. Since its inception with merely 125 people, Gudang Baru has expanded to employ over 2,583 individuals. Fourteen CNN Indonesia. (2021)

Case Chronology

PT. Gudang Garam and PT. Gudang Baru are engaged in a legal battle, with the following rulings rendered by the court: Surabaya District Court Decision No. 4/IPR-Brand/2013/PN-Niaga Sby PT. Gudang Garam initiated legal action against PT. Gudang Baru because to the resemblance between the Gudang Baru brand and the registered Gudang Garam brand in the General Register of Brands. The Gudang Garam and Gudang Baru brands share similarities in typography, composition, color scheme, orthography, and image arrangement. Subsequently, relying on the available evidence, which encompasses written correspondence, testimonies, and expert opinions. The application for the Gudang Baru trademark was submitted in bad faith, thereby contravening Article 4 of Law No. 15 of 2001 regarding Trademarks. Consequently, the Chief Judge of the District Court adjudicated that PT prevailed in the dispute. PT owns the trademark registration for Gudang Garam. The New Warehouse has been terminated. 15 (Commercial Court of Surabaya)

Supreme Court Decision Number 162 K/Pdt.Sus-HKI/2014 PT. Gudang Baru contested the state's ruling—subsequently, PT. Gudang Baru undertook a reinvestigation, which led to the revelation of additional facts and evidence related to the dispute—consequently, PT. Gudang Baru submitted a legal appeal, specifically a cassation, to the Supreme Court. PT. Gudang Baru contended that the Panel of Judges in the district court failed to analyze the case from the facts of the incident, its interpretation, and its legal application. PT. Gudang Baru disclosed that the trademark registration was executed in compliance with legal statutes, and PT has initiated litigation. Gudang Garam has lapsed, as the initiation of a case over the annulment of trademark registration is permissible only within five years, owing to PT's inaction. Gudang Garam has been operational for over a decade, and new evidence has emerged concerning the distinction between the brands of PT. New Warehouse. Consequently, the Supreme Court overturned its prior ruling, resulting in a victory for PT. New Storage Facility.

Similarities between the Salt Warehouse and the New Warehouse

The conflict commenced with the prosecution asserting a resemblance in branding between PT—Salt Warehouse and New Warehouse, particularly from Salt Warehouse's viewpoint. The parallels are evident in the structure of the letters, writing style, spelling, pronunciation, and even the colors, including red, brown, and gold, as well as the imagery presented by the brand. Additionally, both entities share commonalities, specifically the presence of structures. Furthermore, in Gudang Garam, two mountains resemble those in Gudang Baru, albeit with two trees substituted. In the latter, both have routes akin to railroads, but in Gudang Baru, it may also resemble a fence.

The subsequent demands from Gudang Garam directed at Gudang Baru are as follows: 1) The complete acceptance of PT. Gudang Garam's lawsuit, recognizing the Gudang Garam brand and its designs as renowned trademarks; 2) The assertion that the Gudang Baru brand exhibits similarities to Gudang Garam's trademarks; 3) The claim that the Gudang Baru brand and its designs mentioned in the lawsuit were submitted in bad faith; 4) Announce the annulment of the registration of all Gudang Baru trademarks and all associated legal ramifications, subsequently instruct DJKI to adhere to and execute the ruling, mandate DJKI to revoke the registration of the Gudang Baru trademark and the aforementioned artwork from the General Register of Trademarks, and direct DJKI to reject all trademark registration applications utilizing the terms Gudang Baru Origin, Gudang Baru, and Gudang Baru submitted by PT. Gudang Baru, the company and its affiliates, or applications made by other third parties to DJKI that bear resemblance to the Gudang Garam brand. If the Directorate General of Intellectual Property grants a trademark registration application, the trademark is rendered null and worthless; 5) Requiring PT—New Warehouse to bear the whole expenses of the litigation.

Analysis of the Verdict

The Gudang Baru Origin, Gudang Baru, and Gedung Baru brands exhibit similarities to the Gudang Garam brand in terms of letter shape and composition, color scheme, spelling, writing style, and image placement, which may mislead consumers to the detriment of PT. Salt Warehouse. Article 21, Paragraph 1 of Law No. 20 of 2016 defines "similarity in essence" as the resemblance arising from dominant elements shared between brands, which creates an impression of similarity in terms of form, placement, writing style, or element combinations, as well as phonetic similarity in the trademark. Consequently, it can be determined that PT. Gudang Baru has contravened this provision. Because the plaintiff filed a lawsuit with the Commercial Court in the dispute, the decision was made to cancel the registration of the Gudang Baru trademark and reject future registrations of the Gudang Baru trademark that have similarities with Gudang Garam, as per Article 76 of Law No. 20 of 2016.

The dispute may also be examined from a criminal law standpoint. According to Article 100, Paragraphs 1 and 2 of Law No. 20 of 2016: 1) Any individual who unlawfully utilizes an identical trademark as a registered trademark owned by another party for analogous goods and/or services shall face a maximum penalty of 5 years imprisonment and/or a fine not exceeding Rp2 billion; and 2) Any individual who unlawfully employs a trademark that bears substantial similarity to a registered trademark owned by another party for analogous goods and/or services shall face a maximum penalty of 4 years imprisonment and/or a fine not exceeding Rp2 billion. Goods or products that are traded may incur penalties under Article 102 of Law No. 20 of 2016, which stipulates: "Any individual who trades goods and/or services and/or products, knowing or reasonably suspecting that they are derived from criminal activities as outlined in Article 100 and Article 101, shall be subject to imprisonment for a maximum of one year or a maximum fine of Rp200 million." The plaintiff may pursue the conflict through a criminal lawsuit pursuant to this article. The defendant's activities have inflicted harm on the plaintiff, necessitating legal action to deter the defendant.

The commercial court ruling in the issue has afforded robust legal protection to PT. Salt Warehouse. The Supreme Court's judgment Number 119 PK/Pdt.Sus-HKI/2017 solely mandated the annulment of the Gudang Baru brand, so leaving open the potential for future trademark infringement. The verdict fails to discourage infringers, hence legal protection for trademark owners remains uncertain. In the ruling of the Surabaya District Court Number 4/Pdt.Sus-HKI/Memerk/2021/PN Niaga, the court not only mandated the annulment of the Gudang Baru brand but also instructed the DJKI to reject the trademark applications containing the terms Gedung Baru, Gudang Baru Origin, and Gudang Baru, if they bear similarities to the Gudang Garam brand. This verdict ensures the absence of future infringement, so affording robust legal protection for the proprietors of the Gudang Garam brand.

CONCLUSIONS AND SUGGESTIONS

Trademarks constitute a component of intellectual property. In a nation that upholds a constitutional framework, trademark protection is exclusively granted to brands that are the initial registrants of their trademarks with the Directorate General of Intellectual Property. Unregistered trademarks will not receive exclusive rights from the government. Trademark registration offers legal protection and assurance, as stipulated in Law Number 20 of 2016 regarding MIG. The legal owner of the trademark grants exclusive rights for a period of ten years from the date of issuance of the trademark certification.

In trademark registration, the registrant must initially verify at pdki-indonesia.dgip.go.id to ascertain whether another entity has registered a similar or identical mark. Additionally, it is essential to consult skm.go.id to determine the appropriate class and type of product associated with the trademark, while ensuring compliance with the requisite legal standards. To prevent future instances of trademark registration rejections, commonly referred to as Hearings, due to substantial similarity with existing trademarks, it is essential to avoid situations where bad faith may lead to the deletion or cancellation of the trademark.

Cases involving trademark infringement must undergo mediation prior to proceeding to the Commercial Court. The dispute between PT. Gudang Garam and PT. Gudang Baru has been adjudicated in the Surabaya Commercial Court, which has effectively ensured legal protection for PT. Gudang Garam over the Gudang Baru brand. The verdict entails the annulment of the Gudang Baru brand's registration and the denial of any future registration of the Gudang Baru brand due to its similarity with the Gudang Garam brand. This decision ensures legal certainty for PT. Gudang Garam provides legal protection for intellectual property.

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