

TRADEMARK IMPERSONATION: REGULATION AND DISPUTE RESOLUTION**Shelvi Rusdiana**Faculty of Law, Universitas Internasional Batam, Indonesia
Nama Email: shelvi.rusdiana@uib.edu**ABSTRACT**

Intellectual property rights are created or arise from an idea to create a product or process that can be useful for human life. Intellectual property rights are also legal protection given to the results of human thought that are useful and have economic value. Understanding intellectual property itself requires comprehensive knowledge of what can be the object of intellectual property protection. A brand is an intellectual property identifier of a product or service owned by a company or individual. Violation related to registered trademark rights in Indonesia is an act that is against the applicable positive law. This study analyzes the regulation, legal protection of registered trademarks and dispute resolution. The research method used is a normative juridical research method using secondary data in the form of regulations related to brands and the results of previous studies. The results of this study indicate that a violation in the form of imitation of a registered mark can be subject to imprisonment and a fine. There are 2 (two) ways of resolving disputes regarding the imitation of the registered mark: filing a claim for compensation and terminating all activities related to the use of the mark. The lawsuit is submitted to the commercial court and can take arbitration or other alternative dispute resolution.

Keywords: *Trademark, Protection, Dispute Resolution***A. INTRODUCTION**

Intellectual Property is created or arises from a thought that makes a beneficial product or process for human life (Disemadi, 2022; Disemadi & Ariani, 2021; Shaleh & Trisnabilah, 2020). Intellectual Property is also legal protection given to the results of human thought that are useful and can have economic value. Defining this Intellectual Property itself requires a comprehensive understanding of what can be the object of intellectual property protection. Intellectual Property consists of brand rights, industrial design rights, patent rights, copyrights, trade secret rights, plant variety protection rights and circuit layout design rights (Mujiyono & Feriyanto, 2017). A trademark right is an exclusive right granted by the state to the owner of the mark to use its authority or give it to other parties within a specified period. A mark is a sign and or logo displayed in the form of an image, name, letter, word, or colour arrangement. It can also be in the form of sound, which can then distinguish a product or service owned by an individual or legal entity when carrying out its business activities (Heriyanto, 2017). Brands, in this case, are divided into trademarks, services and collectives. The definition of a trademark is a mark used in a product to be traded by

an individual or legal entity to make it different from other products (Marpaung, 2019; Al-Fatih, 2021). A service mark is a mark used by an individual or legal entity for services and/or goods traded to make a difference with other service marks (Sari & Tan, 2021). A collective mark is a mark used on goods and or services that have similarities related to the characteristics, nature and quality of the goods or services, which are then used by individuals and or legal entities as marks that can distinguish them from other services and or goods (Masnun, 2019; Nopiana & Disemadi, 2021). The trademark rights that are the object of protection are the use of product brands with economic value and limited use (Heriyanto, 2017; Balqis, 2021). A brand is essential for producers to do marketing, as well as product identity so that it can be different from other products produced by the manufacturer. Identity here is the producer's identity that distinguishes the brand in a particular business from other businesses.

The use of a mark must follow the applicable positive law because it has provisions that can then protect the mark's owner (Disemadi & Mustamin, 2020). A registered trademark has the authority of the state to use the mark under its aims and

objectives. Based on these conditions, trademark rights are defined as exclusive rights granted by the state for protection. In addition, there is also a specific mechanism for registering marks to the state (Pang, Napitupulu, Dhani & Disemadi, 2021; Amboro, 2019). In this case, to obtain a license for a mark, the trademark rights applicant must follow several procedures. After the trademark is registered, the applicant is obliged to obtain trademark rights. Registration of trademark rights can be done through the official website owned by the Directorate General of Intellectual Property (In Indonesia: *DJKI/Direktorat Jenderal Kekayaan Intelektual*) (Arifin & Iqbal, 2020). Protection of trademark rights starts from the applicant's registration with the state. If a mark is not registered with the state, then the mark does not have the legal protection that the state should provide. In this case, the state cannot protect it because there is no mark registration. The laws and regulations related to trademark rights have regulated the protection of registered trademark rights and how to resolve trademark rights disputes if one day it occurs. The risk that can be accepted by brand owners who have not registered their trademarks is the emergence of infringement efforts, such as those used by other parties without the trademark owner's permission. The owner of the mark also does not get the trademark rights protection because the state cannot protect the unregistered mark. Without registration, the state cannot give the trademark rights to the owner so that they can be given protection in the ownership of the trademark rights (Shahrullah & Mariana, 2016; Kuasa, Erni & Disemadi, 2022).

The regulation of trademark rights in Indonesia has been regulated in Indonesian Law Number 20 of 2016 concerning Marks and Geographical Indications (Mark and Geographical Indications Law). This law states that any person if found without the right to use a mark that is the same and or has in common with a registered mark belonging to another party, may be subject to a maximum imprisonment of 5 (five) years and a fine of Rp. 2,000,000,000.00 (two billion rupiah) (Rifai, 2017). Currently, many imitations of a registered trademark are

circulating in the market, where the impersonator is very detrimental to the brand owner and consumers in getting the desired quality of products or services (Arifin & Iqbal, 2020). It is a crime committed by an actor that can cause material losses. If seen in the existing arrangements, this can be subject to imprisonment as specified in positive law, which has comprehensively regulated dispute resolution and protection for registered trademark owners. In this case, the mark owner can file a claim for compensation for the losses received and a request to temporarily stop all actions of other parties that cause losses to the mark owner. The lawsuit was filed not through a district court but a commercial court under the applicable Law on Marks and Geographical Indications (Disemadi & Romadona, 2021). In addition to filing a lawsuit, the parties also have a choice in resolving the dispute on the imitation of registered trademark rights by taking the arbitration dispute resolution route and other alternative dispute resolutions to obtain a good settlement.

There are several other existing studies related to this research theme. Muchtar AH Labetubun in 2019 who discussed the resolution of disputes over logo rights (a study of overlapping copyrights and trademarks) (Labetubun, 2019); Zaenal Arifin and Muhammad Iqbal in 2020 who discussed the legal protection of registered trademarks (Arifin & Iqbal, 2020); Rahmadia Maudy Putri Karina and Rinitami Njatrijani in 2019 who discussed legal protection for ikea trademark rights holders for trademark deletion (Karina & Njatrijani, 2019); Enny Mirfa in 2016 who discussed the legal protection of registered trademarks (Mirfa, 2016). If in previous studies there were many discussions related to the settlement of trademark rights and also the protection of registered trademark rights, this research focuses on discussing dispute resolution in the event of an imitation of registered trademarks in Indonesia along with the mechanisms and settlement pathways that have an element of novelty following the prevailing laws and regulations. applicable so as to provide an understanding of how to resolve the dispute over the imitation of registered trademark rights. The problem in this study is how to protect the legal rights of



registered trademarks in Indonesia and resolve disputes over the imitation of registered trademarks in Indonesia. This study was based on the formulation of the problem to provide information and understanding related to the protection provided to registered trademark rights owners. If there is a later violation of registered trademark rights, the owner already has an understanding related to the protection he has, following positive laws that apply. That way, this research can contribute and be used to know better the resolution of disputes over imitation of registered trademarks.

B. RESEARCH METHOD

This study uses a normative juridical legal research method. Normative juridical law research uses secondary data obtained indirectly from primary, secondary and tertiary legal materials. The primary legal material in this research is Indonesian Law Number 20 of 2016 concerning Trademarks and Geographical Indications, while the secondary legal material is scientific journals in previous studies that discuss legal protection and dispute resolution of trademark rights. The data were collected from documentary or literature studies based on the legal materials used in this study and then analyzed qualitatively to describe the findings obtained. In addition, this technique is also intended to find correct and scientifically justifiable conclusions.

C. RESULTS AND DISCUSSION

Legal Protection of Trademark Rights in Indonesia

Developments in the trade and industrial sectors globally seem to be growing very fast and rapidly. Therefore, using brands to trade products by business actors and producers is essential and requires legal protection (Hendarsyah, 2019). If a product is on the market and has no legal protection, the mark can be used by any party intentionally. So, in this case, protecting the product brand itself becomes a necessity for business actors (Semaun, 2016). The protection of brand rights granted by the state to brand owners does not only cover

domestic brands, even foreign brands. Due to the principle of reciprocity, each member must protect the intellectual property of other members as same as the protection given to its members without different treatment in applying for such protection (Sufriana, 2012).

The protection of registered trademarks in Indonesia has a special regulation in Law Number 21 of 1961, later amended by Law Number 12 of 1992. It did not stop there; in 2001, this Law was again changed to Law Number 15 of 2001 concerning Marks. The last change is the current regulation, Law Number 20 of 2016, concerning Marks and Geographical Indications (Mark and Geographical Indications Law). Changes made to brand regulation show that trademarks are important and need to get legal attention from the state. The changes also aim to adjust the circumstances and conditions and improve legal protection that previously had shortcomings (Semaun, 2016).

Protection of this brand is not only given to brand owners by the state but also to consumers to gain comfort and guarantee the authenticity of a product to avoid consumers being misled by counterfeit product brands on the market. The provision of legal protection to brand owners who have good intentions means that if it is later proven that the owner of the mark has bad intentions, they can request the abolition and cancellation of the trademark rights that have been previously granted.

The concept of legal protection for the owner of the trademark rights refers to the nature of the trademark rights itself, which is exclusive (Nafri, 2018). This right is a monopoly therefore, the right can only be exercised by the brand owner (Putra, 2014). In Indonesia, trademark rights use the First to File system, meaning that protection is provided based on the applicant who first registered the mark and, by Law, is considered the party who has the right to use the mark (Abdurahman, 2020). The purpose of trademark registration is to obtain protection by the state for the use of the mark against other parties. This protection shows that the state is here to carry out the obligation to enforce the Law against marks in Indonesia. When a trademark infringement

occurs, the trademark owner can file a lawsuit to the competent court. Mark registration can be processed at the *DJKI* by completing the requirements specified in the provisions of laws and regulations related to marks. The state protects registered trademarks to provide business certainty to producers to attract foreign investors to invest in Indonesia, and for local investors, it is expected to develop internationally (Sutrisno & Poerana, 2020). Marks and Geographical Indications Law has regulated the trademark categories that can be protected in the form of images, names, words, logos, letters, numbers, colour composition, in two or three dimensions, sound, holograms and/or a combination of 2 (two) or more of these elements. These elements are meant to make a difference to the services and/or goods produced by individuals and/or legal entities when carrying out activities like trading services and/or goods.

A mark registration application may be rejected if it has similarities in principle or in its entirety to a mark that another party has previously registered (Lobo & Wauran, 2021). Legal protection for registered marks has a protection period of 10 (ten) years starting from the registration date. It can be extended again for the same period as the previous period. The application for an extension can be made as early as 6 (six) months before the expiration of the protection, and it will be subject to an extension fee (Arifin & Iqbal, 2020). The existence of this legal protection is a form of the function of the law itself, namely justice, certainty, and legal expediency (Mirfa, 2016). According to Philipus M. Hadjon, the reason why intellectual property needs to be protected is to obtain 2 (two) means of legal protection as below (Tiawati & Pura, 2020): 1) Means of Preventive Protection. In this protection, legal subjects can submit their opinions and objections before a decision from the government is definitive. In this case, the purpose of preventive protection is to prevent a dispute from occurring later; and 2) Repressive Means of Protection. The means of repressive protection, in this case, aims to resolve a dispute that later occurs. The existence of general and administrative

courts in Indonesia has been included in repressive security.

The trademark certificate becomes a registered mark of the mark, and the certificate will be issued by the minister starting from when the mark is registered. If the certificate is not taken from the time the mark is given for a maximum of 18 (eighteen) months, then the trademark certificate is considered withdrawn and will be deleted (Rifai, 2017). Mark rights, in this case, can be transferred and/or transferred due to the following reasons (Tininta, 2018): Waqf; Will; Agreement; Grants; Inheritance; or other reasons which can then be justified in the legislation.

For brand owners who hold more than one brand with similarities in principle or its entirety, both products and or services, the transfer is made to the same party, so it cannot be transferred to different parties (Pahusa, 2015). The owner of a registered mark can hand over his trademark license to another party to use the trademark. The granting of a permit by the owner of the trademark to another party can protect other parties in using it and provide benefits for the owner to obtain economic benefits in granting the license to other parties (Lestari, 2013). The license granting to other parties by the brand owner is carried out using a license agreement in which the deal is valid for use throughout Indonesia unless otherwise agreed. The license agreement is not only made by the brand owner and the licensee, but it is necessary to apply for registration with the minister. As a result of the license agreement not being recorded, the deal has no legal effect on third parties. The trademark used by the licensee in the territory of Indonesia is equivalent to that of the brand owner. It aims to provide certainty and benefit to the licensee (Sujatmiko, 2010).

Settlement of Impersonation of Trademark Rights in Indonesia

Strictly the provisions of the trademark in Indonesia stipulate that without the permission of the mark owner, other parties are not allowed to use the mark (Putra, 2014). So that if it is known that the other party is using the trademark rights without the permission of the brand owner, it can be subject to sanctions and is included in



the trademark infringement. Then, the brand owner has the right to take legal action to file a lawsuit for infringement that occurs. The trademark owner has the right to file a lawsuit against another party if it is known that he intentionally uses a mark that has similarities both in principle and in general to the goods and or services. The owner of the mark has efforts in the form of Claims for damages; and Complete cessation of activities related to the use of the mark.

In filing a lawsuit against another party, it can also be carried out by the owner of a well-known mark based on a court decision that the owner of the mark is the legal owner. A lawsuit on imitation of a registered mark in Indonesia is filed in a commercial court, where it has been regulated in the laws and regulations that control the settlement of trademark rights disputes in Indonesia (Lasut, 2019). During the examination period for disputes over trademark infringement, the trademark owner may apply to a court judge to request that production and trade activities be stopped by other parties who use the trademark without the right. It aims to avoid more significant material losses received by the brand owner for the trademark infringement that the other party has committed. The court judge may give an order to the defendant to hand over the goods and or something equivalent to the goods after a court decision has permanent legal force. Therefore, the owner of the mark asking the defendant for interests to prevent more losses must be based on the court judge's order as in a decision that has permanent legal force.

Suppose a dispute on imitation of registered trademark rights occurs within Indonesia. In that case, the lawsuit filing can be submitted to the head of the commercial court at the defendant's domicile. If one of the parties, in this case, is domiciled outside Indonesia, the plaintiff can file a lawsuit against the dispute regarding imitating the registered mark to the Central Jakarta Commercial Court. The bailiff shall make the summons of the parties to the court dispute. The summons must be made within 7 (seven) days after the lawsuit is registered. The period of the examination process until the decision must be completed within 90

(ninety) days after the panel of judges receives the case. The extension of the period may be carried out with the approval of the chairman of the supreme court, and an extension period of 30 (thirty) days is granted (Arifin & Iqbal, 2020).

In the case of imitating registered trademark rights, the reading of the decision on the lawsuit processed in the commercial court must be carried out in an open trial and not closed to the public. The Law on Marks and Geographical Indications explains the terms and procedures of a lawsuit against a dispute on imitating registered trademark rights by *mutatis mutandis* way (Toruan, 2017). The owner of a registered mark has legal protection measures that have been regulated in the Trademark Law and Geographical Indications. In this case, the state has provided certainty and justice if later there is a violation committed by other parties, such as imitation of the mark (Laela, 2020). In contrast to the settlement of legal remedies in the general court, the case for impersonation of a registered mark was initially carried out in a commercial court. After obtaining a decision, the legal remedies taken can only file an appeal with a maximum period of 14 (fourteen) days after the decision to be submitted to the parties and read out. The request is filed by registering it with the clerk at the commercial court.

The decision on the cassation must be completed within the allotted period, which is a maximum of 90 (ninety) days from the date the cassation panel has received the request for the cassation. Then, the further legal remedies is a review of the cassation decision that has been decided based on the provisions of the applicable laws and regulations (Kalalo, 2021). Legal remedies for judicial review can be made against a commercial court judge's decision with permanent legal force. Even though the judge has decided on the trademark imitation dispute, it can still be submitted for review. Settlement of disputes regarding imitation of registered trademarks in Indonesia has legal certainty, so trademark owners are expected to be able to obtain protection against violations committed by other parties known to have intentionally used the registered mark without rights (Arifin & Iqbal, 2020).

In addition to the court process, there are other efforts to resolve disputes over imitating registered trademarks in Indonesia. There are several settlement efforts by arbitration and other alternative dispute resolutions. It is the state's role to provide legal protection to brand owners, as it is known that not all brand owners want dispute resolution to be resolved through state courts (Kusuma & Sugama, 2020). In this case, some of the disputing parties also want the dispute resolution they expect, so dispute resolution other than litigation can be an option. The application for a temporary determination can be made by the trademark owner, which is submitted to the commercial court in writing. It is submitted at the place where the infringement of the registered mark occurred. One of the application requirements for this provisional determination is that the applicant is required to provide a guarantee in the form of money and/or a bank guarantee in which the guarantee can be comparable to the value of an item which will then be subject to a provisional determination (Habibi & Saidah, 2020).

D. CONCLUSION

The legal protection given to registered trademark rights in Indonesia is indeed necessary. The state provides this legal protection to business actors and investors to run their businesses by using a brand as an identification mark for their products and or services. As well as the government's efforts, local businesses with brands can compete internationally with other brands. The protection of registered trademark rights in Indonesia has been regulated in the Trademark Law and Geographical Indications. The categories of marks that can be protected in this case have been determined. It consists of signs of images, names, words, logos, letters, numbers, colour composition, in two or three-dimensional form, sound, hologram and a combination of 2 (two) or more elements. These elements are meant to make a difference to the services and/or goods produced by individuals or legal entities when trading services or goods. Settlement of disputes for imitation of registered trademark rights in Indonesia can be carried out in

several ways. It can be by litigation to the commercial court for losses other parties accept. It can also be done by resolving disputes outside the court where there is an option, namely arbitration and other alternative dispute resolution. The aggrieved party, in this case, may apply for a provisional determination to the commercial court to obtain an interim decision to prevent additional losses caused by the actions of other parties without the right to use the mark.

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