

# The Importance of Trademark Registration to Obtain Legal Protection in Indonesia

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## Abstract

Act No. 20 2016 About the Brand and Geographical Indications, the Brand is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, the arrangement of colors, in the form of 2 (two) - dimensional and/or 3 (three) dimensions, sound, hologram, or a combination of the 2 (two) or more elements of the set barang and/or services produced by a person or legal entity in the trading of goods/services. Rights to the Brand are obtained after the Brand are listed. The first Registration of the brand is a legitimate proof of the registered trademark. A trademark registration is also useful as a basis for rejection of the same brand its entirety or be in anyway that is requested by others for similar goods or services. In fact, in the implementation of the can't be done easily because not all the brand owners do the registration of the brand. This leads to brand not get legal protection, so it is very easy occurrence of violations of the use of the brand without the right of that harm the owner of the brand. Factor the brand owner did not register the brand, namely the owner of the brand is still low awareness of the law against the norms. Therefore, the other party can not use the registered trademark without the consent of the owner. If the brand that has been registered is not used in accordance with the provisions set out in the legislation, will result in registration of the mark concerned was abolished. Both Brands as assets of the company will be able to generate huge profits when utilized with attention to aspects of business and management good management. With the growing importance of the role of this brand then the brand need to put the protection of the law; as the object which it related rights of the individual or legal entity.

**Keywords:** Importance, Where The Brand, The Protection Of The Law.

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## I. INTRODUCTION

Any manufacturer or brand owner will have the best legal protection of the rights over the brand oblige the brand registered owner of the brand. A brand that registered in accordance with applicable regulations will be recognized over the ownership of the brand of the product. But a brand is never separated from the violation of brands such as impersonation, forgery, piracy, destruction of reputation and others. Trademark registration is an attempt to provide a status that the registrant was considered as users of the first-until there is another person who proves on the contrary it.

The brand can be defined as identification of a set belonging to someone with the property of another person (Adisumarto, 1989:44). Brand's identification of a product that can be used to distinguish between the goods or services of one another. The brand is an

intellectual property rights need to be protected.<sup>1</sup> Setting brand in the scope of Intellectual property Rights provided for in Law No. 20 2016 About the Brand and Geographical Indications, the Brand is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, the arrangement of colors, in the form of 2 (two) - dimensional and/or 3 (three) dimensions, sound, hologram, or a combination of the 2 (two) or more elements of the set barang and/or services produced by a person or legal entity in the trading of goods/services. The brand is one of the branches of Intellectual property Rights has an important role. Understanding brand according to Poerwosutjipto, the brand is a sign by which an object

<sup>1</sup> Harsono Adisumarto, Intellectual Property Rights, Especially Patent Law and Brand, (Jakarta, Akademika Pressindo, 1990), pp.. 19

specific dipribadikan so that it can be distinguished by objects similar.<sup>2</sup>

Wear items which the brand is known is a pride for consumers, especially when these items are original products are hard to come by and reach by most consumers. The various brand products that are offered by the manufacturer to the consumer make the consumer is confronted by a wide range of options, depending on the purchasing power or the ability of the consumer. Middle class people who do not want to miss using of goods of famous brands buy items as fake. Although the goods are counterfeit, imitations and low-quality, not a problem as long as it can be bought.

The occurrence of counterfeit trademark, trade certainly will not develop properly and will worsen the image of Indonesia as a violator of intellectual property. Therefore, the issue of the legal protection of the brand to be interesting to be discussed, considering the world will continue to evolve, and brand has a role that is taken into account, especially in the process of trading goods and services in the global era. Based on these problems, then there is a formulation of the problem which will be performed as the problem as follows:

1. How to registration of the top brands in Indonesia?
2. How the legal protection of the brand?

## II. RESEARCH METHODS

Methods and techniques used in the writing of this Method of Data Collection To collect data, the authors use the Method of the Research Literature, namely a method used by way of studying the literature related to international conventions, as well as any other written materials associated with the material which is used to support this discussion. This study uses research methods juridical empirical research in the form of empirical studies to find the theory of peorses operation of law in society.<sup>3</sup> To complete the data required then the research carried out by combining the research carried out by combining the research Literature by reading journals, books, and regulations relating to the problem. As well as a population is a number of, individuals, objects, events throughout the unit under study.<sup>4</sup> Data analysis was conducted using a qualitative approach, namely a study that groups data according to the problem under study and then will be concluded and implemented so that it can give the analysis in the writing of scientific works because the scope of this study is on the disciplines of Law, then this research is part of the legal research literature, namely by way of

<sup>2</sup> O.K. Saidin, the legal Aspects of Intellectual property Rights, Jakarta: PT. Raja Grafindo Persada, 2006, pp.343

<sup>3</sup> Sugiono, Quantitative Research Methods, Bandung: Alfabeta, 2015, pp.. 82

<sup>4</sup> Ronny Hanitijo Soemitro, Methodology Legal Research, Bandung: Ghalia Indonesia, 1994, pp. 94.

meneiliti library materials or called a normative legal research.<sup>5</sup>

## III. THE RESULTS OF THE DISCUSSION

### 1. Registration of the top brands in Indonesia

The brand is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, the arrangement of colors, in the form of 2 (two) - dimensional and/or 3 (three) dimensions, sound, hologram, or a combination of the 2 (two) or more elements to distinguish the goods and/or services produced by a person or legal entity in the trading of goods and/or services.

Act No. 20 2016 About the Brand and Geographical Indications on the Requirements and Application procedures in accordance with article 4 as follows : (1) The Application for trademark registration filed by the Applicant or his Proxy to the Minister of electronic or non-electronic in the language of Indonesia. (2) In the Application referred to in subsection (1) must include: a. date, month, and year of Application; b. full name, nationality and address of the Applicant; c. full name and address of the Authority if the Request is submitted through a lawyer; d. the color if the Brand for which registration is requested using the element of color; e. the name of the country and the date the request is the first Brand in case the Application is filed with Priority Right; and f. class of goods and/or class services as well as a description of the types of goods and/or types of services. (3) an Application signed by the Applicant or their Proxies. (4) the Application referred to in paragraph (1) shall be accompanied with a label Brand and a proof of payment of the fee. (5) the Cost of the Application for registration of a Brand is determined per class of goods and/or services. (6) In the event the Brand as referred to in paragraph (4) in the form of the form 3 (three) dimensions, Brand label attached in the form of the characteristics of the Brand. (7) In the event the Brand as referred to in paragraph (4) in the form of voice, Brand label attached in the form of notation and sound recordings. (8) The Application referred to in subsection (1) must be accompanied by a statement of ownership of the Brand for which registration is requested. (9) further Provisions regarding the cost of the Application referred to in paragraph (5) shall be regulated with a Government Regulation.

In Article 5 (1) In case the Application is filed by more than one Applicant who are together entitled to the Brand, all the name of the Applicant listed by selecting one of the addresses as the address of the Applicant. (2) The Application referred to in paragraph (1) shall be signed by one of the Applicant who is entitled to the Brand by attaching a written consent from the Applicant's representative. (3) The Application

<sup>5</sup> Soerjono Soekanto dan Sri Mamudji, legal research Normative, Rajawali, Jakarta, 1985. pp. 14

referred to in paragraph (1) that one of the Applicant or more foreign citizens and foreign legal entities domiciled in the state is obliged asked through the Power of. (4) In the case of a Request as referred to in paragraph (1) is submitted through their Proxies, power of attorney for it was signed by all the parties entitled to the Brand. Article 6 (1) a Petition for more than one (1) class of goods and/or services can be asked in one Application. (2) The Application referred to in paragraph (1) should mention the type of goods and/or services that are included in classes for which registration is requested. (3) Further Provisions regarding a class goods and/or services referred to in paragraph (1) shall be regulated with a Ministerial Regulation. Article 7 (1) the Petition and the matters relating to the administration of the Brand filed by the Applicant resides or is domiciled fixed outside the territory of the Unitary State of the Republic of Indonesia shall be submitted through the Power of. (2) the Applicant referred to in paragraph (1) shall declare and choose the address of the Authority as a legal domicile in Indonesia. Article 8 further Provisions regarding the Requirements and procedures for the Application referred to in Article 4 to Article 6 stipulated by the Regulation of the Minister.

Examination of the Completeness of the Requirements of the Registration of the Brand in Article 11 (1) the Petition is filed to meet all the requirements of registration of the mark referred to in Article 4, article 5, Article 6, Article 7, Article 9 and Article 10. (2) In the event that there is a lack of completeness of the requirements referred to in Article 4, Article 5, Article 6 and/or Article 7, within a maximum period of thirty (30) Days from the date of acceptance, the Applicant is notified that the completeness requirements are met within a maximum period of 2 (two) months from the Date of Delivery of the notification to meet the requirements. (3) In the event of a shortage concerns the completeness of the requirements referred to in Article 10, the term of fulfillment of the shortcomings of the completeness of the requirements of 3 (three) months since the expiry of the period for the filing of the Petition with the use of the Right of Priority. (4) In terms of the completeness of the requirements of the Application referred to in paragraph (2) and paragraph (3) has not been met due to the presence of a natural disaster or force majeure beyond human capabilities, the Applicant or the attorney may file a written application for extension of the term of fulfillment of the requirements referred to. Article 12 In terms of the completeness of the requirements are not met within the time period referred to in Article 11 paragraph (2), the Minister shall notify in writing to the Applicant or that of his application is considered withdrawn. The date of Acceptance of the Application of Article 13 (1) an Application that has met the minimum requirements given the Date of Receipt. (2) the minimum Requirements referred to in paragraph (1) shall consist

of: a. the Application form has been completed; b. Brand labels; and c. proof of fee payment.

The announcement of the Application are described in Article 14 (1) the Minister announced the Application in the Official gazette of the Brand in a maximum period of 15 (fifteen) Days from the Date of Receipt of the Application referred to in Article 13. (2) the Announcement of the Petition in the Official gazette of the Brand as referred to in paragraph (1) takes place during the 2 (two) months. (3) the Official News Brands referred to in paragraph (2) is published periodically by the Minister through electronic means and/or non-electronic. Article 15 of the Announcement done with include: a. name and address of the Applicant, including the Power of attorney if the Application is submitted through the Power; b. class and type of goods and/or services; c. The date of Receipt; d. the name of the country and the Date of Receipt of the application for the first time in the event the Application is submitted with the use of the Right of Priority; and e. Brand label, including a description of the colors and if a Brand label using a foreign language and/or letters in addition to Latin letters and/or numbers which are not commonly used in English, accompanied by a translation into English, the Latin alphabet or numbers that are commonly used in the Indonesian language, as well as how to pronounce it in the Latin spelling.

## 2. THE LEGAL PROTECTION OF THE BRAND

Brand owners to please do the registration of the brand many are doing Impersonation occurs because of the lack of legal protection of trademark infringement that is caused because of the weakness of concern for brand owners to major brands to get the rights to the brand and protection of the law against the equation of the brand in the types of goods or services of the other party. From the research results it can be stated that the registration of the brand is very important for every owner of the brand because of the legal protection of the brand is increasingly becoming important for every owner of the brand, because the legal protection of the brand the more it becomes important to see the very rapid growth of world trade today. As brand owners who have not registered their brand, if there are actions that harm the owner of the brand can not travel through the legal channels to resolve the dispute violations of the brand. While the completion of the case trademark infringement is intended that the perpetrators of violations of the brand will no longer wear the brand that resemble in anyway or in its entirety, from the brand or even stop the activity of production.

Usually a Brand that Can Not be Listed and Rejected On the basis of Article 20 of the Brand can not be registered if: a. contrary to the ideology of the state, laws, morality, religion, morality, or public order; b. the same with, associated with, or just refer to the goods

and/or services for which registration is requested; c. contains elements that can mislead the public about the origin, quality, type, size, of, the intended use of the goods and/or services for which registration is requested or is the name of the protected plant variety for goods and/or services of that kind; d. contain information not in accordance with the quality, benefits, or efficacy of the goods and/or services produced; e. has no distinguishing features; and/or f. is the common name and/or coat of arms belongs to the public. Article 21 (1) the Application is rejected if the Brand has the equation in anyway or in its entirety, with: a. Registered trademarks of other parties or requested in advance by the other party for the goods and/or similar services; b. Famous brand belonging to the other party for the goods and/or similar services; and c. Famous brand belonging to the other party for the goods and/or services not of a kind that meet certain requirements; or d. Registered Geographical indications. (2) the Application is rejected if the Brand: a. is or resembles the name or abbreviation of the names of famous people, photo, or the name of the legal entity owned by another person, except upon the written consent of the entitled; b. is a clone or resembles the name or abbreviation of a name, a flag, an emblem or a symbol or emblem of a country, or a national or international institution, except upon the written consent of the competent authorities; or c. is a clone or resembles a mark or stamp or official seal used by the state or a Government agency, except upon the written consent of the competent authorities. (3) the Application is rejected if submitted by the Applicant that beriktikad not good. (4) Further Provisions regarding the rejection of the trademark Application referred to in paragraph (1) letters a through c are governed by Regulation of the Minister. Article 22 against the registered Brand which later became the name of the generic, any Person may file a trademark Application with the use of generic names is meant by some other words as long as there is an element of distinction.

The law is the process of structuring, which is the institutional arrangement in a rational way, according to Unger referred to as the modern law, so the law of independent in many aspects. According to Unger modern law has four elements, namely : First, to give birth to the rules made yourself intentionally, second, run by an order of administrasi public, third : procurement personnel-ersonel special and fourth, create how to think for themselves. Thus the law has “ a legal system “ , which is towards the positive law. Positive law according to Robert Redfield and Donald Black serves as the state control of society. Norm-nomra positive laid out systematically in a corpus jurisdiction berkoherenensi high, developed through theories and doctrines. The law is laid out in hierarkhis

(systematic). Furthermore, the law requires the management and care<sup>6</sup>.

This violation occurs because of the lack of understanding of the people and indifference to the community, including the brand owner to the applicable norms and can get a big profit so as to make the parties do impersonation of a brand that is already known in the community. Efforts that can be taken in the dispute resolution aspects of Intellectual property rights can be done through two channels, namely the courts and lanes in the outer court are known as Alternative Dispute resolution. Some forms of Alternative Dispute resolution, namely negotiation, mediation, conciliation and arbitration. The steps taken by the owner of the brand is certainly not create a deterrent effect in stopping the party is not responsible for in addition to registering the brand. If the impersonation is constantly occur naturally will make losing the trust of consumers, whereas the owner of the trademark has been much effort and cost in the development efforts initiated since decades.

#### IV. CONCLUSION

Factor the assumption that it is not important to register the brand, the brand owner considers sufficient with its identification in the form of boards name dipabriknya, logo on the product packaging and known to many by the community can protect their business. Factor the high cost of trademark registration and factors of the process of registration of a brand that takes a long time lead to brand owners are reluctant to register a brand. The efforts made by the piha Ministry of Law and human RIGHTS and socialization in a direct and socialization are not directly related to violations of the brand and explain due to bad for brand owners who do not register the brand. The protection of the law plays a very important so that the brand has a guarantee not to be imitated or from the unlawful actions of the other. The legal protection of the brand. This makes the owner of the brand experience huge losses due to such action is an action taken to gain profit with shortcuts. The factors that lead to brand owners have not registered brands, namely the lack of knowledge of the law against the owner of the brand and the consumer against the rules and norms applicable law. Efforts that can be taken in the dispute resolution aspects of Intellectual property rights can be done through two channels, namely the courts and lanes in the outer court are known as Alternative Dispute resolution. Some forms of Alternative Dispute resolution, namely negotiation, mediation, conciliation and arbitration. The steps taken by the owner of the brand is certainly not create a deterrent effect in stopping the party is not responsible for in addition to registering the brand.

<sup>6</sup> Moegni Djojodirdjo, M.A, Against The Law, (Jakarta, Pradnya Paramita, 1982), pp.33

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