

Well-known Trademark Protection in Indonesia: The Essence of Good Faith and Legal Practices

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Abstract

The trademark role is important in advertising and marketing a particular business because the public often associates a distinctive image or the quality of goods and services with certain trademarks. This research will analyze the essence of adopting good faith in resolving disputes concerning well-known trademarks in Indonesia. The research adopted normative legal research using statute, cases, and conceptual approaches. The results show that the essence of good faith in well-known trademark dispute resolution is to protect well-known trademark owners who are honest, rational, and have tried to find a trademark's existence. Therefore, their trademark has no essential or overall similarity with other parties to minimize losses. The well-known trademark cases that have been submitted showed that the lack of indicators of good faith resulted in deciding the case. The Commercial Court of Central Jakarta decided based on the subjective of the judge. For this reason, the problem of disputes becomes complicated and complicated can arise when court decisions are inconsistent.

Keywords: Trademark; Good Faith; Legal Practices; Well-Known Trademarks; Commercial.

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1. INTRODUCTION

Protection of trademarks is carried out in almost every country in the world. However, consumer protection and local companies related to trademarks in Indonesia have a closely related relationship [1]. On one hand the government is required to protect consumers from trademark infringement and on the other hand the government must protect the intellectual property rights of local companies from foreign companies [2]. This is not only a matter of goodwill or the reputation of a brand, but also the fate of the sustainability of local company employees and increasing domestic economic growth.

The trademark role is important in advertising and marketing a particular business because the public often associates a distinctive image or the quality of goods and services with certain trademarks [3]. Furthermore, this is an extremely valuable commercial property. The concept of enacting a Trademark Law aims to protect reputable business owners from parties that free ride on their success. Therefore, the pillars are unable to use the packaging or other indications that cause consumers to believe that the product they are buying is from a well-known trademark.

At the practical level, disputes over trademark infringement arising from conflicts between foreign companies with foreign trademark rights and domestic trademark owners with the same trademark on the same or similar goods can be debated because the so-called

¹ Ahmadi Miru. (2016). Larangan Penggunaan Klausul Baku Tertentu dalam Perjanjian antara Konsumen dan Pelaku Usaha. *Jurnal Hukum Ius Quia Iustum*, 8(17), 107-119.

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'infringement' is almost ineffective and confusing or even will be misleading person. But the problem of disputes becomes complicated and complicated can arise when court decisions are inconsistent [4].

Above all, a trademark infringement that is often executed involves the exact duplication of another company's logo and materials. Furthermore, it also involves using a trademark that is similar to other registered ones, thereby causing a misperception in the public's mind. These bad faith actions negatively affect the owners of well-known trademarks. However, no indicators determine whether an action is categorized as either good or bad faith. Therefore, these indicators are necessary to assist the Panel of Judges in resolving disputes concerning well-known trademarks. Hence, this research will analyze the essence of adopting good faith in resolving disputes concerning well-known trademarks in Indonesia.

2. METHOD

This research adopted a normative legal research. The research data is the decision of the Commercial Court judges at the Central Jakarta District Court from 2016 to 2019. The reason for this limitation is because the most recent Trademark Law has been in effect since 2016. Furthermore, the research data was collected at the Supreme Court, because several judges' decisions, which allegedly did not reflect the meaning of good faith, were resolved to the level of Cassation. Primary legal materials are legal materials that are authoritative or have authority.⁵ The data obtained through activities were identified and grouped according to the characteristics of the research objectives, then analyzed qualitatively descriptively [6].

3. LITERATURE REVIEW

Normatively, based on Article 1 number 1 of Law Number 20 of 2016, a trademark is a sign, graphically displayed in the form of images, logos, names, words, letters, numbers, color arrangements, in either 2 (two) or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish between goods and services rendered by individuals or legal entities involved in trading activities. A trademark is a tool used to distinguish goods and services rendered by a company. This

definition emphasizes the fact that its function is to distinguish between goods and services produced by a particular company. Furthermore, it emphasizes the function of trademarks to differentiate between similar goods and services. Considering the distinguishing power, as Gautama reported that a trademark needs to be able to determine or individualize the goods in question. This aids third parties to be able to distinguish a particular trademark from another [7]. Hence, a trademark is a sign to distinguish similar goods or services, guarantee their quality, and are used in trading activities.

The right to a trademark is obtained after it has been registered (after the application goes through certain formalities, announcements, and substantive examination processes) and approval is obtained from the Minister for the issuance of a certificate. Regarding the application for an extension of the trademark registration, the owner is opportunity to be able to extend it to 6 months after the expiry period. This provision is intended to make it difficult for registered trademark's owners to easily lose their rights, as a result of delays in applying for an extension of the registration. Rusing and Brown stated that the legal protection of intellectual property rights promotes the size, quality, and efficiency of the inventor, creator, or designer as well as attracts foreign capital. Furthermore, they concretely stated that the purposes for the legal protection of intellectual property rights are [8].

Strong protection of intellectual property tends to

- a. Create jobs in primary and supporting industries,
- b. Create a higher quality labor force through on the job training,
- c. Shift jobs to higher productivity areas,
- d. Increase the capital stock of the country,
- e. Improve the quality of the capital stock through innovation,
- f. Improve the allocation of the capital stock,
- g. Expand those activities subject to economies of scale,
- h. Improve efficiency through a reduction in local monopoly elements,
- i. Provide lower cost of production for existing products,
- j. Provides new products.

In addition to Law Number 20 of 2016 concerning Trademarks and Geographical Indications, the enforcement of international conventions in the field of trademarks starts with the Ratification of the Agreement on Establishing the World Trade

⁴ Mukhtar, S., Ashiqin, Z., & Jusoh, S. B. (2017). Trademark dispute settlement in Malaysia: A comparative analysis with the TRIPS and the Paris convention. *Journal of Law and Conflict Resolution*, 9(2), 9-25.

⁵ Peter Mahmud Marzuki. (2011). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group. p. 141

⁶ Irwansyah. (2020). *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel*, Yogyakarta: Mirra Buana Media, p. 41.

⁷ Muhamad Djumhana, (2006), *Perkembangan Doktrin Dan Teori Perlindungan Hak Kekayaan Intelektual*, PT Citra Aditya Bakti, Bandung, p. 18

⁸ Ermansyah Djaja, (2009), *Hukum Hak Kekayaan Intelektual*, Sinar Grafika, Jakarta, p. 190

Organization through Law Number 7 of 1994. On April 15, 1994, the Government signed the Final Act Embodying the outcome of the Uruguay Round of Multilateral Trade. In accordance with this, Indonesia simultaneously ratifies and enforces the Trade-Related Aspect of Intellectual Property Rights agreement (hereinafter referred to as TRIPs) contained in Annex C of the Final Act earlier mentioned.

Based on the TRIPs Agreement, it is determined that the Paris Convention for the Protection of Industrial Property Rights (Paris Convention) is the minimum basis for trademark protection arrangements that need to be obeyed by member countries of the World Trade Organization (WTO) as stated in Articles 1 and 2 paragraph 3 and TRIPs, respectively which is reported as follows.

Members need to accord the treatment provided for in this agreement to other nationals. In respect to the relevant intellectual property right, other nationals need to be perceived as natural or legal persons that meet the eligibility criteria for the protection offered by the Paris Convention 1967. Article 2 TRIPs:

In respect to Parts II, III, and IV of this agreement (TRIPs), members need to comply with articles 1 to 12, and including 19, of the Paris Convention 1967. Besides, Parts I to IV of this agreement does not derogate existing obligations which stated that members have to protect each other's right under the Paris Convention 1967.

Meanwhile, in covenant law, good faith is a principle derived from the teachings of *bona fides* in Roman law. This is the reason the principle of good faith is similar to the civil rather than the common law system. *Fides* is a religious term, which means trust in one's honor and honesty. *Bona fides* obliges good faith in the agreement made by the Romans [⁹]. Initially, the Roman covenant law only recognized *iudicia stricti iuris*, an agreement based on legal acts (*negotium*) which strictly and formally refers to the *ius civile* (a set of laws regulating the rights and obligations of Roman citizens). However, when faced with a case, the judge passes its ruling based on the law and agreement. It is only in such situations, that *iudicia bonae fide* is developed, a concept derived from *ius gentium* (natural law) which teaches the need to carry out agreements in good faith. This teaching develops as informal agreements are recognized as consensual [¹⁰].

Good faith is relevant because the law is unable to reach future conditions. Besides, the aforementioned regulations are only made by humans, and no person is perfect. These regulations only encompass those circumstances which at the time of occurrence were known for possibilities. However, this is only included in the regulatory environment assuming the possibilities of certain circumstances had already been known. In these circumstances, the honesty factor of the interested parties becomes important [¹¹]. After World War II, there was an important need to develop the principle of good faith. This originally applies to a contractual relationship, which is further stated to apply to other matters. *Arest Hoge Raad* on November 15, 1957, stipulated that in the pre-contractual stage, the parties negotiating to reach an agreement executed certain obligations based on good faith (*propriety*), namely to examine (*onderzoekplicht*) and to notify (*mededeling plicht*) [¹²].

4. ANALYSIS AND DISCUSSION

In English common law, good faith has two different meanings, namely performance, and purchase. Good faith performance is related to the propriety (objective) or practicality of contract execution. Based on this meaning, good faith is used as implied in Roman law, which mandates cooperation between the parties, in order not to cause any harm from reasonable expectations. Meanwhile, good faith purchase is related to the contracting party's subjective state of mind. Moreover, whether someone makes purchases in good faith depends entirely on ignorance, suspicion, and notification of the contract [¹³].

In the Netherlands, the court's interpretation of good faith in respect to contracts emerged in the *Hengsten Vereniging v. Onderlinge Paarden en Vee Assurantie*. According to *Hoge Raad*, this doctrine refers to reasonableness and existence fairness (*redelijkheid en billijkheid*) in the society. Furthermore, agreements need to be carried out based on these qualities. *Hoge Raad* also firmly stated that paying attention to the principle of good faith during the implementation of an agreement implies its interpretation according to the measure of reasonableness and fairness. Therefore, it was viewed that *Hoge Raad* equated good faith with reasonableness and fairness [¹⁴].

The principle of law is dynamic in nature, which in turn changes according to the development of the society [¹⁵]. Furthermore, the principle of good faith is also adopted in the field of intellectual property

⁹ Wirjono Prodjodikoro, 2006, *Asas-Asas Hukum Perjanjian*, Sumur, Bandung, P. 56

¹⁰ Ridwan Khairandy, 2003, *Iktikad Baik Dalam Kebebasan Berkontrak*, Pascasarjana UI, Jakarta, P. 130

¹¹ Wirjono Prodjodikoro. *Op.Cit.* P. 60

¹² *Ibid.* p. 62

¹³ Ridwan Khairandy. *Op.Cit.* p. 157

¹⁴ *Ibid.* p. 9

¹⁵ Sudikno Mertokusumo, 2004, *Penemuan Hukum, Liberty*, Yogyakarta, P. 35

rights. J Satrio stated that good faith is divided into two, namely subjective and objective. Subjective good faith relates to the inner attitude of the persons involved and their ability to realize that their will is contrary to good faith. Meanwhile, objective good faith is when public opinion expresses that the action is contrary to good faith [16] Khairandy reported that good faith in Roman contract law refers to the three behavioral forms of the parties involved in the contract. First, they need to uphold their promises or words. Second, they need not take advantage of misleading actions against either of the parties. Third, the parties need to comply with their obligations and behave as respectable and honest people, irrespective of the fact that they have not explicitly agreed on these responsibilities [17].

The implementation of trademark registration is based on the good intentions and honesty of the registrant, without any hidden intention to free-ride on the trademark of another party, to obtain maximum benefit. Good faith in trademark registration is related to the subjective meaning in which the registrant needs to have honest intention to solely protect it from fraudulent acts committed by other parties [18] Therefore, in the case of registering a trademark, subjective and objective good faith needs to be in accordance with the provisions of the laws and regulations, without having any hidden purpose to imitate or utilize the trademarks of other parties or in general to gain the maximum benefit from an economic point of view thereby damaging previously registered well-known brands.

Bad faith is described as an inner attitude of someone that deliberately free-ride on the other party's brand, by violating the provisions in Law Number 20 of 2016. Based on Article 21 Paragraph (3), it is stated that "an application is rejected when submitted by an applicant with bad faith." Bad faith in trademark registration is also interpreted as a deliberate act to imitate part or all of a previously registered brand with the aim that it matches with the popularity of the duplicated one for the personal benefit of the register [19]. Therefore, bad faith in the registration of a brand needs to be rejected because legally it is a fraudulent act that is detrimental to the owner of a previously registered trademark.

Based on decision Number 1269 L/Pdt/1984 dated January 15, 1986, decision Number 220 PK/Perd/1981 dated December 16, 1986, and decision Number 1272 K/Pdt/1984 dated January 15, 1987, the Supreme Court stated that the trademark owner had bad faith because they used a trademark proven to be similar as that of the opposite party. In other words, there was an imitation of a legitimate trademark belonging to another party due to bad faith. The Supreme Court further stated that bad faith is described as when a trademark has substantial similarities with the one owned by another person thereby, misleading the public. It is also interpreted as the act of passing off on a well-known trademark. This is evident in the Jurisprudence of the Supreme Court Number 3485 k/Pdt/1992 concerning the dispute over the Gucci brand which stated that the choice of a similar trademark indicates bad faith. This includes passing off on well-known trademark thereby misleading consumers, regarding the original goods. In the decision of the Supreme Court Number 557 K/Pdt. Sus-HKI/2016, good faith is described as when a trademark lacks substantial similarities with other trademarks intended to mislead and harm society.

In decision Number 790 K/Pdt. Sus-HKI/2016, the Supreme Court reported that bad faith is defined as when a trademark is entirely similar to that of other parties, thereby misleading the general public. The Supreme Court also believes that bad faith is intended to mislead consumers, as stated in decision Number 823 K/ Pdt. Sus-HKI/2016. Bad faith is also described as the act of passing off the well-known trademark, as stated in the Supreme Court decision Number 113 K/ Pdt.Sus-HKI/2016.

In accordance with this research, bad faith is an attitude of dishonesty. This simply means despite being aware of a well-known trademark, an individual deliberately chooses to imitate that particular trademark. Furthermore, dishonesty also means a person's unwillingness to discover whether the registered brand has certain similarities with the pre-existing ones. It is a known fact that good faith started in Roman times. This is the reason its principle originated from civil law which is the parent of the legal system in Indonesia. Good faith in Roman law is described as ones' belief in honesty, which triggered their heartstrings.

The development of good faith in Roman law is inseparable from the evolution of the contract itself. Initially, the Roman law only recognized *iudicia stricti iuris*, which is a contract entered in accordance with law (*negotium*). This strictly and formally refers to *ius civile*. However, when faced with such a contract case, it needs to be decided according to the law. The judge is bound by the terms stated in the contract (*express term*). Furthermore, this led to the development, of legal actions based on *iudicia bonae fidei*. In addition, this is

¹⁶ J Satrio, 2000, *Hukum Perikatan (Perikatan Yang Lahir Dari Perjanjian)*, PT Citra Aditya Bakti, Bandung, P. 179

¹⁷ Ridwan Khairandy, *Op.Cit.*, P. 130

¹⁸ Thomas Heru Susanto, Ahmadi Miru, and Winner Sitorus. (2019). "Legal Protection for Domestic Airlines Consumers Related with Ticket Purchasing." *Mulawarman Law Review*, Vol. 1 No. 1: 1-13.

¹⁹ Edy Damian, 2003, *Hak Kekayaan Intelektual*, Alumni, Bandung, P. 49

referred to as *negotia bonae fidei*. The concept of *negotia* is derived from *ius gentium*, which mandates that the parties that executes these contracts need to be in good faith [20].

The principle of good faith in Roman law is developed along with the recognition of consensual contracts which initially include sales and purchases, leasing, and civil partnerships [21]. This principle is rooted in Roman social ethics regarding the comprehensive obligation of obedience and faith that applies to both citizens and foreigners. There is a tendency of the Roman contract law to migrate from formalistic to consensual, besides the recognition of the importance of good faith is developed through court discretion [22]. This allows people to enter into contracts outside the prescribed form and recognize *ex fide bona*, namely in accordance with good faith requirements [23]. *Fide* means belief in someone's words. Based on this belief, a person tends to make agreements with other people, which is certainly in accordance with the rule of law. In the future, when a dispute occurs, the judge is obliged to decide the case based on the rule of law and the agreement between both parties. This is the reason an agreement needs to be made in good faith. However, this refers to the good faith of the parties and the values of the society. Good faith is also interpreted as honesty which is used to anticipate unpredictable circumstances beforehand, which also tends to affect the course of an agreement. Circumstances beyond expectations occur in an agreement because they are made by humans with weaknesses in predicting the future.

Propriety associated with good faith is rational, which lives in society. Rational means that the fulfillment of the rights and obligations of the parties specified in the contract is acceptable by common sense. The parties to the contract are required to be able to uphold the things that have been promised. Furthermore, they are prohibited from engaging in misleading actions to take advantage of the opposing party. In this case, propriety is also defined as behaving respectfully and honestly even though these obligations are not explicitly agreed upon. The principle of good faith in countries with civil law systems is heavily influenced by Roman and Canon legal traditions. However, the formulation of good faith obligations is very different from one country to another. In Germany, Article 242 of the German Civil Code stipulates that the debtor needs to carry out the contract, especially those

created from the contract in good faith. In France, Article 1134 of the French Civil Code stipulates that contract need to be executed in good faith. The meaning of good faith in the French Civil Code refers to the moral view that is needed by people to obey their promises or words. Article 1374 paragraph (3) *Burgerlijk Wetboek* stipulates that agreement needs to be implemented in good faith in the Netherlands. According to P.L Wery, the meaning of good faith (*uitvoering te goeder trouw*) implementation in Article 1374 paragraph (3) is similar to *bona fides* in Roman law. Good faith means that both parties need to collaborative effectively without deceit, disturbance, and selfishness [24].

As comparison, in the state of Louisiana, located in the United States of America, a good faith arrangement is contained in the Louisiana Civil Code which stipulates that it is absolutely necessary for the execution of a contract. This is similar to the contract arrangements in Germany, France, and the Netherlands. However, these countries do not specify the parameters required to assess good faith [25]. In its development, good faith does not only apply in an agreement or a pre-contractual relationship, rather it also needs to be enforced in every legal action even though it was not previously agreed and the parties did not know each other. The law continuously develops in accordance with advancements in society. This is also experienced by the principle of good faith, which initially only applies in the law of the agreement and is expressly agreed upon by the parties. However, presently, the principle of good faith is also adopted in the field of intellectual property rights regarding the protection of well-known trademark.

Bad faith is also interpreted as a deliberate action capable of making a trademark match the fame of a well-known trademark, thereby providing financial benefits for the owner. Actions with bad faith are reflected in the deliberate attitude of imitating the previously registered trademark. These actions are deliberate because, with the availability of internet facilities and websites, using similar contents of a well-known trademark is unacceptable. Bad faith is not only related to the deliberate attitude of imitating a previously registered trademark rather it is also associated with a person's unwillingness to seek information regarding the similarity of a trademark to be registered with those previously used in Indonesia and member countries of the Paris Convention. Unwillingness refers to a person's determination to avoid taking certain actions, this means not seeking information.

²⁰ P van Warmelo, (1976), *An Introduction to the Principles of Roman Law*, Juta and Co Ltd, Cape Town, P. 151

²¹ Alan Watson, (1995), *Roman Law and Commerce*, University of Georgia Press, Athens, P. 50

²² Carleton Kemp Allen, (1988), *Law in the Making*, Clarendon Press, Oxford, P. 395

²³ *Ibid*, P. 396

²⁴ P.L Wery, 1990, *Perkembangan Hukum Tentang Iktikad Baik di Nederland*, Percetakan Negara, Jakarta, P. 9

²⁵ *Ibid*, P. 12

According to Soekanto, humans tend to live properly and regularly [²⁶]. However, order and appropriateness are needed to ensure they keep carrying out good acts and avoid acts directed towards evil. The principle of good faith is rooted in the social ethics of Roman times regarding the comprehensive obligation to obedience and faith. When it is used in a contract, it means that the parties are bound by things explicitly agreed upon and by applicable propriety. Humans are good and one parameter of goodness is being honest. Historically, during the Roman contract law development, the parties act honestly and were prohibited from participating in actions that mislead others. An example of honest action in trading goods or services is the prohibition of people from trademarks similar to already existing ones. Therefore, once a brand discovers similarities with another, it is meant to implement some modifications, to avoid causing harm.

In a well-known trademark dispute, the desire to use a brand that is similar to another is not in good faith because it only materializes when the desire has been concrete in an action. Therefore, the following attributes are used to assess when an action is in good or bad faith.

1. Honesty (without guile),
2. Rational (based on common sense),
3. Looking for information hence the brand to be registered is not similar to the previously existing trademark.
4. The act of carrying out the similarity in essence or entirety does not provide any financial benefit to the brand owner.

After determining the indicators of good faith, the cases obtained during the research were analyzed. In case number 9/Pdt. Sus-HKI/Merek/2019/PN. Niaga Jkt.Pst, the Commercial Court of Central Jakarta decided that Roda Rollen Indonesia was the Plaintiff in good faith, and declared ELEKTRIM as a well-known trademark. Judging from the good faith indicators, Roda Rollen Indonesia has indeed been honest and has not taken any action to imitate other trademarks. Furthermore, the act of using the ELEKTRIM brand does not aim to harm the interests of others, hence it is appropriate for the Panel of Judges to tag the Roda Rollen Indonesia a Plaintiff in good faith and entitled to the ELEKTRIM trademark.

In case number 892K/Pdt.Sus-HKI/2019, the Panel of Judges decided to overturn the decision of the Commercial Court, with Cassation Petitioner Polo Motorrad UND Sportswear GmbH, and John Andi Wibowo as Appellant for Cassation. Furthermore, they decided that the FLM trademark belonging to the Cassation Applicant is a well-known trademark and needs to be protected. This decision was widely

accepted because during the trial the Appellant was a company domiciled in Germany with more than 84 (eighty-four) branches globally. Therefore, it was concluded that the Cassation Appellant is a well-known trademark owner in good faith. The trademark has not taken any similar action in principle, or in whole with another, as evidenced by the absence of any lawsuit against it either inside or outside Indonesia, despite being used as a partner of the Yamaha cup.

In case number 789K/Pdt.Sus-HKI/2018, the Panel of Judges decided to cancel the Commercial Court decision with the Appellant for Cassation of Intigarmindo Persada, and Agus Salim. The Judges were of the opinion that as a licensee from LOIS Trade Mark Consultores E. Servicos SA, the Cassation Applicant is entitled to legally make and distribute a garment with a trademark in carrying out all legal steps necessary to sue any person that commits action equality in essence, and as a whole by the Cassation Respondent. Although the Cassation Defendant has made and signed a statement not to repeat the actions, the respondent repeatedly falsified the Trademark of the Appellant. This shows that the Cassation Respondent is not a party in good faith for being dishonest, and deliberately falsifying the brand belonging to the Appellant, thereby causing financial losses. Therefore, the action of the Panel of Judges to cancel the decision of the Commercial Court was appropriate.

In case number 897K/Pdt.Sus-HKI/2016, the Panel of Judges decided to cancel the Commercial Court decision and decided with Cassation Petitioner J. Casanova, and Cassation Respondent, Irawan Gunawan. In this case, it was stated that J Casanova was the party entitled to the CASANOVA brand, and the Panel of Judges canceled it because it belonged to the Cassation Respondent which has in essence the wellknown trademark belonging to the Appellant. Furthermore, the Cassation Appellant's trademark and trademark are in the same class. However, those from France had already used and registered their trademark in twelve countries across the world. The Cassation Respondent registered a trademark that has the same substance as those owned by the Cassation Appellant in Indonesia. The main similarity between these two trademarks is evident from the similarity in the sound of the words of the CASANOVA trademark and the trademark owned by the Cassation Appellant. The Cassation Respondent had bad faith because it was dishonest and deliberately imitated the trademark of the Cassation Appellant, in order to confuse the public's perception of the origin of the goods. Therefore, it was right for the Panel of Judges to make their decision after canceling that of the Commercial Court.

In case number 868K/Pdt.Sus-HKI/2019, the Panel of Judges decided to overturn the decision of the Commercial Court, with Cassation Petitioner Teddy Tan, Cassation Respondent Hugo Boss Trade Mark

²⁶ Soerjono Soekanto, 2017, Sosiologi Suatu Pengantar, Rajawali Press: Jakarta, P. 54

Management GmbH & CoKG, owner of the wellknown trademark HUGO BOSS and its variations. In this case, it is stated that the Cassation Defendant is the party entitled to the HUGO BOSS brand and its variations, and the Panel of Judges canceled the HUGO HUGO trademark belonging to the Cassation Appellant which has the same in essence with the well-known trademark. The actions of the Panel of Judges were appropriate because the Cassation Petitioner was not a party with good faith. The word Hugo belongs to the Cassation Respondent and comes from the name of the owner of the company that produces HUGO BOSS and its variations. The appeal of the Appellant for using the HUGO HUGO trademark is in the dishonest class. The Cassation Appellant's action to deliberately produce goods that have a trademark similar to the Cassation Respondent's also aimed at obtaining financial benefits. As result, from the well-known trademark cases that have been submitted, it shown that the lack of indicators of good faith resulted in deciding the case, the Commercial Court of Central Jakarta decided based on the subjective of the judge.

5. CONCLUSION

The essence of good faith in well-known trademark dispute resolution is to protect well-known trademark owners who are honest, rational, and have tried to find a trademark's existence. Therefore, their trademark has no essential or overall similarity with other parties to minimize losses. The well-known trademark cases that have been submitted showed that the lack of indicators of good faith resulted in deciding the case. The Commercial Court of Central Jakarta decided based on the subjective of the judge. For this reason, the problem of disputes becomes complicated and complicated can arise when court decisions are inconsistent.

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