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# PROCEEDINGS

**2018 International Conference on  
Applied Science and Technology  
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**APPLIED INTELLIGENCE TECHNOLOGY FOR SUPPORTING 4.0  
INDUSTRIAL REVOLUTION AND ITS IMPACT ON  
SUSTAINABLE SOCIAL AND ECONOMIC DEVELOPMENT**



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# ANALYSIS OF LEGAL PROTECTION ON THE RIGHT TO INTELLECTUAL PROPERTY IN INDONESIA

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Abstract - Lack of knowledge of the Indonesian people especially the owners of Intellectual Property Rights for certainty and legal protection of Intellectual Property Rights because in practice the brand holders often experience obstacles, including among others limited information to the public about trademark registration, and limited human resources both from brand inspectors, as well as law enforcement officers. In order to provide certainty and legal protection Indonesia as a member of the WTO has ratified the agreement on TRIP's (Trade-Related Aspects of Intellectual Property Rights) which specifically regulates matters relating to Intellectual Property Rights. In addition the government along with the House of Representatives the Republic of Indonesia, considers it necessary to optimize the Trademark Law No. 15 of 2001 because there are provisions that must be adjusted to the TRIP's Agreement. The method used in data collection, namely through literature studies, articles both print and electronic media, brand laws, and government regulations, which relate to legal protection, against previous brand holders. The results of the study show that in providing legal protection to brand holders it can be done by optimizing the implementation of the Brand Law No. 15 of 2001 enhancing the

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ability of brand inspectors, law enforcement officers in understanding the protection of intellectual property rights, especially brand holders, the use of information technology about brands, cancellation of trademark registration on the basis of bad faith by the Directorate General of Intellectual Property Rights the refusal of the extension of legal protection against brands that have been registered without rights in bad faith.

Keywords: Certainty, Protection, Law, Brands, and Intellectual Property Rights

## INTRODUCTION

### 1.1. Background

Along with the era of the WTO (World Trade Organization) and Indonesia as a member of the WTO has ratified the agreement on TRIP's (Trade Relations Aspects of Intellectual Property Right) which specifically regulates matters relating to Intellectual Property Rights, the legal protection of Intellectual Property Rights is very necessary. Legal protection in Indonesia is highly expected by the business community nationally and internationally, to uphold the principles that have been included in the TRIP's agreement and in the international conventions of Paris, London, Stocholm for the creation of free competition and

healthy free trade in the globalization era recently. The era of globalization of economic development has become increasingly rapid because the relations between nations are interdependent and patterns of trade are not bound to country boundaries. Entrepreneurs who own brands, and services compete with each other to get the widest access to international markets. Brands as one form of intellectual work, are used to distinguish goods or similar services, produced by other companies. In the regulation of Intellectual Property Rights in Indonesia is the worst in Asia, both in violation of law, and in the quality of the protection law on intellectual property rights. In our society there is a tendency to be oriented towards popular brands. However, the purchasing power of Indonesian people is low, causing them to prefer goods or services that are cheaper, even though they know that the brands on the goods or services are fake, and the quality is not good. Such conditions, increasingly provide opportunities for naughty entrepreneurs, to register famous brands belonging to other people, especially popular brands. That, caused the original owner of the brand, felt aggrieved because his intellectual property rights were violated, and indirectly reduced the sales turnover of goods or services. On the other hand, people are also disadvantaged because they have used brands with unreal quality. Such a situation, it is feared that it will have a negative impact, reluctantly outside investors enter Indonesia, because they do not get a guarantee that the brands of their products will get adequate legal protection. On the grounds that brand forgery is increasingly happening in the market, legal protection for brands requires a more stringent handling.

## **1.2. Formulation of the problem**

Based on the above background, the following problem can be formulated:

What is legal protection for brand holders to uphold their rights, is sufficient

How is the legal strength in implementing legal protection for brands based on regulations and legislation in Indonesia

## **1.3. Research purposes**

To find out the meaning, and forms of infringement of intellectual property rights and legal protection efforts against brand holders based on brand legislation in Indonesia.

## **2. RESEARCH METHOD**

The research method used in this study is literature study. Research carried out by searching and collecting data in the form of: books, articles, both from newspapers and from electronic media, Decree of the Minister of Justice of the Republic of Indonesia No. 02-HC.01 of 1981, which was renewed by the Decree of the Minister of Justice of the Republic of Indonesia No. M. 03-HC.02.01 of 1991, Brand Law No. 21 of 1961, UUM No. 19 of 1992, Brand Law No. 14 of 1997, Brand Law No. 15 of 2001, Concernation, Law No. 7 of 1994 concerning the ratification of the Agreement on the Establishment of the World Trade Organization, PP. 23 of 1993, the Criminal Code, the Civil Code. This aims to get a clear picture about legal protection of brand owners from brand violations in Indonesia that occur at this time.

## **DISCUSSION**

### **3.1. Intellectual Property Rights**

Intellectual Property Rights are rights relating to wealth which are born from human intellectual abilities in the form of discoveries in the fields of technology,

science, art, and literature, must be protected by law. Therefore, the ownership of Intellectual Property Rights as an intellectual asset that has economic value, must be revised its legal documentation, namely, with registration to the designated agency. In Indonesia are the Directorate General of Intellectual Property Rights Ministry of Justice and Human Rights of the Republic of Indonesia. Consideration of letter (b), which is contained in Law No. 7 of 1994 concerning the ratification of the Agreement Establishing The World Trade Organization is an umbrella for the protection of intellectual property rights, and gives hope, in order to improve Indonesia's competitiveness in the economic field, especially in international trade. Full consideration of letter (b) is as follows: "Whereas in the implementation of national development especially in the economic field, efforts are needed to, among others, continue to improve, expand, strengthen and secure markets for all products, both goods and services including investment aspects and intellectual property rights related to trade, as well as improving competitiveness, especially in international trade. For this reason the government and the House of Representatives continue to conduct studies and consider it necessary to replace Law No. 19 of 1992 concerning brands as amended by Act No. 14 of 1997 concerning amendments to Act No. 19 of 1992 concerning brands by stipulating UU\_undang Merk No. 15 of 2001 concerning brands, because there are provisions that must be adjusted to the TRIPs Agreement and or adapted to other international agreements such as the Paris, London and Stockholm Conventions.

### 3.2. Criminal Law Provisions

Legal protection efforts, against original brands other than with claims for brand violations, can be handled through criminal law provisions. Handling through

criminal law provisions, regulated in article 90-95 of the Brand Law No. 15 of 2001, which essentially covers six types of brand criminal acts, namely:

Use the same brand in its entirety with a registered trademark owned by another party for goods and / or similar services produced and / or traded, subject to imprisonment of a maximum of 5 (five) years, and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

Using the same brand in essence with a registered brand belonging to another party for similar goods and / or services, which are produced and / or traded shall be punished with a maximum imprisonment of 4 (four) years and a maximum fine of Rp. 800,000,000.00 (eight hundred million rupiah).

Using the same sign in its entirety with the geographical indication of the other party for the same item or similar to the registered item shall be punished with a maximum imprisonment of 5 (five) years and or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

Using the same sign, in essence with the geographical indication of another party, for the same item, or similar to the registered item, shall be punished with a maximum imprisonment of 4 (four) years, and or a maximum fine of Rp. 800,000,000.00 (eight hundred million rupiah).

Using a protected sign based on the indication of origin in the goods or services so that it can deceive or mislead the public about the origin of the goods or the origin of the service shall be punished with a maximum of 4 (four) years and or a maximum fine of Rp. 800,000,000.00 (eight hundred million rupiah).

Trading goods and / or services that are

known, or it should be known that the goods and / or services are the result of a violation (letter a-e), shall be punished with a maximum imprisonment of 1 (one) year, or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah).

### **3.3. Legal Protection Based on Applicable Laws**

Brand owners, in addition to being burdened with obligations, also have rights protected by law. To realize the existence of rights and obligations in real terms, law enforcement is required by law enforcement officials. Factors that can hinder the implementation of law enforcement against the right holders of the original brand. These factors are.

Limited information to the public (consumers) on request brand registration.

Difficulties from the holder of the rights to the original brand, to find the offender of the brand.

Constraints on funding problems

The brand appeal commission has not been effective

Internal weaknesses because of the limited ability of the Directorate General of Marks both socio-economically and intellectually so that the brands registered. Then with the registered brand, registration can be accepted.

Provisions for refusal to apply for registration of trademarks for goods and / or services that are not similar if they have a real equality in principle or all of them with well-known brands belonging to other parties which in the Brands law will be further stipulated by Government Regulation, in fact until now the Government Regulation does not yet exist.

Knowledge and understanding of law

enforcement officials regarding legal protection for holders of rights to foreign brands is still inadequate.

The existence of a lawsuit from the original brand holder in some cases will worsen the reputation of the product because it is considered a product that is in trouble, which in turn will reduce sales turnover of the product.

### **3.4. Efforts to Protect Brand Holders**

Protection of well-known brands in

Indonesia is a consequence of the approval of TRIPs (Trade Related Aspects of Intellectual Property Right) which are part of the agreement on the establishment of the WTO (World Trade Organization) world trade organization, one of the Uruguay negotiations. Original brand protection is based on the consideration that the imitation of genuine brands belonging to other parties is basically based on bad faith. In order to provide more certainty, and legal protection to the original brand holder, the following efforts are needed:

#### **3.4.1. Preventive Efforts**

Preventive is an effort that leads to preventive actions, in order to minimize opportunities for brand violations. This effort is emphasized in the supervision of brand use, protection of the exclusive rights of holders of original brand rights, and recommendations to brand owners, to register their trademarks so that their rights are protected. Especially with the original brand, the right holder gets special treatment, to apply for a trademark registration, by using priority rights that must be submitted within a maximum period of 6 (six) months, from the date of receipt of the first brand registration application received by another country, which is member of the Paris Convention for the Protection of Industrial Property or a member of the Agreement Establishing the World Trade Organization.

With the stipulation of the Trademark Law No. 15 of 2001, is expected to provide more legal protection for holders of rights to original brands. Actually there is no obligation for someone, to register the mark he has. However, if the brand owned by him has been registered with the Directorate of Trademark, he will get legal protection. An application for registration of a mark will be accepted if the registration has fulfilled the requirements both formality and substantive that have been determined by the Trademark Law. In connection with this, Article 5 of the Brand Law stipulates that the mark cannot be registered, if the mark contains one of the following elements:

- Contrary to the prevailing laws and regulations, religious morality, morality or public order;
- Does not have distinguishing power;
- Has become public property; or
- Is a statement, or relating to the goods, or services requested for registration.

In addition Article 6 paragraph (1) letter b adds that: "The application must be rejected by the Directorate General if the mark has similarities principally or the whole with a well-known brand owned by another party for similar goods and / or services. These provisions can also be applied for goods and / or services that are not the same ". In addition there are exceptions for well-known brands, namely that they can file a lawsuit for cancellation of the brand even though they are not yet registered with the Directorate General. Determination that the brand, a well-known brand is carried out by taking into account the general knowledge of the community, regarding the brand in the business field concerned. Elucidation of article 6 paragraph (1) letter b of the Brand Law No. 15 of 2001, adding that it was also noted the reputation of well-known brands, which

were obtained because of intense promotions, and massive investments in several countries in the world carried out by their owners and accompanied by proof of registration of these brands in several countries.

### **3.4.2. Repressive efforts**

Repressive efforts are efforts made to resolve, or overcome an event, or an event that has occurred. This repressive legal protection is given if there has been a violation of the right to the mark. That means, the role of the judiciary, and other law enforcement officials, such as the police, civil servants, and prosecutors are very necessary. Actually, since the Brand Law No. 19 of 1992 which was renewed with the Brand Law No. 14 of 1997, has been regulated about the protection of genuine brands. It's just that the implementation of law enforcement is not optimal, causing there are still many original brands whose rights are violated by local entrepreneurs who register, and or use the original brand for goods that are not similar in bad faith. For this reason, the government then stipulates the Brand Law No. 15 of 2001, which is expected to provide more legal certainty for original brand holders.

The Supreme Court is of the opinion that: First, the protection referred to in the Trademark Law No. 21 of 1961 can be repressive, that is, after the brand has obtained a register number, and it is announced in the Supplement State Gazette, as well as in a preventive manner, namely the registration has been granted, but has not been announced in the Supplement State Gazette. Although it has been announced in the State News Supplement the publication is often late, so that in this case the lawsuit is considered to be within a period of time. Second, in order to protect the Indonesian consumer community against mistakes, as if the

Indonesian brand originated from the same factory, with original foreign brands, it is recommended that Indonesian citizens who produce Indonesian-made goods can use brands that clearly show identity. nationally in Indonesia, and to the extent possible avoid using similar brands, or the same as the original brand.

#### 4. CONCLUSION

Brand violation is an act that is done intentionally, and without the right to use the mark, or the same sign in essence, or in its entirety with the brand, geographical indication, or indication of the origin of the other party, trading, and or service of the result of the violation. While forms of brand violation are registration without rights, registration without rights accompanied by usage, and use without rights.

Brand arrangement through the Brand Law No. 15 of 2001 actually has enough legal protection for brand holders to uphold their rights. However, it cannot be applied optimally. This is inseparable from the condition of the people in Indonesia who are still unable to understand the system of protection of Intellectual Property Rights, especially regarding the original brand.

Law enforcement in the implementation of legal protection for the original brand holders, experiences obstacles, including limited information to the public, about the application for trademark registration, difficulties in finding brand violators, and limited capacity both in terms of information and human resources, both from the examiner brand, as well as law enforcement officers. Based on the laws and regulations in Indonesia, the provision of legal protection is carried out by: penegak hukum.

Optimizing the implementation of the Brand Law No. 15 of 2001.

Enhance the ability of brand inspectors and law enforcement officers to understand the protection of intellectual property rights, especially the original brands.

Utilization of information technology about the original brand.  
Cancellation of trademark registration on the basis of bad faith by the Directorate General of Copyright, Patents and Trademarks.

Rejection of the extension of legal protection against brands that have been registered without matter in bad faith.

#### B. Suggestion

To provide more legal protection to the original brand holder, a harmonious collaboration is needed, between the government and the appropriate legislation, the brand inspector apparatus (Director General of Intellectual Property Rights), law enforcement officers, the general public with information on brand violations, and employers who will use a particular brand for its product. Dissemination of understanding, regarding the importance of legal protection for holders of genuine brands in the smooth development, especially Indonesia as part of the international community, still requires foreign investors to invest in Indonesia. This will improve the image that certainty, and law enforcement in Indonesia have gone well. In other words, in Indonesia there is a guarantee of legal certainty that regulates, and at the same time provides sanctions for perpetrators of brand violations, especially the original brands.

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