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Protection of Intellectual Property Rights of Brands in Business Competition

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ABSTRACT

One of the rules that can control economic development is the regulation in the field of IPR regarding Trademarks. The establishment of regulations regarding IPR is also to prevent unfair business competition because in the development of the economy in Indonesia, the goods and services sector no longer has restrictions for other countries to enter. The preparation of this research was carried out using a normative legal research method with a library approach and sourced from secondary data. From the results of the research, it can be seen that the form of implementation of IPR protection for Trademarks is by issuing Law No. 20/2016 concerning Trademarks and Geographical Indications where the law guarantees legal certainty and protection for Trademarks, which can be through civil or criminal lawsuits, thus the legal certainty and protection obtained from the law will greatly guarantee the legitimate brand owner from unfair business competition that causes losses.

Keywords : Intellectual Property Rights; Brand; Competition; Business

INTRODUCTION

Economic development creates competition increasingly varied, a company, whether a legal entity or not, is very helpful for a country's economy, in today's economic development, in companies, the term for those who own a company is generally called an entrepreneur, an entrepreneur who wants his business or company to grow and progress does everything possible to continue to develop his company or business, so that it can cause unhealthy competition, this unhealthy competition cannot be done in business competition that must comply with applicable regulations, for example, unhealthy business competition is market domination or monopoly and dominant position. So the economy should be controlled through legal regulations, so that it remains in accordance with the ideals of Indonesian development. [1]Because it is related to regulating healthy business competition in Indonesia.

[1]AA Ngurah Bagus Bayu Prasetia, I Nyoman Putu Budiartha, Ni Made Puspa Sutari Ujianti Faculty of Law, Warmadewa University. (2020). Legal Protection of Famous Trademarks Related to Unfair Business Competition . *Journal of Legal Construction*. 1, No. 1, September 2020 Pg. 13-18.

Recently, with the strengthening of the flow of globalization developments in all sectors, including the trade of goods and services. This sector is considered to have no boundaries for countries, so the rules in the field of Intellectual Property Rights regarding Trademarks must be met legally and these legal regulations can run properly, because Indonesia has become part of the World Trade Organization (WTO) on November 2, 1994 based on Law No. 7 of 1994 concerning the Establishment of the ratification of the Global/World Trade Organization, in which there is an Attachment to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS agreement). The purpose of the TRIPS Agreement is to obtain protection IPR and the flow to enforce rights to avoid unfair trade. The TRIPs Agreement regulates norms that should apply internationally regarding IPR and IPR objects in a broad scope, namely copyright and related rights , trademarks, geographical indications, industrial designs, patents, integrated circuit layout designs, trade secrets, prohibitions on unfair competition practices and licensing agreements. [2]Intellectual Property Rights are a broad understanding of certain rights then obtained for the achievements obtained as a result of human intellectual activity and become an indication used in business activities, this is recorded in rights that have a form and have a value.

As previously mentioned, one of the broad objects of IPR is a trademark. Current regulations regarding trademarks in Indonesia are contained in Law No. 20 of 2016 concerning Trademarks and Geographical Indications. Before the 2016 Law was enacted, there was a previously applicable law, namely Law No. 15 of 2001, where the old law... replaced with a new law because in the consideration of Law No. 20 of 2016, letter c states that Law No. 15 of 2001 concerning Trademarks still has shortcomings and cannot accommodate the development of community needs in the field of Trademarks and Geographical Indications and does not sufficiently guarantee the protection of local and national economic potential so it needs to be replaced. Therefore, the current law on trademarks is Law No. 20 of 2016.

In The aforementioned law explains brands in general, as well as specifically those referred to as Trademarks, Service Marks, and Collective Marks, all of which have their own definitions. Article 1, number 1, defines brands in general, Article 1, number 2, explains trademarks [3], Article 1, paragraph 3, explains service marks [4], and the definition of collective marks is found in Article 1, number 4.

Despite existing regulations regarding trademarks, many still violate them due to dishonesty among entrepreneurs in competition. Losses and bankruptcy are the reasons entrepreneurs act outside the law. These entrepreneurs consistently violate applicable laws. The most common violation of trademark law is the imitation of well-known brands with a market share. These entrepreneurs will create products that are

[2]See Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) (1994). See Article II.2 of the WTO Agreement.
[3]Article 1 number 2 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications.
[4]Article 1 number 3 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications

so similar to the original that people will prefer their products because they are usually sold at a more affordable price .[5]

However, in essence, in terms of business competition, taking a brand from another company is actually part of competition or business rivalry, meaning that a Trademark violation is actually if there is no IPR that regulates it, then it should be legal in terms of brand competition in Indonesia, however, the application of the Trademark Law which is a regulation of IPR, then this is considered a violation and can be detrimental to the company whose trademark is taken, thus giving rise to unhealthy competition efforts because it is detrimental to the company whose trademark is taken, even though this is indeed part of competition if there are no regulations regarding IPR.

Based on the description explained above, the author found something that will be analyzed for the formulation of the problem, namely regarding how to implement legal protection for trademarks in Indonesia based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

RESEARCH METHODS

To determine the research method, normative legal research is applied to support the success of the research conducted. Normative Legal Research is the process of researching and examining law as norms, rules, legal principles, legal doctrines, legal theories, and other literature to answer the legal problems being studied [6]. The approach to the normative legal writing method is literature whose data is sourced from secondary data.

RESULTS AND DISCUSSION

Forms of Implementation of Trademark Legal Protection According to Law Number 20 of 2016

Legal protection with preventive and repressive efforts comes from unpleasant behavior and securing from arbitrary officials who do not obey the law at all. This is formed and applies in Indonesia, where officials are obliged to protect in order to create an orderly, comfortable and peaceful atmosphere for entrepreneurs and the public/consumers who use the related brand of goods that are intended to be used and can enjoy the goods that have been purchased by the public. [7]Regarding the brand that many people already know, the protection of the brand is preventive and repressive legal protection. The Trademark Law protects well-known trademarks, whose trademark applications will be rejected if the brand is basically or at all similar

[5]Ni Made Ratih Prameswari, I Nyoman Putu Budiartha, and Desak Gde Dwi Arini. (2021). Violations of Trademark Rights in Relation to Unfair Business Competition in Indonesia. *Journal of Legal Analogy* , Volume 3, Number 3, 2021. CC-BY-SA 4.0 License. Pp. 277-281.

[6]Dr. Muhaimin, SH., M.Hum, Legal Research Methods, Mataram University Press, Mataram, 2020, p. 48

[7].A. Ngurah Bagus Bayu Prasetia, I Nyoman Putu Budiartha, Ni Made Puspa Sutari Ujianti Faculty of Law, Warmadewa University. (2020). Legal Protection of Famous Trademarks Related to Unfair Business Competition . *Journal of Legal Construction* | ISSN: XXXX | E-ISSN: XXXX Vol. 1, No. 1, September 2020 Pg. 13-18.

to a well-known trademark for similar goods and/or services. [8]Preventive efforts in the 2016 Trademark Law are regulated in Article 21 paragraphs (1) and (2) which in essence this preventive effort is carried out by rejecting trademark applications that have similarities in principle or in whole with registered brands, but in paragraph (2) it is excluded if permission has been obtained from the rightful and authorized party. [9]Therefore, in carrying out these preventive efforts, we must look comprehensively at what parts cannot be listed as the same as other registered or well-known brands and the Directorate General of Property Rights (DJKI) of the Ministry of Law and Human Rights should reject any trademark application that violates the provisions of the article as a form of preventive effort.

Furthermore, if there is a trademark violation, it is regulated in Article 83 of the 2016 Trademark Law, which states in paragraph (1) that the registered trademark owner is able to file a lawsuit against another party who uses his trademark without the right, the lawsuit can include a lawsuit for compensation and the cessation of all actions related to the use of the trademark. **[10]**Then, in addition to a civil lawsuit, the registered trademark owner can report it to law enforcement officials, namely the police, to be made a criminal act, because in the 2016 Trademark Law, legal remedies are provided from the law to go through criminal channels, this is indicated by the existence of criminal provisions contained in the 2016 Trademark Law. Explained in Article 100 of Law No. 20 of 2016. The stipulation of criminal provisions in this law means that there are other legal remedies besides what has been mentioned in Article 83, namely entering into criminal law. The criminal provisions in this law are contained in Articles 100 to 103.

Rejection of this trademark registration is included in the efforts to provide preventive protection for well-known brands, which must take into account the existence of bad intentions, meaning that those who are not the owners of the trademark intentionally, with bad intentions, will take advantage of the fame and promotion of another person's famous trademark for free.

Repressive protection occurs when there is a violation of trademark rights. Registered trademark owners must receive protection against violations of the rights inherent in their trademarks, either in the form of claims for compensation (and claims for cancellation of trademark registration) or in accordance with criminal law action through authorized law enforcement agencies, namely the police.[11]

Even though there are already regulations regarding this brand, but in reality there are still many in business competition that always disputes regarding brands, however, if this trademark has been registered first and has received legal protection and certainty, then competitors should not force to take a trademark that is similar to

[8]Ni Ketut Supasti Dharmawan et al., 2016, Textbook of Intellectual Property Rights, Deepublish, Yogyakarta, p. 58.
[9]Article 21 paragraph (1), (2) of Law No. 20 of 2016 concerning Trademarks and Geographical Indications.
[10]Article 83 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications.
[11]Putu Eka Krisna Sanjaya, Dewa Gde Rudy. Legal Protection of Famous Trademark Rights in Indonesia. Business Law Department, Faculty of Law, Udayana University. Pages 1-12

the one that has been registered, because if it results in harm to a particular company that has registered its brand, legal action can be taken as explained, namely suing with a civil suit where the defendant must compensate civilly but not only civil, but legal action of criminal reporting or summons can still be done because it is protected by law and guaranteed by the Law, however, you still have to be careful in suing or reporting whether civil or criminal, because the proof in the trial will later produce concrete evidence and trial facts.

Examples of Dispute Cases in Trademark Protection Efforts Based on Commercial Court Decisions

This trademark dispute case has a Commercial Court decision in Surabaya, namely regarding the Ms Glow cosmetic trademark with Ps Glow or can be seen in the trademark dispute decision Number 2 / Pdt.Sus.HKI / Merek / 2022 / PN.Niaga Sby. This dispute began when Ms Glow in Medan issued a warning to Ps Glow, because they did not accept it and tended to defame PS Glow and PS Glow felt harmed by the warning and the police report made by the owner of MS Glow, Ms. SHANDY where the PLAINTIFF who had been intensively advertising the PS GLOW and PSTORE GLOW brands at that time could not sell the product because of a criminal investigation report, then the party from Ps Glow made a lawsuit to the Commercial Court, from Ms Glow itself made a summons because of the trademark problem which was similar to the trademark from Ms Glow, was harmed then it is clear that in preventive measures, namely the rejection of the trademark registration from PS Glow if there is already another brand that is the same and in the same category according to article 21 of Law No. 20 of 2016 [12], this can be proven on the date of registration of the Ms Glow Trademark with Ps Glow, namely Ms Glow registered its trademark first on August 8, 2018 while Ps Glow January 31, 2022 so it is very reasonable if the PLAINTIFF is the one who should be suspected of being the party using the trademark without rights.

So looking at the law, PS Glow should be said to have copied the trademark of MS Glow because there the difference is only in the phrase "PS" and the phrase "MS" where the similarity is in the phrase "Glow" should indeed look at Article 83 of the MIG Law, Ms Glow has the right to file a lawsuit for compensation against Ps Glow and can win the lawsuit, but from Ms Glow's side, she took more criminal action, namely a summons and reporting to the police, however, there are trial facts that it turns out that MS Glow in its trademark registration was registered with the name Ms Glow / For Cantik Skincare so that the plaintiff or PS Glow here succeeded in proving that its trademark is not the same as the MS Glow trademark. This is proven by the MS Glow trademark certificate number IDM000633038 registered with the Directorate General of Intellectual Property where the trademark name of Ms Glow is Ms Glow / For Cantik Skincare, not only Ms Glow, meaning that what is protected by law is the trademark name Ms Glow / For Cantik Skincare, so it is proven here that Ps Glow did

[12]Article 21 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications.

not take action using the trademark without rights, but Ms Glow was found guilty by the judge. committed an act of using the Trademark without authorization and must compensate Ps Glow for losses amounting to 37 billion rupiah.

Looking at this case, it can be proven that the process of protecting IPR regarding this brand must be detailed and thorough in registering a brand so that there are no small gaps that can be exploited by business competitors, because brand protection efforts really protect the rights as the owner of a registered legal brand.

Ammar's decision in the Surabaya Commercial Court can be concluded that in the exception the judge rejected the defendants' exceptions in their entirety but granted the plaintiff's lawsuit in part and stated that the plaintiff had the exclusive right to use the Trademark. “Ps Glow” and Brand “Ps Store Glow” registered by the Directorate General of Intellectual Property of the Ministry of Law and Human Rights for class 3 (three) cosmetic goods/services. The Judge’s opinion stated that the defendants had unlawfully and illegally used the “Ms Glow” trademark which has similarities in principle with the “Ps Glow” trademark and the “Ps Store Glow” trademark used by the plaintiff for the type of class 3 (three) cosmetic goods/services that have been registered with the Directorate General of Intellectual Property of the Ministry of Law and Human Rights. Then the judge in his decision sentenced the defendants to jointly bear the burden of paying compensation to the plaintiff in the amount of Rp. 37,990,726,332 in cash and did not grant the plaintiff’s claim other than and beyond.[13]

CONCLUSION AND SUGGESTIONS

Conclusion

Intellectual Property Rights are broadly defined as certain rights obtained from the achievements obtained as a result of human intellectual activity and become an indication used in business activities, this is recorded in rights that have a form and have a valuable number . Intellectual Property Rights are useful for controlling economic competition in the era of rapid economic development and globalization, both internationally and especially nationally. In efforts to protect innovation, the scope of IPR protection is seen in IPR objects in a broad scope, namely copyright and related rights, brands, geographical indications, industrial designs, patents; integrated circuit layout designs, trade secrets and prohibitions on unfair competition practices and licensing agreements. Brands have always been a problem that causes disputes, because many ideas are simply copied from brands that already have a name to gain illegal profits, so in Indonesia itself there are legal regulations that regulate these brands, regulated in Law No. 20 of 2016 concerning Brands and Geographical Indications, there is also an understanding of Brands. This brand is divided into types in Law No. 20 of 2016 states that brands do not only regulate brands in general, but there are brands according to their definitions, there are trademarks, service marks and collective marks. Legal protection efforts against trademark violations in business competition include preventive and repressive efforts, these preventive efforts are

[13]Ammar of the Surabaya Commercial Court Decision Number 2/Pdt.Sus.HKI/Merek/2022/PN.Niaga Sby.

carried out to first avoid trademark disputes because these preventive efforts are preventive efforts carried out to avoid repressive efforts, an example of this preventive effort is stated in Law No. 20 of 2016, namely the regulation is in article 21 paragraph (2) where if submitting a trademark application then the trademark resembles the name or abbreviation of a famous person's name, photo or name of a legal entity owned by another person except with the written consent of the entitled party, is an imitation or resembles the name or abbreviation of a name, flag, symbol or symbol or emblem of a country, or national or international institution, except with the written consent of the authorized party and is an imitation or resembles an official sign or stamp or seal used by the state or government institution, except with the written consent of the authorized party then if it is exactly as mentioned the application will be rejected. Repressive efforts are the last resort undertaken, where these repressive efforts are a legal action that can be in the form of a civil or criminal lawsuit, because this law is protected by civil and criminal scope. In civil efforts if a party feels that they are not benefited because their trademark has been registered, used to obtain profits that can be said to be not small by people who do not have the right to use the trademark, then they can file a lawsuit for compensation and sue to stop all activities that are related to the use of the trademark in question in accordance with Article 83 of Law No. 20 of 2016, while in criminal efforts can be carried out in accordance with Articles 100-103 in criminal provisions.

An example of a trademark dispute case that has recently been widely discussed regarding the Trademark dispute that occurred between Ms Glow and Ps Glow, the dispute has received a court decision, namely the Commercial Court decision number 2 / Pdt.Sus.HKI / Merek / 2022 / PN.Niaga Sby, where in this case it is very interesting, because MS Glow, who had registered its trademark first in 2018, was proven to have no right to use the trademark from PS Glow which was only registered in 2022 and had to pay losses from PS Glow amounting to 37 billion Rupiah. In the facts of the trial, it was revealed that in fact in the registered trademark registration certificate Ms Glow with number IDM000633038 used the name Ms Glow / For Cantik Skincare and not only Ms Glow, then the legal protection is only on the certificate, namely MS GLOW / FOR CANTIK SKINCARE, because in the use of a trademark, only part of the brand name cannot be used, in this case it cannot be MS Glow alone because the trademark that has been patented is Ms Glow/For Cantik Skincare, then with these considerations and evidence, Ms Glow was declared in the Commercial Court decision to have no right and to be unlawful in using the trademark "Ms GLOW" which has similarities with the trademark "Ps GLOW" and the trademark "Pstore Glow".

Suggestion

A special law should be formed to regulate Intellectual Property Rights, considering that until now there have been no separate regulations regarding IPR, so the rules for intellectual property protection still has to be divided into copyright law, patent law and industrial law MIG, which in its regulations only specifically regulates matters that are appropriate with the law alone, it does not regulate IPR in general,

where in the development The economy in Indonesia and even the world, should be created and regulated specifically regarding Intellectual Property Rights, even though institutionally there are already institutions that handle it. Intellectual property registration, but there is still no specific law governing it. This is certainly necessary so that the implementation of legal regulations can simultaneously protect 3 the scope of intellectual property, namely brands, patents and copyrights, this is done so that business competition in the economy or business in Indonesia can be more controlled and not go out from the ideals of the Indonesian nation, even though normatively each of these laws has protect things that really need to be protected and adapt to the legal needs of society However, special regulations regarding IPR are still needed by combining the three regulations. regarding brands, patents and copyrights.

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