



The Urgency of Legal Protection for Trademark Licensees in Indonesia

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Abstract

Protection for trademark license holders covers all types of goods and services so that all forms of imitation of other people's trademarks are based on "bad faith" to gain profit by piggybacking on the fame of another person's brand. To avoid dishonest practices and provide legal protection to brand owners or licensees, the state regulates mark protection in Law Number 20 of 2016 concerning Marks and Geographical Indications. The importance of a rule to provide a sense of security for trademark holders to develop their business through their brand. Trademark infringement can be concluded through imitation of trademarks (having similarities in principle with other brands) and counterfeiting of trademarks (having similarities in its entirety with another trademark). Law Number 20 of 2016 concerning Trademarks and Geographical Indications provides a way of resolving a trademark dispute through civil law or criminal law where a claim or complaint can be filed by the holder of a trademark license who feels aggrieved over the existence of another trademark that is perceived to resemble his own. The purpose of this research is to find out how legal protection is for trademark license holders in Indonesia and to analyze and find the urgency of legal protection for trademark license holders. By using normative juridical research methods to examine the laws and regulations governing trademark rights and licenses. The statutory regulation approach is an approach that is quite important because the licensing of trademark rights where there are legal issues in it is regulated in the applicable laws and regulations.

Keywords: *Brand License; Brand Rights; Legal Protection*

Introduction

Mark is a part of IPR which is within the scope of assets in civil law. According to Elisabeth Nurhaini Butarbutar: "Intellectual property rights are rights that arise from the ability to think or process thoughts that produce a product or process that is useful to humans. IPR is generally related to the protection of the application of ideas and information that has commercial value (Marwiyah, 2010). Brand as a part of intellectual property rights is very important, especially in maintaining fair business competition. Therefore, the issue of marks needs to be regulated in a law that specifically regulates marks (Roisah, 2015). Regulations regarding marks in Indonesia are regulated in a legal product, namely Law Number 20 of 2016 concerning Marks and Geographical Indications. The importance of a rule is made primarily to provide a sense of security or protect the rights holder of a trademark license. Where with the

existence of a rule, brand holders feel freer to use their brand because they feel that there is protection for the brand they own.

Trademark as Intellectual Property Rights (IPR) is a sign to identify the origin of goods and services from one company with another company's goods and/or services. The brand is the spearhead of trade in goods and services. Through the brand, entrepreneurs can guarantee the quality of goods and services and prevent unfair competition from other entrepreneurs. Licenses are often found in various business sectors in Indonesia, this is reflected in the brands of products, both goods and/or services originating from abroad, which are made, sold, and/or distributed in Indonesia by Indonesian business entities and/or legal entities. Of course, such business practices cannot be abandoned due to the existence of goods and/or service mark licenses from foreign brand rights holders to companies in Indonesia. The granting of a license by the holder of trademark rights to the licensee to utilize his goods and/or service mark, in business practice is outlined in the agreement between the licensor and the licensee based on the laws and regulations in force in Indonesia (Noor, 2018).

In addition to a license agreement, Article 42 paragraph (3) of the Trademark Law also requires the license agreement to be recorded on the general register of marks of the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia. Such registration is intended to create legal consequences for third parties, which means that if there is another party without rights to use the trademark and/or service of the licensor's mark, the licensee has the legal standing to defend the use of the said mark. The granting of a license by the holder of the rights to a certain mark reflects that the rights to the mark have economic value, therefore the holder of the rights to the mark must try to maintain the existence of the rights to the mark. To maintain the existence of the rights to the mark, the holder of the right to the mark often applies for the cancellation of the right to the mark registered by other business actors, which, if it has the overall or principal resemblance to the mark he owns, with the conditions as stipulated in Article 77 of the Trademark Law which regulates (Chandrika, 2019):

- (1) A lawsuit for cancellation of mark registration can only be filed within a period of 5 (five) years from the date of Mark registration.
- (2) A lawsuit for cancellation can be filed indefinitely if there is an element of bad faith and/or the mark in question is contrary to state ideology, laws and regulations, morality, religion, decency, and public order.

The absence of legal protection for licensees in the event of cancellation of trademark rights in the Trademark Law results in the problem of a legal vacuum to provide justice for licensees. Therefore it is necessary to conduct legal research to obtain answers that can provide justice to these problems. According to Philipus M. Hadjon and Tatiek Sri Djamati: "*Rechtvinding* is needed because of the concept of open norms (open texture) and *vague norms*." As for the *rechtvinding* activities according to Peter Mahmud Marzuki: "... law formation (*rechtvorming*), analogy (*rechtsanalogie*), legal refinement (*rechtsverfijning*), or interpretation (*interpretatie*)." To contribute to the world of law, especially business law in Indonesia, research is needed on this issue (Sulasno, 2019).

Research Methods

The type of research used in this research is money research that leads to normative law (Soekanto & Mamudji, 2015). Using primary and secondary legal materials and tertiary legal materials as supporting materials. In connection with the type of research used, normative legal research (Marzuki, 2008), several approaches to the problem will be used in this study, as follows: The statutory approach, the conceptual approach, the philosophical approach, the comparative approach, and the case approach are all examples. These five approaches are carried out to solve problems that occur in connection with

the nature of the mark, the legal ratio of cancellation of trademark rights, and the legal consequences of trademark cancellation for licensees so that in the future business actors, especially in Indonesia, can use their trademark rights as one of the supporting pillars of a successful business as he did.

Results and Discussion

One of the IPRs that is often encountered in the trading world, both in Indonesia and throughout the world, is a mark. According to Achmad Zen Umar Purba (Purba, 2002): unlike copyrights and patents, people pay less attention to the basis of a brand's existence. Maybe because the brand has been considered to be effectively used by business actors. However, there are at least three reasons why there is a brand institution. First, as a reward for investment. Second, is very useful information, namely helping consumers, because if there is no brand, consumers will inspect the goods they are going to buy. In one case, a court in England argued that the essential function of a brand is to provide consumers or end users: a guarantee of identity of the origin of the marked product by enabling them to distinguish, without any possible confusion, that product from others of different provenance. In another case, the court stated that trademarks were able to achieve their goals because "they act as guarantees to the consumer. . . ." Third, ethical justification, namely not using other people's brands.

The concept of legal protection against the right to license a brand refers to the special nature of trademark rights (exclusive). This special right is a monopoly which means that the right can only be exercised by the holder of a trademark license. Without the permission of the licensor or a brand, others can not use the brand. If any party uses the special rights without permission from the brand license holder, then a violation has occurred subject to a certain penalty. Repressive legal protection is carried out by imposing legal sanctions, both civil and criminal against anyone who commits an offense to the right to license a brand that registered trademark licensee legal protection for rights violations brand in the form of a lawsuit for compensation or stop all activities related to the use of a registered mark or based on criminal prosecution through law enforcement officers law (Amalia et al., 2019).

According to Suyud Margono (Margono, 2012), legal protection for brands is legal protection against unfair competition which is an illegal act in the field of trade. Overall, the interests to be protected by trademark law are:

1. The Interests of the Brand Owner

Protection of brand exclusive rights will benefit brand owners by protecting all investments that have been made by producers in developing the goodwill of a brand. Protecting the goodwill of a brand will encourage brand owners to invest in associating a brand with reputation and identity towards the presence of a brand in the market. The value of a brand depends on the ability of the brand owner to maintain consistent product quality and to transmit a signal of trust to consumers in their products. Protecting the goodwill of a brand also supports the creation of healthy competition among products on the market. A new business actor trying to enter the market for goods and/or services must create a brand that is known by the public. These new business actors can inform consumers about their products to compete with old business actors to meet consumer demand. This information can be conveyed and remembered by consumers by using a sign that has a differentiating power, namely a brand. In short, when a brand is guaranteed legal protection, goodwill, and competition will also be protected.

2. The Interests of the Producers

Legal protection of marks guarantees manufacturers to freely market their goods using common signs that can be used by anyone, and which should not be monopolized by anyone so as not to undermine their freedom to sell their goods in fair competition and legitimate.

3. Interests of Consumers

Legal protection for brands guarantees consumers be protected against practices that tend to create impressions that can mislead and deceive or confuse brands. This is motivated by the fact that consumers base the quality and characteristics of a product on a brand and therefore contribute to creating fair business competition.

4. Public Interest

The legal protection of trademarks aims to promote fair trade in markets, as well as to prevent dishonest practices from arising, and are also contrary to the norms of decency in trade.

Article 35 Law Number 20 2016 concerning Brands and Indications Geographical mentions "Registered mark receive legal protection for a period ten (10) years from the date acceptance and duration of that protection can be extended". It can be analyzed that Current Trademark Law provides brand protection registered in the General Register of Marks as referred to in Article 35 of Law Brand, namely for ten (10) years ever. The period of protection can be extended again by filing a protection extension application against the same brand. There is a gift legal sanctions are part of the effort providing legal protection for owners valid brand.

There are several benefits of protection brands, namely (Jened, 2016):

1. Brands can generate income for the company through licensing, selling, and commercialization of that brand protected;
2. Brands can increase the value or assurance in the eyes of investors and institutions finance;
3. In the sale or merger of assets brand can increase the value company significantly;
4. Brands improve performance and competitiveness/competitiveness;
5. With trademark registration helps protect and enforcement of their rights.

Civil law protection is also given to brand holders legitimate. If the trademark rights have been held, then according to the Indonesian brand legal system, the parties of the brand holder will get legal protection. That means when trademark rights are infringed, the holder brand can file a lawsuit against other parties who violate the rights over the brand. This lawsuit is intended to get compensation and termination for all related actions used by the mark. The lawsuit was filed at the Commercial Court.

The license from the holder of the rights to the mark as the licensor to another party as the licensee must be included in a written agreement with terms and conditions that have been agreed upon by the licensor and the licensee and by the laws and regulations in force in Indonesia, one of which is that the license agreement must be registered with the Minister of Law and Human Rights of the Republic of Indonesia, as according to Achmad Zen Umar Purba's opinion: "The state can determine the terms of the licensor and the transfer of trademarks, but a mandatory license is not justified." (Dian Sawitri & Supasti Dharmawan, 2021)

Conclusion

The nature of legal protection is a means to achieve legal objectives, namely justice, legal certainty, and legal benefits, both in the realm of private law and public law, and can be formed internally or externally in a preventive or repressive manner to protect the rights of certain legal subjects. Legal protection for licensees in the realm of license agreements can only be given to licensees in good faith. Legal protection for a licensee who has good intentions, but the trademark owned by the licensor is canceled based on similarities in principle or in whole with another party's registered mark, the licensee

retains the right to carry out the license agreement until the expiration of the license agreement period, provided that the recipient the license is obliged to carry out royalty payments to the trademark owner that is not canceled, but if the trademark owned by the licensor is canceled based on reasons other than the similarity in principle or its entirety with another party's registered mark, the legal protection for the licensee in good faith is a compensation claim. to the licensor whose trademark has been canceled. Arrangements for legal protection for licensees cannot be immediately born based on an agreement between the licensor and the licensee in a license agreement, but rather requires the intervention of the State in making arrangements for legal protection for licensees when the rights to the trademark belonging to the licensor are canceled.

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