

LEGAL PROBLEMS AND THE CONCEPT OF DIGITAL BRAND PROTECTION IN INDONESIA

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ABSTRACT

Research on legal protection for well-known brands in Indonesia aims to determine the legal protection for digital brands based on positive law in Indonesia with an element of equality in essence. Digital brands have an exclusive nature, but there are still many violations that happen to them such as imitation, pillion and things that make the brand owner lose. In this study using a normative juridical method. This research has the advantage of discussing more specifically about digital brand regulation in Indonesia on the basis of legal problems and the concept of digital brand protection in Indonesia. The results of the study are that legal protection for digital brands is currently regulated to the extent of brand criteria, prohibition of taking actions that contain elements of similarities in principle with well-known brands and repressive efforts in the form of the right to report to the court owned by the brand, this is stated in Law no. 20 of 2016 concerning Brands and Geographical Indications, Permenkumham No. 67 of 2016 which regulates trademark registration, as well as Supreme Court Jurisprudence No. 022/HKI/2012. The form of responsibility from the government is to carry out court decisions, provide legal counseling and can be punished according to the provisions of the Criminal Code.

Keywords: Legal Protection, Protection Concept, Digital Brand

A. INTRODUCTION

In Indonesia, the phenomenon of trademark problems that have been recognized by law and the courts occurs a lot, this is because it is easy to find various types of products that are freely sold in the market, ranging from traditional markets, small shops and even those selling on the roadside using vehicles. Personally, more sadly, the product being traded is a product with a well-known brand or brand. These goods are usually traded at a price that is skewed from the original price, even this price sometimes differs very much from the normal price of a well-known brand that has been recognized by the state, but many consumers do not know how to distinguish the goods or products that are has been recognized by the state as genuine or imitation, not even a small amount of bad faith from consumers in the form of deliberately buying counterfeit goods, for them of course they are certainly very interested in buying goods at low prices even though they are buying counterfeit goods.

There is already an element of violation for well-known brands very clearly, this is marked by the production/trading of counterfeit products (KW) to consumers, violations that are rampantly occurring are included in the element of fundamental equality if we refer to law number 20 of 2016 concerning Brand and Geographical Indication (MIG). The certainty of legal protection for trademarks is a must, on the grounds that there is legal certainty for the holders of these marks which are already known to the wider public (famous), in

order to provide exclusive rights and provide a sense of security to the owners of these trademark rights in accordance with the *principle of legal certainty* in Indonesia.

Well-known marks, whether digital or not, have exclusive properties/exclusive rights that they get based on several requirements in the Trademark Law (UU MIG) and the Minister of Law and Human Rights concerning trademark registration; this must be protected through written positive laws. The MIG Law has explained that "every new mark that wishes to register it with the state may not have fundamental similarities to a well-known mark that has been recognized by the state", so if there is an indication of equality in the application for registration of a mark, the new mark must be immediately rejected considering the elements fundamental resemblance especially to well-known brands.

The very important role of the brand as the spearhead of consumer assessment of an item or service offered, results in the brand being obliged to be protected. The basic norm of trademark protection is that no one party has the right to offer goods or services (as if they belonged to them) to the public if it has become the property of someone else's rights. The role of the government is very important in overcoming the act of dishonest competition from other entrepreneurs who have bad intentions, in other words committing a violation of reputation support or what is called passing off. Passing off is an act or action taken by a person or legal entity to carry out an act that leads to unfair competition in gaining profits through shortcuts by all means, or in other words causing a violation of business ethics, moral norms, and in the field of wealth. Intellectual property, in this case is trademark law. The regulation of passing off must receive serious attention by the government because the act of passing off is very detrimental to business actors or the legal owner of the mark.

The passing off doctrine not only provides protection to the holder of the right to the mark from the support of a good reputation, but also provides protection to the public so that there is no public misleading (mistake in choosing products by the public). If there is a public misunderstanding, it is the people who become victims of losses because there is a misunderstanding of a product that causes differences in the quality of the goods and services that will be obtained or in other words the quality of the goods or services obtained is not guaranteed. This is of course detrimental to both parties, namely the consumers themselves and the legal holders of the rights to the brand.

The regulation regarding Passing Off is regulated in Article 21 paragraph (1) of Law Number 20 of 2016 concerning Marks and Geographical Indications. Article 21 paragraph (1) of the Law on Marks and Geographical Indications regulates the rejection of applications for trademark registration for marks which have similarities in principle or in general with registered or well-known marks for similar products. This article does not explain clear boundaries regarding the form of the equation in principle or in its entirety, which in the future can lead to public misleading that can harm the brand holder or the consumer.

If a public misleading occurs, the brand holder will be harmed by the loss of consumer confidence in the quality of the goods and services traded and consumers will become reluctant to buy and or use goods or services with the brand. From the consumer's point of view, they will be disappointed with the quality of goods or services that are received

inappropriately. Thus, the position of the original brand holder and the consumer are both disadvantaged in the event of a passing off. That's why I'm interested in researching clear boundaries regarding passing off. Because even though there are implicit arrangements regarding the Passing Off criteria in the Trademark and Geographical Indications Law, the regulations are still very abstract.

There is no clear limit regarding the regulation of Passing Off in Article 21 paragraph (1) of Law Number 20 of 2016 concerning Marks and Geographical Indications, which only mentions prohibiting the registration of marks that have similarities in principle or in whole and must be rejected, but in fact there are many problems in the case of a mark can be registered and the trademark property rights registered by the Directorate General of Intellectual Property, even though the mark is for goods of the same class. Of course, the absence of clear boundaries regarding the passing off can lead to public misleading which can harm the brand holder or the consumers themselves.

Based on the problems described above, this research will explain digital brand protection which is very important in the business world. Brands are closely related to the world of trade, both in the form of trade in goods and services. The function of a brand in the world of trade is so that consumers can distinguish the results of a particular product from other products for similar goods or services. A brand is an identification of a product or company product that is sold in the market. The function of the brand develops in line with national and international economic developments.

B. RESEARCH METHOD

This research method uses normative juridical research, namely trying to synchronize the applicable legal provisions in legal protection against other legal norms or regulations with their relation to the application of these legal regulations. Normative juridical research is library law research conducted by examining library materials or secondary data. The research approach used is descriptive-analytical, namely by describing the applicable laws and regulations associated with legal theories and the practice of implementing positive laws related to problems. To get legal protection for the brand. Mark registration is carried out at the Directorate General of Intellectual Property Rights. Directorate General of Intellectual Property Rights by fulfilling the procedures specified in the Mark Law.

C. RESULTS AND DISCUSSION

A brand is the result of intellectual property in which there are thoughts, energy, time, and funds spent on promoting the brand, so that it is known by the public. Brands have economic value for producers. For producers, brands are not only meant to differentiate their products from other similar companies' products, but also to build a company's image, especially in marketing. Inside the brand there is a company image of the quality of the goods or services produced, so that the brand is the spearhead of the assessment by the public of the image of the company and the goods or services produced. For this reason, trademarks need to be protected, namely through trademark registration, and registered trademarks are given exclusive rights to use their marks in the production and

marketing of goods or services, and prohibit other parties from using their marks, and if there is a violation of the mark, a lawsuit can be filed or demands.

Public mistakes in choosing a product (public misleading) often occur. Because the brand is almost the same for two similar goods or services. A brand that has similarities in principle or in its entirety with other brands in bad faith (piggyback), is a form of fraud in trade. Passing off a reputation is a fraudulent act with the bad faith of a person or entrepreneur, to ride a new product by stealing a name with a brand owned by another party that is already well known and trusted among the public.

Pilgrimage to reputation or known as passing off is an act that is very detrimental to the brand owner. Brand owners have sacrificed time, effort, thought and money to create and build a good brand image in society, with various efforts and promotions. After successfully building a good image in the community, a brand will become famous and provide benefits for the brand owner, on the other hand a well-known brand provides an opportunity for other parties to commit fraudulent acts by simulating the brand with a well-known brand first. With the intention that buyers are deceived and think that the product is from the same party, giving rise to public misleading.

Passing off is an action that tries to get an advantage by taking shortcuts and is done by all means to violate business ethics, moral norms, and the law. This action is carried out by "piggybacking" the name of a brand that has a good reputation and is carried out in the absence of goodwill. There are three elements in the act of passing off, namely the first element is having a good business reputation in the eyes of the public owned by business actors and also the business is well known by the public. In the second passing off element, namely the existence of misrepresentation, in this case the recognition of the brand owned by the business actor, then if there are other business actors supporting the same brand, the public will be easily deceived (public misleading) or confusion (confusion) in selecting the desired product.

Furthermore, the third passing off element is the existence of losses that arise as a result of an act of piggybacking or piggybacking carried out by entrepreneurs who, in bad faith, use a brand that is similar to or similar to a known brand, which can lead to mistakes in choosing products by the public (public misleading).) which can harm brand owners (business actors) as well as consumers. Consumers who experience errors in choosing a product will be disappointed because they get a quality that does not match the product they usually buy. Of course this is detrimental to the brand owner because it reduces the good reputation of the brand that has been built with many things that have been sacrificed.

The legal basis for regulating passing offs in Indonesia currently has no laws and regulations that specifically regulate passing off, in the Trademark Law and Geographical Indications No. 20 of 2016 in Article 21 paragraph (1) only regulates applications for trademark registration against a mark that has similarities in principle or in its entirety to a registered or well-known mark for similar products must be rejected, and in Article 21 paragraph (3) the application must be rejected if it is submitted by an applicant with bad intentions. The terminology of equality is basically regulated in Article 15 paragraph (1) of TRIPs, i.e. any sign or any combination of signs, which can distinguish the goods or

services of one company from that of another, can become a trademark. These marks can be words including personal names, letters, numbers, figurative elements and combinations of colors, the combination of these signs can become trademarks if approved in the trademark registration. The signs that are made must be able to directly distinguish other similar goods or services. Trademark registrants must be able to register their mark in accordance with the criteria in trademark registration, namely that the registered mark has clearly visible signs that have distinguishing features.

The equality assessment is basically contained in Article 17 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 67 of 2016 concerning Mark Registration, which is carried out by taking into account the similarities of the dominant elements that exist between one brand and another, which gives the impression of similarities, both in form and form. , the way of placement, the way of writing or a combination of elements, sounds of speech, contained in the brand.

1. Legal Protection for Consumers and Trademark Rights Holders Brand

protection is provided not only aimed at protecting owners of rights to registered and well-known marks, but also aims to protect the public as consumers, so that they are not confused and do not choose the wrong product due to the existence of two similar brands circulating in the market, which The purpose of brand protection from passing off acts is to ensure to consumers that the goods purchased come from the company that owns the brand, to guarantee the quality of the goods, so that consumers do not get low-quality goods. Consumers who are protected from passing off acts of fraudulent business actors also indirectly protect registered brand holders, because if consumers are protected from passing off acts, they will always believe in the products issued by registered trademark holders, because there is a guarantee of the quality of goods or services. Brands that are already familiar among consumers are certainly more trusted. Because the brand is an important assessment of a product for consumers.

Consumers believe that the quality of goods will be guaranteed, if they buy goods with brands that are well known and widely known in the community. The role of the brand is so important, so that many business actors who are new to the business world, commit fraudulent acts of piggybacking on a reputation with a brand that is already well-known and has a good image in the community, is carried out by simulating the brand, packaging, so that the impression arises that the brand is branded. It's the same as the famous brand.

This can lead to public mistakes in choosing products. If the consumer has chosen and purchased the wrong product due to the brand and packaging that is similar to a well-known brand, the consumer can complain to;

1. Consumers complain where they buy, it can be in stores, retailers for goods or services, to ask for a refund or replacement of goods.
2. Consumers can go directly to the producer (product maker), to report the distributor and ask for a replacement of goods or a refund, for example for electronics they can go to the PT, or to the importer if there is no company in Indonesia.

3. If business actors do not get a positive response, consumers can make complaints to the National Consumer Protection Agency (BPKN) and LPKSM (Non-Governmental Consumer Protection Institutions), one of which is YLKI. Because the task of LPKSM in Article 44 paragraph (3) of the Consumer Protection Law is to disseminate information in the context of increasing awareness of the rights and obligations and prudence of consumers in consuming goods and/or services; provide advice to consumers who need it; cooperate with relevant agencies in an effort to realize consumer protection; assisting consumers in fighting for their rights, including receiving complaints on consumer complaints and conducting joint supervision with the government and the public on the implementation of consumer protection.
4. Make a complaint to BPSK (Consumer Dispute Settlement Agency) which is at level II or Province.
5. Can make a complaint to the Directorate of Consumer Protection and Trade.
6. If all the complaint steps do not produce results, the last step is to prosecute to the District Court.

Protection and law enforcement of Intellectual Property Rights aims to encourage innovation, transfer and dissemination of technology and obtain mutual benefits between the producer and use of knowledge, create social and economic welfare as well as balance between rights and obligations.⁸⁹ Trademark rights are part of the recognized Intellectual Property Rights. In Indonesia and should be protected for every right holder who has been legally registered. Legal protection must be given to registered trademark rights holders to ensure the creation of the State's responsibility to protect each of its citizens.

The description of the legal objectives also illustrates the existence of legal protection for holders of registered trademark rights after going through the process of applying for trademark rights registration, starting from applications, examinations, announcements, to receiving a trademark rights certificate so that the rights to a person's trademark are contained in the General Register of Marks as part of the trademark rights of the law itself. Therefore, to accommodate the creation of the legal objectives referred to in the protection of rights to trademarks, the government establishes laws and regulations in the form of Law Number 20 of 2016 concerning Marks and Geographical Indications.

Furthermore, the purpose of legal protection for registered trademark rights holders can be seen from Jeremy Bentham's description in understanding the purpose of the law. Jeremy Bentham, with his utility theory, argues that the law aims solely for the benefit of the people. This opinion is focused on things that are useful for the people and are general in nature without paying attention to the issue of justice. This theory posits that the purpose of law is to provide as much benefit as possible. If the eight views above are synthesized, then the objectives of the law are:

1. Protection of public interest.
2. Regulate and create order in society in a peaceful and just manner.
3. Achieve justice for society.
4. Provide maximum benefit to society.

On that basis to achieve the above legal objectives, the law must offer something more than just procedural justice, the law must be competent and fair, thus the law is able to recognize the wishes of the community/public and have a commitment to achieving substantive justice. If it is related to the protection of rights to trademarks, the legal objectives even include the interests of both the interests of the state, the interests of the community (buyers of branded goods) and the interests of legally registered trademark rights holders. Exclusive and absolute.

Intellectual property rights (especially trademark rights) are exclusive and absolute, meaning that these rights can be defended against anyone and those who have these rights can sue for violations committed by anyone. Holders of intellectual property rights also have monopoly rights, namely rights that can be used by prohibiting anyone without their consent from making their inventions/inventions or using them. Previously, in Article 28 of Law Number 15 of 2001, legal protection was provided, namely "Registered marks receive legal protection for a period of 10 (ten) years from the Filing Date and the period of protection can be extended". However, this law does not explain how long and how long it can be extended. Therefore, the government formed a new law to accommodate further legal protection of trademark rights, namely in Article 35 of Law 20 of 2016 concerning Marks and Geographical Indications, which states:

1. A registered mark is protected by law for a period of 10 (ten) years from the Filing Date.
2. The period of protection as referred to in paragraph (1) may be extended for the same period of time.
3. The application for extension as referred to in paragraph (2) is submitted electronically or non-electronically in the Indonesian language by the Mark owner or his Proxy within 6 [six] months prior to the expiration of the protection period for the registered Mark with a fee.
4. (2) The application for extension as referred to in paragraph (2) may still be submitted within a maximum period of 6 (six) months after the expiration of the protection period for the registered Mark, subject to fees and fines equal to the cost of the extension.

Through reforms in terms of legal protection for holders of registered trademark rights, it implies the importance of ensuring that the legal protection of trademark rights holders is applied properly, so that the purpose of the law is truly created. This is also closely related to the study of legal protection theory which accommodates the interests of each person who should be protected in accordance with the existing constitutional provisions.

Ownership of intellectual property rights such as trademark rights is part of the responsibility of the State to protect it from other parties who do not have good intentions to take over trademark rights belonging to others.

The concept of ownership of Intellectual Property Rights (including legal protection) including brand rights originating from Europe is different from the concept of intellectual creativity ownership which is based on the thinking of most Indonesian people. Indonesian civilization since centuries ago has known very monumental works of art such as the Borobudur temple, Prambanan, dances, folklore originating from various ethnic groups in Indonesia and the wealth of knowledge about medicines from biological sources, genetic resources) or in Java as knowledge about herbal medicine (a popular term now herbal medicine) is no longer in doubt. The creativity is by the artists or their characters and by the inventor of the knowledge not intended to be monopolized or claimed to be private property.

Indigenous Indonesians generally do not recognize abstract concepts, including the concept of intellectual property rights, Indonesian indigenous peoples never imagine that intellectual creation is property. The Indonesian people's perspective on material things is concrete. Indonesians do not know about material things like the concept of *zakelijke rechten* and *persoonlijke rechten* that Westerners have. Customary law only recognizes the product (*in perse*) produced by the creator and the creator may only claim ownership of the product of his creation and *adat* does not allow the creator to claim the intellectual idea (IPR) which is the basis for making the product because IPR is not real or concrete.

Cosmology of Indonesian society placing an individual is not separated from the environment that surrounds him, society, nature and even supernatural powers. Fritjof Capra calls it the view of the mystical tradition. *Adat* does not recognize monopoly ownership because individuals and everything they own are an inseparable part of the environment that surrounds them. This results in an individual being responsible for the use and/or exploitation of his property rights to society, nature and the supernatural forces that surround him. The background can explain why during the Dutch colonial period the monopoly right on intellectual works was not well known in Indonesian society. Because intellectual works are not only needed by the individual owner but also the community where the owner of the work lives.

This is different from the moral doctrine adopted by the IPR regime with exclusive ownership to provide protection for individual IPR owners so that their rights are not violated by others. So it is clear that IPR protection adopts the idea of promoting individual rights or in other words IPR protection adopts an individualist notion. This understanding accepts that someone has a strong personal value, if you want to say absolute, a person or individual is believed to have an intrinsic moral value. Based on this belief, individual understanding encourages one's autonomy in thinking and acting. As a consequence, self-exclusivity as an individual (individual privacy) has a place and is recognized as important. A person is completely autonomous because he is detached from a specific relationship with the person. The goals to be achieved are centered on self-development. Its exclusive ownership can bring consequences for the owner of the Intellectual Property Rights to exploit the economic benefits of his work or findings as much as possible without

interference from other parties during the protection period and the limitation is only as long as it does not harm others.

Protection of intellectual property rights (including trademark rights) is an economic development tool. A country whose IPR protection system is running well, then its economic growth will be good too. Judging from the various theories above, it is possible that a good IPR system will become a tool for the economic development of a country. A good IPR system must be supported by several things, including:

1. Granting Independence to the Intellectual Property Rights Office to independently and professionally manage its IPR finances and policies.
2. Law enforcement in the field of IPR, in developing countries, must start from the education process about the importance of IPR itself. Only after education about IPR is carried out will law enforcement in the field of IPR run as well.
3. Awareness and understanding of IPR must be applied at the level of universities, companies, and research institutions.

In essence, it can be explained that the purpose of legal protection for holders of registered trademark rights is to basically guarantee the creation of existing legal objectives in Indonesia, including protecting the interests of the State, the community and individually registered trademark rights holders, furthermore to regulate and create an orderly trading activity relating to trademark rights, to achieve justice for the community and trademark rights holders, and to accommodate the rights and obligations of registered trademark rights holders. The protection of trademark rights is carried out through Mark Registration. Protection of brand rights is intended or aims to protect ownership of a brand, investment and goodwill (good name) in a brand, and to protect consumers from confusion regarding the origin of a product or service.

Furthermore, apart from the purpose of registering trademark rights, there is also a function of registering trademark rights. However, before that, it is necessary to know the function of the existence of the trademark rights. According to Endang Purwaningsih, a brand is used by producers or brand owners to protect their products, either in the form of services or other merchandise, according to him a brand has the following functions:

1. Differentiating function, which is to differentiate one product from another company's product;
2. The function of reputation assurance is that apart from being a sign of the origin of the product, it also personally links the reputation of the branded product with the manufacturer, as well as providing quality assurance for the product;
3. Promotion function, namely the brand is also used as a means to introduce and maintain the reputation of the old traded product, as well as to dominate the market;

4. The function of stimulating investment and industrial growth is that brands can support industrial growth through investment, both foreign and domestic, in the face of free market mechanisms.

The function of the brand can be seen from the point of view of producers, traders and consumers. From the producer's point of view, brands are used to guarantee the value of their products, especially regarding quality, then their use. From the trader's side, brands are used to promote their merchandise in order to find and expand the market, from the consumer side, brands are used to make a choice of goods to be purchased. Having a slightly different view, according to Imam Sjahputra, the function of a brand is as follows:

1. As a distinguishing mark (identifier);
2. Protecting the consumer community;
3. Protect and secure the interests of producers;
4. Giving prestige because of reputation;
5. Quality assurance.

After knowing the function of the mark itself, in the end it is necessary to know the function of the mark registration process itself so that finally the legitimate registered mark holder gets his trademark rights certificate and is registered in the General Register of Marks. Based on the various descriptions above, including the study of the purpose of the mark registration, it is also related to the principle of good faith inherent in the Trademark Law, therefore the functions of trademark registration are as follows:

1. As evidence of ownership of the rights to the registered mark;
2. As a basis for rejection of a mark that is the same in its entirety or is the same in principle that another person is applying for registration for similar goods/services;
3. As a basis to prevent others from using the same mark in its entirety or the same in principle in circulation for similar goods/services.

2. Problem of Sanctions for Brand Equity

A trademark has the ability to act as a sign that can distinguish the results of one company from another in the market, both for similar and dissimilar goods/services. The function of a brand is not only to distinguish a product from other products, but also to function as an invaluable company asset, especially for well-known brands. A brand can cause unfair business competition because through a brand of similar goods or services, it can be distinguished from its origin, quality and guarantee that a product is Original. Through a brand, a company has built a character for its products, which is expected to be able to form an increased business reputation for using the brand.

The efforts of brand owners to prevent the use of their marks by other parties are very important and should be protected by law. With regard to trademark protection, trade will not develop if the mark does not receive adequate legal protection in a country. Piracy or brand violations are certainly not only detrimental to the entrepreneurs as the owners or

holders of rights to the brand, but also to consumers. The imposition of sanctions for perpetrators of trademark registration who do not have good intentions due to similarities in trademarks is a form of legal protection for legitimate trademark rights holders. Through the provision of sanctions in accordance with these laws and regulations to the perpetrators of violations, it is hoped that it can cause a deterrent effect to the perpetrators so that they do not commit the act of violating the trademark rights again. Trademark rights are one of the intellectual property rights that must be protected, because they are related to industrial business aspects that result in economic development, both to business actors who own and sell their brands and to countries that receive economic turnover from the sale of the branded goods.

One aspect of business law that needs attention is what is called intellectual property right. Because intellectual property rights (HMI) are closely related to other legal aspects such as technological aspects or economic and artistic aspects. Even some time ago an Italian model designer (related to Trademark Rights) named Pierre Cardin, came to Indonesia to ask the Indonesian government to pay more attention to someone's work, not to piracy of his work "at will" (illegally/unlawfully). This shows that in the last decade, intellectual property rights continue to be discussed not only in Indonesia, but also other nations and countries that have the same problem. In the context of relations between countries, intellectual property rights have become one of the issues that continue to attract the attention of business circles. It is known that intellectual property rights arise or are born because of someone's intellect as the core or object of regulation. Therefore, the understanding of this right is basically an understanding of the rights to property that arise or are born from human intellectuality (especially the brand rights made by a company).

Many works are born or produced by humans through their intellectual abilities, either through creativity, taste or intention. Legal protection of the results of human intellectuality, such as in the fields of technology, science, art, literature, and others, needs to be taken seriously. Because this human work has been produced with a sacrifice of energy, thought, time, and even no small cost. Such sacrifices certainly make the work produced have a value that should be appreciated. Coupled with the benefits that can be enjoyed from an economic point of view, such works of course have a high economic value (such as brand rights). With the concept of thinking as above, there is an interest to grow and develop a system of legal protection for property (intellectual rights). As a work produced from human intellect, HMI can only be given to its creator or inventor to enjoy or benefit himself for a certain period of time, or give permission to others to do so.

In its history, it must be admitted that the concept of legal protection for HMI is not something that arises in the legal system in Indonesia. This concept was first grown and developed by foreign nations. However, the culture of respect for one's work and one's rights has also become part of the culture in Indonesia, even though such attitudes and cultures used to take root without written laws governing them. Trademark Rights are a group of types of Intellectual Property Rights contained in industrial property rights that have been recognized and must be protected in Indonesia. Indonesia guarantees legal protection for registered trademark rights holders. It is said so because brand rights are classified as industrial property rights because they are related to business activities by

certain parties related to economic value (trademarks). This is in line with what is stated in Article 1 point 2 of Law Number 15 of 2001 concerning Trademark Rights, which states "Trademarks are marks used on goods traded by a person or several persons jointly or by a legal entity to distinguish them from others other similar items."

These groupings are said to be general because such groupings have existed and developed since the beginning, although many people doubt it. Even with the use of works in various commercial industry activities, the boundaries of these groupings have begun to diminish and at the same time diminish the assumptions that underlie them. Giving sanctions to perpetrators of trademark rights violations is one of the values contained in the theory of legal protection which is part of the analysis knife in this study. The theory of legal protection guarantees that the rights and obligations of every legal person/subject are fulfilled, and that legal protection is guaranteed by the state. So that if there is a violation of the rights of the holder of the registered trademark right, then the perpetrator deserves to be given sanctions as a form of legal protection from the state. Based on the theory of legal protection, sanctions are things that are justified and guaranteed by the constitution.

Sanctions for Mark Registration Actors who do not have good intentions due to similarities in trademarks are evidence of the principle of good faith in the legal protection of registered trademark rights holders. This sanction is closely related to the legal certainty to be obtained by a legal subject who has legal/legal rights. In contract law there is a principle that agreements made in good faith bind the makers as statutory. If this is deviated by the court, it means that the court has deviated from something that has been agreed upon by the parties, thereby threatening legal ertainty. Likewise, deviations from the rules made by the authorities making the rules lead to legal uncertainty.

Sanctions are also another word for the legal consequences that are found by someone for violating the law. Legal consequences are all consequences that occur from all legal actions carried out by legal subjects against legal objects or other consequences caused by certain events which the law in question itself has determined or considered as legal consequences. Or the result of an action taken to obtain a result desired by the perpetrator and regulated by law. In short, legal consequences are consequences caused by legal events. Examples of legal consequences, namely:

1. The issuance of a right and obligation.
2. Sentencing.

Legal consequences can be manifested as follows:

1. The birth, change or disappearance of a legal situation.
2. The birth, change or disappearance of a legal relationship, between two or more legal subjects, where the rights and obligations of one party are in conflict with the rights and obligations of the other party.
3. The birth of sanctions if an action is against the law.

The legal consequences also apply to perpetrators of infringement of registered trademark rights. The legal consequences are in the form of sanctions that will be

imposed on the perpetrators and will also result in trademarks that are registered in bad faith and violate the rules. First, the sanction can be in the form of the abolition or cancellation of the rights to the mark of the perpetrator from the General Register of Marks. A registered mark can basically be abolished at the initiative of the Directorate General of Intellectual Property Rights or at the request of the mark owner. The abolition of trademark registration may be filed by a third party in the form of a lawsuit to the Commercial Court. If the mark owner is not satisfied with the abolished mark as mentioned above, the mark owner may file an objection to the Commercial Court, which furthermore, if the mark owner is still dissatisfied with the decision of the Commercial Court, may file an appeal to the Supreme Court.

The deletion of a mark registration will be recorded in the General Register of Marks and announced in the Official Gazette of Marks which will then be notified in writing to the mark owner or his proxies by stating the reasons for the deletion and confirming that as of the date of deletion from the General Register of Marks, the Mark Certificate shall be declared no longer valid. However, in the event that the mark is still bound by a license agreement, the deletion will only be carried out if this is agreed in writing by the licensee. A registered mark can also be canceled with a lawsuit that can only be filed within 5 (five) years from the date of registration of the mark. The lawsuit was filed with the Commercial Court. A lawsuit for cancellation is filed if the mark in question is contrary to religious morality, decency, or public order. Included in the definition of contrary to religious morality, decency, or public order is if the use of the sign may offend the feelings, decency, tranquility, or religion of the general public or certain groups of people.

In the legislation on the abolition of trademark registration, it is regulated in Article 72- Article 75 and the cancellation is in Articles 76 to 79 of Law Number 20 of 2016 concerning Marks and Geographical Indications. Apart from that, sanctions for perpetrators of violations of rights to registered marks may be subject to sanctions for compensation and also termination of all actions related to the use of marks, this is in accordance with the description of Article 83 paragraph (1) of the Trademark Law. The next sanction can be seen from the contents of Article 84 of the Mark Law, which states:

1. As long as it is still under investigation and to prevent further losses, the Mark owner and/or Licensee as the plaintiff may apply to the judge to stop production activities, circulation, from/or trade in goods and/or services using the said Mark without rights.
2. In the event that the defendant is required to hand over the goods using the Mark without rights, the judge may order the delivery of the goods or the value of the goods to be carried out after the court's decision has permanent legal force.

Sanctions in the form of additional penalties can also be given to the perpetrator as a legal consequence of his/her actions that violate/violate the law, this is through the request of the registered mark holder whose rights have been harmed. The additional sanctions can be seen from Article 94 of Law Number 20 of 2016, namely: Based on

sufficient preliminary evidence, the owner of a registered mark whose rights have been impaired may ask a judge of the Commercial Court to issue a provisional decision regarding:

- a. prevention of the entry of goods suspected of being the result of infringement of the Right to Mark into the trade route;
- b. storage of evidence relating to the infringement of the said Mark Rights;
- c. securing and preventing the loss of evidence by violators; and/or
- d. Termination of violations in order to prevent greater losses.

Finally, the sanction that can be accepted for perpetrators of infringement of registered trademark rights is criminal sanctions. In the previous law, this criminal sanction was regulated in Article 90-Article 95. In the new law, criminal sanctions for perpetrators of trademark infringement are intensified, the criminal sanctions can be seen in Article 100 to Article 103 of Law Number 20 Year 2016. In addition, in order to provide more legal protection to registered Mark owners from any Mark infringement committed by other parties, criminal sanctions against such Mark infringement are intensified, especially those that threaten human health, the environment, and can result in death. Considering that the issue of Marks is closely related to economic factors, in this Law the criminal sanctions of fines are increased 114. This is based on the amendment of the Trademark Law to become Law Number 20 of 2016 concerning Marks and Geographical Indications. The weighting of criminal sanctions was also triggered by the increasing number of perpetrators of violating the rights to registered marks.

As previously explained, various kinds of sanctions are given to the perpetrators in addition to guaranteeing legal certainty to the parties who are legal owners / holders of registered trademark rights who use the principle of good faith in their registration. Also in accordance with the applicable rules in the Theory of Legal Protection, because legal protection can only be applied/applied if the legal product made contains sanctions in it to the violators. It is certain that the violators/perpetrators when they want to register the mark do not use the principle of good faith which is actually clearly embedded in the requirements for submitting an application for trademark registration. So with that, should the perpetrator be given various kinds of sanctions, because the ones who are harmed here are not only the legitimate brand rights holders but also consumers who make purchases of goods whose actual brands are not in accordance with what they should be?

In essence, it can be combined with sanctions given to perpetrators of registered trademark violations of various kinds, both sanctions in the form of sanctions for deletion and cancellation, sanctions for compensation and also termination of all actions related to the use of marks, as well as additional sanctions, even criminal sanctions. The criminal sanction against the mark is a complaint offense which is subject to imprisonment or imprisonment and a fine.

D. CONCLUSION

Registration is carried out starting from the application, examination, and announcement, in the end the registrant fulfills the administrative requirements and checks the substance of the mark. The trademark registration system in Indonesia adheres to the first to file system. This system means that the person who registers the mark first gets the right to the mark under the applicable provisions. There are several obstacles faced by digital startup companies. Such as the lack of knowledge and understanding of the importance of protecting IP, the lack of understanding of IP by the organizers and the processing time related to the registration of the trademark or IP. In this case, the government overcomes by making IPR programs as follows: Facilitation of IPR registration, seminars on IPR protection for creative and creative products and socialization of IPR, socialization of royalty management in the music sector, anti-piracy campaign for creative and creative products, technical guidance on the preparation of specifications for patent applications, socialization of the registration system IPR and other technical guidance related to IPR.

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