

Hafid Zakariya

by Hafid Zakariya

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Protection Intellectual Property To Well-Known Marks In Indonesia

Hafid Zakariya*, Amir Junaidi

Faculty of Law, Surakarta Batik Islamic University, Indonesia

Abstract

Indonesia is a country that gives attention to Intellectual property which is incorporated in international organization that specifically handles about Intellectual Property of the organization is WIPO. The research method used by the author is using the Juridical Normative method, where the authors will use secondary data in the form of legislation and also international agreements, legislation in the government of Indonesia is primarily related to the brand law and the rules of executing. The Government of Indonesia has been protecting the well-known brands located in Indonesia. The thing that is done is to adjust the legal rules relating to the Paris Convention and also the TRIPS agreement which is the basis for the countries under WTO. The government also provides a means of resolving the dispute in full with objection, through a

Keywords: Protection; Well-known marks; Indonesia

Introduction

Indonesia is a country that gives attention to Intellectual property which is incorporated in international organization that specifically handle about Intellectual Property of the organization is WIPO. As a form of commitment that Indonesian government adopt Paris Convention on which then ratified by Presidential Decree No.15 Year 1997 as follow up on Presidential Decree the government also signed the TRIPS (Trade Related Aspect of Intellectual Property Rights) Agreement and ratified it through Presidential Decree No.7 year 1997. With the ratification of the above mentioned international rules, Indonesia is obliged to adapt existing legislation to the provisions of that international agreement [1].

Brand is a sign that is used as a differentiator from one product to another product, the product in the form of goods and services, examples of goods products is Coca Cola products where these products can be enjoyed directly da tone goods and forms, product services such as Tailor, or Legal consultant, this Brand or brand is used as a special specification that will allow consumers to remember and to determine the desired product.

Indonesia's rapidly growing appeal to foreign investors to market their products both goods and services, these products are not uncommon are popular brands such as: Bvlgari, Apple, Blackberry, Aqua, Edward, Products Forrer, Lea, Marie Claire, The product has a good reputation in trading in Indonesia and the consumer has known that the product is famous brand.

The Government of Indonesia as the holder of the authority that must provide comfort for the business actor in Indonesia is primarily a brand or a well-known brand must provide maximum assurance that its products circulating in Indonesia is completely protected and there is no deviation of existing brands.

The study of legal protection for a well-known brand in Indonesia will be the authors describe in this article as will be discussed is (1) International Arrangement on the famous brand (2) Indonesian Government policy in protecting the brand in Indonesia.

Research Methods

The research method used by the author is using the Juridical Normative method, where the authors will use secondary data in the form of legislation and also international agreements, legislation in the government of Indonesia is primarily related to the brand law and the

rules of executing [2].

International Arrangement of Well-known Marks

Intellectual Property through the rule of law protects the brand both goods and services by default in the world, inside there is also a famous brand where the brand must be protected, there are three types of intellectual property protection that is: First: Cases relating to well-known brands occur mainly in the world primarily in developing countries, but in developed countries there are also deviations of well-known brands such as piggybacks, counterfeiting, well-known brands must be protected across countries. Secondly: To ensure consumers do not experience confusion over a well-known brand there must be protection from famous brand difutionn. Third: Trademarks that have a higher degree of reputation, recognition or fame are singled out for broader protection by treaties, statutes and case law including, in some instances, protection without use or registration of the mark in the country at issue [3].

Conven Paris

The brand arrangement of both goods and services is well known in Article 6bis of the International Convention to protect intellectual property which in French terms 'konus notoirement' - literally 'famous' or, in better English, 'famous' In carrying out the Paris Convention is very clearly stated in Article 6bis that stated that Member countries agreed "to refuse or invalidate the registration, and to prohibit the use, of a trademark which constitutes a reproduction, imitation or translation, may give rise to confusion, mark considered by the competent authority of the country of registration or use to be well known in that country for being the sign of someone who is entitled to the benefits of this Convention". This provision also applies to similar marks that derive their essential elements from a well-known mark or are "an imitation liable to create confusion". The provision was developed to protect owners of unregistered marks that were widely known in the local marketplace against registration and use by third parties. Many products and services are imitation so as to cause confusion for the consumer then for that in article 6bis to protect the famous brand in the countries of the world.

*Corresponding author: Hafid Zakariya, Faculty of Law, Surakarta Batik Islamic University, Indonesia, Tel: +6282184779295, E-mail: hafidzakariya@gmail.com

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If referred to in Article 6bis the interested parties have a chance at least five years to request the cancellation of third party registration. If any sign of infringement is registered in bad faith, "no time limit is set to request cancellation". Famous signs need not be registered locally for protection against misuse of similar items under Article 6bis. In addition, the Paris Convention does not specify or explain how the mark is known in the country - that is, the convention does not require that the mark be actually used in the country, provided it is known. Therefore, Article 6bis creates a basis for international protection for a well-known brand or service item against the use or registration of identical or similar goods and to a trade mark that is reproduction, imitation.

The setting up of a well-known brand issue other than in article 6bis is also governed in Article 10bis, this Article discusses aspects of unfair competition protection from well-known brands that may not be included in Article 6bis. Under Article 10bis members are bound to effective protection against unhealthy competition". First, competitive action is contrary to honest practice. two competitive acts that are "natural to create confusion ... with the establishment, goods or industrial or commercial activity of competitors" and three "Indications or Accusations...are responsible for misleading the public such as the nature, the manufacturing process, the characteristics, the suitability for the purpose or quality of their goods".

History of TRIPs Agreement

The TRIPs Agreement is an annex of the World Trade Organization (WTO), signed in Marrakesh, Morocco on April 15, 1994, which binds more than 120 countries [4]. The objectives of the TRIPs Agreement are listed in Article 7, namely

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

The main feature of TRIPs Agreement is[5]:

1. In contrast to other closely related issues and its starting point in commodities and its access to markets, the TRIPs Agreement speaks of norms and standards (level or quality of arrangements)
2. In some cases the TRIPs Agreement bases itself on the principle of full compliance to existing Intellectual Property Conventions on conventions and uses them as a minimum basis.
3. Due to its close association with international trade, the TRIPs Agreement contains and emphasizes the high degree of law enforcement and dispute-related mechanisms associated with possible cross-retaliation.

TRIPs Agreement for all countries is the most comprehensive agreement in protecting intellectual property. The arrangements in the TRIPs Agreement are more assertive and detailed in regulating intellectual property in general. TRIPs Agreement has consequences for the signatory countries to ratify and improve their national legal products.

Participation in the TRIPs Agreement requires Indonesia to adjust the national legislation governing Intellectual Property in order to create uniform regularization and protection of Intellectual Property in Indonesia with applicable in other countries [6].

TRIPs Agreement

Article 16 paragraph (3) provides legal protection to a well-known mark for unlawful goods or services used by other producers so that consumers will expect to buy goods under the auspices of a well-known brand. Article 16 paragraph (3) TRIPs Agreement accommodates Article 6bis of the Paris Convention. Article 16 paragraph (3) TRIPs Agreement

Based on Article 16 Paragraph (3) of the TRIPs Agreement, this Article constitutes the extension of legal protection to a well-known brand, governing goods or services which are not similar by basing the impression of a close connection between goods using the brand with the manufacturer, and if the use or registration by others for non-alike goods may harm the owner of a well-known brand. The "confusion of business connection" factor as a consideration for determining whether the same brand with a well-known brand but for a non-similar item maybe rejected or cancelled.

Legal Protection Mark Well Known in Indonesia

The Government of Indonesia in accordance with and in protecting intellectual property rights principally the right to a well-known brand has ratified the World Trade Organization Convention related to the Intellectual Trade Aspects Properties / TRIPs. The ratification effort is realized in Law No. 7 of 1994 on Ratification of Agreement on Establishment of World Trade Organization. The consequence of such ratification is that the Indonesian government and all components of the state are obliged to follow, comply with and exercise the substance of the Convention. The ratification, too, has prompted the Indonesian government to ratify the Paris Convention for the Protection of Industrial Property. Then, Indonesia has been poured into the Decree of the President of Indonesia Number 15 of 1997. The Indonesian government, it becomes an obligation for Indonesia to comply [7].

The obligation of the Indonesian government to comply with WTO decisions is a logical consequence for countries that have become members of the WTO, not only for Indonesia but also other countries that have become members of the WTO.

In order to increase the flow of trade in goods and services in the globalization era, the circulation of goods and services is not limited to one country but there is no state barrier. Especially with the presence of industrial revolution 4.0 is causing the world is not isolated anymore, the existence of the internet as an advocate of industrial revolution makes this technology is needed. World trade with the rise of information technology is causing economic activities and trade in goods and services based on human intellectual. Meanwhile, the trademark is one of human intellectual works. Therefore, trademark rights are human intellectuals that should be provided by legal protection at all. This is to support healthy competition [8].

In order to protect a well-known brand in Indonesia has made laws and regulations of Law No. 20 of 2016 on brands and geographical indications in article 21 which read "Rejected Marks If the Application is rejected if the Mark has any similarity in essence or in its entirety by:

- a. Registered trademarks of other parties or previously requested by other parties for similar goods and /or services;
- b. Other proprietary brands belonging to other parties for similar goods and /or services;
- c. Other proprietary trademarks for non-similar goods and/or services meeting certain requirements;

Owner brand registered intellectual property office, IPR office will

substantive Examination, according to Article 23.

A substantive examination shall be an examination conducted by the Examiner of the Application for registration of Marks.

1. Any objection and/or rebuttal as referred to in Article 16 and Article 17 shall be considered in the substantive examination as referred to in paragraph (1).
2. In the event that there is no objection within 30 (thirty) days since the end of the announcement, a substantive examination of the Application shall be made.
3. In the event that there is an objection within 30 (thirty) days since the date of expiry of the time limit of the submission of disclaimer as referred to in Article 17, a substantive examination of the Application shall be made.
4. The substantive examination as referred to in paragraph (3) and paragraph (4) shall be settled within a period of no more than 150 (one hundred and fifty) Days.
5. Where it is necessary to conduct substantive examinations, Brand Experts may be determined outside the Examiner.
6. The results of a substantive examination conducted by a trademark examiner of a Trademark outside the Examiner as referred to in paragraph (6) shall be deemed to be similar to the result of a substantive examination conducted by the Examiner, with the approval of the Minister.
7. Further provisions concerning Brand examining experts outside the Examiner as referred to in paragraph (6) shall be regulated by a Ministerial Regulation.

Furthermore, the government through the minister of law and ham decides whether the petition of the petitioner can be accepted or rejected, according to Article 24:

If the Examiner decides the Application may be registered, the Minister:

- a. Register the Mark;
- b. Notify the registration of the Mark to the Applicant or its Attorney;
- c. Issuing Brand certificates; and
- d. To announce the registration of such marks in the Official Branding of Marks, electronic or non-electronic.

1. In the event that the Examiner decides the Application cannot be registered or rejected, the Minister shall notify the Applicant or his Attorney in writing by stating the reason.
2. Within 30 (thirty) days since the Submission Date of the notification letter as referred to in paragraph the Applicant or his Attorney may submit his/her response in writing by stating the reason.
3. In the event that the Petitioner or his Proxy does not submit the response as referred to in paragraph (3), the Minister rejects the Application.
4. In the event that the Applicant or his Proxy submits the response as referred to in paragraph
5. (3) and the Examiner decides that the response is acceptable, the Minister shall apply the provisions referred to in paragraph (1).

6. In the event that the Applicant or his Proxy submits the response referred to in paragraph (3) and the Examiner decides that the response is unacceptable, the Minister rejected the Application.
7. Rejection as referred to in paragraph (4) and paragraph (6) shall be notified in writing to the Applicant or his Proxy by stating the reason.
8. In the event of an objection as referred to in Article 16, the Minister shall deliver a copy of the registration or rejection notice to the complainant.

Dispute Resolution: Lawsuit for Brand Breach

Article 83

The owner of a registered Mark and/or a registered Marking licensee may file a lawsuit

against another person who unlawfully uses a Mark that has similarity in essence or in its entirety for similar goods and/or services in the form of:

- a. indemnification; and/or
- b. termination of all acts relating to the use of the Mark.

(2) The lawsuit as referred to in paragraph (1) may also be filed by the owner of a reputed Brand based on a court decision.

(3) The lawsuit as referred to in paragraph (1) shall be filed with the Commercial Court.

Article 84

As long as it is under investigation and to prevent greater losses, the owner of the Marks and/or Licensee as a plaintiff may apply to the judge to stop the production, distribution, and/or trade in goods and/or services using the Marks without rights.

In the event that a defendant is required to deliver goods using the Mark without rights, the judge may order the delivery of goods or the value of the goods to be carried out after the court's decision has a permanent legal force. Procedures of Lawsuit on Commercial Courts.

Article 85

1. A lawsuit as referred to in Article 30 paragraph (3), Article 68 Article 74, and Article 76 shall be filed with the Chairman of the Commercial Court within the jurisdiction of residence or domicile of the defendant.
2. In the event that one party resides outside the territory of the Unitary State of the Republic of Indonesia, the lawsuit shall be filed with the Chairman of the Central Jakarta Commercial Court.
3. The Registrar shall register the lawsuit on the date the lawsuit is filed and the plaintiff shall be given a written receipt signed by the clerk with the same date as the date of registration of the lawsuit.
4. The Clerk shall submit a lawsuit to the Chairman of the Commercial Court within a maximum period of 2 (two) days from the date the lawsuit is filed.
5. Within a maximum period of 3 (three) days from the date of the lawsuit submitted as referred to in paragraph (4), the chairman of the Commercial Court studied the lawsuit and appointed the judge to determine the day of the hearing.

6. The summoning of the parties shall be made by the bailiff at the latest 7 (seven) days after the lawsuit is filed.
7. The hearing until the decision on the lawsuit as referred to in paragraph (1) shall be completed no later than 90 (ninety) days after the case is received by the panel examining the case and may be extended by 30 (thirty) Supreme Court.
8. The decision on the lawsuit as referred to in paragraph (1) which contains the complete legal considerations underlying the decision shall be pronounced in the hearing open to the public.
9. The decision of the Commercial Court as referred to in paragraph (8) shall be delivered by the bailiff to the parties no later than 14 (fourteen) days after the decision on the lawsuit as referred to in paragraph (1) is pronounced

Cassation: Article 87

The decision of the Commercial Court as referred to in Article 85 paragraph (8) can only be filed an appeal.

Article 88

The request for a cassation as referred to in Article 87 shall be filed no later than 14 (fourteen) days after the date on which the appeal is filed or notified to the parties by registering with the court clerk at the Commercial Court who has severed the lawsuit.

1. The Registrar shall register the request for a cassation on the date the application is filed and the applicant shall be given a written receipt signed by the clerk with the same date as the date of receipt of the registration.
2. The Clerk of the Court shall be obligated to notify the appeals of cassation as referred to in paragraph (2) to the party of the appellant of the cassation no later than 7 (seven) days after the request for the cassation is registered.
3. The applicant of the cassation must submit the memorandum of appeal to the clerk within 14 (fourteen) days at the latest from the date the request for a cassation is filed as referred to in paragraph (1).
4. The Clerk of the Court shall be obliged to submit the memorandum of appeal to the appellant of the cassation at the latest 2 (two) days after the cassation memorandum received by the clerk.
5. The Respondent may file a counter appeal to the clerk no later than 14 (fourteen) days after the date on which the appeal receives the cassation memory as referred to in paragraph (5) and the clerk shall submit the counter of appeal to the cassation applicant no later than 7 (seven) days after counter appeal received by the clerks.
6. The Clerk of the Court shall deliver the file of the cassation to the Supreme Court no later than 7 (seven) days after the expiration of the period referred to in paragraph (6).

7. The hearing and verdict, the application for a cassation shall be completed no later than 90 (ninety) days after the date of the request for a cassation received by the Cassation Assembly.
8. The decision on the request for a cassation as referred to in paragraph (8) which contains the complete legal considerations underlying the decision shall be pronounced in a session open to the public.
9. The Registrar of the Supreme Court shall submit the decision of the cassation to the clerk no later than 7 (seven) days after the date of the decision on the request for a cassation.
10. The confiscation clerk shall deliver the decision of the cassation as referred to in paragraph.
11. To the applicant of the cassation and the appellant of the cassation no later than 2 (two) days after the decision of the cassation is received.
12. The judicial review of the decision on appeal as referred to in paragraph (8) shall be conducted in accordance with the provisions of laws and regulations.

Article 89

Against a Commercial Court ruling having a legal force may still be subject to review

Conclusion

The Government of Indonesia has been protecting the well-known brands located in Indonesia. The thing that is done is to adjust the legal rules relating to the Paris Convention and also the TRIPS agreement which is the basis for the countries under WTO. The government also provides a means of resolving the dispute in full with objection, through a lawsuit in a commercial court until a cassation.

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