

Legal Protection of Trademarks That Have Similarities In Principle In The Trademark Registration Process Is Associated with The Principle of Good Faith

Eryanto Pangaftu Yuanda¹, Rilawadi Sahputra², Ariman Sitompul^{3*}

^{1,2,3}Magister Hukum, Universitas Dharmawangsa

ariman.sitompul@dharmawangsa.ac.id*



e-ISSN: 2964-0962

SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum

<https://ejournal.45mataram.or.id/index.php/seikat>

Vol. 3 No. 4 Agustus 2024

Page: 293-302

Available at:

<https://ejournal.45mataram.or.id/index.php/seikat/article/view/1417>

DOI:

<https://doi.org/10.55681/seikat.v3i4.1417>

Article History:

Received: 12-07-2024

Revised: 20-07-2024

Accepted: 21-07-2024

Abstract : *How the legal protection of brands that have similarities in essence on the trademark registration process is associated with the principle of good faith, as well as how the implementation of the provisions of equality in essence on trademark disputes and the consideration of judges in deciding the dispute is associated doctrine of Nearly Resembles (case study Supreme Court Decision No. 606.k / pdt.sus-HKI/2018). Research methods, this type of research is normative, descriptive research, taken from secondary data by processing data from primary legal materials, secondary legal materials and tertiary legal materials. Data collection techniques with library studies / documentation studies. This study uses qualitative analysis. The result of this research is 2. Legal protection is carried out starting from the application, examination, and announcement, in the end the registrant meets the administrative requirements and the examination of the brand substance. Research methods, this type of research is normative, descriptive research, taken from secondary data by processing data from primary legal materials, secondary legal materials and tertiary legal materials. Data collection techniques with library studies / documentation studies. This study uses qualitative analysis. The result of this research is 2. Legal protection is carried out starting from the application, examination, and announcement, in the end the registrant meets the administrative requirements and the examination.*

Keywords : *Intellectual Property Rights; Brands; Business Law*

Abstrak : Bagaimana Perlindungan Hukum terhadap merek yang memiliki persamaan pada pokoknya pada proses pendaftaran merek dikaitkan dengan prinsip Itikad Baik, serta bagaimana Implementasi ketentuan persamaan pada pokoknya terhadap sengketa Merek dan pertimbangan Hakim dalam memutuskan sengketa tersebut dikaitkan dengan doktrin Nearly Resembles (Studi Kasus Putusan MA Nomor 606.k/pdt.sus-HKI/2018). Metode penelitian, jenis penelitian ini ialah normatif, penelitian bersifat deskriptif, yang diambil dari data sekunder dengan mengolah data dari bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Teknik pengumpulan data dengan studi kepustakaan/studi dokumentasi. Penelitian ini menggunakan analisis kualitatif. Hasil Penelitian ini adalah Perlindungan hukum dilakukan mulai dari permohonan, pemeriksaan, dan pengumuman, pada akhirnya pendaftar memenuhi syarat-syarat administratif dan pemeriksaan substansi merek. Kemudian Hak merek yang didaftarkan dicantumkan dalam Daftar Umum Merek serta pemegang hak merek diberikan sertifikat merek sebagai bukti pemegang hak atas merek. Permohonan pendaftaran hak merek tertuang dalam Pasal 4 sampai dengan Pasal 8 Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis. Setelah proses itu semua, pemilik dapat mengalihkan hak merek dan memberikan lisensi kepada pihak lain sesuai Pasal 41 dan Pasal 42 Undang-Undang Merek.

Kata Kunci : Hak Kekayaan Intelektual; Merek; Hukum Bisnis

INTRODUCTION

The advancement of Science and technology influenced by globalization has encouraged humans to create useful works to support and facilitate human daily activities. The work not only creates inner satisfaction but also provides economic value for the creator. In order for the economic value to be enjoyed by the creator, the work must be protected so that the rights owned by someone who makes a copyrighted work are guaranteed. Therefore, the role of Intellectual Property Law becomes very important to ensure the protection of a work to avoid piracy, imitation, and utilization of intellectual property rights without the permission of the actual owner.

Intellectual property rights (hereinafter abbreviated as IPR) are exclusive rights owned by creators or inventors as a result of human intellectual activity. IPR is a way of protecting intellectual property by using legal instruments including copyright, patent, trademark and Geographical Indication, trade secret, Industrial Design, Integrated circuit layout design, and Plant Variety Protection.

Brand is one part of intellectual property that must be attached to a legal protection, because the brand is very important in the business world. In the business world a brand is considered the "spirit" of a product. A brand is a characteristic between products of similar goods and/or services that can be distinguished by their origin, quality, and guarantee. In addition, the brand is also used by manufacturers as a medium in marketing and advertising a product of goods and services, it is because the public or consumers often associate the quality or reputation of goods and services with the brand. Consumers will buy a particular product by looking at the brand because in their opinion, the brand is high quality or safe for consumption due to the reputation of the brand.

Definition of brand according to Article 1 Number 1 of the law of the Republic of Indonesia number 20 of 2016 concerning brands and Geographical Indications (hereinafter abbreviated as the brand law), a brand is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by legal or natural persons in the activities of trade in goods and/or services.

In Indonesia, a new brand gets protection after registration, this registration system is called a constitutive system because registration is done to give birth to rights. In the constitutive system, trademark protection is obtained by the party who first registered the trademark (first to file). A person or legal entity wishing to acquire rights to a trademark is required to submit a registration request to the Directorate General of Intellectual Property Rights (Dgip) first. The rights to the mark are acquired after the mark is registered.

However, a registered trademark is not a guarantee of full legal protection for the owner / holder of trademark rights. There is always a gap that is exploited by other manufacturers to take advantage of the popularity of a brand that is widely known and loved by the public because the goods are already circulating first. The way that is often used is to create a brand that is almost the same as a brand that has been widely known by consumers, the goal is that buyers are fooled and buy the product.

The similarity of this brand is known as a brand that has similarities in essence. Brands that have been widely known by consumers because of the quality and price will always be followed, imitated, hijacked and may even be counterfeited by other manufacturers in doing business or trade competition. One form is a brand that has similarities in essence. As a distinguishing sign, brands in one classification of goods / services should not have similarities between one and the other both in whole and in essence.

Brands that have similarities in essence are clearly very detrimental to brand owners because consumers who previously bought their products switch to buying other products because the brand is almost the same. Brands that have similarities in essence are also very potential to deceive consumers and cause public confusion (public confusion) or misleading in the community about the origin of a product.

In Article 21 of the trademark and Geographical Indication law which states that the registration of a mark is rejected if it has similarities in essence or in whole with the registered mark

of another party or applied for by another party for similar goods and/or services, well-known marks of other parties for similar goods and/or services, well-known marks of other parties for goods and/or services that do not meet certain requirements, and registered geographical indications. Definition of equality in essence according to elucidation of Article 21 of the law on trademarks and Geographical Indications is the similarity caused by the presence of dominant elements between one brand and another brand so as to give the impression of similarity, both regarding the form, placement, way of writing or combination of elements, as well as the similarity of speech sounds, contained in the brand. In other words, a brand has similarities in essence with other people's brands if the brand has similarities or is almost similar to other people's brands.

Although Article 21 of the trademark and Geographical Indication law has expressly regulated the rejection of registration of trademarks that have similarities in essence, in practice there are still many brands that have similarities in essence that pass the examination stage and are finally registered in the General Register of trademarks. This is because the trademark and Geographical Indication law does not regulate in more detail the criteria for brands that have similarities in essence. Brands that have similarities in essence with brands that have been registered first eventually cause disputes with brand owners who feel disadvantaged.

One of the disputes regarding brands that have similarities in essence on the same type and class of products has reached the level of Cassation by the Supreme Court and was decided in Supreme Court Decision No. 606.k / pdt.sus-HKI/2018. In the decision resolved a dispute between PT. Supra Teratai Metal brand owner "Star and Star Logo " as a plaintiff against PT. Wiharta Prametal brand owner "Green Star", "Red Star" and "Blue Star" as defendants. In the Supreme Court Decision No. 606.k / pdt.sus-HKI / 2018 Cassation filed by PT. Supra Teratai Metal with the brand "Star and Star Logo " was granted by the Supreme Court because the brand has similarities in essence with the brand "Green Star", "Red Star" and "Blue Star" owned by PT. Wiharta Prametal and cancel the Court Decision No. 05 / Pdt.Sus.HKI / MERK / 2017 / PN Niaga.Sby who in this case the Commercial Court at the Surabaya District Court is considered to have misapplied the law and / or legislation.

The subject matter in the Cassation decision is the existence of bad faith in the registration of Marks made by the defendant, the defendant's brand has the same brand in the name, image, word, letter, and is in the same class of goods as the plaintiff's brand that was registered first. When referring to the legal basis of the trademark, it is clearly contrary to Article 21 paragraph (1) letter A and Article 21 paragraph (3) of the trademark law, because when there is a similarity of the trademark in essence and/ or the whole with the trademark belonging to another person who is registered first for similar goods and/ or services, the Director General of intellectual property rights must reject it, but in fact the Director General of intellectual property rights still accepts the registration of a trademark that is identified as having similarities in essence.

In this case, the Director General of IPR is less strict in applying Article 21 of the trademark and Geographical Indications law to reject brands that are identified as having similarities in essence with the brands that are registered first, so that brand owners who feel disadvantaged end up suing and eventually causing disputes. The lack of detailed rules regarding the criteria for a brand that is categorized as having similarities in essence, causes judges to have different interpretations in deciding trademark disputes.

RESEARCH METHODS

The research in this thesis uses a normative legal approach, which is a research method that focuses on the analysis of law in a theoretical perspective. This approach aims to study law comprehensively by examining the normative aspects of law and investigating how the application of law in the social context of society. In writing this law, the method applied is the approach of legislation. This approach focuses on the analysis of various legal provisions enshrined in legislation that are relevant to the research topic, which means to understand and comprehensively analyze the hierarchy of legislation and the principles in legislation. Statutory approach (statute approach) is done by reviewing all laws and regulations related to legal issues that are being addressed.

RESULTS AND DISCUSSION

A. The Process of Transferring Property Rights To The Brand

The term intellectual property rights consists of two words, namely property and intellectual rights. Property rights are wealth in the form of rights that are protected by law, in the sense that others are prohibited from using that right without the owner's permission, while the word intellectual refers to intellectual activities based on copyright and thinking in the form of expression, creation and invention in the field of technology and services. Intellectual property rights are rights arising from the ability to think or think that produces a product or process that is useful to humans.

In the science of intellectual property law, property rights, especially the law of objects (*zakenrecht*) that have intellectual objects, namely intangible objects that are immaterial, the owner of intellectual property rights in principle can do anything according to his will. Because someone's intellectual property rights in the form of works such as brand rights are objects of intellectual property, then the brand rights can also be carried out against it transfer to others. To understand the purpose of the transfer of rights to the brand and its position in Indonesian positive law, it must first be understood also the nature of material rights in the Civil Code. Because the right to a brand can also be categorized as a person's material right. Because the transfer of rights to brand property such as can be by agreement or grant, which is regulated in a *delas* in the Book Of Law The law of objects is part of the law of property and is regulated in the 11th book of the Civil Code. According to Soediman Kartohadiprodjo, the law of wealth is all the rules of law that govern the rights of whether obtained on people in relation to other people, certain or not certain, which has a monetary value. According to L.J. van Apeldoorn, the law of property is the regulation of legal relations that are worth money.

On that basis, Book II of the Civil Code not only contains the legal provisions of the object, but also contains the inheritance law (one of the reasons for the transfer of trademark rights). The arrangement of inheritance law in Book II of the Civil Code with consideration, because the formulator of the law considers that the right of inheritance is a material right, namely the material right to the *boedel* of the deceased. Therefore, it is considered a property right, so it is regulated in Book II of the Civil Code. As for the other opinion, it says that inheritance law is regulated in Book II of the Civil Code because inheritance is one of the ways to obtain property rights (as stipulated in Article 584 of the Civil Code) and property rights are also regulated in Book II of the Civil Code.

The legal system is a closed system. That is, people cannot enter into new material rights other than those already established in the law. So, it can only hold material rights limited to those stipulated in the law. This is in contrast to the legal system of engagement, where the law of engagement recognizes an open system. That is, people can enter into an engagement or agreement on anything, whether there are already rules in the law or there are no rules at all. So, anyone can enter into an alliance or agreement recognizing the principle of freedom of contract. However, the application of this principle of freedom of contract is limited by *udnang* law, morality and public order.

According to Article 499 of the Civil Code, thing is every good and every right that can be controlled by property. As for, what is meant by objects in the sense of legal science is everything that can be the object of law and goods that can be the property and rights of everyone who is protected by law. According to Soediman Kartohadiprodjo, what is meant by things is all tangible goods and rights (except property rights). According to Sri Soedewi Mascjchoen Sofwam, the understanding of objects is first of all tangible goods that can be captured by the senses, but intangible goods include objects as well. As for the subject, the word thing (*zaak*) in a broad sense is everything that can be judged by people, and the word thing in a narrow sense is as things that can be seen only.

Thus, in the civil law system (Civil Code), the word *zaak* (thing) has two meanings, namely tangible goods and part of the property. Which includes *zaak* in addition to tangible goods, also some specific rights as intangible goods. In addition to understanding *tesebutm* objects (*zaak*) can mean various, namely: 1. Objects as objects of Law (Article 500 of the Civil Code). 2. Objects

as interests (article 1354 of the Civil Code). 3. Objects as a legal reality (article 1263 of the Civil Code).

For the entire description, it can be understood that intellectual property rights including brand rights are intangible material rights. Through the basis of material Rights, brand rights can be transferred ownership of the rights to others. Of course, in addition to generally referring to the Civil Code, the transfer of material rights to intangible objects in the form of brands must see special legislation, namely Law Number 20 of 2016 on brands and Geographical Indications.

The transfer of rights to the brand falls within the scope of ensuring ownership of one's intellectual property rights. The fundamental thing in transferring rights to the brand is that previously the rights to the brand must be registered, it is necessary that the rights to the brand are acknowledged and protected by the state, as well as when the rights to the meres are about to be transferred. The transfer of rights to the trademark must also be registered by the Director General of Intellectual Property Rights, as stipulated in Article 42 of Law Number 15 of 2001 concerning trademarks which states "the transfer of rights to a registered trademark is only recorded by the directorate general if accompanied by a written statement from the transferee that the trademark will be used for trade in goods and/or services."

The rapid development of technology and trade today, causing activity in the trade sector to increase with the variety of goods and services found on the market. Goods and services produced are the result of the ability of human creativity that can give rise to Intellectual Property Rights (IPR). Basically, IPR is a right arising from the results of human intellectual ability in producing products and works, which gives rise to property rights for the creator or inventor. One branch of IPR that plays an important role is the brand.

Based on Law No. 15 of 2001 (now Law No. 20 of 2016) explains that the role of the brand to be very important, especially in maintaining good business competition. A brand can be known by the wider community through continuous promotion generally through attractive and strategic advertising of goods that use the brand.

The influence of globalization in all areas of public life, both in the social, economic, and cultural sectors is increasingly driving the pace of economic development of society. In addition, with the increasing development of Information Technology and transportation facilities, has made activities in the trade sector both goods and services experienced a very rapid development. The trend will increase the flow of trade in goods and services will continue to take place continuously in line with the increasing national economic growth. By taking into account such realities and trends, it becomes understandable if there is a demand for the need for a more adequate arrangement in order to create a strong legal certainty and protection. Moreover, some countries increasingly rely on their economic and trade activities on products produced on the basis of human intellectual abilities. In view of this fact, the brand as one of the intellectual works of mankind, which is closely related to economic and trade activities, plays a very important role.

Trade in goods and services across national borders. Therefore, the international brand registration mechanism is one of the systems that should be used to protect national brands in the international world. The International Trademark registration system based on the Madrid Protocol is a very helpful tool for National Business actors to register their brands abroad easily and at an affordable cost.

On that basis, Indonesia's participation in ratifying the Convention on the establishment of the World Trade Organization (World Trade Organization) which also includes agreements on trade aspects of intellectual property rights (TRiPs) as ratified by Law Number 7 of 1994 on the ratification of the Agreement Establishing the World Trade Organization (agreement on the establishment of the World Trade Organization), has required Indonesia to comply with and implement the contents of the international agreement. The ratification of the regulation encourages Indonesia's participation in ratifying the Paris Convention for the Protection of Industrial Property (Paris Convention) which has been ratified by Presidential Decree No. 15 of 1997 and the Trademark Law Treaty (trademark law Treaty) which was ratified by Presidential

Decree No. 17 of 1997. The international agreement makes it an obligation for Indonesia to adjust the applicable Trademark Law with the provisions of the ratified international agreement.

The adjustment in question also includes adjustments in terms of activities on the transfer of rights to the mark. However, even though the transfer of rights to the brand must be adjusted, based on the study of legal protection theory, the adjustments made must still pay attention to the rules of law that live and exist in Indonesia. Because if adjustments from other countries do not pay attention to the values that live in society in Indonesia, the adjustments that have been made will not be applied. Therefore, the theory of legal protection gives the view that the adjustment is still based on the values that live in society. Especially related to the transition is certainly related to positive law, customary law and even Islamic law in force in Indonesia. Which is essentially unknown in international conventions.

Registered trademark rights may be transferred or transferred, due to inheritance, wills, grants, agreements, or other causes justified by laws and regulations. Meanwhile, any transfer of rights to the brand must be applied for recording at the Directorate General of brands to be recorded in the General Register of brands. The complete transfer of rights to the brand can be seen in the provisions of Article 40 and Article 41 of Law No. 15 of 2001 concerning the brand. However, at the present time the terms of the transfer of rights to the brand have been changed but in substance there is not much difference, which can be seen in the provisions of Article 41 of Law Number 20 of 2016 concerning brands and geographical indications, which states:

1. Rights to the registered mark may be transferred or transferred because: a. inheritance; b. will; c. Waqf; d. grants; e. the agreement; or f. other reasons permitted by law.
2. The transfer of rights to a registered mark by the owner of a mark that has more than one registered mark that has the same pacta principally or entirely for similar goods and/or services can only be done if the sernua registered marks are transferred to the same party.
3. The transfer of rights to registered marks as intended by pacta paragraph (1) and Paragraph (2) is requested to be registered to the Minister.
4. The application for the transfer of rights to the brand as referred to in pacta paragraph (3) is accompanied by supporting documents.
5. The transfer of rights to the registered mark recorded as meant in paragraph (3) shall be announced in the Official Gazette of the mark.
6. The transfer of rights to an unregistered registered Mark has no legal effect on the third party.
7. The recording of the transfer of rights to the mark as referred to in Paragraph (1) is subject to a fee.
8. The transfer of rights to the mark as meant in Paragraph (1) can be done during the Application Process for Mark registration.
9. Further provisions regarding the terms and procedures for the application for registration of transfer of rights to trademarks as referred to in Paragraphs (1) to (8) shall be regulated by a Ministerial Regulation.

It can be seen that the diversion, although it absorbs from international intellectual conventions, but the legal products created in Indonesia in the diversion still put forward the values that live in Indonesian society. As well as inheritance, wills, grants, endowments and so forth. This is in accordance with the manifestation of the concept of the rule of law, which although adopting legal provisions from abroad, but still uphold the values that live in society. Including the transfer of rights to this brand. The transfer of this right must of course be requested for its recording to the Directorate General of intellectual property rights to be recorded in the General Register of trademarks. The transfer of the noted rights will be announced in the official brand Gazette. If the transfer of rights to the registered mark is not listed in the General Register of marks, there will be no legal effect on the third party. The determination that the legal effect only takes effect after the transfer of rights to the mark is recorded in the General Register of Marks is intended to facilitate supervision and realize legal certainty.

In addition to the transfer of rights as set forth above, the owner of the registered mark also has the right to grant a license to another party with an agreement that the licensee will use the

mark for some or all types of goods and services. The License Agreement shall be valid throughout the territory of Indonesia unless otherwise agreed, for a period not longer than the period of protection of the relevant registered mark. This license agreement must also be applied for recording to the Directorate General of IPR. Even if there is a license, the brand owner can still use it himself or grant licenses to other third parties to use the brand, unless otherwise agreed. In the license agreement can certainly be specified that the licensee can grant further licenses to third parties.

Against brands that are canceled because of similarities in essence or in whole with other brands. Licensee in good faith (principle of good faith) shall remain entitled to execute the license agreement until the end of the term of the license agreement. Licensee is no longer obligated to continue to pay royalties to the cancelled licensor, but is obligated to carry out royalty payments to the owners of the cancelled marks. If the licensor has already received royalties at once from the licensee, the licensor is obliged to deliver the portion of the royalties it receives to the owner of the mark that is not canceled, the amount of which is proportional to the remaining term of the license agreement.

In principle, the transfer of rights to the brand can be carried out by a legitimate registered trademark holder, so that to transfer the rights to the brand, the previous owner of the trademark rights must register the trademark rights at the Directorate General of Intellectual Property Rights, in the end it will be listed in the General Register of trademarks. The transfer of rights to the brand can be done under Article 41 of Law Number 20 of 2016 concerning brands and Geographical Indications. The transfer of rights to a trademark can be carried out similarly to the transfer of property rights applied in the Civil Code, but in essence, the transfer of trademark rights can be done by inheritance, wills, endowments, grants, agreements and other causes justified by legislation. In the transfer of rights to the brand the owner of a registered mark may grant a license to another party to use the mark either in part or in whole types of goods and/or services, it is in accordance with Article 42 paragraph (1) of Law Number 20 of 2016 concerning trademarks and Geographical Indications.

B. Legal Protection of The Brand

In Law No. 20 of 2016, trademark registration must be accompanied by the principle of good faith (good faith) which this principle is attached to the applicant who registers, but this principle can only be proven when there is no claim for trademark cancellation. That is, when a trademark registrant is accepted, he must have a good faith belief that what he registers is actually his own brand that has the original power of being created or is purely the result of his creation (origin).

Law Number 20 of 2016 on brands and Geographical Indications is more likely to refer to the measure of propriety than the measure of legal norms. The importance of a good faith trademark owner is set as one of the requirements for trademark registration, the goal is to seek legal certainty about who is really the person who is the owner of the trademark. In the constitutive system, it is intended that the state does not mistakenly provide legal protection along with the right to a brand to people who are not entitled to receive it. Good faith brand owners are honest brand owners. An honest nature should be shown the absence of the intention of the brand owner to cheat on someone else's brand. Understanding other people's brands are limited to brands that are already known in the community.

On that basis, it is assessed that the application of bad faith in trademark registration is used as a reason for trademark cancellation according to the trademark law, aiming to determine the application of equality in principle and bad faith in a trademark cancellation lawsuit. The reason for a deregistration of a mark based on equality is essentially the same as that proved in good faith in a claim for deregistration of a mark.

The principle of good is a requirement that must be met when registering a trademark, the article in Article 21 of Law Number 20 of 2016 stated that the application for trademark registration will not be accepted if it does not have good faith. In this context, it can be correlated that the principle of good faith is an absolute thing for the subsequent use of certain brand rights. When it is known that one of the parties has filed a lawsuit which is considered by one of the

other parties to use the pretext of the existence of bad faith by one of the parties, it must be determined by The Commercial Court for a first instance decision and can be submitted to Cassation until reconsideration. Furthermore, when examined further regarding trademark registration, it is also not far from being binding with regard to Law Number 20 of 2016 concerning trademarks and Geographical Indications contained therein regarding trademark registration. Of course there is no explicit mention in the trademark law regarding the principle of good faith clearly, but in essence it can be said that the principle of good faith in trademark registration is something that should be located and owned by the trademark registrar at the Trademark Office.

In the trademark registration it is known that the Law Number 20 of 2016 on trademarks and Geographical Indications regulates implicitly about the good faith which can be examined through the registered trademark is not accepted or rejected if as explained in Article 20 on trademark registration. A trademark cannot be registered if it is contrary to state ideology, legislation, morality, religion, decency and public order.

This in the sense of not being in good faith can be taken from the explanation of Article 20 which the Registrar of marks cannot be accepted if it contradicts the matters stipulated in the law, especially with regard to only mentioning the goods and or services for which registration is requested, contains elements that can mislead the public about the origin, quality, type and the like and also has no distinguishing power which is from the purpose of the brand and the function of the brand. Article 3 of Law No. 20 of 2016 concerning trademarks and Geographical Indications states that “the right to a trademark is obtained after the trademark is registered”. This article underlies the importance of a person to register the trademark rights he has, in order to obtain legal force and legal protection over it. In order for the owner of the brand to obtain exclusive rights to the brand and receive legal protection, the owner of the brand in good faith (the principle of good faith) can register the brand with the government. There is an opinion that a mark cannot be registered if it contains the following elements:

1. Such marks are contrary to applicable legislation.
2. Brands have no distinguishing power.
3. Has become public property.
4. Is information or related to goods or services for which registration is requested.
5. Have similarities in essence or in whole with other people's trademarks that have been previously registered for similar goods and/or services.
6. Have similarities in essence or in whole with well-known brands belonging to other parties for similar goods and or services.
7. Have similarities in essence or in whole with well-known geographical indications.
8. Represents or resembles the name of a famous person, photograph, or the name of a legal entity owned by another person, except with the written consent of the entitled.
9. Is an imitation or resemble the name or agreement of the name, flag, emblem or symbol or emblem of the state or national or international institutions, except with the written consent of the competent authorities. Is an imitation or resembling a mark or stamp or seal officially used by the state or government agencies, except with the written consent of the competent authorities.

Registration of a mark can only be submitted for one class of goods or services. A class of goods or services in a group of types of goods or services that are similar in nature, method of manufacture, and purpose of use. If a trademark is to be registered for more than one class, the request for registration must be submitted separately.

Based on the description of the meaning of the brand law that has been described previously, there are 2 (two) things or principal discussions that can be learned/understood. The first is related to the forms of brands that can be used by one or several people together or legal entities:

1. In the form of drawings / paintings. This form must be able to distinguish in the form of drawings or paintings between goods produced by other companies. For example, paint a flying horse. The image of a flying horse, for example, must have wings that show the horse flying so that it can distinguish it from paint/other horse-branded items.
2. Brand the word. For example,

Rexona, Tancho, Bodrek and so on. 3. Letters or Numbers, for example, ABC syrup, hair oil 4711. 4. Combination brands. For example, a combination of a name with a picture. Through the understanding of the brand, there are several types of brands, which are then described in Article 1 numbers 2, 3 and 4 of Law No. 15 of 2001 which has now been amended by Law No. 20 of 2016, as follows: 1. A trademark is a mark used on goods traded by a person or several persons jointly or a legal entity differentiating from other similar goods. 2. A service mark is a mark used on a service traded by a person or several persons jointly or a legal entity to distinguish it from other similar services. 3. A collective mark is a mark used on goods or services with the same characteristics regarding the nature, general characteristics, and quality of goods or services and supervision that will be traded by several persons or legal entities together to distinguish them from other similar goods and/or services. After knowing and understanding the types of trademarks and understanding that the registration of trademark rights is part of the principle of good faith practiced in business activities, and vice versa, the principle of good faith must be put forward when a person/business entity wants to confirm his trademark rights to be legally registered. Furthermore, it will describe the steps/mechanisms of the process of registration of trademark rights based on the principle of good faith, starting from the application, examination, announcement until the issuance of a certificate of registered trademark rights on behalf of the legitimate trademark holder.

CONCLUSION

Legal protection is carried out starting from the application, examination, and announcement, in the end the registrant meets the administrative requirements and checks the substance of the brand. Then the registered trademark rights are listed in the General Register of trademarks and trademark rights holders are given trademark certificates as proof of trademark rights holders. The application for registration of trademark rights is contained in Article 4 to Article 8 of Law Number 20 of 2016 concerning trademarks and Geographical Indications. After the process, the owner can transfer the rights to the brand and grant the license to another party in accordance with Article 41 and Article 42 of the trademark law.

REFERENCE

- Abdulkadir Muhammad, *Kajian Hukum Ekonomi Hak Kekayaan Intelektual*, Citra Aditya Bakti, Bandung, 2007.
- Abdulkadir Muhammad. 2001 *Kajian Hukum Ekonomi Hak Kekayaan Intelektual*. Bandung: Citra Aditya Bakti.
- Ari Wibowo. 2015. "Penerapan Prinsip Itikad Baik dan Daya Pembeda Dalam Pendaftaran Merek Dagang Yang Bersifat Keterangan Barang (Descriptive Trademark) Berdasarkan Undang-Undang Nomor 15 Tahun 2001 Tentang Merek". dalam *Jurnal Privat Law*. Volume VII. Juni. 2015.
- Elsi Kartika Sari dan Advendi Simangunsong. 2007. *Hukum Dalam Ekonomi*. Jakarta: PT.Gramedia Widiasarana Indonesia.
- Emmy Yuhassarie, *Hak Kekayaan Intelektual dan Perkembangannya*, Pusat Pengkajian Hukum, Jakarta, 2005.
- Hery Firmansyah, *Perlindungan Hukum Terhadap Merek*, Yustitia, Yogyakarta, 2011.
- Indirani Wauran-Wicaksono, *Pengantar Hukum Kekayaan Intelektual*, Tisara Grafika, Salatiga, 2017.
- Mastur, "Perlindungan Hukum Hak Kekayaan Intelektual Dibidang Paten", *Jurnal Ilmiah Ilmu Hukum QISTI* Vol. 6 No. 1 Januari 2012.
- Nur Hidayati, *Perlindungan Hukum pada Merek yang Terdaftar*, *Ragam Jurnal Pengembangan Humaniora* Vol. 11 No. 3, Desember, 2011.
- Ok Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, Ed. Revisi, cet. 9, Raja Grafindo Persada, Jakarta, 2015.
- Ok. Saidin II. 2004. *Aspek Hukum Hak Kekayaan Intelektual*. Jakarta: Grafindo Persada.
- P.N.H. Simanjuntak. 2015. *Hukum Perdata Indonesia*. Jakarta: Kencana.

Pasal 21 Undang-Undang Republik Indonesia Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis.

Penjelasan atas Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis.

Penjelasan Atas Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis.

Penjelasan Atas Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis.

Richard Burton Simatupang. 2003. *Aspek Hukum Dalam Bisnis (Edisi Revisi)*. Jakarta: PT. Rineka, Tim Lindsey, Eddy Daiman, dkk. 2003. *Hak Kekayaan Intelektual suatu Pengantar*. Bandung: Alumni.

Tim Lindsey, *Hak Kekayaan Intelektual Suatu Pengantar*, Alumni, Bandung, 2005.