LEGAL BRIEF

journal homepage: www.legal.isha.or.id/index.php/legal

Legal Protection For Unregistered Mark in Indonesia

Dania Agustina[1], Ratih Kemala[2]

[12]Sekolah Tinggi Ilmu Hukum IBLAM, Indonesia

E-mail: daniaagustina01@gmail.com

Abstrak

Mark is a sign that identifies an item. Based on the elements in it, the Mark has a distinguishing power and is used in the context of trading goods or services. In Indonesia, trademarks are protected under the first to file system. This means that a 'protected mark' is a mark that has been registered with the Directorate General of Intellectual Property (DJKI) or trademarks declared as 'well-known mark'. However, currently there are many products whose marks have not been registered with the DJKI. Legal problems often occur when an 'unregistered mark' turns out to have similar elements to a 'well-known foreign marks' that has been previously registered with the DJKI. This certainly has an impact on the continuity of the mark's business of 'unregistered marks'. Thus, this journal raises issues, including how the mechanism for registering mark/trademarks is based on the current regulations in Indonesia, and how the protection for the 'unregistered mark' in Indonesia, with examples of cases of the 'unregistered mark' having similar elements to 'well-known foreign mark' in Indonesia. The purpose of this study is to find out how the provisions for trademark registration are and to find out how to protect 'unregistered mark' in Indonesia. The type of this research is a normative juridical method. The results indicate that mark registration in Indonesia can be carried out in two ways, namely through domestic trademark registration and registration based on the Madrid protocol. Both of these methods now can be submitted through the official DJKI website, namely https://www.dgip.go.id/. As for the 'unregistered mark' in Indonesia, there is currently no legal regulation to protect them. The 'unregistered mark' has to register through the official website of the DJKI. Regarding if the 'unregistered mark' has similarities with a 'well-known foreign mark', the owner of the 'unregistered mark' must check whether administratively the 'well-known foreign mark' has been registered or not, or the protection period has expired, and so on to become an opportunity to be applied for. Even though, in the end was DJKI would decide the decision on the submitted application.

Keywords: Mark, Trademarks, Unregistered Mark, Intellectual Property rights, Well Known Foreign Mark

A. Introduction

Intellectual Property (hereinafter referred to as KI) is a valuable asset that can advance the economy of a nation (Abdul Hakim, 2020). Brands, which are part of IP, have an important role in various fields. A brand is an asset that is not physically identifiable or intangible. This means that although the existence of the brand is only an unreal sign, its value and influence is very dominant for the economic viability of the brand owner and the lifestyle of consumers. The increasingly advanced consumer perspective and perception of a product will affect the brand attached to the product. That's why a brand as a product identity makes it easier for consumers to recognize it (Directorate General of Intellectual Property Rights, 2020). Trademarks began to play

Legal Brief is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).

an important role along with the growth of industrialization and since then brands have become a key factor in the era of modern trade and market-oriented economy. Industrialization and the growth of a market-oriented economic system resulted in competition between producers and traders who competed to offer various kinds of goods to consumers, this is where brands begin to play their role as a differentiating tool, for consumers to recognize the identity, source and origin of goods. . Meanwhile, for manufacturers, brands are symbols and representations of the company's good name which continues to be maintained among consumers (DR. Juwita SH, MH, 2020).

In Indonesia, legal protection of marks has been regulated in several Trademark Laws. The Trademark Law has been amended several times, as follows: 1. Law Number 21 of 1961 concerning Marks 2. Law Number 19 of 1991 concerning Marks 3. Law Number 14 of 1997 concerning Marks 4. Law Number 15 of 2001 concerning Marks 5. Law Number 20 of 2016 concerning Marks and Geographical Indications Although there has been a long history of regulating trademarks, there are still many brands that are not registered with the Directorate General of Intellectual Property Rights (hereinafter referred to as DJKI) of the Ministry of Law and Human Rights (hereinafter referred to as Kemenkumham) as the sole agency that handles registration and protection. brand in Indonesia. Such is the case for bottled water products, Crystalline and Cristaline. Starting from problems with the registration of the Crystalline trademark with the Ministry of Law and Human Rights, PT Pepper Tree Investama filed a lawsuit to the Commercial Court at the Central Jakarta District Court to the Ministry of Law and Human Rights.

The registration was hampered because the Crystalline brand was similar to the Cristaline brand, owned by a French company, which previously had a trademark license in Indonesia. In the end, the lawsuit from the court of first instance to the Supreme Court did not produce the results that Crystalline brand owners had hoped for. It has been four years since the lawsuit was first filed, until finally the Judicial Review filed by Pepper Tree Investama to the Supreme Court was still rejected. In the Supreme Court's Decision Number 47 PK/Pdt.Sus-HKI/2020, the panel of judges stated that the Cristaline mark with Registration Number IDM000051968 for class 32 with a registration date of September 30, 2005 has a protection period of 10 years starting January 28, 2004, has been extended on 17 July 2013 so that the protection period expires on 28 January 2024. Class 32 contains beer products, types of beer, mineral water, sparkling water and other non-alcoholic drinking water, fruit water, syrup and the availability of water to make them. In Indonesia, the stage of a brand of an item or service to become a well-known brand is not an easy process, because its achievement requires a lot of effort, such as creativity, cost, effort and so on. Because of the difficulty of building a brand into a well-known brand, it is a factor that encourages the emergence of fraudulent competition that is detrimental to other parties (Abdul Hakim, 2020). Based on the description above, the authors are interested in discussing how the process of registering a mark according to the regulations in force in Indonesia and how to protect a mark that is not registered in Indonesia.

Based on the background of the problem above, the research problems that researchers can formulate include:

1. How is the Mark Registration Process according to the prevailing regulations in Indonesia?

Legal Brief is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).

2. How is the Protection of Unregistered Trademarks in Indonesia?

B. Method

The research carried out is normative juridical research or commonly referred to as legal research, which is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced (Peter Mahmud Marzuki, 2005). This research will use a statutory approach, a conceptual approach, a comparative approach and a case approach.

C. Results and Discussion

1. Registration Of Marks According To Regulations Applicable In Indonesia

According to the constitutive system, a trademark right is an exclusive right granted by the State to the owner of a mark registered in the General Register of Marks for a certain period of time by using the mark itself or giving permission to other parties to use it.

Indonesia adheres to a constitutive registration system where in this system requires the registration of a mark so that a mark can get protection. This system is known as the first to file system. Which in this system confirms that the person who first registers the Mark is the person who has the right to the Mark. Although Indonesia adheres to a constitutive system, the protection of well-known trademarks that have not been registered in Indonesia will still receive protection because Indonesia has ratified the Paris Convention and the TRIPS agreement (Yahya Harahap, 1996).

The advantage of this constitutive system is further that there is a guarantee of legal certainty in the sense that whoever is registered in the General Register of Marks, then that person is entitled to a trademark for similar goods. Likewise, in terms of proving in the event of a dispute, the mark owner is sufficient to show the Mark Registration Certificate. A trademark certificate is proof that the person is the rightful owner of the mark in question. With such a rights system, it will provide legal certainty, both certainty of rights and legal protection (Sudarto, 2021).

The first to file principle adopted by the trademark protection system in Indonesia makes anyone (both individuals and legal entities) who first registers a trademark for a certain class and type of goods/services be considered as the owner of the right to the mark in question for the class and type of goods/services. the.

The regulation regarding the trademark registration process is not only regulated in Law No. 20 of 2016 concerning Marks and Geographical Indications (hereinafter referred to as the Trademark Law) but also in the provisions contained in https://www.dgip.go.id/. The author will describe the trademark registration procedure contained in both settings.

a. Domestic Mark Registration

Before a manufacturer registers a trademark, it is necessary to classify the types of goods and services traded. The applicant is obliged to determine the type of product or service that has been determined by the latest edition of the Nice Classification which applies to all members of the World Intellectual Property Organization (WIPO). The classification of goods or services based on the Nice Classification changes and is

Legal Brief is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).

published in each edition every 5 (five) years (Directorate General of Intellectual Property Rights, 2020).

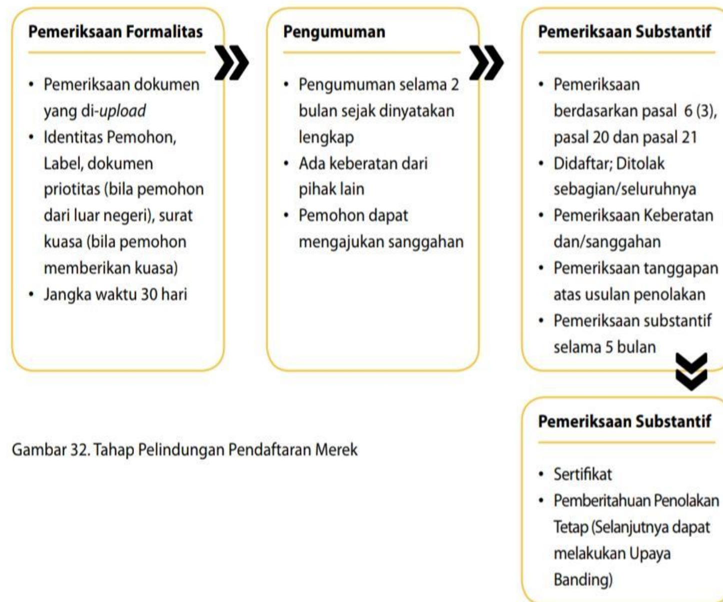
After determining the product classification, brand search is the next stage. The applicant independently checks the marks and classes that have been published on the https://www.dgip.go.id/ page so as to avoid the provisions for rejection of marks as stated in the Law on Marks and Geographical Indications Number 20 of 2016. In addition, by conducting a trademark search first will have an impact on the status of trademark ownership faster so that the applicant can exercise his right to protect his trademark and can exercise his right to license the rights to his trademark to other parties. (Directorate General of HKI, 2020) The stages before registration are shown in the following image:

The next stage is that the applicant performs the online trademark registration stage. The stages of submitting a trademark registration online are as follows:

1) Activate e-filing by opening the page: www.dgip.go.id then selecting K.I e-filing, then selecting Trademark/Services, then the brand.dgip.go.id page will appear and on this page you can download the e-activation guide -flling.
2) Select e-filing activation and proceed with filling in the data on the form.
3) E-filing activation is complete with your Username verification screen successful. Furthermore, the applicant will get a verification sent via email/email that has been registered.
4) Start registering online by logging in and entering the registered username and password.

After the registration process, DJKI will carry out inspections, namely formality checks and substantive examinations. As shown in the image below:

Legal Briefis licensed under a Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).



Gambar 32. Tahap Pelindungan Pendaftaran Merek

The Trademark Law regulates 2 ways of registering a mark, namely registration with priority rights and registration in the usual way. Priority application for rights is regulated in articles 9 and 10 of the Trademark Law. While the meaning is regulated in article 1 letter, what is meant by the right of authority is the right of the applicant to submit an application originating from a country that is a member of the Paris Convention for the protection of Industrial Property or Agreement Establishing the World Trade Organization with the approval period being a maximum of 6 months as of from the date of receipt of the first application for registration of a mark received in another country which is a member of the Paris Convention or a member of the agreement for the establishment of the World Trade Organization".

The mark adheres to the territorial principle, which means that the protection of the mark only applies in the country where the mark is applied for and granted the right to the mark. To obtain trademark protection in Indonesia, the trademark owner must apply for a trademark in Indonesia, however, by registering a trademark in Indonesia, the trademark does not necessarily receive legal protection for its trademark in other countries.

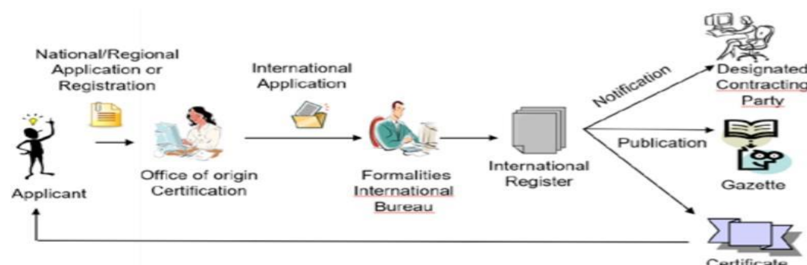
In order to obtain protection abroad, the applicant must register individually in each desired country by appointing a registered IPR consultant whose work area covers that country to become the attorney for the application for trademark registration. Within 6 months from the date of first receipt in Indonesia, the applicant can apply for registration of the same mark for similar goods/services in other countries that are both members of the Paris Convention and obtain the same date of receipt as the date of receipt in Indonesia by using Priority Rights as described above. The main purpose of granting priority rights when obtaining trademark registration in Indonesia is to protect trademark owners from trademark infringement such as imitation, piracy (Iswi Hariyani, 2010).

b. Registration of Marks Under the Madrid Protocol

The intellectual property protection system is territorial in nature, in practice often a well-known trademark is used without permission and even registered by an unauthorized party simply because the mark has not been registered in that country.

Legal Brief is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).

(Directorate General of Intellectual Property Rights, 2020) The Madrid Protocol is a refinement of The Madrid Agreement, this system is an alternative in establishing administrative order in international trademark submissions.



Gambar 64. Alur Permohonan Pendaftaran Internasional

Some countries have implemented a centralized trademark registration system, for example in Benelux (Netherlands, Belgium, Luxembourg) where the mark will be registered as well as get legal protection in the three countries. Likewise in the European Union through the OHIM system, a similar system is also applied to about 22 countries in Europe. However, this system has a weakness, namely if during the inspection period a registered mark is rejected in one member country, it will affect all applications. So many applicants prefer to register individually in each country (Sudarmanto, 2012).

In article 52 of Law Number 20 of 2016 concerning Marks and Geographical Indications add provisions regarding "applications for international trademark registration" namely regarding applications originating from Indonesia addressed to the international Bureau and applications addressed to Indonesia as one of the destination countries of the International Bureau. This further provision is known as international trademark registration based on the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid 1891 Agreement) which is further regulated in a Government Regulation.

The purpose of the formation of the Madrid Agreement of 1891 was to facilitate the registration of trademarks in various countries simultaneously in the participating countries of the Paris Convention, to avoid false notification of the origin of goods (Madrid Agreement Concerning The Repression of False Indication of False Origin), international registration of national marks in international bureau in Bern with the understanding that the marks must first become national brands in their country of origin. (Sudrajat, et. Al, 2010)

The basic concept of the Madrid Protocol is the application of a brand to obtain legal protection in many countries. Where if a prospective trademark registrar wants to register his trademark in many countries, it is sufficient only to submit an application to the Directorate of Marks, the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights. Thus, if Indonesia does not ratify the Madrid Protocol, domestic trademark owners will inevitably have to register their trademarks in every country.

Currently, the Trademark Law Number 20 of 2016 has adopted the Madrid Protocol agreement. Indonesia has officially become a member of the 100th Madrid Protocol in front of the 57th General Assembly of the World Intellectual Property Organization (WIPO) in Geneva, Monday 2 October 2017. To follow up on this, the

Legal Brief is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).

Indonesian government through President Jokowi signed a Presidential Regulation (Perpres No. Madrid protocol.

2. Brand Protection For Brand Not Registered In Indonesia

There are several ways to realize the use of unregistered marks. The mark will be permitted to be used but intentionally not registered as the registration itself will substantially exceed the product's intended useful life. There are also cases where a mark has been registered but the registration has expired because it is not renewed in a timely manner even though it is still used by the company that previously registered it.

A case that the author raises in this study is the case experienced by bottled water products, Crystalline and Cristaline. Starting from problems with the registration of the Crystalline trademark with the Ministry of Law and Human Rights, PT Pepper Tree Investama filed a lawsuit to the Commercial Court at the Central Jakarta District Court to the Ministry of Law and Human Rights. The registration was hampered because the Crystalline brand was similar to the Cristaline brand, owned by a French company, which previously had a trademark license in Indonesia.

Starting from problems with the registration of the Crystalline trademark with the Ministry of Law and Human Rights, PT Pepper Tree Investama filed a lawsuit to the Commercial Court at the Central Jakarta District Court to the Ministry of Law and Human Rights. The constrained registration is because the Crystalline brand is similar to the Cristaline brand which already has a trademark license.

The dispute between Pepper Tree Investama and Gie Cristaline began with a trademark lawsuit filed by Pepper Tree Investama with case No. 69/Pdt.Sus-HKI/Merek/2016/PN Pn.Jkt.Pst, on December 16, 2016. The company is domiciled in Kalideres, West Jakarta. Meanwhile, Gie Cristaline is located at 70 Avenue des Sourves, 03270 Saint Yorre, France.

Pepper Tree Investama requested the court that the trademark in the name of Gie Cristaline (as the defendant) be deleted by DJKI because it had not been used for 3 years from the date of registration. The trademark is registered with the DJKI with No. IDM000051968 for item type 32 includes mineral water, sparkling water, and other non-alcoholic beverages. Another lawsuit is ordering the co-defendants of DJKI to accept the application for registration of their trademarks consisting of the brands Crystalline, Cystalline Crystal Clear, Crystal Clear, each in class 32.

In the course of time, the court rejected all claims from Pepper Tree Investama on May 2, 2018. Not satisfied with the court's decision, Pepper Tree Investama filed an appeal with No. 14K/Pdt.Sus-HKI/2018/PN Niaga.Jkt.Pst on May 16, 2018, with a memorandum of cassation asking the Supreme Court to overturn the decision of the Central Jakarta District Court. In its consideration, the Indonesian Supreme Court stated that after examining the memorandum of cassation on May 28, 2018 in connection with judex facti considerations, the Commercial Court did not wrongly apply the law to reject the lawsuit in the first instance filed by Pepper Tree Investama.

The lawsuit filed was rejected by the Central Jakarta District Court and then PT Pepper Tree Investama submitted a judicial review to the Supreme Court, but the Supreme Court rejected the request. In the Supreme Court's Decision Number 47 PK/Pdt.Sus-HKI/2020, the panel of judges stated that the Cristaline mark with Registration Number IDM000051968 for class 32 with a registration date of September

Legal Brief is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).

30, 2005 has a protection period of 10 years starting January 28, 2004, has been extended on 17 July 2013 so that the protection period expires on 28 January 2024. Class 32 contains beer products, types of beer, mineral water, sparkling water and other non-alcoholic drinking water, fruit water, syrup and the availability of water to make them.

When it comes to well-known marks, protection is not only given to similar goods and or services, but also to similar goods and or services. Meanwhile, to measure the fame of a brand, it is done by taking into account the general knowledge of the public about the brand in the relevant business field. In addition, it was also noted that the reputation of well-known brands was obtained due to intensive and massive promotions, investments in various countries in the world made by the owner, and accompanied by proof of registration of the mark in several countries. If these things are deemed insufficient, the Commercial Court may order an independent institution to conduct a survey in order to obtain conclusions about the popularity of a mark which is the legal reason for the rejection of the application for trademark registration.

The consumer protection law (Law Number 8 of 1999) does not regulate the field of Intellectual Property Rights as described in the general explanation which specifically excludes the regulation of consumer rights arising in the field of Intellectual Property Rights. IPR needs to look at its arrangements in other laws.

The real purpose of using the principle of the first registrar is to provide legal certainty that is much needed for business actors, but the use of the first registrar system also does not rule out the potential for abuse of these rights through the use of legal loopholes in the constitutive mark registration system. When compared with the first-to-use system, the registration of a mark only gives a legal assumption (rechtsvermoeden) that the person on whose name a mark is registered is considered according to law as if it were recognized as the first user in Indonesia and therefore the owner of the mark in question. . However, if another party can prove a stronger right, then the right of the registrant is considered invalid and the third party is recognized by law as the party entitled to a trademark (Sudargo Gautama, 1997).

In order to protect small and medium-sized business actors regarding the possibility of registering a mark used by someone else but not yet registered, there is a suggestion from trademark law experts, namely by prioritizing the principle of combined protection. The combined protection system here is a protection system based on a declarative system and a constitutive system. Mr. E.A. Van Nieuwenhoven Helbach gave an opinion when the Benelux Brandenwet was implemented in the Netherlands (Harsono Adisumarto, 1998):

"In general, trademark law from various countries recognizes two ways to obtain trademark rights, namely the first user and the first registrant. Each protection system has its own advantages and disadvantages. Therefore, it is not surprising that a combined system will be implemented, namely a system that has legal consequences for both use (gebruik) and registration (inschrijving). , or a role as evidence for the requirements for the implementation of these special rights. Or if viewed from the side of the party who adheres to the registration system that creates rights, the use (gebruik) can take on the role of a condition for the continuation of the rights obtained through registration, or as a form of clear purpose, namely use as an additional element

Legal Briefis licensed under a Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).

for the creation of rights. Everything depends on whether or not registration can create rights, which is the difference between a constitutive system or a declarative system".

The discourse on the combined system here is very good to observe, in essence a trademark registration system which, apart from being based on a declarative system, also gets priority for the protection of his rights to trademarks, as long as he can prove that he is the first user and the first registrant has known of its existence, besides that the first registrant also gets priority protection. the right to the mark as long as it can prove that there is no bad faith on the part of his party towards the registration of the mark. The basis for decisions on disputes in the field of trademarks can be in the form of not prohibiting the marketing of several local products that have not been registered but in a limited area.

Until a name or logo is registered as a trademark, the mark cannot be sure that it is its own. If another person or business registers the mark first, that brand can find the company in a very uncomfortable and very expensive position to engage in litigation and potentially have to withdraw the product, redesign packaging and marketing literature, and pay damages or profits to the brand owner. registered trade.

In addition to the measurable costs, the brand-owning company can also risk any goodwill they may have built up in the brand name over the years, over a product they have painstakingly created over the years, simply because they don't take steps. extra to register it. Available research from the world's intellectual property organizations shows that more than 80% of SMEs fail to register their trademarks. Most think that it is not important to their business, with other reasons being lack of time, lack of understanding of the registration process and costs associated with registration. By not registering their trademark, these businesses not only damage their brand and reputation, but also harm their business and ultimately, lose the market battle (Prisca Octaviani, 2020).

In Indonesia, as for the correctness of the definition of a lawsuit against the law, if it is applied or applied to the Trademark Law, the review of Article 1365 of the Civil Code is now no longer possible to be applied in a claim for fraudulent competition. This is because prior to Law Number 19 of 1992 concerning Juncto Law Number 14 of 1997 Juncto of Law Number 15 of 2001 concerning Marks, Law Number 21 of 1961 concerning Marks whose trademark registration system adhered to the declarative system. Even though the Government of Indonesia has issued Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

These provisions allow unauthorized trademark owners to file trademark cancellation claims without any conditions. Must be accompanied by conditions such as the mark is considered a well-known mark, or at least there is also a requirement that the registrant of the mark is a registrant who has no good intentions. Basically, a trademark is a sign or identity to distinguish between goods or services and other goods or services traded because a mark has a function as a tool to distinguish one product or service from another, especially for similar goods or services. Strict enforcement of trademark registration obligations with the imposition of sanctions also has a positive impact on non-tax state revenues, because the increase in the number of registered trademarks will increase state revenues, in addition to orderly administration in the field of trademarks (Sudarto, 2021).

Legal Brief is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).

In relation to trademarks, legal protection in trademarks in general can be interpreted as a protection given to legal subjects related to them, both preventive in the form of legal norms, the rule of law so that there is no violation of rights by other parties, as well as granting rights to legal subjects to take action. lawsuits or repression in the form of legal remedies that can be carried out both civil and criminal. The legal protection provided under the law is the stipulation that regulates (Sudarto, 2021)::

1) The obligation to refuse registration of a mark which is the same in principle or in its entirety with a registered mark belonging to another party, including a mark of good repute
2) Civil lawsuits for registered owners to file civil lawsuits against other parties who use their trademarks without rights in the form of claims for compensation and termination of activities related to infringement of the mark
3) An action of criminal sanctions against a party who uses the same mark and is essentially the same as a whole with the registered mark of another party without rights. It is undeniable that since the enactment of the constitutive system in trademark registration with the enactment of Law Number 19 of 1992 concerning Marks and its amendments to Law Number 14 of 1997 which was replaced by Law Number 15 of 2001, it has been replaced by Law 20 of 2016 Regarding Trademarks, there are still many trademarks that are not registered by their owners.

Based on the fact, there are still many unregistered trademarks, both goods and service marks. Generally, producers and traders of goods and services at the beginning of their business do not use any sign as a trademark, so in the development of their business with the intention of signaling the goods or services being traded use a symbol or sign that is used as a trademark. But unfortunately they did not register it because the most important thing for them is to sell goods or services that consumers like. Some of them do not consider the legal protection aspect for the use of their trademark, even they do not care about the possibility of being imitated by others (Abdul Hakim, 2020).

In order to protect the aggrieved party from a trademark registration, the Trademark Law provides an opportunity for the adverse party to take legal action. The legal effort is in the form of filing a lawsuit for the cancellation of a registered mark that violates the rights of the owner of an unregistered mark on the condition that the owner of the mark submits an application for registration to the minister.

The period for filing a lawsuit can only be filed within five years from the date of registration of the mark, or indefinitely if there is an element of bad faith and/or the mark in question is contrary to state ideology, laws and regulations, morality, religion, decency, and order. general. So that the owner of an unregistered mark who in this case is the first user of a mark or is a party that should be protected, can file an attempt to cancel the mark even though 5 years have passed since the registration of the mark on the pretext that the registered mark was registered on an application in bad faith.

Cancellation of a mark is a procedure taken by one of the parties to seek and eliminate the existence of a registration of a mark from the General Register of Marks (DUM) or to cancel the validity of rights based on a trademark certificate. The registration of a registered mark can still be cancelled, if based on sufficient evidence the mark is registered without meeting absolute or relative grounds. (Rahmi Janed, 2015) If you look at the existence or occurrence of losses that occur for these actions,

Legal Brief is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).

it can be categorized that registration actions based on bad faith are a form of unlawful act so that the party who is harmed is the trademark owner who should be able to file a claim for compensation. loss with the argument of violating the law as referred to in Article 1365 BW.

D. Conclusion

Based on the results of the research that the author conducted, it can be concluded that trademark registration in Indonesia can be carried out in two ways, namely through domestic trademark registration and registration based on the Madrid protocol. Both of these methods can now be done online through the official DJKI website, namely https://www.dgip.go.id/. Legal protection in trademarks in general can be interpreted as a protection given to legal subjects related to them, both preventive in the form of legal norms, the rule of law so that there is no violation of rights by other parties, as well as granting rights to legal subjects to take actions related to their rights.

As for trademarks that are not registered in Indonesia, there is currently no legal umbrella to protect them. The only way that the mark in question must take is to register its trademark according to the proper provisions, according to the author's general explanation of the previous problem, namely through the DJKI official website. Regarding if the unregistered mark has similarities with a well-known foreign mark, the owner of the unregistered mark must first check whether administratively the well-known foreign mark has been registered or not, or the protection period has expired, and so on to become an opportunity to be applied for. Even though in the end it was DJKI who gave the decision on the submitted application.

The advice that can be given by the authors for their trading purposes in general is to always be directly registered according to the provisions that apply in Indonesia legally. This is because in the end it is necessary to clearly understand that the use of unregistered marks in almost every case, is inherently less secure than the use of registered marks. The degree of harm to the business depends on the strategies and decisions used. Early development of brand and trademark strategies, suggested and well considered by companies of all sizes should be highly recommended. The Directorate of Intellectual Property Marks needs to give priority to well-known brands by providing preventive measures to any business actor who has not and has been registered for deletion of the mark if it is known that there is a well-known trademark that has been registered. Efficiency starts with an initial trademark search which quickly gives companies a strong brand candidate to come forward for licensing.

Reference

Abdul, H. (2020). Legal Protection of Registered Mark Owner in Indonesian. Budapest International Research and Critics in Linguistics and Education (BirLE) Journal 3.1 .

Dwi Agustine Kurniasih,(2008). Perlindungan Hukum Merek Terdaftar dari Perbuatan Passing Off (Pemboncengan Reputasi) Bagian I, Media HKI, Desember.

Direktorat Jendral Kekayaan Intelektual, Kementerian Hukum dan Hak Asasi Manusia RI. Modul Kekayaan Intelektual Lanjutan Merek dan Indikasi Geografis tentang pendaftaran Permohonan Merek dan Indikasi Geografis Serta Perlindungannya. (Jakarta: Direktorat Jendral Kekayaan Intelektual, Kementerian Hukum dan Hak Asasi Manusia RI, 2020)

Legal Brief is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).

Dr. H. OK. Saidin, SH., M.Hum. Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights), Edisi Revisi, (Jakarta: Rajawali Pers, 2019)
DR.Juwita SH, MH, et. Al. Perlindungan Kekayaan Intelektual Suatu Pengantar, (Jakarta: Penerbit Pusbangter, 2020)
Yahya Harahap, Tinjauan Merek secara Umum, (Bandung: PT Citra Aditya Bakti, 1996)
Iswi Hariyani, Prosedur Mengurus HAKI yang Benar, (Yogyakarta: Pustaka Yustisia, 2010)
Hani, S. (2021). Ideal Construction of the Implementation of A Constitutive System (" FIRST TO FILE") in Mark Registration. The 1st Proceeding International Conference And Call Paper. Vol. 1. No. 1.
Harsono Adisumarto, Hak Milik Intelektual Khususnya Hukum Paten dan Merek, (Jakarta, Akademika Pressindo, 1990)
Harsono Adisumarto, Hak Milik Intelektual Khususnya Paten dan Merek Hak Milik Perindustrian. (Akademi Presindo 1998)
https://smartlegal.id/hki/merek/2021/09/16/ini-dia-5-sengketa-merek-di-indonesia-yang-perlu-anda-ketahui/ diakses 3 Juni 2022
Oktaviani, P. (2020). Legal Protection Implications on Trademark in Indonesia by Comparing the First to Use and First to File Principles. International Conference on Law Reform (INCLAR 2019).
F Nugrahani, M Hum (2014). Metode penelitian kualitatif. (Solo: Cakra Books, 2014)
Peter Mahmud Marzuki, Penelitian Hukum, Cet.6, (Jakarta: Kencana Prenada Media Group,2005)
Raden, M. (2018). Legal Protection of the Registered Trademark Owner in the Constitutive System (First to File) in Indonesia. SHS Web of Conferences. Vol. 54.
Rahmi Janed, Hukum Merek (Trademark Law) dalam Era Globalisasi Dan Integrasi Ekonomi (Jakarta: Prenada Media Group, 2015)
Sudargo Gautama, Hukum Merek Indonesia,(Bandung: Alumni 1977)
Sudarto. (2021). The Legal Politic of Regulation for Trademark Registration Systems in Indonesia. Berumpun: International Journal of Social, Politics, and Humanities.
Sudarmanto, KI dan HKI serta Implementasinya Bagi Indonesia, (Jakarta: PT Elex Media Komputindo, 2012)
Sudrajat, et. Al. Hak Kekayaan Intelektual, (Bandung: Oase Media. 2010)
Undang-Undang tentang Merek dan Indikasi Geografis, UU No.20 Tahun 2016. LN No. 256 Tahun 2016
Undang-Undang Republik Indonesia tentang Perlindungan Konsumen, UU Nomor 8 tahun 1999. LN No. 22 Tahun 1999

Legal Brief is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).