

Legal Protection for The Owner of *Warung Makan Ibu Gambreng* Trademark: A Study of Supreme Court Decision No. 988 K/Pdt.Sus- HKI/2024

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Abstract. *This study meticulously analyzes the legal protection afforded to the owner of the prior registered trademark “Warung Makan Ibu Gambreng,” focusing on the landmark Supreme Court Decision Number 988 K/Pdt.Sus-HKI/2024. The research holds two primary objectives: first, to thoroughly examine the consistency and efficacy of legal protection under the Indonesian Law No. 20 of 2016 concerning Marks and Geographical Indications, and second, to dissect the detailed legal considerations and judicial reasoning that led the Supreme Court, as the Judex Juris, to decisively cancel the competing mark, “Nasi Gambreng Bu Esti.” The research utilizes a Normative Legal Research methodology, primarily employing the Case Approach focused on the specific decision, the Statute Approach analyzing the relevant trademark law, and the Conceptual Approach to interpret key legal principles. Data collection relies exclusively on secondary sources, including primary legal materials (the Supreme Court Decision) and secondary legal materials (academic journals, books, and articles), all subjected to Qualitative Content Analysis for critical interpretation. The findings reveal a significant and correctable discrepancy between the Commercial Court, which initially rejected the lawsuit based on formalistic visual differences, and the Supreme Court. The MA decisively established the defendant to have acted in bad faith, thereby overriding the Judex Facti’s restrictive formal approach, as the foundation for cancellation was the Defendant’s proven misappropriation of the Plaintiff’s goodwill established through the prior franchise agreement. The novelty of this research lies in its specific analysis of this Supreme Court judgment, which sets a crucial precedent: the abuse of an established contractual business relationship, such as a franchise, is confirmed as compelling and decisive evidence of bad faith under Article 21 paragraph (3), thereby significantly reinforcing the prioritization of substantive justice and ethical business conduct in Indonesian trademark law.*

Keywords: *Agreement; Franchise; Protection; Similarity; Trademark.*

1. Introduction

The global commitment to secure intellectual property rights (IPR) is mandated by international trade agreements, notably through the ratification of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), leading member countries to adopt stringent national laws. In Indonesia, this obligation is codified in Law No. 20 of 2016 concerning Marks and Geographical Indications. This legislation fundamentally establishes a trademark as a distinctive sign for goods and/or services, serving as a vital guarantee of product quality for consumers and securing fair business competition within the market. Therefore, the effective and consistent enforcement of this law is paramount to upholding commercial integrity.

The legal framework specifies that trademark protection can only be effective if the registration process adheres to strict statutory provisions, specifically addressing subjective and objective grounds for rejection. Critical among these are the prohibition against marks filed by applicants acting in bad faith (Article 21 paragraph (3) of Law No. 20/2016) and the rejection criteria for marks that bear a similarity in essence to a previously registered mark for similar goods or services (Article 21 paragraph (1) letter a). The challenge for the judiciary lies in assessing the interplay between the objective visual, phonetic, or conceptual similarity and the subjective intent of the applicant, particularly when there is a calculated effort to capitalize on the reputation of an existing mark.

This precise legal complexity forms the nucleus of the trademark dispute concerning the mark "Warung Makan Ibu Gambreng" (the Plaintiff/Petitioner) which has established priority rights since 2010, against the mark "Nasi Gambreng Bu Esti" (the Defendant/Respondent). The root of the controversy is anchored in a contractual relationship: the Plaintiff and Defendant previously engaged in a legitimate Franchise Agreement. The crucial fact is the Defendant's subsequent action of independently registering their own mark, which bears similarity in the dominant word "Gambreng", shortly after benefiting from the operational success and goodwill of the Plaintiff's existing business model.

However, the handling of the case presented a significant GAP at the level of the Commercial Court of Central Jakarta (Judex Facti). Despite robust evidence detailing the existence of the prior franchise relationship and the implication of the Defendant's calculated intent, the Judex Facti ultimately rejected the Plaintiff's entire cancellation lawsuit. The court's ruling was criticized for being overly focused on formalistic distinctions, arguing that the assessment of bad faith was primarily the exclusive domain of the Directorate of Marks and Geographical Indications and that the visual elements of the two marks were sufficiently distinct. This approach effectively failed to deliver substantive justice by overlooking the critical factor of abuse of a business relationship as compelling evidence of bad faith.

The legal error committed by the Commercial Court was corrected by the Supreme Court (Judex Juris) through Decision Number 988 K/Pdt.Sus-HKI/2024. The Supreme Court emphatically

granted the cassation request and subsequently annulled the Defendant's mark. The MA's consideration demonstrated a rigorous legal analysis, prioritizing the protection of the prior mark owner. The Court decisively ruled that the Defendant's bad faith was proven, primarily based on the exploitation and misappropriation of the existing franchise relationship for self-gain. Furthermore, the MA confirmed that the mark "*Nasi Gambreng Bu Esti*" indeed possessed a similarity in essence with the Plaintiff's mark due to the use of the dominant element "*Gambreng*" for identical goods/services.

This Supreme Court decision is vital as it provides a clear, high-level judicial interpretation regarding the definition and requisite proof of "bad faith" under Article 21 paragraph (3) of Law No. 20/2016. The judgment effectively confirms that the misappropriation or abuse of a contractual or established business relationship, such as a franchise agreement, serves as compelling and definitive evidence of bad faith, thereby setting a strong precedent for enforcing substantive justice over minor visual or administrative formalisms. This research offers a significant novelty by providing an in-depth analysis of this recent landmark decision, contrasting the formalistic findings of the *Judex Facti* with the definitive, policy-driven judgment of the *Judex Juris*—a vital legal development often underexplored in previous research focusing on older or less complex cases.

The identification of this problem and the analysis of the legal consistency are crucial for the development of Indonesian IPR jurisprudence. This research aims to analyze the legal protection afforded to the owner of the *Warung Makan Ibu Gambreng* mark under Law No. 20 of 2016 concerning Marks and Geographical Indications, and to examine the legal considerations of the Supreme Court in Decision Number 988 K/Pdt.Sus-HKI/2024 that resulted in the definitive cancellation of the Defendant's mark.

2. Research Methods

The research employed in this study is classified as Normative Legal Research (Juridical Normative). This methodology focuses on examining the consistency and application of legal norms and principles found in legislation and court decisions, specifically regarding trademark protection in Indonesia.

The primary approach utilized is the Statute Approach, which involves analyzing the relevant law, namely Law No. 20 of 2016 concerning Marks and Geographical Indications. This is combined with the Case Approach, which centers the analysis on the legal considerations within the specific landmark judgment: Supreme Court Decision Number 988 K/Pdt.Sus-HKI/2024. A Conceptual Approach is also used to assess the core legal concepts of "bad faith" and "similarity in essence."

The research specification is Descriptive-Analytical, aiming to systematically describe and analyze the substance of the legal norms and the judicial reasoning applied in the Supreme Court decision, particularly in enforcing the principle of good faith.

Data collection relies exclusively on Secondary Data, consisting of:

1. Primary Legal Materials (e.g., Law No. 20 of 2016, Supreme Court Decision No. 988 K/Pdt.Sus-HKI/2024).
2. Secondary Legal Materials (e.g., legal journals, books, and articles concerning trademark law and jurisprudence).
3. Tertiary Legal Materials (e.g., legal dictionaries and indexes).

The collected data are analyzed using Qualitative Analysis. The analysis technique applied is Content Analysis (descriptive-analytic), which involves critically reviewing and interpreting the substance of the legal provisions and judicial opinions to draw systematic conclusions regarding the legal protection afforded to the prior trademark owner.

3. Results and Discussion

3.1. The Legal Protection for the "Warung Makan Ibu Gambreng" Trademark Owner

The structure of trademark protection in Indonesia is built upon an elaborate and multilayered system of norms that operate simultaneously at the formal, substantive, moral, and coercive levels. The interaction among these norms creates a legal architecture that is not merely declarative but performative—constructed to actively preserve the stability of the marketplace, the integrity of commercial identity, and the fairness of competition. The dispute involving the “Warung Makan Ibu Gambreng” mark offers a compelling lens through which this architecture may be critically examined, revealing how doctrinal principles are intended to function when confronted with a real-world attempt to appropriate a distinctive element of an established brand.

At the foundation of Indonesian trademark law lies the constitutive principle embodied in Article 3 of the MIG Law. This principle, derived from continental civil-law philosophy, stipulates that trademark rights arise exclusively upon registration, not usage. This doctrinal choice transforms trademarks into formal legal property and creates certainty by enabling the Directorate General of Intellectual Property (DJKI) to serve as a centralized authority managing the registry. Yet the deeper function of the constitutive system is often overlooked: it intentionally shifts the burden of vigilance to market actors, requiring them to conduct due diligence before adopting or registering new marks. Registration thus operates as constructive notice—a concept that places every trader in Indonesia on implied awareness of existing marks. In the Mrs. *Gambreng* case, the Plaintiff’s registration since 2010 imposes an unavoidable legal obligation upon all subsequent traders to refrain from adopting identical or similar marks. This obligation exists

irrespective of actual knowledge. Therefore, any subsequent adoption of the term “*Gambreng*,” especially when used as the dominant component, is not a matter of inadvertence but a legal impossibility under the constitutive system.

However, the constitutive principle, though designed to promote certainty, carries inherent structural risks. Because rights arise from formal filing rather than inherent originality, the system is susceptible to manipulation by actors who seek to register marks that derive commercial value from prior goodwill. This flaw in the system—well documented in global IP scholarship—necessitates strong substantive safeguards. Indonesian law responds through Article 21(1)(a), which prohibits the registration of marks that bear Similarity in Essence (PnP) to earlier marks within the same class of goods or services. This provision acts as the substantive backbone of trademark protection, preventing the erosion of distinctiveness and reducing the risk of marketplace confusion.

The doctrine of Similarity in Essence is not merely a technical rule; it is a sophisticated analytical framework that requires a holistic evaluation of visual, phonetic, and conceptual similarity. The assessment begins with the dominant feature of the mark—the part that consumers most likely remember and rely upon when differentiating products or services. In the “*Gambreng*” dispute, the dominant feature is undeniably the word “*Gambreng*” itself, a distinctive and non-generic element that has acquired market recognition. The presence of ancillary modifiers such as “*Nasi*” or “*Bu Esti*” does not dilute the dominance of “*Gambreng*.” In doctrinal terms, the addition of descriptive or subordinate words cannot overcome the likelihood of confusion caused by the replication of the principal identifier. This principle, recognized across multiple jurisdictions, maintains that consumers do not dissect marks with scientific precision; they rely on gestalt perception—absorbing marks in their total impression.

Furthermore, the average consumer doctrine recognizes that consumers operate with imperfect recollection, especially in fast-moving marketplaces like Indonesia’s culinary sector, where decisions are rapid and often influenced by habitual recognition rather than careful examination. A patron encountering “*Nasi Gambreng Bu Esti*” in the marketplace would naturally assume some affiliation with “*Warung Makan Ibu Gambreng*.” The likelihood of confusion is not only probable but doctrinally unavoidable, because the average Indonesian food consumer is influenced by the prominent verbal component of the mark, not its secondary descriptors. Thus, under the core tenets of trademark doctrine, the Defendant’s use of “*Gambreng*” satisfies the legal threshold for similarity, bringing the mark squarely within the prohibition of Article 21(1)(a).

Critically, however, the statutory prohibition of confusing similarity does not exhaust the scope of trademark protection. Indonesian trademark law extends into deeper normative territory through Article 21(3), which invalidates applications filed in bad faith. Bad faith is a multidimensional concept, operating at the intersection of public ethics, private obligation, commercial morality, and equitable doctrine. Unlike similarity, which concerns external

perception, bad faith concerns internal intention. It evaluates whether the applicant sought to manipulate the trademark system for improper advantage. Importantly, bad faith is not limited to explicit acts of fraud; it includes any conduct that violates commercial morality—a phrase that captures fairness, honesty, and loyalty in business interactions.

Bad faith is particularly relevant when the parties share a prior relationship, as is the case with the Mrs. *Gambreng* franchise agreement. A franchise arrangement inherently establishes a relationship of trust. The franchisee receives intimate access to trade secrets, operational methods, branding strategies, and other goodwill-laden assets. This relationship is doctrinally quasi-fiduciary; although not formally labeled “fiduciary” under Indonesian law, it is functionally similar because the franchisee is expected to act in loyalty to the brand and refrain from exploiting the franchisor’s intellectual assets. When a former franchisee later attempts to register a mark incorporating the core identity of the franchised brand, such conduct constitutes a paradigmatic breach of trust and an exploitation of confidential commercial knowledge.

In civil-law theory, this conduct is categorized under *misbruik van recht*—the abuse of a legal right. The doctrine prohibits the exercise of legal mechanisms (such as filing a trademark application) for purposes that contradict the aims of the legal order. The trademark registration system exists to promote transparent and fair identification of commercial origin, not to reward opportunists seeking to appropriate established market identities. The Defendant’s conduct in the *Gambreng* case therefore represents a collision between formal legality (the act of filing an application) and substantive illegality (the purpose of undermining the franchisor’s goodwill). The law resolves this tension by giving decisive weight to substantive justice, invalidating registrations filed with improper intent.

The severity of bad faith is underscored by Article 77(2) MIG Law, which declares that cancellation actions based on bad faith are not subject to any statute of limitations. This is a remarkable legislative stance. Most civil claims in Indonesian law are time-barred, but bad-faith trademark claims are perpetually actionable. This reflects a profound moral judgment: rights acquired through deceit or abuse cannot be legitimized by the passage of time. In the context of Mrs. *Gambreng*, this means that the Plaintiff’s right to challenge the Defendant’s conduct persists indefinitely, underscoring the seriousness with which Indonesian trademark law views attacks on brand integrity and relational trust.

The trademark protection regime further extends into the criminal sphere under Article 100 of the MIG Law, which penalizes unauthorized use of identical or confusingly similar marks. The criminalization of trademark infringement reflects a philosophical view that such conduct harms not only individual rights holders but also the integrity of economic order. Trademarks help consumers navigate the marketplace, signaling origin, quality, and accountability. When these signals are distorted through deceptive imitation, consumer welfare suffers. In culinary markets, where brand names strongly influence consumer choice and where trust is essential due to

health and safety concerns, the unauthorized replication of a name like “*Gambreng*” becomes especially dangerous and harmful.

3.2. The Supreme Court's Legal Considerations in Canceling the Defendant's Mark

The Supreme Court's decision represents a significant jurisprudential shift in Indonesian trademark law, particularly regarding the interpretation of "bad faith" and "essential similarity." The Court's legal reasoning provides a comprehensive framework for analyzing trademark disputes involving pre-existing business relationships.

3.2.1. Comprehensive Analysis of Pre-Existing Contractual Relationship

The Supreme Court established that the franchise agreement between the parties was not merely a background fact but the central element proving bad faith. The Court meticulously examined the contractual relationship:

"That before the Defendants' mark was registered, on February 14, 2021, between the Plaintiff and the Defendants there was already a business cooperation relationship in the same field, namely the Plaintiff (franchisor) with Defendant I and Defendant II (franchisees) made an agreement for the use of the mark '*Warung Makan Ibu Gambreng*' which was made before Notary Zulkarnain, S.H, M.Kn. with a compensation value of IDR 12,000,000.00 each year." (Supreme Court Decision, p. 6).

This finding is crucial because it demonstrates that:

1. The relationship was formalized through a notarial deed, giving it legal certainty
2. The defendants were not merely licensees but franchisees who had comprehensive access to the plaintiff's business system
3. The compensation of IDR 12,000,000 annually indicated a substantial business relationship

The Court further emphasized the significance of this relationship by noting:

"That the Defendants' business as franchisees from the Plaintiff ran successfully, with many visitors." (Supreme Court Decision, p. 6).

This observation indicates that the defendants benefited directly from the plaintiff's established goodwill and brand recognition before attempting to register their own similar mark.

3.2.2. Systematic Pattern of Bad Faith Registration Attempts

The Supreme Court uncovered a disturbing pattern of registration attempts that demonstrated the defendants' persistent intention to appropriate the plaintiff's brand identity:

"...thus the Defendants attempted to register the mark '*Anak Bu Gambreng*', Registration Number J002015053729, dated November 24, 2015 (evidence P-5a), mark '*Gambreng*',"



Registration Number J002009004320 dated February 11, 2009 (evidence P-5b), mark '*Nasi Gambreng Bu Esti + Logo*', Registration Number IDM001083968 dated May 19, 2023 and evidence P-5c, P-5d, P5e and P-5f, all of which were rejected by the Co-Defendant [Directorate General of IP]." (Supreme Court Decision, p. 6).

This pattern reveals several important aspects:

1. Chronological persistence: The attempts spanned from 2009 to 2023, showing a long-term strategy
2. Variation strategy: The defendants tried different combinations containing the dominant element "*Gambreng*"
3. Administrative rejection: All previous attempts were formally rejected by the trademark office
4. Progressive imitation: Each attempt moved closer to the plaintiff's actual mark

3.2.3. Essential Similarity Through Dominant Element Analysis

The Supreme Court conducted a sophisticated analysis of essential similarity by identifying the dominant element in both marks:

"That the mark '*Nasi Gambreng Bu Esti*' belonging to the Defendants has essential similarity with the mark '*Warung Makan Ibu Gambreng*' belonging to the Plaintiff, because both marks use the word '*Gambreng*' as the dominant element, where in the Plaintiff's mark the word *Gambreng* is a person's name, namely Ibu *Gambreng*." (Supreme Court Decision, p. 6).

This analysis demonstrates the Court's application of the "anti-dissection" principle in trademark law, where marks are compared as a whole rather than broken down into separate components. The Court recognized that:

1. "*Gambreng*" functions as the distinctive and memorable component
2. The personal name "*Ibu Gambreng*" carries significant brand value
3. Additional elements like "*Warung Makan*" or "*Nasi Bu Esti*" are descriptive and non-distinctive
4. The overall commercial impression created by both marks is confusingly similar

3.2.4. Synthesis of Evidence and Final Determination of Bad Faith

The Supreme Court masterfully synthesized all evidence to reach its conclusive finding of bad faith:

"That if linked with the business relationship between the Plaintiff and the Defendants, before the Defendants registered their mark and considering the efforts of the Defendants to register

their marks, all of which used the word '*Gambreng*' which is the dominant element of the Plaintiff's mark, it is clear that the Defendants' purpose in registering the mark '*Nasi Gambreng Bu Esti*' had the intention to imitate, copy, or follow the Plaintiff's mark, for their business interests which creates conditions of unhealthy business competition, deceives, or misleads consumers, therefore the Defendants are trademark applicants who acted in bad faith as meant by the provisions of Article 21 paragraph (3) of Law No. 20 of 2016." (Supreme Court Decision, p. 6).

This synthesis represents a comprehensive legal test for establishing bad faith, incorporating:

1. The fiduciary relationship created by the franchise agreement
2. The systematic pattern of registration attempts
3. The exploitation of the dominant element from the plaintiff's mark
4. The likely consumer confusion in the marketplace
5. The violation of fair competition principles

3.2.5. Correction of Lower Court's Legal Error

The Supreme Court explicitly identified the Commercial Court's fundamental error:

"That the objections can be justified, because the *Judex Facti* was wrong in applying the law with the following considerations..." (Supreme Court Decision, p. 5).

The Supreme Court clarified that the Commercial Court's narrow focus on visual comparison while ignoring the contextual evidence of bad faith constituted a fundamental error in legal application. The Supreme Court reasserted that:

1. Trademark examination is not purely administrative but requires substantive judicial review
2. Contextual evidence of bad faith must be considered in cancellation claims
3. The commercial reality of the relationship between parties is relevant to trademark disputes
4. Consumer protection and fair competition are fundamental purposes of trademark law

3.2.6. Legal Consequences and Precedential Value

The Supreme Court's final ruling established significant legal consequences:

"Stating that the registration of the mark '*Nasi Gambreng Bu Esti*' which is registered in the General Mark Register Number M001083968 dated June 21, 2021 in the name of Defendant I, Defendant II, Defendant III, Defendant IV, Defendant V, and Defendant VI is canceled with all its legal consequences." (Supreme Court Decision, p. 8).

This decision sets several important precedents:

1. Franchise relationships create heightened duties of good faith in trademark matters
2. Patterns of rejected applications can evidence systematic bad faith
3. Dominant element analysis prevails over minor visual differences
4. Indonesian courts have broad authority to examine bad faith in trademark cancellation cases

The Supreme Court's comprehensive analysis in this case provides a robust framework for future trademark disputes, particularly those involving pre-existing business relationships and systematic attempts to appropriate established brand equity through trademark registration.

4. Conclusion

The conclusion of this study directly addresses the two research problems formulated. Firstly, the legal protection afforded to the owner of the prior registered trademark "*Warung Makan Ibu Gambreng*" is realized through two crucial aspects of Law No. 20 of 2016 concerning Marks and Geographical Indications: objective protection against Similarity in Essence (PnP) (Article 21 paragraph (1) letter a) and subjective protection through the prohibition of mark registration performed in bad faith (Article 21 paragraph (3)). Indonesian trademark law effectively provides comprehensive protection against opportunistic imitation that harms the owner of the priority right. Secondly, the legal considerations of the Supreme Court (MA) in Decision Number 988 K/Pdt.Sus-HKI/2024, which decisively canceled the Defendant's mark ("*Nasi Gambreng Bu Esti*"), are based on an analysis that overcame the formalism of the Commercial Court (Judex Facti). The MA established that the Defendant's bad faith was definitively proven, grounded in the abuse and misappropriation of the goodwill from the pre-existing contractual franchise relationship. This ruling reinforces jurisprudence by affirming that leveraging an established business relationship to register a mark bearing Similarity in Essence on the dominant element "*Gambreng*" constitutes compelling evidence of bad faith, thereby prioritizing substantive justice and commercial ethics over minor visual differences.

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