

## **Legal Protection For Briquette Trademark Holders In Indonesia (Study On Decision Number 70pdt.Sus-Hki/Merek/Pn Niaga.Jkt.Pst)**

**Nimasgari Dhaeyu Wildan Syafira<sup>1)</sup> & Anis Mashdurohatun<sup>2)</sup>**

<sup>1)</sup>Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [nimasgaridhaeyuwildansyafira.std@unissula.ac.id](mailto:nimasgaridhaeyuwildansyafira.std@unissula.ac.id)

<sup>2)</sup>Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [anismashdurohatun@unissula.ac.id](mailto:anismashdurohatun@unissula.ac.id)

**Abstract.** Brands are part of intellectual property rights that have been used for hundreds of years and play an important role in the world of advertising and marketing in the business world. The formulation of the problem in this study is, 1) How is the legal protection for Briket trademark holders in Indonesia, 2) What is the basis for the judge's consideration in Decision Number 70/Pdt.Sus-HKI/Merek/2019/PN Niaga. Jkt. Pst related to legal protection for trademark holders in Indonesia, 3) How should the legal protection for trademark holders in Indonesia be. This research method uses a Normative Juridical approach. Legal research in a Normative Juridical manner examines the implementation of positive legal provisions (legislation) factually in every specific legal event that occurs in society in order to achieve predetermined goals. The results of this study indicate that: Legal protection for briquette brand holders is only given to parties who register their brands in good faith. Therefore, parties who apply for trademark registration based on bad faith will not be given legal protection. 2) The basis for the judge's consideration in Decision Number 70 / Pdt.Sus-HKI / Merek / 2019 / PN Niaga. Jkt. Pst is Law Number 20 of 2016 concerning Trademarks and Geographical Indications related to legal protection for trademark holders in Indonesia. Consumer legal protection against passing off related to public misleading in Indonesia, namely consumers can report business actors who carry out unfair business competition to the Business Competition Supervisory Commission. 3) Legal protection for Trademark holders in Indonesia in the future will be carried out by repressive efforts or active efforts to protect registered briquette brands can be carried out with a complaint offense by filing a lawsuit for damages and a lawsuit for cancellation of Trademark registration or criminal lawsuits through law enforcement officers. Repressive legal protection is carried out if there has been a violation of Trademark rights. Article 76 of the Law on Trademarks and Geographical Indications provides protection to registered trademark owners to file lawsuits against other parties who unlawfully use trademarks that are essentially or wholly similar.

**Keywords:** Briquettes; Legal Protection; Trademark.

## 1. Introduction

Brands are part of intellectual property rights that have been used for hundreds of years and play an important role in the world of advertising and marketing that occurs in the business world. This is because the general public often associates the image, quality and reputation of a product with a particular brand, because a brand can be a very valuable business asset and often the brand makes the product more expensive. In addition, brands play an important role in the continuity and improvement of goods and services transactions in trade and investment.<sup>1</sup>

The impact of globalization on people's lives, both socially, economically and culturally, is increasingly driving the speed of economic development in society. Intellectual property rights cannot be separated from business and trade. Intellectual property rights also play an important role in economic development and trade, which ushers in a new stage in knowledge-based economic development.<sup>2</sup> Like trademarks, copyrights, patents, and other intellectual property rights, trademark rights are also part of intellectual property rights. With the existence of trademark rights, unfair commercial competition can be prevented, such as trademark imitation and bad faith actions. It is said so because people often have to face intellectual property rights problems in the form of trademark violations.

Brands created by economic actors and intended to distinguish goods or services produced can be referred to as identifying the origin of goods or services in relation to their production purposes. For producers, brands act as a guarantee of quality, product value, and customer satisfaction. Brands produced by producers create several perspectives for consumers. In this way, consumers can use the brand to determine whether a product is good or bad. Thus, brands that are known to the public and have their own characteristics are likely to be imitated and pirated by other parties.<sup>3</sup>

The definition of a brand based on Article 1 Paragraph (1) of Law Number 20 of 2016 concerning Brands and Geographical Indications (hereinafter referred to as the Brand Law) is:

*"A sign displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement in 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of (two) or more of these elements to distinguish goods and/or services produced by a person or legal entity in the trading of goods and/or services."*

Trading of goods or services requires a brand to distinguish one product from another. Without a brand, it becomes difficult to distinguish one product or service from a similar product or service. This is where the function of the brand lies as a distinguishing feature between similar goods. An important function of a brand is that brand rights must be protected from unlawful use by other parties. In addition, brand rights are regulated by the

---

<sup>1</sup>Muchtar AH Labetubun and Marselo VG Pariela, Controlling of Imported or Exported Goods Related to Brand Protection By Customs, UNTAG Law Review 4, no 1, 2020.pg 21

<sup>2</sup>OK Saidin, Legal Aspects of Intellectual Property Rights (6th Revised Edition), (Jakarta: PT. Raja Grafindo Persada, 2007), p. 13

<sup>3</sup>Wiratmo Dianggoro, Reform of Trademark Law and Its Impact on the Business World, (Jakarta: Business Law Development Foundation, 1997), p. 34.

Master of Law, UNISSULA

Trademark Law in other matters that may give rise to disputes.<sup>4</sup>In accordance with applicable regulations, brand owners are entitled to legal protection when the brand has been declared registered by the Directorate General of Intellectual Property of the Ministry of Law and Human Rights. Therefore, other people who try to copy or imitate a registered brand will be sued under the Trademark Law.

Trademark registration is a form of legal protection that aims to create legal certainty. Thus, based on the constitutive system, it has been determined that trademark rights can only be recognized and protected by law if they have been registered. Preventive legal protection is provided by filing a trademark application, while repressive legal protection is provided in the case of trademark violations through civil and/or criminal legal processes.<sup>5</sup>

Intellectual Property Rights (IPR) are rights relating to wealth arising from human intellectual abilities. These abilities can be in the form of works in the fields of technology, science, art, and literature.<sup>6</sup>The concept of IPR is based on the idea that intellectual works produced by humans require sacrifice of energy, time, and money. With these sacrifices, the work that has been produced has economic value because of the benefits that can be enjoyed.<sup>7</sup>Broadly speaking, the scope of IPR is divided into two, namely copyright and industrial property rights. Copyright includes creations in the fields of science, art, and literature. Industrial property rights consist of patents, trademarks, industrial designs, integrated circuit layout designs, trade secrets, and plant variety protection.<sup>8</sup>

As stated above, one part of IPR is a brand. The existence of a brand cannot be separated from business activities. Business activities in Indonesia are growing, many new businesses are followed by the emergence of various brands. A brand is one of the IPRs that is protected and can be accounted for. Trademark rights are a form of IPR protection that provides exclusive rights for registered brand owners to use the brand in the trade of goods or services. A brand is a form of intellectual work that plays an important role in the smooth running and increasing of trade in goods or services. Brands also have strategic and important value for producers and consumers. For producers, in addition to distinguishing their products from other similar products, brands are also intended to build the company's image in marketing.<sup>9</sup>

The existence of trademarks in Indonesia is increasing with information and communication technology that supports the development of various brands that are well-known in the

---

<sup>4</sup>Sarah S. Kuahaty, License Agreement as a Form of Brand Protection, SASI Journal Vol. 21. No. 1, 2015, p. 67

<sup>5</sup>Ridwan Khairandy, Legal Protection of Trademarks and Problems of Legal Enforcement, (Yogyakarta: Law Faculty of Law, University of Indonesia, 2000), p. 11.

<sup>6</sup>Muhammad Ahkmad Subroto & Suprapedi, Introduction to IPR (Intellectual Property Rights) Basic Concepts of Intellectual Property for the Growth of Innovation, (Jakarta: Indeks, 2008), p. 14

<sup>7</sup>Afrillyanna Purba et al., TRIPs – WTO & Indonesian Intellectual Property Rights Law: A Study of Copyright Protection of Traditional Indonesian Batik Art, (Jakarta: Asdi Mahasatya, 2005), p. 12

<sup>8</sup>Much. Nurachmad, Everything About Indonesian Intellectual Property Rights, (Yogyakarta: Buku Biru, 2012), p.22

<sup>9</sup>Muhamad Djumhana, Development of Doctrine and Theory of Intellectual Property Rights Protection, (Bandung: Citra Aditya Bakti, 2006), p. 78

Master of Law, UNISSULA

wider community. It is very easy to find information on product advantages from brands that consumers want. Therefore, brand owners on a product will compete to gain public trust. This situation can encourage unhealthy business competition, such as counterfeiting or imitation of famous brands.<sup>10</sup>

Brands created by business actors aim to distinguish the goods or services produced. Brands can be called as an identifier of the origin of goods or services that connects the purpose of making the product or service. For consumers, brands function as a guarantee of the value of production results with a different perspective from the wider community. Thus, brands that have quality that is widely known by consumers have the potential to be followed, imitated, or pirated by irresponsible people.<sup>11</sup>

Each country has a brand protection system through its national laws. Indonesia has a long history of brand regulation, so there have been several changes. The first time, Indonesia regulated the existence of brands after independence through Law Number 21 of 1961 concerning Company Brands and Trademarks. Currently, the existence of brands is regulated in Law Number 20 of 2016 concerning Brands and Geographical Indications. Law Number 20 of 2016 was established as a result of the improvement of the brand registration system regulated in Law Number 15 of 2001 concerning Brands.

The era of globalization continues to develop. Indonesia as a country of law also continues to make improvements by improving the contents of laws in the field of IPR. By obtaining legal protection, inventors and creators will benefit if their inventions or creations are utilized. These benefits can be in the form of royalty payments and technical fees. With the existence of rewards or recognition of human creations, works, ideas, and inventions in IPR regulations, it is hoped that it will be able to arouse enthusiasm and interest in producing new, sustainable creations or innovations.<sup>12</sup>

Law Number 20 of 2016 concerning Trademarks and Geographical Indications explains that the role of government is very important, especially to maintain good and healthy business competition. Trademarks can be used as a tool to explain the origin of a product, to determine the quality of the product, and the authenticity of a product. Therefore, adequate regulation of trademarks is needed so that it can provide improved services to the wider community.<sup>13</sup>

Trademark law in Indonesia constitutively adopts the first to file system, so that the first person to register a trademark is the one who has the right to ownership of the trademark. In order for a trademark to be protected by law, the trademark must be registered with the Ministry of Law and Human Rights, Directorate General of Intellectual Property Rights so that it is registered in the General Register of Trademarks (DUM) and the actual owner of

---

<sup>10</sup>Tomi Suryo Utomo, *Intellectual Property Rights (IPR) in the Global Era: A Contemporary Study*, (Yogyakarta: Graha Ilmu, 2010), p. 28

<sup>11</sup>Tommy Hendra Purwaka, *Brand Protection*, (Jakarta: Yayasan Pustaka Obor Indonesia, 2017), p. 7.

<sup>12</sup>Mastur, "Legal Protection of Intellectual Property Rights in the Field of Patents," *QISTI Scientific Journal of Legal Science* Vol. 6 No. 1 (January 2012), p. 65

<sup>13</sup>OK. Saidin, *Legal Aspects of Intellectual Property Rights*, Revised Ed. Eighth Printing (Jakarta: RajaGrafindo Persada, 2002), p. 329

Master of Law, UNISSULA

the trademark will receive a trademark certificate as proof of rights/ownership of the trademark/service. If not, then the actual owner of the trademark will find it difficult to prove his rights if at some point there is a dispute because the trademark is used by another party or sued by another party. In the constitutive system, trademark rights are obtained through registration, meaning that exclusive rights to a trademark are granted because of registration. Thus, it can be said that trademark registration is absolute because a trademark that is not registered will not receive legal protection.

The exclusive rights can be in the form of economic rights that can be obtained by someone for legitimate ownership of the Brand that they obtain through a legitimate process and in accordance with Law Number 20 of 2016. Because in Law Number 20 of 2016 there is a sentence "If there is a registration in a Brand, then the Brand owner can obtain exclusive rights from the Brand that has been registered, and obtain exclusive rights from the brand that has been registered".<sup>14</sup>

Khoirul Hidayat wrote several procedures for trademark registration in Indonesia; First; Submitting a trademark application in accordance with the trademark registration form provided by the relevant agency and duplicated into 4, Second; Examination of trademark registration requests.<sup>15</sup>

The problem with the COCO ARRA brand above is very important to handle and requires protection and legal certainty for the owner or holder of rights to the COCO ARRA brand.

Based on the description of the COCO ARRA trademark dispute above, the author is interested in trying to research and re-tracing the legal issues regarding the judge's considerations in deciding the COCO ARRA trademark dispute. In this study, the author is interested in raising the issue further as a scientific work or final assignment in the form of a Thesis entitled "Legal Protection for Briquette Trademark Holders in Indonesia (Study on Decision Number.70/Pdt.Sus-HKI/Merek/2019/PN Niaga. Jkt. Pst)".

## **2. Research Methods**

The approach used in this study is the socio-legal approach. Socio-legal legal research examines the implementation of positive legal provisions (legislation) factually in every specific legal event that occurs in society in order to achieve predetermined goals.<sup>16</sup> The purpose of this review is to ensure whether the results of the application and in-concreto legal events are in accordance with the provisions of the law or not.

## **3. Results and Discussion**

### **3.1. Legal Protection for Briquette Trademark Holders in Indonesia**

Legal protection of trademark rights is legal protection given to registered trademark owners. This is because the trademark legal protection system in Indonesia adopts a constitutive system. This means that a trademark must be registered first before it will receive legal protection. Whoever registers the trademark first will be recognized by the

---

<sup>14</sup>Indirani Waudan, Legal Review of Trademark Imitation (Salatiga: FH-UKSW 2006)., p.25.

<sup>15</sup>Khoirul Hidayat, SH, MH, Intellectual Property Rights Law (Malang: Setara Press, 2017), page 308

<sup>16</sup>Abdulkadir Muhammad, Law and Legal Research, (Bandung: Citra Aditya Bakti, 2004), p.134.



Master of Law, UNISSULA

state as the legitimate owner. This principle is called first to file. However, registration must be accompanied by good faith.

Legal protection given to registered trademarks can be preventive and repressive. Preventive trademark legal protection is an effort made before a dispute occurs. While repressive legal protection is legal protection carried out after a dispute occurs.<sup>17</sup>

This type of legal protection can be resolved through litigation or non-litigation, either criminally or civilly. It should be noted that criminal acts against brands are based on complaints.<sup>18</sup>

Settlement of disputes regarding trademark infringement is explained in the Trademarks and Geographical Indications Law, Articles 83 to 98.<sup>19</sup>

In Indonesia, trademark registration is submitted to the Minister. In this case, the minister in question is the Directorate General of Intellectual Property of the Ministry of Law and Human Rights. Trademark registration is carried out through several stages, namely: submitting a registration application, paying the registration fee, going through formality examination, announcement, substantive examination, and issuance of a certificate.<sup>20</sup>

Legal protection for unregistered brands applies to: well-known brands, brands that are being applied for registration, and also geographical indications. In Law Number 20 of 2016 concerning Trademarks and Geographical Indications Article 21 it is stated that, every registered brand if it has similarities in principle, or in its entirety with a well-known brand, a brand that is being applied for registration, and also geographical indications. Then the registration application will be rejected.<sup>21</sup>

In Article 16 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, it is stated that: any party other than the applicant and his/her attorney has the right to file an objection to the trademark that is being applied for registration with the minister. Provided that the other party can prove that the trademark being applied for is a trademark that can be rejected based on the Trademark and Geographical Indications Law. As written in Article 20, namely: trademarks that are contrary to public order, religion, names of plant varieties protected by law, misleading the public, have no distinguishing power, common names or publicly owned institutions.<sup>22</sup>

Furthermore, in Article 21 paragraph 3 of the Trademark and Geographical Indications Law, it is stated that: an application is rejected if it is submitted by an applicant who has bad intentions. The meaning of bad intentions is imitating, plagiarizing, or following another party's brand for the sake of their business interests, or imitating another party's brand that has been known to the public for years.<sup>23</sup>

The above is also explained in Article 6 bis of the Paris Convention, which reads:

---

<sup>17</sup>Sihombing et al, 3.

<sup>18</sup>Article 102, Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

<sup>19</sup>Chapter XV, Articles 83 to 98, Law Number 20 of 2016 concerning Trademarks and Geographical Indications

<sup>20</sup>Articles 4 to 25, Law Number 20 of 2016 concerning Trademarks

And Geographical Indications.

<sup>21</sup>Law Number 20 of 2016 Concerning Trademarks and Geographical Indications

<sup>22</sup>Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

<sup>23</sup>Explanation of Law No. 20 of 2016 concerning Trademarks and Geographical Indications.

Master of Law, UNISSULA

*"The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith."*

This means that countries that have joined the "Paris Convention" agreement must refuse or cancel registration, and prohibit the use of trademarks that are: the result of a reproduction, an imitation, or a translation, which may cause confusion of the registered mark and the mark of the beneficiary of the Paris Convention for identical or similar goods. The provisions of Article 6 bis also apply if the essential part of the mark is a reproduction of a well-known mark or an imitation that may cause confusion therein.

From the provisions above, researchers can conclude that every registered or to be registered briquette brand that is the result of imitation, theft of other party's brands, especially well-known brands. Then the minister is obliged to reject registration or cancel the brand and even prohibit it from being used in a particular country.

If we look at the practice in the field, that Small and Medium Industry Actors who have registered trademarks have made efforts to protect the brand preventively and repressively. And obtain exclusive rights as stated in the Trademark and Geographical Indications Law Article 1 Point 5, with the term "rights to the brand".<sup>24</sup>

The exclusive rights can be used to prohibit others from using the brand, or to grant permission to others to use the brand in the form of a license agreement. And can also transfer rights, such as: inheritance, will, endowment, grant, and other reasons permitted by law.<sup>25</sup>

Meanwhile, Small and Medium Industry actors who do not register their trademarks. Then automatically will not get legal protection either preventively or repressively. And do not get exclusive rights as stated in the Trademark and Geographical Indications Law. However, unregistered trademark owners can file objections to the minister accompanied by sufficient reasons and evidence that the trademark being applied for registration is a trademark that is rejected or cannot be registered based on the Law.<sup>26</sup>

### **3.2. Judge's Consideration in Decision Number 70/Pdt.Sus-HKI/Merek/2019/PN Niaga.Jkt.Pst**

#### **1. Judge's Consideration**

Judges as law enforcement officers in making decisions must certainly be based on, not just passing a verdict on a legal problem, if not done with proper consideration, it is feared that the results of the decision he issued will not provide legal satisfaction and will cause injustice to the parties to the case. Therefore, judges must have intelligence in both theory

---

<sup>24</sup>Article 1 Paragraph 5, Law Number 20 of 2016 Concerning Trademarks and Geographical Indications

<sup>25</sup>Chapter V, Articles 41 and 42, Law Number 20 of 2016 concerning Trademarks and Geographical Indications

<sup>26</sup>Article 16, Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

Master of Law, UNISSULA

and practice so that in making decisions there is no difference between theory and practice so that the decisions he issues do not conflict between theoretical law and practice, which if they do, can cause problems of injustice for the person sentenced by him.<sup>27</sup>

Making a decision certainly requires certain good and mature considerations, so that the results of a decision can provide good results for anyone who needs it, both from the person who decides it and for the person who receives and for the person who lives the results of the decision. Likewise, a judge who has the authority given by the State, to implement and enforce the law because the judge has the authority to do so. A judge in deciding a case must certainly have good legal ability, intelligence and reasoning in the legal field because the judge is considered as God's representative on earth because he is given the authority to determine a person's fate. Therefore, the decision he takes must have weight so that justice can be felt by the parties to the case.<sup>28</sup>

Judges are one of the law enforcement officers who are given authority in the legal field, because they have the authority to do so, judges have a basis or foundation to carry out their duties and functions, regarding the legal basis for judges to carry out their duties, functions and authorities, it is regulated in "the 1945 Constitution guarantees the existence of a free and independent judicial power". With the authority granted by the Constitution, it is clear that the regulation regarding judges is recognized by the State. "This is emphasized by Law No. 48 of 2009 concerning judicial power, which in Article 1 paragraph (1) explains: judicial power is the power of an independent State to organize trials in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia for the sake of the implementation of the rule of law of the Republic of Indonesia".<sup>29</sup>

In trying criminal cases, the freedom of judges is needed, which aims to produce decisions that are fair and accepted by the community, therefore it is necessary to get a guarantee of protection, so that there is no interference or intervention of certain powers and interests, decisions are made on the basis of logical considerations or rationality of objective legal arguments and strong ethical and moral content, so that they can be accounted for to the community and to those seeking justice. The regulation of the freedom of judges in carrying out their duties in court is a legal guarantee that has been regulated in the State constitution and laws.

Regarding the regulation of the freedom of judges in judging, it has been widely regulated both in international conventions and national regulations that guarantee the freedom of judges in judging and are protected or immune from all lawsuits. The principles of justice related to legal guarantees for the freedom of judges in judging are: first *Ius Curia Novit* (judges are considered to know the law), second *Res Judicata Pro Veritate Habetur* (judges' decisions are considered correct). Judges are freed from all lawsuits in terms of judging if the judge is considered to have made a mistake regarding legal technicalities, not moral ethics.<sup>30</sup>

---

<sup>27</sup>Satjipto Raharjo, *Law in the World of Order*, Uki, Jakarta, 2006, p. 163

<sup>28</sup>Satjipto Raharjo, *Law in the World of Order*, Uki, Jakarta, 2006, p. 169

<sup>29</sup>A. Muhammad Asrun, *Judicial Crisis*, Elsam, Jakarta, 2004, p.45

<sup>30</sup>A. Muhammad Asrun, *Judicial Crisis*, Elsam, Jakarta, 2004, p.45



Master of Law, UNISSULA

The author's research results related to the judge's considerations in trying the case in decision Number 70/Pdt.Sus-HKI/Merek/2019/PN Niaga.Jkrta.Pst, as follows: The basis for the judge's legal considerations is to reject the lawsuit for cancellation of the trademark filed by the plaintiff and in its entirety; and to sentence the plaintiff to pay the costs incurred in the case in the amount of Rp. 2,405,000.00 (two million four hundred and five thousand rupiah). Based on the statements of witnesses, the defendant's statement and in connection with the evidence presented at the trial, the Panel of Judges obtained legal facts. In decision Number 70/Pdt.Sus-HKI/Merek/2019/PN Niaga.Jkrta.Pst, it can be categorized as a Decision whose lawsuit is not accepted. Where the Decision whose contents are a lawsuit is declared not accepted, if the lawsuit is against the rights or against the law. The decision does not accept the plaintiff's application, namely the plaintiff's lawsuit/applicant's application is not accepted because the legal requirements are not met, both formal and material (negative decision).

The above can be seen in the legal considerations contained as follows:

"Considering, that based on the description above, the Panel is of the opinion that between the Plaintiff's and Defendant's brands, there is a difference between the Plaintiff's registered brand and the Defendant's registered brand and furthermore, to compare whether a brand has similarities in principle or not with another brand, the brands being compared must be viewed as a whole or as a complete unit and cannot be viewed one by one (partially). Thus, with the absence of similarities between the two brands, it can be ascertained that the two brands can be registered side by side and will not mislead or mislead consumers. In other words, consumers can distinguish between the two brands originating from two different owners;"

"Considering, that based on the considerations above, the panel concludes that the Plaintiff cannot prove the argument of his lawsuit regarding the existence of similarities in principle between the Plaintiff's and Defendant's trademarks, while on the other hand the Co-Defendant has succeeded in proving the argument of his Response that the registration of the trademark "COCO ARRA" with registration number IDM000640197 belonging to the Defendant has fulfilled the elements of distinguishing power so that it cannot be qualified as a trademark registered on the basis of bad faith as regulated in the provisions of Article 21 Paragraph (3) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications;"

"Considering, that the opinion of the Panel is also based on the fact that the trademark registration by the Defendant is supported by the arguments and evidence from the Co-Defendant that the registered trademark belonging to the Defendant in the registration process has gone through the formality examination process, substantive examination and obtained the Minister's approval to issue a certificate as regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, where good faith is one of the basic considerations for the Co-Defendant during the substantive examination."

In the first instance Intellectual Property Rights lawsuit for Trademarks, filed by Sugeng Hariyadi through his attorney at Margaret Pardede & Partners Law Office, located at Jalan Banding I D.1 Number 12, Neighborhood Association 008 / Citizens Association 008, Sukasari Village, Tangerang District, Tangerang City, Banten 15118, based on a Special Power of

Master of Law, UNISSULA

Attorney dated August 12, 2019. because in the General Trademark Register the ARRA + LUKISAN trademark has been registered with the list IDM000638551 dated January 31, 2019 in the name of the Defendant to protect the types of briquettes, coal briquettes, wood briquettes, coconut shell briquettes, gambus briquettes (fuel) which are included in class 4 which have similarities in principle with the ARRA trademarks owned by the Plaintiff which are well-known and previously registered in Indonesia and in other countries. The plaintiff is the owner of registered trademark Number IDM000640197 dated March 26, 2019 to protect types of goods included in class 4, especially types of goods Charcoal which have been extended successively with registration numbers Register No. IDM000640197 dated March 26, 2019.<sup>31</sup>

If we look at the lawsuit filed by the Plaintiff, it turns out that the Plaintiff filed a lawsuit for Intellectual Property Rights for the Trademark "ARRA + LUKISAN" and based on Article 69 of Law Number 15 of 2001 concerning Trademarks which states that a lawsuit for cancellation of trademark registration can only be filed within a period of 5 (five) years since the trademark registration, and it turns out that the Plaintiff's lawsuit is still within the time permitted by Law Number 15 of 2001 concerning Trademarks. Even if the period of 5 (five) years has been exceeded, the basis for the lawsuit for Intellectual Property Rights for the registered Trademark "ARRA + LUKISAN" by The Margareth Pardede & Partners Law Office was carried out because of bad faith from the owner of the brand "ARRA + LUKISAN" while according to Article 69 paragraph (2) that the cancellation lawsuit can be filed without a time limit if the brand in question is contrary to religious morality, morality or public order and according to the explanation of Article 69 paragraph (2) included in the definition of what is contrary to public order is bad faith. This is in line with Article 6 bis of the 1967 Paris Convention which states that lawsuits against brand owners who act in bad faith do not recognize a time limit. According to Article 68 paragraph (3) of Law Number 15 of 2001 that the lawsuit for cancellation of a brand is filed with the Commercial Court, in this case the Plaintiff's lawsuit was filed with the Central Jakarta Commercial Court because the Defendant resides in the Jakarta area (Article 80 paragraph (1) of Law Number 15 of 2001).

Looking at the judge's considerations in the decision of the Central Jakarta Commercial Court on case Number 70/Pdt.Sus-HKI/Merek/2019/PN Niaga.Jkrta.Pst that the judge only considered the evidence of letters P-1 to P-11, namely a photocopy of the Supplement to the Republic of Indonesia State Gazette regarding the registration of the trademark "ARRA + LUKISAN", a photocopy of the Official State Gazette of the registration of the trademark "ARRA + LUKISAN" and an official excerpt of the registration of the trademark "ARRA + LUKISAN" where according to the judge the evidence is a Trademark Certificate because the registration of the trademark "ARRA + LUKISAN" was filed by the Plaintiff so that the judge saw the Plaintiff's interest in filing the aquo lawsuit where, the Trademark Certificate is proof of ownership of a trademark.

According to the author, the consideration of the judge at the Central Jakarta Commercial Court is correct because in his evidence the Plaintiff has attached evidence in the form of letters P-1 to P-11 (evidence of registration of the trademark "ARRA + LUKISAN" and extension of the trademark in Indonesia) where in the Official Excerpt of the registration of

---

<sup>31</sup>Decision 70/Pdt.Sus-HKI/Brand/2019/PN Niaga.Jkrta.Pst

Master of Law, UNISSULA

the trademarks "ARRA + LUKISAN" as contained in evidence P-4 to P-11, so according to the Author, the Plaintiff has an interest in filing a lawsuit to cancel the trademark against the Defendant who holds the trademark "ARRA + LUKISAN" in accordance with Article 68 paragraph (1) of Law Number 15 of 2001 concerning Trademarks, in addition the Plaintiff has also submitted evidence of registration of the trademark "ARRA + LUKISAN" belonging to the Plaintiff in various countries in the world (evidence P-12 to evidence P-18) as well as evidence of promotion of battery products with the trademark "ARRA + LUKISAN" belonging to the Plaintiff in Indonesia, evidence of advertisements warning the trademark "ARRA + LUKISAN" and articles in newspapers regarding "ARRA + LUKISAN" belonging to the Plaintiff (evidence P-19 to evidence P-49).

## **2. Basic Considerations of Judges in Sentencing**

The court is the central point of law enforcement by placing the judge as the main actor tasked with examining the entire course of the trial process that culminates in the decision-making, the problem of legal reasoning is the most important and most difficult part for the judge when formulating the judge's considerations (*ratio decidendi*). Article 50 paragraph 1 of Law No. 48 of 2009 concerning judicial power, regulates that:

*"In addition to containing the reasons and basis for the decision, a court decision must also contain certain articles in the relevant legislation or unwritten legal sources that are used as the basis for the trial."*

In the author's analysis, the decision Number 70/Pdt. Sus-HKI/Merek/2019/PN Niaga.Jkt.Pst which was decided through the Commercial Court at the Central Jakarta District Court, examined and decided on cases of Intellectual Property Rights lawsuits for Trademarks at the first level. It is in accordance with Article 50 paragraph 1 of Law No. 48 of 2009 concerning judicial power. This can be proven by the decision containing the reasons and basis for the decision, including laws and regulations whose correlation is in accordance with unwritten legal sources as the basis for judging.

Based on these provisions, it appears that the position of the *ratio decidendi* is a basic reason that can explain and at the same time account for the reasons used by the judge in making his decision.

The quality of a judge's decision, the level of intelligence and intellectuality of the judge will be reflected and at stake when a judge formulates the *ratio decidendi* in his decision, legal reasoning and the formulation of legal arguments in the process of formulating the decision will describe the accuracy, sharpness and intelligence of the panel of judges and also describe the depth of understanding, expertise, breadth of insight and sharpness of analysis. The process of reconstructing a decision is not merely a result of a formal syllogistic way of thinking, namely merely a matter of finding conformity between the formulation of legal rules and facts and evidence before the trial, the profession of a judge is not merely technical, but rather more of an intellectual profession.

According to Ahmad Rifai: "the basis for the judge's consideration in making a decision is based on several things. The decision regarding the incident, whether the defendant really committed the act that he is accused of, the decision regarding the law, whether the act

Master of Law, UNISSULA

committed by the defendant is a criminal act and whether the defendant is guilty, the criminal decision, whether the defendant can be punished."<sup>32</sup>

According to criminal law expert Gerhard Robbes, "contextually there are 3 essences contained in the freedom of judges in exercising judicial power. Judges must submit to the law and justice. No one can influence judges when deciding a criminal case. There are no consequences for the judge's personality in carrying out his judicial duties and functions."<sup>33</sup>

In the Criminal Procedure Code, specifically Article 183 states that "A judge in sentencing a defendant may not sentence the defendant unless there are at least two valid pieces of evidence, so that the judge is convinced that a crime really occurred and that the defendant is guilty of committing it."

Meanwhile, the explanation of evidence in Article 184 of the Criminal Procedure Code explains what is meant by valid evidence as follows: "Witness statements, expert statements, letters, clues and statements from the defendant or things that are generally known through a series of criminal acts so that they do not need to be proven."<sup>34</sup>

In the author's analysis, the decision Number 70/Pdt. Sus-HKI/Merek/2019/PN Niaga.Jkrt.Pst which was decided through the Commercial Court at the Central Jakarta District Court, examined and decided on cases of Intellectual Property Rights lawsuits for Trademarks at the first level. Based on the considerations of the panel of judges by observing the physical form and design of the Plaintiff's and Defendant's Trademarks, each has its own characteristics, including; That the Plaintiff is the sole owner and holder of the "ARRA + LUKISAN" trademark registered with certificate number IDM000638551, dated January 31, 2019, class 4, Type of Goods briquettes, coal briquettes, coal, wood briquettes, coconut shell briquettes, gambus briquettes (fuel). That the defendant is the sole owner and holder of the "COCO ARRA" trademark Registration Number: IDM000640197 Registration Date: March 26, 2019 Class of Goods: 4 Type of Goods: Charcoal.

The Panel is of the opinion that between the Plaintiff's and Defendant's brands, there is a difference between the Plaintiff's registered brand and the Defendant's registered brand and furthermore, to compare whether a brand has similarities in principle or not with another brand, the brands being compared must be viewed as a whole or as a whole unit and cannot be viewed one by one (partially). Thus, with no similarities between the two brands, it can be ascertained that the two brands can be registered side by side and will not mislead or mislead consumers. In other words, consumers can distinguish between the two brands originating from two different owners.

Considering, that based on the considerations above, the panel concludes that the Plaintiff was unable to prove the argument of his lawsuit regarding the existence of similarities in principle between the Plaintiff's and Defendant's trademarks, while on the other hand the Co-Defendant succeeded in proving the argument of his Response that the registration of the trademark "COCO ARRA" with registration number IDM000640197 belonging to the

---

<sup>32</sup>Ahmad Rifai, *Discovery of Law by Judges in the Perspective of Progressive Law*, Sinar Graphics, Jakarta, 2010, p. 103

<sup>33</sup>Ahmad Rifai, *Discovery of Law by Judges in the Perspective of Progressive Law*, Sinar Graphics, Jakarta, 2010, p. 102

<sup>34</sup>Satjipto Raharjo, *Anthology of Problems in the Criminal Justice System*, Center Justice Service and Legal Service, Jakarta, 1998, p. 11

Master of Law, UNISSULA

Defendant had fulfilled the elements of distinguishing power so that it could not be qualified as a trademark registered on the basis of bad faith as regulated in the provisions of Article 21 Paragraph (3) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

Considering, that the opinion of the Panel is also based on the fact that the trademark registration by the Defendant is supported by the arguments and evidence from the Co-Defendant that the registered trademark belonging to the Defendant in the registration process has gone through the formality examination process, substantive examination and obtained the Minister's approval to issue a certificate as regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, where good faith is one of the basic considerations for the Co-Defendant during the substantive examination.

Considering, that based on the description and considerations above, the Panel is of the opinion that there is no similarity in principle between the Plaintiff's mark and the Defendant's mark as stated above, and thus the considerations are sufficient to be used as a basis for the Panel of Judges to declare that the Plaintiff's objection that the Defendant registered the mark "COCO ARRA" based on bad faith, is an objection or argument that cannot be proven by the Plaintiff.

So, in the author's opinion, based on decision Number 70/Pdt. Sus-HKI/Merek/2019/PN Niaga.Jkrt.Pst through the legal basis of the judge's considerations, the Panel is of the opinion that the Plaintiff cannot or has not succeeded in proving the argument of his lawsuit that the Defendant registered the Arosa trademark based on bad faith and also cannot prove that there is a similarity in principle between the Plaintiff's "ARRA + LUKISAN" trademark and the Defendant's "COCO ARRA" trademark, so that the Plaintiff's petitum lawsuit number (2) must be declared rejected.

Where the argument, the Author categorizes it can and is considered appropriate and falls into the category of the type of decision; The positive decision in this decision is material or also called "ein verdict" Based on Article 266 of the Criminal Procedure Code, which is the same as the decision submitted by Barda Nawawi Arif. In the statement of the decision, it is in line with the type of decision that has permanent legal force.

#### **A. Ideal Legal Protection for Trademark Holders in Indonesia in the Future**

The philosophical basis of trademark rights, in addition to providing moral rights, also provides economic rights. From an economic perspective, trademarks are part of Intellectual Property Rights (IPR) which are considered capable of contributing to economic development. Economic development, as part of national development, is one of the efforts to achieve a just and prosperous society based on Pancasila and the 1945 Constitution.

In the context of national legal development, related to this thesis, according to Hamid S. Attamimi, Pancasila in its position as the basis and ideology of the state must be used as a paradigm (framework of thought, source of values, and orientation) in legal development, including all efforts to reform it. Law in Indonesia must guarantee and uphold the values contained in the preamble to the 1945 Constitution which is a reflection of Pancasila.<sup>35</sup>

---

<sup>35</sup>Darji Darmodiharjo and Sidharta, Principles of Legal Philosophy, (Jakarta, Gramedia, 1995), p.206



Master of Law, UNISSULA

Wolfgang Friedman stated that one of the roles or functions of the state is as a regulator (*regulator*). The Republic of Indonesia as a country of law has regulated trademark rights as an object of guarantee in the national legal system. In this context, the theory of the legal system according to Lawrence M. Friedman is used to study the legal system comprehensively. As Lawrence M. Friedman calls it "the subject of social science", because the legal system has three elements, namely substance, structure and legal culture.<sup>36</sup>

In the context of valuation, valuation is essentially an analytical process to provide an estimate and opinion on the economic value of a property--both tangible and intangible--based on applicable analytical methods and valuation principles.<sup>37</sup>In the context of trademark rights as an intangible asset, there are several approaches to assessing trademarks, there are three measures in assessing trademark rights. Each is:

#### 1. Market approach

In the mind of Shannon P. Pratt, Alina V. Naculit the market approach provides a systematic framework for estimating the value of an intangible asset (brand) based on an analysis of actual sales and/or tangible licensing transactions comparable to the object.

#### 2. Income approach (income approach)

The income approach provides a systematic framework for estimating the value of intangible assets based on capitalizing economic income or present value and future value. The value of "economic income" will be derived from the use, licensing, or leasing of the brand.

#### 2. Cost approach.

The cost approach provides a systematic framework for estimating the value of intangible assets based on the economic principle of substitution that equates the cost of a comparable substitute as well as the utility function.<sup>38</sup>

In Article 40 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, a trademark can be transferred due to an agreement. This provides an understanding that a trademark is an object that gives strong authority to its owner to transfer by agreement.

The important principles used as guidelines regarding trademark registration are the need for good faith on the part of the registrant.

In relation to good faith, because Law Number 20 of 2016 concerning Trademarks and Geographical Indications uses the First to File System principle, that only trademarks that are registered and in good faith receive legal protection.

---

<sup>36</sup>Lawrence M. Friedman, *Legal System from a Social Science Perspective*, translated by M. Khozin, (Bandung, PT. Nusa Media, 1st printing, 2009), pp. 13-17.

<sup>37</sup>Benny Supriyanto, *Indonesian Society of Appraisers*, in HR Daeng Naja, *Credit Law and Bank Guarantees The Bankers Hand Book*, (Bandung: Citra Aditya Bakti, 2005), p. 228

<sup>38</sup>Shannon P. Pratt, Alina V. Naculit, *aluing a Business The Analysis and Appraisal of Closely Held Companies*, Third Edition, Shannon Pratt Valuation, Inc, (New York, Copyright by The Mc-Graw Hill Companies, 2008). pp. 367-369.

Master of Law, UNISSULA

Stated by Muhammaad Faiz that: "Good faith is an abstract concept and difficult to formulate, so people formulate it more through events in court. Good faith in the implementation of an agreement is related to the issue of propriety and appropriateness". The difficulty in formulating the definition of good faith does not make good faith a foreign term, but is only seen in the differences in definitions given by several experts, including in Black's Law Dictionary.<sup>39</sup>

In relation to the existence of similarities in principle or overall in the case between Krakatau Steel and Perwira Adhitama Sejati, the opinion of Amalia Rooseno can also be added, namely that according to her there is a doctrine that can be used to determine whether or not there is a similarity of brands, namely the doctrine of enterities similar and the doctrine of nearly resembles.<sup>40</sup>

The enterities similar doctrine considers the overall similarity of the elements to be standard, in this case the brand requested to be registered is a reproduction copy of another person's brand. Meanwhile, the nearly resembles doctrine considers a brand to have a basic similarity to another person's brand if the brand has similarities (identical) or is almost similar to another person's brand, which can be based on the similarity of images, wording, color or sound. The most important factor in this doctrine is that the use of a brand that has a basic similarity can cause actual confusion or mislead consumers. As if the brand came from the same source or producer, so that there is an element of bad faith to piggyback on the fame of another person.<sup>41</sup>

The meeting in the World Trade Mark Symposium in Cannes, France on 5-9 February 1992 also provided several elements that can be used as a benchmark to assess similarities in principle, namely similarity of appearance; similarity of sound; similarity of connotation of appearance; similarity in commercial impression; and similarity of trade channels.<sup>42</sup>

The concept of good faith cannot be separated from the conditions that have been set. Law no. 20 of 2016, namely that trademark registration must be done in good faith to use it must also be in good faith. The problem of good faith will also arise if someone has used a trademark in a previous period, if someone can prove that he has used his trademark even though he has not registered it, then the attempt to register the trademark by another person can be prevented based on the principle of "bad faith".

The trademark registration date submitted by the defendant as a defense is actually not a reason to strengthen the cancellation of this trademark registration. Because in the Paris Convention Article 6 bis 3 states that the 5-year time limit is not a benchmark, "There is no time limit set for an application for cancellation or prohibition of the use of a registered trademark or use of a trademark without the permission of the trademark owner."

Added to Article 69 paragraph (2) namely that a lawsuit for cancellation of a trademark can be filed without any time limit if the cancelled trademark is related to religious morality,

---

<sup>39</sup>Muhammad Faiz. Possibility of filing a case with an Arbitration Clause before the Court. [www.panmuhamadfaiz.co](http://www.panmuhamadfaiz.co). March 26, 2017

<sup>40</sup>Emmy Yuhassarie, Intellectual Property Rights and Their Development, Jakarta: Center for Legal Studies, 2004, pp. 206-207

<sup>41</sup>Loc. Cit.

<sup>42</sup>M. Yahya Harahap, SH, General Review of Trademarks and Trademark Law in Indonesia based on Law No. 19 of 1992, Bandung: Citra Aditya Bakti. 1996, pp. 285-286

Master of Law, UNISSULA

decency and public order. In the explanation, what is referred to as being contrary to public order is the existence of bad faith.

Immanuel Kant, a German philosopher (1724-1820) argued that something that is absolutely good is the good will itself. So clearly, in this case the question is "how can the good will be identified?" Kant answered it by saying that there is a rational moral law, which can be identified based on reason. According to Kant, moral law is merely an intellectual effort to find it, in other words it is not created by him. Legal theorists have different approaches in analyzing law, justice and morals. Some support the relationship between law, justice and morals, some separate them, depending on the beliefs and values of each individual, or in other words, a discussion of moral language regarding right and wrong.<sup>43</sup>

A more specific question is when can arguing about morals be the same as arguing about facts, where the former is merely a matter of opinion. This is a big question that philosophers consider a branch of philosophy known as ethics that offers many answers. Arguments based on duty, which in the philosophical dictionary are called deontological arguments, can be divided into religious and non-religious ones.

Arguments based on religion, for example, God conveys the truth through holy books, or through the words of the prophet, transcendental experiences, on the basis of which all life is based. If the truth of this fact cannot be shown to be the same as the truth of the "original" fact can be shown, it is because the fact concerning the existence of God is not a fact in the second sense. Those who believe in the existence of God are certainly satisfied with the first (argument based on religion), those who do not believe in God certainly have a different opinion. Those who believe in the existence of God, prove that God exists based on rational arguments. Second, there is a difference of opinion regarding the legitimacy of power in this religion bound up in the differences between Catholics and Protestants. In this case, religious adherents believe in differences in interpreting holy books and doctrines. Those who are not satisfied with answers based on religious beliefs, try to find answers based on rational answers to moral problems. The philosopher of faith, Immanuel Kant (1724-1804), for example, considered something absolute and unconditional about the good to be good will, while other things that are commercially said to be good (such as wealth or health) are good only insofar as they are used to achieve good results.<sup>44</sup>

Obviously, this leads us to the question of how to identify such good faith. Kant's answer is that there is a "pre-existing moral law", which humans are rational and have free will, can identify by using their reason and what they need to identify in order to know how to exercise their free will. The important thing for Kant is that morality exists as it is, from the intellectual effort of humans to reflect it. In other words, humans do not create morality. Morality is universal, absolute, unconditional and must be obeyed.

Wirjono Prodjodikoro argues that good faith is needed because the law cannot reach future circumstances, he explains: There is no perfect human action. Because the regulations above were only made by humans, none of them are perfect. These regulations can only

---

<sup>43</sup> Ridwan Khairandy, 2004, Good Faith in Freedom of Contract, UI Postgraduate, Jakarta, pp. 130-133

<sup>44</sup> Wiryono Prodjodikoro, Principles of Contract Law, (Bandung: Sumur, 2006), p. 56.

cover circumstances that at the time the regulations were made were known to be possible. Only later did it turn out that there were circumstances that if the possibility had been known in the past, would of course or should have been included in the regulatory environment. In such circumstances, the honesty factor of the interested parties seems important.<sup>45</sup>

The principle of good faith is actually an idea used to avoid acts of bad faith and dishonesty that may be committed by one of the parties, both in making and implementing an agreement. Ultimately, this principle actually aims to teach that in social interactions in the midst of society, parties who are honest or have good intentions should be protected; and conversely, parties who are dishonest, should feel the bitterness of the dishonesty.

In brand review, any act of imitation, reproduction, copying, pirating or piggybacking on the fame of another person's brand is considered an act of forgery, misleading or using another person's brand without rights (unauthorized use) which in harmony with brand protection is qualified as unfair competition and stated as an act of seeking wealth dishonestly (unjust enrichment).<sup>46</sup>

The difficulty in defining good faith is not only a problem in Indonesian law. In the United States, the requirement to act in good faith in the Uniform Commercial Code is also not widely explained. Judges there also do not provide a clear definition when they base their decisions on good faith.

#### 4. Conclusion

1. Legal protection for trademark holders against passing off related to public misleading in Indonesia is that trademark holders can file a written objection to the DJKI if they find a trademark application that is indicated as passing off, if it is still in the substantive examination process. Trademark holders can file a lawsuit for cancellation of the trademark, if the trademark indicated as passing off has been registered. Another form of protection is that trademark holders can also report business actors with bad intentions to the Business Competition Supervisory Commission in writing, accompanied by evidence. 2. The basis for the judge's consideration in Decision Number 70/Pdt.Sus-HKI/Merek/2019/PN Niaga. Jkt. Pst is Law Number 20 of 2016 concerning Trademarks and Geographical Indications related to legal protection for trademark holders in Indonesia. Legal protection for consumers against passing off related to public misleading in Indonesia, namely consumers can report business actors who engage in unfair business competition to the Business Competition Supervisory Commission. Consumers who have experienced public misleading, due to the actions of fraudulent business actors who carry out passing off, can sue the business actor for compensation. If the business actor does not provide a positive response, they can file a complaint with the Indonesian Consumers Foundation and the Consumer Dispute Resolution Agency. 3. Legal Protection for Trademark Holders in Indonesia that will be carried out by repressive efforts or active efforts for the protection of registered briquette Brands can be carried out by means of a complaint offense by filing a lawsuit for damages and a lawsuit for

---

<sup>45</sup>Wiryono Prodjodikoro, Op.Cit, p. 56.

<sup>46</sup>Agus Mardianto, "Deletion of Trademark Registration Based on Third Party Lawsuit", Journal of Legal Dynamics, Unsoed Purwokerto, Vol. 10 No. 1, 2010, Pg, 47

Master of Law, UNISSULA

cancellation of Trademark registration or a criminal lawsuit through law enforcement officers. Repressive legal protection is carried out if there has been a violation of Trademark rights. Article 76 of the Law on Trademarks and Geographical Indications provides protection to registered Trademark owners to file a lawsuit against another party who without the right uses a Trademark that has similarities in principle or in whole for similar goods or services in the form of: a) a lawsuit for damages, and/or b) termination of all acts related to the use of the trademark. Lawsuits regarding violations of Trademark rights are filed in the Commercial Court.

## 5. References

### Journals:

- Abdul Halim Barkatullah dan Teguh Prasetyo, *Bisnis E-commerce: Studi Sistem Keamanan dan Hukum di Indonesia*, Yogyakarta: Pustaka Pelajar, 2015
- Agus Iskandar, 2012, *Kewenangan Pengadilan Niaga Dalam Penyelesaian Sengketa Bisnis*, Jurnal Pranata Hukum, Vol. 7, No. 1
- brahim Nainggolan, "Pertanggungjawaban Pidana Perbuatan Penggunaan Merek yang Sama Pada Pokoknya Tanpa Izin (Analisis Putusan MA. RI No. 2037/Pid.Sus/2015)," Jurnal EduTech. Vol. 5, No. 1, Maret 2019
- Buku Panduan, Hak Kekayaan Intelektual, Direktorat Jenderal Hak Kekayaan Intelektual, Departemen Hukum dan Hak Asasi Manusia Republik Indonesia
- Fathur Roji, 2023, *Perlindungan Huku Terhadapat Merek Terdaftar Dalam Mengatasi Pelanggaran Merek atas Transaksi Elektronik Perspektif Undang Undang Nomor 20 tahun 2016*, Jurnal Notarius, Volumen 2, Nomor 2, Juli-Desember Universitas Sumatera Utara, e-ISSN : 2598-070X
- Fathur Roji, *Perlindungan Hukum Terhadap Merek Terdaftar Dalam Mengatasi Pelanggaran Merek Atas Transaksi Elektronik Perspektif Undang Undang Nomor 20 Tahun 2016*, Jurnal Notarius Vol 2 No. 2 Juli-Desember 2023
- Mardianto Agus, 2010 Mardianto, Agus. 2010. *Penghapusan Pendaftaran Merek Berdasarkan Gugatan Pihak Ketiga*. Jurnal Dinamika Hukum, Vol. 10, No.1.44
- Mastur, "Perlindungan Hukum Hak Kekayaan Intelektual Di Bidang Paten," Jurnal Ilmiah Ilmu Hukum QISTI Vol. 6 No. 1 (Januari 2012)
- Meita Djohan OE, 2019, *Penyelesaian Sengketa Bisnis Melalui Pengadilan Niaga*, Jurnal Pranata Hukum, Vol. 14, No. 1
- Muchtar A. H. Labetubun dan Marselo V. G. Pariela, *Controlling of Imported or Exported Goods Related to Brand Protection By Customs*, UNTAG Law Review 4, no 1, 2020
- Rusmiati, *Konsep Pencurian dalam Kitab Undang-undang Hukum Pidana dan Hukum Pidana Islam*, Jurnal Hukum Vol. 1(1) (April) 2017
- Sarah S. Kuahaty, *Perjanjian Lisensi Sebagai Bentuk Perlindungan Merek*, Jurnal SASI Vol. 21. No. 1, 2015
- Sarah S. Kuahaty, *Perjanjian Lisensi Sebagai Bentuk Perlindungan Merek*, Jurnal SASI Vol. 21. No. 1, 2015



Master of Law, UNISSULA

Sulastri, Sulastri, Satino, Yuliana Yuli W. 2018. Perlindungan Hukum Terhadap Merek (Tinjauan Terhadap Merek Dagang Tupperware versus Tulipware). Jurnal Yuridis, Vol. 5, No.1

Wiwik Afidah, Anang Dony Irawan, et. All. (2021) Perlindungan Konsumen Terkait Peredaran Produk Impor Tanpa Label Halal di Indonesia.,

**Books:**

A Satjipto Raharjo, Hukum Dalam Jagat Ketertiban, Uki, Jakarta, 2006

Abdul Halim Barkatullah dan Teguh Prasetyo, Bisnis E-commerce: Studi Sistem Keamanan dan Hukum di Indonesia, Yogyakarta: Pustaka Pelajar, 2015

Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung: Citra Aditya Bakti, 2004

Abi al-Husain Ahmad Ibn Faris Ibn Zakariyya, 1979, (Selanjutnya disebut Ibn Faris)

Achmad Rofiq, Pembaharuan Hukum Islam di Indonesia (Yogyakarta: Gama Media, 2001

Afrillyanna Purba et al., 2005, *TRIPs – WTO & Hukum HKI Indonesia: Kajian Perlindungan Hak Cipta Seni Batik Tradisional Indonesia*, Jakarta: Asdi Mahasatya

Ahmad Rifai, Penemuan Hukum Oleh Hakim Dalam Prespektif Hukum Progresif, Sinar

Anthon F. Susanto, 2010, *Dekonstruksi Hukum ; Eksplorasi Teks dan Model Pembacaan*, Genta Publishing, Yoyakarta,

Asian Law Group Pty Ltd, 2001, Intellectual Property Rights (Elementary) 2001, Indonesia Australia: AusAID

Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, (Bandung: Mandar Maju, 2008

Benhard Limbong, 2011, Konflik Pertanahan, Margaretha Pustaka, Jakarta

Bernard, dkk., 2010, *Teori hukum : Strategi Tertib Manusia Lintas Ruang dan Generasi*, Genta Publishing, Yogyakarta

C.S.T. Kansil. *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, (Jakarta: Balai Pustaka, 1980

Grafika, Jakarta, 2010

Hans Kelsen, 1971, *General Theory of Law and State*, Russel, New York

Indirani Waudan, Tinjauan Yuridis Mengenai Peniruan Merek (Salatiga: FH-UKSW 2006

Ishaq. *Dasar-dasar Ilmu Hukum*. (Jakarta: Sinar Grafika. 2009

Khoirul Hidayah, S.H., M.H, Hukum Hak Kekayaan Intelektual (Malang: Setara Press, 2017

Muhamad Djumhana dan R. Djubaedillah. Hak Milik Intelektual (Sejarah Teori dan Prakteknya di Indonesia), PT. Citra Aditya Bakti, Bandung 1993, cet.1

Muhamad Djumhana, *Perkembangan Doktrin dan Teori Perlindungan Hak Kekayaan Intelektual*, (Bandung: Citra Aditya Bakti, 2006

Muhammad Ahkmad Subroto & Suprapedi, 2008. *Pengenalan HKI (Hak Kekayaan Intelektual) Konsep Dasar Kekayaan Intelektual untuk Penumbuhan Inovasi*, Jakarta: Indeks,

Muhammad Asrun, Krisis Peradilan, Elsam, Jakarta, 2004

Master of Law, UNISSULA

Muhammad Tahir Azhary, *Negara Hukum Suatu Studi Tentang Prinsip-Prinsipnya Dilihat dari Segi Hukum Islam, Implementasinya pada Periode Negara Madinah dan Masa Kini*, Prenada Media, Jakarta, 2004

OK. Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, Ed.Revisi. Cet. Kedelapan (Jakarta: Raja Grafindo Persada, 2002

Putra, Ida Bagus Wyasa, *Aspek-aspek Hukum Perdata Internasional dalam Transaksi Bisnis Internasional*, PT Refika Aditama, Bandung, 2000

Rahmi Jened, *Hukum Merek Dalam Era Global & Integrasi Ekonomi*, Prenadamedia Group, Jakartam 2015

Rhona K.M. Smith, 2008, *Hukum Hak Asasi Manusia*, Yogyakarta: PUSHAM UII

Ridwan Khairandy, *Perlindungan Hukum Merek dan Problematika Penegakan Hukumnya*, (Yogyakarta: Hukum Fakultas Hukum Universitas Indonesia, 2000)

Ridwan Khairandy, *Perlindungan Hukum Merek dan Problematika Penegakan Hukumnya*, Hukum Fakultas Hukum Universitas Indonesia, Yogyakarta, 2000

SF. Marbun, *Peradilan Tata Usaha Negara*, Liberty, Yogyakarta, 1988

Soemarso S.R, *Perpajakan: Pendekatan Komprehensif* (Jakarta: Salemba Empat, 2007

Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI-Press, 1985

Suparji, 2014, *Pengaturan Perdagangan Indonesia Undang Undang Nomor 7 Tahun 2014 Tentang Perdagangan*, UAI Press

Tomi Suryo Utomo, *Hak Kekayaan Intelektual (HKI) di Era Global: Sebuah Kajian Kontemporer*, (Yogyakarta: Graha Ilmu, 2010

Tommy Hendra Purwaka, *Perlindungan Merek*, (Jakarta: Yayasan Pustaka Obor Indonesia, 2017

Wiratmo Dianggoro, *Pembaharuan Undang-Undang Merek dan Dampaknya Bagi Dunia Bisnis*, (Jakarta: Yayasan Perkembangan Hukum Bisnis, 1997)

### **Regulation:**

Civil Code;

Law Number 20 of 2016 concerning Trademarks and Geographical Indications;

Law Number 23 of 2016 concerning the Elimination of Domestic Violence

Law Number 11 of 1965 concerning Trade

Law Number 8 of 1962 concerning Trade in Goods Under Supervision

Regulation of the Minister of Law and Human Rights Number 67 of 2016 Concerning Trademark Registration

Government Regulation in Lieu of Law of the Republic of Indonesia No. 1 of 1998 concerning Amendments to the Law on Bankruptcy

Decision of the Central Jakarta District Court Number 70/Pdt.Sus-HKI/Merek/2019/PN Niaga.Jkt.Pst