

## A LEGAL AND SOCIOLOGICAL ANALYSIS OF TRADEMARK CIRCULATION IN INDONESIA

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### ABSTRACT

Intellectual property rights are a system of modern life that is interconnected with the system that exists today. Intellectual property rights are a by-product of human ideas and thought patterns, so they are currently one of the complex problems that arise in the world of commerce. This research aims to analyze the sociology of law in the circulation of trademarks in Indonesia. Analytical descriptive methods are used in research specifications to describe facts and realities relating to trademark law in Indonesia. The results show that respect for trademark rights under the rule of law is a national honor for individuals who develop original and distinctive intellectual property works. The sociology of law plays a role in handling brand infringement, including by filing criminal and civil charges and using alternative conflict resolution. All parties need to comply with the requirements for effective conflict resolution. Having a certificate helps companies feel more legally secure and makes it easier for brand owners to demonstrate their ownership. Society, particularly the private sector, should support intellectual property, including trademarks, by upholding corporate ethics that demand integrity in business. Strong business growth, through increased market share and product quality, is a catalyst for economic expansion, improved living standards, and better economic development.

**Keywords:** sociology of law; trademarks; trade; IPR.

### Introduction

Intellectual property rights are a system of modern life that is interconnected with the system that exists today. Intellectual property rights are a by-product of human ideas and thought patterns, so they are currently one of the complex problems that arise in the world of trade, both nationally and internationally (Wulan N.M.Wulur, 2023). Therefore, this is a serious problem that is being addressed both at the national and international levels. The use of well-known brands began to spread, and this was partly due to promises of greater profits to be made by using these names compared to using the company's own name. Because pirated goods are physically very similar to the original, many manufacturers get around this, especially during a severe economic crisis like the one we are currently experiencing (Rasyid, Laily, & Handayani, 2017).

As globalization progresses, Indonesia, as a nation, must be able to anticipate all changes and developments in the world and take appropriate action to enable national

goals to be achieved. Among the key components of development, legal protection of intellectual property rights for foreigners in Indonesia is a globalization issue. As a participant in the ratification of the International Convention on the Establishment of the World Trade Organization with Law Number 7 of 1994 concerning the Agreement on the Establishment of the World Trade Organization (WTO), Indonesia is a member of the World Trade Organization.

The acronym "HAKI" or "HKI" is an abbreviation of intellectual property rights, which is the same as the term "Intellectual Property Rights (HAKI)", namely rights resulting from the results of human thought. In other words, intellectual property rights (IPR) originate from human intellectual capacity, which produces a method or product that is beneficial to society (Rasyid et al., 2017). The World Trade Organization (WTO) established the General Agreement on Tariffs and Trade, which sets out guidelines and standards for the defense of intellectual property rights, including trademarks and other related rights (Trademarks and Related Rights). In Indonesia, the Trademark Law has undergone three changes and expansions since Law Number 21 of 1961, Law Number 12 of 1992, and Law Number 20 of 2016. This shows how important brands are (Sus-hki & Jasmine, 2021). More flexible regulations are needed to keep up with rapid global corporate change. Prestige is a brand. In some circles, a person's status is determined by the goods or services they use. The reasons that are often put forward are investment, quality, or truth. Sometimes, a brand turns into a lifestyle. (Yuristyawarman & Rustandi, 2023). Brands can determine their social level or even give them confidence. Wearing products from well-known brands makes people proud, especially if these items are unique products that are difficult to obtain and are within the reach of most consumers (Sholahudin, 2016). Therefore, works or products that constitute intellectual property rights (IPR) and have been sold internationally should receive the necessary legal protection against any violations that do not comply with the TRIPs agreement and other established conventions. This is because a brand Companies are crucial in the business world.

Theories in legal sociology provide conceptual explanations. The Law of Awareness confirms that society has awareness or values regarding existing laws or laws that are expected to exist. In this case, the importance of legal knowledge as a human virtue is emphasized more. Humans will be able to differentiate between good laws and laws that have a negative impact, between laws that bring justice and laws that bring injustice, between laws that bring benefits and laws that do not have an element of benefit, once they are aware of this law (Rohman, 2016).

According to Law Number 20 of 2016, trademark registration is carried out by fulfilling the following requirements: Declarative and constitutive (attributive) systems are two systems used for trademark registration (Reza, 2010). In this case, trademark registration functions to establish the status that the registrant is a user first, until and unless proven wrong. This is what increases certainty. Because if someone can show that he has registered a brand and has been given ownership rights to the brand through the issuance of a brand certificate, then other people are not permitted to use the brand or

use it in conjunction with similar products. Therefore, this constitutive system offers greater guarantees (Gunawan, 2022).

Considering the importance of brands in the commercial world, especially foreign brands, legal protection for brands is very necessary. Of course, this encourages producers or other business owners to advertise their products in conflict with well-known brands, thus leading to the development of unhealthy commercial competition. (Rasyid et al., 2017) There are several examples of violations of international brands in Indonesia, especially well-known foreign brands, due to weak legal frameworks and law enforcement procedures. (Pasaribu & Hasyim, 2018). Infringement of foreign brands in Indonesia has damaged the country's reputation due to its unclear laws. Another problem that business owners often face, such as brand infringement on branded goods or services, is the act of copying, taking, or imitating someone else's work, either in whole or in part, without getting permission from the owner and claiming it as their own. This is known as plagiarism. Plagiarism often causes problems between brands or businesses that end up in court (Maileni, 2018). The current case is a conflict between PT Kosmetika Global Indonesia (PKGI) and PT Kosmetika Cantik Indonesia (PKCI). Shandy created the MS GLOW brand, while PT Pstore Glow Bersinar Indonesia (PGBI) claims that Putra Siregar founded the PS GLOW brand. Based on the explanation above, this article will analyze the legal sociology of trademark circulation in Indonesia with the aim to analyze the sociology of law in the circulation of trademarks in Indonesia.

### Research Methode

Based on the author's inventory of statutory regulations governing matters relating to trademarks, the research methodology in this work uses a legal sociological approach. Analytical descriptive methods are used in research specifications to describe facts and realities related to trademark law. The type of research that the author conducted on the object of this research was in the form of normative legal research. Normative legal research is also known as doctrinal legal research, or research that clarifies how law is understood as a rule or norm for a type of acceptable human behavior or what is contained in legislative regulations (law in books).

### Result and Discussion

In the era of free trade, protecting brand rights is very important to realize fair trade practices. A brand is an identification mark of the origin of goods or services related to the producer, describing the personality guarantee and good name of the goods or services produced by the business when traded. (Amin, 2021). Brands are used to differentiate similar goods or services produced by one company from those produced by other companies. Manufacturers leverage branding to ensure the value of their products, particularly in terms of quality and application. Legal protection for legal trademark owners is intended to provide exclusive (special) rights to their holders, preventing third parties from using their legitimate or very similar trademarks for identical or nearly identical goods. These unique rimonopolies usually monopoly, meaning only the brand owner may use them. Brand owners can use it without violating

current usage guidelines and also prohibit third parties from using permission granted by the trademark owner (Sukro, 2019).

The way business actors compete with each other shows that there is unhealthy business competition. How vendors respond to various trademark violations (Sukalandari, Budiarta, & Sriasih Wesna, 2023). What is meant by unhealthy business competition is competition between business actors in carrying out production and/or marketing activities of goods or services that is carried out in an unhealthy manner, is contrary to the law, or hinders business competition (Article 1, paragraph 6 of Deed No. 5/1999). Case 17 (1) Law No. 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition states that "entrepreneurs are prohibited from controlling the production and/or marketing of goods and/or services that could lead to monopolistic practices." and/or unhealthy business competition. One of them is a violation of brand rights through the use of names, characters, numbers, images, logos, and other symbols.

Friderich Hegel argued that property (wealth) must ultimately turn into something personal, and individual wealth must eventually turn into a universal institution. This is the reason for including the trademark in intellectual property rights. Within the framework of the rule of law, respect for trademark rights is a national honor given to individuals who have taken the time to consider developing an original and distinctive work of intellectual property. Therefore, those who have registered their trademarks with the government must receive adequate legal protection for their rights. This is in accordance with John Locke's theory, which states that efforts to create intellectual property rights must be enforced, and these efforts have a direct impact on the amount of money paid (incentives).

Legislation has a very important and exclusive role because it is the basis for every aspect of state, social, and even government life. Legislative regulations in all their forms contain the concept of legality, which is a necessity that cannot be violated (Semaun, 2016). According to Jalaludin, the purpose of law is to crack down on and end criminal acts (crimes and violations), as well as to order and control life and spread legal certainty, benefit, and justice. Law functions as a tool to guide society as a whole towards desired changes, in addition to being the basis of social control (law is social control (Gaumi & Hartono, 2022)). The study of the sociology of regulations and legislation is very closely related to the field of legal sociology.

Brand ownership in terms of dispute resolution will be studied from the perspective of registered marks and well-known marks, which are the property of their respective owners. The dispute resolution theory argues that brand ownership disputes must be resolved in various ways. which discusses the issue of brand ownership and the theory of legal discovery, the essence of which is that brand ownership is protected by law, whether as a registered mark, a well-known brand, or if studied from the perspective of legal philosophy.

Criminal prosecution related to trademark disputes based on Article 90 of the Law states that "Anyone who intentionally and without permission uses a mark that is completely the same as a registered mark belonging to another person for similar goods

and/or services produced and/or traded shall be punished by imprisonment for a maximum of five years and a maximum fine of IDR 1,000,000,000.00. (one billion)."

Apart from filing criminal and civil charges for failure to reach a resolution, there are other options to resolve the existing problems. All parties must comply with certain requirements so that the conflict resolution process can be effective. First and foremost, all parties must respect and pay attention to their right to be tried. The following three main factors have an impact on the dispute resolution process: interest, rights (rights), and power status.

The aim of brand protection is to ensure that a brand has legal certainty so that it can provide relevant legal protection or defend itself from third parties who bring legal claims. Law Number 20 of 2016 concerning trademarks, especially Article 3, grants exclusive rights to the state and to owners of brands registered in the General Register of Food Product Brands, which can be utilized efficiently to create legal protection for them.

Having a certificate is one of the components of feeling more comfortable running a business in the future. In addition, trademark owners can more easily demonstrate ownership rights to the trademarks they use with a brand certificate, so they don't have to worry about their company if something happens to the brand they use and a lawsuit arises. Their brand certificates can be used as a means to carry out the production and sale of goods with the same name that are not approved by third parties, to the detriment of customers. Therefore, society, namely the private sector, must support intellectual property, including trademarks, by upholding corporate ethics that demand integrity in all business dealings. Strong business growth in terms of market share and product quality is a catalyst for economic expansion, raising living standards, and achieving economic development.

## Conclusion

Within the framework of the rule of law, respect for trademark rights is a national honor given to individuals who have taken the time to consider developing an original and distinctive work of intellectual property. Legal sociology has a role in violations that occur in trademark cases; apart from filing criminal and civil charges for failure to reach a resolution, there are other options to overcome existing problems. All parties must comply with certain requirements so that the conflict resolution process can be effective. Having a certificate is one of the components of feeling more comfortable running a business in the future. In addition, trademark owners can more easily demonstrate ownership rights to the trademarks they use with a brand certificate, so they don't have to worry about their company if something happens to the brand they use and a lawsuit arises. Therefore, society, namely the private sector, must support intellectual property, including trademarks, by upholding corporate ethics that demand integrity in all business dealings. Strong business growth in terms of market share and product quality is a catalyst for economic expansion, raising living standards, and achieving economic development.



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