

Legal Protection towards Trademark: Textile Trademarks of Small Medium Enterprise in Indonesia

Cindy Utama

Abstract: Many Indonesian use trademarks that are not registered, which results in disputes regarding the legal issues of trademarks. This research aims to know the legal protection given by the government to the owner of the registered trademark in Indonesia by analyzing how the implementation of trademark protections towards textile products where the registered trademark of textile products in Indonesia is classified as class 24. The methodology of this research is using normative law no. 20 year 2016 to analyze the issue and empirically know the situation in the market. Researchers found that the government already has regulations for trademark legal protection. However, there are many dispute cases regarding the ownership of trademarks between textile entrepreneurs in Indonesia due to the implementation of the law that is not yet optimal as it requires consistency towards continuous monitoring, commitment, and evaluation from parties who enforce the law and regulation are crucial.

Introduction:

Business actors require legal protection for a trademark as a trademark is a crucial element that enables the business's success as a trademark can differentiate their products from their competitors' products in the market (Maolana, 2021). Indonesia is one of the countries with a promising prospect for trading goods. Most of the trademarks that can be found in the textile industry in Indonesia is a local brand created by SMEs as they use their brands. These trademarks are used for the products that are marketed within Indonesia. In Jakarta, many textile products are sold by wholesalers in Pasar Pagi Asemka, Mangga Dua, Tanah Abang, and Pasar Baru, which are famous as wholesale market centers. Most of these wholesalers are classified as SMEs, and most of them are not Limited Liability Companies but are registered as trading companies for their operations in Indonesia.

The government is interested in reducing the case disputes regarding trademarks in Indonesia to compete in the era of global trade, maintain adequate business protection, protect consumers from counterfeit goods, and protect small and medium enterprises and local industries. Furthermore, the government has a crucial role in providing legal protection for the community to reduce the occurrence of counterfeit or imitation of the trademark in the textile industry in Indonesia.

According to Ranggalawe Suryasaladid, an intellectual property right consultant and a lecturer at the Faculty of Law at the University of Indonesia, the level of awareness of SME business actors in Indonesia toward registered trademarks is relatively low. Many Indonesians use trademarks that are not registered to the Directorate General of Intellectual Property, known as Direktorat Jenderal Kekayaan Intelektual, in Indonesia (Winanto, 2022). Furthermore, many trademark users in Indonesia are unaware that a trademark is an asset that contains an economic value and can be protected to have legal protection by registering the trademark.

Counterfeit goods usually involve more than one element of intellectual property rights being violated. Trademark is one of the elements in intellectual property rights that must be given legal protection as they will affect the country's economic growth. On the other hand, the consumption of counterfeit goods in Indonesia is considered normal by many Indonesians, where there are many buying and selling activities in the Indonesian market for counterfeit goods. The development of technology increase electronic transactions through e-commerce as it affects higher transactions of counterfeit goods in Indonesia and causes difficulty for the government to control it. Counterfeit goods will affect the stability of commercial trade.

Good coordination between all parties is vital to effectively implementing the intellectual property rights system. The participation and roles of various institutions, including private and government sectors, are crucial. Further more, support from the administration, law enforcement, and optimal socialization towards intellectual property rights are crucial factors for success besides the law and regulations (Departemen Perindustrian, 2007).

Methodology:

This paper aims to analyze the legal protections of a trademark in Indonesia by using normative law related to a trademark in Indonesia which is law no. 20 year 2016, which is about trademark and geographical indication. Empirically, the researcher observed Jakarta and interviewed the practitioners of textile wholesale that already sold their products nationwide.

Analysis:

The effectiveness of law can be measured through 3 degrees of application of the law: law as a deterrent, law as resolves disputes, and law to provide the needs of legal subjects to carry out legal actions (Allott, 1981). Law related to the protection of trademarks has not yet achieved its target, which is to provide a fair solution for the community as the legitimate owner of the trademark is based on a constitutive system. This means that the individual that registered the trademark to Direktorat Jenderal Kekayaan Intelektual in Indonesia before others will become the legitimate owner of the trademark. In fact, the legitimate owner of the trademark by the law often intentionally registered other trademarks that have not been registered.

Under law no. 20 year 2016, chapter 3 stated that the exclusive right toward trademark could not be obtained by showing evidence that the actor is the first user of the trademark in Indonesia (Indonesia, 2016). Through this law, the government aims to force business actors to register their trademarks by providing legal certainty for their business. Additionally, it protects intellectual property rights more effectively, particularly trademarks.

SMEs usually do not generate too many profits from their business, but registering a trademark so that it can be legally protected requires a relatively expensive fee. In addition, individuals that imitate or counterfeit other's trademarks usually have a trademark with high economic value and is well known. However, trademark infringement is often carried out by textile entrepreneurs with bad intentions to harm the legitimate owner of the trademark economically.

Under Kementerian Hukum dan Hak Asasi Manusia (Kemenhumham), DJKI plays important role regarding counterfeit goods. DJKI acts as an administrator, regulator, law enforcement, and dissemination towards the commercialization of intellectual property that actively ensures legal protection and certainty for all Indonesian regarding intellectual property (Biro Humas, Hukum dan Kerjasama, 2019) . It provides technical guidance and evaluation of the policies implemented in the field of the consumer environment. On the other hand, the Indonesian Ministry of Trade carries out the formulation towards implementing the policies, composing guidelines, norms, standards, procedures, and criteria. Besides that, the institutions also control products in the market and trade activity (Kementerian Perdagangan Republik Indonesia, 2022) .

The regulatory design of the law in Indonesia is already an international standard due to international pressure. Indonesia is part of the World Trade Organisation, where the government has to show its commitment to eliminating counterfeit goods. It can be seen that the law and regulations related to a trademark are already international standards. However, the regulatory compliance with the 6 regulations regarding trademarks in Indonesia is not effective and efficient as many Indonesians do not comply with the law, resulting in poor implementation for the state to meet the requirements of the law. It can result from poor communication or lack of coordination within the institutions due to ego sectoral. On the other hand, it can be seen that the benefits received by the seller or user of counterfeit goods are more significant than if they comply with the law. Therefore, it means that the law does not provide deterrent effects to sellers,

Conclusion & Recommendation:

The existing laws and regulations in Indonesia related to trademarks for textile products are still ineffective as there are many violations and disputes related to trademarks, either intentionally or unintentionally, to harm the legitimate owner of the trademark economically. Legal protection towards the victims can only be processed through the criminal realm, but the trademark owner's purpose is compensation for them. In the future, the government should provide a solution to dispute of trademark in the case that the plaintiff is the one who intentionally registered a trademark of the defendant that is being used but not registered.

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