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Legal Protection for Registered Trademark Rights Holders Against Brand Counterfeiting in Indonesia

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Abstract
Intellectual Property Rights is a system that is currently embedded in modern life. The protection of brands has been regulated in TRIPs as stated in article 16 of TRIPs. Based on Article 1 of Law No. 15 of 2001 concerning Trademarks, what is meant by a Brand is a sign in the form of images, names, words, letters, numbers, color arrangements, or combinations of these elements that have distinguishing power and are used in the world of trading goods or services. In trademarks there is the term license, namely permission given by the registered trademark owner to a person or several people together or a legal entity to use the trademark for goods or services. In the world of trade, brand violations often occur. In Indonesia, cases of brand infringement often occur, especially well-known brands. Indications of violations Based on the Trademark Law No. 15 of 2001, an example of a case is brand counterfeiting. The act of brand counterfeiting is carried out by parties with bad intentions who want to gain as much profit as possible in unfair and dishonest competition using an existing brand. registered property of another party. The purpose of this writing is to find out the legal protection for registered trademark rights holders, as well as the Government's responsibility for protecting trademark rights.

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Abstrak
Hak Kekayaan Intelektual adalah suatu system yang saat ini melekat pada tata kehidupan modern, dalam perlindungan terhadap merek telah diatur dalam TRIPs seperti yang tercantum pada pasal 16 TRIPs, Berdasarkan Pasal 1 UU No.15 tahun 2001 tentang Merek, yang dimaksud Merek adalah tanda yang berupa gambar, nama, kata, huruf angka-angka, susunan warna, atau kombinasi dari unsur-unsur tersebut yang memiliki daya pembeda dan digunakan dalam dunia perdagangan barang atau jasa. Didalam merek terdapat istilah lisensi yaitu izin yang diberikan oleh pemilik merek terdaftar kepada seseorang atau beberapa orang secara bersama-sama atau badan hukum untuk menggunakan merek tersebut, untuk barang atau jasa. Dalam dunia perdagangan sering terjadi pelanggaran merek. Di Indonesia sering kali terjadi kasus pelanggaran merek, terutama merek terkenal. Indikasi pelanggaran Berdasarkan Undang-Undang Merek No.15 Tahun 2001, contoh kasusnya adalah pemalsuan merek, Tindakan pemalsuan merek dilakukan oleh pihak-pihak yang beritikat tidak baik yang menginginkan memperoleh keuntungan sebanyak-banyaknya dalam persaingan yang tidak sehat dan tidak jujur menggunakan merek yang sudah terdaftar milik pihak lain. Tujuan Penulisan adalah ini untuk mengetahui perlindungan hukum terhadap pemegang hak merek terdaftar, serta tanggungjawab Pemerintah atas perlindungan hak merek tersebut.

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1. INTRODUCTION

Background of the problem

In the current era of global trade, the role of brands is very important in maintaining healthy business competition. Trademark law is a form of regulation regarding brands to improve services to the community, as well as a form of legal protection for the community. Therefore, brands play an important role, especially in the world of trade. With a brand, people can determine their choice of a product that has a brand. Based on Article 1 of Law No. 15 of 2001 concerning brands, what is meant by a brand is a sign in the form of an image, name, word, letters, numbers, color arrangement, or

a combination of these elements that has differentiating power and is used in the world of trading goods or services. Brands consist of trademarks and service marks. A collective brand is a brand used on goods or services with the same characteristics that are traded by several people or entities
laws together to differentiate similar goods or services.

Trademark rights are one of the rights protected in the laws relating to Intellectual Property Rights in Indonesia. In principle, intellectual property rights are the results of a person's thoughts, creations and designs which are recognized by law and given rights to objects so that the results of these thoughts, creations and designs can be bought and sold. In trademarks there is the term license, namely permission given by the registered trademark owner to a person or several people together or a legal entity to use the trademark for goods or services. Thus, someone who has intellectual property rights can be given royalties or payments by other people who exploit or use their intellectual property rights. Historically, legislation in the field of Intellectual Property Rights (hereinafter referred to as IPR) in Indonesia has existed since 1840. The Dutch colonial government introduced the first law regarding IPR protection in 1844.

In Indonesia, cases of brand infringement often occur, especially well-known brands. Indications of violations Based on the Trademark Law No. 15 of 2001, there are several classifications regarding brand counterfeiting, namely using the same brand in its entirety, using the same brand in essence, using the same sign, using the same sign in essence as a geographical indication. Apart from that, there is also counterfeiting of registered brands. an example of this case is brand counterfeiting. The act of brand counterfeiting is carried out by parties with bad intentions who want to gain as much profit as possible in unfair and dishonest competition using registered and well-known marks belonging to other parties. In fact, registered trademarks should be protected by the state through its laws and regulations regarding trademarks.

The government forms laws and regulations to be legally binding. Provisions regarding brands are regulated in Law Number 15 of 2001 concerning Trademarks. This law repeals Law Number 19.

Based on this background, the author is interested in conducting research, especially regarding the legal protection of brand rights holders, as well as the role of the government in protecting the rights of brand rights holders, so the researcher is interested in making research in the form of a journal with the title "Legal Protection for Brand Rights Holders Registered Against Brand Counterfeiting in Indonesia".

Formulation of the problem

Based on the background above, the problem formulation of this research is:

1. What is the legal protection for registered trademark rights holders?
2. And what is the government's responsibility for protecting brand rights?

Research purposes

1. To find out how legal protection is for registered trademark rights holders in Indonesia
2. To find out how the government is responsible for legal protection for registered trademark rights holders.

Benefits of research

This research is expected to provide a number of useful benefits both theoretically and practically, including:

1. Theoretically
   It is hoped that this research can provide additional scientific literature that is useful for the development of legal science, especially those related to Intellectual Property Law in the field of brands, and it is hoped that it can be used as a reference for similar research in the future.
2. Practically
   a. For private writers to find out and increase knowledge related to legal regulations regarding brand rights as well as forms of legal protection for brands, both for goods and services.

b. The results of this research can be used as a contribution of thought to goods and services businesses related to the legal protection of their brands, as well as for the Director General of Intellectual Property Rights as material for criticism in providing brand certificates.

Theoretical and Conceptual Framework

1. Theoretical framework

Theoretical framework is a framework of thought or points of opinion. Theories about a case or problem become material for comparison for writers in the field of law. A theoretical framework aims to present ways to organize and interpret research results and relate them to previous research results. Another word for theoretical framework is a framework of thought or points of theoretical opinion regarding a case or problem that becomes material for comparison or theoretical guidance in research.

Fred N. Kerlinger in his book Foundation of Behavioral Research explains that theory is a set of concepts, limitations and propositions that present a systematic view of phenomena by detailing the relationships between variables with the aim of explaining and predicting these phenomena.

Gorys Keraf believes that theories are general and abstract principles that are accepted scientifically and can at least be trusted to explain existing phenomena.

In the development of science, legal theory cannot be separated from legal theory as its basis and the task of legal theory is to "explain legal values and postulates down to the deepest philosophical foundations, so that this research cannot be separated from the theories of legal experts discussed. in the language and system of thought of the legal experts themselves." Understanding the law methodologically as an old machine that is constantly being repaired, stripped down and patched up until finally the law is accepted as permanent as a guide to human life. According to the 1945 Constitution of the Republic of Indonesia as regulated in Article 1 paragraph (3), the Indonesian State is a State of Law. Indonesia is a state of law, so the means of nation building must be based on law, not power, the law is a guideline in making decisions.

The theoretical basis describes the way of thinking according to a logical framework, meaning that it places the research problem that has been formulated in a relevant theoretical framework that is able to explain the problem. This effort is aimed at answering or explaining the problem that has been formulated. Theory is scientific knowledge that includes explanations about a particular sector of a scientific discipline.

For a researcher, a theory or theoretical framework has various uses, where these uses at least include the following:

a. This theory is useful for sharpening or further specifying the facts to be investigated or tested for truth.
b. Theory is very useful in developing a fact classification system, building a structure of concepts and developing definitions.
c. A theory is usually a summary of things that are not known and whose truth is tested regarding the object to be studied.
d. Theories provide predictions of future facts, because the causes of these facts are known and perhaps these factors will appear again in the future.
e. Theory provides clues to deficiencies in the researcher's knowledge.

The theory of legal science can be interpreted as a legal science or discipline which, from an interdisciplinary and external perspective, critically analyzes various aspects of legal phenomena, both independently and in their practical manifestations, with the aim of obtaining a better understanding and providing the clearest possible explanation of the law presented in the law. juridical activities in the reality of society. The object of the study is general phenomena at the level of positive law which includes analysis of legal materials, methods in law and ideological techniques regarding law. On the basis of the importance of legal theory in research, in this case the researcher will take 2 (two)

important theories, the first of which is the Legal Protection Theory, and the Theory of Recognition of Intellectual Property Rights (Reward Theory).

1. Legal protection theory

The next theory that will be used in this research is the theory of legal protection. Laws are made by humans and for humans themselves. Legal protection means that the law protects something which can be property, honor and even a person's life. The law can provide protection through certain methods, including:

a. Making regulations (by providing regulations), aims to:
   - provide rights and obligations;
   - guarantee the rights of legal subjects;

b. Enforcing regulations (by law enforcement) through:
   - state administrative law which functions to prevent (preventive) violations of consumer rights, with licensing and supervision;
   - criminal law which functions to overcome (repressive) violations, by imposing criminal sanctions and punishments;
   - civil law which functions to restore rights (curative; recovery; remedy), by paying compensation or compensation.

The first method and step taken in legal protection is the creation of statutory regulations. It is said to be legal protection because its actions must be based on legal regulations. Without regulations, legal action cannot be taken. Regulations in this case are the result of agreements made by the community through their representatives in parliament together with the government.

Legal Protection of Intellectual Property Rights is a legal system that consists of several system elements, namely as follows:

1) Subject of protection, the subject in question is the owner or rights holder, law enforcement officials, registration officials, and law violators;
2) Objects of protection, the objects in question are all types of IPR regulated by law;
3) Registration of protection, protected IPRs are only those which have been registered and proven by a registration certificate, unless the law stipulates otherwise, such as copyright which may not be registered;
4) Protection period, the period referred to is the length of time the IPR is protected by law; And
5) Protective legal action, if it is proven that IPR violations have occurred, then the violators must be punished, both criminally and civilly.

Legal protection of IPR is an effort regulated by law to prevent violations of IPR by people who have no rights. The theory of legal protection as proposed by Sudikno Mertokusumo, where the existence of law in society is a means of creating peace and order in society, so that the interests of members of society can be safeguarded in the relationship between one member of society and another. Law is nothing other than the protection of human interests in the form of norms or rules. Law as a collection of regulations or rules contains general and normative content; general because it applies to everyone, and normative because it determines what can and cannot be done, and determines how to comply with the rules.

The aim of legal protection is expected to obtain real justice or justice that is responsive, accommodating to legal interests that are comprehensive in nature, both from the criminal aspect as well as from the civil and administrative aspects, therefore achieving responsive justice requires legal awareness from all levels of society which include government agencies and society to comply with the law itself. According to Sudikno Mertokusumo, the law aims to achieve order in society so that it is hoped that human interests will be protected to achieve its goals and is tasked with dividing rights and obligations between individuals in society, dividing authority and prioritizing solving legal problems and maintaining legal certainty. According to Subekti, as

quoted by Sudikno Mertokusumo, the aim of the law is to serve the goals of the State, namely to bring prosperity and happiness to its people.

According to Maria Theresia Geme, what is meant by legal protection is related to the state's action to do something (exclusively enforcing state law) with the aim of providing guaranteed certainty of the rights of a person or group of people. According to Salim HS and Erlies Septiana Nurbani, protection is an effort or form of service given by law to legal subjects and things that are protected objects. Legal protection theory is a theory that examines and analyses the form or form or purpose of protection, the legal subject being protected and the object of protection provided by law to the subject. The elements listed in the definition of legal protection theory; includes:

1) The existence of a form or form of protection or purpose of protection;
2) Legal subject; And
3) Object of legal protection.

Legal protection is an illustration of the working of legal functions to realize legal objectives, namely justice, benefit and legal certainty. Legal protection is protection given to legal subjects in accordance with legal rules, both preventive (prevention) and repressive (coercive) in nature, both written and unwritten in order to enforce legal regulations.

According to Philipus M. Hadjon, legal protection for the people includes two things, namely:

1) Preventive Legal Protection, namely a form of legal protection where the people are given the opportunity to submit objections or opinions before a government decision takes a definitive form;
2) Second: Repressive Legal Protection, namely a form of legal protection which is more aimed at resolving disputes.

Preventive legal protection is legal protection that is preventive in nature. Protection provides the people with the opportunity to submit objections (inspraak) to their opinions before a government decision takes definitive form. This preventive legal protection aims to prevent disputes from occurring and has a very big meaning for government action which is based on freedom of action. The existence of this preventive legal protection encourages the government to be careful in making decisions related to the freies ermessen principle, and the people can raise objections or be asked for their opinion regarding the planned decision.

Repressive legal protection functions to resolve disputes if a dispute occurs. In Indonesia today there are various bodies that partially handle legal protection for the people, which are grouped into two bodies, namely:

1) Courts within the scope of General Courts; And
2) Government institutions which are administrative appeal institutions.

A protection can be said to be legal protection if it contains the following elements:

1) There is protection from the government for its citizens
2) Guarantee of legal certainty.
3) Relating to citizens' rights.
4) There are punitive sanctions for those who violate them.

This legal protection theory is used by the author to find out the extent to which laws and regulations in Indonesia protect brand rights that are registered and generally known to the public.

2. Theory of recognition of Intellectual Property Rights (Reward Theory)

There are various theories that underlie the need for a form of legal protection for IPR, one of which was put forward by Robert M. Sherwood. The theory in question is what is known as Reward Theory (Recognition of Intellectual Property Rights) which has a very deep meaning in the form of recognition of intellectual property that has been produced

by someone so that the inventor/creator or designer must be given an award as a reward for their creative efforts in discovering/ create intellectual works.

Intellectual Property Rights (especially trademark rights) or the term in English Intellectual Property Rights is one of the rights that arises or is born due to human abilities. IPR is an exclusive right within the scope of technology, science, or arts and literature. Ownership is not in the goods but in the results of human intellectual abilities and creativity, which include ideas or thoughts.

Intellectual property rights, including brand rights, are rights that originate from the creation of human thinking abilities which are expressed to the general public in various forms, which have benefits and support human life, as well as having economic value. The real form of human intellectual work ability can be in the form of technology, science, or art and literature.

In principle, IPR has a certain or limited period of time; This means that after the protection period for a creation or discovery produced by a person or group has expired, it will become public property, but there are also things that after the protection period have expired, the protection period can be extended further, for example for trademark rights. IPR also has an exclusive and absolute nature, meaning that the rights to inventions including brand creativity produced by a person or group can be maintained if another party imitates or plagiarizes their work. The owner of the right can sue for violations committed by anyone and the owner or holder of the legal IPR has monopoly rights, that is, the owner or holder of the right can use his right to prohibit anyone from producing without obtaining approval from the owner.

The values in reward theory essentially state that a person who has the ability to find something creative must be rewarded both in terms of recognition carried out by registering a trademark and in terms of the economic benefits that he will obtain, including the property rights. Because intellectual works are born with sacrifices of time and even money and this sacrifice makes the resulting work have inherent economic value as a consequence of becoming wealth (property), if these works obtain economic benefits that can be enjoyed. IPR only emerges when human intellectual output has formed something that can be seen, heard, read or used practically.

Reward Theory or the theory of recognition of intellectual property is used in this research because through this theory it will be studied regarding parties who have created creativity, especially in the field of brands, so they must be given recognition, appreciation and protection, this recognition will be obtained by registering trademark rights. so that further economic benefits will be obtained as the person's trademark rights are registered, and legal protection is obtained through the existence of laws regarding Intellectual Property Rights, especially regarding trademark rights.

2. RESEARCH METHODS

1. Types and Nature of Research

   This type of research is normative research. Normative legal research is also referred to as library research or document study, because it is mostly carried out on secondary data in libraries. Normative legal research also refers to legal rules, legal norms contained both in statutory provisions and in court decisions. The nature of this research is descriptive, Ronald Dworkin stated that this research is also referred to as doctrinal research, namely research that analyzes laws both as written in the book and laws decided by the judge through the court process (law as it is decided by the judge through judicial process).

2. Data source

   The data source in normative research is secondary data. In legal literature, the data source is called legal material. Legal materials are anything that can be used or is needed for the purpose of analyzing applicable law. The legal materials studied and analyzed in normative legal research consist of:

a. Primary legal materials, namely legal materials consisting of statutory regulations ordered according to hierarchy.
b. Secondary legal materials are research materials that provide an explanation of primary legal materials and secondary legal materials are also research materials that come from literature or the writings of scholars in the form of books, journals and also materials in print media. as well as electronic media related to the subject of discussion.
c. Tertiary legal materials provide instructions or explanations for primary legal materials and secondary legal materials, such as legal dictionaries and encyclopaedias.

3. Data collection technique

The data collection and retrieval process is carried out by means of library research. Library research is a series of efforts to obtain data by reading, analysing, clarifying, identifying and understanding legal materials in the form of statutory regulations and literature books that are relevant to the research problem. In essence, the data collection technique for this research is research carried out by examining library materials or library legal research.

4. Data analysis

This research uses qualitative data analysis, through analysis of various laws and regulations related to the research object. From this discussion, we will draw conclusions deductively, namely drawing conclusions from general ones to specific conclusions.

Data analysis is the most important and decisive stage in writing a thesis. To be able to solve existing problems and to be able to draw conclusions by utilizing the data that has been collected, the research results in this study were first analysed using qualitative analysis. Data analysis is an internal activity

research in the form of conducting studies or researching the results of data processing assisted by previously obtained theories. In simple terms, data analysis is referred to as the activity of providing analysis which can mean criticizing, supporting, adding or commenting and then

make a conclusion on the research results with your own thoughts and the help of the theory that has been mastered.

Data obtained from research results are grouped according to problems which are then carried out qualitatively. Qualitative analysis means that the analysis does not depend on the amount of data based on numbers but rather the data being analyzed is then described in the form of sentences. Qualitative descriptive analysis is a data analysis method that groups and selects the data that has been obtained according to its quality and truth, then connects it with theories, principles and legal rules obtained from literature study so that answers to the problems formulated are obtained.

3. DISCUSSION

A. legal protection for registered trademark rights holders in Indonesia

Based on Article 1 of Law No. 14 of 1997 in conjunction with Law No. 15 of 2001, a brand is a sign in the form of an image, name, word, letter, number, colour arrangement, or a combination of these elements which has distinguishing power and is used in world of trade in goods or services. Brands that receive protection are brands registered with the Director General of Intellectual Property Rights, Depkumham. A registered mark is a mark that is valid and recognized by law and has a registration number, so that it obtains protection from the State through the Court Office. Meanwhile, brands that have not been registered or are not registered do not receive legal protection from the State. Because trademark infringement is a complaint offense, if a party who legally owns the trademark makes a complaint, the court office will process it.

In the current global era, cases of brand infringement are increasingly occurring, such as cases of brand counterfeiting of registered marks that already have a name or are known to the public, which are carried out by parties with bad intentions who want to gain as much

profit as possible in unfair competition. and dishonestly using a registered mark belonging to another party.

Indications of brand infringement based on Trademark Law No. 15 of 2001, there are several classifications regarding brand counterfeiting, namely using the same brand as a whole, using the same mark as essentially the same sign, using the same mark as essentially the same as a geographical indication. Apart from that, there is also counterfeiting of registered brands.

Protection is only given to registered marks, because according to Article 3 of Law no. 19 Th. 1992 in conjunction with Law No.14 Th. 1997 in conjunction with Law No. 15 Th. 2001, the right to a trademark is a right granted by the State to the owner of a trademark registered in the Trademark General for a certain period of time to use the trademark himself or give permission to someone or several people together or as a legal entity or to use it. Therefore, brands that have not been registered do not receive legal protection.

Types of registered trademark protection:

1. Preventive Brand Protection

   A registered trademark is a trademark that has been registered with the Director General of Intellectual Property Rights. Therefore, trademarks that have been registered will receive a registration number. If the registration number is registered with the Director General of Intellectual Property Rights, the brand is a valid brand. The brand owner obtains preventive legal protection from

   The state through law, namely Law no. 15 of 2001 concerning Brands. Preventive legal protection of registered marks is regulated in Articles 4, 5, 6 paragraphs (1,3) of Law no. 15 of 2001 concerning Brands. In accordance with article 4 of Law No. 15 of 2001, a trademark cannot be registered on the basis of an application submitted by an applicant who is in bad faith.

   Then preventive protection is in accordance with article 5 of Law No. 15 of 2001, namely trademarks that cannot be registered or requests for trademark registration that are rejected. Trademarks cannot be registered if they contain one of the following elements:

   - contrary to decency and public order
   - has no distinguishing power
   - has become public property or
   - is information or relating to goods or services for which registration is requested. Preventive trademark protection is based on Article 6 of Law paragraph (1) No.15 of 2001, a trademark whose request for registration is rejected by the trademark office if:
     a. has similarities in essence or in its entirety with a mark belonging to another person that has been previously registered for similar goods or services
     b. has similarities in essence or in its entirety with someone else's well-known brand for goods or services
        kind
     c. has similarities in essence or in its entirety with known geographical indications.

Preventive brand protection in Article 6 paragraph (3) of Law No.15 Th. 2001, the Application must also be rejected by the Directorate General's Office if the Mark:

1) is or resembles the name of a famous person, photo, brand and name of a legal entity owned by another person who is already famous, unless with written approval from the person entitled to it.
2) is an imitation or resembles the name or abbreviation of the name of a flag, symbol or emblem of a country or national or international institution, unless with written approval from the authorized party;
3) is an imitation or resembles an official mark or stamp or seal used by a state or government agency, unless with written approval from the authorized party.

B. Repressive Brand Protection

A valid brand or registered mark must be protected by the State through Law no. 15 of 2001 from detrimental parties. The form of repressive protection if there is a violation of a registered mark is regulated in Articles 90 to 95 of Law No. 15 of 2001.

1) Article 90 of Law No. 15 of 2001,
   Any person who intentionally and without right uses a mark that is completely the same as a registered mark belonging to another party for similar goods and/or services produced and/or traded, shall be punished by imprisonment for a maximum of 5 (five) years and/or a fine of a maximum Rp. 1,000,000,000.00 (one billion rupiah).
2) Article 91 of Law No. 15 of 2001
   Any person who intentionally and without right uses a mark that is substantially the same as a registered mark belonging to another party for goods and/or services
   similar products produced and/or traded, shall be punished by imprisonment
   a maximum of 4 (four) years and/or a maximum fine of Rp. 800,000,000.00 (eight hundred million rupiah)
3) Article 92 of Law No. 15 of 2001
   (1) Any person who intentionally and without right uses the same mark throughout as the geographical indication belonging to another party for goods and/or services that are similar to the goods listed, shall be punished by imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of IDR. 1,000,000,000.00 (one billion rupiah).
   (2) Any person who intentionally and without right uses a sign that is completely the same as a geographic indication belonging to another party for goods and/or services that are similar to the goods listed, shall be punished by imprisonment for a maximum of 4 (four) years and/or a fine of a maximum of Rp. 800,000,000.00 (eight hundred million rupiah).
4) Article 93 of Law No. 15 of 2001,
   Any person who intentionally and without authorization uses a protected sign based on indications of origin on goods and/or services so as to deceive and mislead the public regarding the origin of the goods or services, shall be punished by imprisonment for a maximum of 4 (four) years and/or a fine of up to a lot of Rp. 800,000,000.00 (eight hundred million rupiah)
5) Article 94 of Law No. 15 of 2001
   Any person who trades in goods and/or services who know or should know that the goods and/or services are the result of a violation as intended in Article 90, Article 91, Article 93, shall be punished with imprisonment for a maximum of 1 (one) year and/or a fine of up to a lot of Rp. 200,000,000.00 (two hundred million rupiah).
   The criminal act as intended in paragraph (1) is a violation
6) Article 95 Law no. 15 of 2001
   Criminal acts as referred to in Article 91, Article 92, Article 93 and Article 94 are complaints.

Violations occur because there are parties who do not have the right to use the registered mark for their purposes. The factors causing brand infringement that occur in Indonesia are as follows:

a. The IPR law in Indonesia is still weak, the general market share is that people prefer to buy products that are cheap even though the quality is low.
b. Weak supervision and implementation of these regulations
c. Public interest in branded products but at cheap prices
d. People's purchasing power is still low
e. Paying less attention to the quality of a product
f. The level of public awareness of brand infringement is still low
g. Economic conditions where people tend to buy fake brands, because they are cheap

Apart from that, it is also caused by fraudulent competition called "Passing of". Passing of is fraudulent competition carried out by producing goods that use a certain

shape, appearance or design and are not registered as a brand. A case example is the Adidia shoe product which is almost the same in design and color composition as the Adidas Brand, which is a shoe and sports equipment product made by a German company. It turns out that Adidia is registered with the Director General of Intellectual Property Rights. This is a new brand infringement. Because they produce goods that are not the same but use the same design and composition, which is called Passing Off. Another case example is the Camilio Wafer and Candy Products which are almost the same in design and color composition as the Milo Brand (chocolate milk and chocolate produced by PT. Nestle). It turns out that Camilo is already registered with the Director General of Intellectual Property Rights too. This includes brand infringement. Because it produces different items (between milk chocolate and chocolate ± Milo with wafers and candy-Camilo) but uses the same design and composition, which is called Passing Off. If this violation is prosecuted, it is difficult to enforce the law.

C. The role and responsibility of the government regarding legal protection for brand rights holders.

Protection of well-known brands is provided by the State through laws, both preventive and repressive protection. Preventive protection is contained in Articles 4, 5, 6 of Law no. 15 of 2001 concerning Trademarks, while the repressive protection is in the Criminal Provisions Article from Article 90 to Article 95 of Law No. 15 of 2001. If a trademark violation occurs, the brand owner will be protected by preventive articles and repressive articles.

The existence of this protection shows that the State is obliged to enforce trademark law. Therefore, if there is a violation of a registered trademark, the trademark owner can file a lawsuit with the Court Office. With this protection, justice will be realized which is the aim of the law. One of the goals of law is to realize social justice. With legal protection, the legal brand owner's rights are protected. The state is obliged to provide protection to injured parties in accordance with the context of State Law.

4. CLOSING

Conclusion

Conclusions that can be drawn from the discussion above include:

1. That only registered marks receive legal protection. Because the registered mark is a mark that is legally registered at the Office of the Director General of Intellectual Property Rights. If there is a trademark infringement, the legal trademark owner can file a lawsuit with the Court (because trademark infringement is a complaint offense).
2. Forms of protection for registered marks are Preventive Protection and Repressive Protection. Preventive Protection is regulated in Article 4, Article 5 and Article 6 of Law no. 15 of 2001, law on Trademarks. Repressive Protection is regulated by Criminal Provisions, namely in Articles 90 to Article 95 of Law No. 15 of 2001 concerning Trademarks. Anyone who commits a trademark violation will be subject to criminal sanctions or a fine in accordance with the violation committed.
3. The Government's responsibility in terms of legal protection for registered trademark rights holders is to create statutory regulations relating to trademarks as well as implementing and enforcing these regulations.

Suggestion

Here the author tries to provide suggestions regarding the problems discussed above. Here the author believes that the government should be more aggressive in enforcing the law regarding trademark infringement in order to protect the rights of registered trademark holders who already have a name in the community.

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