

Law Enforcement Against Trademark Counterfeiting

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Abstract. Law enforcement against brand counterfeiting is an effort to protect the rights of brand owners in running their business and punish brand counterfeiting perpetrators who can harm many parties ranging from the brand owner himself, consumers to the economy. Law enforcement against trademark counterfeiting crimes includes investigation, prosecution, confiscation of counterfeit goods, compensation, and prevention and socialization efforts that can be carried out to the community. Law enforcement against brand counterfeiting requires the cooperation of various parties ranging from authorities, brand owners, and the public to jointly fight brand counterfeiting. This enforcement effort aims to maintain the sustainability and integrity of the brand system, as well as protect the rights of brand owners from adverse violations.

Keywords: Brand; Counterfeiting; Punishment

1. Introduction

The development of the times changes various fields that exist in human life such as technology and information to other industrial fields. The large number of various types of goods and services offered to the community makes the flow of free trade demand the high quality of the products produced. The complexity and high competition in the industrial world will tend to cause conflicts or disputes. In the business community, there are two common approaches that are often used to resolve disputes. First, using the litigation dispute resolution paradigm (litigation paradigm / PLg), which is an approach to obtain justice through the *adversary system* and using coercion in managing disputes and producing *win-lose solutions* on the disputing parties. Second, using the non-litigation paradigm (non-litigation paradigm / PnLg), where in achieving justice prioritizes the "consensus" approach by bringing together the interests of the parties to the dispute which aims to obtain the results of *a win-win solution*.

In the business industry, goods and services offered by business actors, making the brand as an identity that characterizes the goods from the production offered. The existence of a brand is one of the most important things that need to be done legal protection. Along with this, the importance of protecting the rights of every human being needs to be regulated, including the role of Intellectual Property Rights (IPR).

In a business industry, there are often acts of brand forgery. This act of brand counterfeiting is a criminal act offends that violate Intellectual Property Rights. The brand is part of the Intellectual Property Rights of abag, so the action harms the brand owner, consumers, and the existing economy. Therefore, there is a need for law enforcement against brand counterfeiting to protect the rights of brand owners and create a healthy business climate in Indonesia.

Intellectual Property Rights is a form of legal rights involving rights to intellectual works produced by individuals or groups, such as copyrights, patents, trademark rights, and industrial design rights. IPR crime refers to a series of violations involving the illegal use, reproduction, or distribution of intellectual works protected by IPR in Indonesia.

In Indonesia, IPR crime is regulated by various laws and regulations, including Law Number 28 of 2014 concerning Intellectual Property Rights (IPR Law). IPR crimes can include copyright infringement, patent rights, trademark rights, industrial design rights, and trade secret rights infringement. IP infringement can occur in the form of production, distribution, or sale of products that infringe protected intellectual property rights, such as counterfeit, pirated or counterfeit products.

The trademark law provides legal protection against trademark counterfeiting and authorizes the authorities to enforce the law against trademark counterfeiters. Law enforcement against the crime of brand counterfeiting involves various agencies, such as the Police, Prosecutor's Office, and the Court. The duties and authorities of these institutions are regulated in the Trademark Law and related laws and regulations.

IPR criminal acts in Indonesia have severe legal sanctions, including high fines, imprisonment, or destruction of goods that violate IPR. In addition, IPR holders who are victims of IPR violations also have the right to file civil lawsuits against perpetrators of IP violations to obtain compensation. Some steps in law enforcement against brand counterfeiting in Indonesia include:

1. Investigation and Investigation: The police have the authority to conduct investigations and investigations into suspected criminal acts of brand counterfeiting. They can collect evidence, interrogate witnesses, and engage experts to prove the existence of a criminal act of brand counterfeiting.
2. Prosecution: after the investigation is complete, the prosecutor's office has the authority to bring the perpetrators of brand counterfeiting to court. The prosecution will file charges based on evidence gathered during the investigation.
3. Court: the court is the institution authorized to examine, adjudicate, and give judgments on trademark counterfeiting cases. The court will consider the evidence and arguments presented by the prosecution and the accused before deciding whether the defendant is guilty or not.
4. Legal Sanctions: The Trademark Law regulates legal sanctions given to trademark counterfeiters, including large fines, imprisonment, and confiscation of counterfeit goods or tools used for brand counterfeiting.

Indonesia has made efforts in law enforcement against brand counterfeiting crimes through cooperation between law enforcement agencies, brand owners, and other related parties to prevent, uncover, and crack down on perpetrators. It is important to remember that IP protection is an important part of encouraging innovation, creativity, and investment in knowledge-based economic sectors. IPR crimes can harm IP holders, destroy brand reputation, and harm the economy as a whole. Therefore, law enforcement against IPR crimes is important to protect the rights of IPR holders and encourage knowledge-based economic development in Indonesia.

2. Research Methods

This research uses normative juridical research methods, namely by analyzing the implementation of legal rules or norms contained in positive law. The results of the study are

then presented in the form of a narrative that includes a well-organized and systematic description of the findings. That is, the secondary data collected are interconnected based on the research problem, so that it can be seen as a whole that meets the research requirements.

3. Findings and Discussion

3.1 Violation of Trademark Rights

Trademark infringement usually occurs to easily profit by trying, imitating, or falsifying brands known to the public. These actions can harm parties, both producers and consumers.

Infringement of trademark rights is an act that violates the rights owned by the owner of a trademark that has been legally registered and protected. There are several common forms of trademark infringement that often occur:

- a. **Similar or Identical Use of a Mark:** This violation occurs when a third party uses a mark that is similar or the same as a registered mark without permission from the trademark owner. This can result in consumers or the general public being deceived or confused, and to the detriment of legitimate brand owners.
- b. **Counterfeit or Counterfeit Brand Infringement:** This violation occurs when a third party creates an imitation or counterfeit mark that is similar or equal to a legally registered or protected mark. These counterfeit or counterfeit brands can be used to gain illegal advantage by deceiving consumers or the general public.
- c. **Infringement of Unauthorized Use of a Registered Mark:** This violation occurs when a third party uses a registered mark without permission from the trademark owner. This can be detrimental to the rightful owner of the mark and can be considered a violation of rights to the mark.
- d. **Infringement of Use of a Brand by Damaging the Reputation of the Brand:** This violation occurs when a third party uses the mark in a way that damages their reputation. This action can harm the rightful owner of the mark and is considered a violation of rights to the mark.
- e. **Famous Brand Impersonation Violation:** This violation occurs when a third party impersonates or uses a well-known mark without permission from the brand owner. Famous marks have special protections and unauthorized use of famous marks can be considered as infringement of rights over the brand.

Law Number 11 of 2020 concerning Job Creation regulates several violations of trademark rights where if the registered trademark owner finds that there is a violation, the trademark owner can file a lawsuit against the infringing party. Such violations may be subject to applicable sanctions.

The consequences of infringement of trademark rights may vary depending on the laws and regulations applicable in each jurisdiction. Usually brand owners can take legal steps to protect their rights, including filing civil suits, criminal suits, or appealing in court.

3.2 Legal Protection of Trademark Rights

Intellectual law is theoretically grouped into two: *Industrial Property Rights* and Copyright. Industrial property rights are divided into:

- a. Patents and;
- b. Brand Rights.

Patent Rights are regulated in Law Number 13 of 2016 concerning Patents as Amended by Law Number 11 of 2020 concerning Job Creation (Patent Law). Meanwhile, Trademark

Rights in the legal system are regulated in Law Number 15 of 2001 concerning Trademarks as Amended by Law Number 11 of 2020 concerning Job Creation (Trademark Law).

The principle of trademark protection is the first to apply, namely the party who first registers the mark, so that the first person gets protection. Kola there are two similar brands registered by two different people, so the one who will get protection is the first person to register. The state can protect the rights to the mark by the owner who makes the application for registration of the mark. Where it has uses, namely:

- a. Become proof of ownership of a registered mark
- b. Become a basis for rejecting the same mark registered by another party for similar goods or services
- c. Become a basis for prohibiting other parties from using the same mark on similar goods or services.

The registered mark will be protected for 10 years, during which period it can be renewed at any time within the same period if the owner of the mark applies for renewal. The mark can also be transferred through a license agreement whereby another party can use the mark with permission from the owner. Heirs and wills can also be the cause of trademark transfer, or other causes that have been regulated in laws and regulations.

In detail, legal protection of trademark rights is regulated in Law Number 11 of 2020 concerning Job Creation in Indonesia. It is important for brand owners to understand the provisions in the legislation. Where legal protection of trademark rights includes:

- a. The Job Creation Law recognizes and protects registered marks that have been registered with the Directorate General of Intellectual Property (DJKI) under the Ministry of Law and Human Rights. A registered mark gives the owner of the mark exclusive right to use the mark in relation to products or services that have been registered in the relevant class of goods or services.
- b. The Job Creation Law prohibits the use of identical or similar marks in relation to the same or similar products or services without permission from the registered trademark owner to prevent acts of piracy or imitation of marks that can harm legal trademark owners.
- c. The Job Creation Law provides a mechanism for registered trademark owners to submit a trademark removal application to the DJKI if there is a violation of trademark rights, including unauthorized violations.
- d. The Job Creation Law gives the right to registered trademark owners to file compensation claims against parties who violate their trademark rights by filing a civil lawsuit to obtain these compensations.
- e. Trademark infringement may be subject to administrative sanctions, in the form of administrative fines, license revocation, or suspension of business activities.
- f. The Job Creation Law regulates the procedures and mechanisms for resolving trademark disputes, through judicial channels or dispute resolution institutions established by the government.
- g. The Job Creation Law recognizes and protects well-known brands with a higher level of protection.

3.3 Dispute Resolution of Brand Counterfeiting Cases

The majority of trademark disputes arise from imitation events or unauthorized use of marks belonging to other parties. Brands that will usually be imitated come from brands that are

known to the public because in the turnover of economic flows traded, these goods have quite a lot of enthusiasts.

Enforcement of intellectual property rights laws is carried out by the government with various efforts. Gradually and continuously, socialization efforts have been made regarding the role of intellectual property rights in various aspects, government policy in carrying out several provisions, protection of intellectual property rights, and countermeasures against piracy.

The owner of a registered mark can file a lawsuit against another party who without the right to use a mark that has the same as a claim for damages, and/or stop all actions related to using the mark. A lawsuit can be filed with the Commercial Court which can be filed by the licensee of the registered mark, either independently or together with the owner of the mark concerned.

Trademark registration guarantees legal certainty for trademark rights holders. However, it does not guarantee the creation of harmony guarantees of fairness and expediency because there are many marks that are registered not by the actual brand owner. Intellectual Property Rights including brands have enormous economic benefits. With trademark infringement committed, violators may be subject to imprisonment and/or fines. It's just that the loss of the brand owner whose rights have been violated cannot be returned. Administrative actions that can be taken by the trademark office by rejecting the trademark registration request and deleting the trademark registration.

During the hearing, the judge may order the defendant to stop producing, circulating, and/or trading goods or services that use the mark without rights. The defendant is required to deliver goods that use the mark without rights, and the delivery of goods or the value of the goods will be carried out after the judgment has permanent legal force.

In the Job Creation Law Number 11 of 2020 article 184B, there is a mechanism for resolving trademark counterfeiting disputes involving judges or trademark dispute resolution institutions determined by the government, namely:

- a. Settlement through a Judge: in the event of a trademark counterfeiting dispute, the trademark owner can file a lawsuit to the Commercial court by following the procedures and provisions applicable in the civil procedural law in Indonesia
- b. Settlement through a Trademark Dispute Resolution Agency: the trademark owner can choose a Dispute Resolution Agency established by the government, where this institution can be used as an alternative dispute resolution other than through the courts.

4. Conclusion

Based on the things that have been explained in the previous chapters, it can be concluded that:

1. In resolving disputes in the field of IPR, including IPR crimes, the filing of IPR dispute claims according to Indonesian laws and regulations, where the first instance judicial body given the authority to handle is in the Commercial Court as a Special court located in the general judicial environment. The lawsuit must meet the formal and material requirements stipulated in the IPR Law. After the lawsuit is received, the trial will be carried out in accordance with the procedures stipulated in the civil procedural law in Indonesia until the court will issue a formal ruling on the IPR dispute.
2. Legal arrangements regarding the settlement of IPR disputes are based on laws and regulations where dispute claims are processed through the courts, while the

procedural law that applies in the dispute lawsuit process is the Civil Procedure Law as handled by the District Court within the general judicial body, to the Supreme Court regulations.

3. The process of legal settlement of false trademark rights is that the trademark owner can take settlement efforts depending on the factual case that occurs and sanctions are imposed in the form of imprisonment, civil sanctions to compensate for losses, to administrative sanctions which in these provisions are the most effective to do.

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