

**Legal Consequences Of Land Nominee Agreements Related To Foreign
Ownership (Decision Analysis Of Gianyar State Court Number
259/Pdt.G/2020/Pn.Gin)**

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ABSTRACT

Under the Basic Agrarian Law No. 5 of 1960 article 21 paragraph 1 stated that only Indonesia citizen may have the right of ownership and it is the main principle of right of ownership in Indonesia. However, it would not be a problem for foreign citizen to have the right of land ownership in Indonesia with the use of Nominee Agreement. Nominee agreement is a form of legal smuggling towards the right of ownership by foreign citizen. The research method that will be used in this article is a juridical-normative approach by using primary and secondary legal material. As for the approach that will be used is the study documents through library research derived from statutes, publications, and related legal articles. The result shows the use of nominee agreement in right of ownership towards foreign citizen is null and void. The legality of this agreement is dubious because it does not fulfill the requirements for the validity of agreements, that is a legal cause. There is no legal protection towards the notary who create this agreement.

Keywords: Nominee Agreement; Rights of Land Ownership; Notary.

INTRODUCTION

Today Intellectual Property (IP) is a means of supporting economic development, especially in the creation of creations.¹ IP supports and rewards creators, impacts economic growth, and enhances human civilization.² Moreover, with universal recognition such as in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and also Indonesia Constitution. This further emphasizes that a creation has benefits for humans and their life (life worthy) and has economic value, giving rise to the concept of wealth; concept of rights; and the concept of legal protection.³ These three conceptions cannot be separated from the term intellectual property. The term wealth (property) refers to property rights that are protected by law.

Based on this, other parties are prohibited from utilizing these rights without permission from the owner, while the term Intellectual refers to human cognitive activities based on thinking power, creativity which is expressed in the form of literary, artistic and scientific creations as well as material inventions.⁴ Thus the person who produces it gets natural ownership rights.⁵ This is because these various intellectuals were created with a sacrifice of time, sacrifice of energy and sacrifice of costs so that they have economic value.⁶ Therefore, IP is a new form and development of conventional property rights to an intangible movable object.⁷ The conception of legal protection is an implication and consequence of the two previous conceptions of intellectual property, namely the protection of dignity, as well as the recognition of human rights possessed by legal subjects based on general provisions of authority or as a set of rules or norms that can protect a Other things.⁸

¹Sudjana, *Hak Desain Tata Letak Sirkuit Terpadu*, CV Keni Media, Bandung, 2017, p. 74.

²*Ibid*, p. 75.

³Edy Damian, *Hukum Hak Cipta*, Alumni, Bandung, 2009, p. 16.

⁴Sudjana, *Op. Cit.*, p. 60.

⁵*Ibid*.

⁶*Ibid*, pp. 61-62.

⁷Muhammad Amirulloh and Helitha Novianty Muchtar, *Buku Ajar Hukum Kekayaan Intelektual*, UNPAD Press, Bandung, 2016, p. 4.

⁸CST Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Balai Pustaka, Jakarta, 1989, p. 40.

One of the intellectual property rights that is a means of development and driving the economy is a brand. According to Law Number 20 of 2016 Concerning Trademarks and Geographical Indications (TMIG Law), a trade mark is a sign that can be 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 2 (two) or more of these elements to differentiate goods and/or services produced in the activities of trading in goods/or services. The main function of the existence of a brand is to be used as a sign for identity so that it can differentiate the products produced.⁹ In addition to product identity, brands also play an important role in securing business strategies in today's competitive corporate environment because brands play a key role in the product and service industry.¹⁰ This is because a brand can also be used as an indication of the origin of a product (source of origin).also guarantee the quality of the product concerned as well as a means of promotion.¹¹

Therefore, brand is a company asset if the product produced using that brand succeeds in becoming a product that is widely used by the public, so that the brand in question will become a "key word" for people who will buy a product.¹² Given the important role of the brand in the business aspect of a product, the brand is also

⁹Novianti, *Et Al.*, *Perlindungan Merek*, Yayasan Pustaka Obor Indonesia, Jakarta, 2017, p. 13.

¹⁰Shellen Dhea Af Gaumi, Rudy Hartono, "Analisa Hukum Sengketa Merek Dagang Geprek Benu Berdasarkan Asas Kepastian Hukum (Studi Kasus Putusan No. 196/G/2020/Ptun-Jkt)", *Jurnal Darma Agung*, Volume 30, Nomor 2, Agustus, 2022, p.75.

¹¹Muhammad Djumhana, R.Djubaedillah, *Hak Milik Intelektual Sejarah Teori dan Praktiknya di Indonesia*, Citra Aditya Bakti, Bandung 2014, p. 229.

¹²Siti Marwiyah, "Perlindungan Hukum Merek Terkenal," *De Jure, Jurnal Syariah dan Hukum*, Volume 2 Nomor 1, Juni, 2010, p. 39.

one of the issues related to the economy in Indonesia. The Indonesian economy is played by Micro, Small and Medium Enterprises (MSMEs) significantly. MSMEs are defined as a form of people's economic activity that has a small scale and then the business meets the net worth criteria or annual sales results and ownership as stipulated in the law.¹³ MSMEs have an important role in supporting the Indonesian economy because they have strong resilience.¹⁴ Having a strategic role in national economic development, MSMEs have a role in economic growth and employment¹⁵ with an absorption rate of around 97% of the workforce in Indonesia.¹⁶

Based on data obtained from the Indonesia Central Statistics Agency (CSA), MSMEs reach up to 64 million. This figure reaches up to 99.9% of all businesses operating in Indonesia.¹⁷ Seeing the large strategic role of MSMEs, the Government is promoting MSMEs as business potential. The more people who are self-employed it will improve the regional economy. People's income from MSMEs is a major factor in fulfilling daily life and provides a role in maintaining economic growth by reducing the unemployment rate and being able to increase welfare, so that MSMEs play a role in the economic development of a nation or have contributed to job creation and gross domestic product. GDP).¹⁸

The strategic role of MSMEs has not been accompanied by an increase in product value through trademark registration. The Directorate General of Intellectual Property (DGIP) recorded data that there were only around 70 thousand MSME actors who registered their brands from more than 65 million business

¹³Hamdani, *Mengenal Usaha Mikro Kecil dan Mengengah (UMKM) Lebih Dekat*, Uwais Inspirasi Indonesia, Ponorogo, 2020, p. 1.

¹⁴Apip Alansori dan Erna Listyaningsih, *Kontribusi UMKM Terhadap Kesejahteraan Masyarakat*, Andi, Yogyakarta, 2020, p. 6.

¹⁵Dini Setyorini, (et al), "*Pengaruh Transaksi Online (E-Commerce) Terhadap Peningkatan Laba UMKM (Studi Kasus UMKM Pengolahan Besi Ciampea Bogor Jawa Barat)*," *Jurnal Mitra Manajemen*, Volume 3, No.5, 2019, p. 502.

¹⁶<Leski Rizkinaswara>, "<Kementrian Komunikasi dan Informatika RI, Dorong Bangkitnya UMKM, Pemerintah Anggarkan 695 Trilyun>," <<https://aptika.kominfo.go.id/2020/10/dorong-bangkitnya-umkm-pemerintah-anggarkan-rp-695-trilyun/>>., accessed, <01/10/2022>.

¹⁸Apip Alansori and Erna Listyaningsih, *Op. cit*, p. 3.

actors in 2019 to 2021.¹⁹ The lack of knowledge about the importance of protecting IP marks through registration has resulted in the emergence of a perception that the process of trademark registration is complicated and expensive is the reason for the low number of trademark registrations on MSME products. Such actions by MSME actors will cause problems in the future, bearing in mind that product expansion and reputation are ongoing but brand ownership has not been registered. Negligence by a business actor in registering a mark can result in claims/registration of a mark by other parties who are also business actors for similar products, so that a person who has not registered his trademark may lose the right to use and utilize his own mark which has already been used.²⁰

In addition, the rapid changes and shifts in the current super-industrial era have ushered mankind into a borderless world.²¹ Global settlements and economic unity in a borderless world have automatically brought Indonesia to the arena of Business in a global village, free market, and free competition.²² Free trade has an impact on marketing a universal discipline regarding marketing concepts seen as a

¹⁹<Idris Rusadi Putra>, “<Kesadaran UMKM Indonesia Untuk Daftarkan Hak Merek Masih Kalah Dibandingkan China>,”<<https://www.merdeka.com/uang/kesadaran-umkm-indonesia-untuk-daftarkan-hak-merek-masih-kalah-dibandingkan-china.html>>, accessed, [1/09/2022].

²⁰Yudhitiya Dyah Sukmadewi, “*Pendaftaran Merek Asosiasi Sebagai Merek Kolektif (Kajian Terhadap Asosiasi Rajut Indonesia Wilayah Jawa Tengah)*”, Jurnal Ius Constituendum, Volume 2, No. 1, April, 2017, p. 110.

²¹Keinichi Ohmae, *Borderless World*, in, Suyud Margono, *Penyelesaian Sengketa Bisnis Alternative Dispute Resolutions (ADR) Teknik & strategi dalam Negosiasi, Mediasi & Arbitrase*, Ghalia Indonesia, Bogor, 2010, p. 3

²² *Ibid*, p. 3.

universal strategy that changes with the following stages:²³ *First*, the marketing concept focuses on better products based on internal standards and values with the aim of making a profit. *Second*, in the decade of sixties, the focus of marketing shifted from products to customers with a fixed goal, namely still making a profit, but using a broader way of achieving it by updating the marketing mix or 4P (Product, Price, Promotion, and Place). *Third*, regarding the new concept of marketing that turns into a strategy for customers in a broader environmental context nowadays.

Brand use is the only way to create and maintain good will in the eyes of consumers, besides that, a brand is a symbol for traders to maintain and expand their product markets both inside and outside the country, so that the good will of a product is priceless. in expanding the market.²⁴ Brands supported by advertising media can enable business actors to have the ability to stimulate consumer demand and maintain consumer loyalty to the products they produce.²⁵ This is a competitive advantage and the advantage of brand ownership to compete in the global market.²⁶ An international issue, the brand is growing rapidly. In fact, mainstream brands tend to always be talked about, both nationally and internationally. Therefore, we must all realize that a brand is a creation of human thought and must be protected by law.²⁷ Based on this description, this article aims to discuss trademark registration and legal protection based on Law Number 20 of 2016 concerning Marks and Geographical Indications.

²³ Sri Redjeki Hartono, *Aspek-Aspek Hukum Perlindungan Konsumen*, dalam Sudjana, Elisantris Gultom, Rahasisa Dagang dalam Perspektif Perlindungan Konsumen, Keni Media, Bandung, 2016, Hlm.6.

²⁴ Muhammad Djumhana and R. Djubaedillah, *Op.Cit.*, p. 160.

²⁵ Rahmi Jened, *Hukum Merek (TradeMark Law) Dalam Era Global dan Integrasi Ekonomi*, Kendana, Jakarta, 2017, p. 4.

²⁶ *Ibid.*

²⁷ Sudaryat, Sudjana, Rika Ratna Permata, *Intellectual Property Rights, Hak Kekayaan Intelektual, Memahami Prinsip Dasar, Cakupan, Dan Undang-Undang Yang Berlaku*, Oase Media, Bandung, 2010, p. 5.

RESEARCH METHODS

Method Study which is used is Normative Juridical, while the approach Which used, namely the statutory approach. The legal materials used are primary legal materials supplemented by secondary legal materials related to trademark registration and legal protection. The regulations related to this research are Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Data collection techniques used library research by collecting primary and secondary legal materials, and the data analysis method used was normative juridical qualitative, namely data that had been obtained systematically, then compiled to obtain conclusions or research results. Research or discussion of a problem conducted by researchers is expected to provide benefits and be useful for parties who are interested and interested in the problems resulting from the research results.

Theoretically, the results of this study are expected to be able to provide additional references, or library materials, or knowledge for the development of legal science, especially in the field of civil law, namely intellectual property law regarding the urgency and function of trademark registration as a form of legal protection for MSME products according to Law Number 20 of 2016 Concerning Trademarks and Geographical Indications Practically, this research can provide a contribution to the Government, especially the Indonesian Ministry of UMKM, the Department of Trade and Industry Cooperatives, MSME actors and parties related to the issuance of trademark registration for MSME products in Indonesia regarding the urgency of registering a trademark for MSME products to increase marketability, increase promotional power and realize legal protection of IP.

DISCUSSION

Trademark Registration Based on Law Number 20 of 2016 Concerning Trademarks and Geographical Indications

Regulations regarding brands in Indonesia are regulated in TMIG LAW. The legal protection system for brands in Indonesia is first to file. That is, the party that first registers or obtains a trademark certificate, then that party owns the rights to

the mark so that other than those parties are not allowed to register a mark with the same name.²⁸ Applications for trademark registration can be classified into two types, namely registration in an ordinary or general manner and registration using priority rights.

Priority rights are rights granted to applicants to submit applications originating from countries that are members of the Paris Convention For The Protection Of Industrial Property or the Agreement Establishing The World Trade Organization as an effort to obtain recognition that the date of receipt from the country of origin is a priority date in the destination country. registration of marks where the destination country is also a member of one of the two agreements as long as the filing is carried out within the period determined based on the Paris Convention For The Protection Of Industrial Property.²⁹ There are two requirements that will be examined in the process of registering a mark. These requirements can be qualified into formal requirements or administrative requirements, namely requirements relating to registration procedures. and material requirements, which are the main requirements regarding the substance of the brand itself.

a. Examination of Administrative Requirements

Inspection at this stage, namely the completeness of the requirements for the application for trademark registration. If you have met all the specified requirements,³⁰ then it can proceed to the next stage, but if there is a lack of completeness in the submission then within a maximum period of thirty days from the date of receipt. While the completeness of these requirements must be met within a maximum period of two months from the date of sending the notification

²⁸Humaedi Abdurahman, "The Principle of First To File Principal in the Case of Rights to the Famous Benu Brand Name, Actuality," Vol. 3, No. 1, June, 2020, p. 430.

²⁹Ahmadi Miru, *Trademark Law: An Easy Way to Learn Trademark Law*, Raja Grafindo Persada, Jakarta 2005, p. 32.

³⁰Completeness of Mark registration requirements as referred to in Article 4, Article 5, Article 6, Article 7, Article 9 and Article 10 TMIG LAW.

letter to fulfill the completeness of the administrative requirements.³¹ Applications submitted with priority rights are given a period of time to fulfill the deficiencies in the completeness of the requirements no later than three months from the end of the application submission period. If the applicant has not completed the required requirements by the specified time limit, then the application for registration of a mark is considered withdrawn by the applicant by DGIP.³²

Even if an application is submitted and received by DGIP, if the administrative requirements have not been fulfilled, then this cannot be referred to as the time when the application for mark registration is received. If the administrative requirements have been met, then the application is given a date of receipt known as the filing date, which is recorded by DGIP. Filing date is the starting date for calculating the period of protection for a registered mark if an application for mark registration is received. Determining the acceptance date is very important because it is the starting date for calculating trademark protection.³³

b. Substantive Examination

In addition to checking the completeness of administrative requirements, in an application for registration of a mark no later than thirty days from the date of receipt. DGIP will also conduct a substantive examination of the application, with a timeframe for completion as determined by law, namely a maximum of one hundred and fifty days.³⁴ Substantive examination is an examination conducted on the material aspects of the mark. The material aspect of a brand is in the form

³¹Article 11 Paragraph (2) TMIG LAW.

³²Article 11 Paragraph (2) TMIG LAW

³³Ahmadi Miru, Op.cit., p.36.

³⁴Ibid., p. 39.

of images, logos, names, words, letters, numbers, color arrangements, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements contained in a marks that pay attention to the requirements in Article 20 and Article 21 of TMIG LAW. Because of that not all applications for registration of marks are granted by the DGIP because applications for marks may face the possibility of not being able to be registered and or must be refused registration.

A mark cannot be registered if the mark contains one of the elements as specified in Article 20 TMIG LAW, if it conflicts with state ideology, laws, morality, religion, decency, or public order;³⁵ Same with, related to, or only mentions the goods and/or services being applied for registration;³⁶ Load for elements that can mislead the public about the origin, quality, type, size, type, purpose of using the goods and/or services being applied for registration or are names of protected plant varieties for similar goods and/or services³⁷ contains information that is inconsistent with the quality, benefits or efficacy of the goods and/or services produced;³⁸ Has no discrimination;³⁹ and/or is a common name and/or a symbol of public property.⁴⁰

³⁵Explanation of Article 20 letter a TMIG LAW: what is meant by "contrary to public order" is not in line with existing regulations in society which are comprehensive in nature such as offending the feelings of the community or class, offending decency. or the general ethics of society, and offends the peace of society or class.

³⁶Explanation of Article 20 letter b TMIG LAW: The mark is related to or only mentions the goods and/or services being applied for registration.

³⁷Explanation of Article 20 letter c TMIG LAW: What is meant by "containing elements that can be misleading" is for example the Mark "Ketchup No. 1" cannot be registered because it misleads the public regarding the quality of the goods, the Mark "net 100 grams" cannot be registered because it misleads the public regarding the item size.

³⁸Explanation of Article 20 letter d TMIG LAW: What is meant by "loading information that does not match the quality, benefits, or efficacy of the goods and/or services produced" is including information that does not match the quality, benefits, efficacy, and/or risks of the intended product. For example: a drug that can cure a thousand and one diseases, cigarettes are safe for health.

³⁹Explanation of Article 20 letter e TMIG LAW: A sign is considered to have no distinguishing power if the sign is too simple, such as one dash or one full stop, or too complicated so it is not clear.

⁴⁰Explanation of Article 20 letter f TMIG LAW: What is meant by "common name" includes among others the "restaurant" brand for restaurants, the "coffee shop" brand for cafes. The "public property symbol" includes the "corral symbol" for dangerous goods, the "poison sign" symbol for chemicals, the "spoon and fork symbol" for restaurant services.

As for a mark being rejected for registration, it refers to Article 21 TMIG LAW can be concluded with regard to three things, namely equality in principle, having similarities and or imitation of certain entities determined by law and applications made by applicants who have bad intentions, the description is as follows:

1) Equality in essence

Equality in essence is a resemblance caused by the presence of a dominant element between one brand and another, giving rise to the impression that there is a similarity between brands, both in terms of shape, method of placement, method of writing or combination of elements, as well as similarities in speech sounds contained in said brand.⁴¹ Rejection of applications that have similarities in principle or in whole is carried out by IP into account general knowledge among the public regarding certain brands in related business fields. Apart from that, brand reputation obtained from means of promotion, investment in several countries, and accompanied by proof of registration is also considered.⁴² Therefore, the brand is given a classification and level from the highest, namely famous brands, well-known brands and ordinary brands.⁴³

Ordinary brands that are classified as not having a high reputation are considered to lack a symbolic radiance of lifestyle both in terms of usage and technology. Consumers see the brand as a low quality brand. Therefore, ordinary brands are also considered to have no drawing power capable of giving a touch of familiarity, suggestive mythical power to consumers, and unable to form layers of

⁴¹Explanation of Article 21 Paragraph (1) TMIG LAW.

⁴²Explanation of Article 21 Paragraph (1) letter b;

⁴³Yahya Harahap, Overview of Trademarks in General and Trademark Law in Indonesia Based on Law No. 19 of 1992, Citra Aditya Bakti, Bandung 1996, p. 80.

the market and users.⁴⁴ Furthermore, the famous brand class has a high reputation. This brand has the power of radiance that is stunning and attractive, so that the types of goods under the brand immediately create a touch of familiarity and mythical context to consumers.⁴⁵ While the term well-known mark is not recognized in TMIG LAW, however, its presence often influences the process of registering and protecting the mark.

Some countries also treat well-known brands as brands that have a higher reputation than well-known brands because of their big names and very well-known names.⁴⁶ Therefore a trademark application will be rejected if it is similar in principle to a registered mark belonging to another party or applied in advance by another party for similar goods and/or services; Famous brand owned by another party for similar goods and/or services; Well-known marks belonging to other parties for goods and/or services that are not of the same type that meet certain requirements; or registered Geographical Indication.⁴⁷

2) Having similarities and or imitation of certain entities determined by law

In addition to the material aspects related to equality in essence as has been discussed As mentioned in the previous point, rejection of trademark registration can also occur if the trademark submitted has similarities to the entities regulated in TMIG LAW, Is or resembles the name or abbreviation of a famous person's name, photo, or name of a legal entity owned by another person, except with written approval from the person entitled; Is an imitation or resembles the name or abbreviation of a name, flag, symbol or symbol or emblem of a country, or national or international institutions, except with written approval from the competent authority; or Is an imitation or resembles an official sign or stamp or stamp used by

⁴⁴Tommy Hendra Purwaka, Brand Protection, Indonesian Torch Library Foundation, Jakarta, 2017, p. 24.

⁴⁵Ibid.

⁴⁶Ibid.

⁴⁷Article 21 Paragraph (1) Letter a TMIG LAW.

the state or government agency, except with written approval from the competent authority.⁴⁸

3) Petition made by a Petitioner with bad faith

A mark in general cannot be registered on the basis of an application submitted by an applicant with bad intentions. This can be interpreted that an application for registration of a mark will be accepted if the applicant has good faith. Good faith is a doctrine or principle derived from teaching *bona fides* on Roman Law.⁴⁹ Fides means a source that is religious in nature, which means the trust given by one person to another, or a belief in the honor and honesty of one person to another. Bona fides required good faith in the agreements made by the Romans. The context of an applicant who has good faith in registering a mark is that an applicant who registers his mark properly and honestly without any intention to piggyback, imitate or plagiarize another party's brand fame for the sake of his business which results in losses to other parties or creates unfair, deceptive or misleading competition conditions. consumer.⁵⁰

Based on the description regarding the material requirements by paying attention to Article 20 and Article 21 in the substantive examination, in the substantive examination of a mark a decision can be made, If the application for registration of the mark submitted does not conflict with Article 20 and Article 21 TMIG LAW, the DGIP will provide a registration number and then issue a registration certificate for the mark. The registration number begins with the letters IDM and is followed by a nine-digit number; Or If the application for registration of a mark is deemed to be contrary to Articles 20 and 21 of TMIG LAW, the DGIP will issue a notification of the proposed rejection, in this case the applicant or his attorney can submit a written response to the proposed rejection within 30 days

⁴⁸Article 21 Paragraph (2) TMIG LAW.

⁴⁹Ridwan Khairandy, Good Faith in Freedom of Contract, Postgraduate FH UI, Jakarta 2003, p. 130-133.

⁵⁰Explanation of Article 21 Paragraph (3) TMIG LAW.

from the date of the notification letter as stipulated in Article 24 Paragraph 3 TMIG LAW.

c. Announcement of Application

The next step that is carried out by DGIP after an application has been approved for registration is that within a maximum period of ten days from the date of approval of the application for registration, DGIP announces the application in the official mark news. The announcement lasts for 2 (two) months, where the start date of the announcement of the application is recorded by DGIP in the official brand news, and the announcement is made by Placing it in the official brand news which is published periodically by the directorate general and/or; Place it in special facilities that can be easily and clearly seen by the public provided by DGIP.⁵¹

The special facility provided by DGIP is a bulletin board. However, if circumstances permit, the special facility will be developed, among others, with microfilm, microfiche, CD-ROM, internet and other media.⁵² Announcement is made by including Name and full address of the applicant, including the power of attorney if the application is filed through a power of attorney; Class and type of goods and/or services for the mark being applied for registration; Receipt date; The name of the country and the date of receipt of the application for the first time, in the event that the application is filed using priority rights; And Brand example. Including information regarding color, and if the brand label uses a foreign language and/or letters other than Latin letters and/or numbers that are not commonly used in Indonesian, it must include the translation in Indonesian, Latin letters or

⁵¹Article 14 TMIG LAW.

⁵²Ahmadi Miru, Op.Cit., p. 42.

numbers commonly used in Indonesian, and the way it's pronounced in Latin spelling.⁵³

During the entry into the announcement period, DGIP provides an opportunity for interested parties to submit written objections to DGIP regarding the application for registration of a mark for a fee. Such objections can be filed if there are sufficient reasons accompanied by evidence that a mark being applied for registration does not comply with one of the material requirements as referred to in Article 20 and Article 21 TMIG LAW. DGIP within a maximum period of fourteen days from the date of receipt of the objection copy of the objection letter to the application or its attorney. This shows that there is an equal opportunity for the parties to submit their opinion regarding whether or not the mark in question can be registered.⁵⁴

d. Issuance of Brand Certificates and Brand Protection Period

A brand certificate is issued by DGIP since the mark is registered, if the mark is a certificate which has been issued is not taken by the mark owner or their proxies within a maximum period of eighteen months from the date of issuance of the certificate, the mark which has been registered shall be considered withdrawn and abolished.⁵⁵ Registered marks get legal protection for a period of ten years from the date of receipt. The period of protection can be extended at the same

⁵³Ibid., p. 43.

⁵⁴Ibid., p. 46

⁵⁵Article 25 Paragraph (3) TMIG LAW

time.⁵⁶ Registration and renewal of registered marks can be carried out electronically and non-electronically as an effort by the Government to make it easier for the public to register marks.⁵⁷ An application for extension of trademark registration can be filed within a maximum period of six months after the expiration of the protection period for the registered mark, subject to a fee and a penalty equal to the extension fee.⁵⁸

Legal Protection for Registered Marks Based on Law Number 20 of 2016 Concerning Trademarks and Geographical Indications

Protection according to Philipus M. Hadjon is the protection of human dignity, as well as the recognition of human rights that are owned as legal subjects based on legal provisions of arbitrariness.⁵⁹ This was also stated by Muchsin in his views on Legal protection argues that to protect legal subjects, namely through applicable laws and regulations and their implementation is forced by a sanction.⁶⁰ Goes along with it Fitzgerald quoted Salmond's theory of legal protection stating that law has the goal of integrating and coordinating the various interests that exist in society. In a traffic of interests, the protection of certain interests can be done by limiting various interests on the other hand.⁶¹ The interests of law are dealing with human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected.⁶² So that with

⁵⁶Article 35 TMIG LAW

⁵⁷Zaenal Arifin, Muhammad Iqbal, "Legal Protection of Registered Marks," *Journal of Ius Constitudendum*, Volume 5, No 1, April 2020, p. 59.

⁵⁸Insan Budi Maulana, et.all, *Introduction to the Deed of Intellectual Property Rights Agreement for IPR Notaries and Consultants*, Citra Aditya Bakti, Bandung 2021. p. 27.

⁵⁹ Philipus M. Hadjon, *Legal Protection for the Indonesian People, Development of Science*, Surabaya, 1987, p. 1-2.

⁶⁰Muchsin, *Legal Protection and Certainty for Investors in Indonesia*, Sebelas Maret University, Surakarta, 2003 p., 20.

⁶¹Satjipto Raharjo, *Law Studies*, Citra Aditya Bakti, Bandung 2000, p. 53.

⁶²Ibid

this protection, the law seeks to achieve its objectives as conveyed by Gustav Radbruch namely justice, benefit and legal certainty.⁶³

Legal protection can be said to be an illustration of the function of law, namely the concept in which law can provide justice, order, certainty, benefit and peace for each party. Theoretically, the form of legal protection can be divided into 2 (two) forms, namely preventive legal protection and repressive legal protection.⁶⁴The legal protections obtained by trademark rights holders are as follows:

a. Preventive Legal Protection

Preventive legal protection is a preventive legal protection.⁶⁵This is stated in laws and regulations which are intended to prevent violations and provide indications or limitations on the implementation of obligations to guide government actions to be prudent. The existence of legal protection for legitimate trademark owners through registration using a constitutive system (first to file system) is intended to provide legal certainty and exclusive rights for trademark owners so that other parties cannot use the same or similar marks. with what it has, either for the same goods or services or goods and services that are almost the same.³

These special rights tend to be monopolistic in nature, meaning that only brand owners can use the rights holders can use and utilize their mark provided that they do not violate the various regulations that have been determined in the use of the mark. In addition, the owner can also prohibit other parties from using his brand or give permission. Marks that have been registered get legal protection for a period

⁶³Achmad Ali, *Revealing Legal Theory (Legal Theory) & Judicialprudence Theory Including Law (Legisprudence) Volume I Initial Understanding*, Kencana Prenada Media Group, Jakarta, 2010, p. 288.

⁶⁴*Idem.*

⁶⁵ Philipus M. Hadjon, *Loc. Cit.*

of ten years from the date of receipt, and can be extended for the same period.⁶⁶Legal protection is given to holders of exclusive rights contained in TMIG LAW for products whose brands have been registered. Legal Protection from trademark counterfeiting practices which are a form of dishonest competition. If the said act is carried out by a businessman who does not have good intentions intentionally without the right to use the same mark as a whole with a registered mark owned by another party for similar goods and/or services produced and/or traded, as stipulated in Article 100 Paragraph (1) TMIG LAW;

Legal protection from the practice of imitation of the brand (Passing Off), which is an effort to use a mark by imitating a well-known brand (well know trade mark) for the brand of the goods or services it produces. This is intended to deceive and confuse consumers so that consumers choose the wrong goods. For those who do the passing off, it can bring benefits, but for those who are piggybacked, they can experience significant losses.⁶⁷The Passing Off classification regulated in Article 100 Paragraph (2) of TMIG LAW is if without rights the use of a Mark which is similar in principle to a registered Mark belonging to another party for similar goods and/or services produced and/or traded;

Legal protection in the form of refusal of registration by DGIP as stipulated in Article 21 Paragraph (1) and Paragraph (2) TMIG LAW. This legal protection mechanism is aimed at preventing the registration of a mark which is similar in principle to a registered mark and or a well-known mark belonging to another party or being applied for in advance for a similar product, or a product not of the same type that meets special requirements. In addition, for parties who are private and/or parties who already have legal entity organizations, TMIG LAW gives authority to DGIP to refuse applications for a product mark if a brand on a product is or

⁶⁶Article 35 TMIG LAW

⁶⁷Elvani Harifaningsih, Brand case domination of Intellectual Property Rights, Bisnis Indonesia, Jakarta, 2009. p.10

resembles the name or abbreviation of a famous person's name, a photo, or the name of a legal entity that has previously owned by another party; And⁶⁸

Legal protection in the form of granting the right to submit objections to interested parties at the stage of announcing a trademark registration application for a certain period of time. Within the announcement period of two months as referred to in Article 14 TMIG LAW, each party may submit a written objection to the Minister on the Application concerned. Such objections can be filed if there are sufficient reasons accompanied by evidence that the mark being applied for for registration is a mark which based on this Law cannot be registered because there are elements contained in the provisions of Article 20 TMIG LAW, or it is rejected because it has similarities in substance. The right to file an objection is granted within a maximum period of fourteen days from the date of receipt of the objection.

b. Repressive Legal Protection

Repressive legal protection has a function to resolve if a dispute occurs.⁶⁹In addition, repressive legal protection is also a final protection in the form of sanctions in the form of fines, imprisonment, or additional punishment given after this has occurred, that is, if an offense has been committed.⁷⁰Therefore it can be concluded that repressive legal protection is the same as law enforcement. Repressive legal protection is the protection of the exclusive rights of brands from violations committed by various parties using other party's brand products without rights or against the law. As stipulated in Article 35, the current TMIG LAW provides protection for brands registered in the General Register of Marks. As a consequence of regulating the protection of registered marks, the imposition of legal sanctions is part of efforts to protect the law.

The forms of repressive legal protection contained in TMIG LAW can be identified as Legal protection in the form of the right to file a trademark cancellation

⁶⁸except with the written consent of the person entitled

⁶⁹ Philipus M. Hadjon, Loc. Cit.

⁷⁰Muchsin, Loc. Cit.

suit through the Commercial Court as stipulated in Article 76 and Article 77 TMIG LAW. In order to protect the legitimate trademark owner, this can be done by submitting an cancellation of a registered trademark that violates the trademark rights of other parties or if there are elements specified in Article 20 TMIG LAW. A lawsuit for cancellation of mark registration can only be filed within a period of five years from the date of mark registration. However, the lawsuit for cancellation can still be filed indefinitely if there is an element of bad faith and/or the mark in question is contrary to state ideology, laws and regulations, morality, religion, decency, and public order;

Legal protection in the form of the right to file a lawsuit for compensation. As regulated in Article 83 TMIG LAW. If another party without rights uses a Mark that is similar in principle or in its entirety to a similar product, then that action is an illegal act. When referring to Article 1365 of the Civil Code, any unlawful act that results in a loss to another party obliges the party due to causing the loss to compensate for the loss. Legal protection in the form of the right to request the termination of all actions related to the use of the mark. This is given with the consideration that if a dispute is still under examination, in order to prevent greater losses, the brand owner and/or licensee who acts as the plaintiff may submit a request to the judge to stop various activities such as production, distribution and/or trading of products. related parties who use the mark without rights.

Legal protection in the form of granting the right to report trademark violations. As stipulated in Article 103 of TMIG LAW, the criminal acts referred to in Articles 100 to 102 of TMIG LAW constitute a complaint offense. Complaint delict is a criminal act whose prosecution is only carried out if there is a complaint from the affected or disadvantaged party.⁷¹ Legal protection in the form of criminal sanctions. In order to provide further legal protection for registered mark owners from trademark infringement committed by other parties, criminal sanctions for such trademark infringement are intensified, especially those that threaten human

⁷¹Mahrus Ali, *Fundamentals of Criminal Law*, Sinar Graphic, Jakarta, 2012, p. 102.

health, the environment, and can result in death. Given that the issue of Brand is closely related to economic factors.⁷²Article 100 Paragraph (1) stipulates that the crime of counterfeiting a mark is subject to sanctions with a maximum imprisonment of five years and/or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).

Meanwhile, acts of brand imitation are regulated in Article 100 Paragraph (2) with a maximum imprisonment of 4 (four) years and or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah). If the crime of counterfeiting or imitation of traded marks results in health problems, environmental disturbances, and/or human death, then the penalty shall be imprisonment for a maximum of ten years and/or a fine of a maximum Rp. 5,000,000,000.00 (five billion rupiahs).

As explained above, pThe handling of repressive legal protection is carried out through litigation and non-litigation. In terms of litigation by the Judiciary, namely the Commercial Court for matters related to civil disputes, the sanctions can be in the form of compensation for material or immaterial losses, as well as the termination of all actions that use the exclusive rights of brands such as maIPng, using, selling, importing, exporting and/or distributing trademarked products. Apart from being civil, the District Court also handles matters related to criminal charges, with sanctions in the form of imprisonment and fines. Handling non-litigation or Alternative Dispute Resolution outside the court (APS), which includes negotiation, mediation,

The legal protection provided by TMIG LAW to registered brands, both preventively and repressively, is not only aimed at rights holders, but will also have an impact on the parties involved in the product business transactions, namely consumers.consumers as parties who want a sense of security, comfort and assurance in getting original brand products in accordance with reputation, prestige, quality assurance and the origin of a particular place so as to prevent misguidance to consumers in choosing products on the market so that consumers and rights

⁷²Explanation of TMIG LAW Common parts.

holders should benefit according to the provisions TMIG LAW had nothing to lose. Furthermore, the impact of legal protection can minimize or avoid the occurrence of brand imitation activities which only add a little differentiator but overall resemble the previous mark registered by parties with bad intentions. As well as an effort to trigger industrial development, especially sectors related to the economic sector that has an important role in the framework of achieving national development goals.

CLOSING

Trademark registration is very important and has various benefits, including for MSMEs. The legal protection system for trademarks in Indonesia is first to file, that is, the party owning the rights to a mark is the party who registers the mark for the first time. The procedure for registering a mark goes through a series of inspection mechanisms consisting of administrative checks and substantive checks. Legal protection that can be enjoyed by MSMEs after their trademark is registered, including legal protection against the practice of counterfeiting trademarks, imitation of brands, refusal to register trademarks for brands that have the same principal resemblance to registered marks, the right to object to registration of other marks in the announcement phase, all of which include into preventive legal protection.

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