

The Analysis of Broken Cap Brand Violation (Study of Decisions in Mahkamah Agung (Number 85 / Pk / Pdt.Sus-Haki / 2015))

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Abstract

In the global environment, every company carries out economic activities such as producing a product that could be purchased by the public and accepted by the society. The intended strategy is in producing a product, the product is expected to have its own attraction, then the product must be given a Brand as a sign. The Trademark Case is the subject of this study, i.e. in the dispute over ownership of the "Cap Kaki Tiga" Brand, this mark was accused by Russell Vince, a Plaintiff in the Commercial Court, saying that Wen Ken Drug Co. was a company. Pte. Ltd, as the owner of the Brand Cap Kaki Tiga has imitated the symbol of the British country Isle of man. This thesis produce the formulation of the problem on how legal protection of Foreign Trademarks in Indonesia and the legal consequences for the Cap Kaki Tiga brand after the decision Number 85 / PK / PK / Pdt.Sus-HaKI / 2015. This thesis uses the normative juridical method. The author also obtained primary, secondary and tertiary data sources Including agreements between countries such as TRIPs agreements or agreements governing other trademarks. In protecting foreign brands in Indonesia, efforts that can be made are preventive and repressive efforts. The legal consequences after the verdict that is, causing Cap Kaki Tiga does not get legal protection for their brand in Indonesia.

Keywords

Intellectual Property Rights, Foreign Trademarks, Priority Rights

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Preliminary

Economic activities grows rapidly in this era of globalization especially in .The era of globalization which looks very rapidly developing as if it plays an important role in the industrial sector as well as all kinds of economic activities in the market. The presence of a company is one of the things that has become an icon in industrial activities. Every company runs economic activities such as producing an item, there are things that must be considered as one of the strategies for the development of the company. The intended strategy is in producing a product, of course the product is expected to have its own attraction, then the product must be given a brand name as a sign. Intellectual Property Rights in the world of commerce is also very much a reference and includes the part that is considered the most important. In Intellectual Property Rights there are several types of protected rights, namely copyright, patent rights, trademark rights, industrial design rights, plant variety rights, and geographical indications. Trade has a close relationship with Intellectual Property Rights because basically a product that is created will certainly have a value that can be sold later. The value in question is the value of art where art does not only include the form of the product but every process or things that lead to how the product can be marketed. The beginning of the emergence of Intellectual Property Rights began in the 561th century. The battle of Cul Dreimnhe (Battle of the book) broke out in Southwest Ireland, when the priest of Saint Columbia secretly copied a holy manuscript with the Saint Finnian priest from Movilta Abbey as the owner of the manuscript. King Diarmid Mac Carbaill then sided with Saint Finnian, which in his decision stated "To every cow belongs to his calf, therefore to everybook belongs to his copy" of this Decision Saint Columbia led the rebellion which then sparked the battle in question.(IPR, 2019) In Indonesia, IPR has been very popular in the Dutch colonial era, so that almost all existing regulations governing Indonesian IPR still adopt the Dutch property. After 16 (sixteen) years of Indonesian independence, precisely in 1961, then Indonesia had the Intellectual Property Rights legislation in positive law for the first time with the enactment of the Trademark Law In 1961, followed by the Copyright Act in 1982, and the Patent Rights Act of 1989.(Sutedy, 2013) In the TRIPs Agreement the Trademark has the meaning that is: "Any sign, any combination of sign, capable of distinguishing the good of services of one undertaking from those of undertaking, shall be capable of constituting of trademark. Such signings, in particular words including personal names, letters, numerals, figurative elements and combinations of color as well as any of such combinations are not inherently capable of distinguished relevant goods or services, members may make registration dependent dependency on acquired through use. Member may require, as a condition of registration, that the sign be visually perceptible"(TRIPs Agreement) Whereas the Definition of Trademark is regulated in Article 1 paragraph (1) of the 2016 Law. In a Trademark there is an economic value and art elements depicted so that it makes a product have a tradable value and there is also property rights which are very protected over ownership. In order to protect the ownership rights, trademark rights will be given to the owners if they have registered it with the authorities. The law will protect the trademark if there are parties who do not have rights and intend to take advantage. Violations of law committed against registered trademark rights as unfair competition forms of unfair competition include the practice of impersonation of trademarks, as well as practices or actions that can be detrimental to using trademarks without rights especially against brands by irresponsible producers answer.(Priapanjita, 1999) Because some people may not care about the value of an object, there are also some people who are considered to have enough understanding and readiness about protecting a work. Awareness of the importance of Haki actually increased quite prominently when there was a unilateral claim by a neighboring country to a number of cultural heritages that had been clearly known to originate from and belong to Indonesia de facto.(Munandar, 2008) One of the Trademark cases that was discussed in this study, viz in the dispute over ownership of the "Cap Kaki Tiga" Brand, which was actually accused by Russel Vince, a Plaintiff in the Commercial Court, stated that the company Wen Ken Drug Co. Pte. Ltd or as the Owner of the Brand Cap Kaki Tiga has imitated the symbol of the British country Isle of man. The Isle of Man itself is a region in the United Kingdom that has similarities with the symbol owned by Wen Ken Drug Co. Pte. Ltd as a pharmaceutical company from Singapore. The case originated from the lawsuit cancellation claim to the court of first instance namely at the Central Jakarta Commercial Court, Russel Vince filed a foreign citizen who came from England. Russel Vince as the Plaintiff sued the Wen Ken Drug company on the grounds that there was a loss that was obtained from the imprint of the Three Legs emblem from his country. Russel Vince has a legal basis for his prosecution is that impersonation of a symbol of a public logo / property of a certain region, flag, country is strictly prohibited in Article 6 paragraph 3 letter (b)

of Law Number 15 Year 2001 concerning Trademarks, which states "Replicated or Imitated resembles the name or abbreviation of the name, flag, symbol, symbol or emblem of a country or national or international institution, except with the written approval of the competent authority. In registering the case in the Commercial Court, the case was granted and decided the Plaintiff (Russel Vince) won over the cancellation of the Cap Kaki brand.

- a. The Defendant is a British citizen which means that he cannot have any authority in this case, so from the beginning the lawsuit was not acceptable;
- b. According to Wen Ken Drug Co. Pte. Ltd, Russel Vince is only a citizen and not a messenger from the government or has nothing to do with foreign relations. and if the United Kingdom object to the symbol of the Cap Kaki Tiga it must be the British state who is suing the Plaintiff;
- c. The plaintiff felt that the authority to settle this case was the Singapore court and not the Indonesian court. As is well known the first decision by judex factie granted the Plaintiff's claim;
- d. When the three-footed brand was founded in 1937 in Singapore until it was registered in Malaysia in 1940, no one objected to the mark, even if it was the area directly concerned;
- e. According to the Plaintiff also Russel Vince does not have the authority to ask for his dismissal in production.

When the appeal filed was presented to the Supreme Court by Wen Ken Drug Co. Pte. Ltd, the Judge may not grant the appeal on the grounds that:

- a. Defendant's actions will potentially cause problems between countries;
- b. It is clear that there is an imitation of a national symbol;
- c. The Plaintiff has the right to represent his country and receive the same treatment as related to the National Treatment principles in Articles 3 and 4 of the TRIPs.

Not only to the cassation suit filed by the Wen Ken Drug Co. Pte. Ltd., after their appeal was rejected by Judex Judis Juris the company objected to the decision. Then in the end the lawsuit for Reconsideration became a force of law that was expected to change the Supreme Court's decision which stated that the Wen Ken Drug Co. Pte. Ltd has copied the Isle of Man Coat.

Formulation of the problem

1. What is the protection of foreign brands in Indonesia?
2. What is the legal effect on the Cap Kaki Tiga Trademark after Decision Number 85 / PK / Pdt.Sus-HaKI / 2015?

Research methods

- a) This type of research uses normative juridical methods. Normative juridical methods, namely approaches that use the positivist legis conception. This concept establishes the law identical with written norms created and promulgated by authorized institutions or officials. Conception sees law as a normative system that is independent, closed and independent of real community life.(Soemitro, 1988)
- b) The research approach used in the writing of the thesis is to use a descriptive approach, namely research that aims to obtain a complete, detailed, clear and systematic presentation of several aspects examined in the laws of other object of study.(Muhammad, 2004)

Discussion

The existence of Intellectual Diversity itself has been known in Indonesia from the Dutch colonial era, and since ancient times Intellectual Property Rights itself can not be separated from trade activities. We can also see the presence of the WTO (World Trade Organization) as one of the agreements agreed upon by the world. The World Trade Organization (WTO) is a framework as an international agreement and is used as a reference in every action of business actors and government policies relating to IPR protection and foreign investment in addition to matters relating to international trade transactions. .(Faradz, 2008) Based on the development of Science and Technology also follows the development of humanity in general. Science and Technology can also be judged as a result of the reasoning of the human mind manifested in the form of a creation, taste, and intention that is called Intellectual Property Rights. Historically, regulations governing Intellectual Property Rights in Indonesia have existed since the 1840s. Burgelijk Wetboek

was enforced in the Hindi region of the Netherlands through Staatblaad No.23 of 1847 concerning Burgerlijk Wetboek Voor Indonesie and was declared in force in 2848 at the same time the Wetboek Van Koophandel on May 1, 1848. In 1912 the Patent regulation was adopted, followed by a two-year Copyright Regulation. then.(Indonesia, Ronna, & Yosia, 2014) According to A. Zen Purba Intellectual Property Rights are assets that legally give rise to hak and obligations for their owners, as well as other assets, such as land with certificates, and ownership of movable property, attached to the master. For this reason, a registration process is needed to obtain a certificate of ownership from the state. Awareness that Intellectual work is an object that can be used as an asset is a key issue, then the presence of the element of ownership, is expected to lead to business creativity(Muhammad, 2004) According to Otto Hasibuan, Intellectual Property Rights (IPR) are divided into two major groups, namely Industrial Property Right and Copyright, which are included in the Industrial Property Rights group, including Patents, Trademarks), Industrial Design, Trade Secrets (Undisclosed Information), Geographical Indications, Model and Design (Utulity Models), and Unfair Competition, while those included in the Copyright group are distinguished between Rights Copyright (for art, literature and science) and rights related to copyright (Neighboring Rights).(Yasmin, 2018) The origin of the brand itself originated around the Middle Ages in Europe, when trade with the outside world began to develop. Its function was originally to indicate the origin of the product in question. Only after the method of mass products became known and with a wider and increasingly complex distribution and market network, the function of the brand developed into what is known today.(Maileni, Studies, Law, Law & Islands, 2018)MPreviously known in the Dutch colonial era, the Eigendom Industriële Regulations (RIE) were in force since the Dutch colonial era. In 1888 Indonesia joined the Paris Convention for the Protection of Industrial Property, then was joined as a member of the Berne Convention for the protection of literary and Artistic Works in 1914 until the Japanese colonial era. All regulations on IPR remained in force. In the beginning in the UK the brand began to be known from the form of official marks (HALLMARK) made an official mark by goldsmiths, silverers, and iron tools used as cutters and that sign will be the differentiator between one type of cutter with another cutter. Even though during the Japanese colonial era, the trademark law of the Dutch colonialism was still valid, At that time Japan also issued a regulation regarding trademark rights called Osamu Seire Number 30 regarding Trade Mark Registration which took effect on the 1st of Syowa month or after Indonesian independence. In 1961, Law No. 21 of 1961 concerning Company Brands and Trade Marks was enacted, replacing the Dutch colonial legacy regulations. The law following its development has been increasingly revised and until finally Indonesia made a special regulation to regulate the Law No. 25/2001 on Brand Rights made in order to resolve the issue of trademark rights in Indonesia and also internationally following the TRIPs agreement agreed upon by several member countries that participated.(Lindsey, 2011) Then, in the end comes Law Number 20 Year 2016 concerning the complete Indonesian Geographical Indication Mark. In this law there are striking differences with the old trademark law, including the process of completing an application, such as a substantive examination after the application is declared to meet administrative requirements.(Kholika, 2018) Trademark protection system Wealth rights in Indonesia are known by two systems namely Constitutional Stelsel, the party registering a trademark first is the only party entitled to the mark and the third party must respect the registration rights of a mark. This constitutive statistic system adheres to the principle of First to file which means that the registration of a mark will only be given to the party who first filed a registration request for a mark, and the state does not provide registration for a mark that has similarities with the mark that was submitted earlier to another party to similar goods / services.(Iffan Alif Khoironi, 2013) In addition there are also other brand protection systems commonly referred to as First to Use, in this system which emphasizes the use of a trademark depending on who is the first to use the mark and it is he who is considered entitled to the mark as well. Brands are very important in the world of advertising and marketing because people often associate an image, quality or reputation of goods and services with certain brands. So a brand is present not merely as jewelry but many functions of brands that are rarely known by many people. A brand can be a commercially valuable asset. A company's brand is often more valuable than the company's real assets. In trading goods or services, sebaqgai brand, one form of intellectual work, has an important role for the smooth improvement of goods and services. In general, the Brand functions as a symbol or identification of a work / product and will later be a differentiator between other products. But on the other hand the brand turned out to have functions that are rarely known to the public, as follows the functions of other brands:

1. Identification to distinguish one company's product from another company's product ethically traded Means of trade promotion (means of trade promotion).
2. Guarantee on the quality of goods or services (quality guarantee).
3. Indicator of origin of goods or services produced (source of origin). from other merchandise.

A brand is something that is not only related to trade in goods but in the form of services. Trademarks are known in Indonesia as Trademarks, Service Brands, and Collective Trademarks. These types of brands are those that we often encounter in the world market economy. Trademarks in the form of products are not uncommon to be used in Indonesia. A brand is an identical thing in a work so that everyone is able to distinguish one type of work from another. For every person or legal entity that wishes to legally own the mark, there are provisions that must be fulfilled by the creator of the work to be accepted in the community and approved by the state. There are two basic reasons for the Directorate General to refuse any application for registration of a mark, namely absolute and relative rejection. (Negotiable, 2016) Can be seen in the law that has regulated the registration requirements for trademarks that cannot be registered, with the following explanation:

1. The mark is contrary to applicable laws, contrary to religion, decency, and public order. A mark which does not violate the preceding provisions and norms to respect state regulations. The brand must not use words that smell about pornography or words that will violate decency. A brand is recommended not to portray a power or security which would violate general provisions. A brand that violates religious morality is where a brand is associated with a group or a belief in another person.
2. The trademark does not have a differentiator from other works. This means that a brand certainly has its own characteristics so that it can be distinguished from brands that are made by other creators. And brands that have distinguishing features will certainly avoid plagiarism or the taking of the rights of the creators of works without their permission.
3. The mark is public property or has become public property. Trademarks which have become public property in question are those that are the responsibility of the state. In terms of royalties which will be given to the state, for those who will make a trademark or register their mark with the same likeness with a state mark, the mark cannot be registered.
4. The mark is a description or related to the goods or services requested by the registrant. The mark to be registered should be different from the goods to be produced, this itself aims to make the community not wrong.

A Trademark in Indonesia basically requires legal certainty so that the brand can be protected in Indonesia. In general, registered trademarks will have the right to be protected by their trademark ownership, but each registered mark must have a time limit for protection. So, if a trademark wants to get another legal protection that is useful to maintain a trademark violation of a product the brand must be extended immediately after registration is limited to only 10 years. Provisions regarding the extension of the registered period are regulated in Article 35 through Article 38 of Act Number 20 of 2016 concerning Trademarks. In Article (1) and (2) Trademark Law Number 20 Year 2016 concerning Indications and Indications Trademarks The right to a registered mark and the monopoly granted by law to the owner of a registered mark is essentially perpetual because the mark can forever be extended for the same period of time. The regulations that have been outlined in these articles are certainly very mandatory for the applicant to fulfill them, this is done so that the Marks registered by the Applicant can be used and continue to run according to existing regulations. In a trademark that has been registered and is known to not meet the procedures or conditions of a registration, it will be feared that Trademark Violation Trademark infringement is an act carried out intentionally and without the right to use a brand or mark of the same principle or in its entirety with the brand, geographical indication or indication of origin other people's property, trading and or services resulting from the violation. Whereas without rights, registration without rights is accompanied by usage, and usage without rights. (Kadir, 2001) To recognize a trademark in the eyes of the world must be registered before. Registration of a valid mark or registered mark. Trademark is also useful as a basis for rejection of the same brand as a whole or the same in principle that is requested by others for similar goods and services. (Mahmut, 2013) Legal Protection must look at the stages, namely legal protection born of a legal provision and all legal regulations given by the community which basically constitute the community

agreement to regulate the behavioral relationship between members of the community and between individuals and the government which is considered to represent the interests of the community. These legal steps and remedies can later help protect the rights of trademarks that should be an obligation for owners, government agencies, or law enforcement agencies to do so. And to protect the legal protection of brands in Indonesia there are 2 (two) ways, namely Preventive Efforts and Repressive Efforts Preventive Legal Protection is a form of protection that leads to preventive actions.(Laurensius Arliman, 2015) The aim is to minimize the chance of trademark infringement. This form of deterrence we will usually encounter in the prevention of a registration of a well-known brand in Indonesia. And according to the Book of Legal Protection Against Trademarks written by Hery Firmansyah, factors that must be considered in the Preventive Efforts are Legal Factors and Trademark Directorate Factor Factors. In addition to the Preventive protection that further encourages the government or the Director General of IPR to help realize Legal Protection in the form of prevention there are also Repressive Efforts. Repressive legal protection is protection that is done to resolve or overcome an event or event that has already occurred, in the form of a violation of the right to a Mark.(Firmansyah, 2011) This legal protection refers more to the tasks and roles of the government and institutions related to IPR protection. So, Indonesia provides all Legal Protection based on registration with the aim of achieving legal certainty. From this, legal certainty will only be reached after a period of registration and expiration of the cancellation lawsuit that takes a long time and has a large cost, so that this will be an obstacle to the business climate in Indonesia for the Indonesian people themselves who incidentally do not yet have knowledge about the law and good awareness.(Permata & Khairunnisa, 2016; Saudi et al, 2018)

Analysis and Discussion

Protection of Foreign Brands in Indonesia

In the discussion of the first point of this Problem Formulation the author will analyze about Brand Protection for Foreign Brands in Indonesia. As is well known that in Indonesia we often find a brand that comes from abroad. Not many are aware that some of the Foreign Brand Holders are not domiciled in Indonesia. In Indonesia, there are several conditions that apply so that the Brand gets Legal Certainty. Foreigners or foreign mark holders who wish to be registered in Indonesia must comply with existing regulations in Indonesia, including registering their trademarks. Trademarks must be registered first. "An application as referred to in paragraph (1) of which one of the Petitioners or more Foreign Citizens domiciled abroad must be submitted through a Proxy." So based on that article, we can see that Indonesia actually makes it easy for a foreign brand from abroad to register in order to get legal protection. In the Trademark itself known as the Right of Priority this is usually associated with Foreign Trademarks who want to get the same Legal Protection as obtained from their home country. In Article 1 number (17) of Law Number 20 Year 2016 concerning Marks and Geographical Indications reads; "Priority Right is the right of an Applicant to submit an Application originating from a country that is incorporated in the Paris Convention on the Protection of Industrial Property (Paris Convention for the Protection of Industrial Property) or the Agreement Establishing a World Trade Organization (Agreement Establishment of the World Trade Organization) to obtain recognition that the date of receipt in the country of origin is the priority date in the destination country which is also a member of one of the two agreements, as long as the submission is made within the period specified in accordance with the said international agreement." Thus Indonesia has given media for Foreign Trademarks to get legal protection by using priority Rights. And for foreign trademarks that have rights of priority, the trademark has received legal protection before the registration of the mark in Indonesia, but only applies to TRIPs member countries. With legal protection for a Trademark that has Priority Rights, one day if someone commits fraud or violates the rights of the Trademark, the owner who is a Foreign Citizen can make Legal Efforts such as making demands on the registrant in bad faith. Again we see that Indonesia will treat Foreign Citizens the same as its own Citizens in accordance with the agreements in the Paris Convention and TRIPs. In Law Number 20 Year 2016 has also inserted a conditional provision on Priority Rights and not merely priority rights attached to Foreign Trademarks can be used at any time. Priority Rights have a certain time limit, namely the filing of a maximum of 6 (six) months from the date of receipt of the application for the first Mark in their home country. Legal remedies for the Protection of Foreign Trademarks can be done by using existing legal remedies, namely:

Legal Protection with Preventive Efforts

Preventive effort itself has the meaning where this effort is made for prevention, and is associated with the Protection of a Foreign Brand means that this is like a step to reduce the violation of Trademark Rights in Indonesia. Preventive efforts can help Foreign Brands themselves to avoid actions such as impersonation and passing off. This effort can be illustrated at the beginning of the registration, because if the registration has been done this is one way to prevent the Infringement of Trademark Rights for Foreign Trademarks. The Directorate General of Intellectual Property Rights at the beginning of the registration will reject the application if he finds out that the intention is not good because if it is done automatically the Exclusive Rights for Trademark ownership that are recognized in Indonesia will be obtained. This effort is not only done by the trademark owner but also by the Directorate General of Intellectual Property Rights who carry out administrative checks at the beginning of the registration. The Directorate General of Intellectual Property Rights will usually check whether there are Trademarks that are registered together with Foreign Trademarks that have been registered in Indonesia. If there are similarities, it is the duty of the Directorate General of Intellectual Property Rights to take legal actions, such as refusing registration of Trademarks that will resemble registered Foreign Trademarks. This has been regulated in Article 21 paragraph (1) and (3) of Law Number 20 Year 2016 concerning Geographical Marks and Indications, which reads: The Directorate General of Intellectual Property Rights will usually check whether there are Trademarks that are registered together with Foreign Trademarks that have been registered in Indonesia. If there are similarities, it is the duty of the Directorate General of Intellectual Property Rights to take legal actions, such as refusing registration of Trademarks that will resemble registered Foreign Trademarks. This has been regulated in Article 21 paragraph (1) and (3) of Law Number 20 Year 2016 concerning Geographical Marks and Indications, which reads: such as rejecting the registration of a Trademark that will resemble a registered Foreign Trademark. This has been regulated in Article 21 paragraph (1) and (3) of Law Number 20 Year 2016 concerning Geographical Marks and Indications, which reads:

- (1) An application is rejected if the Mark has similarities in principle or in whole with:
 - a. A registered mark that belongs to another party or has been applied in advance by another party for similar goods and / or services;
 - b. Other parties' famous brands for similar goods and / or services;
 - c. Other parties' well-known brands for goods and / or services that do not have the same type that meet certain requirements; or
 - d. Registered Geographical Indications

And in paragraph (3) also mentioning an application that must be refused is an Application with a Good faith. So from the description it has been ascertained that a Safeguard Efforts to protect Foreign Trademarks is to look more closely during the initial stages of the process for anyone who will commit fraud and take the Rights owned by the Foreign Trademark holders.

Legal Protection with Repressive Efforts

Repressive efforts alone emphasize how to solve, overcome, or overcome a legal problem. And in the act of violating the Trademark Rights, it will be tangent to giving the rights that should have been obtained by the Authorized Trademark owner. Repressive efforts usually relate also to the Government and the authorities who have the authority to act decisively in overcoming violations of a foreign mark. If a trademark violation occurs after a local trademark registers using the foreign mark, the foreign mark may cancel the mark which has imitated its mark. The occurrence of things such as Foreign Trademarks in Indonesia can make lawsuits namely Criminal or civil and can also appeal. Protection measures undertaken by Police investigating Officers or Civil Servants in the

framework of providing protection to Foreign Trademarks are in the form of examining Trademarks known to commit fraud. The duties and authority of investigators in accordance with have been clearly stated in Article 99 of Law Number 20 Year 2016 concerning Trademarks and Geographical Indications if violations of trademark rights are found that lead to criminal acts that occur in foreign trademarks. Indonesia in protecting the rights of a foreign brand has regulated what can be done by a foreign brand that feels that its rights have been violated, namely in the form of filing a lawsuit. Lawsuits such as Civil or criminal law are the means of protection granted to foreign brands in Indonesia. Civil law protection for a foreign mark, which is where the owner of a foreign mark can submit an appeal, write off, and also cancel the mark related to a fraudulent trademark. Whereas criminal charges are often associated with licensing rights. The State of Indonesia has the responsibility to implement international treaties regarding Intellectual Property Rights, hence every legal action. As stated in the Madrid Convention Agreement in Article 2 it reads: "Reference to article 3 of the Paris Convention (Same Treatment for Certain Categories of Persons as for the Nationals of Countries of the Union); Nationals of countries not having acceded to this Agreement who, within the territory of the Special Union constituted by the Said Agreement, satisfy the conditions specified in Article 3 of the Paris Convention for the Protection of Industrial Property shall be treated in the same manner as nationals of the contracting countries. "This article explains that the treatment received by a person or trademark holder must be the same as that of other countries. As a country that also signed the Madrid Agreement, Indonesia should provide legal protection to foreign brands entering Indonesia without differentiating their rights from local brands. Besides that, TRIPs is also present as a helper for foreign brands in order to continue to get legal protection in Indonesia. The TRIPs Agreement has been amended several times in order to adjust to national law in Indonesia, and it has become an obligation for Indonesia to apply TRIPs into national law. To protect Foreign Brands from widespread fraud, "The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similiar to those in respect of which the trademark is registered where such use would result in likelihood of confusion. In the case of the use of an identical sign for identical good or services, the likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of members making rights available on the basis of use". This Article has regulated that for every Authorized Trademark Owner who has obtained exclusive rights to use his trademark and who has also been registered has the right to prohibit anyone who will wear the Mark. The mark used for the purpose and purpose of being traded is the mark of an item or service. So, if one day there is a bondage experienced by a foreign brand that enters in Indonesia, the legal consideration that must be taken is to look at the rules of international law governing trademark rights so that the protection provided will be very fair for other countries. In addition, the regulations contained in Article 6bis of the Paris Convention can also be used as a reference to protect trademark rights for foreign brands in Indonesia.

- (1) The countries of the Union Undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of trademarks which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well known mark or imitation liable to create confusion therewith.
- (2) A period of at least five years from the date of registration shall be allowed for requesting the cancellation of such mark. The countries of the Union may provide for a period within which the prohibition of use must be requested.
- (3) No time limit shall be fixed for requesting the cancellation or prohibition of the use of marks registered or used in bad faith.

We can determine a foreign famous brand in the manner specified in Article 16 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) which states: Article 6 Business of the Paris Convention (1967) shall apply, mutatis mutandis, to service. In Determining whether a Trademark is well-known, Member shall take account of the knowledge of the trademark in the relevant sector of the public, including in knowledge in the Member converged which has been obtained as a result of the promotion of the trademark. For a Famous Foreign Brand that has not been registered in Indonesia, but there is another brand that is not in good faith to imitate the

Brand, the system to be used is a first to use system, a system that emphasizes who uses the brand for the first time. times or use the priority rights they have. Basically the Protection of Foreign Trademarks in Indonesia will not be separated from the International Treaties on Intellectual Property Rights, because Indonesian law does not clearly regulate the Protection of Foreign Trademarks in Indonesia. This is the cause of the many cases of disputes that do not meet the point of light, especially involving foreign countries which are basically foreign trademark owners. So Indonesia must equalize national law with national regulations to bring justice to foreign trademark rights in Indonesia. Because everything that has been agreed in the agreements that suggests to all Member States involved can respect the contents of the agreement by implementing it.

Legal Consequences after Decision Number 85 / PK / KPdt.sus-HakKI / 2015

After the Decision regarding the cancellation of the Cap Kaki Tiga trademark in the Supreme Court of the Supreme Court with Case Number 85 / PK / Pdt.Sus-HaKI / 2015 raises question marks about legal regulations in Indonesia. The legal consequence when the Leg Cap Three Mark was officially canceled was the deletion of the certificates and also the Revocation of the Right to Protection which was received over the Leg Cap Three Marks. In accordance with Article 68 paragraph (2) of Law Number 20 Year 2016 concerning Trademarks and Geographical Indications which read: "In the event that the mark referred to in paragraph (1) has been registered as a Mark, the Minister shall cancel and cross off the registration of the Mark for all or the same type of goods after a period of 2 (two) years from the date the mark is registered as a Geographical Indication. "In the opinion of the author based on the existing provisions in the application of various legal systems relating to protection for foreign trade marks have not been implemented in accordance with existing regulations. Cancellation of the Caki Tiga Trademark is a form of non-implementation of international regulations governing trademark rights internationally. Because based on the decision of Case No. 85 / PK / Pat.Sus-HaKI / 2015, resulting in the Plaintiff / Owner of Cap Kaki Tiga brand does not get the rights to the trademark owned. Though he should get fair treatment in Indonesia based on the TRIPs agreement on the National Treatment Principles in Article 4 which reads: "With regard to the protection of the intellectual property, any advantages, favor, privilege or immunity granted by a Member to the nationals of any other country shall be accrded immediately and unconditionally to the nationals of all other Members." The statement in the Article emphasizes that it will give privileges to other countries just like what they have given to their own citizens. The cancellation of the Cap Kaki Tiga brand is carried out without observing the opinions and evidence submitted, impacting on Indonesia's consistency in took part in the Agreement on the World Intellectual Property Organization (WIPO). The cancellation of the Cap Kaki Tiga Trademark also results in public trust in a trusted institution to register Trademarks, namely the Directorate General of Intellectual Property Rights in carrying out their duties. Because this is not absolutely the fault of the Cap Kaki Tiga Trademark Owner, because administratively the examination of a Trademark has committed a violation is the duty of the Directorate General of Intellectual Property Rights. The rejection of a Mark is also the authority of the Directorate General of Intellectual Property Rights, on the basis that if it is proven that the Cap Kaki Tiga Brand mimics the Isle of Man Colony then from the beginning the Directorate General of Intellectual Property Rights explicitly rejects the registration. Because in Article 21 paragraph (2) letter (b) of Law Number 20 Year 2016 concerning Marks and Geographical Indications that the Application is rejected if "it is an imitation or resembles the name or abbreviation of the name, flag, symbol or symbol of a country, or National and international institutions, except with the written approval of the authorities ". Whereas in the Paris Convention. "The Countries of the Union agree to refuse or to invalidate the registration to prohibit bt appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of Trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official sign and hallmarks indicating and warranty by them, and any imitation from a heraldic " Based on the statement from Russel Vince that could not be proven and also the submission of some evidence in the form of photocopies and those that were submitted by Cap Kaki Tiga were not considered. This was also not considered by the Judge in case Number 85 / PK.Pdt.sus-HakI / 2015 to decide on this issue, so that it still refused the Review of Claims Against the Cancellation of the Cap Kaki Tiga Trademark. Then the question arises about how the role of the Judge in the settlement of the case of the cancellation of the Cap Kaki Tiga Trademark, which should listen to both parties and not take sides in accordance with the principles of the Civil Procedure Code. A tool in the form of a photocopy cannot be used as evidence, as stated in article 1888 of the Civil Code and also

regulated in the Supreme Court Decree No: 3609 K / Pdt / 1985 which reads "Photocopy of evidence that has never been submitted or has never been in its original letter, must be ruled out as a proof". In the affirmation given through the Supreme Court Decision should be a reference so that the judge can consider this. Based on what the writer has described above, the writer also has it after the Decision on Case No. 85 / PK / Pdt.sus-HaKI / 2015 makes the system of protection for a brand, especially brands that are not from Indonesia, is still very weak

Closing

Conclusion

As for some conclusions that the author wrote in this thesis, as follows:

1. The legal protection of foreign trademarks is inseparable from agreements between countries such as TRIPs agreements or agreements governing other IPRs. And for foreign brands that have rights to priority must be given exclusive rights in accordance with the consistency of Indonesia to maintain diplomatic and trade relations. In protecting foreign brands in Indonesia, there are 2 (two) efforts that can be done, namely preventive measures which are more inclined to prevent the occurrence of brand violations and repressive efforts to overcome or overcome brand violations that occur.
2. Due to the legal consequences after the decision Number 85 PK / Pdt.sus-HaKI / 2015, made certificates relating to the Three Legs Trademark Mark on the crossing out of the Director General of Intellectual Property Rights, and this caused the Three Legs Cap not to get legal protection for their Marks in Indonesia. There are also legal consequences arising from the weaknesses that exist in government agencies related to IPR and also the law and also the absence of legal considerations by legal institutions themselves. This is feared to have an impact on public trust in agencies related to IPR and also legal institutions.

Suggestion

Enforcement for legal protection of foreign trademarks must pay more attention to international agreements in order to provide the fairest legal protection for foreign trademarks and their owners. And for the Government of the Directorate General of Intellectual Property Rights as the recipient of Trademark registration, it should be more careful in examining applications submitted for prospective legitimate trademark owners so that in the future there will be no mistakes, especially related to Foreign Citizens, because there is concern that problems arise between countries.

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