

Legal Protection Of Trademarks In The Business Competition Of The Fashion Industry In Indonesia

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Abstract: Legal protection of trademarks in the fashion industry has a crucial role in maintaining the identity and competitiveness of products in the midst of increasingly fierce business competition. This study aims to analyze the effectiveness of existing regulations in protecting trademark rights and identify challenges in their implementation in the digital era. The research method used is a normative juridical approach by analyzing laws and regulations, court decisions, and policies related to trademark protection. The results of the study show that although Law Number 20 of 2016 concerning Trademarks and Geographical Indications has provided a comprehensive legal framework, its implementation still faces obstacles, especially in terms of supervision of trademark infringement, lack of legal awareness among business actors, and suboptimal brand protection in digital trade. Strengthening legal protection requires a revision of regulations that are more adaptive to technological developments and strengthening dispute resolution mechanisms, including the implementation of online mediation platforms to reduce the burden of litigation. In addition, optimizing the role of the Directorate General of Intellectual Property (DJKI) through digitization of brand registration and technology-based supervision such as blockchain is a strategic step in increasing the effectiveness of legal protection. Legal education for business actors and the public must also be improved to build awareness of the importance of brand protection as a business asset with economic value. A more holistic and collaborative approach between governments, industry associations, and non-governmental organizations, the legal protection system for trademarks can be more effective, innovative, and in accordance with the dynamics of the fashion industry in the era of globalization.

Keywords: HKI, Trademarks, Legal Protection

INTRODUCTION

The fashion industry in Indonesia is experiencing rapid growth in line with increasing market demand and innovation in this sector.¹ Trademarks are a key element in the fashion industry's business competition, acting as a product identity that distinguishes one brand from another, as well as being a valuable asset for its owners. In the era of globalization and digitalization,

¹ Adha, L. A. (2020). Digitalisasi industri dan pengaruhnya terhadap ketenagakerjaan dan hubungan kerja di Indonesia. *Jurnal Kompilasi Hukum*, 5(2), 267–298.

trademarks are not just a identifying symbol, but also part of a business strategy to build consumer loyalty and increase competitiveness.²

However, in practice, many businesses face serious challenges in protecting their trademarks. Trademark infringement such as product counterfeiting, unauthorized use of trademarks, and unfair business competition practices are increasingly prevalent. This condition is exacerbated by the ease of access to digital commerce that allows counterfeit products to circulate widely without adequate control. This phenomenon not only harms brand owners financially but also negatively impacts their business reputation. In addition, consumers also become vulnerable to products with quality that do not meet their expectations, which can ultimately disrupt the stability of the fashion industry as a whole.

Legally, Indonesia has regulated trademark protection through Law Number 20 of 2016 concerning Trademarks and Geographical Indications.³ This law provides protection for trademark owners who have officially registered their rights. However, even though the regulations have been drafted quite comprehensively, their implementation still faces various obstacles. Low awareness of business actors, especially among micro, small, and medium enterprises (MSMEs), about the importance of trademark registration, as well as weak law enforcement against trademark infringement, are the main challenges in providing effective protection.⁴

In addition to the national legal aspect, trademark protection must also consider international regulations, considering that the trade in fashion products does not only take place domestically but also involves the global market. International agreements such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the international trademark registration system through the Madrid System provide opportunities for businesses to obtain protection in various countries.⁵ However, in practice, many companies in Indonesia have not made optimal use of this mechanism.

It is important to analyze the effectiveness of trademark protection laws in the business competition of the fashion industry in Indonesia. This study aims to evaluate the extent to which existing regulations have been able to protect the rights of trademark owners and identify obstacles faced in their implementation. In addition, this research will also provide policy recommendations

² Ainurrofiqin, M. (2021). *99 Strategi Branding di Era 4.0: Kupas Tuntas Metode Jitu Membangun Citra Baik, Meyakinkan Pelanggan, dan Membangun Kesadaran Merek*. Anak Hebat Indonesia.

³ Putra, S. A. S. (2019). Unsur Persamaan Pada Pokoknya Dalam Pendaftaran Merek Menurut Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis Dan Penerapannya Dalam Praktik Dihubungkan Dengan Pelanggaran Terhadap Merek Terkenal. *Jurnal Aktualita*, 2, 18–37.

⁴ Arika, D., Syarief, E., & Amboro, Y. P. (2023). Perlindungan Hukum Atas Mode Pakaian Sebagai Desain Industri Di Indonesia. *Jurnal Yustisiabel*, 7(2), 264–283.

⁵ Medina, D., & Enggriyeni, D. (2023). Pengaturan dan Penerapan Prinsip Teritorial dalam Perlindungan Indikasi Geografis Indonesia (Dalam Perspektif Hukum Internasional dan Nasional). *UNES Law Review*, 6(1), 25–34.

to strengthen legal protection and encourage a healthier and more competitive business climate for the fashion industry in Indonesia.

This research is relevant in the midst of the rampant infringement of trademark rights in the Indonesian fashion industry, which not only harms business actors financially but also weakens consumer confidence and creates unfair business competition. Although Law Number 20 of 2016 concerning Trademarks and Geographical Indications has provided a legal basis for trademark protection, its implementation still faces various challenges, including weak law enforcement, low awareness of business actors, and increasingly complex developments in digital commerce. The existence of counterfeit products that are easily accessible through online platforms further exacerbates the situation, demanding more adaptive policies and more effective legal protection strategies.⁶ Therefore, this research has great urgency in evaluating the effectiveness of existing regulations and formulating policy recommendations to strengthen legal protection of trademarks, so as to create a fair, competitive, and conducive business climate for the growth of the fashion industry in Indonesia. The formulation of this research problem is: 1) What are the applicable legal provisions in Indonesia in protecting trademark rights in the fashion industry? 2) What are the policy recommendations that can be proposed to strengthen civil law protection of trademark rights in the Indonesian fashion industry?

METHOD

Research Type

The normative juridical approach is an essential method in legal studies that focuses on conceptual and normative analysis of various legal regulations and principles in a given legal system.⁷ This method focuses on an in-depth examination of applicable legal norms, both in the form of written regulations, doctrines, and relevant legal principles. This approach aims not only to identify the applicable rules, but also to evaluate the effectiveness of the application of the law in practice. In addition, a normative juridical approach is used to understand legal responsibilities, protection of certain rights, and ethical aspects in the application of the rule of law in various fields. Thus, this research aims to systematically examine the legal principles that are the basis for solving a legal problem, as well as provide a comprehensive understanding of the implementation of legal norms in practice.

Research Approach

Approaches in legal research related to intellectual property rights and unlawful acts in civil law can be carried out through a statute *approach* and a *case study approach*. These two approaches

⁶ Chandra, T., Munawar, A., & Aini, M. (2024). Tinjauan Yuridis terhadap Mekanisme Penyelidikan pada Tindak Pidana Penipuan Melalui Media Transaksi Elektronik oleh Kepolisian dalam Sistem Peradilan Pidana di Indonesia. *Jurnal Hukum Lex Generalis*, 5(7).

⁷ Prayuti, Y. (2024). Dinamika Perlindungan Hukum Konsumen di Era Digital: Analisis Hukum Terhadap Praktik E-Commerce dan Perlindungan Data Konsumen di Indonesia. *Jurnal Interpretasi Hukum*, 5(1), 903–913.

are used in a complementary manner to provide a comprehensive and in-depth understanding of the legal issues under study.

The legal approach is a method used to analyze legal regulations written in legislation.⁸ In legal research, this approach serves to examine the legal basis that governs a problem and evaluate the effectiveness of the applicable provisions in providing protection for related rights. As part of the normative juridical method, this approach provides a strong legal basis in assessing the validity and suitability of a legal norm with the legal conditions under review.

The analysis in the legal approach includes a study of regulations such as Law Number 20 of 2016 concerning Trademarks and Geographical Indications as well as provisions in the Civil Code (KUHPer), especially related to unlawful acts as stipulated in Article 1365. Through this analysis, the research can identify the extent to which existing regulations protect the interests of brand owners as well as assess the effectiveness of dispute resolution mechanisms in positive law. In addition, this approach helps to uncover the advantages and disadvantages in the implementation of applicable legal rules.

This approach also provides a foundation for research to explore how national and international law plays a role in the protection of intellectual property rights. Through the study of applicable regulations, research can examine the alignment between regulations and examine the possibility of inconsistencies or overlapping rules that have the potential to hinder the effectiveness of law enforcement. Thus, this approach not only provides conceptual understanding but also opens up space for the formulation of policy recommendations to improve optimal legal protection.

The case study approach is used as a research method to examine how legal principles are applied in real-world cases.⁹ Through this approach, the research can observe how the legal regulations written in the law are implemented in practice as well as how court decisions affect the development of the law and its use in society. By examining concrete cases, this approach provides an overview of the problems faced by intellectual property rights owners and the resolution mechanisms used in legal practice.

Legal Ingredients

Normative legal research requires the collection of relevant legal materials as a basis for analyzing and discussing the legal problems being studied. The existence of this legal material plays an important role in building strong, systematic, and academically accountable arguments.¹⁰ In

⁸ Tuhumena, C. J. R., Pietersz, J. J., & Sedubun, V. J. (2021). Partisipasi masyarakat dalam pembentukan undang-undang. *TATOH: Jurnal Ilmu Hukum*, 1(3), 248–256.

⁹ Tahir, R., Astawa, I. G. P., Widjajanto, A., Panggabean, M. L., Rohman, M. M., Dewi, N. P. P., Deliarnoor, N. A., Abas, M., Ayu, R. F., & Meinarni, N. P. S. (2023). *Metodologi Penelitian Bidang Hukum: Suatu Pendekatan Teori Dan Praktik*. PT. Sonpedia Publishing Indonesia.

¹⁰ Muhsinhukum, M. (2021). Fungsi Naskah Akademik Dalam Pembentukan Peraturan Perundang-Undangan. *Jurnal Hukum Das Sollen*, 5(1).

general, legal materials in normative research are divided into two main categories, namely primary legal materials and secondary legal materials. These two types of legal materials complement each other to provide a more comprehensive understanding of the legal issues being studied, so that the analysis carried out can describe the applicable regulations and the theories and concepts that support them.

Data Collection Procedure

1. Formulation of research problems;
2. Determination of research approaches;
3. Collection of legal materials;
4. Analysis of legal materials;
5. Data processing and argument preparation;
6. Evaluation and validation of findings;
7. Preparation of conclusions and recommendations;
8. Writing research reports.

DISCUSSION

Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law) is the main regulation that regulates the legal protection of trademarks in Indonesia.¹¹ This law must be interpreted systematically with other legal provisions, including Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, because violations of trademark rights are often related to unfair business competition practices. The unauthorized use of a trademark not only violates the exclusive rights of its owners, but can also create unfair conditions of competition, which is contrary to the principle of fairness in the business world. (Masrur, 2024) *Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)*.¹² This agreement sets the minimum standards of protection for trademarks that must be adopted by member countries of the World Trade Organization (WTO). In the context of national law, the provisions in the TRIPS Agreement are integrated into the Trademark Law, which must be applied in line with other domestic regulations. For example, the obligation to protect well-known trademarks as stated in Article 21 paragraph (1) b of the Trademark Law needs to be adjusted to the principle of non-discrimination which is one of the main elements in the TRIPS Agreement.

¹¹ Atmoko, D. (2019). Perlindungan Hukum Terhadap Pemegang Hak Merek Menurut Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis. *Jurnal Hukum Sasana*, 5(1), 75–86.

¹² Masrur, D. R. (2024). Implikasi Hukum Atas Perubahan Ketentuan Paten dan Merek Dalam Undang-Undang Cipta Kerja. *Jurnal Interpretasi Hukum*, 5(2), 1053–1063.

In addition, the legal interpretation of trademarks must also pay attention to the relationship between civil and criminal law aspects in trademark infringement cases.¹³ The Trademark Law gives trademark owners the right to file a civil lawsuit in the form of a claim for compensation, while allowing the application of criminal sanctions against violations that meet the elements of a crime. Therefore, in enforcing trademark law, it is important for courts and law enforcement officials to consider the economic and social impact of an infringement, so that the policies taken not only enforce the exclusive rights of trademark owners, but also maintain a balance in business competition.

Systematic interpretation also takes into account the linkages between trademark protection and other forms of intellectual property, such as industrial design and copyright.¹⁴ In some situations, a product can obtain legal protection simultaneously through various intellectual property protection schemes. For example, branded clothing not only gets protection through brand rights, but it can also be protected through industrial design. The systematic approach allows the integration of legal protection of various forms of intellectual property, thereby creating legal certainty for business actors.

Grammatical interpretation is a method of understanding legal norms by referring to the literal meaning of words used in laws and regulations.¹⁵ In the context of trademark protection, this method is used to analyze the provisions in the Trademark Law based on the language used by the legislators. This interpretation aims to ensure that the resulting interpretation does not deviate from the original intention of the legislator, so that legal norms can be applied in accordance with the purpose of its formation.

One of the provisions that is often studied through a grammatical approach is the definition of a trademark in Article 1 number 1 of the Trademark Law, which states that a trademark is "a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in the form of two or three dimensions, sound, hologram, or a combination of two or more of these elements." This definition explicitly indicates that the scope of a brand is not limited to visual signs, but also includes non-visual elements such as sound and holograms. The phrase "graphically displayable mark" is a key element in determining whether an element can be categorized as a trademark, as well as reflecting legal developments that adapt to market and technological dynamics.

¹³ Putri, Z. F. (2022). ANALYSIS OF THE USE OF FOREIGN LANGUAGE COMMON WORDS AS TRADEMARKS IN MARK REGISTRATION IN INDONESIA (STUDY OF THE SUPREME COURT DECISION NUMBER 332 K/PDT. SUS-HKI/2021). *NOVUM: JURNAL HUKUM*, 171–180.

¹⁴ Rohendi, A. (2023). DAMPAK UU CIPTA KERJA TERHADAP KAIDAH HUKUM BISNIS. *Jurnal Hukum Dan Bisnis (Selisik)*, 9(2), 1–26.

¹⁵ Pramapta, Y. H. (2022). Interpretasi Hukum Pasal 15 Ayat (2) Huruf g Undang-Undang Jabatan Notaris. *Officium Notarium*, 2(2), 344–353.

In the aspect of business competition, the phrase "to distinguish goods and/or services" emphasizes that the main function of a trademark is as a means of product identification in the market. Through grammatical interpretation, the meaning of this phrase provides a legal basis for courts to determine whether a trademark registered or used is likely to cause confusion among consumers. This is a major consideration in trademark disputes, especially when a trademark bears a resemblance to other previously registered trademarks.

Furthermore, the provisions in Article 83 of the Trademark Law give the registered trademark owner the right to file a lawsuit against the use of similar trademarks without permission.¹⁶ In the context of grammatical interpretation, the word "similar" does not necessarily mean identical, but includes similarities that can cause confusion among consumers. Meanwhile, the term "without permission" refers to use made without the explicit consent of the trademark owner, either in writing or verbally. This understanding is important in assessing whether a trademark infringement can be categorized as a violation of law that requires further legal action.

Law Number 20 of 2016 concerning Trademarks and Geographical Indications is the main legal instrument in trademark protection in Indonesia. As a regulation that replaces Law Number 15 of 2001, the Trademark Law aims to strengthen the brand protection system in accordance with the development of global and national needs. By defining a trademark as a "graphically displayable mark" used to distinguish goods or services from one business actor from another, this Act gives exclusive rights to registered trademark owners, so that they have full authority to use, license, or prohibit the use of a trademark by another party without permission.

Online mediation platforms provide flexibility in trademark dispute resolution without the need for a physical presence, especially in international cases.¹⁷ This digital-based process reduces costs and time, making it a more efficient solution for small and medium-sized businesses in the fashion industry. In addition, the outcome of mediation can be legally binding if it is outlined in the agreed agreement, thus providing legal certainty equivalent to a court decision.

Trademark protection in the fashion industry requires the involvement of various stakeholders to create a fair and sustainable system.¹⁸ Collaboration between governments, fashion industry associations, and non-governmental organizations is key in strengthening oversight and dispute resolution. Given the complexity and cross-border nature of brand infringement, synergies between these sectors are becoming increasingly urgent to produce effective and inclusive solutions.

¹⁶ Lobo, L. P., & Wauran, I. (2021). Kedudukan Istimewa Merek Terkenal (Asing) Dalam Hukum Merek Indonesia. *Masalah-Masalah Hukum*, 50(1), 70–83.

¹⁷ Andjani, B., & Rosando, A. F. (2023). Tinjauan Yuridis Perlindungan Hukum Terhadap Pelaku Usaha Dalam E-Commerce Yang Dirugikan Akibat Dugaan Order Fiktif. *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, 3(1), 697–723.

¹⁸ Langoday, T. O. (2023). *KEWIRAUSAHAAN DAN ETIKA BISNIS: Pengantar Untuk MENGUBAH MINDSET Generasi Muda Menjadi ENTREPRENEUR SUCCESS*. PT. Sonpedia Publishing Indonesia.

The government, through the Directorate General of Intellectual Property (DJKI), plays a key role as the main regulator in setting trademark protection standards and its registration mechanism.¹⁹ However, limited resources make supervision unable to fully rely on the government. Fashion industry associations can contribute by providing data and information related to potential infringements, while non-governmental organizations can play a role in advocacy, training, and raising public awareness of the importance of brand protection.

This cooperation can be strengthened through the establishment of a joint supervisory unit tasked with monitoring trademark infringement in the physical and digital markets. The use of technology such as artificial intelligence can help detect violations in real-time. In addition, an integrated educational campaign from various parties is also needed to raise awareness of the legal consequences of trademark infringement.

In addition to supervision, a multi-sector approach also needs to be focused on more efficient dispute resolution through online mediation platforms. The platform offers a faster and cheaper alternative to litigation. Governments can provide a legal framework to support the platform's operations, industry associations play a role in identifying expert mediators in the field of intellectual property, and non-governmental organizations act as independent watchdogs to ensure transparency and fairness in the mediation process.

CONCLUSIONS

Based on the research that has been conducted, it can be concluded that legal provisions in Indonesia related to trademark protection have gained legitimacy through Law Number 20 of 2016 concerning Trademarks and Geographical Indications. This regulation provides a strong legal basis for trademark owners to obtain exclusive rights, register trademarks, and take legal action against violations, both civil and criminal. Even so, in its implementation, there are still various significant challenges, such as weak supervision systems, low legal awareness among business actors, and gaps in regulations that are not fully able to anticipate technological developments and digital market dynamics. To answer this problem, technology-based approaches such as the use of artificial intelligence in real-time violation detection are important options. In addition, educational efforts through cooperation between the government, industry associations, and non-governmental organizations are also absolutely necessary to increase the understanding and awareness of business actors on the importance of brand protection.

Civil law protection of trademarks also needs to be strengthened through a number of strategic policies. It is important to revise the Trademark Law to include trademark protection in the digital ecosystem and formulate dispute resolution mechanisms that are adaptive to cross-platform dynamics. The role of the Directorate General of Intellectual Property (DJKI) is very central, which in this case needs to be optimized through the digitization of the registration process, the application of blockchain technology for trademark authenticity tracking, as well as data-based supervision integrated with international protection systems. In the aspect of law enforcement, increasing the capacity of judges and mediators through special training on intellectual property needs to be a priority agenda, so that the resulting legal decisions are fairer and based on a deep understanding of the legal and industry context. In addition, multi-sector collaboration between

¹⁹ Rizkia, N. D., & Fardiansyah, H. (2022). *Hak Kekayaan Intelektual Suatu Pengantar*. Penerbit Widina.

governments, fashion industry associations, and NGOs is essential in building collective oversight as well as designing online mediation platforms to resolve disputes quickly, efficiently, and based on restorative justice. Education for small and medium business actors should also not be ignored, because understanding that a brand is not only a trade identity, but a strategic asset of the company, is the key to creating sustainable legal protection. This collaborative and adaptive approach is expected to be able to realize a trademark legal protection system that is more effective, innovative, and responsive to the demands of the times, especially in facing the challenges of the fashion industry and the increasingly rapid digital transformation

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