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TRADEMARK DISPUTES GUDANG GARAM VERSUS GUDANG BARU

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Abstract

The purpose of this study is to analyze the issue of trademark rights disputes between Gudang Garam and Gudang Baru regarding the name and logo of a painting or picture. The dispute is related to the brand name and the painting displayed on the New Warehouse product. The approach used in this study is qualitative, with case studies being the method used by researchers. The things that will be examined in this research are related to the trademark dispute rights regulation between Gudang Garam and Gudang Baru and both the content and legal considerations of the judges in the trademark dispute rights case between Gudang Garam and Gudang Baru. Researchers in this study will specifically examine the issue of trademark rights between Gudang Garam and Gudang Baru. This study employs normative legal methods and data collection, as well as a literary or conceptual approach. This research on analyzing research data was carried out using the case study method. The results of the study stated that the New Warehouse had violated the provisions regarding trademark registration in accordance with Article 1 Paragraph (1) of the Law on Trademarks and Geographical Indications N 20 of 2016 and Article 18 Paragraph (3) of the Regulation of the Minister of Law and Human Rights No. 67 of 2016 concerning Trademark Registration related to the brand name and the Gudang Garam painting, which is referred to as a well-known brand.

Keywords: Brand dispute, gudang garam, gudang baru

Abstrak

Tujuan dari penelitian ini adalah untuk menganalisis permasalahan sengketa hak merek dagang antara Gudang Garam dan Gudang Baru terkait nama dan logo suatu lukisan atau gambar. Sengketa tersebut terkait dengan nama merek dan lukisan yang dipajang pada produk Gudang Baru. Pendekatan yang digunakan dalam penelitian ini adalah kualitatif, dengan metode studi kasus yang digunakan oleh peneliti. Hal-hal yang akan dikaji dalam penelitian ini terkait dengan pengaturan hak sengketa merek antara Gudang Garam dan Gudang Baru serta isi dan pertimbangan hukum hakim dalam perkara sengketa merek antara Gudang Garam dan Gudang Baru. Peneliti dalam penelitian ini secara khusus akan mengkaji masalah hak merek dagang antara Gudang Garam dan Gudang Baru. Penelitian ini menggunakan metode hukum normatif dan pengumpulan data, serta pendekatan sastra atau konseptual. Penelitian analisis data penelitian ini dilakukan dengan menggunakan metode studi kasus. Hasil kajian menyatakan bahwa Gudang Baru telah melanggar

ketentuan mengenai pendaftaran merek sesuai dengan Pasal 1 Ayat (1) UU Merek dan Indikasi Geografis N 20 Tahun 2016 dan Pasal 18 Ayat (3) Peraturan Menteri Peraturan Menteri Hukum dan Hak Asasi Manusia No. 67 Tahun 2016 tentang Pendaftaran Merek terkait nama merek dan lukisan Gudang Garam yang disebut sebagai merek terkenal.

Kata kunci: Sengketa merek, gudang garam, gudang baru.

INTRODUCTION

One of the purposes of the regulations regarding marks made in Indonesia is to prevent unfair business competition. With the existence of a brand, an item can be distinguished from its authenticity. Sometimes, what makes a product expensive is not the product itself, but the brand. The brand itself is an immaterial object, because what can be enjoyed is the product or the material object. Meanwhile, brands, as immaterial objects, can only provide satisfaction or prestige to buyers (Siregar & Dewi, 2022).

Article 1 point 1 of the Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Geographical Indications reads: "A mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in 2 dimensions and/or 3 dimensions, sound, hologram, or a combination of 2 or more of these elements to differentiate goods and/or services produced by persons or legal entities in trading activities of goods and/or services." The brand is the heart of the continuity of a business because it is through the brand that a product can be recognized by the wider community. Even when the general public is fanatical about a brand, people don't want to look at other brands. This means that a brand is a tool that makes a product generate multiple profits. Reflecting on the advantages derived from the importance of the "name" contained in a brand, of course it is possible to have a trademark dispute and/or have a similar or similar brand designation (Widiantoro, 2022).

According to Perdana and Pujiyono (2017) the main purpose of trademark registration in the form of an intellectual property rights system is to ensure that the creative process continues by providing adequate legal protection and providing sanctions against those who use the creative process without permission. Many of the business products use copyrights, patents, trademarks, plant variety protection, trade secrets, industrial designs, or integrated circuit layout designs. Of the many forms of intellectual property rights, trademarks are one that is widely disputed. The rise of business competition cases involving brands has been anticipated by laws and regulations in Indonesia since 1961, but the most recent is Law Number 20 of 2016 concerning marks and geographical indications.

The concept that these special trademark rights need to be protected is in accordance with the notion of rights as developed by Sudikno Mertokusumo (in Sujatmiko, 2016), that rights are interests that are protected by law, while interests are individual or group demands that are expected to be fulfilled. The same view was put forward by (Umar Purba, 2022) that as part of Intellectual Property Rights, brand rights are part of the rights of property objects, and as rights, brand rights are property or assets in the form of intangible assets. Therefore, in essence, brands, especially in Indonesia, must be protected

because they are related to the rights that a person has for his creativity, so that the rights of that person can be properly protected. Marks as a part of human intellectual property rights are very important, especially in maintaining fair business competition; therefore, the issue of marks needs to be regulated in a law that specifically regulates brands, namely Law Number 15 of 2001 concerning trademarks, which replaced the previous law, namely Law Number 19 of 1992 as amended by Law Number 14 of 1997 (Simatupang & Dermoredjo, 2003).

As for the classification of famous and not-so-famous marks, the criteria for a famous mark based on national law and international law are: A. Law No. 20 of 2016 Concerning Marks and Geographical Indications in the Elucidation of Article 21 Paragraph 1 Letter B, namely Rejection of applications that have similarities in principle or in whole with well-known marks belonging to other parties for similar goods and/or services is carried out by taking into account the public's general knowledge regarding marks in the relevant business sector. Apart from that, attention is also paid to the reputation of the mark, which has been obtained due to vigorous and large-scale promotion, investment in several countries in the world by the owner, and proof of registration of the said mark in several countries. If this is not considered sufficient, the Commercial Court may order an independent institution to conduct a survey in order to obtain conclusions about whether or not the mark is the basis for the rejection. B. Regulation of the Minister of Law and Human Rights No. 67 of 2016 concerning Mark Registration in Article 18 paragraph (1), namely, the criteria for determining well-known marks as referred to are carried out by taking into account the general knowledge of the public regarding said mark in the business field concerned. Article 18 paragraph (2) refers to the consumer community or society in general that has good relations at the level of production, promotion, distribution, and sales of goods and/or services protected by the said famous mark. Article 18 paragraph (3): In determining the criteria for a mark as a well-known mark, as referred to above, it is carried out by taking into account: 1. the level of public knowledge or recognition of said mark in the field of business concerned as a well-known mark. 2. the sales volume of goods and/or services and the profit generated from the use of the mark by the owner; 3. the market share controlled by the mark in relation to the distribution of goods and/or services in society; 4. the area of use of the mark; 5. the period of use of the mark; and 6. the intensity and promotion of the mark, including the investment value used for the promotion. 7. registration of a mark or application for registration of a mark in another country 8. the success rate of law enforcement in the field of marks, particularly regarding the recognition of said mark as a well-known mark by an authorized institution; or 9. the value attached to a mark obtained due to reputation and guaranteeing the quality of goods and/or services protected by the mark. The TRIPs Agreement (Agreement on Trade Related Aspects of Intellectual Property Rights) Article 16 paragraph 2 of the TRIPs Agreement provides the basis for determining whether a trademark is well-known, namely: *"In determining whether a trademark is well-known, members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the media concerned that has been obtained as a result of the promotion of the trademark."* Translation: In determining whether a brand is well-known or not,

members must consider brand knowledge in the relevant public sector, including member knowledge regarding what is obtained as a result of promoting a brand.

The emergence of disputes in trading activities has several settlement mechanisms, namely litigation settlement, which means resolving disputes through the courts, as well as non-litigation settlement, which means carrying out dispute resolution outside the court. Dispute resolution using the litigation method certainly has a formal legal settlement process. In contrast to the non-litigation method of resolving disputes, in which the settlement does not need to go through a formal legal process with the party declaring the dispute, it is only necessary to ask a third party to resolve the problem through filing a case. Apart from going through the two mechanisms above, dispute resolution can also be resolved through alternative settlements, namely negotiation and the media (an alternative to adjudication); as well as negotiation, mediation, and arbitration (an alternative to litigation) (Mahdi & Ikrimah, 2022).

Disputes are generally resolved through litigation in court, where the parties to the dispute face each other. Settlement through litigation is often considered ineffective, efficient, and too formal. Court decisions resulting from disputes often lead to endless feuds because there are parties who feel they "won" and there are also parties who feel they "lost." This is the weakness of settlement through litigation. Unlike the non-litigation settlement, which is considered a solution to the problem of dispute resolution, In addition, disputes in trade are not always about material losses but also about losses suffered immaterially, such as trademark disputes, where when there is a similarity in brand, then automatically there are parties who are harmed and the party suffers immaterial losses on copyright (Elshalinge, 2020).

Today, marks also play a role as a form of intellectual work that has an important role in the smooth running and improvement of trade in goods or services. Brands have strategic value and are also important for both producers and consumers. For producers, apart from playing a role in differentiating their products from other similar products, brands are also intended to build a good image for the company in marketing. For consumers, apart from facilitating identification, a brand is also a symbol of self-esteem. People who are used to the choice of goods from a certain brand tend to use goods from that brand onward for various reasons, such as because they have known them for a long time and trust the quality of their products, so that the function of the brand as a guarantee of quality is increasingly evident in buying and selling activities. A mark is an exclusive right granted by the state to the owner of a mark registered in the General Register of Marks for a certain period of time by using the mark himself or giving permission to other parties to participate in using the mark. However, a problem often occurs when a mark is used without the permission of the owner, or worse, when it is used with the aim of gaining profit by using the name of his company with another company's brand that already has a name. This results in a step of interpretation in a field of law that focuses on trade in handling dispute cases, particularly trademark disputes.

Several cases of brand disputes occurred, including the case of a trademark dispute in international private law between Prada SA and PT. Manggala Putra Perkasa, the result

of which in this case the court decided on Judicial Review No.274 PK/Pdt/2003 and declared legally owned by Prada SA as contained in one of the rulings for Judicial Review Decision No.274 PK/Pdt/2003 (Dewi & Baskoro, 2019). Besides that, trademark disputes also occur in natural cases. This research is to find out the juridical review of the judge's decision in the case of trademark forgery. Legal considerations by judges in cases of brand counterfeiting between CV and Kurnia Abadi The Supreme Court overturned the decision of the Semarang District Court No. 557/Pid/B/2007/PN.SMG. dated November 19, 2007, on the grounds that it was discovered that the defendant imported and traded goods in the form of shaved paste from 2001 to 2006 under a brand that had similarities in principle with the brand owned by PT Inax International Corporation, and thus the defendant's actions satisfied the elements of Article 94 of Law No. 51 of 2001 concerning

Because there are provisions in the MIG Law for how the trademark dispute resolution process begins, from Article 83 to Article 93 of the MIG Law. If the negotiations come to a halt because the disputing parties disagree and each party is adamant about their beliefs, a third party will be asked to resolve the dispute. Generally, parties who think their rights have been violated settle by filing a lawsuit in court. Based on Article 93 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications ("MIG Law"), it explains that dispute resolution is not only in the Commercial Court but can also be resolved by taking arbitration or alternative dispute resolution. Disputing parties can choose the settlement institution as follows:

1. Arbitration Arbitration efforts that can be used in settling trademark disputes originate from Article 5 of Law Number 30 of 1999 on commercial disputes, and regarding rights originating from law, they are fully understood by the parties involved in the dispute.
- 11 Settlement through non-litigation or outside the court is the settlement of disputes using methods available outside the court or using alternative dispute resolution institutions. There are 2 models of dispute resolution that can be taken to arbitration by parties, namely:
 - a. Ad Hoc Arbitration In an ad hoc arbitration, the parties can determine for themselves the method of selecting arbitrators, the working context of the arbitration procedure, and the arbitration administrative staff because the method of checking arbitration takes place without any institutional supervision or examination. Arbitration has a period until the dispute is decided. In practice, arbitration has its own difficulties, such as negotiating, establishing arbitration procedures, and designing procedures for selecting arbitrators that are agreed upon by the parties.
 - b. Institutional Arbitration Institutional arbitration is formed by an organization that is used to resolve disputes originating from agreements. Institutional arbitration is permanent in nature, which means that it always stands even if there is no dispute or a dispute has been resolved, reducing the difficulties caused in an ad hoc arbitration institution.
2. Lawsuit at the Commercial Court Based on MIG Law Articles 83 and 84, there are several things that must be observed, namely:
 - a. Other parties who do not have the right to use a mark that has the same essence or all for products or services of the brand owner can file a registered lawsuit or register a trademark. The lawsuit filed can be in the form of a claim for compensation or the termination of all activities related to the use of the mark.
 - b. Lawsuits can also be filed by well-known brand owners based on court decisions submitted to the Commercial Court.
 - c. As long as it is still under investigation,

the brand owner or licensee may submit a request to the judge to end the activity of creating, distributing, or trading products or services that use the mark without rights. d. Products that use brands without rights must be submitted by the defendant; the judge can instruct the delivery of the product or the value of the product to be carried out after the court issues a decision that has permanent legal force (Hafizah & Apriani, 2022).

Based on the explanation above, the researcher took the initiative in this research to raise the title of "Gudang Garam Trademark Dispute versus the New Warehouse" (Number 3/Pdt.Sus.Hki/Merk/2021/Pn.Niaga.Sby), which is a differentiator or characteristic of this research from previous research in that the researcher uses the case study method to find answers or more in-depth matters about the trademark dispute case between Gudang Garam and Gudang Garam Baru. Whereas, so far, such research has only focused on normative juridical methods from the point of view of this case.

METHOD

The research method used by researchers is a case study, which has a qualitative scope and which researchers feel can be a method that can describe problems (Yusanto, 2020). Meanwhile, according to Yin (2018), the process of compiling a case study takes place in three stages. The first stage is the collection of raw data about individuals, organizations, programs, and places of occurrence, which forms the basis for case study researchers. In this study, the researchers analyzed case studies regarding trademark disputes based on court decision Number 3/Pdt.Sus.Hki/Merk/2021/Pn.Niaga.Sby Concerning Trademark Disputes Between Gudang Garam and Gudang Baru.

HASIL DAN PEMBAHASAN

In this case, the court that has the right to handle this case is the court in Indonesia because of the law of the country where the case was tried (*lex fori*). In terms of intellectual property, especially regarding brands, Indonesia has laws that regulate it, namely Law No. 15 of 2001 concerning Trademarks, defined in Article 1 of the Trademark Law (Law No. 15 of 2001). The sign must have distinguishing features and be used in trade in goods or services (Mahadewi & Mh, 2014; Widianoro, 2022).

The mark is not registered on the basis of an application submitted by an applicant with bad intentions. An applicant with bad intentions is an applicant who registers their trademark in an unfair and improper manner and has hidden intentions such as piggybacking, imitating, or plagiarizing fame, which creates unfair competition and outwits or misleads consumers. Those who can register a mark are persons or legal entities. In a constitutive system, rights will arise if they have been registered by the holder. Therefore, in this system, registration is a must. The act of plagiarizing a mark on a registered mark for a class of similar goods is not in accordance with Law Number 20 of 2016 concerning Marks and Geographical Indications (Sangap C et al., 2018).

According to the law, "the right to a mark is an exclusive right granted by the state to the owner of a mark registered in the General Register of Marks for a certain period of time by using the mark himself or giving permission to other parties to use it." Trademark protection can be carried out with a constitutive protection system, namely, that it is

necessary to register first in order to obtain rights to a mark. Trademark registration certifies that the mark is similar to the registrant's mark. Trademark rights do not exist without registration (Denny et al., 2022). If there is a dispute that arises due to a dispute over brand ownership, the government will use the brand certificate as a reference that can formally prove ownership of the rights to the mark (Betlehn & Samosir, 2018).

Regarding the brand dispute between Gudang Garam and Gudang Garam, it should be noted that Gudang Garam Gudang Garam is a company that can be said to have the status of one of the largest cigarette companies in Indonesia. It has been established since 1985, to be precise, in the city of Kediri, East Java. 35 It cannot be denied that this is indeed a fact, as evidenced by the various kinds of Gudang Garam products that have indeed been disseminated to various parts of the archipelago and are widely used, and also by the fact that Gudang Garam occupies the second position and dominates the market in Indonesia with the largest share of 20.7%. 36 Some of Gudang Garam's well-known products are GG Surya, GG Djaja, GG International, Gudang Garam Merah, GG Mild, and various other products. Gudang Garam produces various types of kretek cigarettes, including low-tar and nicotine (LTN) types as well as traditional hand-rolled kretek (SKT) products. 37 The main product of Gudang Garam is called Kretek, which is made from high-quality materials for the enjoyment of its users. Under Gudang Garam, there is another company owned by Gudang Garam, namely PT. Surya Madistrindo (SM), which was founded in 2002. The function of this company is to become a distributor for Gudang Garam, where later those who previously worked with other companies became distributors, and in 2009 they finally became the sole distributor for Gudang Garam, which handles distribution and field marketing for Gudang Garam from Sabang to Merauke. The founder of Gudang Garam is Surya Wonowidjojo, who is known as someone who is wise and never fails to pay attention to the welfare of his employees. Apart from that, he is the figure behind the application of Catur Dharma values to the Gudang Garam company, namely that being able to contribute and be meaningful to society is a joy, achieving success requires hard work, diligence, and honesty, success cannot be achieved without help or cooperation from others, and finally, employees are the first and most important business asset.

Meanwhile, a new warehouse This company was originally founded by Saman Hoedi in 1967, to be exact. New Warehouse is currently still owned by Ali Khosin, the company's owner. Similar to Gudang Garam, Gudang Baru is also a cigarette manufacturing company, and its main headquarters is in Malang, East Java. Not only based in Indonesia, the Gudang Baru company is also known to have spread to Asia Pacific, the Middle East, and Europe. This company also has two companies under its auspices, namely PT. Bintang Sayap Utama, which acts as a domestic or national distributor, and PT. Gudang Baru Berkah Indonesia, which is in charge of overseas distribution, as already mentioned, namely Asia Pacific, the Middle East, and Europe. From when it was first established, there were only 125 employees. Gudang Baru soared so that it could employ more than 2,583 employees.

For the results of the decision on the Gudang Garam and New Gudang cases by the Commercial Court at the Surabaya District Court after examining and deciding the Intellectual Property Rights (Mark) lawsuit, On March 22, 2021, PT Gudang Garam, Tbk,

and Melda Sihombing, SH, MH, along with their attorneys, filed a lawsuit against Ali Khosin, SE, stating that he was the owner of the New Warehouse with Register number 3/Pdt.SusHKI/Merk/2021/PN. Niaga. A filed a lawsuit to have the trademark registration revoked. The judge declared the Gudang Garam brand to be a well-known brand; as is well known, the Gudang Garam brand was founded on June 26, 1958, making it Indonesia's largest cigarette company. In accordance with the Regulation of the Minister of Law and Human Rights No. 67 of 2016 concerning Trademark Registration, the public's general knowledge about brands in the business sector concerned fulfills the requirements to be designated as well-known brands. Gudang Garam has made various efforts from 1958 until now so that their brand is well-known to all levels of society. In addition, Gudang Garam has also traded and bought their merchandise throughout Indonesia. It is not impossible that Gudang Garam has become a well-known brand among the public. While the Gudang Baru brand and painting nos. IDM000381985, IDM000491292, IDM000491291, IDM000528993, IDM000528994, and IDM000528995 (hereinafter New Origin Warehouse and painting nos. IDM000661355 and IDM000661350) and New Building no. IDM000528996 in class 34 have similarities with Gudang Garam in terms of names or carvings attached to their products, According to Article 1 paragraph 5 of Law No. 20 of 2016, concerning marks and geographical indications, it states that "the right to a trademark is an exclusive right granted by the state to registered trademark owners for a certain period of time by using the mark themselves or giving permission to other parties to use it." The owner and holder of the Gudang Garam brand have been registered with 79 registration numbers for goods and services class 34.

In 1979, the Gudang Garam brand and logo were registered with the Ministry of Justice, Directorate General of Law and Legislation, and on July 16, 1980, they were registered with the Director of Patents and Copyrights. Gudang Garam has also been registered in several countries since 1989, especially in class 34 with Kretek cigarettes, including Singapore, Malaysia, Brunei Darussalam, the Philippines, Qatar, Taiwan, South Korea, Paraguay, Japan, Saudi Arabia, Europe, and Chile. The above is clear evidence that Gudang Garam is legally valid because it has been registered for 37 years.

In the pronunciation of the name, there is a dominant element in the Gudang Baru, Origin Warehouse, and New Building brands that resemble the Gudang Garam brand. This is quite reasonable because Gudang Baru, Gudang Origin, and Gedung Baru use that name so that their popularity is quickly recognized by the public by following a name that resembles Gudang Garam because it starts with the word "Gudang," which is the most dominant element. Even though there is one brand that is registered under the brand Gedung Baru, they are almost identical because they still consist of two syllables. The logo or painting affixed by Defendant I also resembles the logo of the Gudang Garam brand because there are still elements in terms of both color and image. This is in line with Article 1 of Law No. 20 of 2016 concerning Marks and Geographical Indications, which states that a mark is a sign that can be displayed graphically in 2D or 3D in the form of a logo, image, name, letters, words, color arrangement, numbers, hologram, sound, or a combination of two or more to distinguish goods or services produced by

individuals or legal entities in trading activities. In this case, the judge instructed defendant II, namely the Directorate General of Intellectual Property, to reject all registrations of defendant I with the equivalent words "New Warehouse," "Origin Warehouse," and "New Building." If defendant II continues to grant the application, then the registration is null and void by law.

CONCLUSION

Article 1 Paragraph (1) of Law No. 20 of 2016 Concerning Marks and Geographical Indications and Article 18 Paragraph (3) of Law No. 67 of 2016 Concerning the Registration of Famous Marks are the cornerstones of brand protection in Indonesia. Public awareness, product sales volume, circulation in the community, area and time coverage, brand intensity and promotion, brand registration in other countries, brand recognition by authorized institutions, and brand value related to reputation and quality are indicators of a well-known brand of goods. The fact that Gudang Garam is known can be seen by seeing that Gudang Garam has been registered in a number of countries, and the Commercial Court at the Surabaya District Court has considered and concluded the HAKi case. The judge considered that Gudang Garam was a well-known brand that had been established since 1958. Furthermore, regarding the registration of brand names and paintings with the names Gudang Baru, Gudang Origin, and New Building, which resembled the well-known brand, namely Gudang Garam, the court ordered the Directorate General of Intellectual Property to reject all requests, and if any were still granted, they would be null and void by law.

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