

THE TRADEMARK RENEWAL PROCESS RELATES TO THE EXCLUSIVE RIGHTS OF THE BRAND HOLDER BASED ON LEGAL CERTAINTY

Leonard Tasuno Laiya^{1,*}, R. Rahaditya²

^{1,2}Faculty of Law Universitas Tarumanagara, Jakarta Barat, Indonesia
leotpres@gmail.com^{1,*}, rahaditya@fh.untar.ac.id²

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Abstract

In this age of digitalization, the significance of Intellectual Property cannot be ignored. In experiencing the changing era, the Intellectual Property protection system also needs to adjust well, along with the changes, growth, challenges, and opportunities that exist. The growth of the era cannot be ignored, and in the context of the current growth of Intellectual Property, the protection system must also explore so as not to lag behind and protect the rights of individuals efficiently. With this growth, the process of acquisition and ownership of Intellectual Property as a form of protection of intellectual property, absolutely must be supported, facilitated and facilitated by all parties. With such support, facilitation, and ease, this will not only increase the number and quality of Intellectual Property ownership, but more importantly, it will reflect progress in the field of science and technology at the national level. Not only that, it is also a sign of economic progress and the welfare of citizens. The most important is the trademark which is one of and cannot be separated by aspects of Intellectual Property, along with the Exclusive Rights of the Trademark Holder. Because all of these contexts concern the principle of legal certainty. In the context of the disappearance of national borders due to globalization, with the presence of freedom of entry of objects and services. The management of intellectual property rights is very meaningful for the nation's materials because it can share legal protection for intellectual property owned by creators, inventors, designers, and creators related to their creations or intellectual works. In the preparation of this journal, the author uses normative juridical research procedures.

Keywords: Intellectual Property, Exclusive Rights of Trademark Holders, Trademark, Legal Certainty

INTRODUCTION

In the digitalization period that has penetrated the Industrial Period 4.0 and preparation for industrial period 5.0, the Intellectual Property aspect is very crucial because almost all elements underlying this era are based on Intellectual Property-based materials. In this era of digitalization, it means that the Intellectual Property aspect cannot be ignored. In experiencing the change of era, the Intellectual Property protection system also needs to adjust well, along with the changes, growth, challenges, and existing opportunities. The era's growth cannot be ignored. In the context of the growth of Intellectual Property today, the protection system must also be explored so as not to be left behind and protect individual rights efficiently. With this growth, acquiring and owning Intellectual Property as a form of protection against intellectual property must be supported, facilitated, and facilitated by all parties.

With the support, facilitation, and facilities available, this matter not only wants to increase the number and quality of Intellectual Property ownership but, more importantly, is to reflect progress in the field of science and technology at the national level. Not only that, this matter is also a marker of economic progress and the welfare of citizens. Especially in the context of losing national borders due to globalization, with the freedom of entry of objects and services. Intellectual property management is very meaningful for national materials because it can share legal protection for intellectual property owned by creators, inventors, designers, and creators related to their creations or intellectual works. Here are some alibi why intellectual property management means for the nation's materials, is to share legal protection for intellectual property owned by creators, inventors, designers, and creators. Urge innovation and creativity in producing new materials, increase the economic value of the nation, and avoid piracy or illegal use of the nation. Cases surrounding Intellectual Property today continue to be environmental, relating not only aspects of legal protection, but also the consequences of Intellectual Property protection on the economic, social, cultural, legal, and political fields. Intellectual property refers to works of thought such as inventions, literary and artistic works, name symbols and photographs used in trade. Universally, intellectual property can be divided into 2 main groups, namely industrial property and copyright. Industrial wealth includes patents for inventions, trademarks, industrial designs, and geographical indications. Meanwhile, copyright includes literary works such as novels, poems, films, music, as well as works of art such as photographs, paintings, photography, statues, and architectural designs. Not only that, there are copyright rights that include the artist's appearance in the show, the rights of phonogram producers and recording works, and the rights of broadcasting organizations for radio and television program.

Every country universally has laws to protect intellectual property because there are 2 main reasons:

- a. To urge and promote creativity and innovation as sources of economic development and social progress.
- b. To provide legal protection for the rights of creators and innovators in their works and innovations, while balancing the public interest in accessing these works and innovations.

Universally, intellectual property protection is territorial, meaning that the protection of these rights applies in certain regions of the country. However, when it comes to copyright, there is global protection directly granted in countries that are members of the Bern Convention of 1886. Rights in intellectual property are granted by the state and are domineering rights, which means that no one else can exercise these rights without permission from the rights holder.

Intellectual property protection has a certain period of time, except for brands that can be protected indefinitely after a certain period of time stipulated by law by paying a fee that has been formalized by the state. Geographical indications obtain legal protection as long as the characteristics, quality, and reputation of these geographical indications are always maintained, without the possibility of extending the protection period. Trade secrets also receive legal protection indefinitely as long as the confidentiality of the data is always maintained, and there is no possibility of extending the protection period (Gumelar, 2023).

Intellectual property can be transferred, granted, traded, and licensed as other forms of heritage ownership. However, the difference is that these rights can be owned simultaneously in various countries simultaneously, in contrast to the ownership of movable property and other immovable property. Intellectual property can be owned by people and can also be the rights of legal entities, such as entities that have the right to obtain and buy such ownership. Marks are part of Intellectual Property which is a legal ownership right and recognized by law for intangible goods in the form of property or intellectual creations (Fuady, 2016). As a component of Intellectual Property, trademark rights have special characteristics. These special rights are principally exclusive and domineering, which can only be exercised by the owner of the right, while others are prohibited from exercising the right without permission from the owner. Each country has a brand protection system through national laws that

apply in the country. Indonesia has a long history in terms of Intellectual Property, starting with the passing of the initial law overriding the protection of Intellectual Property in 1844 by the Dutch Government. Especially in the field of brands, protection began in 1855 when the Dutch Colonial government promulgated *Handel Nijverheid Marjen*, which is listed in *Staatsblad van Nederlandsch Indie* Number 109. After that in 1912, in Indonesia (Dutch East Indies), the terms of the *Reglement Industrieele Eigendom Kolonien* were enacted which were promulgated in the *Staatsblad Van Nederlandsch Indie* 1913 No. 214. After that, during the Japanese colonial period (1942-1945), all laws and regulations related to intellectual property that were in force during the Dutch rule always applied.

After Indonesia's independence, the government produced Law No. 21 of 1961 concerning Industrial Marks and Commercial Marks (Law No. 21 of 1961) as a substitute for the trademark law in force during the colonial period. The law, which came into force on November 11, 1961, was the first law in the field of intellectual property in Indonesia. The law is based on the principle of "first to use". In other words, in that context, the party who initially used the mark has the right to legal protection.

RESEARCH METHOD

In the preparation of this journal, the author uses normative juridical research procedures. According to Peter Mahmud, there is no need for the term normative legal research because "For comments I do not need, because the legal term research or Dutch *recht onderzoek* is always normative". Similarly, normative juridical designations are actually unknown in legal research.

RESULTS AND DISCUSSION

The trademark owner obtains exclusive rights after the mark is registered as stipulated in Article 3 of Law No. 20 of 2016 concerning Marks and Geographical Indications. The exclusive right of a mark is a form of state to protect the interests of the owner of the registered mark so that the rights of the registered trademark owner are legally protected. Trademark Rights is a form of intellectual property protection that distributes exclusive rights for registered trademark owners to use the mark in the trade of goods and / or services, according to the class and type of goods/services. The exclusive rights of a brand are inseparable from the *first to file* principle adopted by the Indonesian legal system. This is because registration is mandatory in order to get the rights to the mark. This is the legal consequence of the constitutive trademark legal system or the *first to file* principle. This can mean that without a state registration does not want to distribute rights to the mark to the owner of the mark if the owner of the mark does not register the mark so that a person does not want to be given legal protection by the state if the mark is imitated by others (Indriyanto & Yusnita, 2017).

Regarding legal protection, Satjipto Rahardjo said that one of the characteristics and at the same time describing the purpose of the law is to distribute protection (protection) to citizens, and legal protection for these residents must be realized in the form of legal certainty. Legal protection itself is an effort to protect a person's interests by allocating power to him to play a role in his interests (Rahardjo, 2003). On the other hand, for Muchsin, legal protection is an activity to protect people by harmonizing the bonds of values or rules that incarnate in behavior and action in producing discipline in the association of life between fellow humans (Muchsin, 2003). The owner of a mark whose mark has been registered automatically obtains exclusive rights to the mark he registered. Exclusive rights are rights granted by the state to the registered owner of a Mark for a certain period of time by using the Mark itself or distributing permission to other parties to use it. In other words, the exclusive right arises after the mark is registered (Rifai, 2016).

Exclusive rights are privileges that belong only to the registered brand owner. In other words, this exclusive right is only granted by the exclusive state to the owner of the registered mark. By obtaining exclusive rights, registered trademark owners can impose their exclusive rights to carry out legal actions or legal actions as follows:

1. First, the owner of a registered mark can use his registered mark without worrying or fearing the legal consequences or legal cases that will be caused to the use of his mark. This is because the owner of the registered mark has the right to use the registered mark because he already has exclusive rights to the mark he has registered (Mashdurohatun, 2013).
2. Second, the owner of the registered mark has the exclusive right to allow other parties to use his mark. Other parties not only from the owner of the registered mark can use a mark that is similar or similar to the registered mark only if they get permission or approval from the owner of the registered mark. If there is another party who wants to use a brand that is exactly the same or similar to the registered mark, until that party must first apply or obtain permission from the owner of the registered mark.
3. Third, the owner of a registered mark based on law has the exclusive right to prohibit other parties from using his registered mark. Thus, if there is another party who wants to use a brand

on products or services traded in trade that have overall similarities or similarities in essence with the registered mark, until the other party must ask for permission or prior approval from the owner of the registered mark (Djumhana & Djubaedillah, 1993).

If the other party continues to use the registered mark without the permission of the registered mark owner, until the registered mark owner can take legal remedies to protect and enforce his exclusive rights to his registered mark. Legal remedies that can be tried by registered trademark owners are as follows:

1. Claims for Trademark Infringement.

The owner of the registered Mark and/or the licensee of the registered Mark can file a lawsuit against other parties who without the right to use the Mark that has similarities in principal or in whole for similar objects and/or services in the form of a change lawsuit filed in the Commercial Court (Rifai, 2016). Registered trademark owners can file a lawsuit with the Commercial Court against parties who have used brands that have similar products (Miru, 2007). The owner of the mark can file a claim for compensation and termination related to the use of the mark. There are 2 types of compensation, namely material compensation and immaterial compensation (SUJATMIKO, 2021). Material compensation is real compensation and can be assessed with some money, this material compensation causes the original product to sell less because buyers prefer to buy counterfeit objects because it is cheaper. Conversely, immaterial compensation is compensation caused by parties who falsify the original brand making fake brand objects with different quality so that product buyers do not buy products issued by the brand owner (Hartono, 1994). The owner of a registered mark not only has the right to file a lawsuit for trademark infringement to the Commercial Court, the owner of a registered mark also has the right to complain about alleged criminal acts of infringement of registered marks based on Article 100 and/or Article 102 of Law No. 20 of 2016 concerning Marks and Geographical Indications to the Indonesian National Police Investigators or Civil Servant Investigators (PPNS) in the Directorate General of Intellectual Property area. There is also a gap in the rights of registered trademark owners who are in the *grace period* to file criminal legal remedies to be explained further in the next sub-chapter of this research.

2. Complaints Against Alleged Criminal Acts of Trademark Infringement.

The criminal act of this brand is specifically part of the crime in Intellectual Property (IP), so that the legal rules for granting criminal sanctions are located outside the Criminal Code or impose special criminal sanction conditions. Special crimes are acts whose legislation is in certain fields that have criminal sanctions, or crimes regulated in special laws (outside the Criminal Code) (Ruslan Renggong, 2021). In the criminal act of trademark infringement is regulated exclusively in Law No. 20 of 2016 concerning Marks and Geographical Indications (Mahmud Marzuki, 2010).

CONCLUSION

Based on the formulation of the problem and the review of the legal consequences of the brand which is extended within a grace period of 6 months related to the exclusive rights of brand holders that have been described in this research, the author formulates the following. First, the legality of the owner of a mark whose mark is in the grace period can file legal remedies against alleged criminal acts of trademark infringement if the registered trademark owner submits a trademark renewal application within the renewal grace period is 6 months from the end of the protected period of the registered mark because if the registered mark is renewed within the grace period, The period of legal protection is extended for another 10 years starting from the receipt of the trademark registration application so that the owner of the registered mark still has exclusive rights. Second, the Terms of Article 35 Paragraph (4) of Law No. 20 of 2016 concerning Marks and Geographical Indications are not in sync with the Terms of Article 1 point 5, Article 3 and Article 35 Paragraph (1) of Law No. 20 of 2016 concerning Marks and Geographical Indications. Article 1 point 5, Article 3 and Article 35 Paragraph (1) of Law No. 20 of 2016 concerning Marks and Geographical Indications have clearly controlled overriding exclusive rights granted by registered trademark owners for 10 years. However, there is an accumulation of grace periods of 6 months to apply for an extension of protection starting from the end of the protection which opens up different understanding spaces taking the protection period of registered marks for 10 years or 10 years and 6 months, causing legal uncertainty regarding the period of protection of registered marks.

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