

LEGAL CERTAINTY FOR ETAWAKU GOAT MILK TRADEMARK RIGHTS HOLDERS OVER TRADEMARK CANCELLATION SUIT

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Abstract

The advancement of information technology has accelerated globalization and emphasized the importance of Intellectual Property Rights (IPR) protection. As a result, trademarks have become essential assets in differentiating products or services in business competition. This study aims to analyze the application of the first to file principle in the registration of the Etawaku goat milk trademark and its impact on legal certainty and the parties involved. The first to file principle, as stipulated in Law Number 20 of 2016 concerning Trademarks, grants exclusive rights to the first registrant, regardless of prior use. This principle has led to legal disputes, such as the case between Imam Subekhi, who first used the Etawaku brand in 2012, and Mukit Hendrayatno, who officially registered the trademark in 2021 and 2022. This research employs a juridical-normative method with a statutory and conceptual approach. The findings indicate that the first to file principle provides legal certainty to the first registrant, Mukit Hendrayatno, while causing Imam Subekhi to lose his trademark rights despite prior usage. To reclaim their rights, prior users can file a trademark cancellation lawsuit based on bad faith registration. Additionally, third parties may face issues such as ownership changes and consumer confusion, potentially impacting brand loyalty and business partnerships. This study underscores the importance of early trademark registration to prevent disputes and recommends that the Directorate General of Intellectual Property (DJKI) enhance awareness programs and accelerate verification processes through modern technology.

Keywords: Etawaku, First to File, Trademark Rights, Legal Certainty, Trademark Cancellation Lawsuit

INTRODUCTION

The rapid development of information technology has driven globalization, particularly in the digital economy sector, making it easier for people to meet their needs and fostering advancements in various fields, including the protection of Intellectual Property Rights (IPR). In Indonesia's dynamic economic landscape, business competition has become increasingly intense, prompting companies to seek innovative ways to differentiate their products or services. Trademarks, as part of IPR, have become significant assets that serve as the identity of products or services while also protecting them from unauthorized imitation. IPR, which includes copyrights, patents, industrial designs, trade secrets, and trademarks, grants exclusive rights to creators or owners as a form of appreciation for the originality of their works. Law No. 20 of 2016 on Trademarks and Geographical Indications stipulates that trademark registration is mandatory to obtain legal protection.

A trademark must first be registered with the Directorate General of Intellectual Property, hereinafter referred to as DJKI, by its owner to obtain legal certainty. The primary requirement for trademark registration is ensuring that the trademark has a unique distinctive character, providing a strong differentiation from trademarks owned by other businesses. This is because DJKI cannot accept trademark registrations if there are similarities between the newly submitted trademark and those already registered. Article 21, paragraph (1) of the Trademark Law explicitly states that a trademark registration application will be rejected if the proposed trademark has substantial or overall similarity to an existing trademark or geographical indication.

This study examines the trademark dispute involving the Etawaku brand, which includes Imam Subekhi as the initial user of the trademark since 2012 without registration, and Mukit Hendrayatno, who registered the trademark in 2021 and 2022. Imam Subekhi relies on evidence of trademark use, such as the MUI halal certification and BPOM distribution permit. However, exclusive trademark rights were granted to Mukit Hendrayatno as the first registrant. To defend his rights, Imam Subekhi may file a trademark cancellation lawsuit under Article 76 of the Trademark Law, citing bad faith on the part of the registrant. This lawsuit would also require proof that the trademark must serve a commercial purpose, whether already in use or intended for future use (intent to use), as is recognized in trademark protection laws in the United States. This dispute highlights the importance of understanding Indonesia's trademark protection system, particularly for business owners, who must register their trademarks promptly to avoid future legal issues.

Based on the issues described, the author grounds this writing on the core argument of whether the first to file principle in the registration of the Etawaku goat milk trademark has provided legal certainty and what the legal consequences are of applying the first to file principle in the registration of the Etawaku goat milk trademark.

RESEARCH METHOD

This study employs a normative juridical method with a systematic approach to collect, analyze, and interpret data in order to address legal questions related to the legal certainty of the Etawaku goat milk trademark holder in the face of a trademark cancellation lawsuit. The approaches used include the statutory approach to examine relevant regulations and the conceptual approach to explore legal concepts and expert doctrines. Legal material sources consist of primary legal materials such as laws, secondary legal materials such as literature, and non-legal materials as supporting evidence. Data is collected through literature studies and analyzed deductively, starting from general principles to specific cases. The steps of analysis involve identifying legal facts, gathering relevant materials, conducting in-depth analysis, formulating logical conclusions, and providing recommendations. This study aims to provide a comprehensive solution to the legal issues raised while supporting the development of legal theory and practice.

RESULTS AND DISCUSSION

The First to File Principle in the Registration of the Etawaku Goat Milk Trademark has Provided Legal Certainty

The trademark dispute over the Etawaku goat milk brand arose between Imam Subekhi and Mukit Hendrayatno, who were both business partners in PT Etsa Bregas Makmur. Mukit Hendrayatno is the rightful owner of the Etawaku goat milk trademark, as evidenced by the application accepted by the Directorate General of Intellectual Property (DJKI). Imam Subekhi is an entrepreneur engaged in dairy goat farming, production, and sales of goat milk, having started his business in 2012. On November 29, 2012, Imam Subekhi established CV Global Mandiri Perkasa (GMP) to process and market powdered

goat milk products under several brands, including Etawaku. To operate his business legally, Imam obtained various permits, such as a Disturbance Permit Certificate, Industrial Registration Certificate, and Micro Trading Business License (SIUP Mikro). He also acquired a Halal Certificate from MUI and a Distribution Permit for Etawaku powdered goat milk and creamer products.

Imam Subekhi discovered that Mukit Hedrayatno had registered the Etawaku goat milk trademark first without his knowledge. The trademark application for Etawaku goat milk under Mukit's name was accepted by DJKI as the first to file, with the registration in class 29 under registration number IDM000887662 registered on September 3, 2021, and in class 5 under registration number IDM001043502 registered on December 29, 2022. Meanwhile, the trademark application for Etawaku goat milk submitted by Imam Subekhi in class 29, class 35, and class 5 was rejected by DJKI because it was already registered under Mukit Hedrayatno's name.

The Etawaku goat milk trademark case between Imam Subekhi and Mukit Hedrayatno raises a dispute regarding the first to file and first to use principles in trademark law in Indonesia. This conflict highlights a fundamental issue of how trademark law in Indonesia provides legal certainty to the party that registers a trademark first, even if another party has used the trademark for an extended period and has substantial evidence of business development. In this case, there is an underlying theory, namely the theory of legal certainty. The theory of legal certainty proposed by Stefan Wrba, as cited in the book *Ilmu Hukum* (Efendi & Susanti, 2021: 152), is closely related to the trademark registration system in Indonesia. Legal certainty, as a fundamental element of law, ensures that legal regulations serve as clear and reliable guidelines for the public, including in the protection of trademark rights. In the context of trademark registration, the first to file principle applied in Indonesia establishes registration as the basis for the exclusivity of trademark rights. This reflects the concept of legal certainty as explained by Stefan Wrba, where the clarity of legal rules helps reduce ambiguity and provides certainty regarding the rightful owner of a trademark.

According to Bram Akkermans, as cited in the book *Ilmu Hukum* (Efendi & Susanti, 2021: 152), the theory of legal certainty aims to provide strong clarity in determining ownership rights, thereby creating a sense of security and fairness for the rights holder. Trademark registration clarifies for both parties who the rightful owner of the Etawaku goat milk trademark is. In this case, the legal system, which prioritizes good faith registration, provides legal protection to the party who first registered the trademark, namely Mukit Hedrayatno, even though Imam Subekhi had used it for a longer period. Thus, the application of the theory of legal certainty in trademark registration ensures clarity, fairness, and protection for those who have legitimate ownership rights. According to the theory of legal certainty proposed by Lili Rasjidi in her book *Filsafat Hukum Mazhab dan Refleksinya* (1994: 27), legal certainty is closely related to the state's responsibility in enforcing positive law to protect its citizens. In this case, the state grants trademark ownership only if the trademark has been registered. The Trademark Law adopts a constitutive system based on the doctrine of prior in filing, also known as the presumption of ownership principle, which states that the rightful owner of a trademark is the party who registers it first.

Article 3 of the Trademark Law emphasizes that trademark rights are obtained once the trademark is registered. In accordance with the legal provisions, the state has provided legal protection for the Etawaku goat milk trademark to Mukit Hedrayatno as the owner of the registered trademark, which has gone through all stages up to the issuance of the certificate by DJKI. With trademark registration, intellectual property law also offers legal protection through moral rights, safeguarding the creator's reputation, and economic rights, enabling commercial exploitation of the trademark, such as royalties or licensing. Therefore, trademark registration encompasses both moral protection and economic benefits for its owner.

The trademark registration process can be done online through the DJKI website or manually at the Ministry of Law and Human Rights. To obtain a filing date, the applicant must meet the minimum requirements as per Article 13, paragraph (2) of the Trademark Law, which include the registration form, the trademark label/etiquette, proof of payment, a notarized declaration of ownership, a power of attorney if through an intellectual property consultant, usage regulations for collective trademarks, and additional documents such as recommendations or information from SMEs and a notarized statement for MSME applicants. After the application is submitted, a formal examination is conducted to ensure administrative completeness. If the applicant fails to meet the required conditions within the specified timeframe, the application is considered withdrawn. Once the formal examination is passed, the trademark application is published to allow third parties the opportunity to file objections, and the applicant may respond to these objections. The next step is the substantive examination of the

trademark. If the application is approved, the result is announced in the Official Trademark Gazette. If rejected, the applicant is notified along with the reasons and may file an objection.

The case related to the principle of first to file and first to use previously occurred in the Geprek Benu trademark dispute. The "I Am Geprek Benu" trademark, founded in 2017 by Benny Sujono, was officially registered earlier with the DJKI. Ruben Onsu, who initially served as the brand ambassador for "I Am Geprek Benu," later established a similar business under the name "Geprek Benu" and filed a trademark application for that name. Ruben Onsu filed a lawsuit against Benny Sujono for using the name "Benu," claiming it was an acronym of his own name. Referring to the first to file principle, the Commercial Court and the Supreme Court ruled that PT Ayam Geprek Benny Sujono, as the first party to register the trademark, had the right to ownership of the trademark. The lawsuit was deemed baseless and rejected.

The Legal Consequences of Applying the First to File Principle in the Registration of the Etawaku Goat Milk Trademark

A. The Legal Consequences for the Parties Involved in the Dispute

The first to file principle is based on the theory of legal certainty, as outlined by Stefan Wrba, which emphasizes the clarity of legal rules to provide a sense of security and fairness. The legal consequence for Imam Subekhi is the loss of the legal right to claim the Etawaku trademark, despite being the first user. In this case, the law does not accommodate the rights of early users who do not register their trademark, placing Imam Subekhi at a disadvantage. If the trademark is not registered with the DJKI, the consequence is that the trademark owner cannot obtain rights to the trademark, and the trademark is not protected under the legal framework of the state. To protect his rights, Imam Subekhi can file a lawsuit for the cancellation of the trademark based on first use, which has been in effect for a long time and in good faith. If the lawsuit is accepted, the trademark certificate held by Mukit Hedayatno could be revoked, and the exclusive rights to the trademark would be transferred or recognized as belonging to Imam Subekhi, the interested party.

The legislation limits the time for filing a lawsuit to cancel a trademark registration to 5 (five) years from the registration date. However, there are exceptions for cases involving bad faith, such as fraud, imitation, or the use of a trademark that contradicts public interest. Trademark owners acting in bad faith are those who intentionally exploit weaknesses in the trademark registration system to gain unlawful advantages. Bad faith in the context of trademarks as a malicious intent to copy another party's trademark by violating applicable regulations, which should uphold the principle of fairness in business competition, as stipulated in Article 4 of the Law, which states that a trademark cannot be registered based on an application filed by an applicant acting in bad faith.

In a trademark cancellation lawsuit based on Article 21 of the Trademark Law, proving the bad faith of the trademark owner is a crucial element for Imam Subekhi, in this case, the owner of the registered Etawaku goat milk trademark, Mukit Hedayatno. Additionally, the lawsuit will focus on proving who the original owner of the Etawaku goat milk trademark is. Evidence of trademark use can be provided through various forms, such as distributed products, services rendered, promotional materials, labels, packaging, advertisements, or business documentation, showing that the trademark has been applied to goods or services marketed in the marketplace (intent to use). The first user of a trademark may obtain legal protection based on the principle of use in commerce.

Trademark cancellation is a legal action that results in the removal of the trademark owner's right to exclusively use and protect the trademark from unauthorized use. As a result, a canceled trademark is no longer under the legal protection of the State. This step allows for the cancellation of a trademark registration obtained in bad faith. Additionally, this provision serves as legal protection for the rightful trademark owner who has not yet registered their trademark, against actions by others who intentionally register the same trademark with the aim of gaining unlawful benefits. The procedure for a trademark cancellation lawsuit is regulated in Article 76 of the Trademark Law.

The trademark cancellation process is regulated by the Trademark Law. When a trademark must be canceled, the Directorate General of Intellectual Property (DJKI) will remove the trademark's data from the official trademark registry. This cancellation decision is based on a court ruling that has become legally binding. After that, DJKI will notify the trademark owner in writing that their trademark has been canceled, along with the reasons for the cancellation. Therefore, from the date of removal from the official trademark registry, the legal protection for that trademark automatically ends, and it can be used by others.

B. The Legal Consequences for Third Parties

The application of the first-to-file principle in the trademark registration system has legal consequences that not only affect the trademark owner but also third parties. This principle grants exclusive rights to the party who first registers the trademark, regardless of who was the first to use it. As a result, third parties who have used a similar trademark without registering it may lose their right to use the trademark. This situation often triggers legal conflicts, especially if the third party feels harmed by losing access to a trademark they have been using.

The legal consequences of applying the first-to-file principle also affect third parties, namely consumers and business partners associated with the Etawaku goat milk product. For consumers, the legal impact is the potential confusion regarding the authenticity or quality of the product, especially if similar products with the same or similar trademarks are circulating in the market. Consumers who have known the Etawaku brand from Imam Subekhi from the beginning may feel disadvantaged if the product with that trademark is later produced or distributed by another party, namely Mukit Hendrayatno. Furthermore, consumers who have known Etawaku as Imam Subekhi's product may lose trust in the quality and origin of the product if ownership changes or if Mukit Hendrayatno launches a product with different standards. This uncertainty can harm customer loyalty and the overall reputation of the brand. In this context, third parties also have the right to seek legal clarification regarding the trademark status if the dispute affects their contracts or interests.

The legal consequences for business partners relying on the use of an unregistered trademark may hinder their operations, as they do not receive legal protection for the trademark. This creates uncertainty and risks in business relationships, as business partners collaborating with Imam Subekhi risk facing legal implications if their products are considered to infringe on the exclusive rights of the trademark owned by Mukit Hendrayatno. They may also face legal action from the registered rights holder in accordance with the provisions of the Trademark Law, which governs the protection of trademark rights and sanctions for violations of those exclusive rights. This highlights the importance of trademark registration as a legal protection step, which is not only crucial for the trademark owner but also for consumers and business partners.

CONCLUSION

The principle of first to file in trademark registration provides legal certainty to Mukit Hedrayatno as the legitimate owner of the Etawaku goat milk trademark. Mukit Hedrayatno, who was the first to register the trademark with DJKI and completed all the formal and substantive procedures, is entitled to legal protection as the exclusive owner. Legal certainty in this case can be analyzed based on four aspects according to Barda Nawawi Arief. First, the law is positive, meaning it is based on the rules outlined in the law, specifically the Trademark Law, which forms the legal basis for Mukit Hedrayatno's registration. Second, the law must have factual grounds, where in this case, Imam Subekhi has been using the Etawaku trademark since 2012 and holds the legal business licenses, halal certification, and distribution permits, although he did not register the trademark. Third, the facts in this dispute must be clear, so Imam Subekhi must prove the commercial use of the Etawaku trademark before Mukit Hedrayatno's registration. Fourth, the law should not be changed arbitrarily, so consistency in trademark protection must be maintained to avoid uncertainty for trademark owners. Therefore, the registration by Mukit Hedrayatno provides a strong legal basis, despite the prior usage claim by another party.

The application of the first to file principle in the registration of the Etawaku goat milk trademark has legal consequences. The legal consequence for the parties in dispute, Imam Subekhi and Mukit Hedrayatno, is the loss of Imam Subekhi's legal rights over the Etawaku trademark, even though he was the first user. This leads to the potential for trademark cancellation through a lawsuit aimed at protecting the harmed party, although proving bad faith becomes a key element in the dispute. The legal consequences for third parties, such as consumers and business partners, are also significant. For consumers, the legal consequence is the potential confusion regarding the authenticity and quality of the product if the ownership of the well-known trademark changes. Brand loyalty and reputation can be affected in this case. As for business partners, the legal consequence is the potential impact on contracts, agreements, or collaborations made under the name of the trademark, which may be rendered null and void if the trademark cancellation lawsuit is upheld.

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