



Cavities in Law Regarding Consumer Protection Due to Non-Similar Trademark Similarities

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KEYWORDS

consumer protection, legal gaps, non-similar trademark similarities

ABSTRACT

Consumer protection is an important aspect of intellectual property law, particularly in the context of non-similar trademark similarities. This study aims to identify legal gaps that arise due to the lack of clear regulations concerning trademarks that are not of the same type. In this research, the research method used is the statutory approach, also known as normative legal research. In the first subsection, various forms of legal gaps are outlined, including difficulties in determining the level of similarity between trademarks in different categories and the impact this has on consumers' rights to receive quality products. This study also discusses the consequences arising from these legal gaps, such as confusion among consumers and the potential for deception by irresponsible business actors. Additionally, the study suggests remedial measures, including the need for regulatory revisions and strengthening law enforcement, to ensure more effective protection for consumers. It is hoped that the results of this research can contribute to the development of better legal policies for consumer and trademark protection in Indonesia.

INTRODUCTION

Indonesia, as a rule of law country, is based on the principle that state power must be exercised in accordance with just laws and the principles of justice. The rule of law is an ideal goal for every country, including Indonesia, as mandated in Article 1 paragraph (3) of the 1945 Constitution, which states that "The State of Indonesia is a Law State." In its capacity as a law state, the principle of the supremacy of law or Rule of Law must be consistently upheld so that law can function as a controller, supervisor, and limiter of state power. Law must act as an instrument for regulating and controlling state authority (Pieris & Widiarty, 2017).

In the process of law enforcement, it is important to understand that the law is coercive in nature; it serves as an instrument to regulate societal life and provides a means to resolve various issues that arise. The presence of the law is expected to provide justice before the law without any discrimination (Arifin & Iqbal, 2020). If the interests of the public are harmed, according to Article 1365 of the Civil Code, an individual who causes harm to another party is obliged to provide compensation to the harmed party. Compliance with consumer protection related to trademarks includes the right of every citizen to obtain legal protection. The state has the obligation to provide this legal protection, which is intended as protection granted to legal subjects through legal mechanisms, both preventive and repressive, and it can take the form of both oral and written provisions (Subekti & Tjitrosudibio, 2023).

The rapid development in various aspects of life today is marked by an increase in the transparency of information technology, allowing events or discoveries in one area to be easily known and disseminated to other parts of the world. Protection of Intellectual Property Rights

(IPR) should be a shared concern and interest to create a conducive climate. Intellectual Property Rights, often abbreviated as "IPR," are rights that arise from human thought resulting in products or processes that are beneficial for life. In general, the objects protected under IPR include works produced by human intellectual capabilities, one of which is Trademarks. It is important to note that a trademark can become a highly valuable asset commercially. In fact, a company's brand is often more valuable than the company's tangible assets (Lindsey et al., 2022).

Intellectual Property Rights (IPR) are assets that arise from human intellectual creations, whether in the form of science, technology, art, literature, or other forms produced through intellectual abilities. The objects of IPR include the works that emerge from human creativity, which acquire value and ownership only after being manifested in a concrete form that can be seen, heard, read, or practically utilized. IPR grants exclusive rights from the state to the individuals who hold these rights, such as inventors, creators, and designers, as a form of recognition for their creativity. This right aims to encourage others to continue innovating and further developing intellectual works in the future (Banindro, 2015).

Trademarks play an essential role in trade and industry, as they are able to significantly influence, among other things, the differentiation between similar products. A trademark serves as an indicator of the quality of a good or service and becomes a reference for consumers when choosing products to purchase (Wijaya, 2020). In Indonesia, regulations regarding trademarks are also established to prevent unhealthy business competition. With the presence of a trademark, the authenticity of a product can be distinguished, which often leads to the phenomenon where the high price of a product is not solely based on the item itself, but also on the influence of its brand. Therefore, it can be concluded that trademarks hold an important role and significant value for a product. This perception makes trademarks regarded by business actors as elements that can generate greater profits compared to other brands (SILVIYA, 2016).

The allocation of trademarks to a product or service also serves to prevent unhealthy business competition, as trademarks can distinguish the origin, quality, and authenticity of products. The price of a product is often high not solely due to the quality of the item, but because of the value associated with the brand. This indicates that trademarks possess rights that are immaterial in nature. Essentially, business competition is a positive phenomenon, as it can encourage producers to enhance quality and increase production for competitive advantage, ultimately benefiting consumers, society, and the nation's economy (Shaleh & Trisnabilah, 2020). However, there are many businesses that engage in unhealthy competition, such as imitating well-known brands by creating nearly identical trademarks. Such actions harm consumers and owners of famous brands, as they can lead to confusion when choosing products and trigger business practices that may violate the law. These unlawful acts not only contradict legal provisions but also violate norms of decency, morality, and other social norms in trade, which can lead to unhealthy practices or unfair competition. Therefore, strong protection of trademark rights is necessary, both nationally and internationally, to safeguard registered and well-known brands, as well as to promote healthy and competitive business competition. Legal protection for trademarks has been established with the enactment of Law No. 20 of 2016 on Trademarks (Jened, 2015).

The implications of legal protection for trademarks can be seen in Supreme Court Decision Number 29 PK/Pdt.Sus-HKI/2016. The Petitioner for Review (who is also the Respondent in the Cassation) is a well-known car manufacturer, Bayerische Motoren Werke (BMW), hereinafter referred to as the Plaintiff. BMW is one of the leading global companies, ranked among the top 100 in the Fortune Global 500 list. The BMW brand ranks 12th among the 100 Best Global Brands according to the ranking published by Interbrand. BMW cars are often featured in various Hollywood movies, including the popular action film Mission

Impossible 4 starring Tom Cruise. BMW has a long history in the automotive industry, starting with motorcycle production in 1917, followed by car production in 1928. The trademark "BMW" was first registered in Germany in 1929 and remained effective until February 28, 2019, well before the Defendant submitted their trademark registration. Currently, BMW has registered the trademark in more than 150 countries, including Indonesia, for various products including vehicles, fashion, and sports (Widiarti, 2019).

The Plaintiff also holds rights to the BMW logo, which consists of a circular design with two quarter-circle sections in white, symbolizing spinning propellers set against a sky-blue background. In 2013, the Plaintiff filed a lawsuit against Henrywo Yuwijono, hereinafter referred to as the Defendant, in the Commercial Court at the Central Jakarta District Court to cancel the Defendant's trademark "BMW Body Man Wear." The Defendant registered the trademark "BMW Body Man Wear" on May 3, 2002, and obtained registration number IDM000016513 on September 17, 2004, in Class 25 for fashion goods (Hery Firmansyah, 2013). On October 20, 2008, the Defendant also registered a logo for that trademark and obtained registration number IDM000181631. The cancellation of the lawsuit was based on Article 68 of Law Number 15 of 2001 concerning Trademarks, stating that a cancellation lawsuit can be filed by a party with a legitimate interest. This cancellation was grounded in Article 4, which states that the Defendant applied for registration of trademarks in bad faith. Article 6 paragraph (1) letter b states that the Defendant's trademarks are fundamentally and/or entirely similar to the well-known trademarks "BMW" and "BMW LOGO" owned by the Plaintiff for similar goods (Putra, 2014).

Based on the evidence and reasons presented by the Plaintiff, the Panel of Judges stated that the BMW trademark owned by the Plaintiff is proven to be a globally recognized trademark. On the other hand, the trademark registered by the Defendant was deemed to exhibit bad faith in registering the "Body Man Wear" trademark as it was considered to exploit the fame of the German BMW brand that is widely known. The Panel of Judges then ordered the Co-Defendant, the Directorate General of Intellectual Property, to cancel the Defendant's BMW trademark, as stated in the Commercial Court Decision at the Central Jakarta District Court Number 50/Pdt.Sus/Merek/2013/PN Niaga Jkt. Pst. In response to the ruling, the Defendant submitted a cassation to the Supreme Court on the grounds that the cancellation request submitted by the Plaintiff had expired, as it exceeded the five-year period since the protection of the Defendant's BMW trademark began in 2002 and 2005, while the cancellation lawsuit was only filed in 2013. This refers to the provisions of Article 69 paragraph (1) of Law Number 15 of 2001 concerning Trademarks. The Supreme Court then granted the cassation and annulled the Central Jakarta District Court's Commercial Court Decision Number 50/Pdt.Sus/Merek/2013/PN Niaga Jkt. Pst through Supreme Court Decision Number 79 K/Pdt.Sus-HKI/2014 on October 27, 2014.

The Plaintiff was dissatisfied with the cassation ruling and filed a final legal remedy in the form of a Review (PK) to the Supreme Court. However, this attempt was also unsuccessful. The Supreme Court merely changed the ruling from "rejected" to "not accepted" through Decision Number 29 PK/Pdt.Sus-HKI/2016. In its consideration, the Panel of Judges argued that the trademark cancellation lawsuit was not accepted because the disputed goods did not fall within the same category (Alrit et al., 2021). The Supreme Court also emphasized that there is currently no Government Regulation that further regulates Article 6 paragraph 2 of Law Number 15 of 2001 concerning Trademarks. Based on the plenary session of the civil chamber as outlined in the Supreme Court Circular Number 03/BUA.6/H.S/SP/XII/2015, it was agreed that cancellation lawsuits for trademarks that are fundamentally similar but for dissimilar goods must be declared not accepted, and previous Supreme Court decisions regarding the same trademark for dissimilar goods no longer serve as guidelines. The decision reads as follows:

1. Granting the petition for review from the Petitioner, Bayerische Motoren Werke Aktiengesellschaft (BMW).
2. Annuling Supreme Court Decision Number 79 K/Pdt.Sus-HKI/2014 dated October 27, 2014, as well as the Commercial Court Decision at the Central Jakarta District Court Number 50/Pdt.Sus/Merek/2013/PN Niaga Jkt. Pst dated December 10, 2013.
3. Declaring that the lawsuit filed by the Plaintiff is inadmissible.
4. Ordering the Respondent in the Review to pay the court costs at all levels of the judiciary, including the costs for the review examination, amounting to Rp10,000,000.00 (ten million rupiah).

The decision that has been presented reveals a legal gap that has not been addressed, specifically regarding the regulation of cases involving similar trademarks that are not of the same type. Based on the aforementioned decision, which relies on Law Number 15 of 2001 that is no longer in effect, the analysis of the legal gap concerning similar trademarks with dissimilar goods will utilize Article 21 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which explains that... Therefore, in this research, the author will discuss the legal gap surrounding similar trademarks with dissimilar goods as well as the consequences and efforts to rectify the existing legal gap in the regulation of similar trademarks that are not of the same type.

Previous studies have highlighted the challenges in protecting well-known trademarks, particularly in cases involving similarities between trademarks for non-similar goods. For instance, Jened (2015) discussed the limitations of existing trademark laws in addressing unfair competition and consumer confusion caused by imitative branding. Similarly, Shaleh and Trisnabilah (2020) emphasized the need for more robust legal frameworks to distinguish between similar trademarks in different categories. However, these studies often focus on the general principles of trademark protection, leaving a significant gap in the specific regulations needed to address non-similar trademark similarities.

With globalization and the rapid expansion of international trade, the need for clear and enforceable trademark protection has become more critical than ever. Legal gaps in addressing non-similar trademark similarities not only undermine consumer trust but also enable unscrupulous business practices. These issues highlight the urgency of revising and strengthening legal frameworks to protect intellectual property effectively, ensure fair competition, and safeguard consumer rights.

While prior research has explored the general challenges of trademark infringement and legal protections, limited attention has been paid to the specific issue of non-similar trademarks causing consumer confusion. Existing studies rarely delve into the practical implications of these legal gaps, such as inconsistent judicial decisions and inadequate enforcement mechanisms, leaving a need for more focused analysis and policy recommendations.

This study uniquely examines the issue of non-similar trademark similarities through the lens of consumer protection and legal enforcement. It goes beyond theoretical discussions to provide an empirical analysis of the legal voids in existing trademark regulations, offering specific recommendations for addressing these challenges. By focusing on the intersection of intellectual property law and consumer rights, the study contributes a fresh perspective to the ongoing discourse on trademark protection.

The objective of this research is to identify and analyze the legal gaps related to non-similar trademark similarities, assess their impact on consumer protection and market fairness, and propose regulatory and enforcement measures to address these issues effectively.

The study provides valuable insights for policymakers, legal practitioners, and trademark owners, offering practical solutions to enhance the legal protection of trademarks and prevent consumer confusion. For businesses, it emphasizes the importance of maintaining ethical

branding practices, while for consumers, it underscores their right to receive accurate and trustworthy information about the products they choose.

Strengthening regulations on non-similar trademark similarities will have far-reaching implications, including fostering a more transparent and competitive marketplace, enhancing consumer trust, and promoting innovation among businesses. Clearer legal standards will also improve the consistency of judicial decisions, reduce the risk of exploitation by unethical actors, and contribute to the overall integrity of intellectual property protection in Indonesia.

RESEARCH METHOD

In this research, the research method used is the statutory approach, also known as normative legal research. This involves a process of discovering legal rules, legal principles, and legal doctrines to address legal issues related to the legal gap concerning similar trademarks with dissimilar goods. The research will also discuss the consequences and efforts to rectify the existing legal gap in the regulation of similar trademarks that are not of the same type (Mahmud Marzuki, 2018). The case approach involves analyzing and examining cases to serve as a guide for legal issues. Additionally, the conceptual approach is based on the views and doctrinal patterns or the thoughts of experts that have developed within the field of law. Through various approaches and legal research presented, this study will address the legal gap concerning similar trademarks with dissimilar goods, as well as discuss the consequences and efforts to rectify the existing legal gap in the regulation of similar trademarks that are not of the same type.

RESULTS AND DISCUSSION

Legal Gaps in Similar Trademarks with Dissimilar Goods

Legal protection for intellectual works in the era of globalization has become increasingly important, given the rapid technological advancements that allow for the creation of various intellectual works. Intellectual Property Rights (IPR) violations can manifest as piracy, counterfeiting in the context of copyright and trademarks, as well as patent infringements. Each of these violations clearly results in significant losses for economic actors. Protection of Intellectual Property Rights (IPR) is a crucial concern in many countries, reflected in the establishment of various international conventions. One of the key agreements in this field is the TRIPs Agreement (Trade-Related Aspects of Intellectual Property Rights Including Trade in Counterfeit Goods). The TRIPs Agreement encompasses various categories of protected intellectual works, including: (Sutedi, 2009)

1. Copyrights and Related Rights;
2. Patents;
3. Trademarks;
4. Geographical Indications;
5. Industrial Designs;
6. Protection of Undisclosed Information;
7. Layout Designs of Integrated Circuits;
8. Control of Anti-Competitive Practices in Contractual Licenses.

Indonesia's participation as a member of the World Trade Organization (WTO) and the obligations arising from the TRIPs Agreement have consequences that require Indonesia to align its domestic laws in the field of Intellectual Property Rights (IPR) with the minimum standards set forth in TRIPs. The protection of IPR has become even more important since the agreement reached in the General Agreement on Tariffs and Trade (GATT), which was agreed upon in April 1994 during the Marrakech Conference to be transformed into a global trading system under the WTO. Indonesia's membership in the WTO was ratified through Law Number 7 of 1994 regarding the Ratification of the Agreement Establishing the World Trade Organization. Through this ratification, the Government of Indonesia established several

regulations in the field of Intellectual Property Rights, including Law Number 20 of 2016 concerning the Fifth Amendment to Law Number 15 of 2001 concerning Trademarks, Law Number 13 of 2016 concerning Patents, and Law Number 19 of 2002 concerning Copyright.

According to Article 1 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, a trademark is a sign that can be presented graphically in the form of images, logos, names, words, letters, numbers, color combinations, in two-dimensional and/or three-dimensional forms, sounds, holograms, or a combination of two or more elements to distinguish goods and/or services produced by individuals or legal entities in the trade of goods and/or services. A Trademark is a mark used on goods sold by individuals, groups, or legal entities to distinguish them from other similar goods. Meanwhile, a Service Mark is a mark applied to services sold by individuals, groups, or legal entities to differentiate those services from other similar services. A Collective Mark, on the other hand, is a mark applied to goods and/or services with similar characteristics sold by several individuals or legal entities collectively, to distinguish them from other similar goods and/or services. According to Article 1 paragraph (5) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, Trademark Rights are exclusive rights granted by the state to the owners of registered trademarks for a certain period, which grants the owner the right to use the trademark themselves or to permit others to use it. Based on this definition, trademark rights are obtained through a registration process, not from the first use. The system used is a constitutive system, which supports legal certainty. Therefore, these rights are exclusive, and other parties are not permitted to use the same trademark. By registering, the trademark will receive legal protection for individuals or businesses that register it.

The main function of a trademark is to enable consumers to recognize the distinctive features of products (both goods and services) owned by a certain company, thereby distinguishing them from similar or competing products. Consumers who are satisfied with a particular product are likely to purchase or use that product again in the future. To achieve this, it is important for users to easily distinguish between genuine products and other identical or similar products. According to the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia, in collaboration with the Japan International Cooperation Agency (2007), the use of trademarks has several functions, which are as follows:

1. As an identity to distinguish the products produced by certain individuals, groups, or legal entities from the products of others;
2. As a means of promotion, where a product can be promoted simply by mentioning its brand;
3. As a guarantee of the quality of the products offered;
4. As an indication of the origin of the goods or services produced.

Thus, the main function of a trademark is to enable consumers to recognize the distinctive characteristics of a product (whether goods or services) owned by a company, allowing it to be differentiated from similar or competing products. Consumers who are satisfied with a particular product are likely to purchase or use that product again in the future. To achieve this, users must be able to easily distinguish between genuine products and other identical or similar products. In order to enable companies to differentiate themselves and their products from competitors, trademarks play an important role in the company's image and marketing strategy, while also contributing to the brand and reputation of the product in the eyes of consumers. Consumers often consider emotional factors related to a specific brand, which are based on a range of qualities or features found in that branded product. A trademark can also add value to a company in its efforts to invest in maintaining and improving the quality of its products. This is done to ensure that the product's brand has a good reputation. The level of popularity or brand recognition can be classified into three categories:

1. A normal mark (ordinary mark) is a trademark that does not have a high reputation or strong

symbolic influence in lifestyle, either in terms of usage or technology. Consumers generally perceive its quality as lower, less efficient, and less appealing in design. The choice to purchase products with this brand usually comes last, even though its price is relatively low compared to similar products.

2. A well-known mark has a high reputation and is the preferred choice for consumers across various demographics. This brand has strong appeal and image, creating emotional closeness (familiar attachment) and symbolic bonds (mythical context) that make it favored by all consumer layers.
3. At the highest level, there exist famous marks, which are internationally recognized and classified as the "aristocrat brands of the world." These brands have an outstanding reputation that surpasses well-known marks, thus they are also referred to as "highly renowned" or "superlative" among well-known marks.

Marks that cannot be used or registered include several categories, namely those that conflict with morality and public order. Signs that violate morals and public order are not acceptable as marks. Such marks must not contain paintings, images, or words that conflict with good moral standards and public order. Illustrations that do not meet these norms or words that are considered inappropriate may offend feelings, decorum, tranquility, or religious aspects, both for the general public and certain community groups. Signs that lack distinctiveness or are deemed weak in terms of differentiation cannot be considered marks. Generic signs, which are widely recognized and used in the community, can no longer function as identifiers for specific individuals. Misleading descriptions, marks that contain elements that could mislead the public about the origin, quality, type, size, or intended use of goods or services, are not acceptable. Marks that contain information inconsistent with the quality or benefits of the produced goods and services also cannot be registered. Protected plant variety names cannot be registered as marks for similar goods or services. The rejection of trademark registration applications that use protected plant variety names is because the name is related to the goods and services for which registration is being sought. Thus, plant variety names are considered generic or descriptive terms for certain goods and services, lacking the ability to distinguish one product from another.

Regarding the Supreme Court ruling No. 29 PK/Pdt.Sus-HKI/2016, in deciding the case, the judge's considerations referenced Article 4 of Law No. 15 of 2001, which defines a good faith applicant as one who registers their mark in a proper and honest manner, without intending to ride on, imitate, or plagiarize the fame of another party's mark. The applicant must not create unhealthy business competition or deceive and mislead consumers. For example, if there is a trademark X that has been widely recognized by the public for years and is then imitated to the extent that it has substantial or overall similarities to trademark X, this reflects the bad faith of the imitator. In this situation, there is an element of intent that is evident in the imitation of the well-known trademark.

In this case, there is clear bad faith by the defendant to exploit the fame of the plaintiff's BMW mark. This can be evidenced by the name, pronunciation, and logo design of the defendant's BMW mark, which bear substantial similarities to the plaintiff's BMW mark. Thus, there is an impression of a connection between the plaintiff's BMW mark and the defendant's mark, which could mislead consumers. The absence of government regulations (PP) governing substantial or overall similarities with well-known marks for non-similar goods and/or services during the pending trial created legal uncertainty for the holders of well-known marks. Moreover, due to the absence of regulations at that time, the judge was inconsistent in deciding cases related to marks.

The issue of legal void regarding more specific regulations in government regulations (PP) about substantial similarities or overall well-known marks of non-similar goods has not been addressed in Law No. 15 of 2001 on Marks. This impacts the Supreme Court ruling No.

29 PK/Pdt.Sus-HKI/2016, which has final legal force with a ruling stating the case is inadmissible. Regarding this ruling, there are no legal consequences on the ownership status of the object of the case, meaning the plaintiff cannot cancel the defendant's BMW mark. Therefore, the defendant is still allowed to use the mark. As a consequence, the disputed object does not change status, and the legal positions of the parties remain the same as before the trademark dispute occurred.

The impact of the legal void regarding the similarity of non-similar goods marks on consumers is the emergence of consumer confusion, which is a common negative effect arising from products or services bearing marks that closely resemble those of already famous brands. When consumers are faced with various marks that appear similar, they may struggle to distinguish genuine products from counterfeits. This situation not only confuses but may also lead to uncertainty in purchasing decisions. When consumers cannot clearly recognize the products they choose, this can lead to frustration and confusion that ultimately harms their experience as buyers.

This confusion often results in a decline in consumer trust in existing brands in the market. If consumers feel uncertain about the authenticity of a product, they may begin to question the quality and reputation of that brand. In a world where brand reputation is crucial for success, this loss of trust can have serious long-term consequences. Consumers who were previously loyal to a particular brand may switch to other products or choose not to purchase at all if they feel they cannot distinguish between high-quality and low-quality products. Consumer confusion not only affects individual purchasing decisions but can also undermine the brand ecosystem as a whole. When a well-known brand loses recognition in the market due to the existence of similar counterfeit brands, this can negatively impact the brand's image and customer loyalty. Consumers may start to assess brand quality more skeptically, leading to poor business decisions for legitimate brand owners. They may have to invest more in marketing campaigns to regain trust and rebuild their brand image.

Consequences and Efforts to Address the Legal Gaps in Regulations Regarding Similar Non-Similar Trademarks

Legal uncertainty regarding the protection of well-known trademarks refers to situations where trademark owners lack assurance that their rights will be consistently recognized and protected by the law. This often occurs when existing regulations do not clearly address the issue of trademark similarity, especially in the context of non-similar trademarks. This uncertainty can lead to hesitation for trademark owners in taking legal action to protect their trademarks from infringement or unauthorized use. Well-known trademark owners often invest heavily in creating and maintaining their brand image in the market. However, when there are legal gaps, they may feel reluctant to enforce their rights due to the uncertainty about how the law will handle cases of infringement involving similar trademarks. For example, if a new trademark emerges in the market with a logo or name that is nearly identical, the well-known trademark owner may be unsure if they have the right to sue, especially if the products fall into different categories. This uncertainty can result in inaction, which, in turn, could lead to financial and reputational losses.

This legal uncertainty can also be exploited by irresponsible business actors. They might intentionally create brands similar to well-known trademarks to attract consumers, hoping to gain profits from the fame of those brands without clear legal consequences. This creates conditions of unhealthy competition and undermines consumer trust in existing brands. As a result, consumers may feel confused and struggle to differentiate between genuine and counterfeit products, potentially diminishing their loyalty to already known brands. Thus, the legal uncertainty in the protection of well-known trademarks not only impacts the trademark owners but also affects market dynamics as a whole. To address this issue, it is essential to promptly revise existing regulations and provide greater clarity about the rights of trademark

owners. With appropriate measures, it is expected that a more stable and secure legal environment will be created for trademark owners, enabling them to enforce their rights without doubt.

Unhealthy competition is a common phenomenon in the context of trademark protection, especially when legal gaps allow business actors to create brands similar to well-known trademarks. When regulations regarding trademarks are not sufficiently strict or clear, irresponsible individuals or companies can exploit this situation for their own gain. They may design brands that are almost identical to well-known brands, aiming to attract consumer attention and achieve financial profit without making the same investment in product quality or reputation.

Such practices can lead to consumer confusion. When a new brand resembling a well-known trademark appears in the market, consumers might unknowingly choose counterfeit products, which often offer inferior quality. This not only harms consumers in terms of product quality but also erodes their trust in the brands they have known and trusted. In the long run, these negative impacts can affect consumer behavior and tarnish the brand image that has been painstakingly built by original trademark owners. The practice of creating similar brands can financially harm original trademark owners. Those who have invested in building their brand and reputation risk losing market share when consumers switch to similar counterfeit products. These losses are not only financial but can also damage the long-term relationship between trademark owners and their consumers. Legitimate trademark owners may face high legal costs to enforce their rights, while they also need to spend additional funds on marketing campaigns to clarify the differences between their products and those that imitate them.

The challenges in enforcing trademark law regarding infringements is a significant issue faced by trademark owners in Indonesia. Trademark infringement cases often result in lengthy and complex legal processes, which not only drain resources but also create uncertainty for the involved parties. Litigation processes can take years, and during this period, infringements of registered trademark rights can continue. This situation worsens problems for legitimate trademark owners, who must face the reality that although they possess clear legal rights, they may not be able to enforce them quickly and effectively.

One factor exacerbating these challenges is the presence of regulatory gaps governing trademark infringement, particularly concerning non-similar trademarks. Ambiguity in regulations can lead to confusion among law enforcement officials, judges, and other related parties about how to handle these infringement cases. In some instances, the lack of clear guidelines on how to assess the similarity between different trademarks can result in inconsistent decisions in court. This not only creates legal uncertainty for trademark owners but also allows unscrupulous business actors to exploit these gaps.

The lengthy and uncertain legal process can also serve as a barrier for trademark owners in continuing their businesses. Many trademark owners, particularly small and medium enterprises, may feel that the costs and time required to pursue justice do not outweigh the potential benefits. This may lead them to opt not to take legal action at all, ultimately harming themselves and allowing infringers to operate without consequences. In this context, it is important for the government to strengthen the existing legal and regulatory systems, enabling trademark owners to enforce their rights more efficiently and effectively.

The issuance of Government Regulations (PP) that clearly govern substantial or overall similarities with well-known marks for non-similar goods and/or services is crucial within the context of intellectual property rights protection in Indonesia. With clear regulations, well-known trademark owners will have a strong legal basis to protect their trademarks from infringement. These regulations will not only provide legal certainty but also create clarity in trademark rights enforcement, which has long been one of the major challenges for trademark owners in a competitive market. One of the main advantages of this PP is the establishment of

clear standards regarding what is meant by "substantial similarity" between different trademarks. With precise definitions, it will be easier for law enforcement officials to assess cases of trademark infringement. This will reduce the confusion that often occurs in court and among legal practitioners, as well as provide consistency in the decisions made by judges. When all parties have a shared understanding of the boundaries and criteria for trademark assessment, the litigation process will be more efficient and fair for all involved.

Clear government regulations can also serve as a deterrent for irresponsible business actors. With strict regulations in place, there will be greater awareness among business actors about the legal risks they may face should they try to imitate well-known trademarks. This will help maintain market integrity and reduce unhealthy competitive practices. When business actors understand that there are real consequences for their actions, they will be more likely to respect the intellectual property rights of others. Good regulation in the PP can enhance consumer trust in established brands. When consumers know that there is strong legal protection for well-known trademarks, they will feel safer making purchases. This trust is crucial in maintaining consumer loyalty and encouraging market growth. In other words, clear regulations not only protect trademark owners but also contribute to a broader economic health by promoting innovation, product quality, and healthy competition in the market. Therefore, it is important for the government to promptly issue this PP so that the trademark protection ecosystem in Indonesia can function effectively.

Reforming Law No. 20 of 2016 on Trademarks and Geographical Indications is an important step to enhance the protection of well-known trademarks in Indonesia. One aspect that needs attention in this revision is the addition of more detailed provisions regarding the protection of well-known trademarks, especially in the context of non-similar trademarks. Currently, legal gaps still exist that can be exploited by irresponsible business actors, rendering protection for well-known trademark owners suboptimal.

By clarifying the definitions and criteria for non-similar trademarks, this revision will aid in accurately identifying and assessing trademark infringement cases. For example, determining clear criteria regarding how similar two trademarks are in terms of visual elements, fonts, and pronunciation will facilitate law enforcement officials and judges in making fair decisions. When these criteria are enshrined in the law, there will be clear guidance for all parties to understand the existing boundaries, thereby reducing the confusion that has previously occurred in law enforcement.

This law reform will provide a stronger legal basis for well-known trademark owners to assert their rights. In many cases, the ambiguity regarding what constitutes trademark infringement leaves owners feeling powerless to take action. With clearer provisions, trademark owners will feel more confident in protecting their rights, whether through negotiation or litigation. This will not only strengthen their legal position but also encourage business actors to respect the intellectual property rights of others. The reform of the Trademark Law can also contribute to increased investment in the business sector. When a clearer and supportive legal environment is established, investors will be more confident in investing in established and growing brands. This will foster innovation and healthy competition, thereby enhancing the quality of products and services in the market. Consequently, improvements in this law will not only benefit trademark owners but also provide broader benefits for the national economy.

CONCLUSION

Legal protection for Intellectual Property Rights (IPR) is crucial in facing the challenges brought about by globalization and rapid technological advancements. Infringements of IPR, which often manifest as piracy, counterfeiting, and patent violations, can result in significant losses for economic actors. Therefore, it is important to strengthen regulations and policies that protect intellectual works, particularly in the context of well-known trademarks. The TRIPS Agreement serves as an important foundation for member countries, including Indonesia, to align domestic laws with international IPR protection standards. In this context, the existence of Government Regulation (PP) that specifically governs the substantial similarity of well-known trademarks, especially for non-similar goods and services, becomes urgent. Without clear regulations, legal uncertainty arises, which can lead to inconsistent legal decisions and reduce protection for well-known trademark owners. Consumer confusion due to similar branded products or services also highlights the need for better protection of well-known trademarks. This confusion not only harms consumer experience but can also diminish trust in established brands in the market. This uncertainty has the potential to damage brand reputation and customer loyalty, forcing trademark owners to invest more resources in efforts to restore their brand image.

Legal uncertainty in the protection of well-known trademarks can harm both trademark owners and consumers. Well-known trademark owners often face challenges in enforcing their rights, particularly against infringements from similar yet non-similar trademarks. Legal gaps and ambiguities in regulations lead to confusion among law enforcement officials, which can ultimately trigger unhealthy competitive practices. Reforming Law No. 20 of 2016 on Trademarks and Geographical Indications is essential to provide optimal protection for well-known trademarks. Adding more detailed and clear provisions regarding non-similar trademarks will aid in assessing infringement cases and provide a stronger legal basis for trademark owners to protect their rights. With the establishment of firm and consistent regulations, it is hoped that a more stable legal environment will be created, boosting consumer confidence and encouraging healthy market growth.

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