



Property Rights, Definition And Infringement Of Trademarks And Trade Secret Rights (Literature Review)

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INFO ARTIKEL

Abstract

Keywords:

Intellectual Property Rights (IPR) are an important aspect in the protection of intellectual works, including trademark rights and trade secrets

This article investigates the intellectual property rights, definition and infringement of trademarks as an integral trademark rights, and trade part of IPR. Trademark infringement involves the secrets. unauthorized use of an existing trademark, which can harm both the trademark owner and consumers. This research aims to analyze trademark violations and trade secret violations as well as sanctions according to legal decisions in Indonesia. This research uses qualitative methods and literature study. In the process, we evaluated various books, scientific articles and all sources of information that we obtained through searches on the Google search engine. The legal basis relating to Intellectual Property Rights is contained in Law Number 19/2002 which has been revised by Law No. 28/2014 concerning Copyright, which regulates copyright, creators, copyright protection and protected works. In law no. 15 of 2001 states that a brand is an exclusive right owned by the right holder to the brand. Sanctions for violation of trademark rights based on Law Number 20 of 2016 concerning Marks and Geographical Indications article 100 paragraphs 1 and 2. Provisions in Law no. 30 of 2000 concerning Trade Secrets (UURD) states that Trade Secret Rights are rights that arise from Trade Secrets

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Introduction

Intellectual Property Rights (IPR) are basically rights that arise as a product of human intellectual abilities in various fields, which produce processes or products that have value and benefits for society. IPR covers various aspects in the domains of technology, knowledge, art and literature. This right is not related to physical ownership, but rather involves the protection of human intellectual achievements and

expressions, such as concepts and ideas. IPR includes several things, including trademark rights and trade secrets.

Trademark rights are part of intellectual property rights, which allow individuals to use signs or brands to differentiate their trade products from the trade products of others. Although they do not involve elements of creativity or invention as in the general definition of intellectual property, trademark rights remain important in the modern business world. Meanwhile, the definition of a trade secret is information that is not known to the public in the field of technology and/or business, has economic value because it is useful in business activities, and is kept confidential by the owner. Trade secret protection covers various things such as production techniques, processing methods, sales strategies, or other information in the field of technology and business that has economic value and is not known to the public.

In trademark and trade secret rights, there are several violations that frequently occur, so it is necessary to provide legal protection to the holders of trademark and trade secret rights. Having legal protection for trademark and trade secret rights holders will encourage the emergence of new discoveries or innovations. The increasingly rapid free trade demands better product quality. Therefore, awareness of the important role of Intellectual Property Rights (IPR) in supporting the development of the business world, especially in the trade sector, aims to attract consumer attention and achieve the greatest possible profits. In an effort to achieve this goal, unfair competitive practices often occur between business actors which can trigger conflict. To prevent and overcome unfair competition, regulations are needed that bind business actors both in terms of prevention and law enforcement.

FORMULATION OF THE PROBLEM

In the background explanation above, there is a problem that can be formulated as follows:

1. Understanding related to Intellectual Property Rights (IPR)
2. The role of IPR is in accordance with applicable regulations
3. Understanding trademark rights and trade secrets
4. Protection of rights holders and sanctions for violations of trademark rights and trade secrets based on Indonesian law

LITERATURE REVIEW

Intellectual property rights

Intellectual Property Rights are exclusive rights granted by law or regulation to individuals or groups of individuals to protect their work. According to the law passed by the DPR-RI on March 21 1997, IPR are legally recognized rights relating to the results of inventions and creativity of individuals or groups related to the protection of commercial reputation and actions or services in a business context.

IPR regulates various types of works that emerge as a result of human intellectual abilities in various fields, including science, art, literature and technology. Intellectual Property includes two main categories, namely Copyright and Industrial Property Rights, which include patents, trademarks, industrial designs, layout designs, integrated circuits, confidential business information and plant varieties. In Intellectual Property Rights (IPR) everything related to the protection of works is

protected based on valid legal regulations. This is done to protect works owned by individuals to avoid what is called work plagiarism.

Trademark Rights

Trademark Rights are one aspect of Intellectual Property Rights (IPR) protection where the owner of a registered trademark is given the exclusive right to use the mark in the trade of goods or services in accordance with the registered category. For example, if a brand is registered for apparel, the brand owner has exclusive rights as the only individual permitted to use the brand for apparel products, but not for other types of goods or services (Setiadharm, 2016).

Trademarks are product identities created by sellers or manufacturers to differentiate their products from products owned by other business actors. This brand is useful for buyers or consumers to identify the product. This definition does not include trademarks that are no longer in use. A person has the right to sell his trademark, and when it has been sold to another party, the benefits and management will transfer to new owner (Wisnusudibjo, 2008).

Trade Secret

Trade secrets developed along with industrialization and a competitive and individualistic culture. In Western society, trade secrets are considered a personal right because they involve human intellect which requires thought, energy and high costs. Trade secrets are an important element in Intellectual Property Rights (IPR) in Indonesia, which have a big role in business progress. This is reflected in the government's serious commitment to dealing with this issue, as evidenced by the enactment of Law (UU) no. 30 of 2000 concerning Trade Secrets since 20 September 2000. This step was encouraged by the ratification of the WTO/TRIP agreement through Law no. 7 of 1994 and Law no. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Competition. This fact shows that the substance of the Trade Secrets Law in Indonesia is in line with the TRIP principles as part of the agreement within the WTO organization.

RESEARCH METHODS

This scientific article was prepared using a qualitative approach and literature study. In the process, we evaluate various books that are relevant to the theory discussed. Apart from that, we also analyzed scientific articles that have a good reputation, as well as scientific articles from journals that are not yet well known. We obtained all sources of information through searches on the Google search engine.

RESULT & DISCUSSION

Definition of Intellectual Property Rights

IPR is a right that arises as a result of someone's intellectual creation and can produce material benefits, which in turn contributes to the welfare of the owner (Marzuki, 1996). Intellectual Property Rights are rights created to protect the results of individuals' creative thoughts and/or expressions that produce products or processes that have benefits for humans. This also includes the right to obtain economic benefits from such intellectual creativity.

Functions of intellectual property rights

Providing legal protection that protects individuals or groups who have worked hard to create works with economic value contained therein.

1. As a preventive effort to avoid violations of intellectual property rights owned by other parties.
2. Increasing competition, especially in terms of economic exploitation of intellectual property. IPR, by encouraging creators to continue working and innovating, enables them to gain respect from society.
3. Used as a guide for planning strategies in research and in industry in Indonesia.

Principles of intellectual property rights

There are four main principles in Intellectual Property Rights (IPR), namely:

1. Ownership Principle: IPR gives the owner exclusive rights to control and utilize the results of his work. This includes the right to obtain economic benefits from the work.
2. Protection Principle: IPR aims to protect the results of creativity and innovation from unauthorized use or infringement by other parties. This includes legal protection against theft or unauthorized use of intellectual works.
3. Public Interest Principle: IPR should include a balance between the owner's exclusive rights and the public interest. This means that such exclusive rights should not hinder the general public's access to necessary knowledge and innovation.
4. Principles of Internationalization: IPR is also an important aspect of international law. This means that many international treaties regulate IPRs, ensuring that these rights are recognized and respected globally.

Types of intellectual property rights

Types of intellectual property are divided into two things, namely the first is copyright and the second is industrial property rights. Copyright is an aspect of Intellectual Property Rights (IPR) which gives creators or owners exclusive rights to the intellectual works they produce. It includes various types of works such as writing, music, drawings, fine arts, films, and computer software, as well as other forms of creative expression.

The second is industrial property rights, namely Industrial Property Rights (HKI) is a category within Intellectual Property Rights (HKI) which includes various legal rights relating to innovation, discovery and creation in the context of industry and business. IPR in industrial property involves exclusive rights granted to creators, inventors, and business owners to the results of their work, which includes things like patents, trademarks, industrial designs, and more. It is designed to encourage innovation, protect investment, and promote fair competition in the business environment. Some of the main components of IPR in industrial property include: patents, trademarks and trade secrets.

The role of intellectual property rights

Rights in the context of Intellectual Property Rights (IPR) are legal instruments that give the owner the exclusive right to protect and control his work or

innovation. The role of intellectual property rights is very important and covers various aspects:

1. **Protection:** Rights provide legal protection against unauthorized use or infringement of intellectual works. This allows the rights owner to prevent others from duplicating, distributing or using his work without permission.
2. **Innovation Incentives:** Rights provide incentives to individuals, companies, and researchers to continue to innovate and create new work. They know that they will get economic benefits and recognition for their efforts.
3. **Creativity Awards:** Rights give owners the right to recognition and appreciation for their creativity and innovation. This creates a psychological incentive to continue creating.
4. **Financing and Investment:** Intellectual Property Rights can be used as assets that can be sold or used as collateral to obtain financing or investment. This allows the rights owner to obtain additional funds to develop his work.
5. **Dispute Resolution:** Rights also provide a legal framework for resolving disputes that may arise related to copyrights, patents, or trademarks.

With the existence of Intellectual Property Rights, it encourages the development of innovation, transfer and dissemination of technology, and creates mutual benefits between creators and users of technological knowledge, which in turn contributes to social and economic prosperity. The legal basis for Intellectual Property Rights (IPR) in determining these rights is based on applicable regulations. Some of these legal bases include:

1. Ratification of the Agreement Establishing the World Trade Organization (WTO) as regulated in Law Number 7/1994.
2. Law Number 10/1995 concerning Customs which regulates aspects related to customs.
3. Law Number 12/1997 concerning Copyright which regulates copyright.
4. Law Number 14/1997 concerning Trademarks which regulates trademark rights.
5. Law Number 13/1997 concerning Patent Rights which regulates patent rights.
6. Ratification of the Paris Convention Establishing for the Protection of Industrial Property Organization as regulated in Presidential Decree No. 15/1997.
7. Ratification of the Trademark Law Treaty regulated in Presidential Decree No. 17/1997.
8. Ratification of the Berne Convention for the Protection of Literary and Artistic Works as regulated in Presidential Decree No. 18/1997.
9. Ratification of the World Intellectual Property Organization (WIPO) as regulated in Presidential Decree No. 19/1997.

Trademark Rights

Overall, a brand is a symbol that differentiates a product in the market. According to Sudargo Gautama, brands are used to separate products or services produced by certain individuals or companies from products or services produced by other people or companies. In the law in force in Indonesia, namely Law Number 15 of 2001 concerning Brands, a brand is described as a symbol in the form of an image,

name, word, letter, number, color arrangement, or a combination of these elements which has unique characteristics and is used in the trade of goods or services. Its function is to separate one product from another by conveying information about the origin of the goods. The use of brands as an indicator of the origin of goods has existed since 3000 years ago, practiced by traders from India, China and the Middle East.

Brand Function

In its operations, brands have the following roles:

1. Differentiate products or services from one company from products or services from another company.
2. Helps in promoting product sales. A brand on a product must have an appeal to consumers so as to increase sales.
3. Form a lifestyle statement for consumers. In this context, the brand is seen from the consumer's perspective. By using a particular brand, consumers communicate their identity to the surrounding environment. Brands have become an integral part of an individual's lifestyle.

Based on the explanation of the role of brands that has been presented, it can be concluded that the function of brands is to prevent consumers from experiencing confusion when choosing the products they need or want. Apart from that, brands also play a role in protecting brand owners or rights holders from losing the market share they have built.

According to Law Number 15 of 2001, a trademark cannot be registered if it meets one of the following conditions:

1. Contrary to law, religious morality, norms of decency, or public order.
2. Has no distinguishing characteristics.
3. It is commonly used or relates to the goods or services submitted for registration.

Trade Secret

Trade secrets are a complex aspect of Intellectual Property Rights (IPR). Basically, trade secrets refer to information that is not generally known or only known by certain parties regarding matters related to business. Therefore, the confidentiality of this trading information needs to be maintained. Trade secret protection is important both from a moral perspective, to recognize the efforts of the party who discovered trade secret information, and from a financial perspective, to provide rewards or compensation to the finder.

Saidin, who is an expert in commercial law, identified six trade secret principles involving the safeguarding and use of confidential information in a business context:

1. Legal Enforceability: Trade secret information must have legal enforceability that protects its owner from unauthorized disclosure or use by others without permission.
2. Economic Value: Trade secret information must have significant economic value, meaning that the information provides a substantial economic benefit to its owner.

3. Confidentiality: Trade secret information must be kept strictly confidential and must not be known by unauthorized parties.
4. Security Measures: Trade secret owners must take reasonable security measures to maintain the confidentiality of such information, such as restricting access and keeping confidential records.
5. Owner's Compassion: Owners of trade secret information must demonstrate that they have made reasonable efforts to maintain the confidentiality of the information.
6. Public Trust: This principle includes that the owner of a trade secret should have a reasonable sense of confidence that the information will be kept confidential by the party receiving the information.

Provisions in Law no. 30 of 2000 concerning Trade Secrets (UURD) states that:

1. Trade secrets are information that is not generally known in the field of technology and/or business, has economic value because it is useful in business activities, and is kept confidential by the owner of the trade secret.
2. Trade Secret Rights are rights that arise over Trade Secrets based on the regulations in the Trade Secrets Law.

Protection of rights holders and sanctions for violations of trademark rights and trade secrets based on Indonesian law

Trademark rights, as part of intellectual property rights (IPR), have a very important role in the business world. The presence of a brand on a product allows consumers to differentiate the quality of the goods or services they will use. Without a brand, consumers will face difficulties in distinguishing one product from another (Shaleh & Trisnabilah, 2020).

Registered marks receive legal protection. Therefore, every brand owner is expected to register their brand with the Director General of Intellectual Property Rights, so that they can get legal protection for their brand. Legal protection for registered trademarks is valid for 10 years, which is calculated from the date of receipt of the trademark application. Trademark owners can request an extension of registered trademark protection for the same period whenever necessary (Gultom, 2018).

Brand infringement often occurs in society, and this also contributes to the emergence of victims due to the use of counterfeit brands. The negative impact will not only be felt by consumers, but also by producers as brand rights holders, who will experience losses due to brand infringement. According to (Shaleh & Trisnabilah, 2020) several common brand infringement practices include:

3. Businesses that imitate well-known brands that already have market share and are known by many people. Business actors will create products that are very similar to original products to attract people's attention, then sell them at lower prices.
4. Businesses that create similar products then sell them at similar prices.
5. Business actors provide inaccurate information regarding trademarks which is intended to harm the reputation of a product.

According to (Pang et al., 2021) the efforts that can be made to provide legal protection to brand rights holders are:

1. Preventive Efforts

This effort is carried out with the aim of preventing brand infringement by focusing on monitoring brand use. Article 5 of the Trademark Law also states that trademark registration is not permitted if it includes elements that violate the law, religious norms, public order, do not have elements that differentiate it from other products, or have become public property.

2. Repressive Efforts

This effort is used to resolve cases that have occurred. This action is necessary when a trademark rights violation occurs, even if the trademark rights holder has not been registered, they still receive an exception to legal protection against trademark rights violations. Article 76 Paragraph 1 of the Trademark Law explains that the holder of a registered trademark has the right to file a lawsuit against another party who uses their mark for goods or services which are essentially or completely similar.

Sanctions for violating trademark rights based on Law Number 20 of 2016 concerning Marks and Geographical Indications article 100 paragraphs 1 and 2 are as follows:

1. "A person who without the right uses the same mark as a registered mark belonging to another party will be threatened with a maximum prison sentence of five years and a maximum fine of two billion rupiah."
2. "A person who uses a mark that is substantially similar to another person's registered mark without permission and is found guilty in court will be threatened with imprisonment for four years and a fine of two billion."

Trade secrets also receive protection, because trade secrets are confidential and have commercial value. Other forms of IPR can always be expressed in certain forms that can be written, drawn, or recorded according to different requirements, but trade secrets are only based on concepts, ideas, or information that can be conveyed orally to others. Trade Secrets Law no. 30 of 2000 CHAPTER II article 2 provides protection for trade secrets including production methods, processing methods, sales methods, or other information in the field of technology and/or business that has economic value and is not known to the general public.

A trade secret violation occurs when someone intentionally discloses a trade secret, violates an agreement, or violates a written or unwritten obligation to maintain the confidentiality of the trade secret in question. A person is considered to have violated another party's trade secret if he obtains or controls the trade secret by violating applicable regulations. Criminal sanctions for violations of trade secrets are regulated in Chapter IX, Article 17 of Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secrets which states:

1. (1) "A person who intentionally and without permission uses another person's Trade Secret may be punished with imprisonment for a maximum of 2 (two) years and/or a fine of Rp. 300,000,000.00 (three hundred million rupiah)."
2. (2) "The criminal act as intended in paragraph (1) is a complaint offense."

This protection will encourage the emergence of new discoveries or innovations which, even though they are kept secret, still have legal protection regarding ownership, control and utilization by their creators. In the context of IPR, the essence of protection lies in recognizing the rights to wealth and the right to enjoy that wealth for a certain period of time. This means that during a certain period of

time, the owner or holder of IPR rights has the authority to permit or prohibit the disclosure or dissemination of information (including trade secrets).

In addition, there are actions that are not considered a violation of Trade Secrets, namely when:

- Disclosure or use of Trade Secrets is based on the interests of defense and security, health or public safety.
- The act of re-engineering a product resulting from the use of another person's Trade Secret, which is carried out solely for the further development of the product. Reengineering in this context refers to the analysis and evaluation of existing technologies to obtain information about them.

CONCLUSION

Based on the discussion in the previous chapter, it can be concluded that every work born of creative thinking that is useful for humans must be recognized and protected. Therefore, Intellectual Property Rights (IPR) are needed as a form of appreciation for the results of this creativity. Apart from that, the IPR system also plays a role in protecting creators against unauthorized use of their work through regulations governing IPR. With the existence of IPR, recognition of someone's work becomes legally strong.

SUGGESTION

From a legislative perspective, Indonesia has an adequate legal framework in the domain of Intellectual Property Rights. However, there are still several suggestions that can be given, namely:

1. People should avoid purchasing pirated products and should be careful of counterfeit goods.
2. Authorities and law enforcement officials must be more assertive in handling cases of violations of Intellectual Property Rights.
3. It is important for all parties to comply with applicable laws, because IPR violations will be subject to sanctions in accordance with existing regulations..

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