

Dispute Resolution Of "Supreme" Brand Rights (Study of Review Decision Number 37 Pk/Pdt. Sus-Hki/2023)

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Dispute Resolution Of "Supreme" Brand Rights (Study of Review Decision Number 37 Pk/Pdt. Sus-Hki/2023)

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Abstract. In an era of globalization that has a significant impact on industry and commerce, trademark rights disputes are a crucial issue that needs serious attention. One trademark rights dispute that has attracted attention is the case of "Supreme," which is the focus of this study by detailing the Review Decision Number 37 PK/PDT. SUS-HKI/2023. This dispute involves companies with the trademark "Supreme," and its resolution has an important impact on trademark law in Indonesia. This research aims to dig deeper into the resolution of trademark rights disputes through these case studies. Analysis of court decisions, judges' considerations, and the legal basis used will provide a more comprehensive understanding of the trademark dispute resolution mechanism in Indonesia. Through this search, it is expected to find significant contributions to the development of trademark rights regulations and dispute resolution at the national level. This research uses normative juridical method with statutes approach, conceptual approach and case approach. The result of this research is that the trademark dispute resolution process in Indonesia follows predetermined legal steps, starting from filing a lawsuit in the District Court, continuing with the cassation process in the Supreme Court, and can reach the review stage in the Supreme Court if necessary. This approach reflects Indonesia's seriousness in handling brand disputes fairly and efficiently. The study also emphasizes the importance of good faith in the trademark registration process.

Keywords: Brand Rights, Trademark Disputes, Judicial Review.

INTRODUCTION

Life in the modern era is greatly influenced by global transformations which have a very significant impact on human life. One of the impacts felt is how tight business competition is especially for entrepreneurs. Globalization in particular makes the business world to become more competitive, where the times force them to continue to follow this dynamic change and must adjust to survive. Of course, this is due to global influences or globalization in the current era. So with this, globalization forces business actors to present new business strategies that are certainly innovative. This is in line with the results of research (Yusnita & Wahyudin, 2017) which basically states that innovation has a significant effect on the competitive advantage of MSME business actors. Because if these MSME actors are not ready to compete, they will not be able to survive in the influence of globalization that occurs. (Abdurofiq, 2014) (Abdurofiq, 2014)

Innovation itself cannot just create new ideas, but must be able to create new value that can increase competitiveness with other business actors, which certainly creates changes in business models. (Ferreira et al., 2017) One of the economic transformations is marked by

industrialization.(Oyelaran-Oyeyinka & Lal, 2016) The existence of industrialization can be an alternative solution to increase employment and reduce unemployment.¹ With industrialization, it opens up opportunities to increase domestic investment flows (Syahril et al., 2022) so this is one of the impacts of innovations made by business actors to be able to develop more significant businesses which certainly have added value to their businesses.

One way for business actors to attract attention from investors, apart from their products is brand or *branding*.(Montanari et al., 2020) Of course, to invest, funding actors will see the prospects and how the position of the brand, whether the brand can increase the business position to a certain target position. Getting an advantage in terms of brand positioning is part of the surplus value owned by business actors. With a strong *branding identity*, it can attract consumers, because it is *top of mind*.² So that the wider community or potential buyers no longer see how good or good the product is, even though it is mediocre *but the branding identity of a business is strong, it can raise the possibility that the business will be more attractive to people than those who have a high product value but a weak branding identity*.

In Intellectual Property Rights, brands become very valuable because they are related to consumer desires ³⁰ in a product or service. By using a brand, it can attract someone to use or consume a good or service. (Ong, 2013) Brand Protection or obtaining Brand Rights or a certain brand is a very important thing to understand and do for business actors. Of course, with brand protection, business actors get legal protection if there are certain individuals who claim to have someone's business brand, use brand fame facilities for personal gain, while business actors take pains to increase *engagement* and *traffic* rates from their business. So this is an unfair thing and certainly very detrimental. Therefore, the government helps the public to get legal protection with the passing ²⁰ of Law Number 20 of 2016 concerning Brands and Geographical Indications. Even though it has been registered, there are still possibilities for disputes over the use of the mark because of unscrupulous individuals. Some factors that often arise brand disputes are due to low Economic, Cultural, Regulatory, and Supervision. However, it is better to be careful by registering our brand, because it provides added value for us because we have received clear legal guarantees and protection for the mark.

¹ This research is related to three previous studies, namely the first by Lompoh (2021) which ¹⁹ examines the settlement of trademark disputes between Geprek Bensu and I am Geprek Bensu

¹²oppelbaum & Schettkat, 1995; Ogbimi, 2015) <http://icsfarchives.net/id/eprint/12719>.

² Alina White ²⁵, *Designing Brand Identity: An Essential Guide for the Whole Branding Team* (John Wiley & Sons, 2017); Tim Ambler, "Do Brands Benefit Consumers?," *International Journal of Advertising* 16, no. 3 (1997): 167–98, <https://doi.org/http://dx.doi.org/10.1111/j.0265-0487.1997.00053.x> <http://dx.doi.org/10.1111/j.0265-0487.1997.00053.x>

⁷ based on Law Number 20 of 2016 concerning Brands and Geographical Indications. The result obtained by this normative research is that the settlement process of both parties was resolved by litigation in the Commercial Court, Ruben Onsu could not use his "Geprek Benu" brand anymore according to the results of the decision of ²³ case number 57 / Pdt.Sus-HKI / Brand / 2019 / PN Niaga Jkt.Ps.(Pinem & Gunadi, 2021)

Next, research conducted by Atika (2021) which examines the case of a ² trademark dispute between DC Comics and PT. Marxing Fam Prosperous. ¹⁸ Analysis of the judge's consideration, regarding similarities in substance and/or as a whole, ² as well as the application of territorial principles in the Superman icon ownership ² case involving DC Comics, the owner of the famous Superman cartoon animation, and the registration of the Superman icon by PT. Marxing Fam Makmur, as stated in Supreme Court Decision Number 1105 K / Pdt.Sus-HKI / 2018. The result of this descriptive normative juridical ² research analysis is that legal considerations in the case of DC Comics, the owner of the SUPERMAN Brand in the decision of the Supreme Court Decision Number 1105 K / Pdt.Sus-HKI / 2018, are not appropriate, because they state that the plaintiff's claim is inadmissible (*niet ontvankelijk verklaard*) so that it has not been examined in essence. (Amira et al., 2021)

Furthermore, research conducted by Denny (2022) which examines Indonesian law enforcement in resolving trademark disputes of PT. Gudang Garam and PT. New Warehouse. The ¹ results of normative juridical research using qualitative ⁶ data analysis techniques are based on disputes between ⁶ PT. Gudang Garam and PT. Gudang Baru, Surabaya Commercial Court ruled ⁵ that PT. Gudang Baru has violated Article 21 Paragraph 1 of Law No.20 of 2016. ⁶ Therefore, the court stated that the Gudang Baru brand has similarities with the Gudang Garam brand which is recognized as a well-known brand.(Denny et al., 2022) Reviewing from ¹ previous research, there are differences in this study, namely: normative research that focuses on discussing in detail the depth of brand protection in Indonesia. ¹ The problems and discussions raised in this study are not the same as previous research so that this research has innovations and updates that complement the shortcomings of previous research.

¹⁰ In response to the background of the above problem, this study is directed to review the Supreme Court Review Decision Number 37 PK / PDT. SUS-HKI/2023. The main purpose of this study is to review the extent of legal protection of trademark rights in Indonesia, examine aspects of trademark rights infringement, and evaluate the effectiveness of law enforcement in Indonesia related to brand issues. This is very important considering that brands play a crucial role in helping consumers get to know products or services, and provide added value for business actors. This research makes an important contribution in understanding the dynamics

of brand protection in Indonesia, especially in the context of brand disputes. By reviewing the case of Husein Thamrin and the Supreme brand in the Supreme Court Review Decision Number 37 PK / PDT. SUS-HKI/2023, this research enriches the intellectual property law literature, especially regarding the protection and enforcement of trademark rights in Indonesia. Another academic contribution is increased understanding of trademark dispute resolution procedures and judges' considerations in deciding similar cases. The research also offers a critical look at the effectiveness of current brand legislation in protecting brand owners from rights infringement. In practical terms, the results of this study are beneficial for stakeholders in the intellectual property industry to better understand and implement effective legal strategies in the protection of their brands. Business owners and legal practitioners will gain valuable insights into how to prevent, identify, and address trademark infringement. The research also helps them to better prepare themselves for brand disputes, minimize risk, and optimize opportunities for fair and speedy dispute resolution.

THEORETICAL STUDIES

Rights to a Brand

Article 1 point 5 of Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Geographical Indications (hereinafter referred to as Law 20/2016) concerning Marks or Geographical Indications confirms that, Brand Rights are an exclusive right obtained by the government / state for the owner of a registered mark for a certain period of time, both using the mark itself and obtaining permission from others. (Desmayanti, 2018) Then, the brand is also an intellectual property right that really needs to be protected or can be interpreted as a sign of identity distinguishing between one's property and another's. The explanation is in accordance with Article 1 number 1 of Law 20/2016, namely: Brand is a marker that can be seen graphically in the form of logos, names, images, words, numbers, letters, color arrangements, in 3-dimensional or 2-dimensional form, holograms, sounds or a combination of 2 and more of these aspects to distinguish services and those produced by parties and legal entities in trading services and goods.

RESEARCH METHODS

The methodology applied in this study is normative juridical. The problem approach in this study is based on statutes approach, conceptual approach and case approach. This is a method that studies applicable legal norms and examines existing laws and regulations,

especially those related to trademark issues and court decisions as well as customary norms found in society. Peter Mahmud Marzuki, Legal Research (Jakarta: Kencana Prenada Media Group, 2017). The main focus is on Law Number 20 of 2016 as the primary legal material, which is a basic regulation related to brand issues in Indonesia and has binding force on the community. Secondary legal materials used in this study include research results, articles, papers and results from legal experts in the field of brands that support this research. These sources provide in-depth and comprehensive explanations of primary legal materials, help understand and interpret the Law better, and provide diverse views on brand issues in Indonesia.

DISCUSSION

Supreme Court Decision Number 37 PK/Pdt.Sus-HKI/2023 is a Review decision on a trademark case involving Husein Thamrin (who authorized Nur Yuadiman and his associates) and CHAPTER 4 CORP, a company registered in New York State, USA. Husein Thamrin was initially a defendant in the case. Chapter 4 CORP, represented by Darci J. Bailey, as General Counsel, filed an application for the mark "SUPREME," claiming to be the first user and legal owner of the mark to distinguish its goods and services. They filed a lawsuit against Thamrin and the Directorate General of Intellectual Property *cq.* Directorate of Brands and Geographical Indications of the Republic of Indonesia. They demanded recognition of the "SUPREME" brand, stating that the mark was well-known and registered by Husein Thamrin in bad faith. Husein Thamrin denied, filing an exception and counterclaim, stressing that he was entitled to the mark. The Commercial Court at the Central Jakarta District Court initially rejected the CHAPTER 4 CORP claim, but its decision was overturned by the Supreme Court which subsequently ordered the removal of Husein Thamrin's "SUPREME" mark from the General Register of Marks, recognized CHAPTER 4 CORP as the first user and legal owner of the mark and ordered Husein Thamrin to pay the costs of the case.

Brand Dispute Resolution Procedure

Law 20/2016 provides a detailed explanation of material and procedural rules related to trademark disputes in Indonesia. Law 20/2016 not only establishes the legal basis for the definition and protection of trademarks, but also provides explicit direction regarding trademark dispute procedures. The rules on the dispute resolution process are set out in Articles 73 to 79, Articles 83 to 92, and Articles 94 to 97 of Law 20/2016. In resolving disputes, the legal principle applied puts forward the principle of *lex specialist derogat legi generali*, which

means giving priority to the provisions in Law 20/2016 rather than general law when resolving trademark disputes.

⁵ Supreme Court Decision No. 37 PK/Pdt.Sus-HKI/2023 illustrates the application of these provisions. In the case of trademark cancellation, Article 76 of Law 20/2016 explains the mechanism for filing a claim for cancellation of a registered mark.¹⁴ (Alfarizi & F, 2021)

⁹ Based on the reasons mentioned in Article 20 and Article 21 of Law 20/2016, eligible parties, including unregistered trademark owners, can file a claim after submitting an application to the Minister.¹⁴ This situation emphasizes the importance of the Commercial Court as a judicial entity that has the authority to handle claims for cancellation of registered marks, as stipulated by Article 76 of Law 20/2016. Looking at Article 77 of Law 20/2016 determines ⁵ the time limit for filing a claim for cancellation of trademark registration, which is five years from the date of trademark registration. However, under certain conditions, this time limit can be waived, especially if there is evidence of irregularities or if the mark in question contradicts basic principles such as state ideology, law, morals, religion, ethics, and public order.

Meanwhile, Article 78 of Law 20/2016 states that "*Terhadap putusan Pengadilan Niaga pembatalan sebagaimana dimaksud dalam dapat diajukan kasasi.*". In more detail in Article 88 of Law 20/2016, the cassation application process is explained as follows:

"(1) Permohonan kasasi sebagaimana dimaksud dalam Pasal 87 diajukan paling lama 14 (empat belas) hari setelah tanggal putusan yang dimohonkan kasasi diucapkan atau diberitahukan kepada para pihak dengan mendaftarkan kepada panitera pada Pengadilan Niaga yang telah memutus gugatan.

(2) Panitera mendaftarkan permohonan kasasi pada tanggal permohonan yang bersangkutan diajukan dan kepada pemohon kasasi diberikan tanda terima tertulis yang ditandatangani oleh panitera dengan tanggal yang sama dengan tanggal penerimaan pendaftaran.

(3) Panitera wajib memberitahukan permohonan kasasi sebagaimana dimaksud pada ayat (2) kepada pihak termohon kasasi paling lama 7 (tujuh) hari setelah permohonan kasasi didaftarkan.

(4) Pemohon kasasi sudah harus menyampaikan memorikasaki kepada panitera dalam waktu paling lama 14 (empat belas) hari sejak tanggal permohonan kasasi didaftarkan sebagaimana dimaksud pada ayat (1).

(5) Panitera wajib menyampaikan memori kasasi kepada termohon kasasi paling lama 2 (dua) hari setelah memori kasasi diterima oleh panitera.

(6) Termohon kasasi dapat mengajukan kontra memori kasasi kepada panitera paling lama 14 (empat belas) hari setelah tanggal termohon kasasi menerima memori kasasi

sebagaimana dimaksud pada ayat (5) dan panitera wajib menyampaikan kontra memori kasasi kepada pemohonkasasi paling lama 7 (tujuh) hari setelah kontra memori kasasi diterima oleh panitera.

(7) Panitera wajib menyampaikan berkas perkara kasasi yangbersangkutan kepada Mahkamah Agung paling lama 7 (tujuh) hari setelah lewat jangka waktu sebagaimanadimaksud pada ayat (6).

(8) Sidang pemeriksaan dan putusan Permohonan kasasiharus diselesaikan paling lama 90 (sembilan puluh) hari setelah tanggal Permohonan kasasi diterima oleh Majelis Kasasi.

(9) Putusan atas permohonan kasasi sebagaimana dimaksudpada ayat (8) yang memuat secara lengkap pertimbanganhukum yang mendasari putusan tersebut harus diucapkandalam sidang yang terbuka untuk umum.

(10) Panitera Mahkamah Agung wajib menyampaikan isi putusan kasasi kepada panitera paling lama 7 (tujuh) hari setelah tanggal putusan atas Permohonan kasasi diucapkan.

(11) Juru sita wajib menyampaikan isi putusan kasasi sebagaimana dimaksud pada ayat (10) kepada pemohon kasasi dan termohon kasasi paling lama 2 (dua) hari setelah putusan kasasi diterima.

(12) Upaya hukum peninjauan kembali terhadap putusan kasasi sebagaimana dimaksud pada ayat (8) dilaksanakan berdasarkan ketentuan peraturan pemndang-undangan.”



Article 88 paragraph (12) of Law 20/2016 above stipulates that against cassation decisions legal remedies can be submitted for judicial review. Meanwhile, Article 89 of Law 20/2016 stipulates that against ⁵ the decision of the Commercial Court that already has legal force, a review application can still be submitted. So that in the case of trademark disputes, judicial review can be carried out as stipulated in Article 88 paragraph (12) and Article 89 of Law 20/2016. This process is important as a form of last legal remedy that can be taken by ⁴ parties who feel aggrieved by the cassation decision / decision of the Commercial Court.

Analysis of Supreme Court Decision

⁹ Based on the Supreme Court Decision, the review request filed by Husein Thamrin was not accepted. Husein Thamrin is required to bear the cost of the process at this review examination in the amount of Rp10,000,000.00. This decision was taken because the reasons raised in the application for judicial review were considered unreasonable. After conducting a thorough examination of the reasons submitted on November 10, 2022 and a response to the reasons for judicial review received on April 18, 2023, no significant errors or errors were found by the examining judge. The Plaintiff's brand and the Defendant's SUPREME brand are considered similar in both sound and writing. The marks owned by the Plaintiffs, which have

existed and are well-known since 1994 in many countries, are registered in various countries and introduced on the www.supremenewyork.com website in September 2006, show indications that the Defendant registering his Supreme mark, allegedly had the intention to imitate or duplicate the Plaintiff's mark for the benefit of his business, thus creating unfair conditions of business competition and could confuse or deceive user. Considering the above factors, the Supreme Court concluded that the review application filed by Husein Thamrin had no basis, and therefore needed to be rejected.

Table 1. SUPREME brand logo image

CHAPTER 4 CORP'S SUPREME	Husein Thamrin's SUPREME
	

In the case of Husein Thamrin and CHAPTER 4 CORP, Supreme Court Decision Number 37 PK/Pdt.Sus-HKI/2023 is a Review decision on Supreme Court Cassation Decision Number 1313 K/Pdt.Sus-HKI/2021. Based on the cassation ruling, it was stated that CHAPTER 4 CORP as the first user and the sole legal owner of the "SUPREME" brand. The mark is declared a well-known brand, and this shows the importance of legal recognition of the status of a brand. In this judgment it was also affirmed that the registration of the mark "SUPREME" by Husein Thamrin with Registration Number IDM000421842 in Class 25 was carried out in bad faith. This shows that the legal system in Indonesia serves to prevent trademark registration carried out with improper intentions, thus protecting the original trademark owner from possible exploitation by unauthorized third parties. The ruling cancelled or declared void Husein Thamrin's mark and ordered to remove the mark from the General Register of Marks. This decision reaffirms the importance of the trademark registration process in preventing future legal conflicts, as well as providing legal certainty for the rightful owner of the mark.

In the analysis of Husein Thamrin's case, there are two fundamental legal concepts: well-known brands and bad faith. This case highlights the importance of brand protection in the global era and the complexity of good faith interpretation in trademark registration. Both of these concepts are emphasized in cassation rulings, affirming the existence of well-known brands and the challenge of defining bad faith. Referring to Article 21 paragraph (1) of Law 20/2016, a trademark registration application will be rejected if the mark has essential or total similarities with other parties' famous marks, for similar or unsimilar goods and/or services that meet certain criteria. In this case, the mark "SUPREME" was recognized as a well-known mark, strengthening the plaintiff's position, and rejecting the defendant's claim to the same or similar mark. Article 21 paragraph (2) of Law 20/2016 affirms the rejection of marks that

resemble ²¹ the name or abbreviation of a well-known name, photograph, or legal entity name belonging to another person, except with written consent. This provides an additional layer of protection for well-known brand owners, protecting them from exploitation by third parties trying to register similar marks without permission.

⁴ Article 21 paragraph (3) of Law ¹⁶ 20/2016 confirms that an application will be rejected if it is submitted by an applicant in bad faith. ⁴ The definition of bad faith includes ¹⁷ an applicant who is reasonably suspected of registering a mark with the intent to imitate or follow another party's mark, create unfair competitive conditions, or mislead consumers. This was relevant in the case of Husein Thamrin, where the defendant was deemed to have registered a similar mark in bad faith, attempting to exploit the reputation of the plaintiff's well-known brand for personal gain. In its cassation ruling, the Supreme Court stressed the need for careful explanation and interpretation of the concept of a well-known and bad faith brand ¹³ to ensure that justice is achieved. This reflects the importance of trademark protection and the need to clarify the boundaries and definitions of bad faith ¹³ in the context of intellectual property law in Indonesia.

CONCLUSION

In ¹³ this study, the main focus is to explore the depth of brand protection in Indonesia. Highlighting that brand protection is a crucial element in maintaining brand integrity and value in the market. This, in turn, affects consumer confidence and the company's reputation. The process of resolving trademark disputes in Indonesia follows a predetermined legal path, starting from a lawsuit in the District Court, continuing with cassation in the Supreme Court, and ending with a review in the Supreme Court if necessary. This reflects Indonesia's commitment to resolving brand disputes in a fair and efficient manner. The existence of good faith in trademark registration is also highlighted in this study. Good faith forms a solid basis for a legitimate and effective trademark registration process, preventing conflicts and protecting the rights of trademark owners. A lack of good faith can undermine the integrity of the brand protection system and result in protracted disputes.

In the context of brand protection, the study suggests several important steps to be taken by regulators or governments to minimize the likelihood of brand disputes. Sophisticated detection tools should be implemented to detect immediately if any new registered mark bears resemblance to an already registered or well-known mark. This can be done with the use of advanced technology that is able to identify such similarities effectively. It is important for the government to invest in the development and implementation of this technology to ensure that trademark registration takes place without conflict. In addition, regular education and training

on the importance of brands and related legal protections is also very important for all relevant stakeholders, including business owners, brand agencies, and other legal professionals. This activity will increase awareness and understanding of the importance of having a unique and legally protected brand, as well as understanding the risks of infringing on the brand rights of others.

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