ACTIVA YURIS
Volume 4 Nomor 1 February 2024
E-ISSN: 2775-6211 (online)
DOI: http://doi.org/10.25273/ay
Website: http://e-journal.unipma.ac.id/index.php/AY

Dispute Settlement of International Trademark on Intellectual Property Rights (Case Study: Decision Number 557 K/PDT.SUS-HKI/2016)

Arkianti Anindita Putri[1*], Dewi Ratnadewanti[1], Kamila Khaerunisa[1], Sheikha Dwi Nabilla[1], Nadia Rastika Alam[1], Mustika Mega Wijaya[1]
[1] *Universitas Pakuan, Indonesia*
**Corresponding author: arkiantianindita929@gmail.com*

Abstract
Intellectual Property Rights (IPR), namely rights resulting from the impact of thought patterns resulting in products that are beneficial to legal subjects. However, there are still many problems that arise in IPR such as brand theft, brand plagiarism and so on. One of them is the case of Laverana, a cosmetic product from Germany. This brand was plagiarized by Irawan Gunawan to be used as a product brand in Indonesia. On top of these things, Laverana also felt disadvantaged. Therefore, this article aims to provide an understanding of the importance of protecting IPR and how to resolve international trademark disputes. The research method used in this research itself is a normative-empirical legal research method and a literature approach as well as legal protection theory and effectiveness theory in this brand plagiarism dispute case. The resolution of the Intellectual Property Rights dispute in the Laverana case was pursued through litigation, namely the Indonesian court to try the defendant, namely Irawan Gunawan. The final decision obtained from the court stated that the party from Germany or the original owner of the Laverana Brand won. This resulted in Irawan Gunawan (defendant) having to withdraw from the brand and being charged legal fees of Rp. 5,000,000 (5 Million Rupiah).
***Keywords*:** *HAKI; Brand; Laverana;Dispute;*

History:
Received: January 31th 2024
Accepted: February 1st 2024
Published: February 11th 2024

Publisher: Universitas PGRI Madiun
Licensed: This work is licensed under
a Creative Commons Attribution 3.0 License

INTRODUCTION

Basically, trade is defined as the activity of exchanging goods and services. Trade has occurred since prehistoric times, when humans began to exchange goods and services at a time when money had not yet been invented. Long-distance trade has existed since 150,000 years ago. As time progressed, disputes began to occur in the realm of trade. A dispute itself is a situation where a party feels disadvantaged by another party, so that party sues the other party. Thus, a trademark dispute can be interpreted as a dispute that occurs over a trademark from one party to another, causing parties who do not accept it and file a lawsuit.

A brand is defined as a sign, in the form of an image, name, word, letters, or a mixture of the listed parts which has a comparative effect and is used for the act or execution of trade in goods or services. Meanwhile, brands are used for products traded by individuals or groups, either en masse or by legal entities, as a way to differentiate them from other similar products. This brand is certainly very necessary for the business world as a marketing tool. Thus, it can be concluded that marketing will always involve an image, capacity or weight and prestige of a particular brand's products. Trademarks, service marks and collective marks are brand classifications in the MIG (Marks and Geographical Indications) Law (Masnun, 2019: 220).

As time goes by, this trade does not only cover the exchange of goods and services but is broader and even global or what can also be called international trade. The definition of international trade is trade carried out between countries or governments and other countries according to the agreement of both parties (Aprita and Adhitiya, 2020: 1). In this

way, the term international trademark was born. International trademarks are actually the same as trademarks, namely, symbols that are useful as differentiators of a company's products or services. However, the difference is that international coverage is broad and universal so it covers the whole world. So an international trademark is a sign to differentiate a product from other companies that cover internationally.

In the world of national and international trade, a brand is an aspect of intellectual property rights to obtain legal protection for intellectual works with the aim of protecting their rights or what is known as IPR. IPR is the right to obtain legal certainty over intellectual property in accordance with laws in the field of IPR, such as the Law on Copyright, Patents, Industrial Designs, Trade Secrets, Plant Varieties, Integrated Circuits and Trademarks. With the definition that has been explained, trademarks and intellectual property rights have a mutually beneficial relationship. If all trading activities have IPR, it will increase security in advancing the product and increase the income of the product producer.

In a business world that is developing very rapidly, especially with the support of electronic advances that can be accessed by anyone, creativity or bright ideas are needed to survive in the business world. This is what causes competition in the business world to become increasingly fierce, both domestically and abroad. The necessity of developing ideas in this tight business competition sometimes makes someone develop the idea, sometimes not developing the idea but instead copying an idea that was discovered earlier by someone else.

Therefore, nowadays IPR is very necessary to prevent the possibility of unhealthy business competition such as fraud, piracy, plagiarism, use of brands belonging to other parties and others. Intellectual Property Rights (IPR) is a synonym for Intellectual Property Rights (IPR), namely rights resulting from the impact of a mindset that creates products that are useful for legal subjects. In essence, IPR is the right to enjoy the consequences of intellectual invention economically. IPR is a type of non-material asset that has economic value and provides legal certainty. (Masnun, 2019: 219-220). In this IPR, the material specified is human intellectual ability which is manifested in these works. As has been explained and explained above, the real form of human intellectual work is a brand, where in this brand disputes often occur, both ordinary disputes and disputes on an international scale.

This also applies to trademarks, where currently many goods, products or services have names, brands, logos or slogans that are almost similar or even the same. One of the cases that will be raised is the case of an international trademark dispute or dispute, namely plagiarism of the LAVERANA GmbH & Co.KG (Germany) VS IRAWAN GUNAWAN (Indonesia) brand. It is known that Laverana is a cosmetics brand from Germany which has registered its brand in various countries. However, when you want to register a brand in Indonesia, the Laverana brand is already registered in Indonesia. This also creates problems for the injured party.

Based on the description that has been described, the author formulates a problem that will be examined in this research, among others:

a) What is the Impact of International Trademark Disputes (Case Study: Number 557 K/PDT.SUS-HKI/2016?
b) ow are international trade mark disputes resolved (Case Study: Number 557 K/PDT.SUS-HKI/2016)?

MATERIALS AND METHODS

In the development of science and technology, research is one of the ingredients (Kamila Khaerunisa, 2023: 3). Research itself is an effort or step aimed at expanding and developing science and technology. According to Prof. M.E Winarno Research is a scientific activity carried out through careful and systematic techniques. Research is carried out with

the aim of uncovering the truth and preventing or avoiding it with a systematic, methodological and consistent approach.

In this research, normative legal research methods are used, namely methods that analyze every relevant document or book and of course relate to the problem to be studied. This research uses an approach to legislation and cases or in other words a case approach, a historical approach and a facts approach.

RESULTS AND DISCUSSION

A. Impact of International Trademark Disputes (Case Study: Number 557 K/PDT.SUS-HKI/2016

By plagiarizing or imitating a brand, it certainly has an impact that can be detrimental to both the owner, the original owner and the consumer. The owner of a brand who intends to plagiarize will be disadvantaged by the rejection of the trademark application because the trademark is already registered with another party, in accordance with Article 21 of Law no. 20 of 2016 concerning Brands and Geographical Indications. The holder of the original mark will be disadvantaged because the exclusive rights which should be monopolistic, that is, the brand holder alone is allowed to use them, will not work well with the emergence of plagiarism of the same brand (Muliasaru, Santoso and Irawati, Notarius, December 2021: 985). Consumers are not immune from losses, if there is plagiarism or brand imitation, of course they will feel cheated because the product they buy is not an original product but only a copy, where the quality of the product may be different from the original product. Looking at the impact of brand plagiarism, it can be concluded that this is an action that is not in good faith and can cause very complex losses, so it is very unfortunate if there is brand plagiarism (Muliasaru, Santoso and Irawati, Notarius, December 2021: 983) . One of them is an example of a trademark plagiarism dispute experienced by Lavera co bkgs.

In this case, the Lavera brand, which was previously established in Germany and has been registered in more than 40 countries, experienced a bad faith violation from Indonesia by registering a similar mark on similar types of goods without any cooperation. This action is not in good faith and tends to mislead consumers, and in reality is fraudulent behavior, unhealthy business competition which constitutes a violation of IPR. This behavior is not in line with the intellectual ethics regulated by law. It should require permission from the owner first, it cannot be copied directly. Competition in business is generally good, because it can encourage other entrepreneurs to improve the quality of goods. However, if one entrepreneur thinks of bringing down another business, especially for his own interests, this is a point that violates the law.

The Commercial Court is a place for parties who have an interest in filing a trademark cancellation lawsuit, based on the basic reasons in Article 20 or Article 21 of the Trademark and Geographical Indications Law (Muliasaru, Santoso and Irawati, Notarius, December 2021: 985). Five years is the time period for filing a lawsuit starting from the date the trademark registration is made. However, if it conflicts with morals, religion, decency, ideology and law, the cancellation has no time limit. Regarding brands and geographical indications, it is regulated in Articles 76 to 79 of Law number 20 of 2016.

As a result, the defendant was sentenced to pay court costs at the cassation level of 5000,000 (five million rupiah). And the cancellation of the Lavera trademark registration number IDM000278277 in the name of the defendant from the public records at the Directorate of Trademarks, with all the related legal consequences.

B. Efforts to Settle International Trademark Disputes (Case Study: Number 557 K/PDT.SUS-HKI/2016).

The rise in plagiarism of IPR has given rise to measures or regulations if violations of these rights occur. In resolving intellectual property rights disputes, this can be done in 2 (two) ways, namely by litigation (court) and non-litigation. Dispute resolution through litigation is a step in resolving disputes with the court (Glorydei, et al, Lex Et Societatis, 1, January-March 2021; 114). Meanwhile, non-litigation itself is dispute resolution outside of court.

In the case of the Laverana GmBH & Co.KG trademark dispute against Irawan Gunawan, it was resolved through litigation. The resolution of the trademark dispute between Laverana, who comes from Germany, was carried out through Indonesian court procedures. Laverana as the plaintiff also filed a lawsuit against Irwan Gunawan who then became the defendant through the court in line with Article 76 paragraph (2) of Law Number 20 of 2016 "Owners of unregistered Trademarks can file a lawsuit as intended in paragraph (1) after submitting an Application to the Minister. ” which regulates MIG Brands and Geographical Indications. So, on October 28 2015, the plaintiff submitted an application for registration of the Lavera trademark to the Directorate of Trademarks, Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia under Agenda Number D002015047792. This is done so that the Lavera brand and its goods are protected against this brand dispute.

As explained above, it is clear that this international trademark dispute case will be followed up with a litigation settlement. Litigation is the litigation stage of a conflict which is carried out ritually to replace the actual conflict, with each party presenting two conflicting options to the decision maker (Fajriawati, Social and Economic Journal, 2022: 143).

Litigation disputes are resolved by judges. Judges are an integral part of judicial power and their responsibility is to accept, review and make decisions in court cases (Suherman, Sign Jurnal Hukum, September 2019: 43). Judges must uphold the law as fairly as possible in deciding a case.

The plaintiff is the owner and the first user of the Lavera brand in various parts of the world and one of them is Indonesia, so the plaintiff is the first user to submit an application for registration of the Lavera brand for Class 3 goods to the Trademark Office, General Office of Intellectual Property of the Ministry of Law and Human Rights Regulations in the Republic of Indonesia. The plaintiff founded a company called Laverana GmbH & Co in 1987, and the plaintiff registered his trademark called "Lavera" on October 29 2004 in Germany. Meanwhile, the Defendant registered his trademark called "Lavera" on October 16 2008. This is strong evidence that the plaintiff is the first person to own this trademark.

It cannot be denied that the defendant's actions in plagiarizing/imitating the plaintiff's brand, being inspired by it, and exploiting the reputation of the plaintiff's brand are bad actions. Therefore, the registration of this mark violates the provisions of article 21 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, namely that an act of bad faith in registering the mark "Lavera" which is essentially the same as the plaintiff's mark is an attempt by the defendant to mislead the public about the origin of the mark. and stating unfair behavior to achieve dishonest goals (Dishonest Goal). If the defendant carries out its business activities in good faith, there are still millions of words, numbers and

paintings/pictures or logos that the defendant can use without plagiarizing or imitating the plaintiff's brand.

Therefore, the plaintiff applied to the Central Jakarta District Court, namely:

1. Accept and grant the Plaintiff's lawsuit in its entirety;
2. Declare that the plaintiff is the first registrant and owner of the Lavera brand in the world for products included in class 3;
3. Stating that. Defendant's "lavera" mark Register Number IDM000278277 is substantially similar to the plaintiff's Lavera mark;
4. States that. The Defendant's "Lavera" Mark Register Number IDM000278277 resembles the name of the legal entity owned by the plaintiff, namely Layerana GmbH & Co. K.G;
5. States that the registration of the Defendant's "Lavera" mark at the Trademark Directorate was in bad faith;
6. Cancel the registration of the trademark "Lavera" Register Number IDM000278277 in the name of the defendant from the general register of the trademark directorate with all legal consequences;
7. Order the Registrar of the Jakarta Commercial Court to immediately submit a copy of this decision to the Directorate of Trademarks, Directorate General of Intellectual Property in order to implement this decision in accordance with the provisions of Article 70 of Law Number 15 of 2001 concerning Trademarks;
8. Order the Directorate of Trademarks to comply with the Commercial Court Decision by recording the cancellation of the mark "Lavera" Register Number IDM000278277 in the name of the Defendant and announcing it in the General Register of Trademarks at the Directorate of Trademarks;
9. Sentence the Defendant to pay court costs.

But the defendant filed an exception, that is;

1. Regarding the Legal Standing of the Power of Attorney (Power of Attorney made by an unauthorized person). That at the trial on Thursday, December 17 2015, as requested by the Panel of Judges examining the case. The Plaintiff has submitted the company's deed to prove the Plaintiff's legal standing to file a lawsuit;
2. That after the Defendant learned; "Plaintiff's Special Power of Attorney dated 20 October 2015 was signed by Haase, Thomas, Barsinghausen representing Laverana GmbH & Co.KG which is domiciled at Am Weingarten 4. 30974 Wenningsen, Germany."
3. Meanwhile, based on the Company Deed (Trade Registration of the Hannover District Court: "Haase, Thomas, Brrsinghausen are directors of Haase Verwaltungs GmbH, domiciled at Am Weingarten 4, 309741 Wenningsen. Germany"; Based on this, it is clear that between Laverana GmbH & Co .KG and Haase Verwaltungs GmbH are different legal entities, so it is clear that Haase, Thomas, Bersinghausen (director of Haase Verwaltungs GmbH) is domiciled at Am Weingarten 4. 309741. does not have legal standing/is not authorized to represent

LaveraNA GmbH & Co.KG which is domiciled in Am Weingarten 4. 30974 Wenningsen Germany.

4. Whereas regarding this lawsuit the Commercial Court at the Central Jakarta District Court has given decision Number 70/Pdt.Sus/Merek/2015/PN.Niaga.Jkt.Pst., dated 7 March 2016 which is as follows:

In Exception: - Granted the Defendant's exception;

1. In the main case: - Declares the Plaintiff's claim unacceptable and charges the Defendant with court costs of Rp. 716,000.00 (seven hundred and sixteen thousand rupiah); On March 29 2016, the plaintiff submitted a cassation request which was finally accepted at the Commercial Court Registrar's Office at the Central Jakarta District Court on April 6 2016. The defendant also submitted a counter cassation memorandum which was accepted at the Commercial Court Registrar's Office at the Central Jakarta District Court on April 27, and as a result was rejected.
2. Finally, the Commercial Court's decision at the Central Jakarta District Court Number 70/Pdt.Sus/Merek/2015/PN.Niaga.Jkt.Pst was annulled on March 7 2016. So the Court rejected the defendant's exception in its entirety. And the defendant is required to pay court costs at all levels of the trial, namely IDR 5,000,000.00 (five million rupiah).

CONCLUSION

Based on the description that has been submitted regarding this trademark case, it can be concluded as follows:

1. The impact of loss is because the brand which is the result of his thinking is stolen, resulting in the loss of exclusive rights to the brand. Consumers can be harmed because they feel cheated that the product they purchased is not an original work. One case is Laverana, a cosmetic product from Germany whose brand was plagiarized by Irwan Gunawan to use as his product brand. Due to this, Laverana felt aggrieved because Irwan Gunawan was seen as trying to take advantage of the fame of this German product.
2. Settlement of the Intellectual Property Rights dispute in this case or Laverana chose to resolve the IPR dispute through litigation or through the Indonesian courts and sued Irawan Gunawan. The court's final decision was that German Laverana won and resulted in Irawan Gunawan having to withdraw his brand and being charged a court fee of Rp. 5,000,000 or 5 million rupiah.

ACKNOWLEDGMENTS

Praise be to the presence of Almighty Allah, for His grace and guidance, the author was able to complete the International Civil Law Journal entitled "Settlement of International Trademark Disputes Against Intellectual Property Rights (Case Study: NUMBER 557 K/PDT.SUS-HKI/2016)" at the right time.

This journal was formed as a complement to the assignments for the Private International Law course. Thank you to Mrs. Mustika Mega Wijaya S.H., M.H. as a lecturer in the Private International Law course, I have given assignments that have broadened the author's insight a little. The author realizes that the journal we have compiled has not reached

the level of perfection due to the limited knowledge and knowledge we have. Therefore, we are happy to accept suggestions and constructive criticism.

REFERENCES

Indonesia. Law (UU) Number 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization. LN. 1994/ No. 57, TLN NO. 3564.

_____. Law (UU) Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. 1999/ No. 138, TLN NO. 3872.

_____. Law (UU) Number 20 of 2016 concerning Marks and Geographical Indications. LN. 2016/NO.252, TLN NO.5953. Amendments to Law no. 15 of 2001 concerning Brands. LN. 2016/NO.110, TLN No. 4131.

_____. Code of Civil law

Aminah. (2019). Pilihan Hukum dalam Kontrak Perdata. *Diponegoro Private Law Review*, *4*(2).

Aprita, S., & Adhitya, R. (2020). *Hukum Perdagangan Internasional*. PT. Raja Grafindo Persada.

Dewi, M. L., Ardhya, S. N., & Dantes, K. F. (2023). Peran Indonesia Dalam Penyelesaian Sengketa Internasional Di Laut Cina Selatan. *JURNAL KOMUNITAS YUSTISIA*, *5*(2).

Fajriawati. (2022). Penyelesaian Sengketa Perbankan Melalui Litigasi Dan Non Litigasi Di Medan. *SOSEK Jurnal Sosial Dan Ekonomi*, *2*(3).

Firmansyah, M. A. (2019). *Buku Pemasaran Produk dan Merek*. CV. Penerbit Qiara Media.

Gratia Gijoh, L. G. (2021). Implementasi Hukum Dalam Kontrak Bisnis Internasional. . *Lex Et Societatis*, *9*(1).

Khaerunisa, dkk. (2023). *Analysis of the Explosion of the Pertamina Plumpang Depo in Review From Government Regulation No. 14 of 2015 Concerning the National Development Master Plan.* Universitas PGRI Madiun.

Harsyah, J. R. (2022). *Penyelesaian Sengketa Wanprestasi Melalui Arbitrase Dan Alternatif Penyelesaian Sengketa*. Universitas Nasional.

Hasudungan, S. E. (2022). *Penyelesaian Sengketa Antara Indonesia Dengan Uni Eropa Perihal Larangan Ekspor Bijih Nikel Dalam Perspektif Hukum Perdagangan Internasional (Kasus Ekspor Bijih Nikel Dalam Perkara Nomor DS592)*. Universitas Kristen Indonesia.

Masnun, M. A. (2019). Reorientasi Pengaturan Pemberdayaan Hukum Usaha Mikro, Kecil, dan Menengah Melalui Hak atas Merek Kolektif. *Jurnal Wawasan Yuridika*, *3*(2).

Matulessy, M. F. (2022). *Perlindungan Hukum Bagi Pemilik Merek Terkenal Terkait Dengan Persamaan Pada Pokoknya Ditinjau Dari Undang-Undang Republik Indonesia Nomor 20 Tahun 2016 (Studi Kasus Putusan Mahkamah Agung Nomor 332 K/Pdt.Sus-HKI/2021)*. Universitas Kristen Indonesia.

Muliasari, R. S., Santoso, B., & Irawati. (2021). Pelanggaran Prinsip Itikad Baik dalam Sengketa Merek Internasional. *NOTARIUS*, *14*(2).

Namang, R. B. (2020). Negara Dan Warga Negara Perspektif Aristoteles. Jurnal Ilmiah Dinamika Sosial. *Jurnal Ilmiah Dinamika Sosial*, *4*(2).

Nasrudin, J. (2019). *Metodologi Penelitian Pendidikan* . Terbit Panca Terra Firma.

Nugroho, S. A. (2019). *Manfaat Mediasi Sebagai Alternatif Penyelesaian Sengketa* . Kencana

Suherman, A. (2019). Implementasi Independensi Hakim dalam Pelaksanaan Kekuasaan Kehakiman. *SIGn Jurnal Hukum*, *1*(1).

Wijaya, M. M. (2022). Pemberian Remisi Bagi Koruptor Dikaitkan Dengan Komitmen Pemerintah Dalam Pemberantasan Korupsi Di Indonesia. *PALAR (Pakuan Law Review)*, *8*(4).