

## Juridical Analysis of the Etawaku Trademark Cancellation in Business Cooperation

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### Abstract

Brand is an important component in a business. Trademarks have the power to shape a company's image and influence consumer decisions. Nevertheless, there are registered trademarks with similarities or similarities with previously registered trademarks and the first registrant feels disadvantaged, so that legal efforts can be made to cancel the trademark, remove the trademark, or apply for compensation. This study aims to determine how the consequences of cancellation of the trademark against business cooperation agreements, to achieve these objectives can be done through the method of normative legal research with more emphasis on understanding in obtaining answers by basing on the principles and principles of law applied to regulate the sovereignty of a country. The results show that the cancellation of the "ETAWAKU" Trademark can affect business cooperation in a significant way, considering that the brand is an important element in marketing and selling products. Where the impact can be in the form of contract cancellation, economic loss, or reputational damage for the parties involved. Therefore, it is very important to ensure that the trademark used in business cooperation has strong and valid legal protection, and anticipate the possibilities that can arise due to the cancellation of the trademark.

## 1. Introduction

Intellectual Property Rights (IPR) is one of the most important and inseparable issues in life today. Intellectual Property Rights are the result of the creation of the human mind and are human efforts to fulfil the needs of social life. The existence of intellectual work as a type of intellectual property is something that is needed by mankind. If we take an example in the field of trade, then a brand name is needed in order to sell goods or services successfully. The function of a brand in the world of trade is so important that it is not only a sign to distinguish between similar goods or services, but also as a superior competitive tool to capture the consumer market. A brand that becomes easily recognizable is also *goodwill* and an invaluable asset for the company.

Brand is an important component in a business.<sup>1</sup> This is because the brand is used as an identity of a product that makes the expression more easily recognised by the public or consumers. Article 1 Paragraph 1 of Law Number 20 Year 2016 on Trademarks and Geographical Indications (MIG Law) states that Trademarks are signs that can be displayed graphically in the form of images, logos, names, letters, numbers, colour arrangements, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by persons or legal entities in trading activities of goods and/ or services. Trademarks have the power to

<sup>1</sup> Nurul Ainun, Rian Maming, and Altri Wahida, "Pentingnya Peran Logo Dalam Membangun Branding Pada Umkm," *Jesya* 6, no. 1 (2023): 674–81, <https://doi.org/10.36778/jesya.v6i1.967>.

shape a company's image and influence consumer decisions.<sup>2</sup> The use of trademarks that contain elements of plagiarism has a detrimental impact on business actors and is an act of violating the trademark law system in Indonesia.

Through trademarks, entrepreneurs can maintain and provide assurance of the quality of the products produced and prevent dishonest competition from competitors who try to take advantage of their reputation.<sup>3</sup> However, the more brands in circulation also means the increased possibility of conflicts and disputes related to the brand, this is because many individuals or other parties often misuse the brand. Misuse of a trademark can be in the form of fraud, plagiarism, or unauthorised use. To protect trademarks from unfair competition, the state has a role in providing legal protection to legitimate trademark holders as stipulated in the MIG Law, where to obtain legal protection a trademark must be registered with the Directorate General of Intellectual Property Rights (DGIP) under the Ministry of Law and Human Rights.<sup>4</sup>

The legal protection of trademarks in Indonesia is based on the principle of good faith and the "first to file" system. The principle of good faith requires the registrant to have good intentions in registering the mark, while the "first to file" system states that the mark registered first in good faith will get legal protection.<sup>5</sup> Nevertheless, there are trademarks registered with similarities or similarities with previously registered trademarks and the first registrant feels harmed, so that legal remedies can be made for cancellation of the trademark, removal of the trademark, or application for compensation. Trademark law also stipulates that a trademark cancellation lawsuit can be filed by an interested party based on certain reasons.<sup>6</sup>

Based on research conducted by Hendri and Markoni entitled 'Juridical Analysis of the Cancellation of the Zhe Nung Zhu Trademark' that based on Decision Number 55/Pdt.Sus-Merek/2020/Pn.Niaga.Jkt.Pst and Decision Number 704 K/Pdt.Sus-HKI/2021 studied stated that the Plaintiff is the first party to register the brand and logo (first to file), so it has the exclusive right to use the logo. The court ordered the cancellation and removal of the defendant's trademark. Thus, legal protection for first registered trademarks provides legal certainty and gives exclusive rights to the trademark owner.<sup>7</sup> Then, based on research conducted by Desak Made Dwipayani and Nurul Fazriyah entitled 'Case of Refusal of Cancellation of Registered Trademark in Civil Lawsuit Analysis of the Decision of the Central

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<sup>2</sup> Siti Lam'ah Nasution, "Pengaruh Citra Perusahaan, Pelayanan, Dan Produk Terhadap Keputusan Pembelian Konsumen Pada Master Cash & Credit Kota Pinang," *Ecobisma (Jurnal Ekonomi, Bisnis Dan Manajemen)* 6, no. 1 (2019): 60-69, <https://doi.org/10.36987/ecobi.v6i1.35>.

<sup>3</sup> Hendri Hendri and Markoni Markoni, "Analisis Yuridis Mengenai Pembatalan Merek 'Zhe Nung Zhu,'" *Jurnal Impresi Indonesia* 2, no. 8 (2023): 780-89, <https://doi.org/10.58344/jii.v2i8.3313>.

<sup>4</sup> Nasrianti and Muhibuddin, "Perlindungan Hukum Terhadap Indikasi Geografis Menurut Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis," *Jurnal Geuthee: Penelitian Multidisiplin* 05, no. 02 (2022): 177-87.

<sup>5</sup> Neisa Ines Tritanaya and Wiwin Yulianingsih, "Perbandingan Perlindungan Hukum Merek Antara Prinsip First to File Hukum Indonesia Dan Prinsip First to Use Pada Hukum Australia," *Yustisia Tirtayasa: Jurnal Tugas Akhir* 2, no. 3 (2022): 229, <https://doi.org/10.51825/yta.v2i3.16987>.

<sup>6</sup> Nike Sepvinasari and Markoni Markoni, "Analisis Yuridis Perkara Sengketa Merek Terdaftar 'Kasomax' Versus Merek 'Kaso,'" *Jurnal Impresi Indonesia* 2, no. 8 (2023): 790-800, <https://doi.org/10.58344/jii.v2i8.3314>.

<sup>7</sup> Hendri and Markoni, "Analisis Yuridis Mengenai Pembatalan Merek 'Zhe Nung Zhu.'"

Jakarta Commercial Court Number 02/Merek/2002/Pn.Niaga.Jkt.Pst' with the results of research showing that in the decision the defendant rejected the plaintiff's claim because it was not proven that there was good faith of the defendant, and the registration of the defendant's trademark was in accordance and fulfilled the provisions of Articles 4, 5, and 6 of the Trademark Law and there was no similarity in essence between the plaintiff's trademark and the defendant.<sup>8</sup>

Furthermore, based on research conducted by Nike Sepvinasari and Markoni entitled 'Juridical Analysis of the Case of Registered Trademark Dispute "Kasomax" Versus Trademark "Kaso"' which shows that the Trademark Registration Procedure in Indonesia consists of formality examination, announcement, substantive examination and certification. The importance of a clearer legal basis regarding bad faith in the Act, because bad faith in the trademark registration procedure is one of the considerations of the judge deciding Case Number 115/PDT.SUS.Merek/2022/PN.Niaga.Jkt.Pst in addition to the first to file system, similarities in essence to the decision to cancel the defendant's trademark.<sup>9</sup>

Thus, the three previous studies above have differences with the author's research, where in this study will be studied how the consequences of cancellation of the trademark against the cooperation agreement that occurred in one example of a dispute case against the trademark, namely Case No. 3/Pdt.Sus-HKI-Merek/2023/PN.Smg. It is known that the Plaintiff is a dairy goat breeder, goat milk production and goat milk sales entrepreneur who has started a business since 2012, where the business is producing and using the brand 'ETAWAKU'. Then, the Defendant is an entrepreneur who has long been involved in the food and beverage industry as well as herbal medicines, through the Defendant's business groups, including CV Wijaya Food and CV Bumi Wijaya, the Defendant has produced and/or sold many food and beverage products, and has an extensive distribution network.

Furthermore, in order to develop its business on 26 June 2019 the Plaintiff and the Defendant signed a *Memorandum of Understanding* (MoU) Agreement Letter for "ETAWAKU" Products, which contains an agreement between the Plaintiff and the Defendant to produce and sell ETAWAKU goat milk products as much as 500 boxes/month. Whereas, the Plaintiff is obliged to produce "ETAWAKU" goat milk products, while the Defendant is obliged to sell a minimum of 500 boxes/month using the Defendant's extensive distribution network, large investments from the Defendant and a good marketing or sales strategy, the Defendant has succeeded in selling ETAWAKU goat milk products with an increasing number from thousands, to tens of thousands of boxes per month. In September 2021, product sales reached more than 75,000 boxes/month. Far exceeding the minimum sales target agreed by the Plaintiff and Defendant in the MoU of 26 June 2019.

The Plaintiff and the Defendant followed up on the success in the sale of "ETAWAKU" goat milk products by signing a Cooperation Agreement for the Establishment of a Milk Factory dated 20 October 2021 (Factory Establishment MCC). Through the signing of Factory

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<sup>8</sup> Desak Made Dwipayani and Nurul Fazriyah, "Perkara Penolakan Pembatalan Merek Terdaftar Dalam Gugatan Perdata Analisis Putusan Pengadilan Niaga Jakarta Pusat Nomor 02/Merek/2002/Pn.Niaga.Jkt.Pst," *Ganesh Law Review* 3, no. 2 (2021): 97-110, <https://doi.org/10.23887/glr.v3i2.445>.

<sup>9</sup> Sepvinasari and Markoni, "Analisis Yuridis Perkara Sengketa Merek Terdaftar 'Kasomax' Versus Merek 'Kaso.'"

Establishment Agreement, the Plaintiff and Defendant agreed to establish a Limited Liability Company which later establish a factory to produce "ETAWAKU" goat milk, with a share ownership portion of 50% (fifty percent) for the Plaintiff and 50% (fifty percent) for the Defendant. So that in the future, "ETAWAKU" goat's milk products that were previously produced in factories owned by other parties (among others in factories owned by CV Tamto Mandiri), can be produced by the Plaintiff's and Defendant's factories. The Factory Establishment MCC was realised with the establishment of PT Etsa Bregas Makmur (PT EBM) through Deed of Establishment Number 1 dated 7 January 2022, domiciled in Sleman Regency, Yogyakarta Special Region Province.

Along with the plan to establish PT EBM and the milk factory as agreed by the Plaintiff and the Defendant in the Factory Establishment Agreement, in order to protect the product name "ETAWAKU" which has been used so far, It was also agreed that the product name "ETAWAKU" be registered with the Directorate General of Intellectual Property (DGIP), both the ETAWAKU trademark which has been registered with registration number IDM000887662 Class 29 and the ETAWAKU trademark with registration number IDM001043502 Class 5 at DGIP by the Defendant as the property of the Defendant which is based on good faith and is a business agreement between the Plaintiff and the Defendant used in business activities of selling goat milk products "ETAWAKU" which is profitable for both parties. The registration of the "ETAWAKU" class 29 and class 5 marks by the Defendant could not have been unknown to the Plaintiff who is the President Commissioner of PT EBM, because after the "ETAWAKU" class 29 and class 5 marks were registered, the Defendant as the owner of the marks licensed the use of its marks to PT EBM (which is jointly owned by the Plaintiff and the Defendant) through the signing of a Licensing Agreement dated 16 January 2023 between the Defendant as the brand licensor and PT EBM as the brand licensee. The Plaintiff as a shareholder in PT EBM has also given its approval in the GMS of PT EBM dated 2 February 2023 which discussed the approval of the company's 2022 Performance Report and 2023 Company Work Plan. Therefore, the Plaintiff should be deemed by law to approve and justify the registration of the mark "ETAWAKU" class 29 and class 5 as the property of the Defendant.

However, since at least June 2023 the Plaintiff has been producing and selling goat's milk products under the brand name "ETAWANEW" which is a similar product and competes with goat's milk products produced by PT EBM without the consent of the Defendant as a business partner. Not only is the type of product the same, the brand "ETAWANEW" and the logo and packaging used by the Plaintiff are also very similar to the products produced by PT EBM, this is clearly an attempt by the Plaintiff to mislead the public and consumers to be fooled and mistakenly equate the Plaintiff's product with PT EBM's product for the Plaintiff's own interests and profits.

## 2. Methods

The research method used is normative research.<sup>10</sup> Normative research is research conducted with more emphasis on understanding in obtaining answers by basing on the principles and principles of law applied to regulate the sovereignty of a country and problem-solving efforts regulated in national and international legal instruments reviewed from

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<sup>10</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan* (Jakarta: Raja Grafindo Persada, 2010).

regulations to obtain a comprehensive understanding in analysing the problems caused by brand cancellation against business cooperation this research.<sup>11</sup> This research is conducted using statute approach and case approach. The data sources in the research consist of primary data obtained from the applicable laws and regulations, as well as secondary legal materials consisting of books and journals. The sources as supporting primary and secondary data from the internet and news.<sup>12</sup>

### 3. Results and Discussion

Trademark registration is one of the efforts to ensure the legal certainty of the trademark holder is to establish the responsibility of the producer for the quality of goods traded, so that the value of an item in the eyes of consumers becomes vital.<sup>13</sup> A good reputation by a brand is generated through good and continuous quality improvement. Through registration, the state will also provide protection to people who meet the requirements to register, as well as provide exclusive rights to people who have successfully registered.<sup>14</sup> Protection in the form of exclusive rights is certainly a very valuable asset. The exclusive rights obtained by the owner of a well-known trademark through the registration of its trademark is an effort to build a good reputation and image of brand, so that the state has a consequence to provide full legal protection.<sup>15</sup>

The right to a trademark is obtained after the DGIP issues a trademark certificate. The owner of a registered mark has the right to protect his mark from infringement by other parties. The Trademark Law applies the first to file principle, which stipulates that trademark registration is the main condition for obtaining legal protection. The first to file system grants rights only to the party who first applies for registration. The State will not authorise the registration of a mark that is similar to a mark that has been previously filed for similar goods or services.<sup>16</sup>

In this system, ownership of the mark is determined based on registration, not based on use. The party that registers the mark becomes the sole legal owner, and other parties are obliged to respect the exclusive rights. The application of the first to file system aims to provide clearer legal certainty because trademark ownership depends on official registration. However, this system has the disadvantage of allowing a party in bad faith to register another party's trademark as its own. Therefore, legal protection under the first to file system relies heavily on the registration being done in good faith. Trademark rights that have been

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<sup>11</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Cetakan ke (Jakarta: Kencana Prenada Media Group, 2007).

<sup>12</sup> *Ibid*, 133.

<sup>13</sup> Yolanda Precillia, Budi Santoso, and Rinitami Njatrijani, "Analisis Yuridis Pendaftaran Merek Deskriptif Yang Menjadi Merek Generik (Studi Kasus: Putusan Nomor: 179/Pk/Pdt. Sus/2012)," *Diponegoro Law Journal* 5, no. 3 (2016): 2-3.

<sup>14</sup> Septi Indrawati, Wanda Athaya Nisrina, and Amalia Fadhila Rachmawati, "Contemporary Batik on the Verge of Risk : The Urgency of Copy Right Registration for Legal Protection," *Justitia Jurnal Hukum* 8, no. 2 (2024): 164-79, <https://doi.org/10.36501/justitia.v1i2.164>.

<sup>15</sup> Muhammad Dayyan Sunni and Mas Rahmah, "Pembatalan Merek Terkenal Yang Berubah Menjadi Istilah Umum," *Jurist-Diction* 3, no. 2 (2020): 481, <https://doi.org/10.20473/jd.v3i2.18200>.

<sup>16</sup> Stefani Adelia Widayani and Febri Noor Hediati, "Perlindungan Hukum Indonesia Bagi Pemegang Hak Atas Pencantuman Merek Terkenal Pada Parfum Lokal," *Sapientia Et Virtus* 9, no. 1 (2024): 398-414, <https://doi.org/10.37477/sev.v9i1.544>.

registered will receive protection for ten years from the date of receipt and can be extended for a certain period of time. This is in accordance with Article 3 of the Trademark Law which states that 'Trademark rights are obtained after the Trademark is registered'. Kedati, if a person uses a trademark in his business activities without registering it, then he does not have exclusive rights to the trademark and risks losing his rights if another party has registered it first.

Based on the Decision of Case Number 3/Pdt.Sus-HKI-Merek/2023/PN.Smg that the Panel of Judges decided to cancel the mark 'ETAWAKU' with some legal considerations underlying the cancellation of this trademark, among others:

- a. Similarity of the Plaintiff's Trademark and filed in bad faith the Trademark 'ETAWAKU' owned by the Defendant. Despite the existence of the Defendant's Creation Recording Letter for the type of creation of artistic image and the title of the creation "Etawaku Goat and Mountain View" with the recording number 000503960 with the date and place announced for the first time in the territory of Indonesia or outside the territory of Indonesia on 7 January 2018 and the recognition of the Defendant's ownership of the trademark 'ETAWAKU'. The ownership of the Defendant of the 'ETAWAKU' trademark is based on the evidence in the form of a trademark certificate issued by the DGIP dated 30 March 2022 with a licensing agreement between the Defendant (as Licensor) and PT EBM (as Licensee) Registration number IDM000887662, where the position of the Plaintiff is a shareholder (Commissioner) of PT EBM and the witness is a Director, so that PT EBM has made payments to the Defendant as the licensor. This is in accordance with Article 1 Paragraph 5 of the Trademark Law that:

*"The right to Trademark is an exclusive right granted by the state to the owner of a registered Trademark for a certain period of time by using the Trademark itself or granting permission to other parties to use it."*

Then in Article 43 paragraph (1) of the Trademark Law states that the owner of a registered mark has the right to grant a licence to another party with the agreement that the licensee will use the mark for part or all types of goods or services. According to these provisions, the birth of the legal relationship of the parties in the granting of the licence must be set forth in the agreement. The agreement is fully subject to the law of agreements contained in the Civil Code.

- b. The existence of bad faith committed by the Plaintiff by selling goat milk products with a mark that is substantially the same as the Defendant's mark and is being used by PT EBM under a licence agreement, so that it can be subject to criminal sanctions as referred to in Article 100 paragraph (2) of the Trademark Law that:

*"Any person who without right uses a Trademark that is substantially similar to a registered Trademark owned by another party for similar goods and/or services produced and/or traded, shall be punished with imprisonment of 4 (four) years and/or a maximum fine of Rp2,000,000,000.00 (two billion rupiah)."*

- c. The acts committed by the Plaintiff were an attempt to mislead the public and consumers who purchased goat's milk products "ETAWAKU" produced by PT EBM, for the Plaintiff's own benefit and advantage, thus constituting 'fraudulent competition' as set out in Article 382 of the Criminal Code that:

*"Any person who, in order to obtain, continue or expand his own or another person's trade or business, commits fraudulent acts to mislead the public or a particular person,*

*shall, if such acts may cause injury to his concurrent or other concurrent persons, by reason of fraudulent competition, be punished by a maximum imprisonment of one year and four months or a maximum fine of thirteen thousand five hundred rupiahs."*

Thus, with the prior recording of the Defendant's trademark, the exclusive rights of the Defendant as the registered rights holder have been attached to the fact that the Plaintiff's argument regarding the absence of good faith in the registration of the trademark of the Defendant in registering the trademark with its position as the owner of an unregistered trademark is a pretext that is not legally grounded and must be rejected. This is in accordance with Article 76 of the MIG Law that the filing of a trademark cancellation lawsuit can be done, as follows:

- (1) *A registered trademark cancellation lawsuit may be filed by any interested party based on the grounds as referred to in Article 20 and/or Article 21.*
- (2) *The owner of an unregistered mark may file a lawsuit as referred to in paragraph (1) after submitting an application to the minister.*
- (3) *A cancellation suit is filed with the Commercial Court against the owner of the registered mark.*

However, Article 76 paragraph (2) of the MIG Law above opens the possibility for registered trademark owners to lose their trademark rights due to a cancellation lawsuit. So that the application of the first to file system in trademark registration is less effective, where the rights to registered trademarks become weak or less strong, which in turn can lead to legal uncertainty. The first to file registration system should be applied strictly and consistently, so that legal protection is only given to trademark owners who have registered in accordance with the provisions of the applicable legislation.

Trademark cancellation is a procedure taken by a party to seek and eliminate the existence of registration of a trademark from the General Register of Trademarks or cancel the validity of rights based on a trademark certificate. Generally, a party who feels that it has been harmed by the registration may file a lawsuit for cancellation. The lawsuit for cancellation of a trademark is based on the provisions in Article 20 and Article 21 of the MIG Law to the Commercial Court. The lawsuit for cancellation of trademark registration can only be filed within a period of 5 (five) years from the date of registration of the trademark. However, the provisions of this lawsuit filing period are excluded if the trademark in question contains elements of bad faith or contrary to the state ideology, laws and regulations, morality, religion, decency and public order.

Based on the decision *a quo* that has been in force although the verdict states the ownership of rights to the trademark is void, null and void or invalid, but the ownership is not necessarily void, because the act of cancellation is an administrative action of government officials in this case based on the decision of the trademark cancellation lawsuit aims to end the protection of the trademark, this is also explained in Article 91 Paragraph 1 of the MIG Act which states:

*"The implementation of cancellation based on a court decision is carried out after the minister receives a copy of the official decision that has permanent legal force and is announced in the official brand news."*

When the court decision regarding the cancellation of trademark registration is received and permanent legal force. Cancellation of trademark registration based on a lawsuit will be carried out by the DGIP by crossing out the relevant trademark from the general register of trademarks, which is explained in Article 92 of the MIG Law which states:

- (1) *Cancellation or deletion of trademark registration is carried out by the Minister by crossing out the relevant trademark by giving a note on the reasons and the date of cancellation or deletion.*
- (2) *Cancellation or deletion of registration as referred to in paragraph (1) shall be notified in writing to the trademark owner or his attorney by stating the reasons for cancellation or deletion and confirmation that from the date of deletion, the relevant trademark certificate is declared no longer valid.*
- (3) *Removal of registered trademark as referred to in paragraph (1) is announced in the official trademark news. So that from the date of deletion from the general register of trademarks, the relevant trademark certificate is declared no longer valid. Such deletion must be announced in the official trademark news. With the cancellation and removal of registered trademarks from the general register of trademarks, will result in the end of legal protection of the relevant trademark.*

For the Commercial Court decision that decides the cancellation lawsuit, the contents of the judicial body's decision are immediately submitted by the clerk to the DGIP after the date of pronouncement. DGIP shall cancel the registration of the relevant trademark from the public register of trademarks and announce it in the official trademark news after the decision of the judicial body is received and has permanent legal force.

Cancellation of trademark registration is done by DGIP by crossing out the relevant trademark from the general register of trademarks by giving a note about the reasons and date of cancellation. Cancellation of registration is notified in writing to the owner of the trademark or his attorney by stating the reasons for cancellation and confirmation that since the date of deletion from the general register of trademarks, since the date of deletion from the general register of trademarks the relevant trademark certificate is declared no longer valid. The removal of a trademark registration from the public register of trademarks is announced in the official trademark news, so that the cancellation and removal of trademark registration results in the end of legal protection of the trademark concerned.<sup>17</sup> When there is a trademark that is declared invalid through a court decision because it has factually met the requirements of cancellation as stipulated in Article 20 and Article 21 of the MIG Law, the executorial action on the trademark is only limited to the administrative process in the form of removal and announcement, but not accompanied by sanctions to the owner in the form of a ban on the re-use of the trademark that has been cancelled to ensure legal certainty for the winning party as an interested party in the case of a trademark cancellation lawsuit as stipulated in Article 20 of the Trademark Law, namely:

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<sup>17</sup> Patrichia Weyni Lasut, "Penyelesaian Sengketa Gugatan Atas Pelanggaran Merek Menurut Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis," *Lex Et Societatis* 7, no. 1 (2019): 69-69.



- (1) *The trademark does not fulfil the registration requirements, such as not having a distinguishing characteristic, or not fulfilling the provisions stipulated in the Trademark Law.*
- (2) *Trademarks registered in bad faith, for example if they imitate or counterfeit a pre-existing mark.*
- (3) *The registered mark is already being used by another party in a way that may mislead consumers (e.g. false claims of quality or authenticity).*
- (4) *Trademarks that violate the provisions of laws and regulations, such as those that contain prohibited elements or violate the norms of decency and religion.*

Cancellation of a mark by the DJKI or the court results in the loss of the owner's right to use the mark, so it can no longer be used for related products or services. This can disrupt existing business relationships, especially if the mark is the primary identity of the product being manufactured or marketed together. In addition, cancellation of a trademark registration can also have a significant impact on consumers. Consumers who have become accustomed to products or services from well-known brands often associate quality and trustworthiness with those brands. If a trademark registration is cancelled, consumers risk getting products or services that do not match the standards they expect. As a result, this can lead to financial losses, loss of trust, and even health risks, especially if the products concerned are consumer goods.

Thus, the trademark owner must provide guarantees and provide access to consumers to obtain legal counsel if he violates the provisions of Law Number 8 Year 1999 on Consumer Protection (Law of Customer Protection) which regulates consumer rights in Article 4 of the UUPK, that:

- a. *The right to be free from physical and mental harm when using products or services;*
- b. *The right to choose and obtain products or services in accordance with the price, conditions, and guarantees set;*
- c. *The right to accurate, transparent, and honest information about the terms, conditions, and guarantees of products or services*
- d. *The right to have one's opinion heard regarding one's experience with services or goods;*
- e. *The right to be properly publicised, protected, and to be the subject of appropriate consumer protection dispute resolution initiatives*
- f. *The right to receive consumer education and advice;*
- g. *The right to fair treatment;*
- h. *The right to restitution or replacement if the goods or services obtained are defective or do not meet the standards set out in the agreement;*
- i. *Rights controlled by other laws*

Through the experience of using a brand, consumers can assess the quality and authenticity of the product based on the characteristics, such as the mark or colour attached to the brand. GCPL is expected to increase the awareness of consumers in Indonesia regarding their rights and obligations towards businesses. The preamble of the GCPL states that in order to improve the dignity of consumers, it is necessary to increase consumers' awareness, knowledge, concern, ability, and independence in protecting themselves. In addition, the GCPL also aims to encourage business actors to act more responsibly.

Thus, the decision to cancel this trademark shows the importance of protection of intellectual property rights, particularly trademarks, as part of efforts to protect consumers and maintain fair competition in the market. In this case, entrepreneurs or parties involved in business must ensure that the marks they use do not infringe on the rights of other parties and have been legally registered. The use of a legitimate brand that does not confuse consumers is one way to ensure business continuity.

Cancellation of a mark by the DGKI or the court causes the right to use the mark by its owner to be lost, and the mark can no longer be used for related products or services. This can lead to disruption of existing business cooperation, especially if the mark is the main identity of the product that is produced or marketed together. Thus, cancellation of a trademark registration will lead to the termination of the licensing agreement between the licensor (whose trademark is cancelled) and the licensee. Nonetheless, the rights of the licensee still get protection in accordance with the provisions stipulated in article 48 of the Trademark Law that:

- (1) *The licensee who is in good faith, but then the trademark is cancelled on the basis of the existence of similarities in principal or in whole with other registered trademarks, is still entitled to implement the license agreement until the expiration of the term of the license agreement;*
- (2) *The licensee as referred to in Paragraph (1) shall no longer be obliged to continue the royalty payments to the licensor of the cancelled Trademark, but shall be obliged to make royalty payments to the owner of the non-cancelled Trademark;*
- (3) *In the event that the licensor has already received royalties in a lump sum from the licensee, the licensor shall be obliged to deliver a portion of the royalties received to the owner of the non-cancelled Trademark, the amount of which is proportional to the remaining term of the license agreement.*

Nevertheless, Article 48 of the Trademark Law provides legal protection to the licensee of a good faith trademark, but does not elaborate in detail on the definition of a good faith licensee. Therefore, this needs to be linked to Article 43 Paragraph (3) of the Trademark Law which regulates the obligation to record the licence agreement with the DGIP. This recording is usually done by the licensee (in good faith), because the legal consequences of the recording will apply to both the parties involved and third parties. If in the implementation of the licensing agreement there is a lawsuit for cancellation of the ownership of the trademark (on the grounds of the similarity of the principal or the entire trademark), which is submitted to the trademark owner who is also the licensor, then the licensee's position will not be affected by the judge's decision that has permanent legal force in the dispute. If a legally enforceable commercial court decision invalidates the licensor's position as the trademark owner, then the licensee can continue the licensing agreement with the provision that royalty payments in the following period will be forwarded to the legitimate party as the trademark owner.

#### **4. Conclusions**

Trademark registration is an important legal process that provides certainty and protection to the rights of trademark owners, ensuring that manufacturers are responsible for the quality of the goods traded. Based on Decision Number 3/Pdt.Sus-HKI-Merek/2023/PN.Smg that the cancellation of the trademark 'ETAWAKU' due to several legal reasons, including bad faith in the filing process and similarity to other registered marks.

Although the Defendant had conducted the DGIP recording and registration of the mark earlier, the use of substantially the same mark by the plaintiff for the same products was deemed to mislead consumers and constituted fraudulent competition. The case also involved a licensing agreement between the defendant and a third party (PT EBM), where the plaintiff, as a shareholder, sought to sell similar products under the disputed mark. Thus, Trademark cancellation affects business relationships, especially licensing agreements. As stipulated in Article 48 of the Trademark Law, a licensee in good faith is still entitled to continue the licensing agreement until its validity period expires, even though the mark is subsequently cancelled. The licensee is not obliged to pay royalties to the licensor of the cancelled trademark but must divert the payments to the rightful trademark owner. This provision ensures that the rights of the licensee are protected, while the licensor has to transfer a portion of the lump-sum royalty to the rightful owner. Thus, the importance of protecting intellectual property rights, particularly trademarks, to prevent confusion in the market, protect consumers, and promote fair competition. The case also highlights the need for businesses to ensure their trademarks are properly registered and do not infringe on the rights of others. Moreover, it also emphasises the role of the DGIP in maintaining transparent and compliant trademark registrations, with legal mechanisms available to handle disputes and cancellations.

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