

Legal Protection for Trademark Applicants in Good Faith in Retroactive issuance of Certificate Based On Supreme Court Decision

Muhammad Aditya Pramana¹, Fokky Fuad², Suartini³

^{1,2,3}Al-Azhar University Indonesia

*Corresponding Author: adityapramanamuhammad@gmail.com

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Abstract

The process by which a trademark certificate issued by the Directorate General of Intellectual Property is retroactively valid from the date the trademark registration application is submitted, not from the date the certificate is officially issued. brand which was resolved through criminal channels in Court Nganjuk State with the Defendant Rudy Mulyanto who can analyzed more far is a dispute between Trademarks resolved through criminal channels which then in the Cassation Decision at the Supreme Court Number 3733 K / Pid.Sus / 2020 Rudy Mulyanto was declared not legally and convincingly proven guilty of committing a crime as in the First or Second indictment. The research method used is normative juridical library materials or secondary data as basic material for research by conducting a search for regulations and literature related to the problem being studied. The results of this study are that legal protection for trademark certificates issued by the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia is retroactive from the date of submission of the application, not from when the certificate was issued. In the Decision of this trademark dispute case, there was negligence in providing legal protection to the applicant or trademark registrant, the author does not agree with the decision of the panel of judges at the first level and the high court level and concludes that trademark disputes should be resolved first through civil channels, while criminal channels are used as a last resort in resolving trademark disputes.

1. Introduction

Humans, through science, have developed their intellectual abilities to create various works, both in the fields of technology, art, and literature. The works produced by this intelligence require great effort, including the sacrifice of time, energy, thought, and creativity, because these works are expected to have economic value ¹. Wealth generated from human intellectual abilities, which provide economic benefits to life, needs to be protected by law. This protection aims to achieve justice, certainty, and benefits, especially in the intellectual property legal protection system in Indonesia ².

The legal protection system for intellectual property in Indonesia is known as Intellectual Property Rights (IPR). Works resulting from human intellectual ability are the primary focus of protection within the IPR system. Generally, IPR is divided into two categories: Copyright and Industrial Property Rights. Industrial Property Rights include

¹ Reza Adi Hioctava Darsana Sandi Yudha Prayoga, "CASE STUDY OF SUPREME COURT DECISION NUMBER 3733 CONCERNING RUDY MULYANTO'S TRADEMARK DISPUTE," *Justice Dialectical* 1, no. 1 (2022): 24–31, <https://doi.org/https://doi.org/10.70720/jjd.v1i1.13>.

² Abdul Latif Mahfuz, "Problematics of Intellectual Property Rights (IPR) Law in Indonesia," *Journal of Legal Certainty and Justice* 1, no. 2 (2020): 47, <https://doi.org/10.32502/khdk.v1i2.2592>.

Patents, Trademarks, Industrial Designs, Integrated Circuit Layout Designs, Trade Secrets, and Plant Variety Protection ³.

Influence globalization Which push development economy The world has had a direct impact on the increasing flow of trade in goods and services. Based on this, brands have become an important part of Intellectual Property Law in the development of trade in goods and services. Brands are part of IPR regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications (hereinafter abbreviated as the Trademark and Geographical Indication Law) ⁴. The Trademark and Geographical Indication Law defines a brand as a sign in the form of an image, name, word, letters, numbers, color arrangement or combination of these elements that have distinguishing power and are used in trade in goods or services ⁵.

Brands serve as a differentiating tool, both for consumers to recognize the identity, source and origin of goods and for brand producers who use brands as symbols and representations of the company's good name whose reputation must always be maintained among consumers. Brands are also very important in the world of advertising and marketing Because public often to hook something *image*, quality or the reputation of goods and services with a particular brand so that a brand can become riches Which very valuable in a way commercial. For consumer, If A company use brand company Otherwise, consumers may feel cheated because they have purchased a product of lower quality.

Protection brand famous in Indonesia is Wrong one aspect important from law brand. Protection brand famous contained in Article 21 paragraph (1) letters b and c of the Trademarks and Geographical Indications Law. Article 21 paragraph (1) letter b explains that the application must be rejected. by the Directorate General Riches Intellectual (DIRECTORATE GENERAL OF KI, MINISTRY OF LAW AND HAM, RI) if brand concerned have equality on the main thing is or in its entirety with a well-known brand owned by another party for goods and/or services similar. Then on Chapter 21 paragraph (1) letter c also explains application must rejected also to brand goods and/or service Which No similar throughout fulfil condition certain. Certain requirements What is meant is Article 21 paragraph (1) letter c loaded more carry on in Chapter 19 paragraph (3) letter a And b Regulation Minister Law and Right Basic Man Number 67 Year 2016 about Registration Brand (hereinafter abbreviated Minister of Law and Human Rights Regulation 67/2016) that is covering there is an objection Which submitted in a way written by owner brand famous for application And brand famous must Already registered ⁶.

Retroactive issuance of a trademark certificate is a process in which the trademark certificate issued by the Directorate General of Intellectual Property (Ditjen KI) is valid

³ Sulasno and Uul Nabila, "Implementation of Intellectual Property Legal Protection for MSMEs Through," *Journal of Public Administration Science (AsIAN)* 08, no. 01 (2020): 27–32.

⁴ Legislation, "Law of the Republic of Indonesia Number 20 of 2016 Concerning Trademarks and Geographical Indications," BPK Ri § (2016).

⁵ Kholis Roisah, "The Legal Policy of 'Transferability' to Rights Protection," *Jurnal Law Reform* 11, no. 2 (2015): 241–54, <https://doi.org/https://doi.org/10.14710/lr.v11i2.15772>.

⁶ Ranggalawe Suryasaladin, "Capacity Development of Small and Medium Enterprises in Utilizing the Intellectual Property Rights System to Increase Business Competitiveness," *Journal of Law & Development* 50, no. 1 (2020): 159, <https://doi.org/10.21143/jhp.vol50.no1.2488>.

retroactively starting from the date the trademark registration application was submitted, not from the date the certificate was issued. the official published ⁷This means that even if the physical certificate is received on a specific date, the legal protection rights for the trademark are recognized from the date the application was first submitted, based on the applicant's good faith in registering the trademark. This can provide legal certainty for trademark holders that from the date of submission, their trademark has received legal protection, even if the certificate has only just been issued. a number of time Then ⁸.

Dispute brand which initially had to be resolved through civil law first, but in Court Nganjuk State with the Defendant RUDY MULYANTO who can analyzed more far is a dispute between Trademarks that was resolved through the Criminal route which was then in the Cassation Decision at the Supreme Court Number 3733 K/Pid.Sus/2020 Defendant Rudy Mulyanto was declared not legally and convincingly proven guilty of committing a crime as in the First or Second indictment. This has implications for the resolution of trademark disputes in this case.

The panel of judges in its decision granted the entire cassation application with the consideration that the Defendant's reason for cassation could be justified because the decision of *the judex facti*/ High Court which upheld the decision of *the judex facti*/ District Court which stated that the Defendant was legally and convincingly proven guilty of committing the crime of "Without the right to use a trademark that has similarities in principle with a registered trademark belonging to another party for similar goods and/or services produced and/or traded" and sentenced the Defendant to 4 (four) months imprisonment, which was inappropriate and did not apply legal regulations as they should ⁹.

Problems arise when trademark certificates are issued retroactively, that is, they are effective retroactively from the date the application is submitted. This retroactive issuance of certificates has various legal implications, particularly regarding legal protection for trademark applicants during the period between the application submission and the issuance of the certificate. This condition can create legal uncertainty for applicants, because the trademark submitted is not officially recognized until the certificate is issued, but while the applicant is still in the process of waiting for certainty regarding the acceptance or rejection of their trademark application, the applicant is already facing a criminal dispute. An in-depth analysis is needed with the title "Legal Protection of Trademark Applicants in the Issuance of Retroactive Certificates Based on Supreme Court Decision Number 3733 K/PID.SUS/2020". This is important to ensure that the applicable legal system is able to provide legal certainty and protect the rights of interested parties considering that the trademark has become the

⁷ Erna Amalia Joy Sinaga, Syafrida, "LEGAL PROTECTION FOR THE FIRST TRADEMARK REGISTRANT BASED ON THE FIRST-TO-FILE PRINCIPLE FOR STRONG TRADEMARK CASES (CASE STUDY: NUMBER 22PK/Pdt.Sus-HKI/2022)," *Kliendi Law Journal* 1, no. 1 (2022): 1-16.

⁸ Nadya Enjelin Kusuma and R Rahaditya, "Review of the Principle of Good Faith in Legal Protection Efforts for Trademark Disputes (Study of Decision Number 3/Pdt. Sus. Hki/Merek/2022/PN Niaga Mdn)," *UNES Law Review* 6, no. 2 (2023): 4516-23.

⁹ Azhari Ar, M Hum, and Daniel Simanungkalit, "Legal Protection of the First Registered Trademark Holder Against Registration Actions by Other Parties (Case Study of the Supreme Court of the Republic of Indonesia Decision Number 750 K/Pdt.Sus-HKI/2018)," *Al-Hikmah Journal of Law and Society* 1, no. 2 (2020): 208-24.

reputation and quality of a product or service that has high economic value, so it is important to maintain that reputation and quality.

Based on the description of the background of the problem above, the problem is formulated as follows:

1. What is the legal protection for trademark applicants who act in good faith when trademark certificates are issued retroactively?
2. What are the legal implications of the settlement after going through the examination process by the Directorate General of Intellectual Property (Ditjen KI) regarding the protection of intellectual property rights based on Supreme Court Decision Number 3733 K/PID.SUS/2020? ?

2. Methods

The research method used is normative juridical, namely legal research conducted by examining library materials or secondary data as basic material for research by conducting searches on regulations and literature related to the problem being studied. The research specifications used in this study are analytical descriptive, namely the results of the research will attempt to provide a comprehensive, systematic and in-depth picture of the research situation. The data analysis technique used is qualitative analysis, namely the data obtained is then collected systematically, then qualitative analysis is carried out to obtain conclusions on the problem being studied¹⁰. The author examines positive legal provisions in order to find legal rules, legal principles, and legal doctrines to answer the legal issues faced.

3. Results and Discussion

3.1. Legal Protection for Trademark Applicants in good faith when the Trademark Certificate is issued retroactively

Based on Philipus M. Hadjon's concept, legal protection for well-known trademarks in Indonesia involves preventive and repressive measures to resolve trademark disputes. The first preventive measure is the establishment of a specific law governing trademarks. Second, the trademark registration process requires applicants to meet certain requirements that will be examined by the Directorate General of Intellectual Property (DITJEN KI KEMENKUMHAM RI) through administrative and substantive examinations. Third, it provides an opportunity for objections to file a protest before a final decision is made.

This inspection by the Directorate General of Intellectual Property aims to prevent trademark disputes by ensuring there are no similarities in registered trademark names. This preventative protection requires the Directorate General of Intellectual Property to carefully examine each application in its database to avoid potential future conflicts. The government is encouraged to be more cautious in making decisions regarding trademark protection¹¹.

In addition to preventive protection, there is also repressive protection aimed at resolving trademark disputes. If a trademark violation occurs, the trademark owner can take

¹⁰ S. Soekanto, *Legal Research Methods* (Sinar Grafika, 2014).

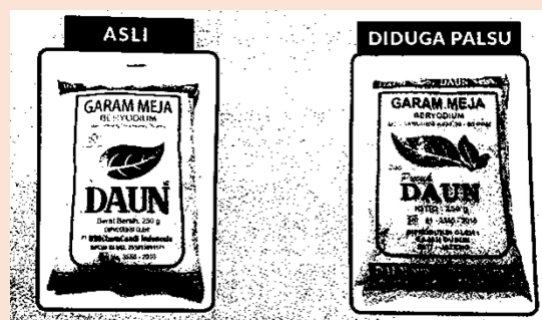
¹¹ Catherine Angelica, Gunardi Lie, and Moody P Rizqy Syailendra, "Trademark Rights Dispute between Geprek Bensu and I Am Geprek Bensu," *Indigenous Cultural Values as Supporters of Sustainable Development in the Industrial Era 4.0.*, 2021, 311-18, <https://doi.org/https://doi.org/10.24912/pserina.v1i1.16381>.

legal action, both civil and criminal, to demand sanctions against the violator ¹². This repressive protection includes claims for compensation and criminal charges. In addition, through state administrative lawsuits, the State Administrative Court has the authority to handle trademark disputes, although its authority is limited to the deletion of registered trademarks at the initiative of the Minister, in accordance with the provisions of Law No. 20 of 2016 ¹³.

Referring to the provisions of Law No. 20 of 2016 concerning trademarks, which does not prohibit the use of trademarks that resemble abbreviations of famous people's names, it is also reinforced by the prohibition on the application of a rule retroactively. The existence of a court decision cannot be a reason for the cancellation of a trademark because it is only an affirmation and does not create a new situation ¹⁴.

Purpose and Benefits of Retroactive Issuance, Legal Certainty With the issuance of a retroactive certificate, the trademark applicant is guaranteed that his rights are valid from the date of application submission. This provides legal certainty for the applicant during the examination process until issuance. Protection against claims by Third Parties if someone uses the same or similar brand during the application process, the certificate holder in this case the Third Party cannot yet sue for the violation and must wait for the final decision to be accepted or rejected by the Directorate General of Intellectual Property or the decision of the Trademark Kanding Commission of the Directorate General of Intellectual Property if the applicant files an appeal against the rejection, considering that the applicant in submitting the application is based on good faith and so as not to conflict with the provisions stating that the brand is protected from the date of application. (Nur Wicaksana & Miftah Farid, n.d.) The exclusive rights of the trademark holder remain recognized from the date of application. Prevention of Abuse with the enactment of retroactive rights, the potential for abuse or illegal use by third parties during the waiting period for certificate issuance can be minimized. This also prevents the actions of other parties who try to register the same brand during that period.

Case Position: that the brand "DAUN + LUKISAN" in the form of table salt goods belongs to PT. UNICHEMCANDI Indonesia has been registered with the Directorate General



¹² Raden Ajeng Cendikia Aurelie Maharani and Hernawan Hadi, "LEGAL PROTECTION FOR RIGHTS HOLDERS OF FOREIGN TRADEMARKS IN INDONESIA (Study of Supreme Court Decision Number 264/K/PDT.SUS-HKI/2015)," *Jurnal Privat Law* 8, no. 1 (2020): 130, <https://doi.org/10.20961/privat.v8i1.40386>.

¹³ Bimarcelline Agatha and Krisnadi Nasution, "LEGAL ANALYSIS OF SUPREME COURT DECISION NUMBER. 836 K/Pdt.Sus-HKI/2022 CONCERNING CANCELLATION OF THE REGISTERED TRADEMARK 'STARBUCKS CIGARETTES,'" *Yustisi* 11, no. 1 (2024): 170-82, <https://doi.org/10.32832/yustisi.v11i1.16201>.

¹⁴ Andrew Betlehn and Prisca Oktaviani Samosir, "MSME Industrial Brands in Indonesia," *Law and Justice Journal* 3, no. 1 (2018): 3-11.

of Intellectual Property with a trademark certificate dated November 20, 2012 with the application date and receipt date on February 21, 2011 with an extension recorded on March 2, 2011 and the application date on July 2, 2011. The defendant Rudy Mulyanto from July 2016 to October 31, 2017 as the reported party at that time had used a brand that had similarities in principle or in its entirety with the registered brand of another party (PT UNICHEMCANDI) for similar goods or services produced and/or traded. The defendant has a business UD GAJAH DUDUK (salt production and sales) since 2014 until now, in May 2016 Rudy Mulyanto has submitted an application for registration of the brand "Cap Pucuk DAUN" to the Directorate General of Intellectual Property, but in October 2017 (when there was no official decision of rejection by the Directorate General of Intellectual Property) Rudy Mulyanto was reported by PT UNICHEM at the East Java Regional Police for alleged criminal acts of trademarks and geographical indications by using the brand "Cap Pucuk Daun" without the right which has similarities in whole or in essence with the registered brand "DAUN + LUKISAN" belonging to PT. UNICHEMCANDI as referred to in Article 100 paragraph (1) or (2) and or Article 102 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications . Due to the alleged criminal act, Rudy Mulyanto has received treatment by the East Java Regional Police who conducted a raid, confiscated salt, named Rudy Mulyanto a suspect until the transfer to the prosecutor's office based on a report from PT UNICHEM which should not have been able to carry out criminal efforts considering that the civil process for the application for the "cap pucuk daun" trademark is still ongoing at the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia. The label or packaging is similar to the DAUN + LUKISAN brand of table salt produced by PT. UNICHEMCANDI Indonesia.

Figure 1: Original Brand (owned by PT UNICHEM CANDI) and suspected fake brand owned by RUDY MULYANTO

In Decision Number 150/Pid.B/2019/PN Njk in a criminal case with the defendant Rudy Mulyanto, it was proven legally and convincingly guilty of committing a crime by trading goods and/or services and/or products that were known or reasonably suspected of knowing that the goods and/or services and/or products were the result of a criminal act under Article 100 and Article 101 of the alternative charge of Article 102 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications and the defendant was sentenced to 4 months in prison.

Then the Surabaya High Court Decision in Decision 1747/Pid/2019/PT.SBY accepted and confirmed the Nganjuk District Court Decision Number 150/Pid.B/2019/PN.Njk at the Cassation level in Decision Number 3733 K/Pid.Sus/2020 canceled the Surabaya High Court Decision and declared that the Defendant Rudi Mulyanto was not proven guilty.

Legal Protection for defendant Rudy Mulyanto, the defendant who has owned the business UD GAJAH DUDUK since 2014 until now and has had a trademark certificate "cap pucuk DAUN" based on the decision of the Trademark Appeal Commission of the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia dated December 5, 2018, is retroactively valid from the date of application submission, namely May 23, 2016, not since the certificate was issued. This means that the

rights of the trademark applicant are recognized from the date of submission, so that the applicant has legal certainty that his trademark has been protected during the examination process. Although a trademark certificate may only be issued after some time, the applicant's exclusive rights are already valid from the date of application ¹⁵. Thus, if another party uses the same or similar trademark during the application process, the other rights holder does not yet have a legal basis to sue for infringement of trademark rights that are still in process at the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia until there is a rejection or rejection at the trademark appeal commission of the Directorate General of Intellectual Property (if the applicant files an appeal). This protection provides a guarantee that the applicant's exclusive rights are not disturbed during the waiting period for the certificate ¹⁶.

3.2. Legal Implications of Trademark Dispute Resolution Based on Supreme Court Decision Number 3733 K/Pid.Sus/2020

a. The Role of Inspection by the Directorate General of Intellectual Property

The trademark examination process by the Directorate General of Intellectual Property (DGIP) includes administrative and substantive examinations aimed at ensuring that the proposed trademark does not infringe the rights of others and meets applicable legal requirements. This examination aims to prevent overlapping trademarks and future disputes. Supreme Court Decision No. 3733 K/Pid.Sus/2020 is important in this context because it emphasizes that the DGIP must conduct thorough examinations to prevent intellectual property rights violations.

Hidayani and Hasibuan also explained that legal arrangements for registering a trademark can be carried out through the procedure for registering their Trademark Rights with the Directorate General of Intellectual Property. Online registration can also be done by culinary entrepreneurs. ¹⁷This online registration of MSME trademarks has been fully facilitated by the Directorate General of Intellectual Property. The web address for online Intellectual Property (IP) registration can be easily accessed by the general public, namely on the page, which includes the management of Trademark Rights, Patents, Copyrights, Industrial Designs, and Trade Secrets. As regulated in Government Regulation Number 28 of 2019 by the Directorate General of Intellectual Property ¹⁸.

The substantive examination process conducted by the Directorate General of Intellectual Property serves as a form of preventative protection to protect trademark applicants from future disputes. If a trademark dispute arises after the trademark has been registered, the examination by the Directorate General of Intellectual Property is one of the elements considered in the court's decision-making. If a trademark dispute arises after the

¹⁵ Nazaruddin Lathif, "Legal Theory as a Tool to Renew or Engineer Society," *Palar | Pakuan Law Review* 3, no. 1 (2017): 73–94, <https://doi.org/10.33751/palar.v3i1.402>.

¹⁶ WIPO, "Creating a Brand: An Introduction to Brands for Small and Medium-Sized Enterprises," in *WIPO Publication No. 900*, 2008, 3.

¹⁷ RSA Amelia Cahaya, Kristina Dwi Wulan Asri, Witta Dewi Mustika Takarsi, "IPR Protection for the Trademark 'Ps Glow' (Analysis of Decision Number 2/pdt.sus.HKI/Merek/2022/Pn.Niaga Sby)," *Journal of Legal and Pancasila Research*, 2023.

¹⁸ Adelia Dwi Anggraen, Budi Santoso, and Adya Paramita Prabandari, "Protection of Intellectual Property Rights (IPR) in Micro, Small, and Medium Enterprises (MSMEs) in the Batik and Culinary Sectors," *Notarius* 14, no. 2 (2021): 650–65, <https://doi.org/10.14710/nts.v14i2.43711>.

trademark has been registered, the examination by the Directorate General of Intellectual Property is one of the elements considered in the court's decision-making ¹⁹.

b. Legal Implications of Trademark Dispute Resolution Based on Supreme Court Decision Number 3733 K/Pid.Sus/2020

The process of resolving a trademark dispute is carried out starting from a lawsuit by the registered trademark owner and/or registered trademark licensee ²⁰. In a trademark dispute there must be a defendant and a plaintiff. The defendant is the owner of the registered trademark where the lawsuit filed is for the cancellation or removal of the trademark ²¹. The lawsuit was filed because the defendant uses a trademark that has similarities in principle or in its entirety for similar goods and/or services that have been registered. The trademark dispute lawsuit process is the absolute authority of the commercial court ²², however there are several legal measures that can be taken for a trademark dispute, both through civil, criminal and state administrative law. Secondly, criminal legal action for trademark disputes can be taken if there is a complaint offense or if there is another party who does not have the rights to the trademark in question who carries out production and/or trades without permission, and other legal action can also be taken in trademark disputes by filing a lawsuit against the decision to delete the registered trademark on the initiative of the Minister of Law and Human Rights to the PTUN.(DJIK, 2022)

The trademark dispute resolved through the Criminal path in the Nganjuk District Court with the Defendant RUDY MULYANTO which can be further analyzed based on the Supreme Court Decision Number 3733 K / Pid.Sus / 2020 Rudy Mulyanto was declared not legally and convincingly proven guilty of committing a crime as in the First or Second indictment. The panel of judges in its decision granted the entire Cassation Request with the consideration that the Defendant's cassation reasons could be justified because the decision of the *judex facti* / High Court which upheld the decision of the *judex facti* / District Court which stated that the Defendant was legally and convincingly proven guilty of committing a crime "Without the right to use a brand that has similarities in principle with a registered brand belonging to another party for similar goods and / or services produced and / or traded" and sentenced the Defendant to imprisonment for 4 (four) months, is inappropriate and does not apply legal regulations properly. The registration application by Rudy Mulyanto for the trademark "cap pucuk DAUN" in May 2016 is a form of good faith from the person concerned ²³.

Basically in this case it is wrong to determine the resolution of the trademark dispute case, the legal implications that occur are there is no legal protection for the trademark applicant who was still in process at the Directorate General of Intellectual Property and the first registered trademark holder was still premature in taking criminal legal action without waiting for civil action. As in a similar case of the trademark dispute "KAMPUS" and

¹⁹ Megawangi Kusumaning (2023) Puteri, "LEGIDAL ANALYSIS OF THE USE OF RIGHTS TO TRADEMARKS THAT ARE SIMILAR TO OTHER PEOPLE'S TRADEMARKS BETWEEN MS GLOW AND PS GLOW (CASE STUDY OF DECISION NUMBER: 2/Pdt.Sus.HKI/Merek/2022/PN.Niaga Mdn and 2/Pdt.Sus.HKI/Merek/2022/PN.Niaga Sby). U," *Veteran National Development University of East Java*. (2023).

²⁰ Daughter.

²¹ Tjahyo Harry Wilopo, *The Right Way to Build Brands for SMEs* (Grhatama Pustaka, 2007).

²² Republic of Indonesia, "Law of the Republic of Indonesia Number 48 of 2009 Concerning Judicial Power," *JDIH BPK*, 2009.

²³ Ruri Suci Muliasari, Budi Santoso, and Irawati Irawati, "Violation of the Principle of Good Faith in International Trademark Disputes," *Notarius* 14, no. 2 (2021): 972-589, <https://doi.org/10.14710/nts.v14i2.43788>.

"CAMPUS" with the trademark "BMCAMPUS" and "MMCAMPUS"²⁴, Article 6 paragraph (1) letter a of Law No. 15 of 2001 concerning Trademarks if there is a similarity between two registered trademarks, then the one that can be canceled in order to maintain the first exclusive right is the last registered trademark. The consideration of the panel of judges of the Supreme Court who considered that the word campus is a word that is commonly used and there is no similarity between the trademarks of BMCAMPUS and MMCAMPUS even though there should be protection for the exclusive rights of the first registrant. The author does not agree with the decision of the panel of judges and the author concludes that the civil route should be resolved first and the criminal route should be the last route in the trademark dispute.

4. Conclusions

Legal protection for trademark certificates issued by the Directorate General of Intellectual Property applies retroactively to the date of application submission, not to the date of issuance. This provides legal certainty to applicants that their trademark rights are protected from the beginning of the application process. Even if the official certificate is issued some time later, the applicant's exclusive rights are recognized from the date of submission, so the applicant has no legal basis to sue for infringement if another party uses the same or similar trademark during the waiting period. This protection ensures that the applicant's exclusive rights are not impaired during the issuance process.

In the decision of this trademark dispute case, there was negligence in providing legal protection to the trademark applicant. The author does not agree with the decision of the panel of judges at first instance and the high court and concludes that the trademark dispute should be resolved first through civil channels so as not to harm the rights of the trademark applicant, while the criminal channel is used as a last resort in resolving trademark disputes.

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²⁴ Elvira Rosa Astrianto et al., "Brand Use to Increase Revenue and Legal Protection of the Sego Pedes Basman MSME Brand," *Journal of Law and Social Politics* 2, no. 1 (2023): 144-52, <https://doi.org/10.59581/jhsp-widyakarya.v2i1.2110>.

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