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TRADEMARK CANCELLATION OF THE PT. DIPOSIN IN THE PRINCIPLE OF LEGAL CERTAINTY BY SUDIKN0 MERTOKUSUMO

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ABSTRACT

Trademark cancellation can be done by registered trademark owners, such as PT. Pos Indonesia filed a trademark cancellation suit against the DIPOSIN mark because the mark has similarities in principle to the Pos Indonesia mark and its registration was carried out in bad faith. The judge granted the lawsuit for the cancellation of the DIPOSIN mark in part and the cancellation decision was not implemented. So, because of this, there is a legal inconsistency that results in the absence of legal certainty for brand owners who have good intentions. This study aims to discuss the judges' considerations in Decision number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby and the application of the principle of legal certainty according to Sudikno Mertokusumo. This research is normative legal research using statutory, conceptual, and case approaches. This research shows that based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications the judge's consideration in Decision Number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby is appropriate however, the implementation of the decision to cancel the trademark is not appropriate with what has been set. This decision gave rise to an inconsistency of norms which resulted in the absence of legal certainty for brand owners. According to Sudikno Mertokusumo, for the law to function in a real way, the law must be upheld, because then the law becomes a reality and the law must reflect legal certainty, benefit, and justice.

Keywords: Trademark Cancellation; Equality in Essence; Bad Faith; and Legal Certainty;

ABSTRAK

Pembatalan merek bisa dilakukan oleh pemilik merek terdaftar, seperti PT. Pos Indonesia yang mengajukan gugatan pembatalan merek terhadap merek DIPOSIN karena merek tersebut memiliki persamaan pada pokoknya dengan merek Pos Indonesia dan pendaftarannya dilakukan dengan itikad tidak baik. Hakim mengabulkan gugatan pembatalan merek DIPOSIN tersebut sebagian dan putusan pembatalannya tidak dilaksanakan. Sehingga, karena hal itu terjadi inkonsistensi hukum yang berakibat pada tidak adanya kepastian hukum bagi pemilik merek yang beritikad baik. Penelitian ini bertujuan untuk membahas pertimbangan hakim dalam Putusan nomor 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby dan penerapan asas kepastian hukum menurut Sudikno

Mertokusumo. Penelitian ini merupakan penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan, konseptual dan kasus. Penelitian ini menunjukkan bahwa berdasarkan Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis pertimbangan hakim dalam Putusan Nomor 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby sudah sesuai namun, untuk pelaksanaan putusan pembatalan merek belum sesuai dengan yang telah diatur. Putusan tersebut menimbulkan adanya inkonsistensi norma yang berdampak pada tidak adanya kepastian hukum bagi pemilik merek. Menurut Sudikno Mertokusumo, agar hukum dapat berfungsi secara nyata maka hukum harus ditegakkan, karena dengan demikian hukum menjadi kenyataan dan hukum harus mencerminkan kepastian hukum, kemanfaatan, dan keadilan.

Kata Kunci: Pembatalan Merek; Persamaan pada Pokoknya; Itikad Tidak Baik; dan Kepastian Hukum;

Introduction

Parties whose trademarks have been registered can file a lawsuit against a registered mark belonging to another party if the mark is considered to violate Law Number 20 of 2016 concerning Trademarks and Geographical Indications Article 20 and/or Article 21. The suit referred to herein is a lawsuit for the cancellation of a registered mark. Cancellation of a registered mark can be done because the law has been regulated in this regard and the cancellation can be done if the criteria specified by the law are met. Cancellation of a registered mark is the cancellation of a mark whose certificate has been issued or a mark that has completed registration, not against a mark whose registration is being filed.¹ One of the cancellations of registered marks is the PT. DIPOSIN in Decision number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby In the judgment, Gilarsi W Setijono (President Director of PT. Pos Indonesia) sued Rangga Dirgantara (Owner of the DIPOSIN brand) as a defendant and the Government of the Republic of Indonesia C.Q. Ministry of Law and Human Rights of the Republic of Indonesia C.Q. Directorate General of Intellectual Property C.Q. Directorate of Brands and Geographical Indications as co-defendants. The lawsuit was filed by Gilarsi because the DIPOSIN brand has similarities in essence or its entirety with the PT. Pos Indonesia brand and judged in its registration is carried out in bad faith. The result in the judgment stated that the plaintiff's suit was partially granted.

¹Sudjana, "Akibat Hukum Penghapusan Dan Pembatalan Merek Terdaftar Terhadap Hak Atas Merek (Eletion and Cancellation of Registered Marks in The Perspective of Legal Certainty)," *Res Nullius Law Journal* 2, no. 2 (2020): 119–40, <https://doi.org/10.34010/rlj.v2i2.3076>.

In Law Number 20 of 2016 concerning Trademarks and Geographical Indications, it is stated that Article 91 paragraph 1 “The implementation of cancellation based on a court decision is carried out by the Minister after receiving a certified copy of the decision that has permanent legal force and is announced in the official brand news”, paragraph 2 “Further provisions regarding the implementation of cancellation as referred to in paragraph 1 and deletion by the Minister as referred to in Article 72 to Article 75 regulated by government regulations”. Article 92 paragraph 1 “The Minister shall cancel or remove the registration of the mark by crossing out the mark in question accompanied by providing a record containing the date and reason for the cancellation or deletion”, paragraph 2 “Cancellation or deletion as referred to in paragraph 1, the owner of the mark or its attorney is notified in writing stating the reasons for the cancellation or removal of the mark, and confirms that from the date the mark is crossed out of the general register of the certificate mark the mark in question is no longer valid”, and paragraph 3 “The removal of the mark referred to in paragraph 1 is announced in the official brand news”. However, on the cancellation of the brand DIPOSIN the cross-out and announcing such cancellation on the official news of the brand for the mark declared void under the judgment of the court was not carried out. Because the decision to cancel the DIPOSIN brand was not conveyed to the Directorate General of Intellectual Property Rights, so the Minister has not crossed out the DIPOSIN brand and announced it in the official brand news. This gives rise to the inconsistency of norm.

In some trademark cancellation rulings, such as the cancellation of the PT. Officer Adhitama, the judge granted the cancellation of the mark because the brand was judged to have similarities in essence or its entirety with the PT brand. Krakatau Steel. And gave an order to the Director General of IPR for the mark to be crossed off the general list of marks and ordered the defendant to pay the costs of the case.² The cancellation of the STONES and STONES & CO marks that occurred because it was proven in registering the marks was done in bad faith because it imitated a well-known brand and the result of the cancellation of a mark i.e. the removal of a particular mark from the

²Denti Aulia Puspita Sari, “Pembatalan Merek Terdaftar Karena Adanya Itikad Tidak Baik (Studi Putusan Mahkamah Agung Perkara Nomor 356 K/Pdt. Sus-HaKI/2013 Perkara Antara PT. Krakatau Steel Dengan PT. Perwira Adhitama Sejati)” (Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2018), <https://repository.uinjkt.ac.id/dspace/handle/123456789/43281>.

general list of marks, the expiration of the protection of a particular mark and also resulted in the licensee.³ Decision number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby This will be examined using the theory of the principle of legal certainty. Legal expert Sudikno Mertokusumo has his opinion on legal certainty, namely the guarantee that the law is implemented, the one who has the right to get his rights is he who is entitled according to the law, and a judgment can be implemented. The theory of legal certainty is what will be used in this study because it has relevance to the research problem, namely in this DIPOSIN brand cancellation decision the decision is not implemented as explained in the law.

Research on legal certainty in brand cancellation has indeed been carried out a lot. In the research of Sonny Dwi Judiasih,⁴ Fitri Ida,⁵ Asep Suryadi,⁶ there is also research in comparative law such as Massadeh.⁷ Then research on the legal protection of intellectual property rights, Ariyesti,⁸ and Daniel Pinheiro Astone.⁹ This study aims to discuss the judges' considerations in Decision number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby and the application of the principle of legal certainty according to Sudikno Mertokusumo.

³Albert Renaldi Tambunan, "Perlindungan Hukum Pemegang Merek Akibat Pembatalan Merek Oleh Direktorat Merek Dan Indikasi Geografis (Tinjauan Yuridis Putusan Pengadilan Niaga Jakarta Pusat Nomor 33/Pdt.Sus.Merek/2019/PN.Niaga.Jkt.Pst)" (Universitas Negeri Semarang, 2020), <http://lib.unnes.ac.id/41823/>.

⁴Sonny Dewi Judiasih and Efa Laela Fakhriah, "Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia," *Padjajaran Jurnal Ilmu Hukum* 5, no. 2 (2018): 315–30, <https://doi.org/10.22304/pjih.v5n2.a6>.

⁵Fitri Ida Laela, "Analisis Kepastian Hukum Merek Terkenal Terdaftar Terhadap Sengketa Gugatan Pembatalan Merek," *Jurnal Ilmiah Hukum Dan Keadilan* 7, no. 2 (2020): 182–201, <https://ejurnal.stih-painan.ac.id/index.php/jihk/article/view/38>.

⁶Asep Suryadi, "Pembatalan Merek Terdaftar Dihubungkan Dengan Asas Kepastian Hukum Bagi Pemilik Merek," *Aktualita (Jurnal Hukum)* 2, no. 1 (2019): 233–51, <https://doi.org/10.29313/aktualita.v2i1.4688>.

⁷F.A.-M. Massadeh, M E Kandeel, and A A M Massadeh, "Trademark Cancellation in Terms of Commercial and Administrative Law: A Comparison of the UAE and Jordan," *International Journal of Economics and Business Research* 20, no. 3 (2020): 364–74, <https://doi.org/10.1504/IJEER.2020.110420>.

⁸F R Ariyesti, M Ghufuran, and S Ali, "The Systematic Review of the Functionality of Intellectual Property Rights in Indonesia," *Journal of Public Affairs* 22, no. 2 (2022), <https://doi.org/10.1002/pa.2482>.

⁹D P Astone, "Scarcity, Property Rights, Irresponsibility: How Intellectual Property Deals with Neglected Tropical Diseases," *Law and Critique* 34, no. 1 (2023): 145–64, <https://doi.org/10.1007/s10978-022-09324-3>.

Method

This research uses a type of normative legal¹⁰ research because the focus of the discussion in the article is about court decisions that are reviewed using Law Number 20 of 2016 concerning Brands and Geographical Indications as well as legal theory, namely the principle of legal certainty. Then there are 3 types of research approaches, namely: Statutory approach,¹¹ conceptual approach, and case approach.¹² The source of data in this study comes from primary legal materials consisting of statutory regulations and court decisions, secondary legal materials consisting of books and journals related to research and interview results, finally there are tertiary legal materials consisting of KBBI and legal dictionaries. The method of processing its legal material is carried out by means of inventory, identification, classification, and systematization. The analysis technique used in this study is data analysis with a qualitative approach to primary data and secondary data.¹³ Qualitative analysis is conducted through the intermediary of the researcher's interpretation.¹⁴ In this study, data analysis was carried out by reducing data or condensing data, then displaying reduced data into a form to help draw a conclusion, and finally drawing and verifying conclusions.¹⁵ This research was examined using the theory of legal certainty according to Sudikno Mertokusumo, who has the opinion that legal certainty is a guarantee of the implementation of certain laws, those who are entitled to obtain rights are those who are entitled according to law, and a decision can be implemented. Legal certainty is closely related to justice. However, legal certainty is not the same as justice. Justice has a subjective, individualistic, and non-generalizing

¹⁰Sabian Utsman, *Metodologi Penelitian Hukum Progressif; Pengembaraan Permasalahan Penelitian Hukum; Aplikasi Mudah Membuat Proposal Penelitian Hukum* (Yogyakarta: Pustaka Pelajar, 2014); Riska Fauziah Hayati and Abdul Mujib, "Dispute Resolution on Muḍārabah Musytarakah Contract on Sharia Insurance in Indonesia: Between Regulation and Practice," *El-Mashlahah* 12, no. 1 (2022): 14–36, <https://doi.org/10.23971/elma.v12i1.3795>.

¹¹Sabarudin Ahmad, "Hukum Aborsi Akibat Perkosaan (Analisis Hukum Islam Terhadap Peraturan Pemerintah Nomor 61 Tahun 2014 Tentang Kesehatan Reproduksi)," *El-Mashlahah* 8, no. 2 (2018): 162–83, <https://doi.org/https://doi.org/10.23971/el-mas.v8i2.1321>.

¹²Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenadamedia, 2015).

¹³Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2018).

¹⁴David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (December 2021): 2463–78, <https://doi.org/10.31604/JIPS.V8I8.2021.2463-2478>.

¹⁵Sarosa Samiaji, *Analisis Data Penelitian Kualitatif* (Kanisius, 2021), https://books.google.co.id/books/about/Analisis_Data_Penelitian_Kualitatif.html?id=YY9LEAAQBAJ&redir_esc=y.

nature. While legal certainty is general, binding for anyone and equal.¹⁶ The researcher uses the theory of legal certainty according to Sudikno Mertokusumo, because the theory has relevance to the research problem, namely in the decision to cancel the DIPOSIN brand, the decision is not implemented as explained in the law.

Findings and Discussion

Judge's Consideration in Decision Number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby About Cancellation of Registered Trademark PT. DIPOSIN According to Law Number 20 of 2016 concerning Trademarks and Geographical Indications

A mark that is proven to be voidable against the mark is subject to removal from the general list of marks and the removal is announced on the official brand news as a form of implementation of the trademark cancellation decision. This has been regulated in law, namely Article 92 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which reads: first, the Minister shall cancel or delete the registration of the mark by crossing out the mark in question accompanied by providing a record containing the date and reason for the cancellation or deletion.

Second, cancellation or deletion as referred to in paragraph 1, the owner of the mark or its attorney is notified in writing stating the reasons for the cancellation or removal of the mark, and confirms that from the date the mark is crossed out from the general register of marks the certificate of the mark in question is no longer valid. Third, the cross-out of the brand referred to in paragraph 1 is announced in the official brand news.

In Decision number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby does not apply in such a way. The cancellation of the DIPOSIN brand was not carried out by removing the mark from the general list of brands and announcing it in the official news of the brand after the decision on the cancellation of the DIPOSIN brand was read out. In the said judgment the plaintiff has also listed his request which is included in the petitum regarding the removal of the said DIPOSIN brand from the general list of brands and announced it in the official news of the brand. The petitum reads "ordering the

¹⁶Sidik Sunaryo and Shinta Ayu Purnamawati, "Paradigma Hukum Yang Benar Dan Hukum Yang Baik (Perspektif Desain Putusan Hakim Perkara Korupsi Di Indonesia)," *Hukum Pidana Dan Pembangunan Hukum* 1, no. 2 (April 2019), <https://doi.org/10.25105/HPPH.V11I2.5465>.

Registrar/Secretary of the Commercial Court at the Surabaya District Court to convey this decision to the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights of the Republic of Indonesia as the defendant to cross out the registration of the DIPOSIN mark from the general register of marks which further announces the cancellation of the trademark registration in the official trademark news". The panel of judges in the decision to annul the DIPOSIN mark decided to grant the plaintiff's suit in part. The petitum granted by the panel of judges is:

First, declare the plaintiff as the first and only registrant of the brand "POS Indonesia"+logo, which is already known by the Indonesian people so that Pos Indonesia has the sole right to use the brand "POS Indonesia". Second, declaring the "DIPOSIN" brand on behalf of the defendant Number IDM000644054, has similarities in essence and in whole with the plaintiff's "POS Indonesia" brand which has been registered with the Ministry of Justice of the Republic of Indonesia, Directorate General of Copyright, Patents and Marks with Number 014883. Third, declare null and void according to the law of the brand "DIPOSIN" on behalf of the defendant with a list Number IDM000644054, with all its legal consequences because it is contrary to Deed Number 12 dated October 18, 2017 made by Notary Dewi Sri Rahayu, SH concerning the Establishment of Legal Entities and Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number AHU-0049343. AH.01.01 of 2017 concerning Ratification of the Establishment of a Legal Entity: which normatively the defendant's brand is an integral part of the name PT. Dirgantara Pos Indonesia which is abbreviated as DIPOSIN and PT. Dirgantara Pos Indonesia uses bad faith and bears similarities with the plaintiff's brand.

Fourth, order the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights of the Republic of Indonesia (co-defendants) to reject brands that use elements of "POS Indonesia" or that have similarities in essence or in whole with the "POS Indonesia" brand for class 39 goods belonging to other parties for which registration is requested. Fifth, punishing the defendant to pay the costs of the case.

As for the petitum that is not granted, it is the petitum that deals with removing the brand from the general list of brands and announcing it in the official news of the brand just now. On legal considerations, the judge did not grant the petitum because the petitum according to the panel of judges was an excessive petitum. Based on an

interview that the author has conducted with I Made Subagia Astawa one of the panel of judges who decided the case for cancellation of the DIPOSIN mark, the petition was considered excessive because according to the panel of judges ordered the Clerk/Secretary of the Commercial Court to convey this decision to the Directorate General of Intellectual Property Rights, Ministry of Law & Human Rights of the Republic of Indonesia to cross out the registration of the DIPOSIN mark from the general register of marks and further announce the cancellation of the registration of the mark in the official news of the brand is not an obligation for the clerk/secretary of the court and according to the judge, the party has the obligation to convey the decision to the Directorate General of Intellectual Property Rights of the Ministry of Law & Human Rights of the Republic of Indonesia. The panel of judges considered the petition not their obligation so, that is why the petition was considered excessive. According to the judge, the excessive petition is that the petition filed by the plaintiff is not the duty of the panel of judges to grant what the plaintiff requested in the petition.

Law Number 20 of 2016 concerning Trademarks and Geographical Indications has regulated the procedures for implementing trademark cancellation decisions in Article 91 and Article 92. Article 91 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications regulates: first, the implementation of the annulment based on the judgment of the court shall be carried out by the Minister after receiving a certified copy of the judgment which has the force of law fixed and is announced in the official news of the brand. Second, further provisions regarding the implementation of cancellation as referred to in paragraph 1 and deletion by the Minister as referred to in Article 72 to Article 75 shall be regulated by government regulation.

If you pay attention to the provisions of the article, the implementation of the trademark cancellation decision is carried out by the Minister after the Minister receives a certified copy of the judgment which has permanent legal force. This means that the removal of the registered mark is carried out after the official copy of the judgment is submitted to the Directorate General of Intellectual Property Rights. I Gede Febryan Karwur in his research explained the procedural law used in lawsuit cases in the Commercial Court that in general, the decision of the commercial court must be

delivered by the bailiff to the parties with a maximum time limit of 14 days after the annulment decision is pronounced.¹⁷

Cancellation of the DIPOSIN brand in Decision number 8/Pdt. Sus-HKI/Merek/2020/PN.Niaga.Sby occurs because the DIPOSIN brand and logo have similarities in essence with pos Indonesia's brand and logo and the registration of the mark is carried out in bad faith. That the DIPOSIN brand has similarities in essence with pos Indonesia's brand, where the similarities are found in several elements or it can be said that the brand and logo are a combination of several elements. The elements in question are in the equation of form, the way of placement and the way of writing. The similarity in form between the DIPOSIN brand and Pos Indonesia lies in the word used in the brand, namely the word Pos Indonesia and the use of the bird logo on the brand. On the brand PT. Pos Indonesia, the word used is Pos Indonesia only as the brand while at PT. Pos Indonesia. Dirgantara Pos Indonesia has 2 brands, namely the Dirgantara Pos Indonesia brand which also uses the word Pos Indonesia after the word Dirgantara, but for this brand it has been canceled based on a letter of objection from Pos Indonesia. The second brand is the DIPOSIN brand which stands for Dirgantara Pos Indonesia. and all those brands use bird logos.

For the similarity between the two, namely the similarity of placement methods, the DIPOSIN brand and the Pos Indonesia brand are both in the same brand class, namely class 39 in the form of courier services, packaging, freight transportation, goods delivery, goods storage. The two brands Pos Indonesia and DIPOSIN both put bird logos on their brand writing. And finally, there are similarities in the way of writing, what distinguishes the DIPOSIN brand, Dirgantara Pos Indonesia from the Pos Indonesia brand is in the word Dirgantara and in the way it is written which uses abbreviations. The brands use the same written font i.e., with all capital letters. That a brand that has the same way of writing is usually a brand in the same field of commerce and has the same consumers. And this also applies to the Pos Indonesia brand and the DIPOSIN brand both brands are in the same class and therefore it is likely between PT. Dirgantara Pos Indonesia with PT. Pos Indonesia has the same consumers.

¹⁷I Gede Febryan Karwur, "Pengaturan Hukum Tentang Kewenangan Dan Prosedur Penyelesaian Sengketa Di Bidang Hak Atas Kekayaan Intelektual (Haki)," *Lex Privatum* 6, no. 8 (2018): 90–101, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/22864>.

Table 1. Brand Comparison

Brand PT. Pos Indonesia	Brand PT. Dirgantara Pos Indonesia	Brand DIPOSIN
		

(Source: <https://pdki-indonesia.dgip.go.id/>)

Based on Table 1, apart from the similarity in essence with the brand owned by PT. Pos Indonesia, the DIPOSIN brand registration was carried out in bad faith. A brand that is proven to have similarities in essence then the mark is a trademark registered in bad faith. Trademark registration carried out in bad faith if the registered mark is not in accordance with what has been regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, especially Articles 20 and 21. Both articles are a manifestation of good faith. Therefore, a brand that contains similarities in essence with other people's brands, this is a form of bad faith. And this DIPOSIN brand has proven that the brand has similarities in essence with the Pos Indonesia brand and has been registered since June 11, 2019.

The judge's consideration in the decision to cancel the DIPOSIN mark was in accordance with Law Number 20 of 2016 concerning Trademarks and Geographical Indications by granting the plaintiff's lawsuit stating the DIPOSIN brand and logo as a mark that has similarities in essence with the brand owned by Pos Indonesia and the registration was carried out in bad faith. Which in Article 76 paragraph 1 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications has stipulated that a lawsuit for cancellation of a registered mark can be filed by an interested party based on the reasons as in Article 20 and/or Article 21. And this DIPOSIN brand has violated Article 21 paragraphs 1 and 3 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, so that the brand can be canceled. However, for the implementation of the decision to cancel the mark itself, it is not in accordance with what has been regulated in Article 92 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications. The Directorate General of Intellectual Property Rights as the defendant in the lawsuit for cancellation of the DIPOSIN brand filed by PT. Pos Indonesia should have accepted the judgment and based on its procedural law the decision of the commercial court must be delivered by the bailiff to

the parties after the judgment is read so that, the smearing of the mark that was decided to be cancelled can be carried out.

Principle of Legal Certainty by Sudikno Mertokusumo in Decision number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby

Decision number 88/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby is a trademark cancellation judgment on a lawsuit filed by PT. Pos Indonesia to the DIPOSIN brand to be cancelled because the brand and logo have similarities in essence with the brand and logo belonging to Pos Indonesia and the brand is registered in bad faith by the owner. The ruling in its legal deliberations the judge granted the suit for cancellation of his mark in part not in its entirety. The plaintiff's suit was granted in part because there was one plaintiff's petition which the petition judge deemed excessive, so it was not granted. The petition is about an order to the Registrar/Secretary of the Court to convey the decision to the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights of the Republic of Indonesia to cross out the DIPOSIN brand from the general list of brands and announce it in the official brand news.

That the legal considerations in the decision are in accordance with what has been regulated in Law Number 20 of 2016 concerning Brands and Geographical Indications, but for the implementation of the decision to cancel the mark is not in accordance with what has been regulated in Article 92 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Thus, because of this, there is a legal inconsistency or inconsistency of norm because the removal of the DIPOSIN registered mark from the general register of the mark and announcing it in the official news of the brand is not carried out, which is a form of implementation of the cancellation of the mark that has been canceled based on the court's decision. With the occurrence of these inconsistencies, it means that law enforcement on the cancellation of the DIPOSIN brand has not been carried out properly. Sudikno Mertokusumo mentioned that in order to function the law in a real way, the law must be enforced, because only then does the law become a reality and, the law must reflect legal certainty, expediency, and justice.¹⁸

A judge's decision is part of a process in law enforcement that aims to achieve one of the truths of the law or to achieve legal certainty. A judge's ruling is also a product of

¹⁸Qamar Nurul, "Supremasi Hukum Dan Penegakan Hukum," *Ishlah: Jurnal Ilmiah Hukum* 13, no. 2 (2011): 151–58, <https://doi.org/10.31219/osf.io/qwcp9>.

law enforcement based on legally related matters resulting from a legally prosecuted proceeding.¹⁹ Law enforcement must pay attention to 3 elements such as legal certainty, expediency, and justice, so in the judge's decision, so it is. Because, the judge's decision is a product in law enforcement so, in it must reflect the existence of these 3 elements. Law as a regulation that serves to protect the interests of society, so the law needs to be enforced. In a judgment, justice can be seen in a matter that is disputed in court can be decided as it should be, the party who is declared right acquires its rights and the parties to the dispute are given equal rights and positions before the law (equality before the law). Meanwhile, the expediency in the judge's decision can be seen from an enforcement of the law or a decision issued by this judge can or does not provide benefits or uses, happiness for the litigants or for the community. Then the legal certainty in a judge's decision can be seen in the implementation of the law (the substance of the law) in concrete events.

Sudikno Mertokusumo gave the definition that legal certainty is one of the conditions that must be met in law enforcement. The function of the law is to protect human interests, so the law must be implemented so that human interests are protected. The law in its implementation can run peacefully, normally, but sometimes it lasts because of violations of the law. When the law takes place because of a violation of a law, the violated law must be enforced. The existence of law enforcement can make the law real. There are three elements that must be considered in enforcing the law, namely: *rechtssicherheit* (legal certainty), *zweckmassigkeit* (expediency) and *gerechtigkei* (justice). The law is mandatory to be enforced and implemented. Everyone has an expectation that laws can be established against events of a concrete nature. In the implementation and enforcement of the law must not deviate, must follow the law how the law is what applies. Although this world collapses, the law must be enforced (*fiat justitia et pereat mundus*), which is what legal certainty wants.²⁰

Legal certainty according to Sudikno Mertokusumo was born because the law must be enforced to protect human interests, and to make the law become real, it is

¹⁹Fencem Wantu, "Mewujudkan Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Putusan Hakim Di Peradilan Perdata," *Jurnal Dinamika Hukum* 12, no. 3 (2012): 479–90, <https://doi.org/10.20884/1.jdh.2012.12.3.121>.

²⁰Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar Edisi Revisi* (Yogyakarta: Cahaya Atma Pustaka, 2018).

necessary to pay attention to 3 elements that are the purpose of the law, one of which is legal certainty. This is in line with Sudikno Mertokusumo's own statement in Nurul Qamar's research which states that in order to function the law in a real way, the law must be enforced, because only then does the law become a reality and in reality the law must reflect legal certainty, expediency and justice.²¹ Legal certainty is one of the requirements in law enforcement. Yustisiabel protection from arbitrary actions, which means that a person can get something to expect under certain circumstances.²² The legal certainty referred to by Sudikno Mertokusumo is 3 points in fulfilling its legal certainty, which consists of: a. Assurance that the law is enforced, b. That the one who can get his right is the one who is entitled according to law, and c. A ruling is enforceable.²³

On the cancellation of the DIPOSIN brand which was decided through Decision number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby crossed out the DIPOSIN brand from the general list of brands and announced it in the official news of the brand was not implemented as a form of implementation of the cancellation of a brand. In fact, based on the previous analysis that under the generally applicable procedural law it is stated that the bailiff is obliged to deliver the award to the parties after the award has been pronounced no later than 14 days and the Directorate General of Intellectual Property Rights is also a co-defendant in the case, so that the judgment should have been enforceable or in other words the DIPOSIN mark was crossed out of the trademark registration and announced on the official news of the brand. However, in reality the ruling was not implemented so the removal of the brand was not carried out. This is not in accordance with Article 92 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

The non-implementation of the marking as stipulated in the law creates inconsistencies and no legal certainty for parties in good faith or whose marks have been violated. The absence of legal certainty is because the decision has not applied legal certainty according to Sudikno Mertokusumo, who argues that legal certainty is:

²¹Qamar Nurul, "Supremasi Hukum Dan Penegakan Hukum."

²²Siti Halilah and Mhd. Fakhurrahman Arif, "Asas Kepastian Hukum Menurut Para Ahli," *Siyasah: Jurnal Hukum Tata Negara* 4, no. 2 (2021): 56–65, <https://ejournal.an-nadwah.ac.id/index.php/siyasah/article/view/334>.

²³Suryadi, "Pembatalan Merek Terdaftar Dihubungkan Dengan Asas Kepastian Hukum Bagi Pemilik Merek."

First, assurance that the law is enforced. Cancellation of the mark in Decision number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby refers to Law Number 20 of 2016 concerning Trademarks and Geographical Indications so that, hereby, the legal regulations used are these laws. Law Number 20 of 2016 is a law that regulates everything about brands and geographical indications, especially regarding the cancellation of brands. Decision number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby is a decision on the cancellation of a brand, and in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, the cancellation of a mark has been regulated in Article 76 to Article 79.

Article 76 paragraph 1 explains that interested parties can file a lawsuit for cancellation of a registered mark based on the reasons referred to in Article 20 and/or Article 21. Paragraph 2 explains that the owner of a mark whose mark is not registered can also file a suit as referred to in paragraph 1 but, after the owner of the mark has filed an application with the Minister. Paragraph 3 explains that a suit for cancellation of a mark is filed by the owner of the registered mark with the Commercial Court. Then Article 77 paragraph 1 explains that a lawsuit for cancellation against a registered mark can only be filed within a period of 5 years calculated from the date the mark is registered. Paragraph 2 of a trademark cancellation lawsuit can be filed indefinitely if the mark in question has an element of bad faith, contrary to the ideology of the nation, the rules of the law, morality, religion, decency, and public order. Article 78 paragraph 1 states that the decision of the Commercial Court against the claim for cancellation of the mark as stipulated in Article 76 paragraph 3 can be appealed. Paragraph 2 provides that the judgment on cancellation of the mark is immediately delivered by the Registrar of the court to the interested parties. Article 79 explains the reasons for the cancellation of the mark referred to in Article 76 to apply *mutatis mutandis* to the registered collective mark.²⁴

Provisions on the cancellation of marks regulated in Article 76 to Article 79 of Law Number 20 of 2016 concerning Brands and Geographical Indications are in practice in Decision Number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby has been well run by the judge as well as the parties to the dispute. It is proven by the judge in his

²⁴Suryadi.

legal considerations to grant the trademark cancellation lawsuit made by PT. Pos Indonesia. PT. Pos Indonesia as an interested party, namely the owner of a registered brand who feels aggrieved by the existence of a registered brand DIPOSIN. PT. Pos Indonesia cancels the mark by filing a lawsuit with the Commercial Court on the grounds that there are similarities in essence between the DIPOSIN brand and the logo with the Pos Indonesia brand and logo, then in its registration it is carried out in bad faith where the reason is in accordance with what is referred to in Article 21 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

Second, that the one who can get his right is the one who is entitled according to law. Cancellation of a mark is the act of revoking the trademark rights in goods and services that become the trade name of goods or services owned by individuals, together or business entities because they violate the conditions that have been determined by the Directorate General of Intellectual Property.²⁵ Thus, it can be concluded that the party entitled to obtain its rights in this case the right to the mark is the owner of the mark whose trademark does not violate Law Number 20 of 2016 concerning Trademarks and Geographical Indications Article 20 and/or Article 21. The articles regulate the reasons for which a mark cannot be registered and the marks that must be denied registration or the reasons for cancellation of the mark. These reasons are that there is bad faith in the registration of a mark, a mark that should not be acceptable for registration because it violates one or several absolute reasons for the inadmissibility of registration of a mark (Article 20 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications), and registered marks that are contrary to one of the relative reasons for the refusal of trademark registration (Article 21 of Law Number 20 of 2016 concerning Trademarks and Indications Geographical).²⁶

Thus, in Decision number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby who is entitled to get his rights under the law, namely the right to the mark is PT. Pos Indonesia because of the DIPOSIN brand that was sued by PT. Pos Indonesia has similarities in essence and in its registration is carried out in bad faith. This is evidenced by the judge

²⁵Muhammad Dayyan Sunni and Mas Rahmah, "Pembatalan Merek Terkenal Yang Berubah Menjadi Istilah Umum," *Jurist-Diction* 3, no. 2 (2020): 481–498, <https://doi.org/10.20473/jd.v3i2.18200>.

²⁶Tambunan, "Perlindungan Hukum Pemegang Merek Akibat Pembatalan Merek Oleh Direktorat Merek Dan Indikasi Geografis (Tinjauan Yuridis Putusan Pengadilan Niaga Jakarta Pusat Nomor 33/Pdt.Sus.Merek/2019/PN.Niaga.Jkt.Pst)."

granting part of the plaintiff's or PT's lawsuit. Pos Indonesia in Decision number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby The judge declared the plaintiff to be the first registrant and sole owner of the Pos Indonesia brand and logo.

Third, and a judgment is enforceable. The judgment must be enforceable, a court ruling is meaningless to the party won if it is not implemented. Therefore, the judge's decision has executory power, which means the power to carry out what has been prescribed in the judgment. In essence, the implementation of the judge's decision is a manifestation of the obligation of the party concerned or the loser to fulfill the achievements contained in the decision.²⁷ An executory action taken by the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia against a brand that is declared void is an administrative procedural action. Because the authority that has been granted is regulated restrictively in Article 92 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which consists of 3 things: attaching a note when crossing out the mark containing an explanation of the reason and date of cancellation of the mark, after the brand certificate is crossed out, the brand owner or his attorney is notified in writing that the mark concerned is no longer valid by stating the reason for its cancellation, The last one there is a brand cross-out announced in the official news of the brand.²⁸ The removal of the mark from the general list of marks is a form of execution of the trademark annulment decision.

In the decision to cancel the DIPOSIN brand, the judge had granted the lawsuit for cancellation of the DIPOSIN brand, but the decision was not implemented because, the decision was not conveyed to the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights of the Republic of Indonesia. Because in Law Number 20 of 2016 concerning Trademarks and Geographical Indications Article 91 and Article 92 has regulated the procedures for implementing the trademark cancellation decision, which states that the cancellation of the mark is carried out after the Minister receives a certified copy of the judgment and furthermore the cancellation

²⁷Sri Hartini, Setiati Widiastuti, and Iffah Nurhayati, "Eksekusi Putusan Hakim Dalam Sengketa Perdata Di Pengadilan Negeri Sleman," *Jurnal Civics* 14, no. 2 (2017): 128–38, <https://doi.org/10.21831/civics.v14i2.16852>.

²⁸Eko Yuliyanto, "Executorial Decision of Registered Brand Cancellation," *Indonesian Private Law Review* 1, no. 1 (2020): 11–22, <https://doi.org/10.25041/iplr.v1i1.2044>.

of the mark is carried out by crossing out the brand and announcing it in the official brand news. Thus, for this third point, it was not fulfilled because the cancellation of the DIPOSIN brand was not implemented because the decision was not submitted to the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights of the Republic of Indonesia.

In Islam, legal certainty means the principle that states that an act cannot be punished unless the act has regulations governing the act.²⁹ The principle is based on the Qur'an Surah al-Isra' verse (15):

مَنْ اهْتَدَىٰ فَإِنَّمَا يَهْتَدِي لِنَفْسِهِ وَمَنْ ضَلَّ فَإِنَّمَا يَضِلُّ عَلَيْهَا وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ وَمَا كُنَّا مُعَذِّبِينَ حَتَّىٰ نَبْعَثَ رَسُولًا

The regulations referred to in the decision to cancel the DIPOSIN brand are regulations that have been promulgated, so all actions related to the cancellation of the mark must follow what has been stipulated in the regulation. For example, a trademark cancellation ruling is implemented by crossing the mark off the general list of marks and announcing it in the official news of the brand after the mark is decided to be voidable by the court. Thus, if the brand proves to be voidable then the execution of its ruling by crossing the mark off the general list of brands and announcing it in the official news of the brand. Likewise with Decision number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby because the DIPOSIN brand proved to be a revocable brand so, the brand had to be crossed off the general list of brands and announced in the official brand news. However, since the judgment was not conveyed to the Directorate General of Intellectual Property Rights thus, the Minister did not cross the mark off the general list of brands and announced it in the official news of the brand. Thus, legal certainty on the decision to cancel the mark does not exist.

IPR protection has actually been going on for a long time. This was marked by the discovery of IPR protection, namely the monopoly granted by a king to cooks in Sybaris for one year to prepare a type of recipe he discovered which was considered to have an extraordinary taste, in 500 BC. Then around 3200 BC, there was also IPR protection which was given by marking ceramics by the people of Greece and other nearby European countries, which served to show the identity of the maker. From a

²⁹Achmad Irwan Hamzani, *Asas-Asas Hukum Islam Teori Dan Implementasinya Dalam Pengembangan Hukum Di Indonesia* (Yogyakarta: Thafa Media, 2019).

philosophical point of view, the protection of IPR emerged from the views of John Locke (1632-1704) and Jean Jacques Rousseau (1712-1778), who were called natural law schools.

According to Locke, naturally each person has the right to himself and therefore the results of his work (labor) because he has made sacrifices in the form of finding, processing, and adding "personality" to something, as expressed "...yet every man has a property in his own person. This nobody has any right to but himself. The labor of his body and the work of his hands, we may say, are his proper. Whatever, then, he removed out of the state that Nature had provided and left it in, he had mixed his labor with it, and joined to it something that was his own, and thereby made it his property. That originally everything on earth belonged to all mankind. However, all of this cannot be used immediately, but must be obtained and processed first. To be processed, then something that exists in nature must be taken first. Because of that, Locke emphasizes the importance of giving awards to people who have made sacrifices to find and cultivate something that comes from nature, in the form of property rights.

Justin Hughes connects Locke's views with IPR protection through the statement that IPR is acquired through a process of learning/understanding. Thus, even though the input that drives the creation process comes from the outside environment of the creator, the process of assembling the creation itself occurs in his mind so that it is no longer as pure as its original form. Literally, the protection of property rights according to Locke is not seen from a person's sacrifice through his labor, but in the activities of a person who often provide high social value to society. Thus, this social value is the basis for awarding.³⁰

In addition, the philosophy of the IPR system has economic reasons. That individuals have given energy, time, thought, and cost in discoveries that are useful in their lives. To protect his creations, investment capital in the form of labor, time, thoughts and costs must be accompanied by the granting of exclusive rights to individuals to enjoy the results of their thoughts. Philosophies related to IPR gave birth to appreciation theory, entertainment theory, incentive theory, and public service theory,

³⁰Basuki Antariksa, "Landasan Filosofis Dan Sejarah Perkembangan Perlindungan Hak Kekayaan Intelektual: Relevansinya Bagi Kepentingan Pembangunan Di Indonesia," *Jurnal Ekonomi Kreatif* 1, no. 1 (2012): 1–21, <https://jdih.kemenparekraf.go.id/artikel-15-artikel-hukum>.

which argues that when creative individuals receive incentives in the form of exclusive rights, they can provide innovation and invite other individuals to be creative. This means that the law guarantees that the owner receives financial benefits from the use of his invention and encourages people to create.³¹ Through economic incentives, a person can be encouraged to create something and to sell his creations that benefit society. If someone is not motivated to create something and sell it to the public, the level of production will decrease so that economic activity does not run well.

Locke also provides a condition that something that will be used as property must fulfill "enough and as good left in common for others". When an idea produces something of an extraordinary nature or is really needed by the wider community, then that idea cannot be given IPR protection, because if given it it can reduce the welfare of the community and IPR protection also cannot be given to something that is general in nature. Thus, it can be concluded that copyrighted works that receive IPR protection are those that have characteristics between the two extreme characteristics.³²

Every intellectual right is a work that may not be recognized by others, violation of the intellectual ability of a person or group is the same as not respecting the originality of a work. Therefore, there are several reasons why intellectual property rights must be protected: a. IPR are natural rights, b. Reputation protection, c. The encouragement and rewards of innovation and creation.³³ Just like brand rights which are part of IPR which are produced and developed on the basis of deep thought and great expense. Therefore, legal protection of trademark rights is seen as something reasonable. Reward theory states that the legal protection given to brand rights owners is synonymous with rewards. This award is manifested in the form of protection for brand owners against anyone who violates their trademark rights. While the incentive

³¹Della Wulan Utami et al., "Perlindungan HaKI Dalam Pandangan Filsafat Sebagai Hak Alamiah Berdasarkan Pada Teori Jhon Locke," *Praxis: Jurnal Filsafat Terapan* 1, no. 1 (2022): 1–25, <https://journal.forikami.com/index.php/praxis/article/view/168>.

³²Antariksa, "Landasan Filosofis Dan Sejarah Perkembangan Perlindungan Hak Kekayaan Intelektual: Relevansinya Bagi Kepentingan Pembangunan Di Indonesia."

³³Yulia Nizwana and Rahdiansyah Rahdiansyah, "Perlindungan Hak Kekayaan Intelektual (HaKI) Ditinjau Dari Epistemologi," *UIR Law Review* 3, no. 2 (2019): 34–40, [https://doi.org/10.25299/uirrev.2019.vol3\(02\).4006](https://doi.org/10.25299/uirrev.2019.vol3(02).4006).

theory states that the award will provide a stimulus for the parties to create new, more innovative intellectual works.³⁴

Conclusion

Based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications, that the Judge's considerations in Decision number 8/Pdt.Sus-HKI/Merek/2020/PN.Niaga.Sby, who granted the plaintiff's claim, was partly in accordance with what had been regulated by law. But for the implementation of the decision to cancel the brand is not appropriate. The decision to revoke the DIPOSIN brand resulted in legal inconsistencies because it was not implemented, resulting in a lack of legal certainty for parties with good intentions. According to Sudikno Mertokusumo, in order for the law to function in a real way, the law must be upheld, because then the law becomes a reality and the law must reflect legal certainty, benefit and justice.

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³⁴Agung Sujatmiko, "Tinjauan Filosofis Perlindungan Hak Milik Atas Merek," *Jurnal Media Hukum* 18, no. 2 (2011): 177–89, <https://journal.umy.ac.id/index.php/jmh/article/view/15499>.

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