



**PROTECTION OF BRAND RIGHTS ON JAGO CHICKEN PAINTINGS  
REVIEWED FROM LAW NUMBER 20 OF 2016 CONCERNING  
BRANDS AND GEOGRAPHIC INDICATIONS (STUDY  
RESEARCH IN PT. LUCKY INDAH KERAMIK)**

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This Scientific Work research aims to analyze the trademark rights application for the painting of a rooster on a bowl registered by PT. Lucky Indah Ceramics complies with the Trademark and Geographical Indications Law and its legal protection.

The research methodology used by the author is normative legal research using legal theories and legislation. The type of data used is secondary data consisting of primary, secondary and tertiary legal materials. Data collection was carried out by means of literature study. This legal research uses a comparative legal approach, where data is analyzed descriptively qualitatively.

The research results that the author obtained from literature study were PT. Lucky Indah Keramik does not conflict with the Trademark Law so it can register its brand and in this research it is in accordance with the Legal Theory of Satjipto Rahardjo and Phillipus M. Hadjon, namely PT. Lucky Indah Keramik has made preventive efforts, namely by registering its trademark rights and repressive efforts if a dispute occurs, which can be carried out through litigation or non-litigation.

*Keywords: Rooster Painting, Brand Rights, Legal Protection.*

**A. Background of the problem**

Intellectual Property Rights (HaKI) or Intellectual Property Rights (IPR) are human activities originating from intellectual activities that have benefits in the economic field of IPR or in the international world better known as *Intellectual Property Rights* (IPR), emerging from the results of the mindset that produces a product and through a process that has a function for society. The basic concept of IPR is based on an intellectual work created and produced which requires human sacrifice of time, money and energy.<sup>1</sup>

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<sup>1</sup> "Understanding IPR" <https://penelitian.ugm.ac.id/pengertian-hki/>, accessed on 19 April 2023, at 20.00 WIB



Overall, Intellectual Property Rights are divided into 2, namely Copyright and Industrial Property Rights. Industrial property rights are divided into several, namely Industrial Designs, Brands, Patents, Integrated Circuit Layout Designs, Trade Secrets, Geographical Indications, and Plant Variety Protection. Brand names, symbols, signs, designs and combinations are one of the Intellectual Property Rights which are to be used as identification marks for a brand or complementary identity for a product, both the identity of an individual, company and organization in goods or services to differentiate the products owned. with other service products. <sup>2</sup>Brand has several meanings that can be seen from different points of view. According to the Big Indonesian Dictionary, a brand is "*a mark worn by an entrepreneur (factory, producer, etc.) on the goods produced as an identification mark, a stamp (mark) which serves as identification to state the name and so on.*"<sup>3</sup> Besides that, according to Law Number 20 of 2016 concerning Marks and Geographical Indications (hereinafter referred to as the Trademark Law), "*a brand is defined as a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to differentiate goods and/or services produced by individuals or legal entities in goods and/or services trading activities.*"<sup>4</sup>

Apart from the definition according to the KBBI and the Trademark Law above, there is also a definition according to an expert's point of view. According to Kotler, the definition of a brand is "*a name, term, sign, symbol, or design, or a combination of these, which is intended to identify goods or services from one seller or group of sellers and differentiate products or services from competitors.*"<sup>5</sup> According to Yusran Isnaini, a brand is "*a sign in the form of an image, name, word, letters, numbers, color arrangement, or a combination of these elements which has distinguishing power and is used in trading activities for goods or services.*"<sup>6</sup> According to Prof. Molengraaf, a

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<sup>2</sup> "Understanding Brands" <https://www.kajianpustaka.com/2013/08/brand.html>, accessed on April 19 2023, at 20.00 WIB

<sup>3</sup> "Brand" <https://kbbi.web.id/brand>, accessed on April 19 2023, at 20.00 WIB

<sup>4</sup> Law Number 20 of 2016 concerning Marks and Geographical Indications Article 1 Number 1

<sup>5</sup> "Brand Journal" <http://e-journal.uajy.ac.id/10425/3/2EM19418.pdf>, accessed on April 19 2023

<sup>6</sup> Yusran Isnaini, 2010, *Haki Smart Book*, Bogor: Ghalia Indonesia, p.33



*brand is "a means by which a particular item is personalized, to show the origin of the item, and guarantee its quality so that it can be compared with similar goods made and traded by other people or companies."*<sup>7</sup> Meanwhile, according to HMN Purwo Sutjipto, a brand can be interpreted as a sign, by means of which a certain object is personalized so that it can be differentiated from other similar objects."<sup>8</sup>

A brand as an IPR is based on a sign to differentiate and indicate the origin of the brand of a good or service (*an indication of origin*) from a company owned by someone else from goods or services owned by the company itself. Images, symbols and the like are the spearhead in selling goods and services to brands. With a brand, brand owners and entrepreneurs can provide guarantees for goods and services which results in a guarantee of good quality for consumers. Brands are also a means of marketing and advertising (*marketing and advertising device*) to provide information to consumers regarding goods and services produced or produced by entrepreneurs.<sup>9</sup> A brand owned by a company is used as a distinguishing sign of identification of goods and/or services for one company from another company. What happens in field practice is that there are many cases or incidents of brand infringement, for example, brands that are similar to other brands or the elements and shapes of these brands.

Brand administration is very important because brand rights are special rights given by the government or state to communities or citizens who have creativity in creating goods or services. Therefore, brands are required to be registered and have requirements for registering a brand. The government and state give freedom to brand owners and can also give permission to other parties who want to use the brand, therefore brands are very important and must be registered with the Directorate General of Intellectual Property Rights. Registration of a brand is very important because registering a brand provides a guarantee for consumers, because consumers will buy

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<sup>7</sup>Muhamad Djumhana and R. Djubaedillah, 1993, *Intellectual Property Rights*, Bandung: PT. Aditya Bakti's image, p.121

<sup>8</sup>HMN Purwo Sujipto, 1984, *Understanding the Principles of Indonesian Commercial Law*, Jakarta : Djangkat, p.82

<sup>9</sup> Rahmi Jened, 2015, *Trademark Law in the Global Era & Economic Integration*, Kharisma Putra Utama, Jakarta, p.3



well-known products (stamps, symbols, symbols and so on), the most important thing is that they have quality that is safe for consumption.<sup>10</sup>

*The World Trade Organization (WTO)* is an organization that provides protection for international intellectual property rights, one of which is trademarks in the international scope. As a form of support for trademark protection, Indonesia has also joined *the World Trade Organization (WTO)*<sup>11</sup> and has also ratified several international conventions related to trademarks, such as *the 1994 Trademark Law Treaty*<sup>12</sup> and *the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)*.<sup>13</sup> Brands themselves are protected in the Trademark Law which is clearly stated in article 2 number 3 (three) which reads "*protected marks consist of signs in the form of images, logos, names, words, letters, numbers, color arrangements, in 2 (two) dimensional form. and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to differentiate goods and/or services produced by individuals or legal entities in the activities of trading goods and/or services.*"

In Indonesia, making a regulation is not just a matter of establishing a set of rules, but rather an obligation that must be implemented by Indonesia. However, these regulations must be implemented effectively, and be characterized by increased legal protection and adequate awareness of the owners or holders of IPR.

Technological developments mean that many people are registering their brands to get protection by law. However, even though a trademark has been registered so that it can be protected and avoid plagiarism, violations still occur. One of the cases related

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<sup>10</sup>Suyud Margono, 2011, *Industrial Property Rights: Regulations and Practices in Indonesia*, Ghalia Indonesia, Bogor, p.79

<sup>11</sup>"Indonesia joined as a member country of the WTO on February 24 1995. Can also be seen at World Trade Organization, GATT Members" [https://www.wto.org/english/thewto\\_e/gattmem\\_e.htm](https://www.wto.org/english/thewto_e/gattmem_e.htm), accessed on April 19 2023, at 18.00 WIB

<sup>12</sup>"Indonesia ratified the 1994 Trademark Law Treaty on June 5 1997, See also WIPO-Administered Treaties, Contracting Parties>Trademark Law Treaty" [https://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=5](https://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=5), Accessed on April 19 2023, at 19.00 WIB

<sup>13</sup>"Indonesia ratified the TRIPS Agreement on January 1 1995. See also WIPO Lex, IP-related Multilateral Treaties>Contracting Parties/Signatories>TRIPS Agreement" <https://wipo.lex.wipo.int/en/treaties/parties/231>, accessed at April 19 2023, 20.00 WIB



to trademark rights violations that occurred in Indonesia was the case of trademark plagiarism on a painting depicting a rooster owned by PT. Lucky Indah Ceramics.

PT Lucky Indah Keramik, founded in 1972 and began operating in 1976. This company has two factories in Tangerang and Depok/Cimanggis which concentrate on bowl products and until now covers almost all types of ceramic *tableware products*.<sup>14</sup>In its announcement in a newspaper it claimed that it was the only company that had the rights to produce, use and trade the Brand with the rooster on it.<sup>15</sup> PT. Lucky Indah Ceramics has registered the rooster painting based on Trademark Registration Certificate Number IDM000366635 in class 21 which includes plates, bowls, casseroles, cup coasters, *tea sets*, *dinner sets*, teapots, cups, glasses, cup lids and vases. flower.<sup>16</sup>Because the company that owns the rooster painting brand has already been registered, it feels disadvantaged because someone is still producing the painting. Various efforts have been made by the company, including making announcements in newspapers and other newspapers about the brand it owns so that it is not imitated and the public knows that the rooster painting has been registered and as the right holder of the rooster painting brand, its rights are protected by the Trademark Law.<sup>17</sup>

In fact, many people object because they think that rooster paintings have become commonplace. One of them is Urip Siswanto, a meatball seller in the Santa area. He stated that the bowl with a chicken painting he was using had been registered by PT. Lucky Indah Ceramics, is a legacy of his late father. He stated that his parents had been selling since 1963 and used the same bowl. Urip only continued his business in 2009.<sup>18</sup>

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<sup>14</sup> "PT. Lucky Indah Keramik" <http://www.luckyindah.com/>, See also <https://ecc.ft.ugm.ac.id/employer/site/view/2008/profil-pt-lucky-indah-keramik>, at access on April 19 2023, 18.00 WIB

<sup>15</sup> "Kompas.com, Struggle to Maintain Rooster Paintings", Sherly Puspita, 07 September 2017" <https://megapolitan.kompas.com/read/2017/09/07/09445521/perjuangan-maintain-lukisan-ayam-jago>, at access on April 19 2023, 20.00 WIB

<sup>16</sup> "Intellectual Property Database, Structured Search Brand>Rooster Painting" <https://pdki-indonesia.dgip.go.id/index.php/brand/Y1dVTHRbK0F4ZVF1QXB5cHBjQU5RZz09?q=Lukisan+mangkok+Ayam+Jago&type=1&skip=40>, Accessed on April 19 2023, at 20.00 WIB

<sup>17</sup> "Kompas.com, Struggle to Maintain Rooster Paintings", Op.Cit, accessed on April 19 2023, at 20.00 WIB

<sup>18</sup> "Vice.com, Indonesian Cultural Heritage, The Fate of Our Meatballs and Noodles After the Rooster Bowl is Claimed to be One Company", Adi Renaldi, 7 September 2017" [https://www.vice.com/id\\_id/article/9kkp88/nasib-bakso-dan-mi-kita-after-cock-rooster-claimed-one-company](https://www.vice.com/id_id/article/9kkp88/nasib-bakso-dan-mi-kita-after-cock-rooster-claimed-one-company), accessed on April 19 2023, at 20.00 WIB





However, because the Rooster Painting has been registered under the Trademark Law, PT. Lucky Indah Keramik has full rights to the Rooster Painting Brand.<sup>19</sup> and if another party uses a registered mark without permission, they will be subject to sanctions under the Trademark Law.<sup>20</sup> The Trademark Law states that a trademark that has been registered must have permission from the mark holder, however there are still pros and cons to registering the Rooster Painting Mark.

Therefore, based on the background above, the researcher wishes to conduct a research with the title **"Protection of Brand Rights in Rooster Paintings in View of Law Number 20 of 2016 concerning Brands and Geographical Indications"** (PT. Lucky Indah Research Study ceramic)

## **B. Formulation of the problem**

Based on the description above, the problem formulation can be drawn as follows:

1. Is the application for trademark rights for the rooster painting on the bowl registered by PT. Is Lucky Indah Ceramics in accordance with Law Number 20 of 2016 concerning Brands and Geographical Indications?
2. What is the legal protection for infringement of trademark rights for paintings of roosters on bowls owned by PT. Lucky Indah Ceramics?

## **C. Research methods**

In carrying out this research, the researcher **used** a type of normative legal research. Normative legal research is conceptual legal research as contained in statutory regulations and conceptually existing in other legal rules that exist in society regarding a particular legal problem. In this research, researchers used a type of normative research, namely research carried out by reviewing statutory regulations or other regulations applied in resolving a particular legal problem. Normative research is often called doctrinal research where the object of study is are statutory regulatory documents and library materials which constitute basic data which in research science is classified

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<sup>19</sup>Law Number 20 of 2016 concerning Marks and Geographical Indications, Article 1 Number 5

<sup>20</sup>Law Number 20 of 2016 concerning Marks and Geographical Indications, Article 100 paragraphs (1) and (2)



as secondary data.<sup>21</sup> According to Soerjono Soekanto, legal research can be divided into:<sup>22</sup> Normative Legal Research, consisting of:

1. Research into legal principles
2. Research on legal systematics
3. Research on the level of legal synchronization
4. Legal history research
5. Comparative legal research

In accordance with the type of research, namely normative legal research (normative juridical), more than one approach can be used. In this research, a statutory approach and a concept approach are used. The legislative approach is carried out to examine the statutory regulations that regulate. In the perspective of legal theory, justice is the main goal of the natural law school. Where the natural law school holds the view that law is universal and eternal.<sup>23</sup> In the Indonesian context, justice is in line with the values stated in Pancasila as the basis of the state. The fifth verse in Pancasila states that social justice is for all Indonesian people. Based on this verse it can be said that justice must be aimed at all citizens without exception as an embodiment of Indonesia's diversity. To realize social justice, development can be done that is oriented towards the welfare of all Indonesian people. In development, legal development is an aspect that cannot be separated. This is because the law functions as a means of development/renewal of society, as expressed by Mochtar Kusumaatmadja.

Mochtar Kusumaatmadja stated that law is a means of societal renewal.<sup>24</sup> This is based on the assumption that the existence of order or order in development and renewal efforts is something that is desired or even considered (absolutely) necessary.

<sup>25</sup> Another assumption of law as a means of societal renewal is that it channels the direction of human activity in the direction desired by development or renewal. The purpose of writing this scientific work is to analyze whether the trademark rights for the

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<sup>21</sup> Soerjono Soekanto, Normative Legal Research, (Jakarta, PT Raja Grafindo Persada, 2003) p.23

<sup>22</sup> *Ibid* pg 67

<sup>23</sup> Lili Rasjidi, *Basics of Philosophy and Legal Theory*, PT. Citra Aditya Bakti, Bandung, 2011, p. 47.

<sup>24</sup> Otje Salman and Eddy Damian (ed), *Legal Concepts in the Development of a Collection of Prof.'s Writings. Dr. Mochtar Kusumaatmadja, SH, LL.M.*, PT. Alumni, Bandung, p. 83.

<sup>25</sup> *Ibid*, p. 88.



painting of a rooster on a bowl by PT Lucky Indah Keramik are in accordance with Law Number 20 of 2016 concerning Marks and Geographical Indications. To analyze legal protection for trademark rights violations for paintings of roosters on bowls owned by PT. Lucky Indah Ceramics.

#### **D. Research Results and Discussion**

##### **1. Application for Trademark Rights for Rooster Paintings on Bowls registered by PT. Lucky Indah Ceramics is in accordance with Law Number 20 of 2016 concerning Brands and Geographical Indications**

An item that has sale and purchase value must register a brand with the Director General of Intellectual Property Rights. Application for the Rooster Painting brand on bowls owned by PT. Lucky Indah Ceramics is in accordance with *"Law Number 20 of 2016 concerning Brands and Geographical Indications, namely starting from article 1 number 1 regarding the explanation of the meaning of a brand, a brand is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in 2 (two) dimensions and/or 3 ( three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to differentiate goods and/or services produced by individuals or legal entities in goods and/or services trading activities."* Thus, through the brand definition itself, the rooster painting is in accordance with the brand definition.

As for "Law Number 20 of 2016 concerning Marks and Geographical Indications, the elements contained in Article 2 Paragraph 3 regarding the definition of a Mark are as follows:

- a. A brand is a sign that can be displayed graphically ;*
- b. Brands on signs in the form of images, logos, names, words, letters, numbers, color arrangements ;*
- c. In 2 (two) dimensions and 3 (three) dimensions, sound, hologram ; And*
- d. A combination of 2 (two) or more elements to differentiate the goods and/or services produced ."*





You can see the painting of a rooster on a bowl registered by PT. Lucky Indah Ceramics has fulfilled the existing elements such as the content in the first element regarding the brand is a sign that is displayed graphically, it is true that the rooster painting is displayed in a graphic form that can be seen on the bowl, the second element is the brand which is an image, logo, name, The words, letters, numbers and color arrangement are also correctly reflected in the rooster painting. The painting has an image of a rooster and the rooster painting also symbolizes the logo on an item, the name on the painting is a rooster and there are various colors in the rooster image. The third element is a 2-dimensional or 3-dimensional shape, that's right because the image can be seen from various sides, namely a picture of a rooster, and the last one is a differentiating element from other people's goods or services, of course the rooster painting fulfills the fourth element because there is no brand yet. with a painting of a rooster registered with the Director General of KI.

Thus, it can be concluded that the rooster painting brand has fulfilled the four elements and it is appropriate that the rooster painting brand can be registered with the Director General of IP because it has fulfilled all the existing elements. The content of article two paragraph three is that a protected mark consists of *"a sign in the form of an image, logo, name, word, letter, number, color arrangement, in 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to differentiate goods and/or services produced by individuals or legal entities in goods and/or services trading activities"*. It can be concluded that the rooster painting has a sign in the form of a rooster, so the rooster painting has fulfilled the provisions of the law. And the rooster painting has been registered with the Director General of Intellectual Property Rights and has received legal protection. The rooster painting does not conflict with P 20 to Article 22 of the Trademark and Geographical Indications Law, namely regarding marks that cannot be registered and are rejected. "Article 20 of the Trademarks and Geographical Indications Law explains that there are several conditions where a Mark cannot be registered . registered. The elements contained in this article are as follows:

- a. *Trademarks cannot be registered if they conflict with state ideology, regulations, legislation, morality, religion, decency or public order.*



- b. It has no characteristics, only mentions the goods and/or services requested by the applicant.*
- c. Marks that contain elements that can mislead the public regarding the origin, quality, type, size, type, intended use of goods and services applied for by the registrant or have names of plant varieties that are protected for similar goods and/or services.*
- d. Brands that have information that does not correspond to the quality, benefits or efficacy of the goods produced.*
- e. Brands that do not have differentiating power .*
- f. Brands that have a common name or symbol belong to the public ."*

It can be concluded that the sound in P origin 20, Painting of a rooster in a bowl owned by PT. Lucky Indah Ceramics, does not conflict with the elements above such as state ideology, laws and regulations, morality, religion, decency or public order. It can be seen that the painting only depicts a chicken, there are no elements that contradict the sound of the verse above. The motif of the chicken image also does not mislead the public. Thus, the rooster painting may be registered because it does not violate the existing elements. "As for Article 21 of the Trademark and Geographical Indications Law, it also explains as follows:

- a. A trademark application is rejected if it has substantial or total similarities with a registered mark belonging to another person or has been previously applied for by another party for goods or services, as for well-known marks for goods or services belonging to another party, well-known marks belonging to other people for goods and services that are not similar in nature and meet the requirements. certain requirements as well as registered geographical indications.*
- b. Applications will also be rejected if the mark resembles the name or abbreviation of a famous person, photo or legal entity belonging to another person unless written approval is given and has the right, the mark imitates the name or abbreviation of the name, flag, coat of arms or symbol of a country or national or international institution unless written approval is given by the authorized party, or a brand that*



*imitates the official marks and stamps used by the state or government agency unless written approval is given by the party concerned.*

*c. A trademark application is rejected if it is submitted by an applicant who has bad intentions."*

The rooster painting is not a registered brand or belongs to someone else, it is someone else's famous brand, but the rooster painting is a painting brand that has just been registered by PT. Lucky Indah Ceramics is a new painting brand that is not the same as the name or abbreviation of a famous person's name or a copy of a name, flag or coat of arms or symbol, seal and so on listed on P 21. *"In accordance with Article 22 of the Trademark and Geographical Indications Law, it is explained that for a registered mark which is a genetic name, every person who applies for a mark using the genetic name is referred to with the addition of other words as long as there is a distinctive element."*

Therefore, it can be concluded that the rooster painting brand fulfills every element in P 1 and Article 2 paragraph 3, and does not conflict with P 20 to Article 22, and is in accordance with the Law on Marks and Geographical Indications because has fulfilled the requirements and criteria stated in the law. The painting of a rooster does not violate any of the provisions in the article regarding the brand. In fact, the painting meets every requirement in the law.

## **2. Legal Protection for Infringement of Trademark Rights for Paintings of Roosters on Bowls owned by PT. Lucky Indah Ceramics .**

In the announcement entitled "Remembrance of the Rooster Painting Brand", PT Lucky Indah Keramik stated that the company is the sole holder of the rooster painting brand based on the Brand Registration Certificate number IDM00366635 in class 21. Class 21 includes glassware such as plates, bowls, trays, cup coasters, tea sets, dinner sets, teapots, cups, glasses, cup lids and flower vases. In the same announcement, PT Lucky Indah Keramik warned producers, importers, distributors, agents or retailers not to buy, import, store or trade goods as mentioned above using the Rooster Stamp painting, whether it is the same in its entirety. or have similarities in essence.



Even though the rooster painting has been registered, violations still occur as has been done by PT. Semesta Keramik Raya and PT. Sri Intan Toki Industri. In the Trademark Law, registered marks are protected from all forms as regulated in P 2, paragraph three, namely protected marks, P 35 to Article 40 regarding the period of protection and extension of registered marks. What is meant by legal protection is efforts made to fulfill rights and provide assistance to gain a sense of security with witnesses and/or victims. Protection for crime victims is part of protecting society, which is realized in various forms, namely through compensation, medical services, restitution and legal aid. *According to Satjipto Rahardjo, legal protection is "providing protection for human rights (HAM) that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law."*

All people, especially entrepreneurs, need legal protection from the government to ensure their security. Legal protection is divided into two, namely preventive legal protection and repressive legal protection. What is meant by preventive legal protection is protection provided by the government by the community with the aim of preventing violations before they occur. This is regulated in law with the function of preventing violations and providing signs and limits for carrying out obligations. Meanwhile, what is meant by repressive legal protection is final protection such as sanctions for paying fines, imprisonment, and additional penalties if a dispute has occurred or a violation has been committed.

In preventive legal protection, PT. Lucky Indah Keramik has taken steps to register its brand, in accordance with P 4 to P 10 of the Trademark and Geographical Indications Law, to obtain protection from infringers of its rights. However, violations still occur, namely PT. Semesta Keramik Raya and PT. Sri Intan Toki Industri produces, applies and traces the brand with the image of a rooster on the bowl. Therefore, further legal protection that can be carried out by PT. Lucky Indah Keramik protects its brand rights by resolving disputes.

Dispute resolution is one way of repressive legal protection, namely legal protection carried out after a dispute occurs. In this case, a dispute has occurred, namely the violation of Trademark Rights over the Rooster Painting belonging to PT. Lucky



Indah Ceramics carried out by PT. Semesta Keramik Raya and PT. Sri Intan Toki Industri. In the previous case, the two companies promised not to produce any more paintings depicting roosters so that the problems that occurred could be resolved properly. However, if a problem occurs, you can resolve the dispute in court or negotiate first.

Regarding violations of trademarks, the Trademark and Geographical Indications Law regulates violations and sanctions. *"The sanctions are as stated in Article 100 paragraph 1 of the Trademark and Geographical Indications Law, which states that anyone who plagiarizes can be subject to a maximum prison sentence of 5 years or a maximum fine of IDR 2 billion."* So that paintings that have been registered have received legal protection, in this case the Rooster Painting Brand owned by PT. Lucky Indah Ceramics has been registered with the Director General of Intellectual Property Affairs with the number IDM00366635, which automatically receives strong protection under the Trademark and Geographical Indications Law, which in the Law is clearly stated in every article by article starting from what is included. in protected brands up to sanctions if someone plagiarizes. Because a violation has occurred, the repressive legal protection that can be carried out by PT. Lucky Indah Keramik, as the holder of the Rooster Painting Brand Rights, whose rights have been violated, is by resolving disputes, either through litigation (in court) or through non-litigation (alternative dispute resolution and arbitration).

Protection of brand rights is only given to brand owners whose marks have been registered. Brand protection is provided when there is a brand violation committed by a party who does not have the rights to a brand. In the world of trade, brands have an important role, because a well-known brand can influence the success of a business, especially in terms of marketing. In the world of trade, violations of well-known brands often occur. Violations occur because there are parties who do not have the right to use the registered mark for their interests.

Protection of well-known brands is provided by the State through laws, both preventive and repressive protection. If a brand violation occurs, the brand owner will be protected both preventively and repressively. *"The existence of this protection shows*





that the State is obliged to enforce trademark law. Therefore, if there is a violation of a registered trademark, the trademark owner can file a lawsuit with the Court Office. With this protection, justice will be realized which is the aim of the law. One of the goals of law is to realize social justice. With legal protection, the legal brand owner's rights are protected. The state is obliged to provide protection to injured parties in accordance with the context of *State Law* ."

*"Based on the Legal Protection Theory , Satjipto Rahardjo says that law is present in society to integrate and coordinate interests that can conflict with each other. Coordinating these interests is carried out by limiting and protecting these interests."*

#### **E. Conclusion**

1. Application for trademark rights to paint a rooster on a bowl owned by PT. Lucky Indah Keramik has fulfilled the elements in article 4 of the Trademark Law regarding matters that can be applied for for Trademark Rights and also does not violate the elements in article 20, article 21 and article 22 of the Trademark Law regarding matters that cannot be submitted for registration of Trademark Rights. Therefore PT. Lucky Indah Keramik has the right to obtain the trademark rights to the bowl depicting a rooster because it does not violate existing legal regulations.
2. Legal protection efforts have been carried out by PT. Lucky Indah Ceramics is a preventive legal effort, namely by registering the Rooster Painting Brand with the Director General of Intellectual Property Rights with the right number IDM00366635. However, even though preventive legal protection measures have been taken, violations still occur. Therefore, in accordance with the Legal Protection Theory proposed by Satjipto Rahardjo and Phillipus M. Hadjon, apart from preventive legal protection, there is also repressive legal protection that can be implemented after a violation or dispute occurs. As for the repressive legal protection carried out by PT. Lucky Indah Ceramics is a method of resolving disputes, both through litigation and non-litigation.

#### **F. Suggestion**



1. Lack of public understanding regarding intellectual property rights, especially in this case trademark rights, is one of the causes of violations. Therefore, the government, in this case the Director General of Intellectual Property Rights and the Ministry of Law and Human Rights, should carry out outreach and deepen insight into the public regarding IPR, especially in this case Trademark Rights, so that the public better understands the existence of regulations relating to Trademark Rights, their protection, as well as violations and sanctions. This can be an effort to minimize the occurrence of IPR violations in Indonesia.
2. Apart from the government, the public should also understand more about Brand Rights and related regulations. Especially in this case, registered Trademark Rights holders must be able to better understand what their rights and obligations are as Trademark Rights Holders. For the community, in this case specifically entrepreneurs, so that in the future they can avoid violations that could harm both the Brand Rights Holder and other entrepreneurs.

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