



Trademark Rights Protection on Rooster Paintings Reviewed from Law Number 20 of 2016 Concerning Trademarks

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Abstract

This Scientific Paper Research aims to analyze the submission of trademark rights for the painting of a rooster on a bowl registered by PT. Lucky Indah Keramik has been in accordance with the Trademark and Geographical Indication 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 results of the research that the author obtained from the literature study are PT. Lucky Indah Keramik does not conflict with the Trademark Law so that it can register its trademark and in this study as in accordance with the Legal Theory of Satjipto Rahardjo and Phillipus M. Hadjon, namely PT. Lucky Indah Keramik has made preventive efforts by registering its trademark rights and repressive efforts if a dispute occurs can be carried out through litigation or non-litigation.

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

Introduction

Intellectual Property Rights (IPR) or Intellectual Property Rights (IPR) are human activities that originate 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 a 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 that is created and produced by humans that requires sacrifice of time, money and energy.

Overall, Intellectual Property Rights are divided into 2, namely Copyright and Industrial Property Rights. Industrial property rights are divided into several, namely Industrial Design, Trademark, Patent, Integrated Circuit Layout Design, Trade Secret, Geographical Indication, and Plant Variety Protection. Brand names, symbols, signs, designs, and combinations are one of the Intellectual Property Rights, including to be used as an



identifier of a brand or complementary identity of a product, either the identity of an individual, company and organization on goods or services to distinguish the products owned from other service products. Brands have several meanings that can be seen from different perspectives. According to the Big Indonesian Dictionary, a brand is "a sign worn by entrepreneurs (factories, producers, and so on) on goods produced as an identifier, a stamp (sign) that becomes an identifier to state the name and so on." In addition, according to Law Number 20 of 2016 concerning Trademarks and Geographical Indications (hereinafter referred to as the Trademark Law), "a trademark is defined as a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in the form of 2 (two) dimensions and / or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and / or services produced by a person or legal entity in the trading of goods and / or services."

In addition to the definition according to KBBI and the Trademark Law above, there is also a definition according to the 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 all of them, which is intended to identify goods or services from one seller or group of sellers and differentiate products or services from competitors. According to Yusran Isnaini, a brand is "a sign in the form of a picture, name, word, letters, numbers, color arrangement, or a combination of these elements that have distinguishing power and are used in the trading of goods or services." According to Prof. Molengraaf, a brand is "with which a certain item is personalized, to indicate the origin of the goods, and guarantee its quality so that it can be compared with similar goods made and traded by other people or companies. Meanwhile, according to HMN Purwo Sutjipto, a brand can be interpreted as a sign, with which a certain object is personalized so that it can be distinguished from other similar objects."

A brand as an IPR is based on a sign to distinguish and indicate the origin of a brand of goods or services (an indication of origin) from a company owned by another person with goods or services owned by the company itself. Images, symbols and the like are the spearhead in the sale of goods and services on a brand. With a brand, brand owners and entrepreneurs can provide a guarantee of goods and services that produce a guarantee of good quality (a guarantee of 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 generated by entrepreneurs. A brand owned by a company is a distinguishing mark of identification of goods and or services for one company with another company. What happens in practice is the number of cases or incidents of violations of brands, for example, brands that have similarities with other brands or elements, forms of the brand.

Brand administration is very important because the right to a brand is a special right granted by the government or state to the community or its citizens who have creativity in creating goods or services. Therefore, brands are required to be registered and have requirements in registering brands. The government and state provide freedom for brand owners and can also grant 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 by registering a brand it provides a guarantee for consumers, because consumers will buy well-known product goods (stamps, emblems, symbols and so on) the most important thing is that it has a quality that is safe for consumption.

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 is also a member of the World Trade Organization (WTO) and has also ratified several international conventions related to Trademarks, such as the Trademark Law Treaty 1994 and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The trademark itself is protected in the Trademark Law which is clearly stated in article 2 number 3 (three) which reads "the protected trademark consists of a sign in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and / or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and / or services produced by a person or legal entity in the trading of goods and / or services."

In Indonesia, making a regulation is not only about setting the rules but also an obligation that must be implemented by Indonesia. However, the regulation must be



implemented effectively, and marked by increasing legal protection and adequate awareness of the owners or holders of IPR. The development of technology has made many people register their brands to get protection by law. However, even though the brand has been registered to be protected and to avoid plagiarism, violations still occur. One of the cases related to Trademark violations that occurred in Indonesia is the case of Trademark plagiarism in a painting depicting a rooster owned by PT. Lucky Indah Keramik.

PT Lucky Indah Keramik, was established in 1972 and started operating in 1976. The company has two factories in Tangerang and Depok/Cimanggis that concentrate on bowl products and until now covers almost all types of ceramic tableware products. In its announcement in a newspaper, it claims that it is the only company that has the right to produce, use, and trade the Rooster Painting Brand. PT. Lucky Indah Keramik has registered the Rooster Painting based on the Trademark Registration Certificate Number IDM000366635 in class 21 which includes plates, bowls, platters, cup coasters, tea sets, dinner sets, teapots, cups, glasses, cup lids, and vases. Because it has been registered, the company that owns the Rooster Painting brand feels disadvantaged because there are still those who produce the painting. The various efforts made by the company included making announcements in newspapers and other publications regarding the brand it owns so that it is not copied and the public knows that the painting of the rooster has been registered and that it, as the Rights Holder of the Painting of the Rooster, has its rights protected by the Trademark Law.

In fact, many people object because they consider the Rooster Painting to be commonplace. One of them is Urip Siswanto, a meatball seller in the Santa area, he stated that the bowl with the rooster painting that he was using, which had been registered by PT. Lucky Indah Keramik, was a legacy from 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.

However, because the Rooster Painting has been registered under the Trademark Law, PT. Lucky Indah Keramik has full rights to the Rooster Painting Trademark. and if there is another party who uses the registered Trademark without permission, they will be subject to sanctions under the Trademark Law. The Trademark Law states that for registered



Trademarks, they must have permission from the trademark holder, but there are still pros and cons to registering the Rooster Painting Trademark .

Based on the above explanation, this paper will analyze **the Protection of Trademark Rights on Rooster Paintings Reviewed from Law Number 20 of 2016 Concerning Trademarks** In the discipline of law, it is said and divided into 2 (two) types of research, namely, Normative and Empirical research. In this study, the author uses Normative research, where this research focuses on a secondary approach called research in the form of applicable laws and legal rules and primary data as supporting data. the purpose of law is to guarantee legal certainty based on justice to uphold an orderly social order and balance in relations between individuals in society. It is hoped that with the formation of an orderly social order, the interests of humanity will be protected. To achieve this goal, the law is responsible for dividing rights and obligations between individuals in society, sharing power, and standardizing methods for resolving legal problems and legal certainty.

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

1. Is the trademark application for the Rooster Painting on a bowl registered by PT. Lucky Indah Keramik in accordance with Law Number 20 of 2016 concerning Trademarks and Geographical Indications?
2. How is the legal protection for trademark infringement on the rooster painting on the bowl owned by PT. Lucky Indah Keramik?

Research methods

In conducting this research, the researcher uses a normative legal research type. Normative legal research is conceptual legal research as contained in statutory regulations and conceptually contained in other legal rules that exist in society regarding a particular legal problem. In this research, the researcher uses a normative research type, namely research conducted by examining statutory regulations. or other regulations applied in resolving a particular legal problem. This normative research is often called doctrinal research where the object of study is is a document of statutory regulations and library materials which are basic data which in research science are classified as secondary data.



According to Soerjono Soekanto, legal research can be divided into: Normative Legal Research, consists of:

1. Research on 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 study, the Legislation approach and the concept approach were used. *The Legislation Approach* is carried out to examine the Legislation rules that regulate In the perspective of legal theory, justice is the main objective of the natural law school. Where the natural law school is of the view that the law applies universally and eternally. In the context of Indonesia, justice is in line with the values stated in Pancasila as the foundation of the state. The fifth article in Pancasila states that social justice for all Indonesian people, based on this article it can be said that justice must be aimed at all citizens without exception as a manifestation of Indonesia's diversity. To realize social justice can be done through development that is oriented towards the welfare of all Indonesian people. In comprehensive development, legal development is an aspect that cannot be separated.

Research Results and Discussion

The submission of Trademark Rights for the Rooster Painting on a bowl registered by PT. Lucky Indah Keramik is in accordance with Law Number 20 of 2016 concerning Trademarks and Geographical Indications

An item that has a sale value must register a brand with the Directorate General of Intellectual Property Rights. The submission of the Rooster Painting brand on a bowl owned by PT. Lucky Indah Keramik is in accordance with "Law Number 20 of 2016 concerning Trademarks and Geographical Indications, namely starting from Article 1 number 1 regarding the explanation of the definition 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 the form



of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by a person or legal entity in the trading of goods and/or services." Thus, through the definition of the brand itself, the rooster painting is in accordance with the definition of a brand.

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

- 1) A brand is a sign that can be displayed graphically;
- 2) A brand is a sign in the form of an image, logo, name, word, letter, number, color arrangement;
- 3) In 2 (two) dimensional and 3 (three) dimensional forms, sound, hologram; and
- 4) A combination of 2 (two) or more elements to differentiate the goods and/or services produced."

It can be seen that the painting of a rooster on a bowl registered by PT. Lucky Indah Keramik has fulfilled the existing elements such as the contents of the first element regarding the brand is a sign that is displayed graphically, it is true that the painting of the rooster is displayed in a graphic form that can be seen on the bowl, the second element is the brand which is a picture, logo, name, word, letter, number and the arrangement of the colors is also true that it has been written on the painting of the rooster. The painting has a picture, namely a rooster and the painting of the rooster also symbolizes the logo on an item, the name on the painting is a rooster and has various colors on the picture of the rooster. The third element is in the form of 2 dimensions or 3 dimensions, it is true because the picture can be seen from various sides, namely the picture of the rooster, and the last is an element that distinguishes it from goods or services belonging to other people, of course the painting of the rooster fulfills the fourth element because there is no brand with the form of a painting of a rooster registered with the Directorate General of Intellectual Property.

Thus it can be concluded that the rooster painting brand has fulfilled the four elements and it is right that the rooster painting brand can be registered with the Directorate General of Intellectual Property Rights because it has fulfilled all the existing elements. The contents of article two paragraph three are that the protected brand consists of "a sign in the form of a picture, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or



more of these elements to distinguish goods and/or services produced by a person or legal entity in the trading of goods and/or services. It can be concluded that the rooster painting has a sign in the form of a picture of a rooster, so the rooster painting has fulfilled the provisions of the law. And the rooster painting has been registered with the Directorate General of Intellectual Property Rights and has received legal protection. The rooster painting does not contradict Article 20 to Article 22 of the Trademark and Geographical Indications Law, namely regarding brands that cannot be registered and are rejected. "Article 20 of the Trademark and Geographical Indications Law explains that there are several conditions where a Trademark cannot be registered. The elements contained in this article are as follows:

- 1) A trademark cannot be registered if it conflicts with state ideology, regulations, legislation, morality, religion, decency or public order.
- 2) It does not have any special characteristics, it only mentions the goods and/or services requested by the applicant.
- 3) A brand that contains elements that can mislead the public regarding the origin, quality, type, size, kind, purpose of use of the goods and services applied for by the applicant or has the name of a protected plant variety for similar goods and/or services.
- 4) Brands that have descriptions that do not correspond to the quality, benefits or properties of the goods produced.
- 5) A brand that has no distinguishing power.
- 6) A brand that has a common name or a common symbol."

It can be concluded that the wording in Article 20, The painting of a rooster on a bowl owned by PT. Lucky Indah Keramik, 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 conflict with the wording in the above paragraph. The motif of the chicken image also does not mislead the public. Thus, the painting of a rooster may be registered because it does not violate the existing elements.

"Article 21 of the Trademark and Geographical Indications Law also explains the following:

- 1) A trademark application will be rejected if it has a basic or overall similarity to a registered trademark belonging to another person or has been previously applied for by another party for goods or services, a well-known trademark for goods or services belonging to another party, a well-known trademark belonging to another person for goods and services that are not similar but meet certain requirements and registered geographical indications.



- 2) Applications will also be rejected if the trademark resembles the name or abbreviation of a famous person, a photo or legal entity belonging to another person unless written approval is given and the right is granted, the trademark imitates the name or abbreviation of a name, flag, emblem or symbol of a country and national or international institution unless written approval is given by the authorized party, or the trademark imitates the official sign and stamp used by a country or government institution unless written approval is given by the relevant party.
- 3) A trademark application will be rejected if it is submitted by an applicant who has bad intentions."

The painting of a rooster is not a registered trademark or owned by someone else, a famous trademark of someone else, but the painting of a rooster is a newly registered painting trademark by PT. Lucky Indah Keramik and is a new painting trademark that is not the same as the name or abbreviation of a famous person's name or an imitation of a name, flag or emblem or symbol, stamp and so on as stated in Article 21. "Thus, Article 22 of the Trademark and Geographical Indications Law explains that a registered trademark that becomes a generic name, anyone who applies for a trademark using the intended generic name with the addition of other words as long as there is a distinguishing element."

Therefore, it can be concluded that the rooster painting brand meets every element in Article 1 and Article 2 paragraph 3, and does not conflict with Article 20 to Article 22, and is in accordance with the Law on Trademarks and Geographical Indications because it has met the requirements and criteria stated in the law. The rooster painting does not contradict every word of the rules in the article regarding the brand. In fact, the painting has met every requirement contained in the law.

Legal Protection for Trademark Rights Violation of Rooster Painting on Bowl owned by PT. Lucky Indah Keramik.

In an announcement entitled "Warning of Rooster Painting Brand", PT Lucky Indah Keramik stated that its company is the sole holder of the rooster painting brand based on the Trademark Registration Certificate number IDM00366635 in class 21. Class 21 includes glassware such as plates, bowls, trays, coasters, tea sets, dinner sets, teapots, cups, glasses, cup lids, and vases. In the same announcement, PT Lucky Indah Keramik warned manufacturers, importers, distributors, agents or retailers not to buy, import, store or trade



goods as mentioned above using the Rooster Painting, whether it is the same as a whole or has similarities in principle.

Although the rooster painting has been registered, violations still occur as committed by PT. Semesta Keramik Raya and PT. Sri Intan Toki Industri. In the Trademark Law, registered trademarks are protected from all forms that have been regulated in Article two paragraph three, namely protected trademarks, Articles 35 to 40 regarding the protection period and extension of registered trademarks. What is meant by legal protection is an effort made to fulfill rights and provide assistance to obtain a sense of security with witnesses and/or victims. Protection for victims of crime is part of protecting the community, which is realized in various forms, such as through compensation, medical services, restitution and legal assistance. According to Satjipto Rahardjo, legal protection is "providing protection for human rights (HAM) that are harmed by others and that 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 the protection provided by the government by the community which has the aim of preventing violations from occurring. This is regulated in law with the function of preventing violations and providing guidelines and limitations for carrying out obligations. While what is meant by repressive legal protection is final protection such as sanctions to pay fines, be imprisoned, and additional penalties if there has been a dispute or a violation has been committed.

In preventive legal protection, PT. Lucky Indah Keramik has taken steps by registering its trademark, in accordance with Article 4 to Article 10 of the Trademark and Geographical Indications Law, to obtain protection from violators of its rights. However, violations still occur, namely PT. Semesta Keramik Raya and PT. Sri Intan Toki Industri which produce, apply and copy the trademark with a picture of a rooster on the bowl. Therefore, further legal protection that can be carried out by PT. Lucky Indah Keramik in protecting its trademark rights is by resolving the dispute.

Dispute resolution is one of the methods of repressive legal protection, namely legal protection carried out after a dispute has occurred. In this case, a dispute has occurred,



namely the violation of Trademark Rights on the Rooster Painting owned by PT. Lucky Indah Keramik 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, the dispute can be resolved in court or can be negotiated first.

Regarding violations of Trademarks, the Trademark and Geographical Indications Law has regulated 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 commits plagiarism can be subject to a maximum of 5 years in prison or a maximum fine of IDR 2 billion." So that the registered painting has received legal protection, in this case the Rooster Painting Brand owned by PT. Lucky Indah Keramik which has been registered with the Directorate General of Intellectual Property with the number IDM00366635, which automatically has received strong protection by the Trademark and Geographical Indications Law, which in the Law has clearly stated each article by article starting from what is included in the protected brand to the sanctions if someone commits plagiarism. 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 Trademark whose rights have been violated is by resolving the dispute, either through litigation (in court) or by non-litigation (alternative dispute resolution and arbitration).

Granting of trademark protection is only given to trademark owners whose trademarks have been registered. Trademark protection is given when there is a trademark violation committed by a party that does not have the rights to a trademark. In the world of trade, brands have an important role, because with a well-known brand, it 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 registered trademarks for their own interests.

Protection for well-known brands is provided by the State through laws, both preventive and repressive protection. If a trademark violation occurs, the brand owner will be protected both preventively and repressively. "With this protection, it shows that the State is obliged to enforce trademark law. Therefore, if there is a violation of a registered trademark, the brand



owner can file a lawsuit with the Court. With this protection, justice will be realized, which is the goal of the law. One of the goals of the law is to realize social justice. With legal protection, the rights of legitimate brand owners are protected. The State is obliged to provide protection to the injured parties in accordance with the context of State Law."

"Based on the Theory of Legal Protection according to Satjipto Rahardjo, the law is present in society to integrate and coordinate interests that can collide with each other. Coordination of these interests is done by limiting and protecting these interests."

Conclusion

The submission of trademark rights for the painting of 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 submitted 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 Trademark Rights registration. Therefore, PT. Lucky Indah Keramik has the right to obtain trademark rights on a bowl with a painting of a rooster because it does not violate existing legal regulations.

Legal protection efforts that have been made by PT. Lucky Indah Keramik are preventive legal efforts, namely by registering the Rooster Painting Brand to the Directorate General of Intellectual Property Rights with the rights number IDM00366635. However, even though preventive legal protection efforts have been made, violations still occur. Therefore, in accordance with the Theory of Legal Protection proposed by Satjipto Rahardjo and Phillipus M. Hadjon, in addition to preventive legal protection, there is also repressive legal protection that can be carried out after a violation or dispute occurs. The repressive legal protection carried out by PT. Lucky Indah Keramik is by means of dispute resolution, either through litigation or non-litigation.

Suggestion

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 conduct socialization and also deepen insight to the public regarding IPR,



especially in this case Trademark Rights so that the public better understands the regulations related to Trademark Rights, their protection, as well as violations and sanctions. This can be one of the efforts to minimize the occurrence of IPR violations in Indonesia.

In addition to the government, the public should also better understand Trademark Rights and related regulations. Especially in this case, registered Trademark Rights holders must be able to better understand their rights and obligations as Trademark Rights Holders. For the public, in this case, entrepreneurs in particular, so that in the future they can avoid violations that can harm both Trademark Rights Holders and other entrepreneurs.

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Law Journal Borobudur International
Vol 2 No 2, January 2025

ISSN: 2809-9664

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