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LEGAL PROTECTION OF INFRINGEMENT OF THE NON-RIGHT USE OF THE REGISTERED TRADEMARK OF THE SITTING ELEPHANT SARONG

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Abstract: *PT. Gajah Sitting is one of the largest companies engaged in the production of sarongs in Indonesia. Business activities in running it, PT. Gajah Sitting provides an identifying symbol or often referred to as a brand on the goods produced so that it can be known by the wider community. PT. Gajah Duduk has registered with the Ministry of Law and Human Rights. However, as time went by, PT. Prisma Abadi Jaya made a seated elephant brand sarong that has similarities to the one it owns. Moreover, the class of goods that use the brand is the same as the class of goods used by PT. Gajah Sitting in using its brand. It is certain that this act is contrary to the provisions of the law and harms the legitimate party. It is known that PT. Gajah Sitting filed a trademark cancellation lawsuit against the party who allegedly deliberately forged his trademark. In this regard, it is necessary to review more deeply related to the protection of registered trademarks in Indonesia, how to use without rights to the trademark in the case of the Gajah Duduk saung brand, how to protect the registered trademark of PT. Gajah Sitting against PT. Prisma Abadi Jaya in the case of using the elephant sarong brand without permission, and how does the protection of brand rights compare with other countries. Therefore, on this occasion, the researcher conducts research that will discuss matters related to the problem using juridical-normative research methods which will later be adjusted to legal theories, expert opinions, literature on law, and applicable rules. The results obtained from this study are that related to legal protection for trademarks has been provided with the promulgation of laws and other regulations related to trademarks. The comparison of the legal protection of trademark rights with other countries.*

Keywords: *Brands, Sitting Elephant Covers, Legal Protection*

1. Introduction

Intellectual Property is the result/wealth of the ability of human ideas and actions that create a work that does not form form. Intellectual property assets include a wide range of works that have creative and innovative value. Knowledge, and technology that are the basis

and have opportunities to trade. In short, Intellectual Property is the result of human thought that can be enjoyed economically. Therefore, the protection of intellectual property rights plays a very important role in protecting important assets in the company. A company is one of the intellectual property that must be well maintained.¹

PT. Gajah Sitting is a company that produces sarongs that are very popular in Indonesia. The popularity of this sarong is evident from the quality which is very good. It was first introduced, the elephant sarong brand sat as a market leader in Indonesia. Initially, PT Gajah Duduk, this company was founded by PT Pismatex, a textile company established in Pekalongan in 1972.

PT. Gajah Sitting in carrying out its business activities provides identification or brand names on the goods produced so that it can be known to the scope of society. Gajah Duduk has the trademark rights of sarongs that have been registered by the Directorate General of Intellectual Property with registration numbers: IDM000098470 grades 24 and 25, also registered with the Ministry of Law and Human Rights Number: AHU-48792. AH.01.01.Year 2013 dated September 17, 2013 regarding the ratification of the Company's Hukm Agency. Therefore, Gajah Sitting has exclusive rights.²

PT. Gajah Sitting found an irregularity when he found a product of the same type using the same product and brand name that was identical to his. Realizing this, the company then searched for brands that were considered to resemble his. The search was carried out because there was a strong curiosity. One of the company's representatives decided to verify the facts in the field by buying products that have been circulating in the market. The company finally found out that the sarumng was not produced by PT. Gajah Sitting but

¹ Rio Christiawan. Contemporary Business Law. (Depok, Rajawali Press, 2021) Pg.59

² REFERENCES. Learning from the Sitting Elephant Dispute: Convicted because Trademark Rights Are Not Transferred ?. (News: Article, 2024).



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produced by PT. Prisma Abadi Jaya. The results of field fact verification show that there are indications of similarities in the same name and logo to the class of the brand in question.

Of course, this case can be categorized as a violation of Intellectual Property Rights (IPR). Because the sarongs produced by PT. Prisma Abadi Jaya uses the same name and logo that is identical to that of PT. Elephant Sitting. Judging from the above problems Seeing the problems that occurred, the Ministry of Law and Human Rights (Kemenkumham) as the authorized institution in trademark registration matters should be more thorough in carrying out its duties. In fact, according to the provisions of positive law in Indonesia, namely Law Number 20 of 2016 concerning Trademarks and Geographical Indications, as well as Regulation of the Minister of Law and Human Rights Number 67 of 2016 concerning Trademark Registration, the Ministry of Law and Human Rights has an obligation to process trademark registration professionally and in accordance with the rules. As a fundamental part of the state that plays a role in public services, the Ministry of Law and Human Rights should be responsible for carrying out its functions according to the mandate of the constitution. However, in practice, it is still often found that a few mistakes are fatal, even to the point of causing legal disputes, such as the one experienced by PT. Elephant Sitting.

Companies in the field of services and goods that are widely spread in the market must have a personal identity called a brand. The purpose of this is so that consumers can get to know a product, both goods and services, starting from its origin to the quality it has. This recognition can be done through brands. Trademarks function as a mark of identification as well as a differentiator that can reflect the guarantee of character or uniqueness of the reputation of a product or service produced by a business when marketed. Brands can also be said to be the face of the company and quality products are the heart of revenue.

Trademarks are a form of ownership rights that provide legal protection to official labels. The listing of trademark regulation in Indonesia has been regulated through article 1 point (1) of Law Number 20 of 2016 concerning trademarks and geographical indications:

"A brand is a sign that can be displayed graphically in the form of an image, logos, names, words, letters, numbers, color arrangements, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sounds, holograms, or combinations of 2 (two) or more elements to distinguish the goods and/or services produced by a person or legal entity in the course of trading activities goods and/or services "

Based on Law Number 20 of 2016 related to trademarks and geographical indications "Trademark rights are exclusive rights granted by the state to Trademark owner who is registered for a certain period of time by using or give permission to another party to use it."³

Indonesia, a country of law as listed in the 1945 Constitution of the Republic of Indonesia in Article 1 paragraph 3, expressly states that Indonesia is a country that makes law as one of the fundamental foundations in statehood. The theory of the state of law maintains order, security, and safety. Now the state is transforming towards a welfare theory. The state does not only have the task of order, security, and order, but the state participates in community activities, even those that are private, for example, consumer protection and community economic activities as regulators, implementers, and supervisors. The law on trademark rights and geographical indications is a breath of fresh air for brand owners and their brand goods assets.⁴ The law provides provisions regarding trademarks to prevent conflicts between trademark owners in the future, such as cases of "piracy" of trademarks by other parties. In accordance with Law Number 20 of 2016 concerning Trademarks and Geographical Indications, trademarks are exclusive rights granted by the state to their owners within a certain period of time. This right can be used personally by the owner or given permission to use it to another party.

³ Law Number 20 of 2016 concerning Trademarks and Geographical Indications

⁴ Rahmi Jened. TRADEMARK LAW. (Jakarta, PT. Fajar Interpratama Mandiri, 2017). Pg. 18



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The regulation regarding Law Number 20 of 2016 concerning trademarks and Geographical Indications, in the world itself known as the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), which is in the form of an agreement resulting from the conference in The Hague in 1925, has been clear and detailed.

The explanation of trademark rights regulations exists because there is increasingly fierce business competition that has triggered various parties and acts of infringement in the field of intellectual property, one of which is the use of trademarks without permission. In accordance with the topic discussed. The author raised a case sourced from the decision of the Semarang High Court with case number 438/PID. SUS/2023/PT. SMG. In the criminal case at the appeal level, the Semarang High Court upheld the decision of the Court of First Instance. This case involves a defendant named Mohammad Khanif.

Research Objectives

Based on the background of the problems described above, the objectives of this research are as follows:

1. To analyze the unauthorized use of a trademark in the case of the Sarung Gajah Duduk brand.
2. To analyze the legal protection of the registered trademark owned by PT Gajah Duduk against PT Prisma Abadi Jaya in the case concerning the unauthorized use of the Gajah Duduk brand label.
3. To analyze the comparative protection of trademark rights between Indonesia and other countries.

Theoretical Framework

A theoretical framework is a conceptual foundation that contains various views, concepts, theories, or legal doctrines related to a particular issue or case. This framework serves as a reference in analyzing the legal problems discussed in this research.⁵

Criminal Law Theory

Criminal law theory explains that a person may be held criminally liable for a criminal act committed intentionally or due to negligence, as long as there are no legal justifications or excuses recognized by law. The criminal justice process functions as a mechanism for imposing sanctions on individuals who have been proven to have committed criminal offenses. Through this penal approach, the type and severity of punishment are determined based on the nature of the offense and the consequences of the act. In the context of trademark law, trademark counterfeiting constitutes a criminal offense because it causes losses to the legitimate trademark owner.

Legal Protection Theory

Legal protection theory emphasizes the importance of providing protection to legal subjects, particularly trademark owners, from any form of unlawful acts that may harm their rights. The state has the responsibility to ensure protection, legal certainty, and justice for trademark owners. In Indonesia, trademark protection is regulated under Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Trademark rights are defined as exclusive rights granted by the state to the registered trademark owner for a certain period of time, allowing the owner to use the trademark or grant permission to other parties to use it.

Comparative Law Theory

Comparative law theory is used to analyze and compare the legal protection of trademarks in Indonesia with trademark protection practices in other countries, such as

⁵ Soerjono Soekanto & Sri Mamudji. Normative Law Research: A Brief Overview. RajaGrafindo Persada, 2011) p. 13-14

those in Europe, the United States, or neighboring countries. This comparison aims to identify similarities, differences, and potential improvements for the Indonesian trademark protection system.

2. Research Methods

This research uses a type of normative legal research with a juridical-normative approach, which is a method that analyzes problems based on the prevailing laws and regulations in Indonesia as the main source of analysis. This legal research is descriptive and analytical, namely by analyzing the applicable laws and regulations, associated with legal theories and their application in positive legal practices that are relevant to the problem being studied.

The data source in this study is secondary data. The types of data used are divided into two, namely primary legal sources and secondary legal sources. The data collection technique was carried out through literature studies. Meanwhile, the data analysis method used is qualitative, by conducting a thorough analysis of the issues being studied, based on available facts and supported by legal reasoning.

3. Analysis or Discussion

3.1 Analysis of Use Without Trademark Rights in the Case of the Gajah Sitting Sarong brand

This case began with a report from the Sales Department of PT Gajah Duduk which found that there were Gajah Duduk branded products circulating in the market, but it was not the official production or distribution of the company. Responding to this anomaly, Muhammad Taufiq as the manager of PT Gajah Duduk then assigned Ricky to buy a sarong branded Gajah Duduk which was suspected to be fake, which was sold



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through the Shopee platform, Tokopedia, and at the Mitratex Outlet, Tanah Abang Market.⁶

On Wednesday, January 11, 2023, a sarong product labeled Gajah Duduk was found which was not produced by PT Gajah Duduk, but sold at the Pribumi Dua Outlet, Pekalongan. The product is known to have the label "Manufacture of PT Pisma Abadi Jaya" and lists various characteristics, such as a sticker with the Gajah Sitting logo with an optical illusion effect, as well as a note that the product is made by PT Pisma Abadi Jaya. The product is packaged as a "Gajah Sitting Asia Kembang" sarong with a white wrapper that also contains the name Pisma Abadi Jaya (PAJ). On the front and back of the sarong, there is the inscription "Premium Asian Flower Sitting Elephant Product" in a yellow wrapper, as well as a mica packaging with a silver zipper cover that again includes the name "Pisma Abadi Jaya".⁷

Appointment of Mohammad Khanif as Director of PT Pisma Abadi Jaya (PAJ). Although legally he is a director, since the lockdown in April 2020, Khanif has no active operational control in the company. PT Prisma Abadi Jaya (PAJ) has established a production cooperation or makloon system with PT Pismatex since 2018 to produce the Gajah Duduk brand sarong, based on the agreement to purchase 60% of shares from PT Gajah Duduk which occurred on July 11, 2018. Production took place in Pekalongan (2018–2022), then moved to Solo (2022–early 2023).

However, in 2023, Mohammad Khanif stumbled upon a case of counterfeiting the Gajah Duduk brand. The investigation began with a report from the sales team of PT Gajah Duduk regarding the circulation of Gajah Duduk branded products that were not

⁶ Ranti Fauza Mayana & Tisni Santika. *Brand Law: The Actual Development of Brand Protection in the Context of the Creative Economy in the Era of Digital Disruption*. (Bandung, PT. Refika Aditama, 2021). Page 44

⁷ Elisabeth NurhainiButarbutar. *Legal Research Methods: Steps to find the truth in legal science*. (Bandung, PT. Refika Aditama, 2018). Pg.84



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the original product of official production. After an investigation conducted by the PT Gajah Duduk team, including the purchase of samples from online platforms (Shopee, Tokopedia) and physical stores (Tanah Abang Market, Dua Pekalongan Pribumi Dua Outlet), it was found that the sarongs with labels and packaging resembling the Gajah Duduk brand but were actually produced by PT. Prisma Abadi Jaya (PAJ).⁸

The product has packaging that reads "Gajah Sitting Asia Kembang Premium Product" and includes the name Pisma Abadi Jaya, accompanied by the Gajah Sitting emblem as well as visual elements such as optical stickers and zippers typical of Gajah Sit. This is a violation of the intellectual property rights of the Gajah Duduk brand, it is known that the trademark protection is only owned by PT Gajah Duduk. Previously, PT Pisma had a trademark registration, but later withdrew it, which caused the company to lose the rights to the trademark. This action resulted in the marketing of the Gajah Sitting label sarongs produced by PT. Gajah Sitting was disrupted due to declining sales and material losses.

The legal adagium says " Cuius commodum, eius incommodum " Whoever takes profit, then he must bear the loss. Mohammad Khanif derives benefits or benefits from a situation, so he automatically has to bear the risks or losses that may arise from the situation. This practice of adagium law affirms the principle of justice and balance, namely that it is not natural for a person to only make a profit without bearing the impact or responsibility attached to it.

3.2 Analysis of the protection of registered trademarks of PT. Gajah Duduk against PT Prisma Abadi Jaya in the case of using the Gajah Duduk brand label without permission

⁸ Jose Louis Paskah Sihombing, "Juridical Analysis of the Violation of the Unauthorized Use of the Sitting Elephant Cover Brand" (National University, 2025). Pages 8-9



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The first step in conducting an analysis is to look at the date of brand protection. The main principle in trademark protection is that whoever registers first, then he is the one who has the legal rights. This is very important, especially since trademark cases generally involve more than one business actor. Therefore, the determination of the protection date of each party needs to be ensured first.

In the case of infringement of the intellectual property rights of the Gajah Duduk brand, it is known that the trademark protection is only owned by PT Gajah Duduk. Previously, PT Prisma Abadi Jaya had a trademark registration, but later withdrew it, which caused the company to lose the rights to the trademark. After obtaining data on the date of trademark acceptance, the next stage that the examiner needs to do is to trace the relationship between the parties involved. For example, whether there is an agreement that gives permission to one of the parties to produce related products. In practice, trademark owners can indeed give permission to other parties to produce branded goods through a legal agreement. However, in the case of Gajah Duduk, no such agreement was found. As a result, the actions taken by PT Pisma are categorized as violations of the law.

This action resulted in the marketing process of the Gajah Duduk brand sarongs owned by PT Gajah Duduk experiencing significant disruptions, marked by declining sales figures and material losses. The defendant's actions are categorized as criminal acts based on the provisions of Article 100 paragraph (1) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications. In the article, there are several important elements that are the basis for legal considerations, namely: 1. Carried out by everyone; 2. Without the right to use a trademark that is identical in its entirety to a trademark that has been registered on behalf of another party; 3. Such use is intended for similar goods and/or services that are produced or traded.



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Mohammad Khanif was sentenced by the Pekalongan District Court to 1 year and 6 months in prison and a fine of Rp 1 billion for violating the Trademark and Geographical Indications Law of 2016. This decision was upheld by the Semarang High Court in August 2023. The suspect, who is the leader of PT. Pisma Abadi Jaya does not have authority in the manufacturing, distribution, or marketing process of sarongs under the Gajah Duduk brand. The Gajah Sitting brand itself has been registered in the name of PT. Gajah Sits at the Directorate General of Intellectual Property, with registration numbers IDM000098470 for grades 24 and 25. In addition, there is also a transfer of rights to the label which has been recognized through the registration number IDM000529383 for class 25, which is located in Pekalongan, Central Java.

This action resulted in the marketing process of sarongs branded Gajah Duduk produced by PT. Gajah Sitting experienced disruptions, which had an impact on declining sales figures and causing material losses. The acts committed by the defendant are subject to criminal threats as stipulated in Article 100 paragraph (1) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

Infringement of trademark rights law often occurs in the context of business competition, especially when there are parties who want to make a quick profit by imitating or counterfeiting someone else's trademark. This kind of action can cause losses for various parties, ranging from legitimate brand owners, consumers, to the state. The United States provides legal protection against distinctive and publicly known product designs as part of a brand identity, particularly if they may cause confusion among consumers. Their legal system, the design or appearance of a product (trade dress) that is considered to be inherent in a particular trademark, can be protected like a trademark. If another party imitates these elements without permission and results in consumer mistaking the origin of the product, then it can be categorized as trademark infringement.

Violations of these trademark rights often have serious consequences, including leading to a large amount of compensation lawsuits. Several cases in the United States show that companies that are found to have infringed on trademark rights, particularly through imitation of design or packaging, can be compensated up to hundreds of millions of US dollars, because they are considered to have taken advantage of the reputation and visual identity of others. The United States, in addition to the protection of traditional trademarks such as names and logos, trade dress, namely the external appearance of the product or its packaging, also plays an important role as part of a brand's identity. If the trade dress has been widely known to the public or is considered famous, then the use of a similar visual appearance by another party may be considered an offense, especially if it has the potential to mislead or confuse consumers.

One of the main requirements for trade dress to be protected is the element of non-functionality. This means that if the design elements that are imitated have certain technical functions such as ergonomic shapes that make it easier to grip, or structural parts related to the function of the device, then the legal protection against the trade dress becomes weak. In cases like this, the protection approach is usually more appropriate through design patents, rather than through trademark law.⁹

4. Conclusion

1. The use without trademark rights in the case of the Gajah Sitting brand is the product has packaging that reads "Gajah Sitting Asia Kembang Premium Product" and includes the name Pisma Abadi Jaya, accompanied by the Gajah Sitting emblem as well as visual elements such as optical stickers and zippers typical of Gajah Sed. This is a violation of the intellectual property rights of the Gajah Duduk

⁹ Graeme B. Dinwoodie, Mark D. Janis, and Jason Du Mont. *Trade Dress and Design Law, Second Edition*. (New York, Aspen Publisher, 2024) p. 55

- brand, it is known that the trademark protection is only owned by PT Gajah Duduk. The company lost the rights to the trademark. This action resulted in the marketing of the Gajah Sitting label sarongs produced by PT. Gajah Sitting was disrupted due to declining sales and material losses.
2. Mohammad Khanif was sentenced by the Pekalongan District Court to 1 year and 6 months in prison and a fine of Rp 1 billion for violating the Trademark and Geographical Indications Law of 2016. This decision was upheld by the Semarang High Court in August 2023. The suspect, who is the leader of PT. Pisma Abadi Jaya does not have authority in the manufacturing, distribution, or marketing process of sarongs under the Gajah Duduk brand. The Gajah Sitting brand itself has been registered in the name of PT. Gajah Sits at the Directorate General of Intellectual Property, with registration numbers IDM000098470 for grades 24 and 25. In addition, there is also a transfer of rights to the label which has been recognized through the registration number IDM000529383 for class 25, which is located in Pekalongan, Central Java. This action resulted in the marketing process of sarongs branded Gajah Duduk produced by PT. Gajah Sitting experienced disruptions, which had an impact on declining sales figures and causing material losses. The acts committed by the defendant are subject to criminal threats as stipulated in Article 100 paragraph (1) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

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