

History of Trademark Law No. 15 of 2001 Concerning Trademarks Becoming Law No. 20 of 2016 Concerning Trademarks

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Abstrak

Hak kekayaan intelektual adalah merupakan hak-hak atas kebendaan yang tidak nampak akan tetapi memiliki nilai ekonomi yang sangat tinggi. Merek adalah salah satu bagian dari hak kekayaan intelektual. Dalam rangka untuk memberikan perlindungan dan kepastian hukum kepada para pemegang merek, pemerintah telah menetapkan Undang-Undang No. 15 Tahun 2001 tentang Merek. Seiring berjalannya waktu beberapa ketentuan dalam Merek memerlukan penyempurnaan, karena itu pemerintah telah menetapkan Undang-Undang No. 20 Tahun 2016 tentang Merek. Tujuan penelitian ini adalah untuk mengetahui bagaimana perlindungan dan kepastian hukum bagi para pemilik merek. Penelitian ini menggunakan pendekatan kepustakaan atas referensi perundang-undangan yang terkait dengan permasalahan penelitian. Hasil penelitian ini telah mendalami ketentuan tentang Merek yang diatur dalam Undang-Undang No. 15 Tahun 2001 dan Undang-Undang No. 20 Tahun 2016 tentang Merek.

Kata Kunci : Hak, Kekayaan, Intelektual, Merek.

Abstract

Intellectual property rights are rights to objects that are not visible but have very high economic value. Brands are one part of intellectual property rights. In order to provide protection and legal certainty to brand holders, the government has established Law No. 15 of 2001 concerning Trademarks. Over time, several provisions in Trademarks require improvement, therefore the government has established Law No. 20 of 2016 concerning Trademarks. The purpose of this study is to determine how the protection and legal certainty for brand owners. This study uses a literature approach to references to legislation related to the research problem. The results of this study have explored the provisions on Trademarks regulated in Law No. 15 of 2001 and Law No. 20 of 2016 concerning Trademarks.

Keywords: Rights, Property, Intellectual, Trademarks.

A. Background Research

The importance of law as a unity of norms that regulate recht object, namely society, which according to Paul Scholten must always be open to development. Law should not be static at one point, so that it will create a constant life of society. Law will always follow the development of society. So, between legal changes and social changes or vice versa, there has been a very solid interaction and has been so ideal at the level of social life of society, it's just that the egocentrism of science makes both look compartmentalized, even though both are one system in the ideal network of science that tolerates and complements each other.

Legal changes and social changes or vice versa have a causal relationship in their dynamics towards the life of society. So that law should be understood as an open domain in the network and ideal system of science that tolerates and complements each other so that law is freed from its rigid and closed structure. Law is a tool or means used by the government to achieve the nation's ideals and goals from various definitions such as above that the state has a goal that must be achieved. To achieve these goals by using law as a tool for the implementation or enforcement of law in accordance with the stages of its development

Laws related to Intellectual Property Rights (IPR), which in this case includes brands in Indonesia, so far still follow the legal aspects of the WTO/TRIPs Agreement.¹ Because Indonesia has ratified the WTO/TRIPs Agreement convention and is in full compliance and non-reservation, the pressure from developed countries that own IPRs on Indonesia and the need for national IPRs. There is no courage to create its own IPR legal policy that is based on the philosophy of Pancasila, the 1945 Constitution and national interests. Fear of threats from developed countries that own IPRs must be fought and dealt with intelligently. The government is approaching and mobilizing forces with developing and less developed countries to amend the TRIPs Agreement in a direction that is more beneficial for the common interest. Likewise for trademark registration in Indonesia which is very important for the business world and is also influenced by legal politics at that time and now so that it gave birth to several Trademark Laws from the past until now, Law Number 15 of 2001 was created which can be said to be the OLD Trademark Law and Law Number 20 of 2016 which can be said to be the NEW Trademark Law, to provide protection for trademark registration in Indonesia.

Trademark law is a container that regulates everything related to brands. Everyone must

¹ DGIP, Sejarah Perkembangan Perlindungan Kekayaan Intelektual (KI), <https://dgip.go.id/>, merek, h.utama, diakses tanggal 12 Desember 2024 pukul 14.00 WIB.

have creative and brilliant ideas as a manifestation of their intellectual abilities. These ideas must be protected so that they are not plagiarized by others. Thus, regulations are needed that are able to protect the creative ideas of a person or a group of people.² Trademark is one of them. Brands in the business world make it easier for consumers to know a company's products. However, so that the brand used is not similar to other companies, business actors need to register. The submission process itself is regulated in the law that has been updated. There are several comparisons and differences between the old and new trademark laws

From this simple law, it has developed into a more complex law by regulating various aspects of people's lives. The increasingly complex areas regulated by law form a legal system to synergize these areas so that laws are achieved in a mutually reinforcing arrangement. These legal developments consist of a series of legal changes over time. These changes do not occur without a cause or causal factor. Although in general these changes are determined by changes in society, current conditions and changes in technology. Including several aspects that occurred in the amendment of Law Number 15 of 2001 to Law Number 20 of 2016 concerning Trademarks

A brand is one of the most important assets in a business that functions as a product characteristic. The bigger and better the reputation of a brand, the higher the value of the brand. We can also equip ourselves by understanding the differences between the old trademark law and the new trademark law that was passed in 2016. Knowledge about the articles related to trademarks is important for those of us who want to run a business personally. Learning the differences between the new and old trademark laws will help us if we ever run into problems. Furthermore, where can we see a picture of how the legal aspects change in the comparison between Law Number 15 of 2001 and Law Number 20 of 2016 concerning Trademarks.

B. Problems Formulation

From this background, the problem is formulated as follows:

1. What is the legal history of the formation of the Trademark Law in Indonesia?
2. What is the difference between Law Number 15 of 2001 and Law Number 20 of 2016 concerning Trademarks?

C. Theoretical References

Law is a product of social relations and balances, so in the process of its creation and development it is determined by a number of aspects of these relations and balances. As has been shown above, it seems impossible to determine with certainty the causal relationship

² <https://patendo.com/uu-merek/>, halaman utama, diakses tanggal 16 Desember 2024, pukul 16.15 WIB.

between each of these aspects and the development of the law itself, one and the other because a large number of these social factors work simultaneously, sometimes moving in the same direction, but often directing their influence in the opposite direction. Thus it is very difficult, if not impossible, to trace and determine the exact contribution of each element that plays a role in the development of this law.³

Some legal experts define law as follows:⁴

1. Law is a provision of a prohibited act along with various legal consequences/sanctions therein
2. Law is a regulation regarding human behavior in social interactions. The regulation is made by official bodies that are authorized, are coercive, and contain sanctions for violators of the law.
3. Law is a provision of an act that contains strict sanctions. Every member of society must behave in such a way that order in society is maintained properly
4. Law as a system of values, meaning it contains values of good-bad, right-wrong, just-unjust, and others, which apply generally.
5. Law in the sense of legal discipline or social phenomena, namely law as a symptom and reality that exists in the midst of society.

A trademark is a brand used on goods traded by a person or several people together or a legal entity to distinguish them from other similar goods. A service mark is a brand used on services traded by a person or several people together or a legal entity to distinguish them from other similar services. A collective mark is a brand used on goods and/or services with the same characteristics traded by several people or legal entities together to distinguish them from other similar goods and/or services.⁵

According to Law No. 20 of 2016 concerning Trademarks and Geographical Indications, it states that 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 trading activities for goods/services. A brand is an identification mark in trading activities for similar goods or services and is also a guarantee of its quality when compared to similar

³ Saleh, K., Agusta, M., & Weni, W. (2020). Hukum dan masyarakat dalam perspektif sosiologi hukum. *Datin Law Jurnal*, 1(2).

⁴ <https://jurnalhukum.com/pengertian-hukum-unsur-unsur-ciri-ciri-dan-sifat-hukum/>, diakses tanggal 22 Oktober pukul 15.04 WIB.

⁵ Lembaga Kawasan Sains dan Teknologi Institut Pertanian Bogor (IPB), Jurnal Merek, <https://dik.ipb.ac.id/>, 2018, h.utama, diakses tanggal 10 Desember 2024, pukul 13.30 WIB

goods/services made by other parties. A brand contains a company's promise to consistently and continuously provide certain characteristics, benefits, and services to buyers or consumers.⁶

The provisions governing brands in history and subsequent development are as follows:

1. Law Number 15 of 2001 concerning Trademarks.

The Trademark Law is one of the important regulations for business owners to understand. This is because the contents of the Law are an important reference for business protection. Law Number 15 of 2001 concerning Trademarks was issued in 2001 with 101 articles. This Law has been in effect in Indonesia since August 1, 2001. This regulation provides legal protection for registered trademarks, ensuring that the Brand Owner has the right to use the trademark.

2. Law Number 20 of 2016 concerning Trademarks and Geographical Indications

Currently, the Law in force in Indonesia and regulating trademarks is Law Number 20 of 2016. This Law regulates Trademarks and Geographical Indications. Reporting from the official BPK Regulation page, the main material of the regulations in the Law is that trading activities, whether goods or services, basically cross national borders. Therefore, the trademark registration mechanism must be able to protect national brands in the international arena. This law has been in effect in Indonesia since November 25, 2016. The enactment of this law officially revokes Law No. 15 of 2001 concerning trademarks which previously applied in Indonesia. There are 109 articles in this law and have many important points.

D. Research Methods

This research method is a juridical-normative method, namely a scientific research procedure to find the truth based on the logic of legal science from a normative perspective, with the consideration that the research is focused on examining the application of rules or norms in positive law⁷ The approaches used in this study are the statute approach, which is carried out by examining all laws and regulations related to the legal issue being handled. And also the historical approach, which is carried out by examining the background of the matter being studied and the development of regulations on the issue being faced⁸ Legal research with a historical approach will be necessary if the researcher considers that the

⁶ Undang-undang No. 20 Tahun 2016 tentang Merek dan Indikasi Geografis

⁷ [Metode Penelitian Hukum, Bambang Sunggono, S.H., M.H., Cetakan 18, Depok, Rajawali Press, 2019, hal. 42](#)

⁸ [Ibid](#)

philosophical disclosure and thought patterns of something being studied, when the issue is indeed relevant to the present day.⁹

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E. Results and Discussion

1. The History of Trademark

The formation of laws from time to time always follows the needs of a country. Policies issued in one period can be influenced by several things. The two major periods of trademark law are the period after Indonesia's independence and the period after the TRIPs agreement. The legal products produced are also different, in the period after Indonesia's independence, trademark law was formed to leave behind the regulations formed by the Netherlands. Indonesia succeeded in making the first law on trademarks with the 1961 Law on Company Trademarks and Trademarks (Law 21/1961).¹²

In 1992, Trademark Law Number 19 concerning Trademarks was issued. Then improvements were made to perfect the previous law by establishing Trademark Law Number 14 of 1997. This Trademark Law was then updated again with Law Number 15 of 2001 which has been in effect since August 1, 2001. The Trademark Law explains the definition, types and

⁹ Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2003), hlm. 13.

¹⁰ Lembaga Kawasan Sains dan Teknologi Institut Pertanian Bogor (IPB), Jurnal Merek, <https://dik.ipb.ac.id/>, 2018, h.utama, diakses tanggal 10 Desember 2024, pukul 13.30 WIB

¹¹ Undang-undang No. 20 Tahun 2016 tentang Merek dan Indikasi Geografis

¹² DGIP, Sejarah Perkembangan Perlindungan Kekayaan Intelektual (KI), <https://dgip.go.id/>, merek, h.utama, 12 Desember 2024 pukul 14.00 WIB

requirements of trademarks. In addition, the subject of trademark rights, legal protection of trademarks including the registration system and criminal provisions for those who violate these rights are also regulated therein. Then the last and most recent of the Trademark Law is Law Number 20 of 2016 concerning Trademarks and Geographical Indications which was enacted in 2016

The differences between the Old and New Trademark Laws have been realized in the latest Trademark and Geographical Indications Law, namely Law No. 20/2016. One of the changes is the regulation on trademarks which is stricter than the old law, namely Law No. 25/2001. If the old trademark law only regulated famous trademarks into 3 provisions (consisting of two articles with one explanation), then the latest law adds it to 5 provisions. The most significant difference in the trademark law is seen in the opening of opportunities for famous trademark holders who want to file a lawsuit with the court if they find a violation of their trademark

To find out more about the differences between the new and old laws, there is an explanation of Article 21 paragraph (1) letter b which explains that the rejection of an application for another party's well-known brand is done by observing public knowledge about the brand. In addition, observations are made on the reputation of the brand that is introduced through major promotions, investments in a number of countries, and ownership of proof of registration from the brand owner. The Commercial Court will appoint an independent institution that will later conduct a survey if the evidence collected is not sufficient. There is also an explanation in Article 76 paragraph (2) which states that unregistered brand owners include owners who have good intentions, but they have not been registered or brands that have not been registered. The explanation in Article 83 paragraph (2) emphasizes more on granting the right to file a civil lawsuit according to the dishonorable or fraudulent actions carried out by another party with the intention of providing legal protection to the owner of a well-known brand even though they are not yet listed.¹³

In Law No. 15/2001, Article 6 paragraph (1) letter b can reject an application if the brand has partial or complete similarities with a brand that already has a name owned by another person for similar goods and/or products. Meanwhile, Article 37 paragraph (2) explains that rejecting an application for extension if the brand has partial or complete similarities with other well-known brands as stated in Article 6 paragraph (1) letter b and paragraph (2). Then

¹³ Agung Indriyanto, S.H, M.H, LL.M & Irmie Mela Yusnita, S.S, M.H, *Aspek Hukum Pendaftaran Merek*, Raja Grafindo Persada, Depok, 2017

Article 6 paragraph (1) letter b explains more deeply about the rejection of the application. In Law No. 20/2016, Article 21 paragraph (1) letters b and c states that an application is rejected if the brand has partial or complete similarities with a well-known brand whose services and/or goods are similar; a well-known brand whose services and/or goods are indeed not similar, but meet a number of certain requirements. Then, in Article 83 paragraph (2) it is stated that the lawsuit in paragraph (1) related to trademark infringement can be filed by the owner of a well-known brand according to a court decision

2. Differences in Legal Provisions

- a. Looking at the differences between the Old Trademark Law and the New Trademark Law in terms of trademark substance :
 1. Law Number 15 of 2001 (only related to conventional brands)
 2. Law Number 20 of 2016 (in this new brand law there is a new effort to expand the brands that will be registered, namely the addition of three-dimensional brands, sound brands, and hologram brands)
- b. Looking at the differences between the Old Trademark Law and the New Trademark Law in terms of processing time :
 1. Law Number 15 of 2001 (the registration process is relatively longer; the application is continued with a formal examination, substantive examination, then an announcement and ends with certification).
 2. Law Number 20 of 2016 (the registration process is shorter: The application is continued with a formal examination, continued with an announcement (this is to see if there are any objections), continued with a substantive examination and ends with certification; the applicant will get a number faster than before)
- c. Seeing the differences between the Old Trademark Law and the New Trademark Law in terms of legal material rights :
 1. Law Number 15 of 2001 (The Minister does not have the right to delete a registered trademark).
 2. Law Number 20 of 2016 (The Minister has the right to delete a registered trademark on the grounds that the trademark is a Geographical Indication, or is contrary to morality and religion, while the owner of the registered trademark can file an objection through a lawsuit to the PTUN)
- d. Looking at the differences between the Old Trademark Law and the New Trademark Law in terms of well-known trademarks :

1. Law Number 15 of 2001 (Suits by famous brands were previously not regulated).
 2. Law Number 20 of 2016 (Famous brands can file lawsuits against court decisions).
- e. Looking at the differences between the Old Trademark Law and the New Trademark Law in terms of criminal sanctions :
1. Law Number 15 of 2001 (Does not contain provisions on increasing criminal sanctions).
 2. Law Number 20 of 2016 (Contains increasing criminal sanctions for brands whose products threaten human safety and health)
- f. Looking at the differences between the Old Trademark Law and the New Trademark Law in terms of geographical indications :
1. Law Number 15 of 2001 (Only mentions a little about geographical indications, but is indeed regulated in government regulations).
 2. Law Number 20 of 2016 (Provisions regarding geographical indications are regulated in four chapters (Articles 53 to 71; Applicants for geographical indications are: institutions representing the community in a certain geographical area, provincial or city/district governments; Products that can be applied for: Natural resources, Handicrafts, Industrial products)

F. Closing

1. Conclusion

Trademark law is one of the important regulations for business owners. The law in force in Indonesia that regulates trademarks is Law No. 20 of 2016, which regulates Trademarks and Geographical Indications. This law is an important reference for business protection, legal protection of registered trademarks, ensuring that the owner owns the trademark. A number of changes in trademark law in Indonesia have been realized in the latest Trademark and Geographical Indication Law, namely Law No. 20 of 2016. One of the changes is the stricter rules for well-known trademarks compared to the old Trademark Law (Law No. 15 of 2001). If the old Trademark Law only regulated well-known trademarks into 3 provisions (two articles and one explanation), the latest Trademark Law contains 5 provisions (two articles and one explanation). One significant change is that the new Trademark Law (Law No. 20 of 2016) opens up opportunities for well-known trademark holders to file lawsuits in court if there is a trademark violation

2. Recommendation

We must increase references on the requirements for trademark registration in accordance with the Trademark Law. This means that we must equip ourselves with an understanding of the differences between the old and new trademark laws. Knowledge about the articles related to trademarks is important for those of us who want to register their trademarks. Learning the differences between the old and new trademark laws will help us if we ever run into problems. So that we can see a picture of the differences and comparisons between Law Number 15 of 2001 (the old Trademark Law) and Law Number 20 of 2016 (the new Trademark Law)

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