

## DYNAMICS OF TRADEMARK LAW: A REVIEW OF THE CASE OF INTER IKEA SYSTEM B.V. VS. PT RATANIA KHATULISTIWA IN DECISION NO. 264 K/PDT.SUS-HKI/2015

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### Abstract

Trademark can be interpreted as a naming or thing that can be used as a mention in a product. Trademark is included in one of the scope of Intellectual Property Rights. Intellectual Property Rights that can provide protection and legal certainty against a trademark. Without legal protection, the trademark will be very easy to imitate so as to cause harm to one party. This research focuses on the decision of the Supreme Court No. 264 K/Pdt.Sus-HKI/2015 which filed a trademark dispute between Inter IKEA System B.V. and PT Ratania Khatulistiwa. The two parties involved are the owner of the IKEA brand and the applicant for the IKEA brand. The purpose of this study is to analyze the judge's decision and the elements contained therein as well as outline the lawsuit application filed by the plaintiff. This research is made using the normative juridical method with secondary materials as the main material used. In the case between PT Ratania Khatulistiwa against Inter IKEA System B.V. both seek the brand "IKEA" as the brand they want to have.

**Keywords:** IKEA; trademark; intellectual property rights; trademark removal

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## 1. INTRODUCTION

The development of business ventures certainly creates various kinds of business images. Business image can also be considered as a good strategy for a company in advancing its business (Disastra, 2022) Brand is something that people will remember as the identity of a product. Brands are used to recognize a product that comes from a particular company as an identity. The definition of a brand in Article 1 of Law Number 20 of 2016 concerning Brands and Geographical Indications is a sign that can be displayed in the form of images, logos, names, words, letters, numbers, color arrangements, in 2 (two) dimensional and / or 3 (three) dimensional forms, sound, holograms or a combination of two or more of these elements to distinguish goods and / or services produced by persons or legal entities in trade activities and / or services. Its function is to symbolize a product of goods or services made by a company that is obtained to be used by

other companies. Rights to the brand will be obtained after a brand is registered until it gets a certificate from the ministry. Brands provide rights with exclusive properties granted by the state to the brand owner or register the brand (Gunawan, 2022).

Brands are included in intellectual property rights (IPR), which means that if the brand has issued a certificate, from that moment on it cannot be used arbitrarily by others and is absolutely owned by the brand owner. Brand reputation is generally accompanied by quality that affects a (Denny et al, 2022). Brand as an identity makes it easier for consumers to choose an item as well as a reminder of a product. The rules regarding brands have been regulated in Law Number 20 of 2016 concerning Brands and Geographical Indications. The use of brands is also used as a tool for promotion, in the sense that this identity is used as an indicator of the origin of each product or service. The brand is symbolized as a designation of excellence to distinguish one product from another until it is then applied in the company as a commercial form. That is why if there is imitation of a brand, it will be very detrimental to one party. The brand is not only considered a symbol but also a guarantee and pride of a company for its production, as well as an advantage that will be directly proportional to the level of consumer confidence in a product (Devina et al, 2024). With this, brand policy provides rules for not giving the same brand to different products or those from different companies as a form of legal protection. Legal protection of brands is by not allowing others to plagiarize a brand.

Without any form of legal protection, disputes will arise between companies and products that are complicated and cannot be resolved. The law regulates and gives protection to every brand that has been registered under Intellectual Property Rights (IPR) to maintain healthy competition and prevent plagiarism. Every work registered and published must be an original idea. Any form of imitation is condemned as a form of protection of a pre-existing work. Intellectual property rights are divided into patents, industrial designs, copyrights, geographical indications, trade secrets, integrated circuit layout designs (DTLST), and brands. Brand disputes occur several times as a dispute between entrepreneurs who are creating a product and clash with a pre-existing product. Other people can only enjoy or use or exploit a brand with the permission of the brand owner within a certain time for the nature of brand ownership as a form of protection of intellectual property rights (Ilmiawan & Gultom, 2022).

So in this case, brand protection is needed as a form of legal certainty for brand owners or companies so that there is no imitation that can harm one party (Novita, 2020). Trademark protection is obtained after the trademark owner gets priority rights. Priority right is the right for trademark registrants to get recognition that the date of acceptance in the country of origin is a priority date in Indonesia, although the time of registration is different. Priority rights can be filed no later than six months after the receipt of registration is received. The system used in trademark law in Indonesia is "first to file", meaning that whoever registers a trademark first, then someone is entitled to ownership of a trademark along with legal certainty and legal protection. This is to prevent the possibility of crime or trademark infringement (Abdurahman, 2020). In addition, it is also to facilitate the supervision of every product on the market. Trademark registration means

that each of these products will get supervision from the state so that it is less likely for them to commit violations.

## 2. METHOD

This research is made using the normative juridical method, in which an approach is carried out by examining various secondary legal materials as the main material. Normative juridical is a legal review of norms, opinions, legislation, and jurisprudence. This journal focuses on how a law applies to society, studying how a decision is made with legal concepts so that it can decide a case. This approach takes a lot of literature as a source of research material. This research is made to analyze based on the decision as the main focus of research and discussed through qualitative methods. The description and analysis are made based on the judge's consideration and submission of the lawsuit and the reasons used by the parties to the dispute. The main purpose of this research is to further explain the relevant decision and to understand how the law is implemented in a case.

## 3. RESULT AND DISCUSSION

The increasing number of human needs, making producers continue to make innovations and interesting things to be traded. The development of creations and the continued discovery of new goods, resulting in more products made by the company so that each of them needs to be given a name to distinguish it, because each company must produce different qualities, thus the different names are called trademarks. The trademark will not be considered valid as a trademark if it is not registered in the Director General of Intellectual Property. Quoted directly from the website of the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia, trademark registration functions as:

1. Evidence for brand owners who have registered their products.
2. The basis for rejection if there is a brand that has overall similarity or is called plagiarism or the same in essence that is also registered by others for goods / services.
3. The basis for preventing others from using the same name or mark in its entirety or substantially the same in the circulation of goods/services.

Brand rights have an international scope in their ownership (Gaumi & Hartono, 2022). This means that brand rights are recognized after being officially registered through the Director General of Intellectual Property to obtain an official certificate. Registration of brand rights can only be done by the brand owner and in good faith. Good faith means that the brand is not carried out with the aim of imitating or plagiarizing other brands so as to cause harm to other parties and result in disputes (Karina & Rinitami, 2019). Generally, this is done by parties who are just starting a business, imitating products or large companies that have started their careers first. In this case, the author takes the case of a dispute between Inter IKEA System B.V. and PT Ratania Khatulistiwa. Inter IKEA System BV is a Swedish multinational company that has been around since 1943. IKEA itself stands for Ingvar, Kamprad, Elmatayd and Agunnaryd. Inter IKEA System

B.V. is a franchise holding company that provides a variety of ready-made furniture, kitchen utensils, home decorations, and so on. While PT Ratania Khatulistiwa is a company that has been established since 1989 by producing rattan furniture whose results will be exported to the United States, Europe, Asia, Australia.

The increasing number of customer requests from various countries made PT Ratania Khatulistiwa think of creating a new business strategy by branding their products. So they aim to create products that are different from competitors' products, have strong characteristics so as to increase attractiveness, open up opportunities for franchise businesses, and most importantly to get protection for the brand from the state in this case the Ministry of Law and Human Rights R.I Directorate General of Intellectual Property. They agreed to name their products with the brand "Ikea" which stands for "Intan, Khatulistiwa, Esa, Abadi". They explained that; Intan means rattan; Khatulistiwa is the name of the legal entity owned by the Plaintiff; Esa means single; and Abadi means eternal or forever.

At that time, PT Ratania Khatulistiwa had actually registered its products with the Ministry of Law and Human Rights cq. Directorate General of Intellectual Property Rights with the following submissions: a. Application for Request for Registration of the mark "ikea" for Class 20 for household furniture, mirrors, picture frames, objects (not included in other classes) of wood, rattan; b. Application for Request for Registration of the mark "ikea" for Class 21 for household or kitchen products (not of precious metal pottery not included in other classes). The registered products have been accepted for registration by the Directorate General of Intellectual Property Rights on December 20, 2013. This has resulted in a dispute with PT Inter IKEA System B.V. which considers PT Ratania Khatulistiwa to imitate and claim the brand owned by Inter IKEA System B.V.

This relates to the provision of legal protection of trademark rights. The provision of legal protection in Indonesia in this case will arise if a dispute occurs (Karina et al, 2019). While related to the dispute resolution method, according to Article 93 of Law Number 20 Year 2016 on Trademarks and Geographical Indications can be resolved through arbitration. Arbitration is a method of resolving a dispute outside of court based on a written agreement between the parties to the dispute. So, the dispute will be resolved by agreement of all parties to produce a decision that is considered to be a middle ground for all concerned. In addition, trademark disputes can also be resolved through other alternative solutions such as the commercial court by filing a lawsuit over objection. If one of the parties is from outside the territory of Indonesia, then the lawsuit will be filed at the Central Jakarta Commercial Court.

Along with this, the Plaintiff, PT Ratania Khatulistiwa, has also registered the "ikea" brand logo in the application for registration of creation. But apparently at that time, it was known that PT Ratania had learned that the Defendant, Inter IKEA System B.V., had registered the general register of Trademarks of the Directorate General of Intellectual Property Rights for classes 20 and 21 with the brand "IKEA". It is known that the Defendant since the date on which they registered the goods until the time the lawsuit was registered and/or never opened outlets did not circulate products with the "IKEA" brand, so that they "IKEA" was not used for three or more

consecutive years. Trademarks that are not used should not be considered worthy of legal protection, because trademarks that receive legal protection are trademarks that are actually used in the activities or production process and circulated in the community.

There is a period of time in the protection of trademark rights. The provision of a certain period of time aims to ensure that within that period, the registered trademark is actually used on the goods produced so that the trademark in the product gets legal protection. The period in question is 10 years. If after 10 years a trademark is still in use, then they can be extended. An application for renewal of a trademark can be made no later than 6 months before the protection of the trademark expires. An application can also be filed after the right to protection has expired, but the application will be subject to fees and fines. If a trademark is not renewed, it will be removed from the public register and lose its legal protection.

In this case, the mark "IKEA" owned by Inter IKEA System B.V has not used the mark for 3 consecutive years or more since its registration. This fact is obtained from a survey made by Berlian Group Indonesia, which is a neutral and independent institution in conducting market surveys. The survey was conducted in five major cities, namely Medan, Surabaya, Bandung, Jakarta, Denpasar in the period November to December 2013. As a result, out of 140 respondents, products registered in class 20 and 21 of the "IKEA" brand were not found in the market. It is known that the product has not been circulated since the product registration was received. Knowledge and reputation of the brand can also be used as criteria, this can be used as concrete evidence as a fact that the Defendant did not market its products for a period of three consecutive years or more so that it was not known by the public (Bafadhal, 2018). Actually, registration of brands with the same name in different classes is allowed. Provided that the brands are not plagiarized exactly and are not related to each other. However, if the two brands have similarities in visual form, conceptual or everything that has been mentioned in the definition of a brand based on Article 1 of Law Number 20/2016, then it is considered a violation of the law.

"IKEA" class 20 trademark products have been registered since October 27, 2009, additionally "IKEA" class 21 trademark products have been registered since October 09, 2006. Article 61 paragraph (2) letter a of Law Number 15 Year 2001 on Trademark explains that the abolition of trademark registration can be done if the trademark is not used for three consecutive years since the registration period or the last usage period. It is considered as bad faith, a trademark that is known to have met the elements of bad faith can be filed for removal or cancellation (Fajar et al, 2018). The bad faith referred to in this case is registering a trademark with the intention of not being used, so it is considered to fulfill bad faith in trademark registration. An application for trademark removal can be filed by the trademark owner in accordance with Article 72 of Law Number 15 of 2001 concerning Trademarks, then it can also be filed by a third party or interested party as written in Article 74 of Law Number 15 of 2001 concerning Trademarks by submitting it to the Commercial Court on the grounds that the trademark has not been used for three consecutive years or more in the trade in goods since the trademark was registered or its last use.

The substantive application of a trademark is completed within a month, so that when this case is submitted to the court, the applicant for registration of the trademark, PT Ratania Khatulistiwa, cannot be examined by the opposing party yet. However, in this case, PT Ratania Khatulistiwa is the applicant for the abolition of the IKEA brand by Inter IKEA System BV to the Commercial Court. According to the results of the decision, the application was granted, with this the abolition of the "IKEA" trademark also revoked the protection of the "IKEA" trademark rights by Inter IKEA System B.V. Inter IKEA System B.V. is considered unable to utilize the trademark that has been registered. Then PT Ratania Khatulistiwa wants to use the brand "IKEA" as the name of their products, under the pretext of being able to provide benefits to the Indonesian economy. With this, the court announced the removal of the mark from Inter IKEA System B.V. by removing the mark from the public register along with the official brand news.

#### 4. CONCLUSION

Judging from the rejection of the applicant's request, the author feels the need for more detailed legal certainty regarding the legal protection of existing trademarks in Indonesia. This is evident from the ease with which the respondent requested the applicant to be deprived of the right to the trademark with the reason mentioned is actually reasonable if the respondent requested the application, but it actually shows the existence of a legal loophole to be able to request a trademark that has been recognized before. Even though it has not been used for a certain period of time, the rule regarding trademarks that have not been used within three years feels unfair to registered trademark owners. This unfairness takes the form of the removal of legal protection for marks that are not used within a certain time. Trademarks should last longer because they become the identity of a product. And the unilateral taking of a trademark becomes a serious problem. A brand is something that is considered very commercial, so the removal of a brand is a big and complex matter for a company. The author argues, the brand can be taken over if for a long time, the brand is not used or the company has experienced bankruptcy so that the community who knows is not much, in the sense that the previous brand has no influence for the company that wants to take over the brand.

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