

Telecommunications Business Competition Reviewed from Competition Law in Indonesia

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ABSTRACT

The purpose of this study is to analyze the legal protection for the public against the circulation of counterfeit goods. The method used is normative juridical. The results of the study show that; 1) Legal protection against the circulation of counterfeit goods can be established based on criminal, civil, and administrative laws. The violation of trademarks in the form of trademark counterfeiting is further regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. In more detail, the act violated the Criminal Provisions of Article 100, Article 101 and Article 102. Meanwhile, the use of trademarks without rights can be sued based on unlawful acts in accordance with Article 1365 of the Civil Code. Administratively, it can be reviewed based on related laws, for example in online transactions referring to Law Number 11 of 2008 concerning Information and Electronic Transactions. 2) Obstacles in legal protection against counterfeit barangay distributors are a) Violation of counterfeit goods is a complaint so that it requires an active role of the brand owner, b) limited information to the public (consumers) on the application for trademark registration. c) Difficulties of trademark rights holders to find the perpetrators of trademark infringement. d) The existence of a lawsuit from the trademark holder will worsen the reputation of the product, e) Legal awareness and legal culture of the community

Keywords: Legal Protection, Counterfeiting of goods, Copyright, brand, society

INTRODUCTION

Background

Indonesia as a developing country and has the largest archipelago in the world with abundant natural wealth potential and until now it is still continuing to carry out improvements to the country's economic development. The actual development that has received attention in recent years is the increasingly widespread flow of globalization both in the social, economic, cultural and other fields of life. This development occurred because of the factors of social change that continue to develop rapidly with the times. The thing that causes social change is the development of technology and information and has made activities in the trade sector increase rapidly and has even placed the world as a single common market. Brands have an important role in the development of trade. A brand is a representation of a product of goods and services so that a brand has a value that describes the goods and services. The role of brands in the Indonesian economy can create healthy business competition.

Trademarks are part of intellectual property protected by the state. One form of this protection is contained in the existence of No. 20 of 2016 concerning Trademarks. A trademark as defined in the Trademark Law, is: A trademark 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, sounds, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and or services produced by persons or legal entities in the activity of trading goods and/or services.

A brand as an identifier of a product consists of a name, term, symbol, symbol, color, motion or a combination of these. A brand is an image of identity that distinguishes a product from other products. Trademarks are used as a promotional tool, a guarantee of the quality of goods and to indicate the origin of goods and services. A good and well-known brand is a valuable asset for brand owners. The goods and services industry with the development of advertising makes brands even higher in value. Brands supported by advertising media make brand owners have the ability to stimulate consumer demand while maintaining consumer loyalty to the products and services produced.¹

¹ Rahmi Janed, *Trademark Law* (Jakarta: Prenada Media Group, 2015).p. 4

Trademark as one of the Intellectual Property Rights which is basically an *indication of* origin of a company with the goods and services of another company. Through brands, entrepreneurs can maintain and provide a *guarantee of quality of goods* and services produced and thwart the actions of competition from other companies with bad intentions that want to tarnish their reputation. Trademarks are one of the elements of Intellectual Property Rights. Intellectual Property Rights are private legal rights that reward intangible human contributions that will be used to produce a special technology.²

Trademark law adheres to the complaint delinquency, where reports and complaints from the trademark owner are required to law enforcement officials to take legal action against a trademark violation. One form of trademark infringement is counterfeiting of goods. This counterfeiting activity is increasingly prevalent in the community because of the increasing demand so that brand owners feel overwhelmed by this counterfeiting activity. Brand owners must be active in controlling trademark infringement, this is because brand owners are the only parties that are allowed to make reports so that they are considered less effective and optimal to guarantee goods in circulation.

Legally, the owner of a registered trademark has exclusive rights related to his trademark that grant him the right to use the trademark and prevent unauthorized third parties, use the trademark, or confusing similar marks, as well as prevent consumers and the public in general from confusion. At this time, a claim for a trademark dispute is being made.³ based on the complaint. In this case, it means that the original trademark holder must file a complaint about the counterfeit product if the dispute wants to be processed legally. This brings its own problems considering the massive trade in counterfeit products that it is not possible for genuine brands to report them one by one, making it quite difficult to minimize or stop the circulation of these counterfeit products.⁴

Problem Formulation

1. How is Legal Protection for the Public against the Circulation of Counterfeit Goods?

² Andrian Krisnawati and Gazalba Sakeh, *Protection of New Plant Variety Rights in the Perspective of Patent Rights and Plant Breeding Rights* (Jakarta: PT. Raja Grafindo Persada, 2004).p. 14

³ WIPO *WIPO Intellectual. Property Handbook* (WIPO Publication, 2008).p. 14

⁴ Abi Jam'an Kurnia, "Can Brand Infringement Be Processed Without Complaints?," 2021, <https://www.hukumonline.com/klinik/detail/ulasan/cl7063/apakah-pelanggaran-merek-bisa-diproses-tanpa-pengaduan/>.

2. How 2. Obstacles in Legal Protection for the Community against the Circulation of Counterfeit Goods?

THEORETICAL FRAMEWORK

1. *Grand Theory of Legal Certainty*

The Grand Theory used in this study is the theory of Legal Certainty. Many aspects related to people's lives have been realized in the form of laws to ensure the creation of legal certainty, but the fact is that even though it is manifested in the form of laws, it turns out that in its implementation it is not complied with by the community. One of the factors is that the law is not complied with, because it is considered contrary to the people's sense of justice or the ideals of the law, and therefore in order to realize legal certainty, it cannot be done only by forming a law.

The most important thing that also needs to be considered is related to the legal ideals of the community, because if these legal ideals are ignored in the formation of laws and regulations, it can actually cause legal uncertainty.

Legal certainty, as stated by Apeldoorn (in Darmodiharjo and Shidarta), has two aspects, namely: a) the question of the determination (*bepaalbaarheid*) of the law in concrete matters, meaning that the parties seeking justice want to know what is their law in a particular matter, before they start a case, and b) legal certainty means legal security, meaning protection for the parties against arbitrariness.⁵

Justice refers to equality of rights before the law, the aspect of utility refers to the goal of justice, which is to promote the good in human life, while the aspect of certainty refers to the guarantee that the law really functions as a rule that is obeyed.⁶

2. *Middle Theory of Legal Protection*

According to Fitzgerald as quoted by Satjipto Raharjo that this Law Protection Theory is sourced from the theory of natural law or the stream of natural law. This school was first initiated by Plato, Aristotle and Zeno (the founder of the Stoic school). According to the natural law school, it is stated that the law comes from God who is

⁵ Darmodiharjo, Darji and Shidarta (1996). *Elaboration of Pancasila Values in the Indonesian Legal System*. Jakarta: Rajawali Press. Page 44

⁶ Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Prenada Media Group, 2021). Page 34

universal and eternal, and that law and morality cannot be separated. The adherents of this school view that law and morality are internal and external reflections and rules of human life that are manifested through law and morality.⁷

Fitzgerald explained Salmond's Law Protection Theory that law aims to integrate and coordinate various interests in society because in a traffic of interests, the protection of the interests of certain parties can only be done by limiting the interests of other parties. Legal interests are to take care of human rights and interests that need to be regulated and protected. Legal protection must see the stages, namely the protection of hukun born from a provision and all legal regulations given by the community, which is basically the agreement of the community to regulate the behavioral relationship between members of the community and between individuals and the government which is considered to represent the interests of the community.⁸

According to CST Kansil, legal protection is a narrowing of the meaning of protection, in this case only protection by law. The protection provided by the law, is also related to the existence of rights and obligations, in this case what is possessed by human beings as legal subjects in their interactions with fellow human beings and their environment as legal subjects human beings have the right and obligation to carry out legal actions.⁹

Meanwhile, according to Philipus M Hadjon, legal protection is the protection of the dignity and dignity as well as the recognition of human rights owned by legal subjects based on the general provisions of arbitrariness or as a collection of regulations or rules that will be able to protect something else.¹⁰

The establishment of the National Police Honorary Assembly is one of the parts of providing legal protection guarantees for the public who receive behaviors/acts of abuse of authority by members of the National Police or legal protection for the members of the National Police themselves when they have problems in their duties. The Honorary Assembly of the National Police has the main task of enforcing internal laws of the National Police, both discipline and code of ethics carried out by

⁷ Satjipto Raharjo, *Law*. PT. Citra Aditya Bakti, 2000, p. 53.

⁸ *Ibid*, p. 54

⁹ Kansil CST, *Introduction to Indonesian Law and Governance*, Balai Pustaka, Jakarta, 1989, p.

¹⁰ Philipus M hadjon, *Introduction to Indonesian Administrative Law*, 2005, p. 25.

professional non-career judges from the National Police so as to provide a guarantee that the decisions taken have the value of justice, certainty and better usefulness.

3. *Applied Theory of Judicial Power*

The principle of freedom of judicial power is reviewed from the doctrine of *separation of powers*, independent judicial power is part of efforts to guarantee and protect the freedom of the people from the possibility of arbitrary actions from the government. Thus, the presence of an independent judicial power is no longer determined by the *separation of power* or *distribution of power* but as a '*conditio sine quanon*' for the realization of the State of law, the guarantee of freedom and control over the course of the State government.

If the judicial power is combined with the legislative power, then a person's life and freedom will be under an arbitrary control. On the other hand, if the judicial power is united with the executive power, then the judge may always act arbitrarily and oppressively. Thus, judging from the teaching of *Separation of Power*, an independent judicial power is part of an effort to guarantee freedom and prevent arbitrariness.

The principle of impartiality and judicial administration in a *modern constitutional state* has two principles and is the main prerequisite and judicial system, namely: *The principle of judicial independence*, and *The Principle of judicial impartiality*. The principle of independence itself, among others, must be manifested in the attitude of judges in examining and deciding the cases they face. In addition, independence must also be reflected in various arrangements regarding matters; related to appointments (*recruitment*), tenure, career development, payroll system, and dismissal of judges. Especially regarding the salary of judges, the judicial power in Indonesia is not yet independent because of the system.¹¹

RESEARCH METHODOLOGY

This research is included in the type of doctrinal research, where the approach method used is juridical-normative. The study method used in this study is normative legal research, which is a study conducted by examining the laws and regulations that apply or applied to a

¹¹M. Scheltema, *De Rechtsstaat*, in J.W.M Engels (et.al), *De Rechtsstaat Herdacht*, Zwolle: Tjeen Willink, 1989, pp.15-17

certain legal problem. Research that includes research on legal principles, research on legal systematics, research on legal synchronization, legal history research, and comparative legal research.¹²

The study carried out is a literature study (*library research*) which uses secondary data. Primary data through field studies, secondary data in this study are obtained through literature studies, by seeking as complete and as much information as possible with journal literature, newspapers, articles, scientific papers and laws and regulations related to online buying and selling in electronic contracts. The use of secondary or literature data is intended to; 1) Inform readers about the results of other research related to the research being conducted; 2) Connecting a research that is carried out on an ongoing basis to fill in the gaps and expand other research; and 3) Provide a framework and reference to compare a study with other findings. The data collected in this study will be analyzed descriptively with a qualitative approach, namely by providing a thorough and in-depth presentation and explanation (*holistic/verstelen*).¹³

RESEARCH RESULTS

Legal Protection for the Community against the Circulation of Counterfeit Goods

Economically, utilizing well-known brands brings considerable profits and the facts in the field prove this, besides that it is also supported by the purchasing power of consumers who are mediocre but want to look trendy. There are many ways to meet lifestyle needs. One of them is by buying branded goods. Goods with this brand are of course always priced at a high price. Finally, people often take shortcuts by buying fake versions of the brand to keep it stylish.¹⁴

Branded products (*luxury goods*) are original but fake (asphalt) such as hanphones, clothes, pants, jackets and various other accessories are very easy to get and find in big cities, their circulation extends from the sidewalks to prestigious shopping centers. One of the attractions of counterfeit branded products lies in their very low prices. The circulation of

¹² Soerjono Soekanto and Sri Mamudji, *Normative Legal Research, A Brief Review*, (Jakarta: Raja Grafindo Persada, 2011), p. 65.

¹³ Sugiyono, *"Quantitative, Qualitative and R&D Research Methods,"* 26th (Bandung: Cv. Alfabeta, 2018), p. 34.

¹⁴ Meltalia Panjaitan, "Juridical Analysis of Law Enforcement on the Use of Goods Using Counterfeit Brands (Review from the Legal Culture Aspect of the User Community)," *UNTAN Law Journal* 1, no. 1 (2014).

these asphalt goods is also accompanied by the use of these goods by consumers. Consumers who prioritize lifestyle never look at the goods used as genuine or fake but what they see are goods with the same brand and affordable prices.¹⁵

Counterfeiting of goods is an infringement in the field of trademarks regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Criminal offenses on trademarks are complaint offenses, so reports from trademark owners and licensees are needed for law enforcement to be carried out. Law enforcement officials in counterfeiting goods will not enforce the law if the trademark owner does not make a report. Counterfeiting a brand is also considered a violation of the creator's human rights. Because in the Universal Declaration of Human Rights article 27 reads that, "*everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*" Everyone is entitled to the right to moral and material protection for the benefit of what they create, for they are the creators."

Law Number 20 of 2016 concerning Trademarks and Geographical Indications. In more detail, the act violated the Criminal Provisions of Article 100, Article 101 and Article 102. Article 103 regulates criminal acts as referred to in Articles 100 to 102 are complaint offenses. The complaint offences contained in Article 100, Article 101 and Article 102 are relative complaint charges.¹⁶ Complaint offenses are relative to crimes committed, which are not actually complaint crimes, but specifically for certain matters, are actually needed as complaint offenses and that can only be processed if there is a complaint or report from a person who is a victim of a criminal act.

The concept of legal protection of trademark rights refers to the nature of trademark rights that are special (*exclusive*). These special rights are monopolistic, meaning that the right can only be exercised by the brand owner. Without permission from the brand owner, others may not use special rights. If there are other parties who use the special right without permission from the owner of the trademark rights, then there has been a violation that can be subject to certain sanctions.¹⁷

The Paris convention *for the Protection of Industrial Property* was the first convention on intellectual property rights in 1883 in Paris, where trademark protection began to be

¹⁵ Firmansyah Hery, *Legal Protection of Brands*. L. Mold (Yogyakarta: Pustaka Yustisia, 2011).p. 29

¹⁶ Janed, *United States Trademark Law*.p. 4

¹⁷ Agung Sudjatmiko, "Legal Protection of Trademark Rights," *Juridika* 15, no. 5 (2000).p. 349

regulated internationally. This convention is an international convention in the field of IPR that is very important because it lays the foundations for IPR protection and provides a guideline for the scope of IPR issues for countries in the world.¹⁸

Related to criminal legal protection, namely by providing punishment to those who have committed crimes and trademark violations as stipulated in Article 100 of the Trademark and Geographical Indication Law. Article 100 of the Trademark Law basically provides a threat of imprisonment for a maximum of five years and/or a maximum fine of one billion rupiah to anyone who intentionally and without the right to use the same trademark in whole as the registered trademark belonging to another party for similar goods and/or services produced and/or traded.

Related to the sale of counterfeit branded goods online, this is associated with Articles 46, 47, and 49 of Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions which states as follows: In article 46 of Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions states that electronic transactions carried out by the parties provide legal consequences to the parties and subsequently which The implementation of electronic transactions must have good faith, transparency, principles of prudence, accountability, and fairness.

In Article 47 paragraph (1) of Government Regulation No.82 of 2012 concerning the Implementation of Electronic Systems and Transactions, it is stated that electronic transactions can use the reference of Electronic Contracts or other contractual forms as a form of agreement made by the parties. Furthermore, in paragraph (2) there is a contract between the parties that is considered valid if: a) there is an agreement between the parties; b) carried out by a competent legal subject or who is authorized to represent in accordance with the provisions of laws and regulations; c) there are certain things; and d. the object of the transaction must not be contrary to laws and regulations, decency, and public order.¹⁹

In Article 49 paragraph (1) of Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, it is emphasized that business actors

¹⁸ Oka Saidin, *Legal Aspects of Intellectual Property Rights* (Jakarta: PT. Raja Grafindo Persada, 1995).p. 7

¹⁹ Suwari Akhmaddhian, "Legal Protection of Consumers in Indonesian Electronic Buying and Selling Transactions," *Journal 3*, no. 2 (2016).p. 46

who offer products through Electronic Systems are required to provide complete and correct information related to the terms of the contract, manufacturers, and products offered. Furthermore, in paragraph (2) it is further emphasized that business actors are obliged to provide clarity of information about contract offers or advertisements. If the goods received are not in accordance with the agreement, then Article 49 paragraph (3) stipulates that business actors are obliged to give a deadline to consumers to return the goods sent if they are not in accordance with the agreement or there are hidden defects. In addition, consumers can file a civil lawsuit under the pretext of default on the transaction of buying and selling the goods to the business actor if the goods received are not in accordance with what was agreed at the beginning and in the provisions in the photo.²⁰

Civil legal protection is also provided to the legal trademark holder. If the trademark rights have been held, then according to the Indonesian trademark legal system, the trademark holder will get legal protection. This means that if there is a violation of trademark rights, the trademark holder can file a lawsuit against other parties who violate trademark rights. This lawsuit is aimed at obtaining compensation and termination of all acts related to the use of the trademark.

The use of a trademark without rights can be sued based on unlawful acts (Article 1365 of the Civil Code), namely "Every unlawful act, which brings harm to another person, obliges the person who due to his fault to issue the loss, to compensate for the loss". As a plaintiff, it must prove that it suffered losses felt by the manufacturer or businessman who holds the rights to a well-known trademark because of the defendant's unlawful acts. As a disadvantaged party, of course, the holder of the right to a well-known trademark will take the legal route to resolve trademark infringement cases. This is so that the perpetrators of trademark infringement will no longer use brands that resemble in essence or all of well-known brands or even stop their production activities. Trademark infringement acts, in addition to being regulated in the Trademark Law, can also be subject to sanctions that can be reviewed from criminal, civil, and administrative laws.²¹

²⁰ I Made Mahartayasa Belly Riawan, "Consumer Protection in Online Buying and Selling Transactions in Indonesia," *Kertha Semaya* 3, no. 1 (2015).p. 3

²¹ Muhammad Djumhana and R Djubaedillah, "Intellectual Property Rights of History, Theory and Practice in Indonesia Revised Edition," *Third Printing, Bandung: Pt Citra Aditya Bakti*, 2003.p. 93

Brand owners have a very important role in the circulation of counterfeit goods in the community. This is because of the nature of complaints on brands that result in the need for complaints or reports from brand owners to be able to take action against this trademark infringement. In the event of trademark infringement, law enforcement cannot conduct an investigation if there is no complaint. Complaints from brand owners can be accompanied by reports from the public as consumers to the authorities. From the report, law enforcement officials will investigate whether there is a trademark violation, to check between genuine goods and fake goods, law enforcement officials will be assisted by PPNS IPR in terms of testing.²²

Obstacles in Legal Protection for the Community against the Circulation of Counterfeit Goods

The community as a subject of law certainly has a very important role in the process of achieving legal goals. Bringing out the nature of a law-aware society is certainly a difficult process. Here, the community, especially consumers, has a very important role in the circulation process of counterfeit goods traded in the market.²³ As many as 17 out of 20 people admitted to benefiting from the existence of counterfeit goods/goods resulting from trademark infringement that were traded in the market. Those who are mostly consumers who have a middle to lower economy feel that with the existence of counterfeit goods which certainly have a cheaper price than the real thing, they can still follow the lifestyle of today's society which tends to be oriented towards well-known brands without worrying about the quality of the goods.²⁴

The role of the community as consumers is certainly very important related to law enforcement in trademark infringement cases. Based on the facts in the field, there are various responses regarding trademark infringement cases, both in the form of positive and negative responses, which are certainly influenced by the level of education, welfare/socio-economic level, environment, and knowledge in the field of brands. A positive response or supportive nature from the community is the attitude of the community that the sale of

²² Rachmadi Usman, *Intellectual Property Rights Law* (Bandung: PT. Alumni, 2003).p. 377

²³ Djumhana and Djubaedillah, "Intellectual Property Rights of History, Theory and Practice in Indonesia Revised Edition."p. 93

²⁴ Iman Sjahputra, *Indonesia's New Brand Law The Intricacies and Answers of Brand Theory and Practice* (Jakarta: Harvarindo, 1997).p. 34

counterfeit goods is a violation of the law that must be acted upon firmly and suppressed in circulation. While the negative response or inhibiting attitude from the public includes: the view of the public who considers brand infringement to be a common thing, brand infringement does not always harm consumers, sometimes brand infringement even benefits consumers where consumers can use well-known branded goods at low prices.²⁵

Several factors that can hinder the implementation of law enforcement against the circulation of counterfeit goods, namely:

1. Limited information to the public (consumers) due to trademark registration applications. Where the announcement of the trademark registration only lasts for 3 months, which is unknown to everyone even though the announcement has been issued and other difficulties determine since when the grace period is calculated. As a result, the rights holders of well-known foreign brands are surprised when registering their trademarks because the trademarks have already been registered by other parties.
2. Difficulties from well-known trademark rights holders to find trademark infringers. Where products resulting from infringement of well-known foreign brands are traded on the market and do not include the identity of the maker.
3. This internal weakness is due to the limited ability of the Directorate General of Trademarks from socio-economic and intellectual perspectives so that the brands that are registered later with the brands that have been registered can be accepted for registration.
4. The existence of a lawsuit from a well-known trademark holder, in some ways will worsen the reputation of the product because it is considered a problematic product which will ultimately reduce the sales turnover of the product.²⁶

Law enforcement against the circulation of counterfeit goods is closely related to public legal awareness. Where high legal awareness will be a supporting factor while low legal

²⁵ Moh. Nafri, "Legal Protection Against Counterfeiting of Famous Foreign Trademarks in Indonesia," *Journal of Unismuh Palu* 3, no. 1 (2018).p. 65

²⁶ *Ibid*, p. 64

awareness will be an obstacle in law enforcement. The indicators of legal awareness are actually relatively concrete clues about the level of legal awareness, as follows:²⁷

1. The first indicator is legal knowledge. One knows that certain behaviors have been regulated by law. The legal regulations referred to here are written laws and unwritten laws. These behaviors concern behaviors that are prohibited by law and behaviors that are allowed by law.
2. The second indicator is legal understanding. A citizen of the community has knowledge and understanding of certain rules, for example the existence of knowledge and correct understanding from the community about the essence and significance of Law Number 20 of 2016 concerning Trademarks and Geographical Indications.
3. The third indicator is the legal attitude. A person has a tendency to make a certain assessment of the law.
4. The fourth indicator is legal behavior, which is where a person or in a society complies with applicable regulations.

Based on the four indicators, it shows the levels of certain legal awareness in its manifestation. If someone knows the law. So it can be said that the level of legal awareness is still low. However, if a person or a society has behaved in accordance with the law, then the level of legal awareness has been high. Law is a concretization of values formed from the culture of a society. Every society certainly produces a culture, so the law always exists in every society and appears with its distinctiveness. Seeing this basis, Wolfgang Friedman stated that the law does not have universal force.²⁸

Legal culture also determines in law enforcement against the circulation of counterfeit goods. Culture includes a system and certain goals and values, meaning that culture is a *blueprint of behavior* that provides guidelines on what must be done, what can be done and what is prohibited. Social and cultural values serve as guidelines and drivers for human behavior in the process of social interaction. More concretely, culture functions as a behavioral system. Thus the rules that apply are actually rooted in the social and cultural

²⁷ Soerjono Soekanto, *The Uses of Legal Sociology for Legal Circles* (Bandung: Citra Aditya Bakti, 1989).p. 67

²⁸ Wolfgang Friedman, *Legal Theory, Third Edition*, (London: Stevens & Sons Limited, 1953).

values of the society concerned. All human behavior is actually guided by abstract conceptions of what is good and what is bad.²⁹

The next weakness is that infringement of the brand is a complaint. The use of unlicensed trademarks carried out by business actors/producers requires brand owners to register their trademarks with the correct rules in accordance with existing rules so that there are no problems with the use of unlicensed trademarks that have been rampant lately. If there is an unauthorized use of the trademark, the trademark owner can file a lawsuit against the party who without the permission of the trademark owner uses the trademark that has the same principal or whole for similar goods and services.³⁰

CONCLUSION

The results of the study show that;

1. Trademark as one of the Intellectual Property Rights which is basically an *indication of* origin of a company with the goods and services of another company. Through brands, entrepreneurs can maintain and provide a guarantee *of quality* of goods and services produced and thwart the actions of competition from other companies with bad intentions that want to tarnish their reputation. Trademarks are one of the elements of Intellectual Property Rights. Intellectual Property Rights are private legal rights that reward intangible human contributions that will be used to produce a special technology. Trademark law adheres to the complaint delinquency, where reports and complaints from the trademark owner are required to law enforcement officials to take legal action against a trademark violation. One form of trademark infringement is counterfeiting of goods. This counterfeiting activity is increasingly prevalent in the community because of the increasing demand so that brand owners feel overwhelmed by this counterfeiting activity. Brand owners must be active in controlling trademark infringement, this is because brand owners are the only parties that are allowed to make reports so that they are considered less effective and optimal to guarantee goods in circulation. The Brand Owner in preventing the circulation of counterfeit goods is to

²⁹ Soerjono Soekanto, *Some Legal Issues in the Framework of Development in Indonesia* (Jakarta: University of Indonesia Publishing Foundation, 1967).p. 24

³⁰ Ni Ketut Supasti Dharmawan, *Harmonization of Indonesian Intellectual Property Law* (Denpasar: Private Nulus, 2018).p. 52

act actively to make a report or complaint to law enforcement officials without considering that it will be beneficial for the brand owner and for the product of the goods. Brand owners conduct reports with the main purpose, namely for the safety and security of the public as consumers of a product or goods.

2. Counterfeiting of goods is an infringement in the field of trademarks regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Criminal offenses on trademarks are complaint offenses, so reports from trademark owners and licensees are needed for law enforcement to be carried out. Law enforcement officials in counterfeiting goods will not enforce the law if the trademark owner does not make a report. Counterfeiting a brand is also considered a violation of the creator's human rights. Law Number 20 of 2016 concerning Trademarks and Geographical Indications. In more detail, the act violated the Criminal Provisions of Article 100, Article 101 and Article 102. Article 103 regulates criminal acts as referred to in Articles 100 to 102 are complaint offenses. The complaint offences contained in Article 100, Article 101 and Article 102 are relative complaint charges. Complaint offenses are relative to crimes committed, which are not actually complaint crimes, but specifically for certain matters, are actually needed as complaint offenses and that can only be processed if there is a complaint or report from a person who is a victim of a criminal act. The concept of legal protection of trademark rights refers to the nature of trademark rights that are special (*exclusive*). These special rights are monopolistic, meaning that the right can only be exercised by the brand owner. Without permission from the brand owner, others may not use special rights. If there are other parties who use the special right without permission from the owner of the trademark rights, then there has been a violation that can be subject to certain sanctions. Trademark infringement acts, in addition to being regulated in the Trademark Law, can also be subject to sanctions that can be reviewed from criminal, civil, and administrative laws. Civil legal protection is also provided to the legal trademark holder. If the trademark rights have been held, then according to the Indonesian trademark legal system, the trademark holder will get legal protection. This means that if there is a violation of trademark rights, the trademark holder can file a lawsuit against other parties who violate trademark rights. This lawsuit is aimed at obtaining compensation and termination of all acts related to the use of the trademark. The use of a trademark without rights can be sued based on

unlawful acts (Article 1365 of the Civil Code), namely "Every unlawful act, which brings harm to another person, obliges the person who due to his fault to issue the loss, to compensate for the loss". As a plaintiff, it must prove that it suffered losses felt by the manufacturer or businessman who holds the rights to a well-known trademark because of the defendant's unlawful acts. As a disadvantaged party, of course, the holder of the right to a well-known trademark will take the legal route to resolve trademark infringement cases. This is so that the perpetrators of trademark infringement will no longer use brands that resemble in essence or all of well-known brands or even stop their production activities.

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