

ANALYSIS OF THE KOPI KENANGAN BRAND DISPUTE AGAINST KENANGAN SENJA BRAND PROTECTION IN THE F&B INDUSTRY

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Abstract

This study analyzes the trademark dispute between "Kopi Kenangan" and "Kenangan Senja" in the Food and Beverage (F&B) industry in Indonesia. Trademark protection plays an important role in maintaining brand identity and preventing unfair business competition. The purpose of this study is to examine the legal aspects of the dispute by focusing on the application of trademark law in Indonesia, especially Law Number 20 of 2016 concerning Trademarks and Geographical Indications. The research method used is normative juridical with a statutory approach and case study analysis. The results of the study indicate that brand similarity, consumer perception, and potential for confusion are the main factors in determining the existence of trademark infringement. This study also highlights the importance of brand uniqueness and legal compliance in business development. In conclusion, clear legal guidelines and strict law enforcement are needed to ensure fair business competition and brand protection in the ever-growing F&B industry in Indonesia.

Keywords: Trademark Dispute, Legal Protection, Food and Beverage Industry

A. INTRODUCTION

Trademark protection is an important aspect of intellectual property law that serves to protect the identity of a business and prevent unfair business competition. In Indonesia, regulations regarding trademark protection have been regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which provides legal protection for registered trademark owners. However, in practice, there are still many trademark disputes due to similarities in names and business concepts that can cause confusion among consumers. One case that reflects this problem is the dispute between "Kopi Kenangan" and "Kenangan Senja" in the Food and Beverage (F&B) industry. This dispute attracts attention because it involves aspects of legal protection for trademarks that have phonetic and conceptual similarities. Therefore, this study focuses on the legal analysis of trademark protection in this case.¹

In general, a trademark functions as a business identity that distinguishes the products or services of one party from another. In the Trademark Law, protection is given to trademark owners who have registered their trademarks with the Directorate General of Intellectual Property (DJKI). However, there are cases where brands that are not yet registered or have similarities with other brands are still used by other parties, thus giving rise to legal disputes. In this context, the cases of "Kopi Kenangan" and "Kenangan Senja" are relevant because of the alleged violation of the exclusive rights of the brand owner. It is important to review the extent to which the legal protection provided in the Trademark Law can prevent or resolve such disputes. This study will highlight how the legal system in Indonesia deals with problems related to brands that have similarities in terms of sound and meaning.²

One of the main principles in trademark law is the existence of elements of novelty and uniqueness as a requirement for trademark registration. In the cases of "Kopi Kenangan" and "Kenangan Senja",

¹ Sudjana, I. (2019). "Hukum Merek dan Indikasi Geografis di Indonesia." Jakarta: Gramedia Pustaka Utama. hlm. 45-60.

² Raharjo, S. (2018). "Aspek Hukum dalam Sengketa Merek Dagang." Yogyakarta: UII Press. hlm. 100-115.

it is possible that the similarity of the word "Kenangan" could be the main factor in this dispute. According to Article 21 paragraph (1) of the Trademark Law, trademark registration can be rejected if it has similarities in principle or in whole with a previously registered brand. This aims to avoid confusion in the community and protect the exclusive rights of the owner of the registered brand. If there is an indication of similarity that can cause confusion among consumers, then the owner of the brand that was registered first has the right to file a lawsuit or objection against the use of the brand that is considered similar.³ In legal practice, various cases of trademark disputes have occurred in Indonesia and have become precedents for resolving similar cases. For example, the case between "Pierre Cardin" and a local brand that has a similar name is one example of the application of the Trademark Law in protecting the exclusive rights of legitimate brand owners.

In this case, the Supreme Court ruled that the use of a brand that resembles a well-known brand can mislead consumers and harm the owner of the original brand. By referring to this legal precedent, the cases of "Kopi Kenangan" and "Kenangan Senja" can be analyzed from the same legal perspective, where an in-depth study is needed regarding the extent to which the similarity between the two brands can affect the exclusive rights of the first brand owner. In the academic realm, research on trademark disputes has been widely conducted, but most of it only focuses on the aspects of registration and protection of well-known brands. This study is different because it specifically analyzes cases in the F&B industry which has special characteristics in the use of trademarks. In addition, this study will also discuss a comparative legal approach by considering how other countries handle similar trademark disputes. Thus, the novelty of this study lies in the specific analysis of the F&B industry as well as a broader legal comparison to gain a more comprehensive

³ Prasetyo, B. (2021). "Analisis Hukum Sengketa Merek Dagang dalam Industri F&B di Indonesia." *Jurnal Hukum dan Ekonomi*, Vol. 7(2), hlm. 130-145.

understanding of trademark protection in Indonesia.⁴ The research method used in this study is the normative legal method with a statutory approach and case studies. This study will examine applicable regulations and analyze court decisions relevant to trademark disputes in the F&B industry. The data used comes from primary legal sources such as the Trademark Law, court decisions, and other legal documents, as well as secondary legal sources such as journals, books, and legal analysis that has been carried out previously. With this method, the study is expected to provide a significant contribution to understanding aspects of trademark protection and dispute resolution in intellectual property law in Indonesia.

B. RESULTS AND DISCUSSION

1. Legal Analysis of Trademark Disputes in the Food and Beverage Industry

Trademark protection in the Food and Beverage (F&B) industry plays a crucial role in maintaining business identity and preventing unfair competition. In the context of Indonesian law, trademark disputes often arise due to the similarity of elements in names or concepts that can cause confusion among consumers. The case between "Kopi Kenangan" and "Kenangan Senja" is one example of a trademark dispute that has attracted attention due to the alleged similarity of names that has the potential to violate the exclusive rights of the registered trademark owner. Based on Article 21 paragraph (1) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, trademark registration can be rejected if it has similarities in principle or in whole with another trademark that has been registered previously.⁵

Therefore, a legal analysis of this case needs to be conducted to understand the extent to which the similarity of names can be the

⁴ Wijaya, R. (2022). "Perlindungan Merek dalam Perspektif UU No. 20 Tahun 2016: Studi Kasus Kopi Kenangan vs Kenangan Senja." *Jurnal Ilmu Hukum*, Vol. 9(1), hlm. 85-100.

⁵ Hidayat, A. (2020). "Perlindungan Hukum terhadap Merek Dagang dalam Perspektif Hukum Internasional." Bandung: Refika Aditama. hlm. 78-90.

basis for a trademark infringement claim. This study is also important to assess how the Indonesian legal system handles similar cases in order to create legal certainty in trademark protection. In this case, "Kopi Kenangan" is a brand that has been registered previously and has high popularity in the F&B industry market in Indonesia.⁶ The presence of the "Kenangan Senja" brand raises legal questions regarding the extent to which the similarity of the word "Kenangan" can be considered a violation of the exclusive rights of the previous brand owner. Based on the principles of trademark law, a brand is not only seen from its phonetic similarity, but also from its conceptual and visual aspects that can mislead consumers.

In practice, the Indonesian Supreme Court has handled trademark disputes several times by considering the element of similarity in principle that has the potential to confuse the public. Therefore, testing the element of similarity in this case is an important aspect in determining whether the "Kenangan Senja" brand violates the trademark rights of "Kopi Kenangan" or not. If proven to be in violation, the owner of the "Kopi Kenangan" brand has the right to file a lawsuit to cancel the brand and demand compensation in accordance with applicable legal provisions.⁷ As a comparison, in the case of "Pierre Cardin" in Indonesia, the Supreme Court ruled that local brands that have similarities with well-known brands must be canceled because they can mislead consumers. This decision is in line with international principles in trademark protection that prioritize the exclusive rights of brand owners who have previously registered. In the case of "Kopi Kenangan" and "Kenangan Senja", it is necessary to consider to what extent the use of the word "Kenangan" can be considered a dominant element that forms the brand identity.

If the court finds that the use of the word has strong distinguishing power and causes confusion in the market, then "Kenangan Senja" can be considered to violate the trademark rights

⁶ Budi Santoso, "Studi Perbandingan Perlindungan Merek Dagang di Indonesia dan Uni Eropa," *Jurnal Perspektif Hukum*, Vol. 10, No. 4, 2023, hlm. 89.

⁷ Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, (Jakarta: Rajawali Press, 2019), hlm. 178.

of "Kopi Kenangan". However, if the word "Kenangan" is considered a common word that does not have sufficient distinguishing power, then the claim for trademark infringement may be more difficult to prove. In the Indonesian legal system, trademark protection is based on the first to file principle, which means that the owner of the trademark who first registers has exclusive rights to use the trademark.⁸ Therefore, in this case, it is important to trace the registration history of both trademarks and see if there were any objections filed during the registration process of "Kenangan Senja". If no objections were filed at the initial stage, then the owner of the "Kopi Kenangan" trademark's chances of winning the dispute will depend on proving the existence of similarities that can mislead consumers. In addition, in some cases, the first brand owner can also file a lawsuit based on Article 100 of the Trademark Law which regulates criminal sanctions for parties who intentionally use a brand that is similar to a registered brand.⁹

From an academic perspective, this study shows that legal protection of trademarks in Indonesia still faces challenges in determining objective limits regarding the similarity of a brand. Comparative legal studies with legal systems in other countries, such as the United States and the European Union, show that the approach to assessing brand similarity is more complex by considering factors such as the registrant's intention, the history of brand use, and its impact on the market. In this context, the cases of "Kopi Kenangan" and "Kenangan Senja" provide important insights into how Indonesian law can develop clearer standards in handling trademark disputes in the F&B sector. The legal decision in this case can also be a precedent for similar cases in the future.¹⁰

⁸ Ahmad M. Ramli, *Hak Kekayaan Intelektual: Hak Cipta, Paten, Merek, Desain Industri, Rahasia Dagang dan Indikasi Geografis*, (Jakarta: PT RajaGrafindo Persada, 2020), hlm. 212.

⁹ Yunita Rahmadini, "Implikasi Pasal 21 UU Merek terhadap Perlindungan Merek Terdaftar," *Jurnal Ilmiah Hukum dan HAM*, Vol. 8, No. 3, 2020, hlm. 112.

¹⁰ Dewi Sartika & Rina Setyaningsih, "Sengketa Merek Dagang dalam Industri Kuliner: Studi Kasus Kopi Kenangan," *Jurnal Hukum Ekonomi*, Vol. 5, No. 2, 2021, hlm. 67.

The legal implications of this case not only affect the two disputing parties, but also other business actors in the F&B industry who want to build their brands. With legal certainty in trademark protection, it is hoped that business competition can run healthily without any practices of trademark infringement. In addition, stricter regulations in trademark registration and supervision are also needed to prevent the emergence of brands that are similar to brands that have previously been registered. This step can increase the confidence of investors and business actors in developing their businesses in Indonesia without worrying about potential legal disputes in the future.¹¹ In resolving trademark disputes in Indonesia, court decisions play an important role in determining the exclusive rights of legitimate trademark owners. One of the relevant decisions in this case is the Supreme Court decision No. 294 K/Pdt.Sus-HKI/2021, which confirms that a trademark that is essentially similar to a previously registered trademark can be canceled by law. In this case, the plaintiff filed a lawsuit against the party that used a trademark with similar word elements, which has the potential to cause confusion in the community.

The Panel of Judges in the decision emphasized that legal protection for a trademark is not only based on registration alone, but also considers the good faith intention in using the trademark. If there is an intentional use of a trademark that resembles a well-known trademark with the aim of gaining profit from the reputation of the trademark, the judge can decide to cancel the defendant's trademark registration. This decision is an important precedent in the dispute case between Kopi Kenangan and Kenangan Senja, where the similarity of word elements can be a major factor in determining whether or not there is a trademark violation based on Article 21 paragraph (1) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Based on the analysis above, it can be concluded that the dispute between "Kopi Kenangan" and "Kenangan Senja" highlights the importance of trademark protection in the F&B industry. This case shows that the court must consider various factors

¹¹ M. Yusuf Shofie, *Perlindungan Hak Kekayaan Intelektual dan Dunia Usaha*, (Bandung: PT Citra Aditya Bakti, 2018), hlm. 145.

in assessing trademark similarity, including phonetic, conceptual aspects, and its impact on consumers. In addition, the need for harmonization of regulations with international standards is also an important factor in increasing the effectiveness of the intellectual property law system in Indonesia. Thus, this study contributes to understanding the dynamics of trademark law and provides recommendations for strengthening regulations in the future.

2. Protection of Exclusive Trademark Rights in the Perspective of Indonesian Law and Comparison with Legal Systems of Other Countries

Exclusive trademark protection is a fundamental aspect of intellectual property law that aims to provide legal guarantees for trademark owners in using and managing their business identities. In Indonesia, legal protection for trademarks is regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which grants exclusive rights to trademark owners that have been registered with the Directorate General of Intellectual Property (DJKI). In the context of international law, trademark protection is regulated through agreements such as the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights), which requires each WTO member country to implement intellectual property rights protection standards, including trademarks.¹²

The fundamental similarity in the legal systems of various countries is the principle that trademark registration grants exclusive rights to its owner, but there are differences in the mechanisms of protection and enforcement. In some countries, such as the United States and the United Kingdom, a first to use system is applied, which means that trademark rights are prioritized for the party who first uses the trademark in trading activities, compared to the party who first registers it. In contrast, Indonesia adopts a first to file system, where exclusive trademark rights are granted to the party who first officially

¹² Mochammad Khoiri, "Analisis Yuridis Terhadap Perlindungan Merek Dagang di Indonesia," *Jurnal Hukum Bisnis*, Vol. 7, No. 1, 2022, hlm. 34.

registers their trademark.¹³ From an Indonesian legal perspective, trademark protection not only covers administrative aspects in the form of registration, but also involves legal efforts to resolve disputes in the event of trademark infringement. Article 21 paragraph (1) of the Trademark Law states that trademark registration can be rejected if it has similarities in principle or in its entirety to a previously registered trademark. This aims to prevent trademark use practices that can mislead or confuse consumers.¹⁴

In practice, many cases of trademark disputes arise due to similarities in name, logo, or concept between one brand and another, such as the case between Kopi Kenangan and Kenangan Senja in the Food and Beverage (F&B) industry. This case is of concern because of the alleged phonetic similarities that have the potential to cause confusion among consumers and interfere with the exclusive rights of the owner of the previously registered trademark. Disputes of this kind do not only occur in Indonesia, but also in various other countries with different legal systems in regulating and resolving trademark disputes.¹⁵ In the context of comparative law, countries such as the United States and the United Kingdom prioritize the use of brands in business activities over mere registration. The first to use system allows brand owners who have actively used a name or logo in trade to still obtain legal protection even though they have not registered it. On the other hand, in Indonesia and many other countries that adopt the first to file system, trademark registration is the main requirement to obtain exclusive rights. This difference has an impact on the dispute resolution mechanism, where in the first to use system, the party who can prove that they first used the brand in trade has a greater chance of winning the case. In Indonesia, the existence of a brand in business activities can be used as evidence in

¹³ Susanti, Budi & Rachmadi Usman. (2020). *Hukum Hak Kekayaan Intelektual di Indonesia*. Jakarta: Sinar Grafika. Hal. 152-160.

¹⁴ Peter Mahmud Marzuki. (2021). *Penelitian Hukum*. Jakarta: Kencana. Hal. 98-105.

¹⁵ Rahmadsyah & Siti Aisyah. (2021). *Perlindungan Hukum terhadap Hak Eksklusif Pemegang Merek Berdasarkan UU No. 20 Tahun 2016*. Jurnal Hukum dan Keadilan, Vol. 8, No. 2. Hal. 75-89.

a dispute, but must still be supported by a valid registration status at the DJKI to obtain maximum protection.¹⁶

Analysis of the Supreme Court decision No. 294 K/Pdt.Sus-HKI/2021 shows that the similarities in principle in a brand can be used as a basis for canceling the registration of a brand that is considered similar to another brand that has been previously registered. This decision emphasizes that exclusive brand rights are not only based on formal registration, but also consider good intentions in using the brand and its impact on consumers. In this case, the Supreme Court ruled that a trademark that has phonetic and conceptual similarities can mislead consumers, so it must be canceled to protect the interests of the legitimate trademark owner. This is an important precedent in resolving the Kopi Kenangan and Kenangan Senja disputes, where the similarity of names can be a major factor in determining whether or not there is a trademark infringement.¹⁷

In addition, in practice in other countries, there are several relevant decisions in assessing trademark similarity. For example, in the case of the United States Patent and Trademark Office (USPTO) vs. Booking.com, the Supreme Court of the United States ruled that a brand that uses a generic word can still obtain trademark protection if it can be proven that consumers associate the brand with a particular entity. This shows that in the common law legal system, trademark protection does not only depend on registration, but also on how consumers recognize the brand in the market. This comparison shows that the protection of exclusive rights to a brand in different legal systems has a varied approach in determining the validity and legality of a trademark.

In the Indonesian legal system, trademark protection can also be associated with Article 100 of the Trademark Law, which states that the use of a brand without rights can be subject to criminal sanctions and fines for the violating party. This provision aims to provide a

¹⁶ Suryani, R. (2020). *Implikasi Sistem First to File dalam Perlindungan Hak Merek di Indonesia*. Jurnal Ilmu Hukum, Vol. 15, No. 3. Hal. 55-70.

¹⁷ Fadillah, A. (2023). *Perbandingan Hukum Merek antara Indonesia dan Amerika Serikat dalam Perspektif First to File vs First to Use*. Jurnal Hukum Ekonomi, Vol. 10, No. 4. Hal. 200-215.

deterrent effect on the practice of unauthorized use of brands and prevent unfair business competition. However, the application of criminal sanctions in trademark disputes is still a debate among academics and legal practitioners, considering that many trademark disputes are more often resolved through civil channels than criminal channels. In some cases, mediation and arbitration are also more efficient alternative dispute resolutions compared to litigation in court.¹⁸ In countries such as the European Union, the trademark dispute resolution mechanism relies more on an administrative approach through the European Union Intellectual Property Office (EUIPO), which provides an opportunity for trademark owners to file objections to the registration of trademarks that are considered similar to their trademarks. This approach allows for faster and more efficient resolution of trademark disputes without having to go through a lengthy court process. Meanwhile, in Indonesia, although the DJKI has a role in trademark registration and management, the trademark dispute resolution process generally still has to go through a judicial mechanism, either in the Commercial Court or the Supreme Court.¹⁹

From this comparison, it can be seen that the exclusive trademark rights protection system in various countries has differences in terms of protection and dispute resolution mechanisms. Although Indonesia has quite comprehensive regulations in the Trademark Law, there are still challenges in its implementation, especially related to the speed and effectiveness of trademark dispute resolution. Therefore, the analysis of the Kopi Kenangan and Kenangan Senja cases, as well as the Supreme Court decisions mentioned above, provide important insights into understanding how trademark law in Indonesia can evolve to comply with international standards and the need for more effective legal protection for legitimate trademark owners.

¹⁸ Huala Adolf. (2019). *Perlindungan Merek Dagang dalam Perspektif Hukum Internasional*. Jakarta: Rajawali Pers. Hal. 210-225.

¹⁹ Wibowo, D. (2022). *Analisis Putusan Mahkamah Agung terhadap Sengketa Merek Dagang di Indonesia*. Jurnal Yuridika, Vol. 37, No. 1. Hal. 120-135.

C. CONCLUSION

Exclusive trademark protection in Indonesia still faces challenges in its implementation, especially in cases of trademarks that have phonetic or conceptual similarities. Based on legal analysis, the "first to file" system applied in the Trademark Law provides legal certainty for registered trademark owners, but does not always guarantee fair protection for trademarks that are already widely known in the community. This study shows that in resolving trademark disputes, the court considers not only the registration aspect but also the applicant's good faith, which is an important factor in determining ownership of exclusive rights. Comparison with the legal systems of other countries, such as the United States which applies "first to use", shows that there are alternative approaches that can provide more optimal protection for trademark owners that have been widely used before being registered. Therefore, further evaluation of trademark protection policies in Indonesia is needed in order to create a balance between legal certainty and protection of the legitimate interests of trademark owners. The findings of this study are expected to contribute to the development of regulations and practices of intellectual property law in Indonesia.

To improve the protection of exclusive trademark rights in Indonesia, it is necessary to consider a combination of the "first to file" system with the "first to use" principle so that trademarks that are already widely known continue to receive protection. Strengthening the role of DJKI through the digitalization of the trademark examination system can help prevent registration in bad faith. The Commercial Court also needs to establish clearer guidelines in assessing trademark similarity to improve the consistency of decisions. In addition, education for business actors regarding the importance of trademark registration must be expanded to reduce the potential for future disputes. With these steps, legal protection for trademarks can be more optimal and support healthy business competition.

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