

Counterfeiting of Weel-Known Brands in Indonesia: Legal Protection?

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ABSTRACT

The use of well-known brands is now starting to bloom, and this is none other than because it promises big benefits that will be obtained when using well-known brands instead of using their brands. One of the reasons why many industries use well-known brands for their products is to make them easy to sell. This study uses normative legal research methods to examine the protection of well-known brands in Indonesia. The results of this study indicate that trademark protection is provided after the trademark owner registers his trademark. Law Number 20 of 2016 needs to define well-known brands clearly. Well-known marks, namely the rejection of an application that is basically the same or wholly with a well-known Mark for similar goods and services is carried out with due observance of the general provisions. public knowledge about the mark in the field of business concerned. In addition, attention is also paid to the reputation of a well-known brand that is obtained due to vigorous and large-scale promotions, investments in several countries in the world that are carried out by the owner and are accompanied by proof of registration. brand in several countries.

Keywords	Weel-Known Brands; Counterfeit; Legal Protection
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PRELIMINARY

A trademark or product brand has a role as a differentiator from other products.¹ Especially now that many products look almost the same but come from different brands.² Even though the appearance is the same, the quality provided varies; the more expensive the price of a product, the more quality it brings.³ Another benefit of the brand is that it is used as a marketing medium so that many consumers are familiar with it. Society or consumers often classify a brand into valuable categories based on product image and reputation.⁴ These products also have a higher selling price due to the influence of the built importance. Building a reputation is not easy; it requires a lot of sacrifices, for example, to hook

¹ Shaleh, A. I., & Trisnabilah, S. (2020). Perlindungan Hukum Terhadap Persamaan Merek Untuk Barang Atau Jasa Yang Sejenis: Studi Merek Bossini. *Journal of Judicial Review*, 22(2), 291-300.

² Nopiana, N., & Disemadi, H. S. (2021). Perlindungan Hukum Terhadap Pemegang Hak Merek: Suatu Kajian Komparatif Antara Jepang Dan Indonesia. *Widya Yuridika: Jurnal Hukum*, 4(2).

³ Arifin, Z., & Iqbal, M. (2020). Perlindungan Hukum Terhadap Merek Yang Terdaftar. *Jurnal Ius Constituendum*, 5(1), 47-65.

⁴ Iqbal, M., & Nugroho, E. D. (2021). Legal Protection of Famous Trademarks. *Jurnal Usm Law Review*, 4(1), 105-116.

ambassadors from well-known models, who, of course, must spend a lot of money.⁵ Brands often associated with high prices because of their reputation are brands that come from foreign countries. The price offered is not shown to be lower than the lower class; because of this factor, several rogue manufacturers produce counterfeit products from these brands.

As a result, the legal brand owner of the well-known brand was damaged by his spirit with the decline in marketing, and the reputation faded, and the great brand was hard, and not a few. Not only the interests of famous trademark owners of well-known trademarks but also of consumers, by purchasing products that do not meet their expectations as a reciprocal payment bless. Which of the original products is difficult to learn and achieve from? Most people can be proud of their own. Well-known brands are usually used for quality, low prices and investment.⁶ This high level of consumption is necessary to use well-known brands to use more robust demand for other industries famous to other sectors, the production and distribution of fake favourite brands. Products are commercially available worldwide in Indonesia.⁷ Counterfeit or imitation products cannot be divided into consumers of various manufactured products. Association social status, people's reputation is in the product used or in the purchasing power and service of consumers, and the brand is famous for a particular circle. Many middles to lower consumers don't want to be left behind by trends and want to get well-known or well-known products at affordable prices to support their lifestyles. The target market for expensive foreign brands usually comes from celebrities. Where celebrities besides being able to buy these products, another reason is that celebrities are public figures who are concerned with the appearance of their work. Even though many other local brands are also of good quality and affordable, environmental factors also influence them, so other factors are also caused by prestige.⁸

Brands have a vital role in the world of marketing.⁹ Society always associates certain brands with a good image, quality and reputation for the wearer¹⁰. This is also inseparable from the innate factor of the brand, which already has a good idea, reputation and quality. Because of this, a product with an expensive brand can be considered an asset for the owner.¹¹ Globalization can make trading markets wider and beyond the national territory. And because of globalization, there is also a lot of potential for counterfeiting of trademarks which has a background because they want to create expensive imitation products so that these counterfeit products are suitable for the intended target market, for example,

⁵ Hediati, F. N. (2020). Optimalisasi Pengawasan pada Penerimaan Pendaftaran Merek dalam Rangka Perlindungan Merek. *Jurnal Suara Hukum*, 2(2), 234-257.

⁶ Chandra, D. W., Santoso, B., & Sukma, N. M. (2020). Perlindungan Merek Terkenal Asing Yang Belum Terdaftar di Indonesia (Studi Kasus Sengketa Merek KEEN). *Notarius*, 13(1), 312-326.

⁷ Wijaya, K., & Neltje, J. (2020). Perlindungan Hukum Merek Terkenal (Kasus Sengketa Merek Pierre Cardin Perancis Vs Indonesia). *Era Hukum-Jurnal Ilmiah Ilmu Hukum*, 18(1).

⁸ Serlia, D. (2021). Perlindungan Hukum Terhadap Produk Usaha Kecil Melalui Hak Merek Untuk Mendorong Pertumbuhan Perekonomian Masyarakat. *Eksaminasi: Jurnal Hukum*, 1(1), 66-76.

⁹ Wijaya, E. L. F. (2020). Perlindungan Hukum Konsumen Atas Kesamaan Bunyi Merek Terhadap Barang Yang Tidak Sejenis. *JCH (Jurnal Cendekia Hukum)*, 5(2), 185-197.

¹⁰ Disemadi, H. S., & Mustamin, W. (2020). Pembajakan Merek Dalam Tatanan Hukum Kekayaan Intelektual Di Indonesia. *Jurnal Komunikasi Hukum (JKH)*, 6(1), 83-94.

¹¹ Bukit, A. N., Weley, N. C., Harahap, R. A., & Disemadi, H. S. (2022). Fenomena Produk dengan Merek Palsu: Perlindungan Konsumen?. *Sapientia Et Virtus*, 7(1), 01-17.

inexpensive brands, which are usually used by celebrities.¹² People who are interested in these celebrities sometimes try to imitate the star they like by using the same brand.¹³ However, several brands cannot be purchased because they differ from the target market. In the end, several manufacturers create counterfeit brands with the same appearance at affordable prices to overcome this. But the actual quality is far from the original product.

There have been many original brands that eventually lost to counterfeit brands. There have even been cases where foreign brands were forced to withdraw their distribution in Indonesia due to massive losses because consumers only focused on buying imitation brands compared to the original brands.¹⁴ An example is the case of Vans shoes, which had to withdraw from Indonesia because of the large number of Vans counterfeit products in Indonesia.¹⁵ Indeed, if you look at Vans counterfeit products, they are mushrooming and even have decent quality. Quality means that shoes are not easily damaged, which is an added value from these counterfeit products. Though, of course, the quality of money offered is different.¹⁶ Indonesian people must be educated to respect original brands to support the Indonesian economy. In addition, it also appreciates the parties involved in the production process because creating a product takes work. This culture of using counterfeit goods does not only occur in physical effects such as fashion, even piracy of works such as films also often occurs to the point that the government has to intervene by blocking these pirated websites. Stopping the circulation of piracy in digital terms may be easy, but eliminating or eradicating pirated brands is difficult because so many actors do it. So the law that has been made feels useless because there is no firm action to punish the perpetrators.

Therefore, the development of the trade industry sector is speedy and must increase the protection of the technology used in the manufacturing process.¹⁷ Then, if you distribute a product with a particular brand on the market, you need to protect the products sold by various legal behaviour, in the end, the need to protect the brand. In this case, Hakak of Caucasian brands after intellectual property, especially after the law is implemented, the government will take action in all matters in the brand. It is an entrepreneur and a trader to develop their business for the energy, thought, time and cost they sacrifice to build a company's reputation in the form of a brand to provide services. It is a match for a brand that can prevent unfair business competition. Similar brands, products and services may differ in origin, quality and cooperation. Price for expressing the price of the product is not a product, not a product.

In addition to the damage to the government (tax), investors or brand owners, in addition to the presence of counterfeit goods, the increase in the circulation of counterfeit goods in the market is in addition to the fact the government, including employees and

¹² Sembiring, S. (2020, May). Registration of Brands in the Directorate General of Intellectual Property as an Effort to Protect the Brand as Assets of the Company. In *International Conference on Law, Economics and Health (ICLEH 2020)* (pp. 555-561). Atlantis Press.

¹³ Pangestu, R. R., & Masrur, D. R. (2020). Perlindungan Hukum Terhadap Merek Terkenal Ikea (Analisa Putusan Mahkamah Agung Nomor 264 K/Pdt. Sus-Hki/2015). *JCA of Law*, 1(2).

¹⁴ Ju, A. B., & Disemadi, H. S. (2023). Effectiveness of Culinary Industry MSME Brand Protection in Batam City. *Amnesti Jurnal Hukum*, 5(1), 15-32.

¹⁵ Gea, L. K. B., & Disemadi, H. S. (2022). Relation Between The Awarenesses of Culinary Msme Actors and Trademark Protection. *Jurnal Supremasi*, 1-16.

¹⁶ Darwance, D., & Sudarto, S. (2021). The Legal Politic of Regulation for Trademark Registration Systems in Indonesia. *Berumpun: Journal of Social, Politics, and Humanities*, 4(1), 70-81.

¹⁷ Disemadi, H. S., & Ariani, M. (2021). Arti Penting Perlindungan Kekayaan Intelektual Pencipta Logo Coffe Shop Di Kota Batam, Indonesia. *Mizan: Jurnal Ilmu Hukum*, 10(1), 26-36.

consumers. Endanger the Department. Users can distinguish famous brands directly from well-known ones, but to support lifestyles, the government must consider this situation—the development of large-scale fake favourite brands. Performance measures are harsh to brand a complex product or service; taking into account that it costs a long time to promote the brand and market location that needs to be known is important for legal protection. After the application, the government is all points in everything concerning brands.¹⁸ It is a business or merchant service to develop legal protection for the energy, thought, time and cost sacrificed to build one of the company's reputations in the form of a brand. It regulates brand unfair business competition (tax), investors or trademark owners can prevent it, and the presence of counterfeit goods is also dangerous for the industrial sector, including workers and consumers; it is illegal as a user. The difference between well-known brands and famous fake brands ignores this situation by the government, neglecting to support lifestyle.

METHOD

The method used in this research is normative law. The normative approach means that in conducting research, you must use the characteristics of science. With this method based on information seeking, the steps used must be appropriate so that the interpretation focuses on the research topic and is not too broad.¹⁹ Discussion of issues that are too wide confuses readers, and besides that, research that is carried out requires a lot of time and effort because it discusses a lot of material at one time. The approach used with the literature study is called literature study because the discussion uses data originating from the literature, especially legislation and several examples of cases that occurred in the community environment. The sources used in this research are primary and secondary. Primary sources are sources that are collected directly by researchers, while secondary sources are sources taken from data providers. The primary source comes from the researcher's thinking by connecting the legal basis with the existing case. The secondary source is the legal basis being discussed, namely Law Number 20 of 2016 concerning Marks and Geographical Indications (Mark and Geographical Indications Law).

RESULT AND DISCUSSION

Legal Protection against Counterfeiting of Well-Known Trade Marks in Traditional Markets

Intellectual Property Rights (IPR) are rights that a person owns because of the excess ability of a person's thinking power that is privately owned in the fields included in the IPR section, namely: Copyrights, Patents, Trademarks, Industrial Designs, Layout Designs of Integrated Circuits, secrecy. Trade, and Superior Plant Varieties. The ability of one's thinking power is more than other people so that it can produce works.²⁰ IPR protection has become an international issue. The World Trade Organization (WTO) has specific rules for IPR that apply to its member countries. This special rule is contained in Trade Related Intellectual Property Rights (TRIPs).

¹⁸ Sudjana, S. (2021). Penegakan Hukum Merek Dalam Hukum Indonesia Terhadap Pemenuhan Ketentuan TRIPS-WTO. *Res Nullius Law Journal*, 3(2), 136-151.

¹⁹ Disemadi, H. S. (2022). Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies. *Journal of Judicial Review*, 24(2), 289-304.

²⁰ Disemadi, H. S. (2022). Contextualization of Legal Protection of Intellectual Property in Micro Small and Medium Enterprises in Indonesia. *Law Reform*, 18(1), 89-110.

Products with well-known brands will be easier to market, so they can be sold more easily and provide greater financial benefits.²¹ The definition of a well-known Mark is, if a Mark has circulated beyond regional boundaries to international boundaries, where it has circulated outside its country of origin and is proven by the registration of the relevant Mark in various countries.²² In this way, legal protection is needed for Famous Mark Rights to guarantee legal certainty for brand inventors, brand owners and trademark rights holders. Apart from that, it is also to prevent violations and crimes against Mark Rights and provide benefits to the community so that people are more encouraged to make and manage the registration of their business marks.

Legal protection is one of the guarantees that it is a violation of a well-known mark.²³ The guarantee here means that the owner of a famous mark can take legal action if he breaches his status as a legitimate trademark owner and must obtain legal protection from the state. The well-known trademark protection provided by the Trademark Act is to acknowledge the success of the trademark owner in creating a unique image of the product obtained through advertising or direct selling of the product. The famous “defamation theory” (dilution theory) of well-known brands does not require evidence of malpractice for trademark infringement. Security is based on trade transactions or selling prices and prohibits the use of any items that could harm the exclusive value of a brand or damage the attractiveness of a well-known brand.

Criminal cases related to the use of brands, imitation of brands, counterfeiting and piracy are based on the law that has been issued, namely the Law on Trademarks and Geographical Indications and in Article 1365 of the Criminal Code, which states that any actions related to violations that cause harm to other people, for the perpetrators are required to compensate for the loss to the aggrieved party. Cases of brand imitation and counterfeiting are straightforward in Indonesia. This is easy to find in traders selling their wares on the sidewalks and even in malls, even though many sellers sell counterfeit products. Even the buyers already know that the products sold are imitations, judging from the raw materials used and the pronounced price difference. However, buyers choose to ignore this while, in appearance, they are almost the same. Moreover, in brand imitation, there are quality terms such as grade A, grade B and so on, and the higher the level, the more it resembles the product being sold.

By providing low product prices because these imitations are the leading choice for people who want to be stylish but need more capital.²⁴ People don't care about product quality and don't even respect original brand manufacturers who have gone to great lengths in designing products but are imitated by fraudulent manufacturers for stealing models and even using brands for counterfeit products or products.²⁵ This is related to the mindset and culture that develops in society that foreign brands are considered better than local brands.

²¹ Jaya, D., & Disemadi, H. S. (2022). Prospects of Trademark Registration To Recover The Economic of MSMEs Actors in Service Sector after The Pandemic. *Widya Yuridika: Jurnal Hukum*, 5(2), 265-276.

²² Sanjaya, P. E. K., & Rudy, D. G. (2018). Perlindungan Hukum Terhadap Hak Merek Terkenal Di Indonesia. *Jurnal Kertha Semaya*, 6(11).

²³ Risandi, K., & Disemadi, H. S. (2022). Pemalsuan Merek Sepatu Di Indonesia: Pengaturan Dan Sanksi?. *Jurnal Komunikasi Hukum (JKH)*, 8(2), 315-326. See Putra, M. D. R., & Disemadi, H. S. (2022). Counterfeit Culture dalam Perkembangan UMKM: Suatu Kajian Kekayaan Intelektual. *KRTHA BHAYANGKARA*, 16(2), 297-314.

²⁴ Abdurahman, H. (2020). Asas First To File Principal Dalam Kasus Hak Merek Nama Terkenal Benua. *Aktualita (Jurnal Hukum)*, 428-443.

²⁵ Desmayanti, R. (2018). Tinjauan Umum Perlindungan Merek Terkenal Sebagai Daya Pembeda Menurut Prespektif Hukum Di Indonesia. *Jurnal Cahaya Keadilan*, 6(1), 1-21.

Some people often need to understand that a brand is unfamiliar because it is considered good. So, the mindset that develops in society thinks that good and quality brands are foreign brands.²⁶ Then the culture of the people formed that using branded goods will be valued raises the desire to be appreciated by fighting for expensive brands. Each of them is that some are willing to do credit, some buy used goods or what is commonly referred to as thrift or preloved, and some take the path of buying counterfeit or counterfeit goods.²⁷ That way, satisfaction will appear and feel valued in society. Suppose purchasing counterfeit goods and being found out by a theme or colleague is more embarrassing. In that case, the culture of a community or this mindset must be changed by changing the mindset that buying whatever is considered capable. After all, many local brands can compete with foreign brands at a more affordable price, of course. Because most foreign brands make the most expensive is the brand's value, not from the raw materials or the wages of the workers used. This is referred to as the prestige value. Indeed, it isn't easy to establish a prestige value because banknotes are very expensive because they have to hook several public figures to use the brand.

Many known cases of identity theft aim to gain short-term profits by copying or imitating well-known features. Of course, the owner of the famous brand loses in this case. This is because it can reduce sales and consumer confidence and the quality of well-known brands.²⁸ The essence of this trademark protection is that the mark is not registered based on the applicant's request and good faith. This level of integrity is difficult to measure, and the controversy over it is a common misconception. Sign registration with the same or similar function is the manipulation of the sign and packaging design. So, in good faith, this registration is one of the best efforts to protect famous brands. Trademark protection in Indonesia is subject to the Law on Trademarks and Geographical Indications. Trademark owners are not required to register their trademarks but must register them with the General Manager of Trademarks to obtain legal protection. The process for applying for trademark registration is described under order Number 23 of 1993. Problems arise when there is a discrepancy between existing rules (agencies) and social reality (practices), where there are still many sellers of counterfeit goods, but 20 out of 100 of the 2016 Law clearly states as follows "A person who uses the same mark as a registered mark without rights to the same goods and services produced and traded with a maximum fine of 5 years and a maximum fine of Rp. 20,000,000.00 is regulated in the Law on Trademarks and Geographical Indications.

The provision of protection for trademark owners is intended to overcome the losses experienced by the owners. As mentioned, brand violators must compensate for losses suffered by brand owners. Counterfeiting and brand imitation is a very serious problems in Indonesia.²⁹ And the movement must be immediately resolved by the government indiscriminately, regardless of the economic background of the actors, of course. Anyone, regardless of educational experience or financial knowledge, carries this brand violation. The primary purpose of this kind of action is to gain profit or personal gain. Many foreign brands need clarification on this phenomenon because of the many brand imitations being carried out. The losses incurred are not only for brand owners. However, some buyers can

²⁶ Budiman, C. R. (2019). Perlindungan Hukum Terhadap Merek Terkenal (Well-Known) Di Indonesia. *Reformasi Hukum*, 23(1).

²⁷ Sinaga, N. A., & Ferdian, M. (2020). Pelanggaran Hak Merek Yang Dilakukan Pelaku Usaha Dalam Perdagangan Melalui Transaksi Elektronik (E-Commerce). *Jurnal Ilmiah Hukum Dirgantara*, 10(2).

²⁸ Arlina, S., & Milandry, A. D. (2022). Implementation Of Legal Protection The Famous Trademarks Ikea And Sephora Brand (Trademark's Law Perspective). *JCH (Jurnal Cendekia Hukum)*, 8(1), 71-84.

²⁹ Afif, M. S., & Sugiyono, H. (2021). Perlindungan Hukum Bagi Pemegang Merek Terkenal Di Indonesia. *Jurnal USM Law Review*, 4(2), 565-585.

experience losses. As previously mentioned, there are levels or levels of quality offered in brand imitation. And the assessment of brands that can be done in luxury places makes even celebrities fall for it. There are many cases of celebrities who were tricked into thinking they were buying the original product, but it turned out to be an imitation because it looked like the product they were buying. This is also based on trust in the distributors who sell it, so there is a lack of caution in checking product authenticity.³⁰ Even though imitation is carried out as closely as possible, differences always distinguish the original product or the representation. However, high accuracy is required in checking this. Some brands provide barcodes that can be scanned, and information on product authenticity appears. However, not all products use this method, and it is a weakness that copycat manufacturers exploit.

The Trademark Law protects well-known Marks, in which trademark applications will be rejected if they have similarities in principle or in whole with Famous Marks for similar goods and services. 3 Legal protection of Well-Known Mark Rights in Indonesia is regulated based on Law Number 20 of 2016 concerning Marks and Geographical Indications, to be precise in Article 21 paragraph (1) letters b and c, Article 83 paragraph (2), and reinforced by the Elucidation of Article 21 paragraph (1) letter b, Elucidation of Article 76 paragraph (2), and Elucidation of Article 83 paragraph (2). Indonesia adheres to a trademark registration system with a constitutive system. This system requires Mark registration so that a Mark can get protection, and this system is also known as the first to file system. This system confirms that the person who registers the Mark for the first time is entitled to the rights to the Mark. Even though Indonesia adheres to Mark registration based on a constitutive system, protection for well-known Marks that have not been registered in Indonesia will still receive protection because Indonesia has ratified the Paris Convention and the TRIPS Agreement (the World Trade Organization's TRIPS Agreement).

Based on the Elucidation of Article 21 paragraph (1) letter b of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, it has been explained that the determination of the fame of a Mark must be carried out by considering the public's general knowledge of the mark in the field of business concerned and also paying attention to its reputation as a well-known Mark. Obtained due to massive promotion, investment in several countries in the world by the owner, and accompanied by proof of registration of said Mark in several countries in the world. If the above matters are not considered sufficient, the Commercial Court may order an independent institution to survey to obtain conclusions about whether or not the mark is the basis for the rejection.

The concept of legal protection for trademark rights refers to the nature of trademark rights that are specific (exclusive). Individual freedom is a monopoly, meaning the brand owner can only exercise the right.³¹ Without permission from the brand owner, other people may not use the special privileges.³² If another party uses this special right without consent from the owner of the trademark right, a violation has occurred, which can be subject to certain sanctions. Legal protection for registered marks must be done, especially for well-known brands. In general, many famous brands are targeted for imitation and counterfeiting, which are expected to increase sales turnover from irresponsible brand infringers. Suppose

³⁰ Anugraha, F. (2020). Perlindungan Hukum bagi Pemegang Hak Merek dikaitkan dengan Prinsip Itikad Baik dalam Proses Pendaftaran Merek. *Jurnal SOMASI (Sosial Humaniora Komunikasi)*, 1(1), 48-59.

³¹ Desmayanti, R. (2018). *Op.Cit.*

³² Sufлах, S. N. (2021). Perlindungan Hukum Terhadap Merek Terkenal Dari Tindakan Pelanggaran Merek/Merek Tiruan Di Medan (Studi Undang-Undang No. 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis). *Iuris Studia: Jurnal Kajian Hukum*, 2(3), 634-643.

a brand has obtained a well-known title.³³ In that case, the form of legal protection needed to prevent it from being imitated or counterfeited by others is a preventive and repressive form of legal protection that focuses on efforts to prevent the famous mark from being misused by other people.

Preventive efforts are efforts to prevent and minimize opportunities for violations, which are expected to reduce the number of trademark violations. The aim is to minimize the chances of trademark infringement. This effort is more emphasized on monitoring the use of the mark, protecting the exclusive rights of the right holders on well-known foreign trademarks and suggesting to brand owners to register their trademarks so that their rights are protected. Repressive Efforts are efforts made to overcome and resolve violations that have occurred. Repressive efforts are made as proof of legal protection after a trademark violation has occurred. This repressive legal protection is provided if there has been a violation of trademark rights. Holders of rights to well-known foreign trademarks obtain legal protection against infringement of trademark rights through lawsuits for cancellation or criminal charges.³⁴ In addition, the provision of sanctions following trademark law must be strictly applied so that it can create a deterrent effect for violators who are expected to be able to suppress similar violations in the future.

If the mark has been registered, it will receive civil and criminal legal protection. It is related to criminal legal defence by imposing penalties on those who have committed crimes and trademark violations as stipulated in Article 100 of the Law on Trademarks and Geographical Indications.³⁵ Article 100 of the Law on Trademarks and Geographical Indications provides for a maximum prison sentence of five years and a maximum fine of one billion rupiahs to anyone who intentionally and without properly uses the same mark in its entirety as a registered mark belonging to another party for goods and similar services produced and traded. Civil legal protection is also given to legal trademark holders. If the trademark rights have been held, the brand holder will get legal defence according to the Indonesian brand legal system. This means that if there is a violation of trademark rights, the brand holder can file a lawsuit against other parties who violate trademark rights. This lawsuit is intended to obtain compensation and terminate all actions related to using the mark.³⁶

The use of a mark without rights can be sued based on an unlawful act (Article 1365 of the Civil Code), namely "Any unlawful act, which causes harm to other people, obliges the person who because of the mistake of issuing the loss, compensates for the loss" as the plaintiff must prove that because of the defendant's unlawful actions, he suffered a loss. The existence of trademark violations committed by parties with bad intentions and who are not responsible for the well-known marks they infringe on will certainly cause losses to producers or entrepreneurs who hold the rights to famous brands. As the aggrieved party, the right holder of a well-known mark will take legal action to resolve trademark

³³ Novita, D. (2020). Hak Kekayaan Intelektual bagi Pemegang Hak Merek Suatu Karya Intelektual. *Jurnal Jendela Hukum*, 7(1), 35-40.

³⁴ Septarina, M., & Salamiah, S. (2020). Upaya Perlindungan Hukum Terhadap Pelanggaran Merek Terkenal Yang Tidak Terdaftar Di Indonesia Berdasarkan UU Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis. *Al-Adl: Jurnal Hukum*, 12(1), 89-100.

³⁵ Jotyka, G., & Suputra, I. G. K. R. (2021). Prosedur Pendaftaran Dan Pengalihan Merek Serta Upaya Perlindungan Hukum Terhadap Merek Terkenal Menurut Undang-Undang Nomor 15 Tahun 2001. *Ganesha Law Review*, 3(2), 125-139.

³⁶ Balqis, W. G., & Santoso, B. (2020). Arti Penting Perlindungan Merek Terdaftar Bagi Komunitas Penghasil Produk Ekonomi Kreatif. *Jurnal Pembangunan Hukum Indonesia*, 2(2), 205-221.

infringement cases. This is intended so that the perpetrators of trademark infringement will no longer use a brand that resembles in principle or its entirety that of a well-known brand or even stop its production activities. Apart from being regulated in the Trademark and Geographical Indication Law, acts of trademark infringement can also be subject to sanctions that can be reviewed by criminal, civil and administrative law.

Based on the theory of legal certainty put forward by Utrecht, "legal protection for well-known brands needs general and specific regulations to regulate it so that there are no violations that harm the owner of the exclusive rights of registered popular marks from fundamentally equal elements". In Indonesia, this legal protection is already contained in regulatory policies on the Trademark Law and Geographical Indications, then included in the Minister of Law and Human Rights regarding the Registration of Marks and the statute of the high court of the Republic of Indonesia Number 022 K/HaKI/2002.³⁷

Ideal legal protection for well-known brands in Indonesia can be carried out by fulfilling two critical principles: upholding justice and creating peace.³⁸ The existence of a government agency whose job is to survey the general public regarding a mark to make it easier for new patterns to register so that there is no element of fundamental equality and there are penalties other than the removal and cancellation of marks, penalties can be in the form of fines or criminal law according to the provisions of the Criminal Code.³⁹ Based on the point of view of this research, the researcher argues that in the digital and electronic era, the law regarding brands is still relevant to use. However, in the context of well-known brands, it is not relevant enough because there are still many voids in it, such as punishment for perpetrators who intentionally carry out an imitation of famous brands, apart from that regarding the party reporting under the current Trademark Law and Geographical Indications, it is only the legal subject concerned, but due to technological sophistication, according to this study, anyone can report it to the police or court as a witness accompanied by substantial evidence by the act.⁴⁰ Legal protection for well-known brands in Indonesia places more emphasis on legal certainty for enforcement; that is, a written law, guarantees famous brands from actions or behaviours aimed at imitating, piggybacking either similar or different types of goods and always upholding the principle of fundamental equality with the focus of good faith.

CONCLUSION

Legal protection is needed so that a brand that has obtained a well-known predicate avoids imitation or counterfeiting by others. A preventive and repressive form of legal protection focused on efforts to prevent the famous mark from being wrongly used by others. Preventive efforts are efforts to avoid and minimize opportunities for violations, which are expected to reduce the number of trademark violations. The aim is to minimize the chances of trademark infringement. Repressive Efforts are efforts made to overcome and resolve violations that have occurred. Repressive efforts are made as proof of legal protection after a trademark violation has occurred. The application of legal protection for well-known brands in Indonesia is essential to ensure legal certainty from the holders of

³⁷ Afif, M. S., & Sugiyono, H. (2021). Perlindungan Hukum Bagi Pemegang Merek Terkenal Di Indonesia. *Jurnal USM Law Review*, 4(2), 565-585.

³⁸ Adryani, V., & Kansil, C. S. (2020). Perlindungan Hukum Merek Terkenal Terhadap Pengaturan Prinsip Persamaan Pada pokoknya yang Diajukan dengan Itikad Tidak Baik (Studi Putusan Mahkamah Agung Nomor: 92K/Pdt. Sus-HKI/2017). *Jurnal Hukum Adigama*, 3(2), 874-895.

³⁹ Afif, M. S., & Sugiyono, H. (2021). *Op.Cit.*

⁴⁰ Arifin, Z., & Iqbal, M. (2020). Perlindungan Hukum Terhadap Merek Yang Terdaftar. *Jurnal Ius Constituendum*, 5(1), 47-65.

famous trademark rights that the state has recognized; currently, there are no specific regulations, and little guarantee of legal protection for favourite brands is presently contained in Article 21 of the Law on Trademarks and Indications Geographical. For well-known brands, the protection given to the mark is carried out in two ways, namely preventive legal protection and repressive legal protection. The Trademark Law protects famous Marks, in which trademark applications will be rejected if they have similarities in principle or in whole with Well-Known Marks for similar goods and services. Legal protection for the rights of well-known brands in Indonesia is regulated based on Law Number 20 of 2016 concerning Marks and Geographical Indications.

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