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PROBLEMATICS OF TRADEMARK NAMING AFTER PASSING OF PRESIDENTIAL REGULATION NUMBER 63 YEAR 2019 CONCERNING THE USE OF INDONESIAN LANGUAGE

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ABSTRACT

Naming of a trademark is very important as identity of a good or service, because a trademark can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in 2 (two) dimensional and / or 3 dimensions (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and or services produced by a person or legal entity in trading activities of goods and / or services. The existence of Presidential Regulation Number 63 Year 2019 Concerning the Use of Indonesian Language has caused problems regarding the naming of existing and non-existing Trademarks in Indonesia. The purpose of this research is whether the Presidential Regulation Number 63 Year 2019 Concerning the Use of Indonesian Language can be used as a consideration or reference in determining a registered trademark or not? and what is the form of consideration in the substantive examination related to the naming of trademarks that can be registered. The method used in this research is a qualitative method with a sociological juridical approach; a legal research which studies and examines the reciprocal relationship between law and other social institutions, the study of law as law in action is a non-doctrinal and empirical scientific study. Based on the results of research, Presidential Regulation of the Republic Indonesia Number 63 Year 2019 Concerning the Use of Indonesian Language cannot be used as the basis for trademark naming of trademark registration application because the Presidential Regulation does not use the basis of Law Number 20-year 2016 concerning Trademarks and Geographical Indications. In substantive examination of the application for trademark registration of Law Number 20-year 2016 concerning Trademarks and Geographical Indications is the main basis of Trademark Registration in Indonesia.

Keywords: Naming, Registration and Examination of Trademarks

INTRODUCTION

Now days, there are more millennial entrepreneurs who are competing to produce their respective creative products, both middle-to-low and middle-to-high entrepreneurs improving the quality of their products to attract people. To distinguish one product from another product, it can be done by making a trademark. Thus, the trademark is important for entrepreneurs to have. In this case, the brand has an important role in marketing and presents an image and symbol for a product. With a brand on a product can create a trust in the community as consumers, trust is the basis for getting loyal consumers and can improve the reputation.

Based on Article 1 paragraph 1 of Law Number 20 of 2016 concerning on trademark and Geographical Indications, trademark is signs that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in 2 (two) dimensions and / or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more elements to distinguish goods and or services produced by persons or legal entities in trading activities of goods and / or services. Regulations regarding trademark cannot be separated from the provisions of Intellectual Property of Law, Intellectual Property (IP) is property that arises or is born from human intellectual abilities. Intellectual Property (IP) is the right to enjoy the results of human intellectual creativity economically. Therefore, the objects regulated in PI are works that arise or are born from human intellectual abilities.¹

Trademark naming by entrepreneurs can be adjusted to the products produced so that the brand is easily recognized by the public. Less entrepreneurs give brands for their products using foreign languages so that it looks more attractive for examples are *Banana Crispy*, *Say Story*, *Nice Story*, *Bandeng Queen*, *Chatime*, *Big Burger*, *Aqua*, *Gulu-gulu*, *D'Cost*, *Swallow*, *New Era*, and *Roti Boy*. Trademark naming being important to be used by Entrepreneurs because Brand equity depends on the value of the trademark which is the value of the trademark came from the name of the trademark itself. The existence of Presidential Regulation of the Republic of Indonesia Number 63 of 2019 concerning the Use of Indonesian Language, there are provisions regarding the obligation of using Indonesia language in trademark. This provision is contained in Article 35 paragraph 1 of the Presidential Regulation of the Republic of Indonesia Number 63 of 2019 concerning the Use of Indonesian Language, which states that Indonesian must be used in the name of a trademark in the form of a word or a combination of words owned by Indonesian citizens or Indonesian legal entities. With these provisions, the trademark must use the Indonesian language and may no longer use foreign languages that are not Indonesian.

The existence of Presidential Regulation of the Republic of Indonesia Number 63 of 2019 concerning the Use of Indonesian Language has caused problems regarding the naming of trademarks in Indonesia, that many trademarks registered in foreign languages and it's not using Indonesia language for a product.

¹ Sudaryat, dkk, *Hak Kekayaan Intelektual Memahami Prinsip Dasar, Cakupan dan Undang-Undang yang berlaku*, Bandung : Oase Media, 2010. hlm 15

Based on the background stated, the researcher intends to find out and obtain data regarding the problems trademark naming that cannot be registered or rejected which will be outlined in the research title Problematic of Trademark Naming after Passing of Presidential Regulation Number 63 of 2019 Concerning the Use of Indonesian Language.

Based on the description that²³ been put forward in the background, the outline of the problems arise in this study are: 1. Can the Presidential Regulation of the Republic of Indonesia Number 63 of 2019 concerning the Use of Indonesian Language be used as a consideration or reference in determining a registered trademark? And 2. What is the form of consideration in the substantive examination related to the naming of trademarks that can be registered?

LITERATURE REVIEW

A. REVIEW OF INTELLECTUAL PROPERTY

Intellectual Property right that comes from the results of creative activities, the ability of human thinking²² which is expressed to the general public in various forms, having benefit⁴³ and useful in supporting human life, as well as having economic value. The real form of the ability of intellectual works can be in the fields of technology, science, and art and literature, as a property right arising from works, initiative, human copyright or it can also be called human intellectual property rights. The results of these creations, in a civilized society, it is recognized that those who create may control for purposes that benefit them. Creation as property is based on property rights in the broadest sense that includes intangible property.

The understanding in utilizing and developing IP for business activities, especially using and developing such IP for the purpose of increasing the value of business productivity. Conceptually, IP is a tool to protect the ideas that have been realized in real terms, in which these ideas have implications for the emergence of economic value towards the ideas given. As said by David Brainbridge, in legal discourse, PI can be interpreted⁵²: "...that area of law which concerns legal rights associated with creative effort or commercial reputation and good will." The concept of Intellectual Property Rights includes:²

- a. The rights of proprietary (intellectual), attached to the owner, are permanent and exclusive.
- b. Rights obtained by other parties with the permission of the owner and are temporary.

B. REVIEW OF THE TRADEMARK

Definition of Trademark

Regulation Number 20-year 2016 concerning Trademarks and Geographical Indicators uses the terms trademarks and service brand, it has actual meaning that trademark is a brand because the trademarks used on goods and its opposed to service mark³. This can be seen from the understanding of trademarks and service brand as follows:

- 1) A trademark that is used on goods traded by a person or several people collectively or a legal entity to differentiate it from other similar goods. (Article 1 paragraph (2) Law Number 20-year 2016).
- 2) A trademark used in services traded by person or several persons collectively or a legal entity to differentiate from other similar services. (Article 1 paragraph (3) of Law Number 20-year 2016).

Trademark is related to trade products in the form of goods, while service mark is related to trade products in the form of services. In addition to trademarks and service marks, there are collective marks. Collective marks can come from a certain business entity that has trading products in the form of goods and services. Collective marks can come from two or more business entities working together to own the same mark. The registered trademark owner will get the right to the mark, which is the exclusive right granted by the state to the owner of a mark registered in the General Register of Marks for a certain period of time using its own or grant the licenses or permits to other parties. Based on the trademark rights, trademark owners will receive legal protection so that they can develop their business calmly without fear of having their trademark claimed by other parties. Granting a trademark license to another party can generate income in the form of royalty payments.

Granting the license of trademark is different from granting a franchise. Licensing a trademark, the owner only lends his brand to other parties, the franchisor obliged not only lending the brand but also the production process to the service procedure for consumers. Thus, the franchisor, in addition to granting trademark licenses, can also grant the patent licenses, trade secret licenses and copyright licenses.

Trademark Registration in Indonesia

In general, trademark cannot be registered on the basis of an application filed by an applicant with bad faith. An applicant with good faith is an applicant who registers his mark properly and honestly without any intention of hogging, imitating, or copying the fame of another party's mark for the sake of his business which results in losses to the other party or creates conditions for fraudulent competition, deceives, or misleads consumers.

The provisions of Law Number 20-year 2016 concerning Trademarks and Geographical Indications regulate further anything that cannot be used as trademark cannot be registered as a trademark. Based on Article 20 of Law Number 20 of 2016 concerning Trademark and Geographical Indications, a trademark cannot be registered if:

² Abdulkadir Muhammad *Kajian Hukum Ekonomi Hak Kekayaan Intelektual*, Bandung : Citra Aditya Bhakti, 2001, hlm 1

³ Ahmadi Miru, *Hukum Merek*, Rajawali Pers, Jakarta, 2005, hal. 11

- a. contrary to the state ideology, statutory regulations, morality, religion, morality, or public order;
- b. the same as, relating to, or simply mentioning the goods and / or services being applied for registration;
- c. contains elements that may mislead the public regarding the origin, quality, type, size, type, purpose of use of the goods and / or services being applied for registration or constituting the names of protected plant varieties for similar goods and / or services;
- d. contains information that is inconsistent with the quality, benefits or efficacy of the goods and / or services produced;
- e. no distinguishing power; and / or
- f. is a common name and / or symbol of public property?

Furthermore, Article 21 of Law Number 20-year 2016 concerning on Trademark and Geographical Indications also contains provisions regarding rejection of trademark registration, as follows:

1. An application is rejected if the trademark has similarities in substance or in whole to:
 - a. A registered trademark that belongs to another party or is previously requested by another party for similar goods and / or services;
 - b. Well-known trademarks owned by other parties for similar goods and / or services;
 - c. Well-known trademarks owned by other parties for goods and / or it's not the same type that meet certain requirements; or
 - d. Registered Geographical Indication.
2. The application is rejected if the trademark:
 - a. constitutes or resembles the name or abbreviation the name of a famous person, photograph, or the name of a legal entity owned by another person, except with the written consent of the authorized person;
 - b. is an imitation or resembles the name or name abbreviation, flag, emblem or symbol or emblem of a country, or a national or international institution, except with a written approval from the competent authority; or
 - c. is an imitation or resembles an official sign or seal or stamp used by a state or government agency, except with a written approval from the competent authority.
3. An application is rejected if it is submitted by a Petitioner with bad faith.
4. Further provisions regarding the rejection of Trademarks Application as referred to in paragraph (1) letter a to letter c are regulated in a Ministerial Regulation.

Terms and Procedures for Trademark Application

Regarding the terms and procedures for application for trademark registration in Indonesia according to Law Number 20 of 2016 concerning Trademark and Geographical Indications regulated in Article 4 which stipulates that:

1. Application for Trademarks registration is submitted by the Applicant or his/her Attorney to the Minister electronically or non-electronically in Indonesian.
2. In the application as intended in paragraph (1) must include:
 - a. the date, month and year of the Application;
 - b. applicant's full name, nationality and address;
 - c. full name and address of the attorney if the application is filed by a attorney;
 - d. color if the mark being applied for registration uses a color element;
 - e. name of country and date of the first application of a trademark, if the Application is filed with Priority Right; and
 - f. class of goods and / or class of service and description of the types of goods and / or types of services.
3. The application signed by the applicant or his/her attorney.
4. The application as referred to in paragraph (1) shall be accompanied by a trademark label and proof of payment of fees.
5. Application fee for trademark registration is determined per class of goods and / or services.
6. In condition that the trademark as referred to in paragraph (4) is in the form of 3 (three) dimensions, the trademark label attached is in the form of characteristics of the trademark.
7. In condition that the trademark as referred to in paragraph (4) is in the form of a voice, the trademark label attached shall be in the form of a notation and sound recording.
8. The application as referred to in paragraph (1) must be accompanied by a certificate of ownership of the Mark being applied for registration.
9. Further provisions regarding the Application fee as referred to in paragraph (5) shall be regulated in a Government Regulation.

Trademark Substantive Examinations

The terms and procedures for application for trademark registration in Indonesia according to Law Number 20-year 2016 concerning Trademarks and Geographical Indications are regulated in Article 23 which stipulates that:

1. A substantive examination is an examination conducted by an Examiner of an Application for trademarks registration.
2. All objections and / or rebuttals as referred to in Article 16 and Article 17 shall be considered in the substantive examinations as referred to in paragraph (1).
3. In the event that there are no objections within a period of 30 (thirty) Days as from the end date of the announcement, a substantive examination shall be performed on the Application.
4. In the event that there is an objection within a period of 30 (thirty) Days from the expiration date for the submission of the objection as referred to in Article 17, a substantive examination shall be carried out on the Application.

5. The substantive examination as referred to in paragraph (3) and paragraph (4) shall be completed within a maximum period of 150 (one hundred and fifty) Days.
6. If it is necessary to carry out a substantive examination, an expert in trademark examiner outside the Examiner may be appointed.
7. The results of the substantive examination conducted by experts in trademark examiners who are not Examiners as referred to in paragraph (6) may be deemed the same as the results of the substantive examination conducted by Examiners, with the approval of the Minister.
8. Further provisions regarding trademark examination experts who are not Examiners as referred to in paragraph (6) shall be regulated in a Ministerial Regulation.

C. REVIEW OF THE PRINCIPLES FOR THE ESTABLISHMENT OF REGULATIONS

The formation of laws and regulations must prioritize clarity of purpose, in the sense that the objectives of the formation of these laws and regulations must be clear, fulfill the wishes of the public at large in order to create just certainty so as to distribute benefits to all Indonesian people. In addition, the concept of the institution or official forming legislation must be a credible institution, which is democratically recognized by the public at large. The formation of statutory regulations must adjust the types, hierarchy, and content of the content as well as the principles in accordance with the basis for the formation of statutory regulations. The formation of laws and regulations must be carried out based on the principle of the formation of good statutory regulations including clarity of purpose in forming statutory regulations, appropriate institutional or official formation which is a credible institution elected democratically by the people as the holder of state power, compatibility between types, hierarchy, and content, can be implemented efficiency and efficiency, clarity of formulation, and openness. The contained content in statutory regulations must reflect the principles of protection, humanity, nationality, kinship, nationalism, diversity, justice, equality in law and government, legal order and certainty, and / or balance, and harmony. The establishment of good Indonesian legislation must put Indonesia's legal mind first in taking ideas for the realization of fair certainty.

RESEARCH METHODS

The method used in this study is a qualitative research method. Qualitative research according to Bogdan and Taylor is "a research procedure that can produce descriptive data in the form of written or oral words from people and observable behavior".⁴ "The qualitative approach of attention is centered on general principles based on the embodiment of the units of symptoms that exist in human life".⁵

Qualitative research in data collection is not guided by theory but is guided by facts found during research in the field. This research is expected to be able to provide an overview of the Problems of Trademark Naming after Passing of Presidential Regulation Number 63 of 2019 Concerning the Use of Indonesian Language, thus with the presence of primary or secondary data it is hoped that it can explain more clearly and with quality. This study uses a sociological juridical approach. Sociological Judicial Approach is legal research that studies and examines the interrelationship between law and other social institutions, the study of law as *law in action* is a non-doctrinal and empirical scientific study.⁶ Researchers in conducting this research not only look directly at the provisions of the law governing the issue of registration of trademark after passing of Presidential Regulation Number 63 of 2019 Regarding the Use of Indonesian Language but also ask directly to the field to see the actual circumstances to get the accurate and authentic data as its meet directly with informants.

RESULTS AND DISCUSSION

A. Consideration or Reference in Determining a Trademark that can be Registered After the Presidential Regulation of the Republic of Indonesia Number 63 Year 2019 Concerning the Use of Indonesian Language

Presidential Regulation is a regulation made by the President in administering the government of the country as attribution and Article 4 Paragraph (1) of the 1945 Constitution of the Republic Indonesia. The term Presidential Regulation in lieu of the term Presidential Decree as stated in his book entitled Legal Science (Type, Function, Content Material).⁷

The term "decision" generally divided into two types, namely *regeling* and *beschikking*. In the administration, a decision is often made regulatory, so it can be called as a rule, or a decision is often made determinatively in which can be called an entitlement, nevertheless there is a decision that consists of the governing provisions in it and at the same time the provision is stipulated⁸

Meanwhile, according to Bagir Manan, quoted by King Faisal Sulaiman, the Presidential Decree can be divided into two, namely the Presidential Decree as the implementation of the President's constitutional authority and the Presidential Decree as head of state and head of government, the President has the authority to make decisions. This is in accordance with the general principle that one of the characteristics inherent in an official or position is the authority to make decisions. This authority is an attribution authority. Apart from being based on constitutional authority (*the original power*), presidential decrees can also be issued as

⁴ Lexy J. Moleong. *Metode Penelitian Kualitatif Edisi Revisi*. Bandung: Remaja Rosdakarya, 2007, hlm 4

⁵ Burhan, Ashshofa. *Metode Penelitian Hukum*. Jakarta : Rineka Cipta, 2010, hlm 20-21

⁶ Soemitro Ronny Hannitjo. *Metodologi Penelitian Hukum dan Jurimetri* Jakarta:Ghalia Indonesia, 1990, hlm 34

⁷ Farida Indrati S. Maria 2013. *Ilmu Perundangan-Undangan (Jenis, Fungsi, Materi Muatan)*. Yogyakarta: Penerbit Kanisius.

delegates, presidential decrees are stipulated to implement orders from the 1945 Constitution, UU / Perpu, or PP. so, as a delegation rule, the presidential decree has a broader scope than the PP (only to enforce the law).

Based on Article 13 in Law no. 12 year 2011 explicitly states that: "The content of the Presidential Regulation contains material ordered by law, material for implementing government regulations, or material for implementing the administration of government power".

This affirmation means that all regulations issued by the President in the form of Presidential Regulations must refer to the Law and the Constitution, and may no longer be independent like previous Presidential Decrees.⁸ Based on the description, then the Presidential Regulation that serves to implement the Law and PP is not a big deal, on the other hand the problem of law still raises in contacts with President Regulation which is regulatory and independently has a content material that has no specific scope, because it could be that the president will misuse the authority given.⁹

In a Presidential Regulation, the following restrictions are required.¹⁰ First, there is an order by a higher regulation as stipulated by Article 7 paragraph (4) of Law no. 2004 must be fulfilled; secondly, the order does not have to be explicit in the sense that it directly states the legal form of legal norms that need to be regulated, provided the regulatory order persists; and third, in the administrative stated does not exist, then the Presidential Regulation can be issued for the purpose that (a) technically towards the government administration, and (b) solely intended for the internal purpose of administering the provisions of Law. If the regulated material really only relates to technical administrative matters, then it can be said as attributive authority of the provisions of Article 4 paragraph (1) of the 1945 Constitution which states, "The President of the Republic of Indonesia holds governmental power according to the constitution".

According to the results of research in a hierarchy of Laws and Regulations the position of the Presidential Regulation under government regulations, which is based on Law Number 12 of 2011 concerning the Formation of Laws and Regulations where the formation of the Presidential Regulation is in Article 4 of the 1945 Constitution. The President cannot be a derivative in some of the provisions of the Prevailing Law because it is based on the *Lex Specialist Derogat Lex Generalis* principle of the Law above.

The basis for the formation of a Presidential Regulation is carried by executive, in this case the President without involving any legislative, a Presidential Regulation can be formed if there is a legal vacuum with the above Regulations (Government Regulation) or there is a delegation of the relevant Law. In connection with the existence of Presidential Regulation Number 63 of 2019 concerning the Use of the Indonesian Language, it is a derivative of Law Number 24 of 2009 concerning the Flag, Language and National Emblem, and the National Anthem. In the dictum considering the Presidential Regulation of the Republic of Indonesia Number 63 of 2019 concerning the Use of Indonesian Language, it states:

- a. that Presidential Regulation Number 16 Year 2010 concerning the Use of Indonesian Language in Official Speeches of the President and / or Vice President and Other State Officials only regulates the use of Indonesian Language in the official speeches of the President and / or Vice President and other state officials and has not regulated the use of others Indonesian Language as mandated in Article 40 of Law Number 24 Year 2009 concerning Flag, Language and State Symbol, as well as the National Anthem;
- b. that based on the considerations as referred to in letter a and in order to implement the provisions of Article 40 of Law Number 24 of 2009 concerning the Flag, Language and National Symbol, as well as the National Anthem, it is necessary to stipulate a Presidential Regulation on the Use of Indonesian Language.

Whereas in the dictum using the basis:

1. Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia;
2. Law Number 24 Year 2009 concerning Flag, Language and National Symbol, and National Anthem (Statute Book of the Republic of Indonesia Year 2009 Number 109, Additional to Statute Book of the Republic of Indonesia Number 5035);

However, in the content of Presidential Regulation Number 63-year 2019 concerning the Use of Indonesian Language, there is a discussion regarding Trademark Naming as regulated in Article 35 which reads as follows:

- 1) Indonesian Language must be used in trademark names in the form of words or combinations of words owned by Indonesian citizens or Indonesian legal entities.
- 2) The use of Indonesian in the name of the trademark as referred to in paragraph (1) is excluded for trademarks that are foreign licenses.
- 3) In the event that a trademark referred to in paragraph (1) has historical, cultural, customary and / or religious values, the name of the trademark may use the Regional Language or Foreign Language.
- 4) The use of regional languages or foreign languages referred to in paragraph (3) shall be written using Latin script.
- 5) Inclusion of Indonesian Language on trademarks as referred to in paragraph (1) shall be implemented in accordance with the provisions of the Prevailing Laws.

⁸ Sirajuddin, Fatkhurohman, Zulakrnain. 2016. *Legislatif Drafting Pelembagaan Metode Partisipatif dalam Pembentukan Peraturan Perundang-Undangan*. Malang: Setara Press. hal 78.

⁹ Husen, Ahmad (2019). "Eksistensi Peraturan Presiden Dalam Sistem Peraturan Perundang-Undangan", *Lex Scientia Law Review*. Volume 3 No. 1, Mei, hlm. 70-79.

¹⁰ Asshiddiqie, Jimly. 2010. *Perihal Undang-Undang*. Jakarta: Rajawali Perss. Hal 153

Whereas in Article 39 also regulates information about goods or services which reads as follows:

- 1) Indonesian language must be used in information about domestic or foreign goods or services in Indonesia.
- 2) The obligation to include information on goods or services as referred to in paragraph (1) is carried out by business actors who produce or import goods for trading.
- 3) Information on goods as intended in paragraph (1) at least includes:
 - a. name of goods; b. specification; c. ingredients and composition; d. how to use; e. how to install; f. benefits or uses; g. side effects; h. size; i. net weight or weight; j. date of manufacture; k. validity period / expiration; l. product influence; and m. name and address of the businessmen
- 4) Information on goods as intended in paragraph (3) is written using Latin script.
- 5) The information as referred to in paragraph (1) can be completed with Local Language or Foreign Language as needed.

Based on two Articles that regulate Trademark Naming and Information on Goods or Services which is not the scope of Law Number 24 of 2009 concerning Flags, Languages and National Symbols, and National Anthem so that in the Presidential Regulation of the Republic of Indonesia Number 63 of 2019 Regarding the use of the Indonesian language, that the regulations are not in line with the prejudices as the basis for the formation of the Presidential Regulations.

Basically, the Presidential Regulation must be in line with the preamble of the Law which is the legal basis, but in Article 35 of the Presidential Regulation of the Republic of Indonesia Number 63 of 2019 concerning the Use of Indonesian Language, which also regulates the trademark naming that must use Indonesian Language. The existence of regulations regarding the trademarks naming that must use Indonesian Language, it should be in the Preamble to the Presidential Regulation of the Republic of Indonesia Number 63-year 2019 concerning the Use of Indonesian Language that there is a preamble to Law Number 20-year 2016 concerning Trademarks as the basis for the formation of the Presidential Regulation.

Presidential Regulation of the Republic of Indonesia Number 63 year 2019 concerning the Use of Indonesian Language, it turns out that there is no preamble in the dictum considering Law Number 20 year 2016 concerning Trademarks and Geographical Indications, so that the provisions regarding Trademark Naming which must use Indonesian Language are basically not applicable because the regulation regarding Trademark Naming is regulated in Law Number 20 of 2016 concerning Trademark and Geographical Indications. So that the Presidential Regulations cannot be enforced as long as the higher regulation on which it is based (in this case Law Number 24 of 2009 concerning the Flag, Language and National Symbol, and National Anthem) does not regulate Trademark.

Presidential Regulation of the Republic of Indonesia Number 63 of 2019 concerning the Use of Indonesian Language in the education and capital market sector, it needs to be questioned whether the making of the Presidential Regulation of the Republic of Indonesia Number 63 of 2019 concerning the Use of the Indonesian Language involves related Ministries or not. Whether or not the Ministry of Law and Human Rights also involved in the process of making? The Ministry of Law and Human Rights was involved, but in terms of facilitating legal drafting, but it is the Ministry which initiated the drafting of Presidential Decree No. 63 (e.g.: initiative sector of Intellectual Property on The Ministry of Law and Human Rights)".

In context that the Ministry of Law and Human Rights not involved as a sector that houses trademarks which are part of Intellectual Property, the Presidential Regulation of the Republic of Indonesia Number 63 of 2019 concerning the Use of Indonesian Language, especially the Article that regulates the naming of trademark cannot be applied and cannot be taken into consideration in the Registration of trademark. Moreover, Law Number 20-year 2016 concerning Trademarks and Geographical Indications still allows using foreign languages / foreign elements in trademark naming as long as it does not violate the provisions of articles in the Trademark Law (for example: using a common name as seen in the explanation of article 20 letters f of Trademark law). Thus, the naming of a trademark must be unique and new, even though using a "person's name" is still allowed because "people's names" are not included in the "general name" category as trademark registration follows the *system first to file*.

B. Forms of Consideration in Substantive Examinations Related to Registrable Trademark Naming

Trademarks according to Law Number 20-year 2016 concerning Trademarks and Geographical Indications adhere to a Constitutive System, in which the right to a trademark is granted to the registered trademark owner. The application is a trademark registration request submitted to the Minister in this case is the Ministry of Law and Human Rights *cq* Director General of Intellectual Property. The application for registration of a trademark must be written in Indonesian Language submitted and signed by the applicant or his/her attorney. Before registering a trademark, there are conditions that must be met by every person or legal entity wishing to use a mark, in order its trademark can be accepted and used, requirement that must be met is sufficient distinguish power. In other words, this trademark should be in such a way, so that it has enough power to distinguish the manufactured goods of a company or business goods (trade) or services from the production of a person with goods or services produced by others. Because of the existence of the trademark, the goods or services produced can be distinguished.

From this understanding, in bringing up the naming of a trademark, there are conditions so that the trademark is properly used and accepted. The requirements for good trademarks are:¹¹

- a. Easy to memorize and remember.
- b. Indicates a specific product class

¹¹ Aaker, David A, *Managing Brand Equity, Capitalizing on The Value of A Brand Name*, New York: The Free Press, 1991. Hal 196

- c. Support a slogan or symbol
- d. Shows desired associations without becoming bored or trivial.
- e. The name should be authentic, trustworthy, and fun also should not touch false expectations.
- f. Special, that name should not cause confusion over the names of other competitors.
- g. Its existence can be protected from a legal point of view.

Meanwhile, the criteria for a good trademark were also presented, including:

- a. The trademark must show product characteristics such as the benefits of the quality of a product.
- b. The trademark must suggest product characteristics such as the ability of the color to the product.
- c. The trademark must be easy to pronounce, recognize and remember.
- d. The trademark must attract attention.
- e. The trademark must have something specific and unique.
- f. The trademark must not have a bad meaning in other countries and in other languages.
- g. The trademarks must be registered and meet the criteria in the Trademark Law.

In the Trademark registration process, there are terms and procedures for applying the trademark, including:

- 1) An application of trademark is submitted by the applicant or his/her attorney to the Ministry electronically or non-electronically using Indonesia Language.
- 2) The application shall include:
 - a. the date, month and year of the Application;
 - b. the full name, nationality and address of the Applicant;
 - c. full name and address of the Attorney if the application is filed by an attorney;
 - d. color if the trademark requested for registration uses a color element;
 - e. name of country and date of the first application for trademark, if the Application is filed with Priority Right; and
 - f. class of goods of / or class of service and description of the types of goods and / or types of services.
- 3) The application is signed by the applicant or his/her attorney.
- 4) The application shall be attached by a Trademark label and proof of payment of fees.
- 5) The Application Fee for trademark registration is determined per class of goods and / or services.
- 6) If a trademark is in the form of 3 (three) dimensions, the trademark label is represented in the characteristic form of its.
- 7) If a trademark is a sound, its label attached shall be a notation and sound recording.
- 8) The application must be attached by a certificate of ownership of the trademark requested for registration.

After the application for trademark Registration has been submitted then will be carried out a Complete Examination of the Trademark Registration Requirements by the Minister and if there is a lack of completeness as described above then within a period of no later than 30 (thirty) Days from the date of receipt, to the Applicant is notified that the completeness of the requirement is fulfilled within a period of no later than 2 (two) months from the Date of Delivery of the notification letter to meet the completeness of the requirements. In the case that the completeness of the requirements is not met within the specified period of time, the Minister informs in writing to the Applicant or his/her Attorney that the Application is considered withdrawn.

Applications that have met the minimum requirements are given a Date of Acceptance consisting of:

- a. a completed application form;
- b. trademark label; and
- c. proof of payment of fees.

Furthermore, upon receipt, the Minister announces the Application in the Trademark Official Report within a period of no later than 15 (fifteen) Days starting from the Date of Acceptance of the Application which lasts for 2 (two) months. The announcement of the Trademark Registration application is made by stating:

- a. name and address of the applicant including of the Attorney if the application is filed by an attorney;
- b. class and type of goods and / or services;
- c. Date of Receipt;
- d. country name and Date of Receipt for the first time in the case of Application using Priority Rights; Dan
- e. Brand labels, including descriptions of colors and if brand labels use foreign languages and/or letters other than Latin letters and/or numbers that are not commonly used in Indonesian, accompanied by translations into Indonesian, Latin letters or numbers commonly used in Indonesian, as well as the way they are pronunciation in Latin spelling.

During the announcement of the application for registration of a trademark has an objection, each party may propose in writing to the Minister on the application concerned with the payment of a fee. Objections may be raised if there is sufficient reason with evidence that the Trademark requested to be registered is a trademark under this Law that cannot be registered or rejected. Within 14 (fourteen) Days from the date of receipt of the objection, a copy of the letter containing the objection is sent to the Applicant or his/her attorney. The Applicant or his/her Attorney reserves the right to file a disclaimer against the objection. The disclaimer is submitted in writing within a period of no later than 2 (two) months from the Date of Delivery of the copy of the objection submitted by the Minister.

In general, brands cannot be registered on the basis of applications submitted by applicants who are in bad faith. A good-faith applicant is an applicant who registers his/her brand properly and honestly without any intention to mislead, imitate, or plagiarize the brand fame of another party for the benefit of his/her business which results in loss to that other party or incurs competitive conditions of cheating, outwit, or misleading consumers.

Before the brand on the ministerial list conducts a Substantives, Examination related to the brand on the list. Substantive examination is an examination carried out by the Examiner on the Application for Brand registration. Substantive examination is carried out by the examiner and if necessary, to perform a substantive examination, it can be determined by brand examiners outside the Examiner whose results are considered to be the same as the results of substantive examinations conducted by the Examiner, with the approval of the Minister. Any objections and/or disclaimers are also considered in substantive examination.

If based on the results of substantive examination the application can be approved for the list, then the approval of the Minister of the application is announced in the Trademark Official Report. On the other hand, if based on the results of substantive examination the application cannot be registered or rejected, the Minister informs in writing to the Applicant or his/her Attorney by specifying the reason. Within a period of no later than 30 (thirty) Days from the Date of Submission the Applicant's notice or his/her Power of Attorney may submit his/her response in writing by specifying the reason. In the event that the Applicant or his/her Attorney does not submit a response the Minister rejects the Application. In the event that the Applicant or his/her Attorney submits a response and the Examiner decides the response is acceptable, the Minister implements the provisions to:

- a. register the Trademark;
- b. notify the Trademark registration to the Applicant or his/her Attorney;
- c. issue the trademark certificate; and
- d. announce the registration of the Trademark in the Trademark Official Report, both electronic and non-electronic form.

In the event that the Applicant or his/her Attorney responds and the Examiner decides the response is unacceptable, the Minister rejects the Application

Based on what has been described above in the substantive examination as in Law No. 20 of 2016 concerning Brand and Geographic Indication in substantive examination whose essence decides whether or not a brand registration is applicable regarding trademark naming should use Indonesia Language. So, in Article 35 of presidential regulation no. 63 trademark 2019 on the use of Indonesian language is not a reference in determining whether or not a trademark naming can be rejected. Considerations regarding trademark naming only focus on Article 20 of Law No. 20 year 2016 concerning Brand and Geographic Indications stating:

A Trademark cannot be registered if:

- a. contrary to the state of ideology, statutory regulations, morality, religion, morality, or public order;
- b. the same as, relating to, or simply mentioning the goods and / or services being applied for registration;
- c. contains elements that may mislead the public regarding the origin, quality, type, size, type, purpose of use of the goods and / or services for which registration is requested or constitutes the name of the protected plant variety for similar goods and / or services;
- d. contains information that is inconsistent with the quality, benefit or efficacy of the goods and / or services produced;
- e. has no differentiating power; and / or
- f. It is a common name and / or symbol of public property.

For Article 21 of Law Number 20-year 2016 concerning Trademarks and Geographical Indications which states:

- 1) An application is rejected if the trademark has similarities in substance or in whole with:
 - a. Registered trademarks owned by other parties or previously requested by other parties for similar goods and services;
 - b. Well-known trademarks belonging to other parties for goods from / or similar services;
 - c. Well-known trademarks belonging to other parties for different goods and / or services that meet certain requirements; or
 - d. Registered Geographical Indication.
- 2) An application is rejected if the Trademark:
 - a. resembles the name or abbreviation or abbreviation of a famous person's name, photograph, or legal entity name owned by another person, except with the written consent of the right;
 - b. an imitation or resembles the name or abbreviation of a country's name, flag, emblem or symbol or emblem, or national or international institution, except with the written consent of the authorities; Or
 - c. is a imitating or similar sign or stamp or stamp used by a state or Government agency, except with the written consent of the relevant authorities.
- 3) An application is rejected if it is submitted by an applicant with bad faith.
- 4) Further provisions regarding rejection of Trademark Application as referred to in paragraph (1) letter a to letter c are regulated in a Ministerial Regulation.

Thus, the rules contained in the Presidential Regulation of the Republic of Indonesia Number 63 of 2019 concerning the Use of Indonesian Language cannot be taken into consideration Substantive Examinations of Trademarks.

CONCLUSION

The provisions governing the Trademark shall use Indonesian Language as in Article 35 of Presidential Regulation No. 63 year 2019 concerning the Use of Indonesian Language shall not be immediately applicable because in that Article there is no higher legal basis of regulation that delegates the rules concerning the trademark which is Law No. 20 of 2016 concerning Trademark and Geographical Indication. Moreover, naming a trademark using language except Indonesian Language can still be filed as long as it does not conflict with the provisions contained in Law No. 20 year 2016 concerning on Trademark and Geographic Indications. In a Substantive examination that determines whether a mark can be registered or rejected does not use the basis of the rules in Presidential Regulation Number 63-year 2019 Concerning the Use of Indonesian Language, which states that a trademark is obliged to use the Indonesian Language. However, in the Substantive Examination, the material used to determine whether a mark can be accepted or rejected is the completeness of requirements and prohibitions as in Law Number 20-year 2016 concerning Trademarks and Geographical Indications.

RECOMMENDATION

By passing of the Presidential Regulation No. 63 year 2019 concerning the Use of Indonesian Language in which there is a Clause regulates a trademark naming that must use Indonesia Language, the government agencies need to socializes regarding trademark naming arrangements following the pass of Presidential Regulation No. 63 of 2019 Concerning the Use of Indonesian Language that can potentially overlapping the rules regarding trademark naming. Therefore, it is necessary to affirm the acceptable rules regarding Trademark Naming

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