

LEGAL PROTECTION OF REGISTERED COSMETIC BRAND

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ABSTRACT: The purpose of this study is to analyze the legal protection of registered cosmetic brands, analyze the obstacles and solutions in the legal protection of cosmetic brands. This study uses a qualitative descriptive research method with a normative juridical approach. The results of this study are the legal protection against counterfeiting of well-known trademarks in Indonesia is regulated by Law Number 8 of 1999 concerning Consumer Protection and Law Number 20 of 2016 concerning Trademarks and Geographical Indications, but because brand protection is still a delict complaint and has not been maximized without a complaint from the brand holder and no sanctions are applied for brand infringement, so that supervision is needed by the Department of Industry and Trade throughout Indonesia in the distribution of goods to traders in order to prevent the circulation of counterfeit goods. Obstacles in carrying out legal protection against cosmetic counterfeiting regarding legal regulation and law enforcement, cosmetic brand products that are still widely counterfeited and cheap prices, lack of facilities and facilities that support tools that make it easy to detect an item and fifth, namely the weak awareness of buyers to buy a quality item. The problem solving are such as make regional regulations regarding brand counterfeiting in each region, to suppressing brand counterfeiting by providing socialization to business actors and the public about the dangers of brand counterfeiting, especially those containing ingredients that are harmful to health.

Keyword: Cosmetics; Brands; Counterfeiting; Legal protection;

INTRODUCTION

There are still many counterfeits of cosmetic brands. Law enforcement has also been implemented, but has not been able to deter the perpetrators of counterfeiting cosmetic brands, this may not be realized due to the lack of criminal threats, so there is no deterrent effect for the perpetrators of counterfeiting the cosmetic brands. Due to the lack of firmness in law enforcement against perpetrators, there needs to be legal protection for consumers from

counterfeiting these cosmetic brands.¹

An application for registration of a mark will be accepted if it has met the requirements, both formal and substantive, which have been determined by the Law on Marks and Geographical Indications. The main requirement of a brand is sufficient distinctiveness. The mark used must have the power to distinguish the goods or services of a company from the goods or services produced by other companies.² Legal protection for consumers has been regulated in Article 1 number (1) of Law Number 8 of 1999 concerning Consumer Protection which states that “Consumer protection is all efforts that guarantee legal certainty to provide protection to consumers.” Legal protection for consumers is to protect consumer rights. Consumer rights are clearly and in detail formulated in laws and regulations that should be considered and protected by business actors, this is often neglected due to bad behavior from business actors and doing business only to get big profits.³

The safety of a cosmetic product is very important and must be considered for consumers for daily activities where a product has an affordable price that is sufficient to meet the needs of cosmetic products in the community that must meet the eligibility for use that emphasizes health, safety and has a halal certificate. Cosmetic products must not contain harmful ingredients. Cosmetics circulating in the community must be registered based on BPOM regulation Number 44 of 2013 concerning Cosmetic Requirements regarding marking which is a complete description of the safety and information of a cosmetic product which will be stated in the brochure to be marketed.⁴ The government also provides legal protection to cosmetic producers from piracy activities on cosmetic brands with Law No. 20 of 2016 concerning Brand Counterfeiting. According to Sujatmiko, people commit acts of infringement on brands, namely by using brands without permission, or imitating well-known brands with the aim of facilitating marketing. The crime of trademark piracy is an intellectual crime that is not only detrimental to individual brand owners, consumers, but can also harm the state.⁵

Legal protection for trademarks by the government must be handled seriously because this does not only concern producers but also concerns countries that are harmed because of state

¹ I Wayan Novy Purwanto I Kadek Renown Pranatha, “Tanggung Jawab Pelaku Usaha Terhadap Kosmetik Yang Tidak Mencantumkan Label Bahasa Indonesia Pada Kemasan Produk,” *Jurnal Kertha Negara* 7, no. 9 (2019): 1–13

² Mohammad Iqbal and Erdyanto Dwi Nugroho, Legal Protection of Famous Trademarks, *Jurnal Usm Law Review* 4, no. 1 (2021): 105

³ Ni Putu Januaryanti Pande, “Perlindungan Konsumen Terhadap Produk Kosmetik Impor Yang Tidak Terdaftar Di Bbpom Denpasar,” *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 6, no. 1 (2017): 13

⁴ Luh Cahya Bungan Natah and Marwanto, “Perlindungan Hukum Terhadap Konsumen Yang Mengkonsumsi Produk Kosmetik Impor Ilegal Yang Mengandung Bahan Berbahaya,” *Jurnal Kertha Semaya* 8, no. 2 (2020): 211–216

⁵ Agung Sujatmiko, “Pembajakan Merek Merusak Perekonomian Nasional,” *Jurnal Hukum Pro Justitia*, 2007

tax revenues in cases of trademark infringement. So it should be taken into account for review, because pirated products that are marketed are not subject to tax. In addition, foreign investors will flee if the legal certainty of the brand does not run optimally or is uncertain.

Humaira (2021) has previously carried out research on the protection of cosmetic brands with the title “Legal Protection for Consumers Against Cosmetic Users Who Are Not Registered by the Food and Drug Supervisory Agency”. This study aims to identify and explain the legal protection for consumers who use cosmetics that are not registered with BPOM, to identify and explain the obstacles of BPOM Banda Aceh in legal protection of consumers using cosmetics that are not registered with BPOM and and efforts to resolve these obstacles. The results of this study explain that the implementation of legal protection for consumers has not been implemented optimally. Barriers to consumer protection are the knowledge of consumers and business actors about regulations related to cosmetics. The efforts made are prevention strategies (socialization with the community), supervision strategies and enforcement strategies. It is recommended to the public to be wiser in choosing cosmetic products.⁶

Meanwhile, Vini Alvionita's research (2019) entitled “Legal Protection for Consumers Against Cosmetic Products Containing Hazardous Ingredients” This study aims to determine the legal protection for consumers against products containing hazardous materials and to find out the legal sanctions against cosmetic business actors who use hazardous materials. The results of this study are legal protection for consumers against cosmetic products containing hazardous ingredients that are still widely circulated in the city of Samarinda and are sold by irresponsible producers and business actors as regulated in Law Number 8 of 1999 concerning Consumer Protection.⁷

Research by Tirtayasa (2022), entitled "Consumer Protection Against the Circulation of Cosmetics Containing Hazardous Substances in Denpasar City," This study aims to determine consumer protection against the circulation of cosmetics containing hazardous substances in the city of Denpasar and to find out the responsibility of business actors for the circulation of cosmetics that harm consumers. Legal protection for consumers for the distribution of cosmetics that harm consumers is carried out by every element involved based on Law No. 8 of 1999 concerning Consumer Protection and Regulation of the Indonesian POM RI Number HK.00.05.4.17.45 Regarding Cosmetics. Tanggung jawab pelaku usaha atas beredarnya The responsibility of business actors for the circulation of cosmetics that harm consumers is in the

⁶ Ayu Humaira and Fatahillah Yulia, “*Perlindungan Hukum Bagi Konsumen Terhadap Pengguna Kosmetik Yang Tidak Terdaftar Badan Pengawasan Obat Dan Makanan,*” *Jurnal Ilmiah Mahasiswa* 4, no. 2 (2021): 75–84

⁷ Vini Alvionita, “*Perlindungan Hukum Bagi Konsumen Terhadap Produk Kosmetik Yang Mengandung Bahan Berbahaya,*” *Journal of Law* 7, no. 2 (2021): 1–23

form of compensation given in the form of refunds or replacements in kind. If this is found to be intentional, the business actor may be subject to sanctions. There are two types of sanctions given if business actors are proven to produce dangerous cosmetics.⁸

This research is different from previous research, this research focuses more on examining how the legal protection of cosmetic brands from counterfeiting according to Law No. 20 of 2016 and how the obstacles and solutions in legal protection of cosmetic brands from counterfeiting according to Law No. 20 of 2016. The purpose of this study is to analyze the legal protection of cosmetic brands from counterfeiting according to Law No. 20 of 2016 and analyze the obstacles and solutions in legal protection of cosmetic brands from counterfeiting according to Law No. 20 of 2016.

PROBLEMS

1. How is the legal protection of cosmetic brands from counterfeiting according to Law No. 20 of 2016?
2. What are the problems and solutions in the legal protection of cosmetic brands from counterfeiting?

RESEARCH METHODS

The research method used is normative juridical. According to Soerjono Soekanto, the normative juridical approach is legal research carried out by examining library materials or secondary data as the basis for research by conducting a search on regulations and literature related to the problems studied. The nature of this research is adjusted to the problem used in descriptive analytical research, which describes a clear, detailed and systematic description of the object under study. Analytical means that the data obtained will be analyzed for solving problems in accordance with applicable legal provisions. The main thing that wants to be described is the legal protection of cosmetic brands from counterfeiting according to Law No. 20 of 2016. The legal materials used are primary legal materials in the form of statutory regulations and secondary legal materials in the form of books, scientific articles in the form of journals.

⁸ N.M.P. Tirtayasa, I.G., Budiarta, I.N.P., & Ujianti, “*Perlindungan Konsumen Terhadap Peredaran Kosmetik Yang Mengandung Zat Berbahaya Di Kota Denpasar,*” *Jurnal Konstruksi Hukum* 3, no. 1 (2022): 1–5

RESULTS AND DISCUSSION

Legal Protection Against Cosmetic Brands From Counterfeiting According to Law No. 20 Year 2016

In the era of free trade as it is today, there are many cosmetics on the market with various types of brands, prices, and qualities. Women's desire to look beautiful is widely used by irresponsible business actors to gain more profit by producing or trading cosmetics that do not meet the requirements for distribution. Therefore, the enactment of a statutory regulation is basically intended to change or direct certain behaviors and/or situations, from what was initially considered bad to be seen as a problem to an ideal situation.⁹

Legal protection is a variety of legal efforts that must be provided by law enforcement officers to provide a sense of security, both mentally and physically from interference and various threats from any party. Protection is aimed at legal subjects and legal objects. Legal objects according to article 499 of the Criminal Code, namely objects. Objects are everything that is useful for legal subjects or everything that is the subject of problems and interests for legal subjects or everything that can be the object of property rights.

Intellectual Property Rights or Intellectual Property Rights do not appear out of nowhere, to obtain intellectual property requires hard work and careful thought. Hard work and mature thinking also require a lot of time so that the results of that hard work need to be protected. One of the results of someone's hard work in the form of intellectual property is a brand. A mark is a sign in the form of an image, name, word, letters, numbers, color arrangement, or a combination of these elements which have distinguishing features and are used in the activities of trading in goods or services.

Trademark protection is a protection that protects its rights, rights to trademarks. Taking into account Law No. 20 of 2016 concerning Marks, it is clear that the right to a mark as a special right can only be granted by the state to a person if the mark in question is registered in the General Register of Marks (DUM). Brands for producers are an image as well as a good name for the company, besides that it is also part of the business strategy. There is no producer who does not use a brand as an identity for the goods it produces or the services it provides. The identity embodied in the brand is an identifier and at the same time a differentiator between the brand of a particular company and the brand of other companies.¹⁰

⁹ Hanny Delpyra, Marlia Sastro, and Sofyan Jafar, "*Perlindungan Hukum Bagi Konsumen Pengguna Kosmetik Yang Dijual Melalui Media Sosial*," *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh* 2, no. 3 (2021): 146–162

¹⁰ Zaenal Arifin and Muhammad Iqbal, "*Perlindungan Hukum Terhadap Merek Yang Terdaftar*," *Jurnal Ius Constituendum* 5, no. 1 (2020): 47–65

Counterfeiting of cosmetic brands occurs a lot in Indonesia, cosmetics which are goods that are widely sold freely and used every day are one of the reasons why cosmetic products are targeted for brand counterfeiting or the use of brands that are partly the same in essence as piggybacking famous cosmetic brands. Street vendors and traditional markets become targets for brand counterfeiters to market these fake cosmetic products. Perpetrators of brand counterfeiting take advantage of the difference in the prices of genuine and counterfeit goods to attract sales of counterfeit cosmetics. These goods are usually traded at a slanted price from the original price, even this price sometimes differs very much from the normal price of a well-known brand that has been recognized by the state, but many consumers do not know how to distinguish the goods or products that are has been recognized by the state as genuine or imitation, not even a small amount of bad faith from consumers in the form of deliberately buying counterfeit goods, for them of course they are certainly very interested in buying goods at low prices even though they are buying counterfeit goods.

Counterfeiting cosmetic brands will certainly harm business actors who will experience losses, not only reduced sales turnover but the image of cosmetic companies will decline when the fake cosmetic products are of low quality. Counterfeiting of brands is also dangerous for consumers when the composition of the ingredients used by the fake cosmetic brand is not in accordance with the rules and compositions that have obtained a distribution permit from the Food and Drug Supervisory Agency. It could be that the fake cosmetic brand contains harmful ingredients that will harm the health of its users.

Brand counterfeiting is an evil act from an economic point of view, because the counterfeit goods sold have a detrimental effect on consumers and have deceived consumers with these counterfeit goods. Imitating the label or packaging of an item is a behavior similar to brand counterfeiting. This behavior carried out by someone is not a dangerous act that causes death, but rather a competitor who wants to make a profit by using a brand that looks like it, causing confusion in the community. This behavior can be subject to criminal sanctions, namely in accordance with Articles 100, 101 and 102 of the Law of the Republic of Indonesia Law Number 20 of 2016 concerning Marks and Geographical Indications.

Criminal sanctions that can be given to counterfeiters in the form of imprisonment, imprisonment or fines are listed in Law Number 20 of 2016 concerning Marks and Geographical Indications, articles 100, 101, and 102. The prison sentence imposed on counterfeiters is a maximum of 5 years in prison and a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah). There are criminal acts of forgery of marks, for example, contained in Articles 100, 101, 102 of Law Number 20 of 2016 namely Complaints Delict not ordinary offenses. Investigators are those who process criminal acts in cases of forgery, namely civil servants investigators and police investigators at the Directorate General of Intellectual

Property Rights. In addition to being regulated in the trademark law itself, the violation committed by a person in relation to a mark is specified in Articles 382 and 393 of the Criminal Code. The use of a trademark without rights can be sued based on blindness in violation of Article 1365 of the Civil Code and as a plaintiff is obliged to prove that he suffered loss due to the actions of the defendant. Article 83 paragraph (1), there is a civil penalty if a person violates the trademark rights. So that the brand owner can sue for compensation and can demand the termination of the brand counterfeiting activities. Compensation here can be material or immaterial.¹¹

In addition, Article 60 of the Consumer Protection Law regulates the imposition of sanctions in which, (the Consumer Dispute Settlement Agency) has the right to determine penalties for entrepreneurs who have committed acts that violate the law as stipulated in the legislation, namely paying a maximum fine of Rp. 200,000. .000,00 (two hundred million rupiah). This sanction is limited liability. This is because, in addition to providing protection to consumers, the business actor is also still protected from things that cause the business actor to go bankrupt after making unlimited compensation payments to consumers who are harmed or the victim.

The abolition of the registration of a mark may also be filed by a third party in the form of a lawsuit to the Commercial Court based on Article 63 of Law Number 15 of 2001 concerning Marks for the reasons as referred to in Article 61 paragraph (2) letters a and b. The abolition of a Mark Registration based on a third party lawsuit will be carried out by the Directorate General of Intellectual Property Rights if the court's decision regarding this matter has been received and has permanent legal force. If the claim for the abolition of the registration of a mark is accepted and has permanent legal force, the Directorate General of Intellectual Property Rights will carry out the deletion of the mark in question from the General Register of Marks and announce it in the Official Gazette of Marks. The second form of resistance is a lawsuit for deletion, in which the plaintiff requests that a registered mark be removed from the General Register of Marks on the grounds that the owner of the mark has not used the mark for three consecutive years.¹²

Problems And Solutions In Providing Legal Protection For Cosmetic Brands From Counterfeiting According To The Law

The government has an important role in its efforts to eradicate brand counterfeiting in Indonesia. The government must also be able to provide legal certainty for business actors so that they can continue to run and develop their businesses without any brand counterfeiting.

¹¹ Ibid.

¹² Rahmadia Maudy Putri Karina and Rinitami Njatrijani, “*Perlindungan Hukum Bagi Pemegang Hak Merek Dagang Ikea Atas Penghapusan Merek Dagang,*” *Jurnal Pembangunan Hukum Indonesia* 1, no. 2 (2019): 194–212

The form of protection from the government is to mediate the interests of business actors and the public as consumers. The government must be able to foster and supervise consumer protection and the circulation of counterfeit goods in the community.

Cosmetics as goods that are needed and easily obtained are one of the goods that are prone to counterfeiting. Cheap and affordable cosmetic prices from the price of genuine goods are one of the reasons for the large number of consumer interest in counterfeit cosmetic products. Consumers are not aware of the dangers arising from the use of counterfeit cosmetics containing hazardous ingredients and do not have a distribution permit from the Food and Drug Supervisory Agency such as genuine cosmetics.

Obstacles in carrying out legal protection against counterfeiting of cosmetics, among others, regarding legal arrangements and law enforcement, because complaint offenses hinder legal protection against counterfeiting trademarks such as cosmetics so that it becomes a loophole for the circulation of counterfeit goods. The rise of brand counterfeiting, especially those targeting the traditional market, makes business actors reluctant to report acts of brand counterfeiting by brand owners. The lack of a deterrent effect also makes brand counterfeiting increasingly mushrooming in society. Law enforcement factors that are less than optimal in supervising the distribution of goods from producers to traders by the Department of Industry and Trade in the regions in preventing the circulation of counterfeit goods.

Second, the increasing number of counterfeit and cheap cosmetic brand products. The act of counterfeiting a brand can be categorized as a violation of the law based on bad faith which can result in losses for the first registered trademark holder. Brand counterfeiting can occur when a counterfeit product or a lower quality product is affixed with a registered or well-known mark. Counterfeiting of cosmetic brands will be increasingly difficult to control when sales of counterfeit cosmetics are made through online sales.

The third is the facilities that are not supported because there are no tools that make it easy to detect an item and the fifth is the lack of awareness of buyers to buy a quality item, and the desire to use and buy original brands that are not supported by a sufficient budget, to provide awareness to the community of brand owners by conducting socialization to complain about counterfeiting problems to the relevant authorities. Lastly, the awareness of consumers regarding the harmful effects of using fake cosmetics for health is still low and consumer knowledge in distinguishing genuine and fake cosmetics is still low.

The solution is to make regional regulations regarding brand counterfeiting, especially regarding MSMEs at this time which are starting to bloom with branded products and take repressive actions. This regional regulation aims to clarify and reinforce the existence of a law

on brand counterfeiting, because with the existence of a regional/municipal regulation on counterfeiting, it is possible to suppress the existence of brand counterfeiting. Making a regional regulation is a repressive effort, which is an effort made to resolve or cope with an event or events that have occurred. This repressive legal protection is given after a trademark right has been violated.

Another effort that can be made in an effort to suppress brand counterfeiting is by providing socialization to business actors and the public about the dangers of brand counterfeiting, especially those containing ingredients that are harmful to health. The community as consumers also needs to be given socialization about how to choose cosmetic products that are original and safe for health. Strict law enforcement from law enforcement will also create a deterrent effect for the perpetrators of counterfeiting brands.

CONCLUSION

Legal protection against brand counterfeiting is regulated by Law Number 20 of 2016 concerning Marks and Geographical Indications, but because it is a complaint offense (Complain Delict), brand protection has not been maximized because without a complaint from the brand holder no sanctions will be applied for brand infringement, so that supervision is needed by the Department of Industry and Trade throughout Indonesia in the distribution of goods to traders, so as to prevent the circulation of counterfeit goods. The government should also increase the awareness of traders and buyers about the brand and the awareness of brand holders in reporting indications of brand infringement in order to tackle brand infringement. The obstacles are in the legal setting, because complaint offenses hinder legal protection against counterfeiting trademarks such as cosmetics so that it becomes a loophole for the circulation of counterfeit goods, law enforcement that is less than optimal in supervision of the distribution of goods from producers to traders by the Industry and Trade Service, facilities that are less supportive because there is no tool that makes it easy to detect an item and the lack of awareness of buyers to buy a quality item, and the desire to use and buy original brands that are not supported by a sufficient budget. In addition, there are global constraints, to provide awareness to the brand owner community by socializing to complain about counterfeiting problems to the relevant authorities. The solution is to make regional regulations regarding brand counterfeiting, especially regarding MSMEs at this time which are starting to bloom with branded products and take repressive actions.

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