



Perspective of Cappuccino Cincau Sellers on Trademark Rights in South Banjarmasin Sub-District

Uswatun Hasanah, Hidayatul Husna, Dini Awwalia, Muhammad Noor Ridani,
Muhammad Haris

Faculty of Sharia, Antasari State Islamic University
Jalan Ahmad Yani, Km. 4.5 Banjarmasin, Indonesia
Email: uswatunhasanahbjm2@gmail.com

ABSTRACT

The right to a trademark is a special right that has been granted by the state to the holder of a trademark that has been recorded within a certain period of time by using the trademark itself or allowing others or using the trademark. There are still many people who do not know the use of the right to trademark. Due to the limited extension activities and awareness raising from the authorities about the usefulness of intellectual property rights, especially the right to trademark, until the business people only know that trademark registration must be done with the payment of expensive and complicated in the management. Though the trademark is very important, the trademark is used for identity, legal protection, and distinguish the goods or services produced. This study uses empirical legal research methods. The results of the analysis obtained it turns out that there are still many Cappuccino Cincau entrepreneurs who have not registered the trademark. This is because the seller lacks understanding of trademark rights and the seller feels no need to register the trademark for reasons of time-consuming and complicated management.

Keywords : Intellectual Property Rights, Trademark Rights, Entrepreneur Perspective.

ABSTRAK

Hak pada merek ialah hak khusus yang telah diberikan oleh negara pada pemegang merek yang telah tercatat dalam rentang waktu tertentu dengan penggunaan merek itu sendiri atau mengizinkan orang lain atau menggunakan merek tersebut. Masih banyak masyarakat yang belum mengetahui penggunaan hak atas merek. Karena terbatasnya kegiatan penyuluhan dan peningkatan kesadaran dari pihak yang berwenang tentang kegunaan hak kekayaan intelektual, khususnya hak atas merek, hingga para pelaku usaha hanya mengetahui bahwa pendaftaran merek harus dilakukan dengan pembayaran yang mahal dan rumit dalam pengurusannya. Padahal merek sangatlah penting, merek ini digunakan untuk identitas, perlindungan hukum, dan membedakan barang atau jasa yang dihasilkan. Dalam pengumpulan data pada percobaan ini memakai cara atau metode empiris dan kepustakaan. Hasil analisa yang diperoleh masih banyak penjual usaha Cappuccino Cincau yang belum mendaftarkan mereknya. Hal ini dikarenakan penjual kurang memahami hak merek dan penjual merasa tidak perlu mendaftarkan mereknya karena alasan pengurusan yang memakan waktu dan rumit.

Kata Kunci : Hak Kekayaan Intelektual, Hak Merek, Perspektif Pengusaha.

INTRODUCTION

The rapid development and advancement of information technology has led to many changes in the activities of people's lives in many fields, which have resulted in the emergence of new changes in the law. The use and application of information and technology must be expanded to support, maintain and strengthen national unity. Based on honesty for the sake of public needs, the use of technology and information that will help economic and business growth in order to create people's comfort.

After Indonesia ratified the World Trade Organization (WTO) agreement through Law No. 7 of 1994, Indonesia is obliged to harmonize the laws and regulations related to the agreement. Indonesia publishes Intellectual Property Rights which are intellectual creativity in the form of ideas, inventions and creative expressions, sometimes referred to as "products of thought". However, public awareness of intellectual property rights in Indonesia and other developing countries is still low. The evidence can be seen from the low number of IPR registrations owned by domestic creators and the many IPR violations committed by the public.¹

Intellectual Property Rights are special rights to protect the work of a person or group to create inventions in order to obtain mutual benefits between the creator and the user.² In order to protect the legal provisions on trademark holders, the government revoked the Trademark Act into Law No. 19 of 1992. According to the ratification of the WTO, which contains the provisions of Trade Related Aspects of Intellectual Property (TRIPs), improvements were made to Law No. 19 of 1992 with Law No. 14 of 1997 and again renewed in Law No. 15 of 2001. Then updated with Trademark Law Number 20 of 2016 concerning Trademarks and Geographical Indications. The purpose of this law is to ensure protection to trademark holders so that the trademark will not be misused for counterfeiting. In the industrialized world, certain brands are widely used in the community without the permission of the brand owner, which can harm the brand owner and at the same time mislead the public.³

¹ Sri Rahayu Gorda, Putu Eva Ditayani Antari, dan Ida Ayu Ketut Artami, "Sosialisasi Hak Cipta Dan Hak Merek Pada Kelompok Usaha Kecil Dan Menengah (UKM) Sebagai Aset Bisnis Di Era Industri Kreatif (Sosialisasi Hak Merek Dan Hak Paten Pada Masyarakat Desa Celuk Kabupaten Gianyar)," *Parta: Jurnal Pengabdian Kepada Masyarakat* 1, no. 1 (23 Desember 2020): 28.

² Danang Sunyoto dan Wika Harisa Putri, *Hukum Bisnis* (Yogyakarta: Pustaka Yusticia, 2016), 142.

³ Raissa Diva Kirana dan Hernawan Hadi, "Pemahaman Pelaku Usaha Mikro Kecil Dan Menengah Terhadap Urgensi Penerapan Hukum Kekayaan Intelektual Terkait Merek Ditinjau Dari Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis (Studi Di Dinas Koperasi Dan UMKM Surakarta)," *Jurnal Privat Law* 7, no. 1 (2 Februari 2019): 119, <https://doi.org/10.20961/privat.v7i1.30138>.

Trademark is the work of a person in the form of images, names, words, letters, numbers, color schemes or combinations thereof, having a distinctive characteristic in the sale of goods and services. Trademarks are divided into three parts, trademarks, service marks, and collective marks. The right to a trademark is a special right granted by the government to the holder of a trademark that has been registered within a predetermined period of time by using it for its own use or giving permission to other parties to use it.⁴

Special rights in a mark cannot be granted if the mark has no distinguishing features, such as numbers, letters, contains only information about the time, place of manufacture, shape and purpose, unless the registrant gets approval from the authorities. Trademarks cannot be used if they are marked with an official guarantee from a government agency. Trademarks can be used if the trademark user gets a license from the authorities.⁵

This right on the trademark is used for identity, legal protection, and becomes a differentiator on goods and services produced with similar companies. Currently, many people or businesses do not understand the protection of trademark rights. One of them is the business of Cappuccino Cincau in South Banjarmasin District.

Cappuccino Cincau Beverage Business is a type of business engaged in the provision of finished beverages along with its business systems and services. Cappuccino cincau is a type of coffee or cappuccino drink that combines with cincau yang x diserut or diced, served cold with a fairly affordable price, making this drink favored by many people from all kalangan, from small children, teenagers and even parents.⁶

In the practice of business actors, it was found that in South Banjarmasin District there are many Cappuccino Cincau business actors with various kinds of brands, ranging from ordinary to famous. However, there are still some businesses that do not understand the protection of trademark rights. Some trademark cases in South Banjarmasin District, Cappuccino Cincau business actors do not register the rights to the trademark. Of the Cappuccino Cincau businesses in South Banjarmasin Subdistrict there is one famous business that has started its business for 10 years and has regular customers, but the business actors in fact did not even register the rights to the trademark.

⁴ Sunyoto dan Putri, *Hukum Bisnis*, 143.

⁵ Insan Budi Maulana, *Perlindungan Merek Terkenal Di Indonesia Dari Masa Ke Masa* (Jakarta: PT Citra Aditya Bakti, 2018), 21.

⁶ Terisia Muharam Sesunan, Yaktiworo Indriani, dan Indah Listiana, "Bauran Pemasaran Dan Perilaku Konsumen Dalam Pengambilan Keputusan Pembelian Cappuccino Cincau," *Jurnal Ilmu Ilmu Agribisnis* 3, no. 1 (Januari 2015): 94.

METHODS

The method used in this writing is to use an empirical method, which means that the research goes directly to the field by means of interviews or observations, with the results of these interviews, the data to be researched will be obtained. The data collection process uses interviews and direct observation of Cappuccino Cincau sellers with qualitative descriptive analysis techniques.⁷

RESULTS AND DISCUSSION

Trademark Rights and Their Benefits to Business Actors

Trademark rights are one of the main rights that get protection from the mechanism of Intellectual Property Rights. Based on Law No. 15 of 2001, a trademark is "a sign in the form of a picture, name, word, letter, number, color arrangement or a combination of these elements, which has a distinctive characteristic and is used in trading activities on goods and services". The definition of trademark in the latest Law is Law Number 20 Year 2016 on Trademarks and Geographical Indications which is explained in detail about trademarks containing elements of creation.

Under the UUM, the right to a trademark is a special right granted by the government to the holder of a trademark that has been recorded within a certain period of time with the use of the trademark itself can also allow others. In Article 35 paragraph (1) of the Trademark Act, a registered trademark gets protection with a span of 10 years starting from the recording of the trademark and the time span can be extended. Trademark protection is very important, in addition to being a profitable brand asset for entrepreneurs (trademark holders), can also be a tool for the protection of society as a consumer of fraud against the quality of a product. Consumers will feel disadvantaged if a brand that is considered to be of high quality turns out to have been produced also by other parties with poor quality.⁸

Article 4 of the Trademark Law explains that trademarks cannot be registered due to bad faith applications. Trademarks cannot be registered if there are elements, such as contrary to the applicable laws and regulations.⁹ Indonesia amended the 1992 Trademark Law with Law Number 14 of 1997, then the country enacted the 2001 Trademark Law. Subsequent developments, some provisions in the Copyright Act of 2000 and Trademark

⁷ Muhaimin, *Metode Penelitian Hukum* (Nusa Tenggara Barat: Mataraman Univesity Press, 2020), 76, <https://zlibrary-id.se/book/19217997/c84306>.

⁸ Khoirul Hidayah, *Hukum Hak Kekayaan Intelektual* (Malang: Setara Press, 2017), 52.

⁹ Sunyoto dan Putri, *Hukum Bisnis*, 144.

Act of 2001 turned out to be outdated and need to be revised, this is the enactment of the Copyright Act of 2014 and Trademark Act of 2016.¹⁰

Some of the types that include trademark rights include:¹¹

- a. Trademark, is a brand used by business actors or several people in groups in order to distinguish it from similar products.
- b. Service marks, usually services used by individuals or several people in groups to distinguish them from similar services.
- c. Collective trademark, is a trademark that is used based on goods/services that have similar qualities.
- d. Rights on geographical indications, is a special right granted by the government to holders of rights on registered geographical indications on the condition of maintaining the reputation, quality and characteristics of geographical indications underlying its protection.

Trademarks must fulfill several elements, namely: as a distinguishing mark that has distinctive characteristics, which will be needed in trade, as a distinguishing power so as not to have similarities.¹² Brand owners have their own characteristics and can distinguish their products from competitors, and brand owners always support the quality of goods or services sold and increase new product innovation. So that consumers can easily distinguish/identify genuine products from the same or similar products, and consumers who are satisfied with certain products will buy or reuse the goods and/or services because the quality of the product is guaranteed.¹³

Trademark Registration Application Procedures

Actions to apply for trademark registration online include:

- a. Applicants send their email address to the Directorate General of Intellectual Property to obtain a registration account.
- b. Applicants pay a predetermined registration fee. The amount to be paid can be seen on the official website <http://www.dgip.go.id/tarifmerek>. Payment is made to a commercial bank designated by the Minister of Finance to receive tax-free deposits (tax free bank).

¹⁰ M. Hawin dan Budi Agus Riswandi, *Isu-isu Penting Hak Kekayaan Intelektual* (Yogyakarta: Gadjah Mada University Press, 2020), 118.

¹¹ Zulkifli Makkawaru, Kamsilaniah, dan Almusawir, *Hak Kekayaan Intelektual Seri Hak Cipta, Paten, Dan Merek* (Sukabumi: Farha Pustaka, 2021), 129.

¹² Elza Syarief dkk., "Implikasi Penggunaan Merek Kopi Tiam Berdasarkan Hukum Merek Di Indonesia," *Maleo Law Journal* 5, no. 1 (15 April 2021): 37.

¹³ *Modul Kekayaan Intelektual Bidang Merek dan Indikasi Geografis* (Jakarta: Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2019), 7.

- c. After making the payment, the applicant will receive a billing code (identification code) for the payment.
- d. Melewati situs formal: <https://merek.dgip.go.id> pelamar mengisi formulir digital.
- e. The applicant must fill in the personal data and upload the relevant trademark documents and then verify and finalize the process of applying for trademark rights.

According to article 20 of the Trademark and Geographical Indications Act, a mark cannot be registered if:

- a. Contrary to the state ideology, laws and regulations, morality, religion, decency, or public order.
- b. The same applies to the goods and/or services for which registration is sought, or the mere mention thereof.
- c. Contains elements that may mislead the public as to the origin, quality, type, size, variety, and intended use of the goods and/or services for which registration is sought, or is a protected variety name for the goods and/or services concerned.
- d. Contains information that is not in accordance with the quality, efficiency or effectiveness of the goods and/or services produced.
- e. Does not have distinguishing power and.
- f. Is a public name and/or symbol of public ownership.

Trademark Term and Dispute Resolution

Trademark is valid from the date of receipt until 10 (ten) years then the term has expired but the term of the trademark can be extended for the next 10 (ten) years at once. For how to renew the trademark can be done online or offline, can be represented if the trademark owner is unable to take care of how the renewal can be completed 6 (six) months before the trademark expires and 6 (six) months after the trademark expires with the payment of fines that have been set. The regulations for renewing trademarks are contained in Articles 35, 36, 37, 38, 39 to 40.

With regard to the requirements related to the trademark renewal process according to Article 36 of Law No. 20 Year 2016, the trademark must be used as stated in the trademark certificate, which means that the use of the goods/services trademark can be done on the trademark certificate. If the production of goods/services is completely stopped, the trademark cannot be renewed. The validity of the trademark is 10 (ten) years

and can be renewed again for the same time span. When the trademark registration period expires, the legal protection of the trademark will automatically end.¹⁴

A registered trademark can be used as a license agreement for the business manager of the trademark owner. Article 1 paragraph 18 states that a license is the granting of permission from the holder of a registered trademark to another person by conducting an agreement stated in the trademark laws and regulations.

This provision proves that the use of a registered mark if someone else uses the mark of the registered mark holder without a license, this will violate the Law of the Republic of Indonesia No. 20 of 2016 concerning Trademarks and Geographical Indications. If there is a violation of the registered trademark owner, there will be a legal conflict between the trademark holder and others unlawfully using the trademark of the trademark holder.

Trademark infringement issues can be resolved in the Commercial Court which is tasked with resolving trademark infringement issues between registered trademark holders and others who use similar trademarks unlawfully in principle or in whole. Law Number 20 Year 2016 on Trademarks and Geographical Indications, states in Article 3, the right to a trademark is obtained at the time of trademark registration. Article 3 explains that "registration" means that the application has passed the formal process, notification process and in-depth observation and received permission to issue the certificate. Trademark infringement claims can also be resolved through alternative problem solving through an agreement between the parties in accordance with Law Number 20 Year 2016 on Trademarks and Geographical Information.¹⁵

Perspective of Cappuccino Cincau Entrepreneurs on Trademark Rights

Observations of seven Cappuccino Cincau sellers in South Banjarmasin District yielded the following data:

1. Cappuccino Rizky Aisyah intersection four Beruntung Jaya

This business has been in business for 9 years since 2014 until now, this business is self-owned. From the results of the interview, the seller does not know about brand rights and has not registered his brand, even though he already has regular customers and is quite famous. However, Rizky Aisyah's Cappuccino

¹⁴ Zaenal Arifin dan Muhammad Iqbal, "Perlindungan Hukum Terhadap Merek Yang Terdaftar," *Jurnal Ius Constituendum* 5, no. 1 (13 Mei 2020): 55, <https://doi.org/10.26623/jic.v5i1.2117>.

¹⁵ Patrichia Weyni Lasut, "Penyelesaian Sengketa Gugatan Atas Pelanggaran Merek Menurut Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis," *Lex Et Societatis* 7, no. 1 (4 Februari 2019): 66, <https://doi.org/10.35796/les.v7i1.22848>.

business has registered its business at the Health Office because the seller wants to guarantee cleanliness and health to convince customers.

After the seller has learned about trademark rights, the seller is not interested in registering his business brand on the grounds that there is no time to register it, and the seller is sure that no one will follow the seller's brand because the brand is his own and the seller has a secret blend.

2. Yan Cappuccino Boba and Thai Tea

In this business has been for 7 years since 2016 until now, this business is self-owned. From the results of the interview, the seller this time also did not know about trademark rights and had not registered his trademark, even though he already had regular customers because it was located around the school. The reason the seller did not register his trademark was because he was not interested in registering his business brand, and the seller felt complicated to register his business brand.

3. Cappucino Ice Blend Saijan

This brand is quite famous among the public because it has quite a lot of branches. Although it already has many branches, it turns out that this business brand has not been registered. The seller argued that he did not register his business brand because he was sure that no one would copy it.

4. Kedai Keyla

This business brand has only been established for about 2 months. It is an independent business and the brand has not yet been registered. The seller did not know about trademark rights, but after learning about trademark rights and the benefits of registering her business brand, the seller was interested in registering it. And the seller asked how to register his business brand.

5. Abude Group Bumi Mas

This business brand is very famous among the community because it has many branches and has many customers. This business has been established from 2014 until now. Although it has been established for a long time and is well known, it turns out that this business brand has also not been registered but only opened a branch, where it turns out that the branch owner is an employee who has worked at the first Abude Group branch in Cempaka. Even though he did not register his business brand, the owner believes that the public must know the Abude Cappuccino brand, for this reason the owner also believes that no one will take his business brand and feels that it is already well-known among the public.

6. Cappucino Cincau Do it

This business brand has many branches of approximately 200 but unfortunately the business system is also only open branches and has not

registered the brand. The reason the owner did not register the brand was because he felt that the business brand was already big, and no one would imitate it.

7. Cappucino Cincau Loemer

This business has only been established for 1 month, this business is privately owned which has its own blend. This business brand has not been registered, because the seller does not have time to take care of the registration who wants to focus more on raising his business, especially since the business brand is still new. Although the seller knows the function of trademark rights, the seller is not interested in registering the brand.

From the results of interviews conducted by the author, there is a conclusion that the legal awareness of Cappuccino Cincau business actors in the South Banjarmasin Region against trademark rights is still lacking. They assume that there is no need to register the trademark because the business is already large and there may not be people who imitate it. In fact, it is precisely because of the enlargement of the brand of a business that it is very necessary to register the trademark to avoid any misuse of the responsible party and will actually have a bad impact and harm the entrepreneur. This lack of awareness needs to be followed up by relevant parties to provide awareness to the public that the registration of trademark rights is needed to provide protection and legal certainty so that entrepreneurs feel safe running their business.

CONCLUSION

The results of the discussion about the Understanding of Cappuccino Cincau Sellers About Trademark Rights in South Banjarmasin District, it can be seen that there are still many sellers who do not know about trademark rights. Due to the lack of socialization activities from the authorities, by explaining the benefits of intellectual property rights, especially against trademark rights, then from that the business actors will understand the usefulness of trademark rights. Not just understand that trademark registration must be done with the payment of expensive and complicated in its management. Although the trademark is very important, the trademark serves to distinguish the identity, legal protection and product of goods or services produced.

There are still many understandings among Cappuccino Cincau sellers in South Banjarmasin Subdistrict that are the reasons why their brands have not been registered. Some of these are related to the culture of helping each other, the culture of accepting brand imitation. Also related to financial factors is the understanding that sellers consider profits more important than registering their trademarks, sellers also consider the cost to be expensive and consider that they will not be harmed if their trademarks are not

registered. In addition to the lack of socialization by the government, the factors that make business actors not register their trademarks are that they do not have time, and believe that their trademarks will not be imitated by others. Through this paper we hope to make the basis of reference for socialization related to trademark rights can be intensified. This research can be further developed by asking the perspective of government agencies related to the efforts of socialization of trademark rights by the Directorate General of Intellectual Property of the Ministry of Law and Human Rights to see the perspectives of both parties and refine the shortcomings of our research.

Bibliography

- Arifin, Zaenal, dan Muhammad Iqbal. "Perlindungan Hukum Terhadap Merek Yang Terdaftar." *Jurnal Ius Constituendum* 5, no. 1 (13 Mei 2020): 47–65. <https://doi.org/10.26623/jic.v5i1.2117>.
- Gorda, Sri Rahayu, Putu Eva Ditayani Antari, dan Ida Ayu Ketut Artami. "Sosialisasi Hak Cipta Dan Hak Merek Pada Kelompok Usaha Kecil Dan Menengah (UKM) Sebagai Aset Bisnis Di Era Industri Kreatif (Sosialisasi Hak Merek Dan Hak Paten Pada Masyarakat Desa Celuk Kabupaten Gianyar)." *Parta: Jurnal Pengabdian Kepada Masyarakat* 1, no. 1 (23 Desember 2020): 27–31.
- Hawin, M., dan Budi Agus Riswandi. *Isu-isu Penting Hak Kekayaan Intelektual*. Yogyakarta: Gadjah Mada University Press, 2020.
- Hidayah, Khoirul. *Hukum Hak Kekayaan Intelektual*. Malang: Setara Press, 2017.
- Kirana, Raissa Diva, dan Hernawan Hadi. "Pemahaman Pelaku Usaha Mikro Kecil Dan Menengah Terhadap Urgensi Penerapan Hukum Kekayaan Intelektual Terkait Merek Ditinjau Dari Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis (Studi Di Dinas Koperasi Dan UMKM Surakarta)." *Jurnal Privat Law* 7, no. 1 (2 Februari 2019): 118–23. <https://doi.org/10.20961/privat.v7i1.30138>.
- Lasut, Patrichia Weyni. "Penyelesaian Sengketa Gugatan Atas Pelanggaran Merek Menurut Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis." *Lex Et Societatis* 7, no. 1 (4 Februari 2019). <https://doi.org/10.35796/les.v7i1.22848>.
- Makkawaru, Zulkifli, Kamsilaniah, dan Almusawir. *Hak Kekayaan Intelektual Seri Hak Cipta, Paten, Dan Merek*. Sukabumi: Farha Pustaka, 2021.
- Maulana, Insan Budi. *Perlindungan Merek Terkenal Di Indonesia Dari Masa Ke Masa*. Jakarta: PT Citra Aditya Bakti, 2018.
- Modul Kekayaan Intelektual Bidang Merek dan Indikasi Geografis*. Jakarta: Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2019.
- Muhaimin. *Metode Penelitian Hukum*. Nusa Tenggara Barat: Mataraman Univesity Press, 2020. <https://zlibrary-id.se/book/19217997/c84306>.
- Sesunan, Terisia Muharam, Yaktiwo Indriani, dan Indah Listiana. "Bauran Pemasaran Dan Perilaku Konsumen Dalam Pengambilan Keputusan Pembelian Cappuccino Cincin." *Jurnal Ilmu Ilmu Agribisnis* 3, no. 1 (Januari 2015): 93–99.
- Sunyoto, Danang, dan Wika Harisa Putri. *Hukum Bisnis*. Yogyakarta: Pustaka Yusticia, 2016.

Syarief, Elza, Rina Shahriyani Shahrullah, Febri Jaya, dan Edward Banner Purba. “Implikasi Penggunaan Merek Kopi Tiam Berdasarkan Hukum Merek Di Indonesia.” *Maleo Law Journal* 5, no. 1 (15 April 2021): 35–49.