

ROLES AND RESPONSIBILITIES OF LEGAL AID INSTITUTIONS IN TRADEMARK DISPUTES IN INDONESIA

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Abstract. The purpose of this research is to determine the role and responsibilities of legal aid institutions in trademark disputes in Indonesia. The method used is qualitative research, specifically normative legal research. The approach used is a legislative and conceptual approach. The data obtained indirectly from primary, secondary, and tertiary legal materials such as the 2016 Law No. 20, books, and legal research journals. The data collection to solve this problem is done through documentary or library research, using snowball sampling technique, by tracing legal regulations sources in the field of trademarks. After collecting the data, it is analyzed qualitatively. This technique involves studying legal materials or literature to provide an understanding of the research topic and help the writer draw accurate conclusions. The research findings conclude that legal aid institutions (LAI) play a strategic role in assisting individuals or groups, including businesses or other organizations, in resolving legal problems they face. LAIs can provide professional assistance in resolving trademark disputes, making the resolution process easier. In trademark disputes, LAIs can provide advocacy and assistance in the resolution process, including litigation or settlement outside the court. Thus, LAIs can ensure that the rights of parties involved in trademark disputes are protected and fulfilled in a professional and lawful manner.

Keywords: legal aid institutions; dispute; trademark.

I. INTRODUCTION

Brands play a very important role in economic life, especially in the trade of goods and services in order to distinguish similar products in one class. As an intangible asset, the brand has a very high economic value and becomes a very valuable asset for the company because it can be used for a number of products. A brand, as an intellectual property right, is a mark for identifying and distinguishing the products of one company from another. In an economic perspective, the brand is considered as part of the Intellectual Property Rights (IPR) that can contribute to economic development (Ali Masnun & Pratama [1]). Intellectual Property Rights is a legal concept that protects copyrights, patents, trademarks, and industrial design rights. The development of the world of science and technology has made the issue of Intellectual Property Rights more complex. One clear example is the increasing prevalence of crime in the trade sector which often involves violations of Intellectual Property Rights, especially in the field of brands. These criminals often use well-known brands to make huge profits without regard to the property rights of the brand owner (Cantika [2]).

According to Dewi & Baskoro [3] In the field of private international law, disputes regarding Intellectual Property Rights are one of the most complex issues. Differences in the laws and judicial systems of different countries make handling cases even more difficult. However, the recognition of Intellectual Property Rights by several international agreements such as TRIPS (Trade-Related Aspects of Intellectual Property Rights) and the Madrid Protocol has made it easier to handle cases of intellectual property rights disputes. The case of Prada Italy in Indonesia is one example of a brand dispute that has attracted the attention of researchers. In this case, the owner of the Prada Italy brand filed a lawsuit against the Prada Indonesia businessman because he felt that he was the original owner of the Prada brand. This case began when the owner of Prada Italy tried to register his trademark in Indonesia. However, they found that the Prada brand had been registered by one of the Indonesian businessmen. This became controversial because the owner of Prada Italy felt that the brand was his creation and he was the original owner of the brand. In general, marks can be registered by trademark owners in different countries by registering the mark at the local trademark registration office. However, this registration process takes a

long time and is expensive. Therefore, some entrepreneurs often use an easier way, namely by registering the brand in other countries first before registering in the country of origin of the brand (Dewi & Baskoro [3]). In the case of Prada Italy in Indonesia, Prada Indonesia entrepreneurs have obtained the Prada brand first before the original owner of the brand applies for registration. However, this raises the question of whether the entrepreneur is really entitled to the brand. As a solution, the owner of the Prada Italy brand filed a lawsuit in an Indonesian court and stated that the brand was his creation and he was the original owner of the mark (Dewi & Baskoro [4]). The trademark dispute in the Prada Italy case in Indonesia illustrates the complexity of Intellectual Property Rights issues in private international law. Recognition of trademark rights must be protected and recognized in other countries, but the implementation and enforcement of those rights is often hampered by differences in legal and regulatory systems in different countries.

Based on the results of previous research, the economic impact of brand disputes is very detrimental to brand owners, consumers, and countries. Brand owners suffer losses because the goods they produce are unable to compete with pirated brands that are sold at lower prices. Meanwhile, the state is also disadvantaged by not receiving revenue from sales tax. This greatly impacts the source of state revenue which is significant enough to finance development. The occurrence of brand disputes can also lead to capital flight, which can have an impact on increasing the unemployment rate. Therefore, law enforcement on intellectual property rights needs to be strengthened to prevent trademark disputes that harm all related parties (Disemadi & Mustamin [5]). In the case of another trademark dispute between KOI and KONI The Olympic Five Rings Symbol has been registered as a mark in a brand class classification, the registration has qualified a mark and the Director General of Haki has issued a five-ring brand registration number in three class classifications. With the issuance of a registration number, the mark can be protected against other parties who have bad intentions to use the mark, and also the party who registers the mark has the exclusive right to obtain royalties for the use of the mark by agreement (Prasetyo [6]).

Brand disputes are one of the most common legal issues in Indonesia, especially with the increasing number of companies operating in Indonesia. A trademark dispute occurs when one or more companies claim to have rights to the same or similar marks, which then causes conflicts between the two parties. Brand disputes can have a huge impact on a company, especially in terms of reputation and finances, so it is very important to resolve these disputes in an effective manner. Legal aid institutions are one of the parties that can help resolve trademark disputes in Indonesia. There are several legal aid institutions that can provide legal assistance related to trademark disputes, such as the Legal Aid Institute (LAI) and the Trademark Lawyers Association (APM). However, the role of legal aid agencies in resolving brand disputes is not yet fully known to the public, so many clients do not know where to seek legal help. In this study, the role of legal aid institutions in resolving brand disputes

became the main focus. This study aims to understand how legal aid agencies can help clients who are facing brand disputes, as well as the extent of the effectiveness of the assistance provided by these institutions in resolving brand disputes.

II. RESEARCH METHODS

The research method used in this study is doctrinal, namely using normative legal research methods or Normative Legal Research (Krisanto [7]). The approach used is a statutory approach and a conceptual approach. The data used are secondary data, namely data obtained indirectly from the source or object of research in the form of primary, secondary and tertiary legal materials (Adlini et al. [8]). These legal materials include Law Number 20 of 2016, books, and legal research journals. Data collection in solving this problem, is carried out by documentary studies or literature studies (Library Research), with a method of collecting data using a snowball technique, by tracing the sources of laws and regulations in the field of brands. After collecting, it is then analyzed qualitatively (Denny et al. [9]). This analysis technique is a technique in which the materials or literature of legal literature will be studied so that it can provide an overview of the research topic so as to help the author make a correct conclusion.

III. RESULTS AND DISCUSSION

Legal aid institutions have a very important role in ensuring people's rights to access justice. Legal aid institutions are independent institutions engaged in the legal field and provide legal assistance free of charge or at affordable costs to people in need (Fauzi et al. [10]). According to Mochtar Kusumaatmadja, legal aid institutions have an important role in ensuring that everyone has access to justice without having to worry about the costs involved. Furthermore, Prof. Mochtar Kusumaatmadja also stated that legal aid institutions not only provide legal assistance to financially disadvantaged individuals, but also help individuals or groups who have difficulty in asserting their rights before the law (Siwi [11]). In addition, Benyamin Hadinata, a legal aid institution also has an important role in protecting the rights of people who are vulnerable to rights violations, such as victims of violence, victims of discrimination, and minority groups (Marbun [12]).

Furthermore, Benyamin Hadinata explained that legal aid institutions play a role in educating the public about their rights and providing information about legal issues that are often faced by the community. This is done to raise public awareness of their rights and increase their participation in legal proceedings (Tanjung [13]). In addition, legal aid institutions also have an important role in resolving disputes outside the court. In the event of a trademark dispute, legal aid agencies can help both parties involved in the dispute to reach an agreement through mediation and negotiation. This is very

important, because mediation and negotiation can avoid lengthy and costly judicial processes (Amalia & Fawaid [14]).

However, legal aid institutions in Indonesia still have some challenges in carrying out their duties. Some of these challenges include limited human and financial resources, lack of support from the government and community, and regulations that do not always support the efforts of legal aid institutions in providing legal assistance to the community. When it comes to brand disputes, one of the challenges faced by legal aid agencies is the lack of public understanding of the importance of brands as business assets. Therefore, legal aid agencies need to increase efforts to educate the public and increase their awareness of the importance of brands in business (Denny et al. [9]). In addition, in handling trademark disputes, legal aid institutions also need to have sufficient knowledge about trademark law and legal procedures applicable in Indonesia. This is because trademark disputes involve quite complex legal issues and require a deep understanding of trademark law (Elshalinge [15]).

In carrying out their duties, legal aid institutions must also pay attention to aspects of ethics and professionalism in providing legal assistance to the community. This is done to maintain the credibility and reputation of legal aid institutions in the eyes of the public. For this reason, legal aid institutions can also cooperate with other institutions in handling trademark disputes, such as the Intellectual Property Rights Agency (IPR) and the Commercial Court. This cooperation aims to speed up the process of resolving brand disputes and ensure that both parties involved in disputes get equal justice. To strengthen the role of legal aid institutions in handling trademark disputes, the government also needs to provide sufficient support in the form of adequate regulations and sufficient budget to finance the activities of legal aid institutions. It aims to strengthen the role of legal aid institutions in providing legal aid to the community and increase public access to justice (Jafar [16]).

Related to trademarks and others, the government also needs to step up efforts to raise public awareness about their rights and the importance of brands in business. This can be done through socialization and education campaigns about brand law and intellectual rights. In addition, the role of legal aid institutions can also be increased through cooperation with non-governmental organizations (NGOs), professional organizations, and academic institutions. This cooperation can assist legal aid institutions in improving their capacity and competence in handling brand disputes (Saraswati & R. [17]). In the event of a brand dispute, legal aid agencies can also play a more proactive role in helping communities to protect their brands. One way that can be done is by providing consultation and guidance on the trademark registration process and trademark rights to the public. Legal aid institutions need to pay attention to aspects of ethics and professionalism, and continue to improve their capacity and competence in handling brand disputes. With support from the government and the community, as well as cooperation with various parties, it is hoped that the role of legal aid institutions in handling brand disputes can be further improved and provide greater benefits to the community.

Thus, people's brand rights and intellectual property can be better protected and people can develop their business better (Rahmat [18]).

The guarantee of obtaining legal assistance is contained in the 1945 Constitution, the Law, the fiber of its implementing regulations, every citizen simultaneously has a position in law and government and is obliged to uphold the law and government with no exception (Article 27 paragraph (1) of the 1945 Constitution).⁹ Everyone has the right to recognition, guarantee, protection, and just legal certainty and equal practice before the law (Article 28D paragraph (1) of the 1945 Constitution).¹⁰ Law of the Republic of Indonesia No. 16 Year 2011 On Legal Aid. Broadly speaking, UUBH regulates the procedures for providing free legal aid to Legal Aid Recipients in which are poor people or groups of people who face legal problems. Legal Aid Providers who have met the requirements of UUBH have the right to recruit Advocates, paralegals, lecturers, and students of the Faculty of Law in carrying out legal aid services which include non-litigation and litigation (Siwi [11]).

After the UUBH was promulgated, the Government through the Ministry of Law and Human Rights promulgated Regulation of the Minister of Law and Human Rights No. 3 of 2013 concerning Procedures for Verification and Accreditation of LAI or Orkemas that provides legal assistance to poor people or groups of people. This is made as an implementer of the provisions of Article 7 paragraph (4) of the UUBH. Government Regulation No. 42 of 2013 concerning the Terms and Procedures for Providing Legal Aid and Disbursing Legal Aid Funds is a derivative of the UUBH made by the government for the purposes of implementing Article 15 paragraph (5) and Article 18 of UUBH, PP No. 42 of 2013 promulgated on May 23, 2013. The Minister as the organizer of legal aid in the same year issued Permenkumham No. 22 of 2013 concerning the Implementation Regulations of PP No. 42 of 2013. Permenkumham No. 22 of 2013 was promulgated where its creation aims to implement the provisions of Article 17, Article 23 paragraph (4), Article 29 paragraph (2), and Article 31 paragraph (3) of PP No. 42 of 2013. Interesting things discussed were the standardization of legal aid which regulates litigation and non-litigation legal aid standards, legal aid implementation standards, legal aid provision standards, and reporting standards for Legal Aid Provider budget management. Law Number 16 of 2011 concerning Legal Aid is a legal umbrella for legal aid institutions in providing legal aid that supports fair and equitable access to justice for every person or group of poor people who cannot fulfill basic rights properly and independently, in accordance with the provisions in Article 5 paragraph (1) of Law Number 16 of 2011 concerning Legal Aid (Fauzi et al. [10]).

According to Law Number 16 of 2011 concerning Legal Aid, the implementation of legal aid is organized by the minister who organizes government affairs in the field of law and human rights which is currently the Ministry of Law and Human Rights of the Republic of Indonesia. As one form of fulfillment of Human Rights for justice seekers in Article 3 of the Law on Legal Aid Implementation aims to guarantee and

fulfill the right for Legal Aid Recipients to get access to justice, realize the constitutional rights of all citizens in accordance with the principle of equality in law, ensure the certainty of the implementation of Legal Aid is carried out evenly throughout the territory of the Republic of Indonesia to realize the judiciary that is effective, efficient, and accountable.

In Law Number 16 of 2011, the Minister has the authority to provide legal aid with tasks including the preparation of legal aid policies, standards, and budget plans as well as budget management in an effective, efficient, transparent, and accountable manner. In addition, the Minister is also required to compile and submit a report on the implementation of legal aid to the House of Representatives at the end of each fiscal year. In Article 7 paragraph (1) of the Law, the Minister has the authority to supervise and ensure the implementation of legal aid in accordance with the principles and objectives stipulated in the law, as well as verify and accredit legal aid institutions or community organizations that meet the qualifications as legal aid providers. The verification and accreditation are carried out every 3 years and the Minister forms a committee consisting of various elements such as ministries that organize government affairs in the field of law and human rights, academics, community leaders, and institutions or organizations that provide legal aid services. The requirements that must be met by legal aid institutions as legal aid providers include being a legal entity, accredited by law, having a permanent office or secretariat, having an administrator, and having a legal aid program (Siwi [11]).

The Legal Aid Institute (LAI) as a provider of legal aid as referred to in Article 1 point 3 must meet the requirements as a provider of legal aid including: 1. legal entity. 2. be accredited under this Act. 3. Have a fixed office or secretariat. 4. Have a caretaker. 5. have a Legal aid program. As well as in providing legal aid has the right: 1. Recruiting advocates, paralegals, lecturers, and law faculty students. 2. Perform Legal aid services. 3. Organizing legal counseling, legal consultation, and other activity programs related to the implementation of Legal Aid. 4. Receive a budget from the state to carry out legal aid under this Law. 5. Issue opinions or statements in defending cases that are their responsibility in court hearings in accordance with the provisions of laws and regulations. 6. Obtain information and other data from the government or other agencies, for the purpose of case defense. 7. Obtain guarantees of legal protection, security, and safety while providing legal assistance. In Article 10 legal aid providers are obliged to: 1. report to the minister about legal aid programs. 2. Report on any use of the state budget used for the provision of legal aid under this law. 3. Organizing legal aid education and training for advocates, paralegals, lecturers, law faculty students recruited as referred to in Article 9 letter a. 4. Maintain the confidentiality of data, information, and/or information obtained from recipients of legal aid related to the case being handled, unless otherwise stipulated by law. 5. Provide legal assistance to recipients of legal aid based on the terms and procedures specified in this law until the case is over, unless there is a legally valid reason.

Law Number 16 of 2011 also regulates the authority of the Minister in providing legal aid, in Article 7 paragraph (1), namely: 1. supervise and ensure that the implementation of Legal Aid and the provision of legal aid are carried out in accordance with the principles and objectives determined, namely in the form of state interests, the interests of others, or requests from the recipients of legal aid themselves. 6. Maintain ethics and morals in providing legal aid and do not carry out practices that can harm legal aid recipients. If the legal aid provider violates its obligations or takes actions that harm the legal aid recipient, the legal aid recipient has the right to report the matter to the minister or designated institution. In addition, legal aid providers can also be sanctioned in accordance with the provisions of applicable laws and regulations (Yunus & Djafaar [19]). In carrying out its duties, the Legal Aid Institute as a provider of legal aid cannot be prosecuted civilly or criminally in providing legal assistance for which it is responsible which is carried out in good faith both inside and outside the court in accordance with legal aid standards based on laws and regulations and / or the advocate code of ethics.20 Article 12 and Article 13 regulate the rights and obligations of recipients of legal aid, namely: Legal Aid Recipients have the right: 1. To obtain Legal Aid until the legal problem is resolved and/or the case has permanent legal force, as long as the Legal Aid Recipient concerned does not revoke the power of attorney. 2. Obtain Legal Aid in accordance with the Legal Aid Standards and/or the Advocate Code of Ethics. 3. Obtain information and documents related to the implementation of the provision of Legal Aid in accordance with the provisions of laws and regulations. Legal Aid Recipients must: 1. Submit evidence, information, and/or case information correctly to the Legal Aid Provider. 2. Assist in the smooth provision of Legal Aid. Mechanism or Procedure for Providing Legal Aid as stipulated in Law No. 16 of 2011, in Article 14 and Article (Paat, [20]).

IV. CONCLUSION

From the results and discussion above, it can be concluded that the legal aid institution (LAI) has a strategic role in assisting individuals or groups in the form of business entities or other organizations in solving legal problems faced. LAI can provide professional assistance in resolving brand disputes, so that the settlement process can be easier. In the event of a trademark dispute, LAI can provide advocacy and assistance in the settlement process, including in the case of lawsuits or out-of-court settlements. Thus, LAI can ensure that the rights of parties involved in trademark disputes are protected and fulfilled in a professional manner and in accordance with applicable law. In various cases, especially brand disputes, legal aid institutions or abbreviated as LAI have roles, among others: a. Recruiting advocates, paralegals, lecturers, and law faculty students. b. Perform Legal aid services. c. Organizing legal counseling, legal consultation, and other activity programs related to the implementation of Legal Aid. d. Receive a budget from the state to carry out legal

assistance under this Law. e. Issue opinions or statements in defending cases that are their responsibility in court hearings in accordance with the provisions of laws and regulations. f. Obtain information and other data from the government or other agencies, for the purpose of case defense. 7. Obtain guarantees of legal protection, security, and safety while providing legal assistance.

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