

## **Application of the Constituent System of Trademark Registration Under Law Number 20 Year 2016 In Aceh**

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**Abstract :** Brand in Aceh who becomes the object of piracy is usually associated with the brand reputation, businessmen who are deceitful can confuse the public in selecting the original goods with good quality. Government through Act No. 2016 20 years about the brand and the rule that contains the geographical indication, polemics which occurred in this era of globalization, but in fact the practice carried out by the perpetrators are still many businesses do not comply with the law current especially Aceh. This study uses empirical methods of juridical research, using secondary data collection techniques and primary data through a library of techniques and interview. Research results indicate that the reason for the businessmen in Aceh to register its brand to obtain legal certainty when dealing with the law, while the reasons not to register its brand by businessmen due to the need of time relatively long and obstacles faced for the businessmen in Aceh who did not register the brand due to the registration fee is too expensive and too convoluted Procedural.

**Keywords:** Application, constituent system, trademark registration

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### **I. INTRODUCTION**

The rapid development of small businesses in ACEH resulted in increased business competition among small traders, so that some perpetrators do the deeds that are not justified by the law, such as the utilization of other entrepreneurs brand. This resulted in the original brand owner getting the material loss and the work he produced. Brand violations are often encountered by brand use as a result of the resulting work that gives the character of a product produced and sold to consumers so that it has its own value and quality for the brand that Generated (Sembiring, 2002: 55).

Brand piracy is an act that harms businesses that have their own brand or brand (Mamahit, 2013: 113). Brand-tracking is often an object for other businesses to increase sales by lowering the brand's quality, resulting in the brand owner's sales and legal collateral for their products. Brand hijacking objects are usually associated with the brand's reputation (Rifai, 2016: 445). In this case it can be explained several factors or reasons for the perpetrators to do brand piracy, among others, can generate material profit easily and quickly. The brand that is hacked by the business actors are brands or goods with good quality and market behavior. These hijackers basically do not want to lose to what will be sold to consumers by hijacking a famous brand or not without having to advertise for products that require cost. The advantage produced by the brand piracy is very promising for them by utilizing fame over the brand of others, if it was built with a brand that has not clear fame he could lose up on the goods to be sold.

Brand or Brand will be recognized by consumers as a character in the product produced as identity given the name of the product and goods to be sold by the business actors, and also guarantee the quality of the product with similar products To convince consumers to choose the products it (Firmansyah, 2013: 30).

The brand piracy businesses can make the society to choose the products it produces that will cause the wrong community to choose the original product (Harifaningsh, 2009: 10). As an act of cheating in the trading activities of the brand piracy seeks profit using a fast and easy way with all forms of action to commit violations of the business, legal norms, and violate the provisions of the law (Djubaedah, 2004: 235).

For the important business owner has an identity (brand) to distinguish from one product with another similar product, moreover if the effort is done for long term (Syafrinaldi, 2006: 45). Naturally, with the brand a business will be easier to market, as good as any quality of a consumer product will not be interesting to buy it if it does not have a brand. The brand attached to a product can be intertwined with two sides of the hand, which gives a significant difference, but is interconnected and requires (Tengor, 2016: 369).

There is brand establishment as a sign that distinguishes the sales results in the market, whether it is a product or service. Brands make different products with other will facilitate the consumer in having them based

on various considerations (Panjaitan, 2016: 332). This can also lead to loyal customers for the use of a product. Consumer loyalty to the brand can be seen from the introduction of an item. Thus, the brand is not only for the differentiator as an unpriceless investment (Saidi, 2007: 359).

Customers who are loyal to the brand are an asset of business, this consumer will raise its intention to buy the brand in the form of goods are faced with other options that offer a relatively low price. Consequently, it is important to be protected even more by increasing the small business in Aceh although in terms of quality is not optimal.

Understanding of small entrepreneurs in Aceh to the importance of the brand registration is not good, this happens because of several blocking factors such as funds and the registration time of the brand so that small entrepreneurs in Aceh do not register their brands. Article 1 paragraph (5) of Law No. 20 of 2016 governs the constituent system whose content of the brand is an exclusive right granted by the state to the owner of the registered brand within a certain period of time by using its brand rights or give permission to the other party to be able to use them.

The conjugatif system depends on the registration or unregister of the brand. In the constituent system, containing the principle of first to file, meaning the registration of the brand will be given to the business actors who first registered the brand to the registration request, the Government will not issue the trademark registration rights That there are similarities with the brand filed in advance with similar items (Purwaka, 2017: 103).

The constituent system is implemented so that the legal certainty guarantees are achieved, by integrating the brand (Mayana, 2017: 1132). The weakness of this contemplation system is not every business person can lawfully possess it. Owners of the limited brand registration fee, then will not cause the mess in determining the owner of the first right if problems arise. Mandatory enrolment provisions are coupled with potential first registration principles to accommodate matters as follows (Suratmaja, 2017: 30):

1. Provide legal warranty against the owner who registers his first brand to be protected by obtaining a general registration of the,
2. Provide legal certainty on the fact of brand registration that makes evidence in the event of a dispute, so it is Terhondar of the deforgery know the trademark,
3. To realize the allegations related to the original owner in order to avoid the controversy between the original owner and the one who registered it, because the alleged law holds the fact of the first registration.
4. The foundation of the brand holder in specifying it based on the principle of registration is also the evidence based on the documents that are official, so that the legal conclusions can be concluded, very easily compare to the registration of declarative system . Dispute resolution is much simpler with fast process and lighter cost.

The constituent is meant to be a legal assumption arising out of the first application of applying for a brand registration by a party entitled to the brand. The brand application is carried out in good faith for the application of a brand registration which is not only submitted based on the official terms only, but also the examination of the material and its subplants. Then the new system is introduced about the announcement of the brand registration request for the purpose of providing opportunities for the general public about how important the brand is being registered (Jened, 2015: 16).

Based on the explanation above, there are several issues that become the object of study in this research, namely: what is the reason to register and not register a brand based on the small entrepreneurs of UUM IG in Aceh, And what are the obstacles faced in carrying out the brand registration obligation to get legal protection based on IG UUM on small businesses in Aceh. The purpose of this research is to explain the reason for registering and not registering a brand based on the UUM IG on small businesses in ACEH and because of the ineffectiveness of the applicability of UUM IG.

There are some research writing that resembles related to the writing of this research, namely: research by Achmad Fata'al Chuzaibi in 2011, the results of research analyzing the implementation of the constituent system based on the law No. 15 years 2001 for micro and medium entrepreneurs (Chuzaibi, 2011: 155). The second research by R. Murjiyanto in 2017, which discusses the philosophical basis of shifting the brand registration from declarative system to the constituent system, in the result there is still a brand registration that is similar to that of other people Has a popularity that creates a cancellation dispute, and the enforcement of a constituent system in order to provide a fair and equitable legal (Murjiyanto, 2017: 54). Third research by Alelxander Josua Hutagalung in 2017, discussing brand law with declaratory system and constituent system that has been in force in Indonesia, advantages and disadvantages of acquisition of brand rights based on system Declarative fan contitles, implementation of law enforcement in the event of a conflict of interest between the holder of the brand rights based on declarative system and based on the system of Contitles (Hendrawati, 2010: 9).

The approach in this study using this type of empirical research is the approach in seeing the fact that there is a prkatic in the application of the field. This approach uses a direct sociological approach. The data used

is secondary data obtained from references to literature books, articles and various other legal materials, subsequent data of primary data, obtained in the form of direct interviews with respondents and informant by using Questions concerning in this study. The data collection techniques used in this research are the decomposition or explanation of merging instruments (Soekanto, 2014: 43). See the legal symptoms related to the research and data obtained directly by way of interviews, with the event obtaining information by asking directly to the parties interviewed especially those who Relevant to the research material. Reasons to register and not register brands based on IG UUM small entrepreneurs in Aceh.

## **II. LITERATURE REVIEW**

Philosophy was first used in 700 BCE in Greece. Philosophy is known in Greek as *Philosophia*, consisting of two syllables namely *philos* or *philia* and also *Sophos*. *Philos* itself means love of friendship while *sophos* means wisdom, work, wisdom, creativity, innovation, knowledge and experience. Therefore, *Philosophia* can be interpreted as a wise love or a truth (Bakhtiar, 1997: 3). Basically the philosophy itself can be divided into three aspects, namely: ontology aspects, estomology aspects and axiology aspects, these three aspects are the basis of the establishment of legal philosophy that can actually resolve the question in the problem In brand registrations.

Ontology is the basis of the theory of fact that explains the nature of a thing that occurs or exists. Ontology itself comes from the Greek term, consisting of two syllables, meaning ' the residing ' and *logos* meaning science or teaching. Therefore ontology means science or teaching about something that happens or that is. In the convolutive system, the explanation of ontology is present in the Constitution 1945, which has the intention that the Indonesian nation recognizes indirectly that everyone has the right to himself. So, if not admit it then indirectly Indonesia recognizes slavery, this itself is obtained in the opening of the first 1945 paragraph of the Constitution. Thus, the work of a person should also be recognized as his work in accordance with Labour Theory. Furthermore, justice for the whole community that, Indonesian citizen wholly entitled to legal protection organized by the Government. The implementation of the registration of the famous brand or not, already listed in the law number 15 year 2001 about the brand, but since the development of the era of globalization in terms of technology is governed in the new law is Law number 16 year 2016 on the brand and geographic that regulates the problem of complex brand registrations. The problem is for small business people to own brand but not registered which can be taken over by other business actors who are then registered. Unlike the brand that has been well-known even though it is not registered, it is still a legal protection for its brand owner. The laws relating to this writing are:

1. Law number 20 year 2016 on trademark and geographic registrar.
2. Law No. 13 year 2016 on patent.
3. Law number 28 year 2014 on copyright.
4. Law Number 31 year 2000 about industrial design.
5. Law Number 30 year 2000 on trade secrets.

There are several factors of unregistered brand violations used by certain parties that are:

1. Get profit easily and for sure, this is due to products sold by business piracy is a brand or goods that are selling market;
2. The perpetrators of brand piracy bear a very thin risk, these ha are deposited by the running of products or goods sold;
3. There is a difference in the event that is very large when compared to a product it produces or by selling its original goods, it is obvious that the perpetrators of brand piracy do fraudulent trading activities.

The explanation above can be concluded that, every business person who owns the brand does not understand the law related to the brand, so that the small business actors in Aceh can not avoid the actions of other business actors who are not good. Business actors who have not registered their brand so that they can immediately register their brands to gain more profit and provide assurance to the consumers of the brand.

Brand or better known as the term intellectual property rights since the 18th century which was pioneered by John Locke in the year 1632 S/d 1704, since this time the protection of intellectual property rights is known by the Alaran of natural law (Granstrand, 1999: 23). Locke said that, every person has a right to himself who comes in a way that is so difficult that the work that has been achieved painstakingly by discovering, processing, and consoling personality in a matter. Everything in the face of the earth is essentially the property of all mankind. However, everything is not all used without directly being produced and processed first. Therefore, John Locke emphasizes the importance of the appreciation of the award of others who have been in the process and cultivate something that is sourced from nature that is proprietary to it. Then Justin Hughes contributed Locke's view of intellectual property rights to the statement of intellectual property rights acquired using the process of learning and understanding something or cognitive (Hughes, 1988: 5). The way of study taken can be by:

First, theory of legal certainty, this theory provides an opportunity for business actors to be independent. These law-streams saw the law as a set of rules. The purpose of this law is to ensure the creation of legal certainty that only makes the rule of law in writing. The nature of the rules of law proves that the law does not merely seek justice but also should be able to give certainty to the general public (Ali, 2002: 82).

Legal certainty for businesses that register brands conducted by small entrepreneurs in ACEH based on the constituent system can provide assurance to small entrepreneurs in order to retain and protect the brand that has been used First that has been issued a power to develop an effort to use the brand.

Secondly, the theory of undoing, this theory aims to give a role to the law during the process of the processing of the use by addressing the certainty and fairness. According to this theory good law when legal norms provide benefits to society and create the welfare of society. According to Johnson, it creates a correlation between law and society in the way social law is stronger than the legal teachings created by individuals (Johnson, 2006: 204). By consideration of the benefit of the implementation of the constituent system and constraints on small entrepreneurs in Aceh in registering its brand that provides good benefits for the community and can be the welfare of society.

The axiology of the Greek word *Axios*, meaning the value and word of *Logos*, means science. Axiology is a science that seeks the essence of a value, which can be reviewed from a philosophy that shows the rules of practice in the application of science. The benefits of brand registration can be described as follows:

1. The owner will get economic benefits in the form of royalty when it is enlisted;
2. Avoid monopoly fraud in unhealthy business competition;
3. The right to enjoy the material from the object;
4. The right to make free of the object is full of sovereignty, in this context the owner may provide to sell and surrender his possessions to anyone;
5. Benefits for businesses other than brands are increasingly familiar with the wider, the brand represents the quality of the different products with other similar products. In the case of having a brand certificate, the business person may conduct or claim to the parties who will impersonate the brand without the owner's knowledge.

These benefits explain the importance of brand registration by business actors who can provide substantial benefits to their owners and generally have an economic and social impact on the community. The reasons for business actors register their brand to obtain the following things:

1. Business actors have understood the importance of brands in their business activities;
2. Can provide legal certainty when dealing with the law;
3. To convince consumers to choose the brand they buy;
4. Provide professionalism of production to consumers.

Conversely, many business actors do not register the brand with various reasons/factors, First factor, the owner of the brand in Aceh assumed that it is rarely a *sengeketa* on the brand with other business actors. The business actors in Aceh are safe with a brand that is not registered, as a result of other businesses never faking it with a good faith and not be harmed by other business actors (Dewi, 2013: 335). According to the results of the brand registration interview is not useful anymore and considered useless by the business actors, plus the *Baiaya* that is so big and takes a long time in the management of its brand. This is a guarantee that is a business person who understands about the applicability of brand protection in Indonesia registered, but he does not want to register it. This shows that the awareness or adherence to the law by business actors is still low, causing misunderstanding by the owners of brands who do not register. Government-imposed efforts can provide direction to brand owners in their business activities to comply with Law No. 20 of 2016 on trademark and geographic registrations, although brand issues are Private law.

Second factor, the scope of the product marketing is not wide, the marketing of products sold by the brand owners include Regency/city, province, the context is still within the country. Brand owners with local marketing are caused by limited economic capabilities and tend to be not registered when compared to international marketing. Product Type Related to this writing are: clothes, pants, and other items related to clothes that are the need for clothing that is ad in Aceh. Producers consider the scope of the marketing to be narrow so it is difficult to develop. The brand is still classified as a safe from piracy, as the people of small businesses have become acquainted with the character of their own business. Such marketing scope can lead to guilt and make their relationship not good for other businesses who do piracy, so the sanction that is given can be said to be the same as the customary sanctions in doing business. Unlike the brands that are international marketing coverage that other businessmen do not know each other, and in the event of piracy must be resolved through the legal route.

Based on law number 20 of 2016 on brands and geographical indications the reason for brand registration by business actors is:

1. Providing the legal protection of the ATE
  - a. The cancellation of the brand registration is done by:

- 1) Owner of registered brand;
  - 2) Owners of famous brands although brand is not registered.
  - b. There are 3 (three) possible brands removed by the owner, among others:
    - 1) At the request of the brand owner, this removal applies to all or some of the goods filed;
    - 2) Deletion of the policies of the brand's office;
    - 3) Other prohibitions imposed by government regulation;
    - 4) Elimination of court orders.
  - c. Claims for counterfeit brands that can be prosecuted under the provisions of article 1365 of the Civil Code. Brand counterfeiting can also be seen from the law number 16 of 2016, which allows to compensate for the damages that are material or immaterial. The license lawsuit may be submitted through Civil Code as *Lex Generalis* or by Law No. 20 of 2016 as *Lex specialist*.
  - d. Settlement by criminal, contained in the Code of the Criminal law of the EAS for the piracy of a criminal brand in the form of confinement or fines.
2. Provide a repressive legal protection in resolving disputes
- Owners of registered brands get legal protections that are tangible damages and cancellation of brand registration by businesses based on criminal prosecution through law enforcement apparatus. The protection of the repressive law is given in the event of a brand registration dispute, the role of law enforcement agencies such as police, prosecutors and courts is required.

### **III. OBSTACLES IN CARRYING OUT TRADEMARK REGISTRATION OBLIGATIONS TO GET LEGAL PROTECTION BASED ON IG UUM ON SMALL BUSINESSES IN ACEH**

Intellectual property rights in the form of brands can be obtained through 2 (two) registration systems:

1. The declarative system that utilizes the brand law of 1961 as a rule on brand registration, in the implementation of this system brand registration is much done by businesses who are without their rights over the brand, so many The occurrence of piracy or counterfeiting of the brand, especially on famous brands, consequently the Government was deemed to have failed to hold a good government (Maulana, 1999: 89).
2. The constitutive system, which gives rights to the brand based on the first to file principle, which is based on the registration of the brand is the basis of the right to the brand (Sumartiah, 2006: 64). As for the meaning of the system of Contitular (Harahap, 1996: 69) :
  - a. Registered brands will obtain special or exclusive rights to its brand;
  - b. The use will not give rise to exclusive rights and have not obtained any legal protection;
  - c. Established on the basis of the principle of *proir in Tempora Mellor in jure*, meaning who first who registers the brand, will raise its rights and obtain legal protection;
  - d. contain compulsion to register the brand.

The applicability of the Kontitular system has long been interrupted by businesses in practice, but still many brand owners do not register their brands. Unenrolled brand Enforcement indicates that the public is still apathy to the applicability of the law in Indonesia. This is coupled with the bad habits of the public who do not want to care about the brand status in the purchase by consumers. Consumers do not see the quality of the goods or products it buys but only check their purchase price. Unregistered brands can be used in trading activities and unregistered trademarks can be protected by law and can be used for activities in trading, so that other people are not easy to do piracy or counterfeiting.

Violation of this brand can harm the brand owner if the brand is plowed and used by other businesses in trading activities unless the owner gives the permission. Fraudulent businesses can be prosecuted through the legal path to provide legal protection to brand owners. Registered and unregistered brands, essentially the same function, the interest of trading activities, so that they have a selling value. Trading activities using unlisted trademarks can be released to earn money. The prawns do not prohibit using brands that are not registered to be traded. If someone else's brand is used illegally, it is a form of infringement of the brand and has violated both civil and criminal provisions. In connection with the use of unregistered brands makes it possible for the owner to grant licenses to others, with the intent of the person granting permission for the use of the brand, this does not allow the owner of the trademark to also get Benefit from using the brand. The license agreement is implemented under the contractual principle stipulated in article 1320 of the Civil Code.

The constraints faced by the business actors who do not register the brand, among others:

1. The registration fee is too expensive, so the small business actors can not issue a budget for its brand registration fee;
2. Procedural is too convoluted, the procedure for brand registration is very difficult from the creation of legal entities to file management in the Ministry of Law and Human rights;

3. Incomprehension business Actors on the trademark registration law, the business actors do not know the consequences of not registering the brand at the time of dealing with the law, then the small business is not knowing what to do.

In the trademark Law, no specific provisions governing the brand registration for MSMEs, provisions governed by the brand registration mechanism in general, whereas nowadays many potential products are produced SME business actors. Meanwhile, the implementation to register the brand is still minimal because it is influenced by several factors such as lack of knowledge, limitation of costs and lack of mentoring. Therefore, the benefits for business actors who register the brand will get legal certainty of the law, so there is no reason for the business actors who register the brand is not protected by the state. So it is important license to the registration of the brand so that its rights protected.

#### IV. CONCLUSION

The reason for businesses registered their brand to obtain legal certainty when dealing with the law, to convince consumers to choose a brand they buy and a registered brand is granted legal protection for infringement of rights The brand in a manner of Sue to court or by material form, while the reason that brand owners do not register their brands because it takes a relatively long time and small scope of marketing, which is related to Regency/city and Provinces only. Obstacles encountered for the perpetrators who do not register the brand is due to the cost of registration is too expensive, so that small business actors can not issue a budget for the registration cost of the brand, procedural is too , the procedure for brand registration is very difficult from the creation of legal entities to file management at the Ministry of Law and Human rights, incomprehension actors on the trademark registration law, the business actors do not know the consequences of Do not register the brand at the time of dealing with the law, then the small business actors do not know what to do.

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