



DOI: <https://doi.org/10.38035/gijlss.v2i4>
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Legal Perspectives on Intellectual Property Rights Cases Related to Language Rhetoric in Trademark Registration

Gevan Naufal Wala¹

¹Faculty of Law, Tarumanagara University, Jakarta, Indonesia, gevannaufall@gmail.com

Corresponding Author: gevannaufall@gmail.com¹

Abstract: This study analyzes the legal implications of Article 12 of the proposed Language Bill (RUU Bahasa) on trademark regulations in Indonesia, particularly its potential conflict with Law Number 20 of 2016 concerning Trademarks and Geographical Indications. The research employs a normative legal research methodology with an analytical and conceptual approach. The findings reveal that Article 12 of the Language Bill, which mandates the use of Indonesian language in trademarks, potentially violates existing trademark regulations, specifically Article 61 Paragraph (2) letter b of Law No. 15 of 2001. This requirement to change registered trademarks to Indonesian language could create legal uncertainty and adversely affect trademark owners' rights. Furthermore, the study indicates that such mandatory language requirements might negatively impact Indonesia's business and investment climate. The research concludes that harmonization between the Language Bill and existing trademark laws is crucial to maintain legal certainty and protect trademark owners' rights while supporting sustainable economic growth in Indonesia.

Keywords: trademark law, language policy, intellectual property rights, legal protection, Indonesian law, trademark registration

INTRODUCTION

Background

Intellectual property rights (IPR) law is an important aspect in protecting intellectual works, including trademark registration in Indonesia. Intellectual property rights encompass various aspects, such as copyrights, patents, industrial designs, and trademarks. Our focus is on trademark registration, which serves as a crucial element in protecting the identity of a company's products or services.

The existence of trademarks is intended to distinguish one good and/or service from other goods and/or services. In such circumstances, trademarks begin to function as a differentiating tool for goods and/or services. A trademark's reputation influences the sales of goods and/or services. Based on trademark reputation, many consumers become increasingly familiar with these

trademarks, leading to the emergence of the term "well-known trademarks." These trademarks become the ideal and primary choice for consumers across all segments.

Indonesia, as a developing country, is experiencing dynamic changes across various sectors of its society. Two sectors that have become hot topics of discussion are the legal and economic sectors. Some parties argue that the current legal system has not fully provided adequate certainty and protection for consumers and business actors in the economic domain. Several aspects of this legal uncertainty are believed to emerge as impacts from challenges originating both domestically and internationally.

Within the constitutional framework, the regulation of Indonesia's economic sector has been mandated by Article 33 Paragraph (4) of the 1945 Constitution (fourth amendment). This article establishes principles of national economy conducted based on economic democracy while upholding the principles of togetherness, efficiency, justice, sustainability, environmental awareness, independence, and maintaining balance of progress and equality in the national economy.

With this constitutional provision as a starting point, various legal regulations have been established to govern the economic sector, including in the realm of intellectual property rights (IPR). IPR involves copyrights, trademarks, and patents as instruments of protection for innovation and creativity in the economy. These efforts are expected to provide a clear legal foundation, facilitate sustainability, and promote fair and sustainable economic growth in Indonesia.

Currently, there is a proposed Language Bill (RUU Bahasa), which contains a controversial issue in Article 12 stating: Trademarks, advertisements, company names, building names, and product usage instructions must use the Indonesian language, requiring registered trademarks to immediately change their marks to Indonesian language, for example, "Sampo Clear" which means "bersih" (clean) in Indonesian would become the legal trademark under this Language Bill. This contradicts Article 61 Paragraph (2) letter b of Law No. 15 of 2001 concerning Trademarks which states: Trademark deletion at the initiative of the Directorate General can be carried out if the trademark is used for types of goods and/or services that do not correspond with the types of goods or services for which registration was requested, including the use of trademarks that do not conform with the registered trademark.

In practice, trademark owners and legal professionals need to thoroughly understand the requirements and standards applied in trademark registration related to language rhetoric. This process requires a deep understanding of the market and applicable legal policies, so that the choice of language rhetoric can effectively support trademark protection efforts in accordance with the regulations in force in Indonesia.

Problem Formulation

Based on the background description above, the research problems in this study are as follows:

1. How are trademarks regulated under Law Number 20 of 2016 concerning Trademarks and Geographical Indications?
2. Does Article 12 of the Language Bill violate trademark regulations in Indonesia?

METHOD

This research is conducted using normative research methods. Normative research is one of the approaches in legal research within the context of law implementation or application in society. The research approach used is conceptual analysis (The Analytical and Conceptual Approach).

Furthermore, the data used are primarily secondary data. The research data collection technique is library research, while the legal material analysis techniques employ description and legal argumentation.

RESULT AND DISCUSSION

1. Trademark Regulation in Indonesia

Trademark rights are exclusive rights granted by the state to their owners to use the trademark themselves or grant permission to others to use it. The granting of these special rights by the state carries the consequence that obtaining them must go through a registration mechanism, making registration compulsory. For these trademark rights to receive protection and recognition from the state, trademark owners must register them with the state. If a trademark is not registered, it will not be protected by the state. Consequently, that trademark can be used by anyone. The difference between this article and previous research is that this article examines and analyzes how trademark registration protection can end and how registered trademarks are protected.

The trademark regulation system in Indonesia is governed by Law Number 20 of 2016 concerning Trademarks and Geographical Indications. The trademark registration process, which is key to obtaining legal protection, is carried out through the Directorate General of Intellectual Property under the Ministry of Law and Human Rights. Registration requirements include aspects of uniqueness, non-descriptive nature, and compliance with ethics and morality.

Trademark registration aims to obtain legal certainty and legal protection for trademark rights. Trademark registration is conducted at the Directorate General of Intellectual Property Rights. The Directorate General of IPR is the trademark registration agency tasked with registering trademarks applied for by trademark owners. Currently, the Directorate General of Intellectual Property Rights has changed its name to the Directorate General of Intellectual Property, abbreviated as DGIP.

Registered trademark owners obtain exclusive rights to use and trade their marks within specific classes of goods or services. This protection can be periodically extended and requires renewal in accordance with applicable regulations. The DGIP plays a vital role in trademark supervision to ensure compliance with law and order. Well-known trademarks receive stronger protection, while trademark owners can also pursue trademark infringement cases in court. International cooperation is also an integral part of trademark regulation, including international trademark revocation and collaboration with intellectual property rights institutions at the international level. Overall, trademark regulation in Indonesia aims to create a fair business climate, support innovation, and provide adequate protection for trademark owners. A thorough understanding of trademark law and consultation with trademark legal experts is crucial for trademark owners to maximize their rights and protection.

The regulation of trademark registration itself is governed by Articles 20, 21, and 22 of Law No. 20 on Trademarks and Geographical Indications. A trademark must not contradict state ideology, laws and regulations, morality, religion, ethics, public order, nor have complete similarity with traditional cultural expressions, intangible cultural heritage, or names or logos that are already hereditary traditions. Additionally, there are collective trademarks, which are marks used on goods and/or services with similar characteristics regarding the nature, general features, and quality of goods or services and their supervision, traded by several persons or legal entities jointly to distinguish them from other similar goods and/or services. According to Article 46 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, applications for

trademark registration as a collective trademark can only be accepted if the application clearly states that the mark will be used as a collective trademark.

The requirements for the trademark renewal process as regulated in Article 36 of Law No. 20 of 2016 state that the trademark must be used as specified in the trademark certificate, meaning the use of the goods/services trademark must comply with the certificate. For example, the "Merak" brand soy sauce must conform to what is stated in the trademark certificate, which is soy sauce with the "Merak" brand. If what is found is "Merak" brand sauce, then this violates the trademark certificate and the trademark can be removed or cannot be renewed. The next requirement is that goods/services with registered trademarks must still be in production and/or traded. If the goods/services have actually ceased production and are no longer traded, then the trademark cannot be renewed.

Trademark registration has a validity period of 10 (ten) years and can be renewed for the same period. When the validity period of trademark registration expires, the legal protection for that trademark automatically ends as well.

2. The Language Bill Violates Trademark Regulation Provisions in Indonesia

In the Indonesian legal context, trademark registration is regulated by Law Number 20 of 2016 concerning Trademarks and Geographical Indications. This trademark registration process involves the Investment Coordinating Board (BKPM) as the authorized institution. One aspect of concern in trademark registration is the language rhetoric used in the trademark.

Language rhetoric in trademark registration includes the selection of words, phrases, or symbols that can distinguish products or services from competitors in the market. Trademark law stipulates that registered trademarks must be unique, easily distinguishable, and not cause confusion among consumers. Therefore, the use of appropriate and distinctive language rhetoric becomes key in the trademark registration process.

The Language Bill, which contains controversial provisions, particularly in Article 12, raises several questions and potential conflicts with existing trademark law. This article contains provisions requiring trademarks, advertisements, company names, building names, and product usage instructions to use the Indonesian language. Examples of implementation, such as changing trademarks like "Clear" shampoo to Indonesian, show direct impact on registered trademarks.

Legal analysis of this provision requires consideration of Article 61 Paragraph (2) letter b of Law No. 15 of 2001 concerning Trademarks. This article stipulates that trademark deletion can be carried out if the trademark is used for types of goods and/or services that do not correspond with the types of goods or services for which registration was requested, including the use of trademarks that do not conform with the registered trademark. In this context, the provisions of Article 61 Paragraph (2) letter b affirm that the use of trademarks inconsistent with registered trademarks can be grounds for trademark deletion.

The conflict arising between the Language Bill and Article 61 Paragraph (2) letter b of the Trademark Law could potentially create legal uncertainty, especially regarding the obligation to change trademarks to comply with language provisions. While the Language Bill mandates changes to ensure the use of Indonesian language, the Trademark Law provides grounds for trademark deletion if such use does not conform with the registered trademark.

Further clarification or synchronization between the Language Bill and Trademark Law is needed to avoid legal conflicts and provide clarity in language-related trademark regulations. Efforts to achieve harmony between these regulations may be necessary to ensure trademark

owners have clear and consistent guidelines regarding the use and modification of their trademarks.

The Language Bill with its controversial provisions in Article 12 requiring the use of Indonesian language for trademarks, advertisements, company names, building names, and product usage instructions faces potential conflicts with existing trademark law provisions. Besides Article 61 Paragraph (2) letter b of Law No. 15 of 2001 concerning Trademarks, other aspects that need attention are the principles of legal certainty and protection of legal rights already granted to registered trademark owners. The enforcement of the Language Bill requiring trademark changes can be considered significant interference with rights already obtained by trademark owners under existing regulations.

The conflict between the Language Bill and Trademark Law can also impact Indonesia's business and investment climate. Clarity and consistency in regulations are crucial to provide confidence to business actors, including trademark owners. If the implementation of the Language Bill potentially causes legal uncertainty, this could raise concerns for investors and trademark owners, reducing Indonesia's attractiveness as an investment destination.

Aligned steps, such as intensive dialogue between the government, trademark owners, and relevant stakeholders, can help achieve fair and balanced agreements. Harmony between these regulations will provide necessary legal clarity, protect trademark owners' rights, and support sustainable economic growth in Indonesia. Thus, harmonization between the Language Bill and Trademark Law becomes crucial to achieve balanced legal and business objectives domestically.

Therefore, concrete steps as mentioned above are needed to harmonize the Language Bill and Trademark Law, or at least provide clear guidelines on how both can coexist without harming rights already obtained by trademark owners. These steps may include intensive dialogue between the government, trademark owners, and relevant stakeholders to reach fair and balanced agreements while considering applicable legal and business principles. Harmony between these regulations will provide necessary legal clarity and support sustainable economic growth in Indonesia.

CONCLUSION

In the context of the Language Bill requiring the use of Indonesian language for trademarks, advertisements, and other elements, potential conflicts with the Trademark Law have emerged. Article 12 of the Language Bill raises serious questions regarding the rights and obligations of registered trademark owners who may need to modify their trademarks to comply with language requirements. This conflict is particularly prominent due to Article 61 Paragraph (2) letter b of the Trademark Law, which states that trademark deletion can occur if the trademark is used for types of goods and/or services that do not correspond with the types of goods or services for which registration was requested.

Beyond the legal conflict aspect, the implementation of the Language Bill requiring trademark changes could impact legal certainty, business climate, and investment in Indonesia. The necessary harmony between the Language Bill and Trademark Law needs to be found to maintain the confidence of trademark owners and investors, as well as to create a consistent legal environment that supports economic growth.

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