

# Legal Protection of Famous Trademarks in Indonesia: Between National Regulation and Global Counterfeiting Challenges

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## ARTICLE INFO

### Article history:

Received 7 September 2022

Revised 27 October 2022

Accepted 18 November 2022

### Key words:

Trademark counterfeiting,  
Legal protection,  
Famous trademarks,  
Intellectual property rights,  
Globalization.

## ABSTRACT

The phenomenon of famous trademark counterfeiting has become a significant problem in the current era of globalization. A famous trademark reflects the identity of a product or company, and becomes a symbol of reputation, quality, and consumer trust. This research aims to analyze the challenges in the legal protection of famous trademarks in the national and international scope. The research findings show that although Law Number 20 Year 2016 on Trademarks and Geographical Indications provides a legal protection for famous trademarks, the effectiveness of its implementation still faces various obstacles. One of them is the need for proof of trademark recognizability, which is often not easy to obtain in every counterfeiting case. Strengthening law enforcement and increasing public awareness on the importance of respecting Intellectual Property Rights are also very important. The protection of famous trademarks is the responsibility of the government, and involves the active role of the community, business actors, and consumers. With a comprehensive approach, feasibility and fairness in the protection of famous trademarks can be realized more effectively.

## INTRODUCTION

In a business world that is automatically connected to the global market, the phenomenon of counterfeited trademarks is certainly a big and serious problem. A famous trademark shows that its quality and reputation are very good so that it is favored by the community. For companies to promote their goods and services, they rely on the brand in addition to other aspects because through the trademarks, it can be a differentiator among other products or company (Kladou et al., 2017). The trademark can also be a source of information conveyed during product marketing and of course followed by the authenticity of its quality (Jened, 2016). This fact provides a large and promising opportunity to be utilized by trademark counterfeiters because of its high economic value. The perpetrators want to gain personal benefits but on the other hand for the brand owner to experience financial losses so that between the original producer and consumers who have trusted each other can reduce and even damage existing trust. These conditions are the cause of reduced market share, fading trademark reputation that has been realized with a long process and expensive costs (Marwiyah, 2010).

In the legal world, counterfeited trademarks are violations of Intellectual Property Rights that require assertiveness in their protection. Based on Aridhayandi's (2017) statement that the party who acts fraudulently by counterfeiting the trademark can be reported to the court so that the injured party obtains compensation based on the benefits obtained by the perpetrator and the losses borne by the owner. In the conditions that occur, then according to Budiman (2019) the loss is not only borne by the owner of the famous trademark but consumers will also be harmed because of the incompatibility of the product with what is expected. Consumers have paid a high price, but obtained counterfeit products. The purpose of famous trademarks protected by law is so that in the market justice and balance remain and consumers get protection from counterfeit products that clearly have a negative effect. In Indonesia, according to Law Number 20 Year 2016 related to Trademarks and Geographical Indications has been established as a trademark protection law (Prakoso, 2024). Through the existing law, famous trademarks are recognized even though they have not officially registered but the wider community has recognized them.

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This enforcement is not only to protect similar products but covers a diversity of products provided that the counterfeit brand used raises a great potential for misunderstanding and even the reputation of the original brand to be damaged. The existing provisions can be the strength of the legal basis for the owner so that his interests are protected.

At the international level, there have been arrangements to provide protection for famous marks such as with treaties and conventions (Paris Convention and TRIPs agreement). TRIPs are Trade-Related Aspects of Intellectual Property Rights. Through this legal instrument, member countries including Indonesia are required to provide special protection for registered or unregistered (Afif & Sugiyono, 2021). This agreement becomes a minimum standard so that globally famous trademarks are protected which provides an opportunity for owners to file a lawsuit when violations occur in various countries that are members of the convention. The enforcement of the protection of famous trademarks in the domestic scope and international scale that provides an opportunity for the trademark in various jurisdictions in order to maintain its reputation. This condition certainly raises a series of challenges that must be resolved based on the implementation of laws that protect famous trademarks that are counterfeited (Mukhlis & Rahayu, 2023). This raises a complicated challenge because to define and classify famous trademarks each country uses an approach that cannot be equated so that the court or the competent authority has a different point of view.

In Indonesia, a famous trademark although it has been given protection under the Act that regulates it, but there is no clear guidance on the identification of when the trademark is considered famous (Khairandy, 1999). This fact hampers the owner of the trademark in terms of filing a claim for protection because the status of the trademark does not always obtain recognition from the authority that has the authority. The emergence of problems such as weakly enforced laws that complicate the legal protection and cause it not to be implemented optimally. Counterfeit products circulated in the market which when compared to the original product is certainly cheaper, making consumers become interested and consumers do not realize that the products purchased are counterfeit (Bukit et al., 2022). The conditions that occur are detrimental to several parties starting from the owner, consumers do not trust anymore and in the market the quality decreases. Wicaksono et al. (2022) stated that also from the aspect of significant digital development,

it has a great opportunity for perpetrators to transact online to counterfeit their products that utilize social media. Through this media, the reach is wider so that reaching the international market is easier even though the destination countries already have regulations that support the settlement of brand counterfeiting. This condition makes it difficult for the law to be enforced because it is often found that the perpetrators move between platforms and even disappear from cyberspace after the act of counterfeiting the brand has been discovered. Solving this challenge requires the strength of international collaboration and the suitability of regulations based on evolving technology (Rafli & Apriani, 2022).

Trademark counterfeiting can be resolved not only through enforced legal but also through public education (Sujatmiko, 2010). A better understanding is needed by consumers regarding the importance of purchasing genuine products and the negative impact if counterfeit products continue to gain support. There is often an interest in counterfeit products by consumers for various reasons ranging from the low price of the product even though it sometimes endangers the health and safety of consumers. In Indonesia, the perpetrators of brand counterfeiting are still lightly sanctioned so that the effect is not strong enough to deter the perpetrators (Risandi & Disemadi, 2022). The perpetrators continue their practice because for the perpetrators the risks faced are lighter but the benefits are greater. For this reason, increased sanctions are needed through the amounts of fines to be paid or the severity of the criminal law applied so that the deterrent effect can be significantly felt. Appropriate legal approaches based on confiscated counterfeit goods and closed access to illegal distribution channels are also implemented to reduce the number of counterfeit products in circulation. Various challenges faced, the complexity of brands that are given legal protection is a crucial issue because it is to maintain the integrity of the market and the rights of the brand owner. The effectiveness of protection certainly requires strict regulation, legal assertiveness, continuous public education and close cooperation between interested parties at the national and international levels. Likewise, the trademark owner must be able to adapt to the age of globalization and the rapid development of technology as a protection of valuable asset protection from all threats of counterfeiting. Based on the existing background, the legal review of the counterfeiting of famous trademarks is the purpose of this research.

## **RESEARCH METHOD**

In this research, the literature study and normative juridical approaches are used to analyze the phenomenon of counterfeiting of famous marks. The literature study approach refers to the review of various relevant written sources, including books, journals, articles, and laws and regulations related to trademark protection. It aims to identify basic theories regarding famous trademarks, as well as understand the legal principles applied in trademark counterfeiting cases, both nationally and internationally. The normative juridical approach focuses on the application of legal norms contained in existing regulations, particularly in Law Number 20 Year 2016 on Trademarks and Geographical Indications, which provides the legal basis for the protection of famous trademarks in Indonesia.

Through this method, the researcher was able to compile a comprehensive analysis of the regulations governing famous trademarks and the legal barriers faced in enforcing protection against trademark counterfeiting. The use of this approach is important to evaluate how national and international laws can collaborate in maintaining the integrity of trademarks that have become famous in the global market. Reference to various existing legal sources provides a better understanding of the legal principles underpinning trademark protection and the impact that trademark counterfeiting has on consumers and producers. This research seeks to delve deeper into the effectiveness of legal protection of famous trademarks, as well as the challenges that arise in its legal implementation related to globalization and the rapid development of digital technology.

## **RESULT AND DISCUSSION**

A famous trademark is one that has wide recognition in the market and is recognized by the public in a significant way. Law Number 20 Year 2016 in Indonesia provides for the protection of famous trademarks. There are several criteria to determine whether a trademark is famous, including: (1) Increased community awareness of the trademark, obtained through various effective marketing and promotional strategies; (2) The strength of the trademark's reputation established over a long period of time, so that it is recognized in certain regions, and in other countries; and (3) High quality products and services that facilitate the recognition of the trademark. The legal protection of famous trademark in Indonesia is provided through Law Number 20 Year 2016, which protects both registered trademarks and trademarks that are well known by the public.

Law Number 20 Year 2016 provides comprehensive legal protection to famous trademarks, including in the case of counterfeiting. Even if the trademark has not been registered, as long as the trademark is familiar to the public, its protection can still be enforced. This protection aims to prevent unauthorized third parties from taking advantage of famous marks, which may cause consumer confusion and damage the reputation of the trademark. In this regard, the Directorate General of Intellectual Property (DJKI) acts as an institution that facilitates trademark registration and provides legal channels to resolve trademark-related disputes, including counterfeiting and plagiarism.

The resolution of famous trademark disputes involves a complex legal process, where evidence of counterfeiting must be carefully collected. Once the evidence is gathered, the case will be brought to court to determine whether infringement has indeed occurred and sanction it accordingly. This process clarifies the rights of the trademark owner, and involves the protection of consumers who could be negatively affected by counterfeit products. In addition, the dispute resolution procedure stipulated in the Act provides deeper insight into the importance of trademark protection and its impact on trademark owners as well as consumers (Azhar & Ahmad, 2018).

Trademark counterfeiting from an economic point of view is detrimental, as it harms consumers, and threatens the stability of the economy as a whole. Consumers are harmed because they are lied to with products that are not what the original brand promises. Competitors who capitalize on counterfeited famous trademarks seek to achieve maximum profits by confusing the public, which ultimately results in a decrease in the revenue of the company that owns the original brand. The low quality of counterfeit products damages the reputation of the trademark, and local industries, including Medium and Small Enterprises (MSEs), are affected as they have to compete with cheaper counterfeit products. This undermines MSE competitiveness and hampers innovation, growth, and local economic development.

Another impact is the reduction in taxes received by the state due to counterfeit products circulating in the market, as many transactions are not detected or reported correctly. Declining consumer trust further exacerbates the situation, making the market uncontrollable. The rapid development of e-commerce also complicates the issue, as it is difficult for consumers to distinguish between genuine and counterfeit products, especially when many counterfeit products are sold through online platforms (Sanjaya et al., 2022). To address this,

the Indonesian government has issued Government Regulation Number 80 Year 2019 which regulates trade through electronic systems, providing a legal framework for any e-commerce transactions to prevent trademark counterfeiting.

In an effort to prevent trademark counterfeiting, Indonesia has adopted various technologies and educational campaigns to increase consumer awareness. Technologies such as QR codes and RFID make it easier for consumers to verify the authenticity of products and reduce the risk of buying counterfeit goods. Educational campaigns aim to educate consumers about the dangers of counterfeit products and the importance of buying genuine products. International alliances also play an important role in the fight against counterfeiting, by enabling tracking and stopping the distribution of counterfeit products in various countries. With the active role of consumers and international collaboration, trademark counterfeiting can be minimized, so that the protection of well-known brands is maintained (Sanjaya et al., 2022).

Trademark counterfeiting in Indonesia is a complex problem, both from a legal, economic, and social perspective. Trademark counterfeiting can harm various parties, including the original trademark owner, consumers, and the country's economy as a whole. In a legal review, trademark counterfeiting is often considered a violation of Intellectual Property Rights (HKI), which is regulated in Law Number 20 Year 2016 on Trademarks and Geographical Indications (Trademark Law). This law provides a strong legal basis to protect the rights of trademark owners for their products or services and regulates sanctions against those who commit counterfeiting.

Broadly speaking, trademark counterfeiting is the unauthorized use or duplication of a registered mark to attract consumers in an unauthorized manner. This practice may include the manufacture of products that are identical or confusingly similar to products that have been protected by a registered mark, thereby creating confusion among consumers as to the origin and quality of the product. Trademark counterfeiting has the potential to damage the image and reputation of legitimate trademarks and give rise to unfair competition.

Under Indonesian law, acts of trademark counterfeiting are regulated by the Trademark Law which adopts stricter protection principles for registered trademarks. In the articles of the Trademark Law, trademark counterfeiting is included in the category of prohibited acts. Trademark counterfeiting is subject to administrative and criminal sanctions, including fines and imprisonment.

The Act recognizes the importance of providing protection to marks that have been registered with the DJKI, which is the institution authorized to manage intellectual property rights in Indonesia.

Trademarks that are falsified in some cases, then obviously the violation will be processed criminally or civilly. This case is not only a crime experienced by the owner of the trademark but violates even eliminate the trust of consumers. In Article 100 and 101 of the Trademark Act there is a legal basis that can be used to impose penalties on the perpetrator civilly so that the losses incurred obtain compensation. The application of criminal law also exists if the violation is serious and many parties lose, including the community. The form of criminal sanctions against falsified trademarks is a large fine until the perpetrator is imprisoned. The Indonesian state itself has enforced criminal sanctions despite the fact that it is faced with several conditions that hinder it. These obstacles can take the form of minimal resources for the counterfeiting cases investigated and valid evidence collected is difficult to obtain. These conditions complicate and pose a great challenge to the effectiveness of the implemented law.

Settlement of trademark disputes can be done outside the trial through Alternative Dispute Resolution (ADR) methods, which include negotiation, mediation, conciliation, and arbitration. This approach can be effective in resolving violations relating to Intellectual Property Rights, particularly in the field of trademarks. Settlement of trademark disputes is often resolved through civil channels, not criminal law. Under Law Number 20 Year 2016 on Trademarks and Geographical Indications, registered trademarks receive legal protection. Trademark owners who feel their rights are violated by counterfeiting can sue civilly or criminally. In this case, the Trademark Office provides administrative assistance to ensure the validity of trademark ownership, which can then be brought to the Commercial Court as a specialized judicial institution in trademark rights cases.

If trademark counterfeiting is found, the perpetrator may be subject to criminal sanctions based on the provisions in Law Number 20 Year 2016, including imprisonment of up to 5 years and a maximum fine of IDR 2,000,000,000.00 (two billion rupiah). The investigation process is conducted by Civil Servant Investigators (PNS) and the Police at the Directorate General of HKI. The Criminal Code (KUHP) also regulates criminal offenses related to trademark counterfeiting. Trademark counterfeiting can cause significant financial losses, especially for consumers, especially in products related to health and safety, such as cosmetics, pharmaceuticals, and electronics.



Counterfeit products that do not meet safety standards can endanger consumers, as is the case with cosmetics with dangerous chemicals or electronics that are prone to damage. Protection of famous trademarks is important to ensure consumers are protected from unsafe products.

Law Number 20 Year 2016 gives a central role to the registered trademark owner to file a lawsuit against the party who commits trademark counterfeiting. Trademark owners who feel harmed can file a civil suit or criminal report to law enforcement officials. In this case, law enforcement officials have the authority to conduct investigations and investigations related to trademark counterfeiting cases that occur. In practice, the law enforcement process against trademark counterfeiting does not always run smoothly, due to obstacles in effective supervision and enforcement.

There is an important role in the implementation of trademark protection that focuses on legal sanctions, and on prevention efforts. In this case, relevant authorities, such as the DJKI and the Directorate General of Customs and Excise, have an obligation to carry out more intensive supervision of the circulation of goods that potentially infringe intellectual property rights, including trademark counterfeiting. The government also needs to strengthen its early detection system to be more effective in tackling brand counterfeiting, which often involves international networks.

Another noteworthy aspect is the importance of awareness of intellectual property rights, both from brand owners, consumers, and businesses. Education and socialization of trademark rights must be carried out continuously and widely, so that people fully understand the importance of protecting products with registered trademarks and the impact caused by counterfeiting. Through this education, it is expected to create a high legal awareness that can minimize the occurrence of intellectual property rights violations.

Trademark counterfeiting is often done in order to capitalize on the popularity or reputation of a trademark without making legitimate efforts. For example, counterfeit products are often produced with cheaper materials and quality far below the standard of the original product, but sold at a lower price. Unscrupulous consumers are often fooled by similar-looking brands, and this causes material losses to consumers, especially in relation to the quality of products that do not meet expectations.

The negative impact of trademark counterfeiting is felt by consumers, and by the country's economy. The circulation of counterfeit goods harms domestic industries, reduces state revenue from taxes, and disrupts a healthy business competition climate.

Counterfeit products are also produced in violation of applicable safety and environmental standards, thus impacting public health and the environment. In this case, trademark counterfeiting becomes a legal issue, and becomes a broader social and economic issue.

It is important to note that brand counterfeiting can involve parties from overseas. In the era of global trade, the trade in counterfeit goods often involves international distribution channels that cross national borders. International cooperation becomes one of the indispensable elements in countering trademark counterfeiting. As a member of international organizations like the WTO and ASEAN, Indonesia must strengthen cooperation to enhance global trademark enforcement.

Although the regulations regarding trademark counterfeiting are clearly regulated in the Trademark Law, law enforcement in Indonesia still faces major challenges. One of the biggest challenges is the lack of coordination between agencies involved in handling intellectual property rights violations. The lack of human resources trained in this field is also an obstacle in optimally combating trademark counterfeiting. Efforts are needed to enhance law enforcement capacity and interagency cooperation.

To enhance trademark protection, the Indonesian government must strengthen oversight of e-commerce, a key channel for counterfeit goods. Through strengthening regulations in this sector, it is hoped that the sale and purchase of products that violate intellectual property rights can be suppressed. The use of digital technology in monitoring and detecting counterfeit products also needs to be maximized to provide more effective protection for consumers and trademark owners.

In a long-term perspective, a more comprehensive reform of the legal system on intellectual property rights is needed to ensure stronger protection against trademark counterfeiting. Preventive efforts such as information campaigns on trademark rights and the importance of trademark protection also need to be massively promoted. Through effective collaboration among the government, private sector, and community, Indonesia can reduce trademark counterfeiting and foster a fair, healthy business climate.

## **CONCLUSION**

The findings of this study conclude that in the current era of globalization, HKI have an important role in providing legal protection to famous trademarks. A famous trademark is simply the identity of a product or company, and reflects reputation, quality, and consumer trust. Trademark counterfeiting brings material harm to the owner,

but the greater challenge is maintaining the integrity of the mark in the eyes of consumers. In Indonesia, Law Number 20 Year 2016 provides legal protection to well-known marks, both registered and unregistered. Effective implementation still requires proof of brand notoriety and more optimal law enforcement so that the rights of brand owners are maximally protected.

Public education regarding the importance of respecting HKI and the negative impact of counterfeit products is also crucial. Cross-border collaboration through international agreements such as TRIPs and the Paris Convention is essential to ensure the protection of famous trademarks in various jurisdictions. The protection of famous trademarks is the responsibility of the government, and all components of community, including consumers and businesses. Increasing consumer awareness, empowering business actors, and the government's commitment to strengthen law enforcement are concrete steps in protecting famous trademarks from counterfeiting. With this comprehensive approach, the protection of famous trademarks can be realized fairly and effectively.

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