

Legal Analysis on the Geprek Benu and I am Geprek Benu Under the Indonesia Trademark Law

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Abstract

The food business in Indonesia has experienced tremendous growth, with the ayam geprek industry growing in popularity. Ayam geprek, a dish featuring crispy fried chicken mixed with sambal, has become a favorite among the younger generation. This research examines the trademark dispute between “Geprek Benu”, owned by Ruben Onsu, and “I Am Geprek Benu”, owned by PT Ayam Geprek Benny Sujono. The case highlights important issues in intellectual property rights under Law No. 20 of 2016 on Trademarks and Geographical Indications. The dispute arose when Ruben Onsu, who was initially a promotional ambassador for “I Am Geprek Benu”, launched his own “Geprek Benu” brand, leading to allegations of trademark infringement and unfair competition. An analysis of the case reveals legal inconsistencies, including Ruben's ownership claim despite PT Ayam Geprek Benny Sujono having registered the “Benu” mark first. Key legal provisions, such as Article 21 on bad faith and Article 3 on mandatory registration, emphasize the importance of proper mark registration to protect business identity and prevent consumer confusion. The research shows the needs for companies to protect intellectual property and follow laws and regulation. This case also shows the importance of non-litigation dispute resolution methods for fast and efficient conflict management in the food industry that is growing rapidly in Indonesia.

Keywords: Intellectual Property Rights; Brand; Dispute

A. Introduction

Currently in Indonesia, the food business is a very promising, dynamic, and fast-growing business as people's needs for food innovation, culinary diversity, and modern lifestyles drive the growth of this industry. Indonesia is a country that has a lot of cuisine from Sabang to Merauke, and from each region has a variety of dishes that can attract tourists. So if you visit an area in Indonesia, you definitely have to try the food in the area. One of the food businesses that has become popular in the current

era is the geprek chicken food business. Ayam geprek is increasingly popular and recognized in various regions in Indonesia, especially in Jakarta. The popularity of ayam geprek has spread to other countries, such as Malaysia, Singapore, and several Indonesian restaurants in Europe and America have included ayam geprek in their menus. Due to its popularity, ayam geprek has become a lucrative culinary business opportunity. Many geprek chicken franchises have sprung up, making it one of the promising fast food businesses in Indonesia. Ayam geprek is an Indonesian specialty made from flour-fried chicken that is battered or “geprek” with spicy sambal. The word “geprek” comes from the Javanese word for hit or press. Ayam geprek is different from ayam penyet even though they look similar. Ayam geprek uses flour-fried chicken like fried chicken, while ayam penyet is more traditionally made without flour.

Ayam Geprek first became known in Yogyakarta. It was invented in 2003 by a local seller named Ruminiah. Initially, this flour fried chicken was crushed (digeprek) and mixed at the request of customers. One of Ayam Geprek's specialties is its customizable level of spiciness. Customers can order a specific amount of chili, ranging from “level 1” to extreme levels. As the era develops, geprek chicken is presented with various additions and innovations such as with noodles, mozzarella, green chili sauce, chili paste, chili green bean, etc. Among the younger generation, geprek chicken is one of the favorite foods and its popularity is always increasing. geprek chicken is an Indonesian food made from crispy fried chicken mixed with sambal ulek.

Geprek chicken is often a cheap and practical food choice for students, because in addition to being affordable the portion is also quite filling. Many geprek chicken places target students and college students. Although it is known as a food with a high fat content because it is fried, geprek chicken also contains high protein from chicken. Coupled with sambal, which is rich in vitamin C from chili peppers, geprek chicken can provide sufficient nutritional benefits. Ayam Geprek is a popular choice in food delivery services, due to its practicality. Many food delivery apps offer geprek chicken as one of the favorite menus with fast delivery times.

Indonesia as a country based on law certainly has cases related to Intellectual Property Rights disputes. One of the cases that has become the conversation of many Indonesian people is the case of Geprek Bensu and I Am Geprek Bensu. Many people think that Geprek Bensu and I am Geprek Bensu are the same brand but in fact they are different. The trademark issue between "Geprek Bensu" and "I Am Geprek Bensu" is focused on important legal problems in Indonesian intellectual property law, specifically the protection and enforcement of intellectual property rights under Law No. 20 of 2016 on Intellectual property rights and Geographical Conditions. The problem starts from an issue over the exclusive ownership of the "Geprek Bensu" brand, which has achieved a large following in the food industry.

The disagreement has two basic settlement options: a lawsuit through the legal system and non-litigation actions such as a decision-making process. The court's engagement plays an important part in assessing intellectual property rights, balancing exclusivity with public interest, and finding valid ownership. The problem points out the need for correct registration and the use of intellectual property to avoid problems in business advertising.¹

The journal articles cover the normal rules, regulations and case law, such as Decision No. 57/Pdt.Sus.Merek/2019/PN Niaga Jkt.Pst, which looks at brand ownership and being valid. They point out that intellectual property rights (IPRs), like intellectual property rights, involve important intellectual and financial investment, therefore protecting them is important in supporting development and fair trade. This case shows the involvement of intellectual property law, specifically the idea of "first to file," which acts as the basis of Indonesia's trademark system. Under the law, the first person to register an intellectual property has exclusive rights to use it, unless there is proof of illegal or fake approval. The verdict pointed out that intellectual property rights are about more than just financial gain; they also recognize ²the

¹ Purba, B., Tarigan, I. S., Tamba, N. R. D., & Pardede, N. N. (2023). Trademark Rights Dispute (Geprek Bensu With I Am Geprek & Singapore Company With Hadi Darsono). *Indonesian Journal of Advanced Research*, 2(7), 901–914.

² Al Manda, D. (2022). Sistem First To File Sebagai Perlindungan Hukum Dalam Hukum Merek (Studi Putusan Mahkamah Agung Nomor 57/Pdt. Sus-Merek/2019/Pn Niaga Jkt. Pst). *Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta*.

creators' true efforts and financial investments to create their businesses.

The court's decisions pointed out that intellectual property rights are about more than simply financial gain, they also recognized how the writers made genuine efforts and investments in starting their companies. Also, the "Geprek Bensu" case gives knowledge regarding Indonesia's intellectual property settlement actions. They include both lawsuits and non-court choices that involve settlement and negotiation. They both help to provide solutions (settlement, deals, and possible deposition) while being fair and protecting the public's rights.³ Non-litigation method is mentioned or described in Law No. 30 of 1999 on Settlement and Conflict Management, presenting businesses with an efficient way to solve issues without going through trials or court.⁴

Experts and lawyers used a usual legal research technique to analyze this case and create information on intellectual property registration, protection, and settlement of conflicts. The court's ruling points out the need for difficult attention to intellectual property laws as well as due diligence in stopping brand identification problems. The case also serves as a reminder to businesses to strongly protect their intellectual property assets in order to achieve financial success and market order.

B. Research Method

The research method to be used is the normative legal research method. This means that this research is based on applicable rules, legal norms, and laws and regulations. Normative legal research methods focus on solving problems, or making decisions based on applicable law. Regarding the type of data, the type of data to be used is secondary data in the form of secondary legal materials. Secondary data is a collection of information that has existed before and can be used to complement data needs in a study. Secondary data helps provide an overview of unanswered problems, which can be used as material for research. For the acquisition of data, the data used is literature study. Literature study is a data collection method carried out through

³ Fajar Sugianto, Astrid Athina Indradewi, and Yohanie Mareta, "Book Pirates and Copycats : Infringement That Speaks For Itself" 2, no. 1 (2024): 259–69.

⁴ Khairandy, R. (1999). Perlindungan Hukum Merek Terkenal di Indonesia. *Jurnal Hukum IUS QUIA IUSTUM*, 6(12), 68–79.

reading and analyzing various scientific literature. Finally, the type of approach that will be used is a qualitative approach. A qualitative approach is a research method that aims to understand the problem deeply from the research subject.

C. Analysis and Discussion

C.1 Case Analysis

A variety of issues can be a source of loss, including plagiarism of intellectual work and brand infringement, which is often a problem in the corporate environment. Based on Law No. 20 of 2016 Regarding Trademarks and Geographical Indications Article 1 paragraph 1 trademark is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in the form of 2 (two) dimensions and / or 3 (three) dimensions, sound, holograms, or a combination of 2 (two) or more elements to distinguish goods and / or services produced by persons or legal entities in the trading activities of goods and / or services.⁵ The purpose of the trademark is as an identity to distinguish goods or services obtained by a person or legal entity from goods or services produced by other parties. Trademark as such works as a tool to identify in trading activities as well as provide legal protection to its owner to prevent misuse by other parties. The case that the public spoke a lot about Ruben Onsu's business since his brand is similar to other people's. The name Bensus was previously filed as a trademark on May 3, 2017, by PT Ayam Geprek Benny Sujono and its legal protection until 3 Mei 2027. I Am Geprek Bensus, whose name is expressed by the abbreviation Bensus, is a geprek chicken company founded by Yangcent Kurniawan and Stefani Livinus, who are Benny Sujono's children. The operations manager, Jordi Onsu, joined. Ruben Onsu, Jordi's brother at the time, was named a promotional ambassador. Coincidentally, Ruben's restaurant, Onsu, shares the same name as the Geprek chicken restaurant.⁶

Ruben is reported to have received payment for his work as a promotional

⁵ Article 1 Paragraph 1, Undang-Undang Nomor 20 Tahun 2016 Tentang Merek dan Indikasi Geografis

⁶ Mariska, "Jordi Onsu Bongkar Kronologi Sengketa Merek Geprek Bensus," *kontrakhukum.com*, 26 Oktober 2023, <https://kontrakhukum.com/article/sengketa-geprek-bensus/>.

ambassador for the culinary company brand "I Am Geprek Bensu Sedep Bener/Beneerrr" between May 9, 2017, and August 14, 2017. There are 10 pieces of evidence of honorarium transfer from PT Ayam Geprek Benny Sujono to Ruben. In the copy of the decision of the Central Jakarta Commercial Court on the official website of the Supreme Court, there is evidence that Ruben has received at least Rp 663 million. The following details are written in the copy of the verdict:

- May 9, 2017: Rp 50 million
- May 10, 2017: Rp 50 million
- June 4, 2017: IDR 45 million
- June 8, 2017: IDR 45.3 million
- June 23, 2017: IDR 100 million
- June 23, 2017: IDR 19.3 million
- June 25, 2017: IDR 30 million
- June 26, 2017: IDR 37.6 million
- August 4, 2017: IDR 150 million
- August 14, 2017: IDR 135.8 million⁷

After receiving approval from I Am Geprek Bensu's owner, Ruben requested to recruit a kitchen staff member. Ruben's name and picture were then employed as marketing ambassadors by other culinary brands under the title "I Am Geprek Bensu Sedep Bener/Beneerrr." After employing a worker from I Am Geprek Bensu, Ruben Onsu launched his own geprek chicken business, "Geprek Bensu," in August 2017. The Geprek Bensu brand owned by Ruben Onsu was registered on June 7, 2018 and its legal protection until 3 September 2025. Bensu, a nickname for Ruben Samuel Onsu, was registered by Ruben with the South Jakarta District Court. Ruben claims the name is his. He requested the establishment of the brand name Bensu as an abbreviation of Ruben Samuel Onsu's name to the District Court with No. 384/Pdt.P/2018/PN.Jkt.Sel. Ruben filed a lawsuit against PT Ayam Geprek Benny

⁷ Nurlita Sari, "Jadi Brand Ambassador 'I Am Geprek Bensu', Ruben Onsu Dapat Honor Rp 663 Juta," *kompas.com* 12 Juni 2020, <https://megapolitan.kompas.com/read/2020/06/12/14540361/jadi-brand-ambassador-i-am-geprek-bensu-ruben-onsu-dapat-honor-rp-663>.

Sujono regarding the use of the name "Bensu." The lawsuit, registered under case number 48/Pdt-Sus/Merek/2018/PN Niaga.Jkt.Pusat, was submitted to the Commercial Court at the Central Jakarta District Court on September 25, 2018. In his claim, Ruben asserted that he is the rightful owner and the first registrant of the "Bensu" trademark, which he uses in his culinary business.

He also claims that the defendant has used the Bensu brand for his culinary business, namely "I Am Geprek Bensu Sedep Bener/Beneerrr" without his permission based on information from the intellectual property database of the Directorate General of Intellectual Property (DJKI). PT I am Geprek Benny Sujono, which owns the I am Geprek Bensu business, registered its trademark certificate on May 3, 2017 and its legal protection is valid until May 3, 2027. Of course, this registration date is different from the business run by Ruben Onsu. Ayam Geprek Bensu owned by Ruben Onsu was registered on June 7, 2018 and its legal protection is valid until September 3, 2025.

Article 1 paragraph 5 of Law Number 20 of 2016 concerning trademarks and geographical indications states that, Trademark rights are exclusive rights granted by the state to the owner of a registered trademark for a certain period of time by using the trademark itself or giving permission to other parties to use it. If we look again, the first registered trademark is I am Geprek Benny Sudjono on May 3, 2017 and the last registered trademark is Geprek Bensu owned by Ruben Onsu.⁸ Of course, this is in accordance with Article 1 paragraph 5 which states that Trademark Rights are the exclusive rights of the registered trademark owner to use it or license its use. This is in accordance with Article 1 paragraph 5 because the state grants trademark rights to registered trademark owners. The purpose of article 1 paragraph 5 is to protect the products or services offered by a party from being misused or imitated by another party. Trademark infringement can cause significant harm to the owner of the trademark rights and the company of the trademark. It is important to maintain the reputation and quality of a brand.⁹

⁸ Article 1 paragraph 5, Law Number 20 Year 2016 on Trademarks and Geographical Indications

⁹ Angelica Catherine, Lie Gunardi, dst, "SENGKETA HAK MEREK DAGANG .GEPREK BENSU MELAWAN

After that there is also Article 21 paragraph 2 letter a which states that the application is rejected if the trademark is or resembles the name or abbreviation of the name of a famous person, photograph, or the name of a legal entity owned by others, except for the written consent of the rightful owner. The purpose of Article 21 paragraph 2 letter a is to protect the rights and interests of parties who own well-known names, name abbreviations, photographs, or names of legal entities from abuse in trademark registration. It prevents infringement of the right to privacy and the right to a good name.¹⁰

PT I am Geprek Benny Sujono is entitled to use as the exclusive right holder because he has registered first compared to Ayam Geprek Benu Ruben Onsu. The logos of the I am Geprek Benu and Ayam Geprek Benu brands can be seen very similar. There are several reasons that make there are many logo similarities from the I am Geprek Benu and Ayam Geprek Benu brands. First from the logo, both logos have the same colors, namely red and orange equipped with fire. Second, the shape of the chicken from both brands is the same, but what makes it different is that it lies in the style of the chicken in the I am Geprek Benu logo, the chicken's hands are saluting, in contrast to the Ayam Geprek Benu logo where both hands are on the waist. Article 2 paragraph 3 states that a protected trademark consists of a mark in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by a person or legal entity in the trading activities of goods and/or services. Because the two logos are similar or have many similarities, of course the two logos are entitled to be protected by the state as referred to in Article 2 paragraph 3. The purpose of Article 2 paragraph 3 is to distinguish goods or services produced by individuals or legal entities in trade activities. The owner of a registered trademark has the exclusive right to use the trademark in business activities, thus protecting it by other parties

I AM GEPREK BENSU” (Penelitian Pengembangan, Universitas Tarumanagara, Jakarta, 2021), 314, <http://repository.untar.ac.id/>.

¹⁰ Article 21 paragraph 2 letter a, Law Number 20 Year 2016 on Trademarks and Geographical Indications



without permission.¹¹

Picture 1. I am Geprek Bensus

Sources: <https://iamgeprekbensu.com/>



Picture 2. Ayam Geprek Bensus

Sources: <https://www.theindonesianinstitute.com/belajar-dari-kasus-geprek-bensus-hki-merk-dagang-penting/>

Article 3 states that trademark rights are obtained after the trademark is registered.¹² So the right to a new trademark can be obtained after the trademark has been officially registered in an authorized institution, namely the Directorate General of Intellectual Property Rights (DJKI).¹³ Prior to registration, the trademark owner does not have exclusive legal protection over the trademark. In other words, trademark registration is an absolute requirement to obtain exclusive rights to its use.¹⁴ Both brands have trademark rights because they have registered with the Directorate General of Intellectual Property Rights (DJKI) despite the different dates.¹⁵

¹¹ Article 2 paragraph 3, Law Number 20 Year 2016 on Trademarks and Geographical Indications

¹² Article 3, Law Number 20 Year 2016 on Trademarks and Geographical Indications

¹³ Cindy Rahmatya, Fobo Arazi, and Russell Victory, "Legal Protection Against Trade Secrets in Indonesia," *Universitas Pelita Harapan Academic Journal* 5, no. 8 (2019): 241–62.

¹⁴ Muhammad Azwar Am, "Sengketa Merek Dagang MS Glow Dan PS Glow Atas Merek Dalam Perspektif Hukum Di Indonesia," 2016, 143–53.

¹⁵ Pinem, N, E, L, Gunadi, S, L, N, "Analisis Penyelesaian Sengketa Terhadap Hak Merek Atas Putusan Geprek

Ruben Onsu has received compensation of 663 million rupiah from PT Ayam Geprek Benny Sujono. The proof of payment has been listed above where Ruben Onsu received his payment from May 9, 2017 to August 14, 2017. Because Ruben Onsu became the promotional ambassador of the I am Geprek Benu brand, his photo was installed in I am Geprek Benu branches. In fact, from here Ruben Onsu after getting compensation of 663 million rupiah from PT Ayam Geprek Benny Sujono, but he instead made a new geprek chicken business called Ayam Geprek Benu to become his competitor. At the time of creating the Ayam Geprek Benu business Ruben Onsu even invited employees of I am Geprek Benu to work with him.

Article 21 paragraph 3 states that an application is rejected if it is submitted by an applicant with bad faith.¹⁶ When viewed from the logo, there are many similarities and the brand names of both are similar. The purpose of Article 21 paragraph 3 is to prevent abuse of the legal process by parties who are dishonest (have bad intentions) or aim to harm others. This provides protection to parties who are unfairly victimized by ill-intentioned applicants. The type of food sold by both companies is the same, namely geprek chicken. Ruben Onsu felt the name belonged to him and he filed a lawsuit over the name. If we look at Article 21 paragraph 3, it is natural that his application is rejected, because Ruben has the desire to imitate another brand (I am Geprek Benu) for his business interests and cause unfair business competition. Ruben tried to take advantage by imitating and making his product resemble his competitor (I am Geprek Benu).¹⁷

In addition, Ruben Onsu can also be said to mislead consumers because the name is arguably similar, the food sold is also the same, and the logo has many similarities. So because the name is similar, the food sold is also the same, and the logo has many similarities, consumers are confused to distinguish between the two brands because of these factors, so consumers believe that they are the same. This not only results in

Benu Melawan I am Geprek Benu” Penelitian Pengembangan, Universitas Pendidikan Ganesha, Singaraja, 2021), 30, <https://repo.undiksha.ac.id/>.<https://repo.undiksha.ac.id/>.

¹⁶ Article 21 paragraph 3, Law Number 20 Year 2016 on Trademarks and Geographical Indications

¹⁷ Pinem, N, E, L, Gunadi, S, L, N, “Analisis Penyelesaian Sengketa Terhadap Hak Merek Atas Putusan Geprek Benu Melawan I am Geprek Benu,” Vol. 2, No. 1, (Maret 2021), 30.

losses in the revenue aspect, but also jeopardizes the long-term stability of the company. Both brands are widely known by Indonesians and people recognize Ruben Onsu as the owner. Indeed, Ruben Onsu was once a promotional ambassador for the I am Geprek Benu brand, and made the business famous to all the public.

C.2 Intellectual Property Rights Dispute

1. Legal Protection of Trademark Rights

The brand made by the performer of the effort intends to make but the object or service made. The brand can be said to characterize the origin of the object or service that relates the purpose for which the product or service was made. For customers, the brand acts as a collateral of the created figure with a different end of vision from the general public. Thus, a brand that has a quality that is well-known by customers has the potential to be accompanied, imitated, or hijacked by many irresponsible people.

Basically, brands are divided into trademarks and service marks, and brands are also known as collective marks. Trademarks have also been used for a long time to mark a product to show the origin of goods and/or services and their quality and to avoid imitation. Legal protection of trademarks is also increasing along with the advancement of world trade.¹⁸ The legal protection of trademark rights is needed for the these reasons:

1. To ensure legal certainty for inventors, owners, or holders of trademarks;
2. To prevent violations and crimes against trademark rights;
3. To provide benefits to the public in order to be more encouraged to register a trademark.

In addition, trademark registration is also very important for consumers, because consumers will buy a good and/or service through a brand that certainly has a quality that is safe for use (consumption). Therefore, there are requirements that must be met by a trademark in order to be registered by:

¹⁸ Halomoan, K., Lie, G., Rizqy, M., & Putra, S. (2023). Legal Analysis Of Trademark Patent Dispute I Am Geprek Benu Against Geprek Benu. *Jurnal Multidisiplin Indonesia*, 2(1).

1. 1 . Have distinguishing power;
2. Is a mark on the goods or services;
3. Not contrary to religious morality, decency, and public order;
4. Not being public property;
5. Not in the form of information or related to the goods or services¹⁹which registration is requested.

Protection of trademark rights for trademark holders in Indonesia until now is still often found in violations of trademark rights. Such violations have occurred from the past until now by using ways that are not in good faith and carried out by people who are not responsible. Trademark registration should be based on the principle of good faith of the registrant based on Law Number 20 Year 2016 on Trademarks and Geographical Indications.²⁰

Among them are that the mark contradicts the state ideology, laws and regulations, morality, religion, decency, or public order, or only mentions the goods and/or services for which registration is requested; contains elements that can mislead the public about the origin, quality, type, size, variety,²¹ the purpose of use of the goods and/or services for which registration is requested or is the name of a protected plant variety for similar goods and/or services; contains information that is not in accordance with the quality, benefits, or efficacy of the goods and/or services produced; does not have distinguishing power; and/or is a common name and/or public symbol. Distinguishing power; and/or is a common name and/or symbol of public property.²²

Trademark regulation in Indonesia basically refers to Trade Related Aspects Of Intellectual Property Rights (hereinafter referred to as TRIPs), the removal of

¹⁹ Jened, R. (2021). *Hukum Merek (trademark Law) Dalam Era Globalisasi Dan Integrasi Ekonomi*. Kencana Prenada Media Group.

²⁰ S R Giovani and S S Entoh, "Peran Hak Kekayaan Intelektual Terhadap UMKM Ditinjau Dari Aspek Hukum Dan Ekonomi Indonesia," *Anthology: Inside Intellectual Property Rights*, 2024, 184–207, <https://ojs.uph.edu/index.php/Anthology/article/view/8259%0Ahttps://ojs.uph.edu/index.php/Anthology/article/viewFile/8259/3881>.

²¹ Amiruddin, H. Zainal Asikin, (2012). *Pengantar Metode Penelitian Hukum*, Cetakan ke-6, Edisi Pertama Penerbit: PT. Raja Grafindo Persada, Jakarta.

²² Caitlynn Nadya and Michelle Lim, "Legal Protection for Famous Trademark in Indonesia : Case Study of the Supreme Court Decision No . 264 / K / Pdt . Sus-HKI / 2015" 2, no. 1 (2024): 348–71.

registration of a trademark is not regulated in TRIPs. What is regulated in TRIPs is only the cancellation of a trademark, which can occur if a trademark is not used for at least 3 (three) consecutive years.²³ This is as contained in Article 19 of TRIPs which reads as the following:

‘If the use is required to maintain a registration, the registration may be canceled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitutes an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use”²⁴ These terms showed above are part of the Indonesian Trademark Law and apply to the removal of a registered trademark, not the cancellation of a trademark. That is, the trademark owner does not use his brand in the trade of products and/or services once it has been registered in the General Register of Trademarks at the Directorate General of Intellectual Property Rights. Furthermore, the trademark has not been used for three years in a row. By registering a trademark, the trademark owner gains protection, and the benefit of this system is legal certainty²⁵. So even though the name is well known, it does not mean a guarantee if used as a trademark will immediately get protection and exclusive rights, because it still must be registered in advance to the Directorate General of Intellectual Property (DG IPR) in order to have juridical legal force.

The above-mentioned provision, in the Trademark Law in Indonesia, is a condition for the removal of a registered mark, not a condition for cancellation of a mark. The "Geprek Benu" case gives specific information on the management and protection of intellectual property rights (IPRs) in Indonesia, with a specific focus on the laws controlling intellectual property and dispute resolution. This includes:

²³ Halomoan, K., Lie, G., Rizqy, M., & Putra, S. (2023). Legal Analysis Of Trademark Patent Dispute I Am Geprek Benu Against Geprek Benu. *Jurnal Multidisiplin Indonesia*, 2(1)

²⁴ Jened, R. (2021). *Hukum Merek (trademark Law) Dalam Era Globalisasi Dan Integrasi Ekonomi*. Kencana Prenada Media Group.

²⁵ Hamizh, H. (2020). Legal Protection of the Use of the Trademark ‘Geprek Benu’ which is in the Registration Process.

1). The legal lawsuit

The basic legal basis for this lawsuit is Law No. 20 of 2016, which governs trademarks and geographical indications. The key provisions include:

- Article 1(1) describes a brand as a representation that separates one party's goods and services from the ones of others.
- Article 3 shows the "first to file" idea which allows complete ownership to the first person who files for the brand name.
- Article 21 prevents the filing of brands that are alike or identical to existing brands if their similarity creates confusion for customers.
- Article 76: Establishes the foundation for a lawsuit to invalidate a trademark registered in bad faith.²⁶

Furthermore, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution provides the legal framework for non-litigation ways to settle intellectual property problems.²⁷

2) The Key Issue of the dispute

- Ownership and License Priority: The court made the ruling based on the "first to file" concept/Idea. "I Am Geprek Benu" registered its brand name before Ruben Onsu's registration, giving itself first place under Indonesian law.
- False Allegations: Ruben Onsu's legal representatives (lawyers and counselors) claim that "I Am Geprek Benu" presented the brand name incorrectly. However, the court found not enough proof to support this statement.
- Consumer Confusion: While both brand names had the same elements and factors of the business, the court ruled that the intellectual property law's important concern is register priority rather than the personal experiences of the company.²⁸

²⁶ Gunawan, Levira & Rahaditya, R.. (2023). Analisis Sengketa Kepemilikan Merek Benu (Studi pada Merek Geprek Benu Melawan I Am Geprek Benu). *Syntax Literate ; Jurnal Ilmiah Indonesia*. 8. 4606-4618. [10.36418/syntax-literate.v8i6.12759](https://doi.org/10.36418/syntax-literate.v8i6.12759).

²⁷ Witasari, Aryani. (2017). Absolute Properties of Arbitration Decision in Business Dispute Settlement Based on Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution Law Based on Justice Theory Perspective. *UNISSULA*. <https://doi.org/10.26532/jph.v4i3.2325>

²⁸ Yudistia, T. T., & Romadhona, M. (2022). Analisis Kasus Plagiarisme Merek Dagang Antara I Am Geprek Benu Dan Geprek Benu.

3) Implications for businesses

This case shows different ideas in the business world, it also exposes several lessons for businesses:

- The Importance of Early Registration: Proper registration of brands or brand names to be more specific, is important for securing sole ownership and avoiding issues like a lawsuit and many more that include violation from the law point of view.
- Proper Research in Brand Selection: Businesses must do thorough research to make sure that any potential intellectual property is not in conflict or ground terms of violation with current registrations.
- Smart Ways to Use the Non-Litigation Systems: Arbitration and mediation can be quicker and cheaper than lawsuits or court proceedings, particularly when parties need positive results from both sides to have a win-win or a draw (that includes settlements and deals).²⁹

4) The Increasing The effect on Intellectual Property Law

The "Geprek Bensu" case points out the changing context for conditions in the intellectual property law in Indonesia. It shows the justice system's effort to maintain the rule of law and protect available intellectual property rights was being presented in the Intellectual property law, while also additionally supporting loyalty to proven laws and procedures.³⁰ The case also focuses on the important role of teaching and informing company owners/business entrepreneurs about the protections made applicable to their intellectual property.³¹

C.3 Court Decisions and Reasoning of the Commercial Court of Central Jakarta District Court (No.57/Pdt.Sus-Merek/2019/PN Niaga Jkt.Pst.)

The court of first instance commenced in the Commercial Court of Central

²⁹ Fajar Sugianto, Stevinell Mildova, and Felicia Christina Simeon, "Increasing Economic Performance Through the Rule of Law in Indonesia: Law and Economics Perspective" 140, no. Ic leh (2020): 92–99, <https://doi.org/10.2991/aebmr.k.200513.019>.

³⁰ Fajar Sugianto, "Butir-Butir Pemikiran Dalam Sejarah Intelektuil Dan Perkembangan Akademik Hukum Dan Ekonomi," *DiH: Jurnal Ilmu Hukum* 10, no. 19 (2014), <https://doi.org/10.30996/dih.v10i19.280>.

³¹ Angelica, C., Lie, G., & Syailendra, M. R. (2021). Trademark Dispute of Geprek Bensu Against I Am Geprek Bensu. *SERINA PROCEEDINGS*, 1(1), 311-318.

Jakarta District Court, Decision No.57/Pdt.Sus-Merek/2019/PN Niaga Jkt.Pst. At this stage of dispute, Ruben Onsu's principal claims are as follows:

Ruben is the first registrant of the "Bensu" trademark and reserves exclusive ownership right and protection, in accordance with Art. 1 para. 5 jo. Art. 3 of Law No. 20 of 2016 Regarding Trademarks and Geographical Indications (hereinafter; Trademarks Law No.20/2016) concerning Trademarks and Geographical Indication (Trademarks Law No.20/2016). And claims that the abbreviation "Bensu" is the abbreviated word of a famous figure, hence in this case means himself. Moreover, the trademark "I am Geprek Bensu Sedep Beneerrr" including the logo, Registration No. IDM000643531 Class 43, owned by Benny Sujono (Defendant) has similarities with the Plaintiff's trademark "Bensu" and therefore shall be legally annulled and voided. Citing the Explanation of Art. 21 of Trademarks Law No.20/2016, the Plaintiff claims that the element of "Bensu" in Defendant's trademark "I am Geprek Bensu Sedep Beneerrr" contain similarities with the Plaintiff's trademark, the Plaintiff argues that the word "Bensu" is a commonly known name that is used to refer to Plaintiff's abbreviated name "ruBEN onSU", which shall be considered as the distinguishing element accordance to Article 22. Furthermore, Article 21 (2) stipulates that a trademark request shall be denied if it contains or identical to an abbreviation of a famous figure.³²

Benny Sujono (Defendant) filed a counterclaim (*rekonvensi*), claiming that Ruben Onsu's trademarks registration has violated Article 21 paragraph 1(a), paragraph 2(a), dan paragraph 3 of Trademarks Law No.20/2016, stating that Ruben has registered his trademarks filing in bad faith and his filed trademarks have similarities with the already registered trademark of the Plaintiff, which therefore its application has to be denied.

The court finds that as proven by the evidences, Ruben registered the mark "I Am Geprek Bensu Sedep Beneerrr" registered on August 8th 2017, under the name of Ruben Samuel Onsu. While Benny Sujono's (Defendant) mark, with the same name "I

³² *Decision No.57/Pdt.Sus-Merek/2019/PN Niaga Jkt.Pst.*

Am Geprek Bensus Sedep Beneerr", under the name of PT. Ayam Geprek Benny Sujono had already been registered first before the Plaintiff, registered on May 3th 2017. The marks registered by the Plaintiff were registered under IDM Class 45, which is a category for legal services, security protection services, and private and social services. Whereas the Defendant's trademarks were registered under IDM Class 45, categorized under food and beverages services. The Court's reasoning in interpreting the "substantively similar" element stipulated in Article 21(1) were straightforward as elaborated under the Elaboration of Article 21(1): "*The term 'substantially similar' means similarity which is generated from dominant element between Mark that creates impression of similarity, whether in shapes, composition, writing, or combinations of those elements, or similarity in phonetics, in the Mark.*"³³ The Court concluded that it identifies the similarities between the two Marks as identical.

Moreover, interpreting the existence of different categories of registered Marks with identical names but differing categories, and in view that the same name of Marks "I Am Geprek Bensus Sedep Beneerr" and Logo, the court analyzed and found that the Mark registered in Class 45 owned by the Plaintiff, is categorized as franchise service, which causes confusion to the general public as consumers, and causes the consumers to refer the Mark "I Am Geprek Bensus Sedep Beneerr" as a Mark owned by the Plaintiff, whereas in fact, it is the Defendant who was the first to file, registered under Class 43 as food and beverages. For this reason, the Court decided to grant Benny Sujono's counterclaim request to refuse the registered Marks of the Plaintiff due to its application in bad faith. As shown in the evidence of the case, examining the numerous Marks applied by the Plaintiff, and considering the very identical characteristics of its Marks, the Court decided that the Plaintiff has registered the application of his marks in bad faith which falls within the scope of Article 21(3) of Trademarks Law No.20/2016, committed with an intent of imitating the Marks owned by the Defendant which was already well recognized by the public. Moreover, as proven by the pieces of evidence of financial transactions concerning a business

³³ Elaboration of Article 21 Section 1, Law No. 20 of 2016 Regarding Trademarks and Geographical Indications.

relationship between the two Parties, which shows the Plaintiff to have received compensation in return for his role as Brand Ambassador of the Defendant's franchises "I am Geprek Bensu", the Court is of the opinion that the Defendant should have recognized his role was clearly a Brand Ambassador for the Defendant's business, not as the owner of the Defendant's Marks. Therefore the Court concludes, as mentioned above concerning the intent elaborated under Article 21(3), the actions by the Plaintiff of applying Marks identical to the precedently existing Marks, were committed under the intent of imitating, or to confuse consumers which therefore create conditions of unfair business competition.³⁴

Another merit that the Court addressed, on the issue of similarities between Benny Sujono's Marks registered on May 3th 2017, and Ruben Onsu's Marks registered on August 8th 2017. Upon detailed examination, finding that it has been proven that they are identical, the Court granted the Defendant's request to nullify the Plaintiff's by removing the Marks out of the register and announce it in official announcement in accordance with the provisions of Trademarks Law No.20/2016. The Court thereby declared that the Plaintiff's trademarks to be null and void by the law, with all of its legal consequences that follow.

Ruben's party continued to file a cassation at the Indonesian Supreme Court under Case No. 575 K/Pdt.Sus-HKI/2020. The SC ultimately rejected the cassation, finding that there were no errors in the application of the law at the lower court level, thereby affirming the precedent judgment and upholding the previous decision issued by the Commercial Court Central Jakarta District Court.

D. Conclusion

This study examines the dispute between Ruben Onsu v. PT. Ayam Geprek Benny Sujono concerning Marks ownership in intellectual property rights law, as governed under Indonesian Law No. 20/2016 on Trademarks and Geographical Indications. The dispute started to arise when Ruben Onsu claimed exclusive rights to the trademark "Bensu" and filed a suit against Benny Sujono at the Commercial

³⁴ Elaboration of Article 21 para. 3, Law No. 20 of 2016 Regarding Trademarks and Geographical Indications.

Court of Central Jakarta District Court. In the proceeding, the Court granted the counterclaims made by Benny Sujono. In its rulings, the Court finds that there are substantive similarities between the trademarks owned by each two parties. It found that Ruben Onsu have intentionally registered identical names, logo, and characteristics of his Marks, identical to the precedently existing Marks owned by Benny Sujono. The court further ruled that the registered Marks owned by Ruben Onsu shall be nullified and voided by the law, and also to be removed from the general register, in accordance with Trademarks Law No.20/2016. In its reasoning, the Court primarily adhered to the Trademarks Law No.20/2016, specifically Article 21 paragraph one, two, and three, which serves as regulatory framework for trademarks application and trademark refusal, as well nullification or refusal of mark applications caused by bad faith.

This study findings highlight the critical issues in the enforcement of first-to-file principles in Indonesian intellectual property rights regime. Through this study, it underlines the importance of adhering to the foundational principle of "first-to-file" rule, as established under Trademarks Law No. 20 of 2016. The case shows the importance and necessity of good faith in trademark registration and the risks associated with failing to perform due diligence in Trademarks creation for business or brands. From this study, we learned the necessity for early and lawful trademarks registration, the importance of good faith for business practitioners in designating trademarks and its relation to business competition.

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