

# **Analisa Perlindungan Hukum dan Penyelesaian Sengketa Dalam Perjanjian atas Hak Merek (Studi Merek Dagang Tupperware Terhadap Tulipware)**

**Elvy Wiyono, Macvin Andreas Winata, Yohanie Maretta**

<sup>1,2,3</sup> Universitas Pelita Harapan Surabaya, Indonesia

<sup>1</sup> elvywiyono@gmail.com

<sup>2</sup> macvinandreas29@gmail.com

<sup>3</sup> yohaniemaretta@gmail.com

## **Abstract**

The author discusses the legal protection of Intellectual Property Rights (IPR), particularly in the context of trademarks in Indonesia. The development of Indonesia as a country with diverse wealth gives rise to healthy and unfair competition in various economic sectors. To prevent unfair competition, the government recognizes the importance of IPR regulation. The focus of this paper is on Trademark Rights, which provide legal certainty over economic and moral rights for creators of innovations. By analyzing the Tupperware and Tulipware cases, this paper explores the effectiveness of legal protection and dispute resolution related to trademarks. In addition, this paper explains the definition of trademark rights, its legal basis, and the types of trademarks that can be registered. The legal protection of brand rights includes rules and regulations that enable brand owners to take legal action against infringement of their rights. The process of transferring trademark rights is also discussed as part of such legal protection.

**Keywords:** Intellectual Property Rights; Trademarks; Legal Protection; Dispute Resolution; Exclusive Rights; Transfer of Rights; Regulation in Indonesia

## **A. Introduction**

The development of Indonesia which is a country that has a lot of diverse wealth from various fields of aspects and is experiencing rapid development in the economic, technological, legal, social and cultural sectors. This development aims to improve the welfare of the Indonesian people. Developments in these various sectors have made Indonesia join various countries in placing the world as a single world market.

In this development, there are vulnerable to various competitions, both in the economic climate of fair competition and the type of economic activity of unfair competition. To prevent unfair competition, either in the form of imitation,

plagiarism, reproduction without permission, changing the identity of a brand, piracy of a work or irresponsible parties in the use of intellectual property rights knowingly without permission or license owned by the actual owner. The Indonesian government is aware of the importance of establishing regulations and rules on intellectual property rights that apply. The development of Intellectual Property Rights or briefly called (IPR) is an equivalent word commonly known and used in Intellectual Property Rights (IPR), as well as rights arising from the results of brainstorming which ultimately produces a product or process that in its implementation can be used for humans.<sup>1</sup>

If we look in more detail, Intellectual Property Rights are present to provide certainty over the economic rights and moral rights that should be obtained by the creator for an innovation or creativity produced by him. This concerns visible and invisible objects that are useful in life and useful for legal subjects. If we look back that the issue of IPR is being discussed in the community, the sense of wanting to be appreciated for one's own work and the increasing sense of wanting to appreciate the creator for the invention or creation of a work that is beneficial to the general public.

The increasingly competitive business climate raises a variety of new issues that are now getting deeper attention from the government, one of the interesting issues is the Brand. This is due to the increasing number of brands with various identities that are very well known in the community. Given that Trademark has the meaning of identity and self-esteem of a good and/or service user who becomes a pillar in conducting economic activities in the community, this is a vital thing that must be given legal certainty before the goods or services are circulated or offered widely in the community. Likewise mentioned in Article 3 of Law No. 15 of 2001 on Trademark (hereinafter can be abbreviated as Trademark Law) which states that the realm of Trademark Rights is an exclusive right granted by the state to the owner of the trademark registered in the Trademark General Register for a certain period of

---

<sup>1</sup> Harsono Adisumarto. Hak Milik Intelektual Khususnya Paten Dan Merek, Hak Milik Perindustrian (Industri Property), Jakarta: Akademika Pressindo, tahun 1990, hlm. 59.

time by using the trademark itself or give permission to other parties commercially to use it. On various considerations and weighing of international treaties successfully ratified by Indonesia as well as the experience of implementing Trademark administration, it is necessary to improve the Trademark Act No. 19 of 1992 (State Gazette No. 14 of 1997, State Gazette of 1997 No. 31) and known as the old Trademark Law, with a new Trademark Law 1997 No. 31) and known as the old Trademark law, with a new law on Trademark.<sup>2</sup>

As known in legal science exposure that Intellectual Property Rights are known to be divided into 2 (two) groups in the scope of IPR, namely in Copyright (Copy Right), then followed by Industrial Property Rights or known as (Industrial Property Rights) in this group is divided into Patents (Patent), Trademarks (Trademarks), Industrial Design (Industry Design), Repression of Unfair Competition Practices (Repression of Unfair Competition), Layout Design of Integrated Circuit (Layout Design of Integrated Circuit), Trade Secret (Trade Secret).<sup>3</sup> If you look in more detail that there are similarities that are given copyright, then in patent rights, and also the right to trademark if based on various properties as well as on the intangible form of its rights.

As explained below, Trademark Rights is the scope of Intellectual Property Rights because Trademark Rights in its understanding is a sign that can distinguish a trade product of one person and a product of another person. Although in its embodiment there are no intellectual elements such as at the time of creation or invention of the product. But in its implementation, Trademark Rights are not born by itself like Copyright, but it takes registration of trademark rights along with regulations that must be adhered to for registrants or registrars of trademarks. Trademark rights can be granted by the State after a series of registration process because the birth of Trademark Rights is not directly and can occur automatically as the process of Copyright. But in the purposes of Trademark Rights are born due to

---

<sup>2</sup> Tim oleh Permata Press, Kitab Undang-Undang Hak atas Kekayaan Intelektual, Surabaya: Permata Press, 2010, hlm.117

<sup>3</sup> C. S. T. Kansil, Hak Milik Intelektual (Hak Milik Perindustrian dan Hak Cipta), Cetakan Pertama, Jakarta : PT. Sinar Grafika, 1997, hlm 98.

registration.<sup>4</sup> Registration of Trademark Rights can be registered directly at the Directorate General of Indonesian Property Rights or can be abbreviated as (Directorate General of IPR) Registration of Trademark rights must be based on the good faith of the creator, so that the less violations found against the law in force in Indonesia. Referring to Act No. 15 Year 2001 on a Trademark when talking in terms of completion of the application, after the administrative requirements have been met by the applicant, the application is rejected or approved will be known more quickly, and given the opportunity to object to the announcement during the grace period of 3 (three) months, (this time is shorter than the previous trademark law).

Trademark rights have various advantages that can be enjoyed by the creator in terms of disseminating the creations successfully created by him. The creator can use his creations personally, can also transfer his trademark rights to another person or second pihak or other parties, giving permission to others to reproduce and sell to the general public. The granting of this permission is called a license, the license has a form such as an agreement made between the owner of the trademark (licensor) and then given to the licensor. rights to the party who will commercially use the Trademark Rights (the licensee). Keep in mind that the interest of the license is only to give permission for the Trademark to utilize it economically, not to give the right to the Trademark in full to the licensee.

In the midst of a society that is presented by various types of goods and services that can facilitate activities, create products that can solve problems and losses arising from certain living things, or goods and services that can add aesthetic value to consumers or assets of these consumers. Brands are more than just works, the style of living today also has many factors of influence caused by brands, even wearing certain brands can increase one's self-confidence. The limited production of a product for a particular brand and the high price set to get a product or work makes consumers increasingly want to own it. Economic factors are often an obstacle

---

<sup>4</sup> H.R. Tonny Suryadi Wijaya, *Perlindungan Merek di Indonesia Menurut UU No 15 Thn 2001 Tentang atas Merek, Perspektif Hukum*, Volume 7 Nomor 1, Mei 2007, hlm. 58.; Noegroho Amin stiarlo, *Hak Atas Kekayaan Intelektual dan Hak Kekayaan Intelektual Tradisional Dalam Konteks Otonomi Daerah*, *Jurnal Mimbar Hukum Edisi Tahun 2000*, hlm 68.

in realizing these desires, or a sense of indifference leads to the intention to imitate, counterfeit and also pirate pre-existing original inventions. Some people prefer to use imitation products, poor quality but in appearance resembling the original product to fulfill the desire to own an item. The image or identity of the current product that has been designed and registered with good quality has been damaged by people or interests that escape responsibility, in this case Indonesia acts as a market and also suffers losses in terms of good name. This certainly raises the concerns of the creator of the original work, as well as the Indonesian government so that it is necessary to prioritize the protection of Intellectual Property Rights. In addition to getting benefits in economic terms, creators also get legal protection for their creations, this is to prevent the increasing number of counterfeit works that are also circulating in the market and trying to take advantage of the results of plagiarism of existing original brands. In Indonesia itself, the problem is very severe due to the economic conditions of some of the people who are not prosperous, resulting in a lack of awareness to buy and appreciate original products, the tendency to buy goods at low prices, no matter if the goods are counterfeit or the quality presented is far from SNI (Indonesian national standard). Likewise, the culture of people who are easily sharing without certain conditions, resulting in malicious intent easily arises to steal the invention or creation of the original inventor.

Efforts made in realizing the legal protection of Trademark Rights, and prevent the widespread losses incurred from the results of imitation are rules and regulations that can protect as well as force specifically to comply with the flow of the lawsuit either demanding compensation in the realm of the court. The regulations recognized by Indonesia, specifically described in Chapter XI are found in the First Part of Article 76 of the Trademark Law. The owner of a registered trademark can file a lawsuit against other persons/parties who have not been granted permission for the right to use a trademark in the appearance of having similarities and also similarities that are seen essentially and entirely in the realm of services that are also similar. The type of lawsuit will result in the type of lawsuit for compensation, then

the dismissal/no further operation in all acts and activities which are related to the use of the trademark that has been sued. The filing of the lawsuit can be done in the Commercial Court.

With a variety of exposure that has been described, the author wants to explore and discuss in more detail related to the analysis of legal protection, dispute resolution in the agreement on the right to trademark, analyze the review of the trademark in the field of trade Tupperware against Tulipware. In detail examine the legal protection and dispute resolution.

Formulating the details of the background carried out by the author, it is concluded that the formulation of the problems that this paper will explore is:

1. Is the legal protection of rights in the Tupperware trademark against the Tulipware trade mark effective?
2. How is the settlement of disputes over rights in Tupperware trademarks against Tulipware trade marks?

## **B. Research Methods**

In this writing, the type of research used is normative juridical, with a problem approach using statute approach, conceptual approach and case approach. While the legal materials used are primary and secondary, and the steps in this research are the first step of collecting legal materials through literature study (inventory, classification & systematization), and the second step is the analysis step where the method used is deduction.

## **C. Analysis and Discussion**

### **C.1. Explanation Of The Definition Of Trademark Rights And Exclusive Rights And Their Legal Basis**

Trademark is a right that has been granted exclusively to its owner to express or use a mark that can distinguish products and or use of services offered from similar products or services from competitors or within the same scope. This distinction in

the embodiment of the mark can be in the form of words, images, symbols, sounds, as well as combinations that come together in several important elements that are used to identify a particular product or service. Trademark rights give the owner control over the use of the mark in commerce and protect consumers from confusion between different products or services. It also has the advantage of providing a point of distinction to the product and or service in its implementation enhancing the image and reputation of the brand in the eyes of consumers. Exclusive rights will be granted to a person or entity in its interest to perform an action as well as certain activities without interference from other parties. In the context of trademark rights, exclusive rights mean that the trademark owner has the right exclusively used to utilize certain brands in trade, and no one else is allowed to use a brand of the same or similar products in an illegal manner.

The Legal Basis of Trademark Rights in Indonesia are:

1. Law No. 20 of 2016 on Trademarks as well as Geographical Indications and Law No. 15 of 2001 on Trademarks: These laws are the main foundation for the regulation of trademark rights in Indonesia. The above laws regulate many of the rights and conduct obligations of trademark owners, trademark registration procedures, protection of famous marks, and penalties for infringers of trademark rights.
2. International Provisions: Indonesia is also a member of various international agreements governing trademark rights, such as the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement and the charters that have been issued by the WTO (World Trade Organization). This ensures that the trademark regulations imposed in Indonesia are in line with and below internationally imposed standards. Trademark rights are enforceable for a certain period of time and require periodic renewal.

Brand owners must also be active in protecting and supervising the use of their brands to ensure that their exclusive rights remain protected. Infringement of trademark rights can result in serious legal action, including criminal sanctions and penalties Civil. The term of protection of trademark rights is enforced for a period of

ten years. This part of trademark protection needs to be renewed every ten years. Provisions regarding the extension period for the term of protection of the right to trademark is required for any trademark rights holder who has obtained a trademark registration certificate. The application for renewal of the term of protection of trademark rights can be made in the period of six months before the term for protection of the trademark has expired.

## **C.2. Scope Of Marks And Types Of Marks That Are Not Refused For Registration**

The various types of marks that are more likely to be accepted and not refused for registration include:

- a. **Distinctive Marks:** Marks that are unique, uncommon, and not confused with other marks in the same industry. Brands that have creative or innovative elements are often easier to register and protect.
- b. **Non-Misleading Marks:** Marks that do not mislead consumers about the nature, quality, or origin of the product or service. Marks that provide false or misleading information may be rejected.
- c. **Trademarks that Do Not Infringe on the Rights of Others:** Trademarks that do not infringe existing trademark rights. Trademarks that are similar in appearance at a glance or in detail that have been registered previously registered or at one time caused confusion as well as the perception of ambiguity of a product of other trademarks in the same industry will tend to be rejected.
- d. **Trademarks that Do Not Cause Social or Ethical Discomfort:** Trademarks that do not contain words or symbols that are considered offensive or unethical in society.
- e. Some countries may have certain ethical guidelines that must be followed.
- f. **Marks that Match the Product or Service:** While descriptive marks may be acceptable in some cases, marks that are too descriptive and generic may be rejected. Brands that fit the product or service but remain unique are more appreciated.



- g. **Marks That Are Not Common Names:** Marks that are common names for certain types of products or services, such as “bicycle” for bicycle, tend to be rejected due to lack of unique elements.

The types of brands that are more likely to be accepted include:

- a. **Descriptive Brands** will be used to clearly describe a superior product or service. These marks often simply describe the main features or characteristics of the product. An example would be “The Coffee Shop” for a coffee shop. In this example, the brand name directly describes the type of business being run, which is a place to drink coffee.
- b. **Arbitrary Marks:** Arbitrary marks are marks that have no direct connection to the product or service being offered. They tend to be more unique and can be linked to the brand itself through branding efforts. For example, “Apple” is an arbitrary brand for electronic products and software, and this name does not explain what products are offered.
- c. **Mixed Marks:** Mixed marks are a combination of descriptive and arbitrary elements.
- d. They mix elements that give a description of the product, but also have more abstract elements. For example, “Microsoft” is a mix of “micro” (small) and “soft” (soft), which refers to computer software, but does not fully describe the product.
- e. **Fantasy Marks:** Fantasy brands are brands that are completely made up and have no real connection to the product or service being offered. An example is “Kodak” for photography products. The word “Kodak” was a meaningless word before the company invented it, but is now recognized as a photography brand.
- f. **Associative Marks:** Associative marks are marks that are specifically designed to associate a product or service with certain characteristics or added value. For example, the brand “Duracell” for batteries denotes enduring durability and longevity, ultimately associating the brand with quality and reliability.

g. **Personified Brands:** Personified brands are brands that give the brand a human character or personality. In an example of implementation in society, “Mr. Clean” is a furniture cleaning product. The brand depicts a strong reflected character of the fictitious “Mr. Clean” who is always clean and tidy, creating a strong brand image.

### **C.3. Legal Protection of Trademark Rights**

Trademark is an identifier used in identifying and also to distinguish the identity of products and services from one brand identity and others from producers or service providers with similar products and or services from other producers or service providers. Trademark in the original embodiment can be a name, uniqueness of words, pictures and paintings, symbols, logos, slogans, colors, sounds, or various combinations of selected elements used to form a unique identity of a product to be created. The detailed explanation of the trademark is stated in Article 1 paragraph 1 of Law Number 15 Year 2001 which reads “Trademark is a sign in the form of pictures, names, words, letters, numbers, color arrangements, or combinations of these elements that have distinguishing power and are used in trading activities of goods or services”.

In its implementation, a trademark has a differentiator from a specific sign that has distinctiveness. In this case, the distinguishing power contains an ability that can distinguish the results of different companies and also related.

If a mark that embodies or has the same distinctive mark cannot be registered because it is the most important element for a company. The main function of a brand is to provide an identifying mark to help consumers recognize and distinguish products or services from competitors, provide assurance of quality, and support marketing efforts. A registered trademark can be a valuable asset for the Company as it can create consumer loyalty, differentiate products or services from competitors, and enhance the company's image and reputation. Brands also have significant economic value and can be treated as intellectual property protected by law. Trademark rights give the owner exclusive control over the use of the mark in

commerce and allow them to initiate legal action against various parties caught infringing the rights.

Trademark registration is an embodiment of the protection in law that is poured from Law No. 15 of 2001. The system applied in Indonesia is the first to file principle, which means that the first registrant of a trademark is entitled to the rights of the trademark and will get exclusive rights for ten years with the consequence that no one can use the trademark for the commercial interests of the exclusive rights without the registration of the trademark.

mandatory registration and is an absolute requirement for people or parties if they want the work or the brand is legally recognized that he is the owner of the trademark, if a trademark is not registered in advance then there will be no ha katas trademark and also legal protection. The acquisition of rights to the trademark is a consequence of being registered with the Office of the Directorate General of IPR and is an exclusive right for registered trademark owners who are legally granted by the state.

Legal protection of trademark rights is not only based on trademark registration alone but the State is also obliged to facilitate protection in the form of compensation claims and officially filed a lawsuit for cancellation of trademark registration.

Legal settlement in the civil realm can be done through the court (litigation) with a lawsuit for compensation and stop all acts of making, using, selling and / or distributing products that have been given trademark rights. However, it can also be resolved outside the court (non-litigation) which allows the parties to resolve the dispute through arbitration or Alternative Dispute Resolution (ADR) by negotiation, mediation, and consolidation.

Article 62 paragraph (1) of Law No. 15 of 2001 on Trademarks explains that the owner of a registered trademark who is a recipient or licensee of a trademark can file a lawsuit against a person or legal entity that does not have exclusive rights to the trademark or someone who without permission uses a trademark that has similarities in registered trademarks.

The word does not have exclusive rights is stated in Article 90 of Law No. 15 Year 2001 on Trademarks. A trademark is used that is not registered and is the same in its entirety as a registered trademark owned by another person for similar goods and/or services. Article 90 regulates criminal charges for trademark disputes which reads "Whoever intentionally and without rights uses a trademark that is the same in its entirety as a registered trademark owned by another party for similar goods and/or services that are produced and/or traded, shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp 1,000,000,000.00 (one billion rupiah)."

#### **C.4. Transfer of Registered Trademark Rights**

Transfer in its understanding can be referred to as a process or way or method as well as actions used to transfer a transfer, replacement, exchange, alteration of a matter regarding the rights obtained over a particular trademark. While the right is something in the form of a power that is used to do something (because it has been determined by law, rules, or authority according to the law).

The transfer of intangible movable property is the transfer of rights to another party who has been selected through the determination or assignee by way of inheritance, grants, wills, written agreements, or other means justified by law and in the process of implementation is not contrary to the norms that apply in the wider community.

The transfer of rights to a registered trademark can occur when the trademark owner wishes to transfer ownership or rights to use the trademark to another party. This can occur in various situations, such as the sale of a business, a brand license agreement, or a merger between two companies. To start the transfer process in order to realize certain interests through an agreement that can be made in writing or unwritten, because in principle the law of the agreement must contain and adhere to the principle of freedom of contract, then before its realization must be considered the conditions that must be met to achieve the validity of an agreement, then before its realization must be considered the conditions that must be met to achieve the

validity of an agreement, the party who will make an agreement can try to learn about the principles and basic provisions that must be met in order to achieve maximum legal protection completely and well (Article 1320 of the Civil Code) and general conditions and other detailed matters which in more detail can be seen in the article above, according to the explanation referred to in Article 1319 of the Civil Code, While the explanation for other causes justified by the legislation, in the explanation of Article 41 paragraph (1) of Law Number 20 Year 2016 clearly said that what is meant by other causes that have been justified and not unlawful by the legislation also does not deviate from the unwritten rules or lay called the norms that apply in social life, as long as it does not conflict with this law, for example, ownership of a trademark that has been registered from another party due to the dissolution of the old legal entity that all trademark owners, can occur due to bankruptcy. business that has been passed by the old party, and legally wants to transfer ownership of the brand.

Taking the opinion of experts, Mr. Abdulkadir Muhammad, through the law, assumes that an intangible movable object is the same as an intangible movable object (intangible movable property). In its surroundings, even though intangible movable objects are movable objects, these rights cannot be confiscated (cannot be confiscated). The reason is that an intangible moving object must be personal and be one with the owner. In terms of law, if the legally authorized owner of the right has taken control of an intangible movable object with that right, one day he is found to have committed a legal violation which in essence also directly or indirectly has disturbed public notices, or deviated from decency which can be prohibited by the owner's legal actions. or the party whose rights have been granted by the creator of the rights holder who uses those rights.

Rights to trademarks that have been given legal protection by the State as official and intangible property rights can also be transferred or transferred by force and must be fulfilled by the party carrying out the conflict. This strengthens the evidence that Law Number 20 of 2016 has and must follow the principles of object law adopted by all countries in the world in drafting and adopting Indonesia in its

trademark law regulations which are legally applicable in Indonesia

In article 41 paragraph 1 of Law Number 20 of 2016 concerning Marks and Indications Geographically states that rights to registered marks can be transferred or transferred because:

- a. Inheritance;
- b. Will;
- c. Waqf;
- d. Grant;
- e. Agreement; or
- f. Other reasons justified by statutory regulations.

### **C.5. Legal Consequences of Trademark Cancellation**

Cancellation of the Tupperware trademark against the licensee (Tulipware) can have various legal consequences and involves legal protection and dispute resolution which can be regulated in the trademark rights agreement. The definition of a license according to Article 1 number 13 of the Trademark Law is a permit granted by the owner of a registered mark to another party through an agreement based on the granting of rights (not a transfer of rights) to use the mark, either for all or part of the types of goods and/or services registered within a certain time period and conditions.

According to the legal dictionary Black's Law Dictionary, the term "license" refers to permission or rights given by a party who has authority or power to do something that is actually considered illegal or violates the law without the permission. Licenses are often used in a variety of legal contexts, including business law, intellectual property law, environmental law, and many other areas. A license gives the holder the right to do something that was previously illegal or unlawful, but remains subject to the restrictions and conditions determined by the licensor. License holders must comply with existing provisions, and if they violate these provisions, the license can be revoked or cancelled.

### **C.6. Legal Consequences of Trademark Cancellation for the Licensee**

What will be the consequences for the party being sued by the injured brand creator are as follows:

- a. **Loss of Use Rights:** If a Tupperware trademark is cancelled, Tulipware will lose its right to continue using the mark in accordance with the license agreement. This could result in serious disruption to Tulipware's business operations and branding.
- b. **Potential Indemnification:** The license agreement may regulate whether the brand owner (Tupperware) must provide indemnification to the licensee (Tulipware) as a result of brand cancellation. This indemnification may cover financial losses experienced by Tulipware as a direct result of cancellation. Cancellation of a trademark registration will result in the termination of the license agreement made between the licensor (whose trademark has been cancelled) and the licensee. However, the licensee's rights are still protected. Article 48 of the Trademark Law stipulates that a Licensee who has good faith, but whose mark is later canceled on the basis of similarities in substance or in its entirety with another registered mark, remains entitled to implement the license agreement until the term of the license agreement expires.

### **C.7. Legal Protection of Brands**

Legal protection of brands is very important because it has a number of benefits and positive impacts for brand owners and businesses. Several reasons why legal protection of brands is very important is because it protects business identity where the brand is the unique identity of your business. Legal protection ensures that the identity is not stolen or misused by other parties, so that your business can maintain a good image and reputation in the eyes of customers. Avoid Brand Theft, because without legal protection, your brand is vulnerable to theft by competitors or other parties who want to take advantage of the reputation you have built. Legal protection can deter brand theft and unauthorized use. Exclusive Rights, where

registering a brand gives the brand owner exclusive rights to use it in connection with related products or services. This means that only the brand owner has the right to use or grant permission to use the mark. Economic Value, where brands that are legally protected have higher economic value. A strong brand can increase the attractiveness of your business in terms of investments, partnerships or sales. There is protection for creators, because brands are often the result of creative efforts and large investments in developing a brand image.

Legal protection provides incentives for business owners to continue to innovate and develop their brands. Avoiding Legal Conflicts to ensure Legal protection can help avoid expensive and complicated legal conflicts with other parties who may claim rights to the same or similar marks. There is protection for consumers so that brand protection helps consumers identify certain products or services and ensure that the product or service comes from a legitimate source. This reduces the risk of consumers purchasing counterfeit or low-quality products. There is law enforcement where if there is a trademark violation, the brand owner who has legal protection has a strong legal basis to pursue legal action against the violator. This may result in financial compensation and stopping unauthorized use. There is a long-term investment where legal protection for the brand helps ensure that the investment you make in brand development has a long-term and sustainable impact on the business.

There is also legal protection for trademarks, which are registered trademarks, which are if they are trademarks. Tupperware is a registered brand, this gives its owner the exclusive right to use the brand within the specified territory during the validity period. This protection can be used as a basis for protecting a brand from unauthorized use. There are contractual rights where legal protection also depends on the provisions stated in the license agreement. This agreement usually sets out the rights and obligations of each party, including the licensee's right to use the mark.

### **C.8. Dispute Resolution in Trademark Rights Agreements**

Dispute resolution in a brand rights agreement is a process for resolving



disputes or conflicts that arise between the brand owner and other parties involved in the brand rights agreement, such as the brand licensee. This dispute resolution process is important to maintain good relations between the parties involved and to protect their rights and interests. Some of the options available are:

- a. Negotiation will be used in agreements usually containing clauses that encourage parties to try to resolve disputes peacefully through negotiation or mediation before taking legal action. The parties may try to reach an agreement on use of the mark, compensation, or other alternatives.
- b. Arbitration, if the license agreement includes an arbitration clause, then dispute resolution will be carried out through a private and out-of-court arbitration process. The results of the arbitration may be binding on the parties, in accordance with the terms of the agreement.
- c. Mediation: mediation is a process where the parties involved in a dispute present their problems to a neutral mediator. The mediator will help the parties reach an agreement without interfering in making it decision. Mediation is usually voluntary, and the agreement reached does not always have to be binding.
- d. Reassessment of Agreements, sometimes dispute resolution can be achieved by reviewing the trademark rights agreement itself. The parties may consider changing or clarifying terms of the agreement that may be a source of dispute.
- e. Court would be the next step if negotiations or arbitration are unsuccessful, the parties can take the dispute to court. The court will examine the license agreement, the facts of the dispute, and applicable law to determine the outcome of the dispute.
- f. Other Alternative Resolution: there are various other forms of alternative dispute resolution, such as expert assisted negotiation, conciliation, or online dispute resolution that may be used depending on the nature of the dispute and the agreement between the parties.

### **C.9. Sketch regarding the dispute between the Tupperware brand and Tulipware**

Earl Silas Tupper, a chemist from the United States, invented a plastic product called Tupperware, taken from the inventor's last name. At the age of 31, he founded and began running the Tupper Plastic Company located in Farnumsville, Massachusetts, USA. In 1946, plastic products under the Tupper Plastic brand were widely distributed in various offline stores and the catalogs included in the monthly edition of the book were also popular with the local community. Dart Industries Inc, located in the United States is known as a company that is able to produce many types of plastic household equipment, and equipment made from this plastic material has high quality. In 1954, Tupperware achieved success in sales of 25 million US dollars with 20,000 sellers of Tupperware products in the United States.

The rapid development of Tupperware is not only in the United States, they are expanding to various countries. In 2008, Malaysian Tupperware products began to enter Indonesia, then followed by several countries such as America, Brazil, Korea, Japan, China, Israel, Portugal, the Philippines, Venezuela, Turkey, India, Singapore and other countries.

In 2000 in Bandung, the plastic product Twin Tulipware was born, taken from the name Twin indicating its founders were two people, and Tulip is a beautiful and universal flower. The first sales of this product used a distributor system and were marketed online exclusive, but in line with developments in the commercial sales sector, this system changed to a stockist and there was a massive addition of branches. On November 6 2002, a legal entity in the form of PT. Dian Megah Indo Perkasa was then born, in line with the development of Twin Tulipware which showed progress. Mass production of this product begins with investment in setting up a factory that can produce products that are also of high quality. Product design and color selection are carried out simultaneously at the Twin Tulipware Production House. Then Twin Tulipware developed rapidly and was recorded as having a factory and more than 50 branches spread out as well as stockists on the islands of Sumatra, Java, Kalimantan and Sulawesi.

PT. Imawi Benjaya, a national distributor of Tupperware, found that the

designs used by Twin Tulipware were similar to Tupperware products. Tupperware registered their brand in 1990 with registration numbers 263213, 300665, 300644, 300666, 300658, 339994, 339399, while Twin Tulipware submitted an application for their product in 2002. There was an infringement case committed by CV. Classic Anugerah Sejati produces Twin Tulipware products in the form of placing the brand at the bottom of the product, the form of writing is similar to Tupperware at first glance, in this case Tupperware is widely known by the Indonesian people and causes economic losses for Tupperware. As stated in article 6 paragraph 1 letter a of the Trademark Law, it is stated that an application must be rejected by the Directorate General if the mark is similar in essence and in its entirety to another party's mark which has been previously registered for similar goods/services. In an effort to provide legal protection for their products, Tupperware, as the party that felt aggrieved, filed a lawsuit with the Commercial Court, the basis for the lawsuit is Article 76 of the Trademark Law. As explained in this article, the reason for claiming compensation is a mark which in the trade in goods and services has many similarities in essence or in its entirety with another person's mark which has been registered. The owner of a previously registered trademark can file a lawsuit with the Commercial Court against the party who has not been granted the right to use a trademark that is substantially and wholly similar to similar goods and services in the form of: a lawsuit to provide compensation and/or to stop all actions related to it. use of the product.<sup>5</sup>

#### **D. Conclusion**

1. Legal Protection of Trademarks: Brand rights are valuable assets that distinguish a business from others. Brand protection is essential to protect business reputation, prevent brand theft, provide exclusive rights, and provide economic value.
2. Types of Brands: Some of the more common types of marks that are allowed

---

<sup>5</sup> Yuliana Yuli, *Perlindungan Hukum Terhadap Merek (Tinjauan Terhadap Merek Dagang Tupperware Versus Tulipware)*, Jakarta: [ejournal.upnvj.ac.id](http://ejournal.upnvj.ac.id), 2018, hlm.169-171

to be registered include unique marks, marks that are not misleading, marks that do not infringe on the rights of others, marks that match the product or service, and so on.

3. Transfer of Trademark Rights: One can transfer the registered trademark rights to another person by means such as will, grant, inheritance, agreement, or any other reason permitted by law.
4. Settlement of Trademark Disputes: Dispute resolution of brand rights is important to maintain good relations between all parties involved and protect their rights and interests. It may include negotiation, arbitration, mediation, court, reassessment of the agreement, or other alternative methods.

## REFERENCES

### Statutory Regulation

Undang-Undang Republik Indonesia Nomor 15 Tahun 2001

Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis

### Books

Kansil, C.ST. *Hak Milik Intelektual (Hak Milik Perindustrian dan Hak Cipta)*, Cetakan Pertama. Jakarta: Sinar Grafika, 1997.

Noegroho, Amin Stiarto. "Hak Atas Kekayaan Intelektual dan Hak Kekayaan Intelektual Tradisional Dalam Konteks Otonomi Daerah." *Jurnal Mimbar Hukum*, 2000: 68.

Satino, Yuliana Yuli Sulastri. "Perlindungan Hukum Terhadap Merek (Tinjauan Terhadap Merek Dagang Tupperware versus Tulipware)." *Jurnal Yuridis* Vol. 5 No. 1, 2018: 169-171.

Tim Permata Press. *Kitab Undang-Undang Hak Atas Kekayaan Intelektual*. Surabaya: Permata Press. 2010.

Wijaya, H.R Tonny Suryadi. "Perlindungan Merek di Indonesia Menurut Undang-Undang Nomor 15 Tahun 2001 Tentang Merek." *Perspektif Hukum*, Volume 7 Nomor 1, 2007: 58.