



Analysis of the judge's ratio decidendi in interpreting the principle of 'good faith' in trademark registration cases from the perspective of legal certainty in decision number 48/PDT.SUS Trademark/2023/PN.NIAGA.JKT.PST

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Abstract

The principle of Good Faith in trademark registration plays a pivotal role in ensuring that the exclusive rights granted are not exploited in ways that could harm other parties. This study seeks to analyse the application of the Good Faith principle in trademark registration in Indonesia and to understand the considerations (Ratio Decidendi) made by the judge in Decision No. 48/Pdt.SUS Trademark/2023/PN.Niaga.Jkt. Pst. The issues addressed in this research include how the Good Faith principle is applied in trademark registration in Indonesia and how the judge assesses Good Faith in Decision No. 48/Pdt.SUS-Merek/2023/PN.Niaga.Jkt. Pst. This study adopts a normative juridical approach, using legal, conceptual, and comparative methods. Data were gathered through literature review and analysed qualitatively. The findings reveal that in this case, the judge's considerations focused primarily on the trademark registration procedure, without fully examining the registrant's intent or the potential impact on the legitimate trademark owner. This approach could lead to legal uncertainty and cause harm to the rightful trademark holder. The application of the Good Faith principle in Indonesia still faces several challenges, including varying interpretations among judges and limited evidence regarding the registrant's intentions. The implications of this study highlight the need for consistent application of the Good Faith principle in trademark registration to uphold fairness and prevent unfair competition. This research aims to contribute to the advancement of legal theory and the practice of legal protection for trademark registration in Indonesia.

Keywords: Good faith, ratio decidendi, trademark registration

Introduction

With the advancement of social, economic, and technological developments in information and transportation, the trade sector has experienced significant growth, resulting in the creation of a free market that intensifies competition among traders. In today's trading environment, increased competition is a common phenomenon and forms part of the market's natural dynamics. However, competition becomes unhealthy when it is conducted in a manner that causes harm to other parties, either directly or indirectly. Producers often add unique features to their products or services, such as trademarks, to make them easily identifiable to consumers and to set them apart from other goods. Unfortunately, many producers resort to brand impersonation or imitation, as this approach is often seen as an effective way to capture market attention. A trademark is a vital form of intellectual property in the buying and selling of goods and services. It serves to distinguish one product from another, as defined in Article 1, Paragraph (1) of Law Number 20 of 2016 on Trademarks and Geographical Indications. The law states: "A trademark is a sign that can be depicted graphically in the form of an image, logo, name, word, letter, number, colour arrangement, in two-dimensional and/or three-dimensional form, sound, hologram, or a combination of two or more of these elements to differentiate goods and/or services."^[1]

When registering a trademark, there are several key principles that must be considered, one of which is good faith. Good faith is a fundamental principle of trademark protection in Indonesia. This principle applies not only when a trademark registration is refused, but it can also be used as a basis for filing a lawsuit to cancel a registered

trademark. According to Law Number 20 of 2016 on Trademarks and Geographical Indications, bad faith in trademark registration is outlined in Article 21, Paragraph (3), which states: "The application will be rejected if submitted by an applicant acting in bad faith." This means that an applicant acting in bad faith attempts to follow, copy, or imitate another's trademark for their own business interests, potentially misleading consumers and creating unfair competition. For instance, a trademark application that mimics the colour scheme, logo, design, or text of a well-known trademark, resulting in an overall resemblance to the original trademark^[2]. Renowned trademarks, particularly those from abroad, are often targeted by local businesses for counterfeiting or unauthorised use. These entities deliberately capitalise on the popularity and high economic value of foreign trademarks. As a result, the rightful owner of the trademark is harmed, as their reputation—built over many years and at great expense—is undermined. The consequences of such actions not only damage the famous trademark but also jeopardise consumers who, expecting to purchase a product of the same quality as the original, instead receive a counterfeit of much inferior quality.

In the practice of protecting well-known trademarks, many parties often resort to unethical tactics to exploit the reputation of such trademarks. Some individuals with malicious intent create products or services that closely resemble a registered trademark, deceiving the general public. This situation results in harm to both consumers and the owners of famous trademarks. Consumers feel misled when they receive products that do not meet their expectations, while the producers or owners of the famous

trademarks, who have registered their trademarks in their home country, suffer financial losses due to parties using their trademark without permission. Although the principle of good faith is outlined in Trademark Law, its implementation in practice frequently encounters various challenges, especially when disputes arise over trademark registrations. Judges' interpretations of good faith can differ, which significantly affects the outcome of decisions. Given this context, a key question arises: How is the principle of "good faith" applied in trademark registration in Indonesia, and how do judges evaluate good faith in decision No 48/Pdt.SUS-Merek/2023/PN.Niaga.Jkt. Pst?

Research Method

In the protection of renowned trademarks, many parties frequently resort to unethical practices to capitalise on the reputation of such trademarks. Some individuals with ill intentions create products or services that bear a close resemblance to a registered trademark, thereby deceiving the general public. This leads to harm for both consumers and the proprietors of well-known trademarks. Consumers feel deceived when they receive products that fail to meet their expectations, while the trademark owners, who have legally registered their trademarks in their country of origin, face financial losses due to others exploiting their trademark without consent. Although the principle of good faith is enshrined in Trademark Law, its application in practice often faces various obstacles, particularly when conflicts arise over trademark registrations. The way judges interpret good faith can vary, significantly influencing the outcomes of decisions. In light of this, an important question emerges: How is the principle of "good faith" applied in trademark registration in Indonesia, and how do judges assess good faith in decision No 48/Pdt.SUS-Merek/2023/PN.Niaga.Jkt. Pst?

Result and Discussion

The Application of The Principle of "Good Faith" In Trademark Registration in Indonesia

The demand for legal protection of trademarks has increased significantly as more individuals become involved in fraudulent practices, including counterfeiting and imitation. This is particularly the case as trade has evolved, transportation has advanced, and promotional activities have expanded, leading to a wider market for goods. Trademark regulations in Indonesia have undergone five revisions through the replacement of laws, with each revision introducing several important updates and additions. These changes to trademark regulations were legislated in 1961, 1992, 1997, 2001, and 2016, with notable amendments as follows:

1. Law Number 21 of 1961 on Company Trademarks and Trade Marks was the first regulation established by the Indonesian government after independence to replace the 1912 Reglement Industrieële Eigendom. Enacted on October 11, 1961, and effective from November 11, 1961, this law regulated trademark protection for a period of 10 years and classified goods into 35 classes based on the Nice Agreement of 1957. While aligned with previous regulations, this law introduced several significant updates. However, it did not specifically regulate the concept of good faith; it merely stated that trademark registration applications would be rejected if the mark was identical or similar to an already

registered mark, was generic, lacked distinctiveness, or was applied in bad faith.

2. Law Number 19 of 1992 on Trademarks replaced Law Number 21 of 1961 after 31 years, as it was deemed outdated in line with societal developments and needs. It was ratified on August 28, 1992, by President Soeharto, and came into effect on April 1, 1993. The law, consisting of 90 articles, included more stringent provisions concerning good faith in trademark registration. Article 4 stipulated that trademarks could only be registered by those acting in good faith, whether individuals, groups, or legal entities. Additionally, Article 57 governed the cancellation of trademark registrations, which generally had to be filed within five years, but could be done indefinitely if the trademark violated morality, public order, or was filed in bad faith. This provision emphasized the importance of honesty in trademark registration to protect both legal and public interests.
3. Law Number 14 of 1997 on Amendments to Law Number 19 of 1992 was created to align national regulations with international agreements, particularly the TRIPs-GATT, regarding intellectual property trade aspects. TRIPs and GATT are two international agreements that play a crucial role in global trade and intellectual property. TRIPs (Trade-Related Aspects of Intellectual Property Rights) is an agreement under the World Trade Organization (WTO) that sets minimum standards for intellectual property protection, including copyrights, patents, trademarks, industrial designs, and trade secrets. The goal of TRIPs is to harmonize global intellectual property protection, ensuring adequate and effective protection, and enforcing related laws. Meanwhile, GATT (General Agreement on Tariffs and Trade), which was established in 1947, is an agreement that laid the foundation for the formation of the WTO. GATT aims to reduce tariffs and trade barriers between countries, creating an international trade system. Fair and Transparent. Following the establishment of the WTO in 1995, TRIPs became an integral part of GATT, making both pillars of the global legal framework for trade and intellectual property. Enacted on 7 May 1997, this law amended 23 of the total 90 articles of the 1992 Act, including the addition of protection for geographical indications and designations of origin. This protection covers signs that indicate the origin of goods based on geographical factors, whether natural or human, without the requirement for registration. While it does not alter the basic provisions on good faith, this law adds an explanation that protection for well-known marks aims to prevent imitation based on bad faith, such as exploiting the fame of another mark. States also play an active role in rejecting the registration of marks that are significantly similar to well-known marks. This protection can be enforced through initiatives by the mark's owner or direct rejection by the Trademark Office, as stipulated in Article 56(3). This strengthens the legal protection mechanism for well-known marks and ensures fairness within the trademark registration system.
4. Law No. 15 of 2001 on Trademarks replaced Law No. 14 of 1997 to anticipate technological advancements and address aspects of TRIPs that had not yet been accommodated. This law, which consists of 101

articles, came into force on 1 August 2001 and introduced several significant changes. One of the key changes is that substantive examination is conducted after the application meets administrative requirements, unlike the previous rule which occurred after the announcement period. The announcement period was also shortened to three months, enabling faster resolution of trademark applications and disputes through the Commercial Court. This law also introduced additional protection mechanisms, such as provisional court orders to prevent damage and the option of arbitration as an alternative dispute resolution. Regarding good faith, Article 4 stipulates that a trademark may only be registered by an applicant acting in good faith, meaning honestly, without the intention to imitate, copy, or deceive others' marks. Good faith is dynamic, covering the entire application and registration process, thereby preventing any party from exploiting the negligence of others for personal gain. This regulation reinforces the importance of honesty in trademark registration to foster fair competition.

5. Law No. 20 of 2016 on Trademarks and Geographical Indications, enacted on 25 November 2016, replaced the 2001 Law with several updates. In addition to introducing protection for geographical indications, the scope of trademarks was expanded to include graphic signs in 2D, 3D, sound, and holographic forms. The registration process was also expedited, with the substantive examination period shortened to 150 days and the announcement period reduced to 2 months. This law emphasises the importance of good faith in trademark registration, as stated in Article 21(3). Applications will be rejected if they involve bad faith, such as imitating or copying another's trademark. Articles 76 and 77 grant the right to file for trademark cancellation within five years, or indefinitely if bad faith or violations of morality, state ideology, or public order are present. Other updates include increased criminal penalties for the use of unregistered marks that endanger the environment or human safety. However, provisions related to the detailed trademark registration mechanism still refer to implementing regulations, such as the Ministry of Law and Human Rights Regulation No. 67 of 2016.

The principle of "Good Faith" is a fundamental aspect of the trademark registration system in Indonesia. This principle ensures that every trademark application is made with honest intentions, without causing harm to other parties. Under Law No. 20 of 2016 concerning Trademarks and Geographical Indications, applications made in bad faith can be rejected by the Directorate General of Intellectual Property (DGIP). In essence, a trademark, as a form of intellectual property, plays a vital role in facilitating business operations and enhancing trade in goods and services. It is used by producers or trademark owners to protect their products, whether they are goods or services. Registering a trademark grants the owner exclusive rights, which are protected by law. A trademark acts as an identifier and a key distinguishing feature, ensuring the quality of products or services within a competitive market. Thus, a trademark is an economic asset for its owner, whether an individual or a company, capable of generating

significant profits when managed with sound business practices.

The significance of a trademark is evident in the legal protection it receives, as it is linked to the rights of individuals or legal entities. A trademark confers exclusive rights, as outlined in Article 1, Number 5 of Law No. 20 of 2016, which defines a Trademark Right as: "An exclusive right granted by the state to the owner of a registered trademark in the General Trademark Register for a specific period, allowing them to use the trademark themselves or grant others permission to use it." This provision clearly indicates that a trademark right is an exclusive right, meaning it is a personal right of the trademark owner to use the trademark. Consequently, others are prohibited from using the trademark without the owner's consent, typically through a licensing arrangement. In principle, Indonesia's trademark registration system follows the Constitutive System, adhering to the "first to file" principle. Under this system, trademark registration is granted only to the first party to submit their application, and the government cannot approve the registration of a trademark that is similar to one previously submitted for similar goods or services. In addition to ensuring the application of the "first to file" principle, applicants are required to act in good faith when registering a trademark.

In legal terms, good faith is understood as fairness, reasonable conduct, decency, and adherence to ethical standards. It embodies a spirit of cooperation and upholding community standards of fairness and honesty. Good faith (or "tegoeder trouw") requires that the parties involved in a business transaction act with transparency, honesty, and mutual trust, free from any intention to deceive or conceal the true facts. Essentially, good faith carries two meanings: subjectively, it refers to a mental attitude or mindset, and objectively, it pertains to proper conduct. Honesty, in this context, is reflected not in one's thoughts but in their actions, meaning that honesty is a dynamic principle^[3]. The TRIPS Agreement provides a clear and comprehensive framework for regulating good faith in Article 58(c), stating: "Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith^[4]." This provision underscores the role of the state in ensuring optimal legal protection for all individuals without discrimination. According to the TRIPS Agreement, anyone acting in good faith when registering a trademark is entitled to protection. For a trademark to be legally protected, it must be registered with the Directorate General of Intellectual Property (DGIP). As outlined in the TRIPS Agreement and Article 1, Number 5 of the 2016 Trademark Law, a registered trademark grants exclusive rights to its owner, preventing third parties from using the same trademark for similar goods or services without the owner's permission or knowledge^[5].

The special rights granted by the state to the owner of a registered trademark include:

1. Creation of exclusive rights (sole or single right) The law or legislation grants a specific right to the trademark owner. This right is separate and independent, standing alone without interference from other parties.
2. Realisation of monopoly rights (monopoly right) Anyone is prohibited from imitating, using, or

- employing the trademark in the trade of goods and services without the permission of the trademark owner.
3. Granting of superior rights (superior right) Superior rights refer to the rights granted by the doctrine of the highest rights to the first applicant. Therefore, the holder of the special rights over a trademark becomes superior to other trademarks for protection. The form of protection provided by the state for trademark registration is that a trademark can only be registered based on a request submitted by the rightful owner, who acts in good faith, also known as the Good Faith principle.

In relation to good faith, under Law No. 20 of 2016 on Trademarks and Geographical Indications, the first-to-file system is applied, meaning that only trademarks that are registered and filed in good faith are entitled to legal protection. Article 21, paragraph (3) of the Trademark Law grants authority to the Directorate General of Intellectual Property (DJKI) to reject or even cancel a trademark registration application based on bad faith. Article 21, paragraph (3) of Law No. 20 of 2016 stipulates that a trademark registration application can be rejected if it is submitted by a party acting in bad faith. An applicant who is considered to have acted in good faith is one who registers their trademark in an appropriate and honest manner, without any intention to imitate, copy, or exploit the fame of another party's trademark for business advantage. Such actions should not cause harm to others, create unfair competition, or mislead consumers. For example, if a well-known trademark that has been recognized by the public for a long time is imitated to the point of having similar elements or even being identical, this action reflects bad faith. It indicates an intentional act of copying a well-known trademark, which contradicts the good faith principle as regulated under Law No. 20 of 2016

The understanding of good faith adopted in Law No. 20 of 2016 on Trademarks and Geographical Indications tends to refer to the standard of propriety in society, meaning behavior that is considered reasonable and honest, rather than merely being based on formal legal norms. The application of the good faith requirement in trademark registration aims to provide legal certainty regarding who is truly entitled to be the trademark owner. With this principle, it is hoped that trademark registration can be carried out by parties with good intentions, without the intent to imitate, copy, or harm others, thus creating fairness in business competition and protection for consumers. In a constitutive system, the aim is to prevent the state from mistakenly granting legal protection and trademark rights to someone who is not entitled to receive them. Moreover, the concept of good faith according to J. Satrio^[6] can be distinguished into two meanings: subjective good faith and objective good faith. Subjective good faith (*subjectief goeder trouw*) is related to what exists in a person's mind, specifically concerning their inner attitude, whether they themselves are aware that their intention contradicts good faith. Objective good faith (*objectief goeder trouw*) refers to situations where public opinion deems the action to be in clear contradiction with good faith.

In essence, the owner of a trademark acting in good faith is an honest trademark owner. Honesty must be demonstrated by the absence of any intention to deceive other trademarks. The definition of "other trademarks" is limited to those

trademarks that are already well known in society. Therefore, the application of bad faith in trademark registration is used as grounds for the cancellation of a trademark under the Trademark Law, aiming to examine the existence of similarities in the core elements and bad faith in a trademark cancellation lawsuit. The reason for the cancellation of a trademark registration, based on the similarity of its core elements, is equivalent to proving the presence of good faith in a cancellation lawsuit against a trademark registration^[7].

Thus, the understanding of good faith cannot be separated from the provisions set forth in Article 6, paragraph (1) of Law No. 20 of 2016 on Trademarks and Geographical Indications, which states that: The trademark application must be rejected by the Directorate General of Intellectual Property if the trademark:

1. Is identical in whole or in part to a trademark owned by another party that has been registered earlier for similar goods and/or services;
2. Is identical in whole or in part to a well-known trademark owned by another party for similar goods and/or services;
3. Is identical in whole or in part to a known geographical indication.

Here is the translation into British English: Several key elements in Article 6 paragraph (1) of the Trademark Law include the similarity in principle, the overall similarity with a trademark owned by another party that is already registered for similar goods and/or services, as well as well-known trademarks. Overall similarity refers to the similarity of all elements. Such similarity aligns with the doctrine of "entirely similar" or the complete similarity of all elements. In other words, the trademark being applied for registration is a copy or reproduction of another party's trademark.

For a trademark to be considered a copy or reproduction of another party's trademark and therefore qualify as containing overall similarity, the following conditions must be met: There must be overall similarity of the elements; Similarity in the type or class of goods or services; Similarity in territory and market segment; Similarity in the manner and behavior of use; and Similarity in maintenance methods. An entrepreneur acting in bad faith in terms of unfair competition may resort to methods such as attempting to use a trademark by copying a well-known trademark that already exists. As a result, the trademark for goods or services produced is fundamentally the same as the trademark for goods or services that are already well-known (for similar goods or services), with the intention of creating the impression among the public that the goods or services being produced are the same as those of the well-known brand.

Violations in the field of trademarks generally involve the use of a Famous Trademark without permission, or imitation of a Famous Trademark with the aim of facilitating marketing. This is usually done for short-term interests, but it is highly detrimental to consumers. Provisions related to the protection of famous trademarks are primarily governed by the Paris Convention for the Protection of Industrial Property ('Paris Convention'). In Article 6bis, it is stated that:^[8] "The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an

imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith."

Matters regarding famous marks are also included in Article 16(2) of the TRIPS Agreement, which subsequently supplements Article 6bis of the Paris Convention as follows: In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark."^[9] In determining whether a trademark is a famous mark, consideration must be given to the knowledge of the trademark within the relevant sector of society, including the knowledge acquired by Members through promotional activities of the trademark in question "Therefore, if a trademark is requested for registration and a similarity is found with a trademark that has already been registered, this is considered as a basis for bad faith." "Substantial or total similarity constitutes part of an act of bad faith, which is considered fraudulent conduct aimed at exploiting an already famous trademark or something widely recognised by the public, thus causing the product to be similarly recognised in society. This also constitutes a violation of Article 21, paragraph (1), letter a of Law No. 20 of 2016 on Trademarks and Geographical Indications."

The principle of good faith in trademark registration in Indonesia serves to prevent the abuse of trademark rights that could harm other parties. Based on the theory of ratio decidendi, judges make decisions with legal reasoning underlying their rulings. In Decision No. 48/Pdt.Sus-Merek/2023/PN.Niaga.Jkt. Pst., the judge ruled that the trademark "Safety Crasher" was registered in good faith, even though it resembled the trademark "Kruschers" in both name and design. This consideration was based on the analysis that the registration was not intended to imitate or take advantage of the reputation of "Kruschers," but rather to create a distinct identity for the product. From the perspective of the theory of legal certainty, which emphasizes the importance of clarity, consistency, and predictability in the application of law to protect individual rights, this ruling poses a challenge because it should provide clear and consistent protection for registered trademark owners. The decision creates challenges, as this principle should provide clarity and consistent protection for registered trademark owners. The ruling that "Safety Crasher" was registered in good faith despite its similarity to "Kruschers" could set a precedent that affects legal protection for previously registered trademarks. This could lead to potential conflicts in the future if there is no clear standard for assessing elements of similarity and the intention of the trademark applicant^[10].

However, the interpretation of good faith in this decision demonstrates the judge's flexibility in evaluating legal facts based on the specific context of each case. In this case, the judge considered that the registration of the "Safety Crasher" trademark did not directly infringe on the exclusive rights of "Kruschers" because there were sufficiently significant distinguishing elements. Such

inconsistency creates challenges in achieving the legal certainty expected by business actors. In the author's opinion, this discussion illustrates that the application of the "Good Faith" principle in Indonesia still faces various challenges. One of the issues is the difference in interpretation of what constitutes good faith among judges and parties involved in the trademark registration process. Furthermore, there are still attempts by certain parties to intentionally register trademarks with the aim of riding on the fame of other trademarks. However, the interpretation of good faith in this ruling demonstrates the flexibility of judges in assessing legal facts based on the specific context of each case. In this instance, the judge considered that the registration of the "Safety Crasher" trademark did not directly infringe upon the exclusive rights of "Kruschers" due to the presence of sufficiently distinct elements. Such inconsistencies create challenges in achieving the legal certainty that business practitioners expect.

In the author's opinion, this description indicates that the application of the "Good Faith" principle in Indonesia still faces various challenges. One of these is the differing interpretations of what constitutes good faith among judges and the parties involved in the trademark registration process. Furthermore, attempts by certain parties to intentionally register trademarks with the aim of capitalising on the popularity of another trademark are still encountered. Therefore, clearer and more consistent standardisation is needed in applying the "Good Faith" principle, both at the trademark registration stage and during the judicial process. Harmonisation between the judge's Ratio Decidendi theory and the theory of legal certainty must be a priority to maintain a balance between flexibility in law enforcement and clarity of rules for trademark owners. With this approach, the trademark protection system in Indonesia can offer a stronger sense of fairness and legal certainty."

How the Judge Assesses Good Faith in The Ruling No. 48/Pdt.Sus-Merek/2023/Pn.Niaga.Jkt. Pst.

The process of resolving trademark disputes is clearly regulated in Law No. 20 of 2016 on Trademarks and Geographical Indications (Trademark Law), specifically in Articles 83 to 93. There are two main paths for resolving trademark disputes: litigation (through the court) and non-litigation (out of court). Before proceeding to legal action, efforts should first be made to engage in negotiations. If these negotiations do not yield results, the dispute must be resolved through a third party. Article 93 of the Trademark Law also mentions that trademark disputes can be resolved through arbitration or other alternative dispute resolution methods.

In the case of the dispute between the Kruschers and Safety Crasher trademarks, the path chosen was litigation, meaning the dispute resolution process took place through court proceedings. In this instance, the Panel of Judges has the authority to regulate and decide on the case. This litigation process brings the parties involved in the dispute to court to fight for their respective rights and justice^[11]. The final result of a litigation dispute resolution generally results in a win-lose judgment, where one party wins and the other loses. In the trademark dispute case between PT. Alasmas Berkat Utama (Plaintiff) and Eddy Wirja (Defendant), as outlined in Decision No. 48/Pdt.SUS-Merek/2023/PN.Niaga.Jkt. Pst., the main issue raised was the alleged bad faith in the registration of the "SAFETY

CRASHER” trademark by the Defendant. The Plaintiff argues that the trademark is essentially similar to the “KRUSHERS” trademark owned by the Plaintiff, which is well-known both in Indonesia and internationally. The focus of the case revolves around how the judge evaluates the good faith of the parties involved.

The judge in this decision used various legal approaches to assess good faith. One of the key considerations was whether the Defendant acted with the intent to imitate, plagiarize, or capitalise on the reputation and popularity of the Plaintiff's brand "KRUSHERS." This was evaluated by the substantial similarities between the two brands, in terms of visual appearance, pronunciation, and the types of goods covered. To determine good faith, the judge also considered Article 21(3) of Law No. 20 of 2016 on Trademarks and Geographical Indications, which states that a trademark application must be rejected if submitted by an applicant with bad faith. In this case, the evidence presented by the Plaintiff demonstrated that the "KRUSHERS" brand had been actively used and well-known in Indonesia and abroad since 2000. In contrast, the "SAFETY CRASHER" brand was only registered in 2021. The fact that the Plaintiff's brand had broad recognition, a strong reputation, and consistent use served as a basis for the judge to assess whether there was any indication that the Defendant was attempting to benefit from this reputation.

However, based on the considerations outlined in the decision, the Panel of Judges concluded that the Defendant did not act in bad faith in registering the "SAFETY CRASHER" trademark. The judge found that the Defendant's trademark registration process complied with the provisions of Law No. 20 of 2016 on Trademarks and Geographical Indications. This process included formal examination, publication, and substantive examination carried out by the Co-Defendant, the Directorate General of Intellectual Property. In this case, the Co-Defendant found no substantial or overall similarities between the "SAFETY CRASHER" brand and the Plaintiff's "KRUSHERS" brand. The judge also stated that the Defendant's trademark was published for two months, from 23 November 2020 to 25 January 2021, as stipulated in Article 14(2) of Law No. 20 of 2016. During this publication period, no objections were raised by third parties, including the Plaintiff. Therefore, the judge concluded that the Defendant's trademark met all the administrative and substantive requirements under the applicable regulations, and its application was deemed to have been made in good faith. Subsequently, the judge rejected the Plaintiff's argument that the Defendant intended to imitate, ride on, or exploit the reputation of the "KRUSHERS" brand. According to the judge, there was no evidence indicating substantial similarities between the two brands that could cause confusion in the public. The judge also emphasised that the Defendant's trademark could not be classified as one registered in bad faith, as it had gone through a valid legal process and had received approval from the Minister of Law and Human Rights.

In the judge's reasoning, it was also stated that the Plaintiff's claims could not be proven, and therefore the request based on the allegation of bad faith in the registration of the "SAFETY CRASHER" brand was rejected. This included the request for the cancellation of the Defendant's trademark registration and its legal consequences. Since the main claim was rejected, the accessory claims were also automatically dismissed by the Panel of Judges. This ruling shows that the

assessment of good faith was made by considering the entire trademark registration process, including the substantive examination carried out by the Co-Defendant. The judge confirmed that no violation of applicable trademark laws was found. Therefore, the Plaintiff's claim was dismissed in its entirety, and the Plaintiff was ordered to pay court costs amounting to IDR 4,730,000.

From this decision, it can be concluded that the Panel of Judges viewed the legal process undergone by the Defendant as the basis for assessing good faith. In this context, the judge placed greater emphasis on compliance with formal legal procedures and found no evidence supporting a violation of good faith. This decision provides an important lesson about how procedural aspects can be decisive in trademark disputes, especially when claims of bad intent cannot be substantively proven. The Ratio Decidendi theory emphasises that a judge's decision should be based on legal reasons relevant to the case at hand. This consideration includes the interpretation of legal norms and the social context surrounding the case. In the case of the trademark registration 'Kruschers' vs. 'Safety Crasher', the judge should have assessed the principle of good faith by considering elements such as visual, phonetic, and conceptual similarities between the two brands, as well as the intent of the registrant to imitate or create confusion in the market. If the decision did not consider strong evidence such as brand similarity, the prior reputation of the "Kruschers" brand, and potential consumer confusion, then the legal reasoning in the Ratio Decidendi would become irrelevant to the core issue.

According to the author, based on the theory of Ratio Decidendi, which emphasises the main legal reasoning underpinning a judge's decision and aims to provide a clear precedent for similar cases in the future, a ruling that fails to consider social aspects and the economic impact of unfair competition can be deemed as a flaw in legal reasoning. This is due to the judge's failure to provide relevant legal grounds, which should serve as a reference to create legal certainty and justice in the resolution of similar cases in the future. The theory of Legal Certainty demands that the law be applied consistently, predictably, and fairly. In this case, if the judge decides that the registration of the "Safety Crasher" trademark is permitted despite evidence of a breach of the principle of good faith, this could create legal uncertainty for registered trademark holders such as "Kruschers." Legal uncertainty arises when the registered trademark holder does not receive the protection they are entitled to, thus allowing room for the registration of similar marks for dishonest commercial purposes. When a judge's decision does not reflect the fair enforcement of the law and fails to protect registered trademark holders, the theory of Legal Certainty is also not fulfilled, as the public cannot clearly predict the legal consequences of trademark violations.

Based on the author's explanation above, the panel of judges in this case is considered to have made an error in deciding the dispute between the "Kruschers" and "Safety Crasher" trademarks, as their decision does not align with the principles of Ratio Decidendi and Legal Certainty, which should have been the main basis for resolving trademark disputes. The approval of the "Safety Crasher" trademark registration by the judges indicates a disregard for evidence suggesting the similarity of the marks and bad faith on the part of the applicant. Furthermore, the decision

fails to provide the legal protection that should be afforded to the exclusive rights holder of the "Kruschers" trademark, thereby causing legal uncertainty that could undermine the overall trademark protection system. This ruling not only weakens public trust in the legal system but also opens the door to potential trademark infringements in the future. Therefore, this decision needs to be seriously critiqued in order to maintain the integrity of the law and ensure fair protection for registered trademark holders.

Conclusion

Brand registration in Indonesia is governed by Law Number 20 of 2016 concerning Marks and Geographical Indications. To support the implementation of this Law, the government issued Minister of Law and Human Rights Regulation Number 67 of 2016 concerning Brand Registration, which provides more detailed explanations regarding the brand registration procedure. Although this Law does not explicitly define good faith, the regulation contains provisions that address this matter in detail. Article 21 Paragraph (3) of Law Number 20 of 2016 governs the rejection of brand registration applications from parties acting in bad faith, while Article 77 Paragraph (2) stipulates that there is no specific time limit for filing a cancellation lawsuit for a registered brand involving bad faith elements. The application of the "good faith" principle in Indonesia still faces various challenges. One of the main challenges is the differing interpretations of what constitutes good faith, both among judges and parties involved in the brand registration process. Additionally, there are still efforts by certain parties to register brands with the intention of riding on the fame of other brands. The panel of judges in the Supreme Court Decision Number 48/Pdt.SUS Trademark/2023 was considered to have made an error in deciding the cancellation lawsuit for the "Safety Crasher" trademark. The judges' reasoning, which did not sufficiently consider the core similarities between the Plaintiff's brand ("Kruschers") and the Defendant's brand "Safety Crasher" in terms of spelling, pronunciation, packaging of the product, and the types of goods registered, resulted in a lack of protection for the Plaintiff's rights. The judges only assessed that the Defendant's brand registration procedure had been followed correctly, without considering the impact of infringement on the Plaintiff's well-known trademark. This decision illustrates the weakness in balancing the protection of registered trademark rights with compliance to registration procedures. In trademark law, the principle of "good faith" is indeed important, but it must be balanced with the protection of legitimate trademark owners' rights, especially when there are indications of infringement on well-known and reputable trademarks. Therefore, a more careful approach is needed when considering brand similarities in terms of spelling, pronunciation, and types of goods, in order to create legal certainty for all parties involved.

Suggestion

It would be beneficial if the regulations governing the application of the "good faith" principle in brand registration were clarified, to reduce ambiguity and ensure consistency in case assessments. Additionally, it would be advisable to strengthen supervision and law enforcement regarding brand registrations made in bad faith. The government and relevant institutions should also be more proactive in

preventing the practice of riding on the fame of other trademarks. Courts should also have clearer guidelines when interpreting and deciding cases related to good faith, in order to create legal certainty. Thus, improving the regulations concerning good faith in the brand registration and cancellation process is an important step in providing stronger protection for registered trademark owners and avoiding practices that harm other parties. The author suggests that judges, when deciding trademark cancellation cases, such as in the 'Safety Crasher' case, be more meticulous in considering the important aspects related to the lawsuit. Judges should not only focus on the formal registration procedure but also consider the applicant's intent and its impact on the rightful trademark owner. Furthermore, the court should have clearer guidelines in assessing the principle of good faith, so that the decisions made truly reflect the principles of justice based on ethical values and ensure optimal legal protection for registered trademark owners.

References

1. Majir I. *Melahirkan Entrepreneurship Handal di Era Industry 4.0 & Society 5.0*. Jogjakarta: Deepublish, 2021.
2. Rahaditya MK. Penerapan Prinsip Itikad Baik Dalam Perlindungan Hukum Bagi Merek Terkenal yang Tidak Terdaftar di Indonesia Berdasarkan Putusan Mahkamah Agung Nomor 600 K/PDT.SUS-HKI/2020. *J Kewarganegaraan*, 2023;7(1):1.
3. Nadya Enjelin Kusuma RR. Tinjauan Prinsip Itikad Baik dalam Upaya Perlindungan Hukum Sengketa Merek (Studi Putusan Nomor 3/Pdt.Sus.Hki/Merek/2022/PN Niaga Mdn). *J Unes Law Rev*, 2023, 6(2).
4. Gautama S. *Hak Merek Dagang Menurut Perjanjian TRIPs-GATT dan Undang-Undang Merek RI*. Bandung: Citra Aditya Bakti, 2000.
5. Halomoan IO. *Perlindungan Hukum Terhadap Pemegang Merek Dagang Terkenal Asing Dari Pelanggaran Merek di Indonesia*. Medan: Fakultas Hukum Universitas Sumatera Utara, 2009.
6. Satrio J. *Hukum Perikatan, Perikatan yang Lahir Dari Perjanjian*. Bandung: PT Citra Aditya Bakti, 2000.
7. Priamsari RP. *Penerapan Itikad Baik Sebagai Alasan pembatalan Merek Menurut Undang-Undang Nomor 15 Tahun 2001 Tentang Merek (Di Tingkat Peninjauan Kembali)*. Program Magister Ilmu Hukum Fakultas Hukum Universitas Diponegoro, 2002.
8. Suparmono G. *Menyelesaikan Sengketa Merek Menurut Hukum Indonesia*. Jakarta: Rineka Cipta, 2008.
9. Harahap MY. Prasetyo Hadi Purwandoko, S.H., M.S. *Problematika Perlindungan Merek Di Indonesia* [Internet], 1992. Oct Sunday [cited 2024 Aug Monday]. Available from: <http://praset>
10. Sadikin O. *Aspek Hukum Hak Kekayaan Intelektual Intellectual Property Right*. Jakarta: RajaGrafindo Persada, 2004.
11. Amriani N. *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan*. Jakarta: Rajawali Pers, 2012.