



Legal Protection Against Registered Marks Due to Actions Trademarks Squatting Based on Good Faith in Indonesia

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Abstract

The purpose of this writing is to examine, analyze, and elaborate on the concept of trademark squatting actions and legal protection for registered trademarks due to trademark squatting actions based on good faith in Indonesia. This study is written using normative research methods using statutory approaches, conceptual approaches, and analytical approaches. This study's results shows that the concept of Trademarks Squatting is not regulated in the provisions of the Law on Trademarks and Geographical Indications, but at the international level, WIPO explains that trademark squatting is the act of registering or using a mark which is generally a well-known foreign brand, where the mark has not been registered in a country or the mark has been registered but has never been used by the owner of the mark concerned. As well as, the legal protection of registered trademarks due to trademark squatting in Indonesia, in particular, the possibility of taking legal action against other parties who illegally use a Mark that is essentially similar in terms of rules or its wholeness for similar products or services in the form of a claim for compensations; and/or Termination of all actions related to the use of said Mark based on the stipulations of Article 83 point (1) of the Law on Trademarks and Geographical Indications.

1. Introduction

Many people take advantage of developments in the economic field by establishing a business or business as their livelihood. However, in the world of trading, it doesn't always go well. Often found various problems in the world of trade. Advances in technology that offer two-way communication with speed and reach across countries, even continents, which later became the start of the era called "globalization" marked by the existence of free trade agreements and the elimination of import duties on goods between countries. Individually, everyone is required to balance himself, his abilities, his way of thinking, and his intellect with all things related to this era. In the activities of the business world in general, companies will produce a product, both products in the form of products and services. After a product is born to have differentiating power from the products of other entrepreneurs, a sign is needed to be attached to differentiate it.

Brands have become a part of human life. Almost every place in the world has a brand. The brand is attached to the product in the form of goods or services. Starting from clothing to the transportation chosen for use, there is always a mark attached in the form of a brand that distinguishes the product from the others.¹ In other words, brands have an important role in people's behavior today. Brand is something (name or image) that can be used to recognize a company or product in the market. In the business world, branding is very essential because it relates to product marketing. This is reasonable because people often associate the image, quality, and reputation of products and services with certain brands². The significance of a brand will also be useful for consumers because well-known brands usually guarantee the value or quality of goods. In this case, a trademark holds an important value in marketing a product because the brand will affect a product's selling power.³ Therefore it's natural to provide legal protection for trademark.⁴

Nationally, trademark protection has been regulated by the provision of laws and regulations in Indonesia, namely in the Trademark and Geographical Indication Law Number 20 of 2016 (later known as Law of Marks and Geographical Indication). The definition of Brand is contained in Article 1 Point 1 of the Law on Marks and Geographical Indications "which explains that a Brand 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, sounds, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and / or services produced by people or legal entities in the trade of goods and/or services". This is in line with what is stipulated in *Article 15 of TRIPs* which asserts that every brand or combination of marks that can differentiate the products or services of one company from other companies must be declared as a mark.

The important principle that is used as a guideline with regard to trademark registration is the need for *good faith* from the registrant. With regard to bad faith, the Trademark Law holds to the principle of the *First to File System* that only registered and good-faith marks are subject to legal protection.

Trademark rights are comprised in the stipulations of Article 3 of the Law on Marks and Geographical Indications which explains that "Rights to the Mark are obtained after the Mark is registered", In other words, Trademark rights must be registered first so that they can be protected or called the *first to file* system. This *first-to-file system* of trademark rights creates a legal loophole in the trademark registration process. For the person who registers his mark, there is a legal certainty that he is the one who is entitled to the mark. There is a new phenomenon called *trademark squatting*. In simple terms, *trademark*

¹ Dharmawan, Ni Ketut Supasti, 2018, *Harmonisasi Hukum Kekayaan Intelektual Indonesia*, Swasta Nulus, Denpasar, h. 55.

² I Gusti Ketut Riski Suputra and Gossain Jotyka, "Prosedur Pendaftaran Dan Pengalihan Merek Serta Upaya Perlindungan Hukum Terhadap Merek Terkenal Menurut Undang-Undang Nomor 15 Tahun 2001," *Ganesha Law Review* 3, No. 2 (2021): 125-39.

³ Eri Susanti, Ni Desak Made and Sudiarawan, Kadek Agus, "Registrasion of Sound Marks in Indonesia", *Udayana Master Law Journal* 11, No. 2 (2022): 393.

⁴ Agus Adi Pranatha and Ni Ketut Supasti Dharmawan, "Eksistensi Destination Branding Dalam Undang-Undang Merek Dan Indikasi Geografis," *Kertha Semaya : Journal Ilmu Hukum* 9, No. 1 (2021): 170.

squatting can be interpreted as registering brands for products, goods, or services that have not been registered before, and then reselling them to the actual brand owners.

Phenomenon trademark squatting initially occurred and developed overseas. Those who become victims of trademark squatting abroad are famous brands that have been registered in their country of origin but have not been registered in the country of residence where the trademark squatting happens. One example of the occurrence of practice trademark squatting occurred in China when the US technology company Apple wanted to register the iPhone brand.⁵ Apple's registration was denied because it was first registered by a local Chinese company. The same case happened with a company in the United States that is famous for its coffee products and outlets, namely Starbucks Corporation. The Starbucks mark was registered by a trademark squatter in Russia so Starbucks Corporation could not use its trademark in Russia.

Practice trademark squatting carried out by perpetrators commonly referred to as trademark squatters. Trademark squatters will usually conduct some kind of research in the field related to which brands are already relatively known to the public but have not been registered to then register the mark. After the mark is registered, the trademark squatters will ask for compensation from the original trademark owner for using the mark that the trademark squatters have registered. Generally, trademark squatters will ask for money more than the nominal they spent when registering the trademark first. If the original trademark owner refuses to pay or compensate, the trademark squatters will ask the original brand owner to change the brand he has been using or if he still insists on using it, the trademark squatters will threaten to take legal action.

Considering that the law on Marks and Geographical Indications does not strictly prohibit this practice and is also related to the trademark registration system that applies in Indonesia for the first to file. Furthermore, the lack of awareness of business actors in Indonesia to register a trademark makes them more vulnerable to the practice of trademark squatting. Referring to the background that has been explained, it is essential to conduct a thorough study of the legal issues related to "How Legal Protection of Registered Marks Due to Trademarks Squatting Actions Based on Good Faith in Indonesia". In addition, it is necessary to study the concept of trademark squatting in Indonesia and how the legal protection of registered marks as a result of brand squatting is based on good faith in Indonesia.

As for the state of the art in this writing, previous research was conducted by Yusuf Gunawan in 2023 who examined "Legal Analysis of Ambiguity of Trademark Registration in Indonesia".⁶ The focus of the study in this paper is that the practice of trademark squatting can occur in the process of registering a mark in Indonesia and the obstacles found in the process of registering a mark and how to overcome them, which in this study still uses Law No. 15 of 2001 about Trademarks. In addition, examines how is the regulation of trademarks that are rejected for registration that have similarities in principle or as a whole and how to set a registered mark with a second identity. There are similarities in the topic of discussion that is both study action trademarks squatting.

⁵ Michael Pecht and Patricia E Campbell, "The Emperor's New Clothes: Intellectual Property Protections in China," *J. Bus. & Tech. L.* 7 (2022): 69.

⁶ Yusuf Gunawan, "Legal Analysis of Ambiguity of Trademark Registration in Indonesia", *Nurani* 23, No. 1 (2023): 163-170.

However, the focus of this research review is different from previous research. This paper focuses on the analysis of the study on the concept of trademark squatting in Indonesia and the legal protection of registered marks due to good faith-based trademark squatting in Indonesia.

The aim of this writing is to study, analyze, and develop the concept of action trademark squatting as well as the legal protection of registered marks due to action trademark squatting in Indonesia. To realize the objective of the article, this writing will discuss the substances related to the topic of the problem in a structured and systematic way. First, it discussed the concept of the action trademark squatting in Indonesia. Second, it discusses the legal protection of registered trademarks as a result of trademark squatting in Indonesia.

2. Research Methods

This study is an article that uses methods of normative research because the research focus starts from the void of norms. This research applies a statute approach which is an approach that is carried out by examining the various legal rules that are related to the legal issues being addressed, by examining the laws and regulations that apply according to the issues raised, such as the Civil Code, and Law of the Republic of Indonesia Number 20 of 2016 concerning Merck and Geographical Indications and other related laws and regulations. The conceptual approach and analytical approach are an approach that departs from the views and doctrines that develop in the science of law.⁷ This approach is an understanding of the views/doctrines that develop in legal science that can be used as a basis for resolving a legal issue at hand. In this study, the legal materials used were explored using document study techniques and analyzed by applying qualitative analysis. Peter Mahmud Marzuki stated that normative research is understood and understood as a process with the aim of finding legal rules, legal doctrines, or legal principles to answer the legal problems that are being faced.⁸

3. Results and Discussion

3.1. Action Concept Trademarks Squatting in Indonesia

Definition and concept trademark squatting not contained in the provisions of the Trademark and Geographical Indications Law. Trademark squatting can be found in the WIPO. The Intellectual Property Handbook defines trademark squatting as “the registration or use of a generally well-known foreign trademark that is not registered in the country or is invalid as a result of non-use”. According to WIPO, trademark squatting refers to the act of using or registering a mark which is typically a famous foreign mark when the mark has not been registered in the nation in question or has been registered but has never been used by the mark’s owner. Doris Long also explained

⁷ Kornelius Benuf, *et all.*, “Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer”, *Jurnal Gema Keadilan* 7, No. 1 (2020): 24.

⁸ ND Mukti Fajar and Y Achmad, *Dualisme Penelitian Hukum: Normatif & Empiris*, (Yogyakarta: Pustaka Pelajar, 2013). h. 24.

that trademark squatters are parties who attempt to register another party's trademark before the mark is registered by the original trademark owner.⁹

Practically trademark squatting can be interpreted as an action taken by trademark squatters to register a mark, either in the form of a trademark or service mark, belonging to another person who has not been registered and then after obtaining the certificate of ownership of the mark is obtained he will sell it to the original brand owner with the threat that if the original brand owner does not want to buy the original brand owner must change the brand that is being used or if it persists in use, trademark squatters will be questioning this through legal channels. When viewed from the side of the victim, trademark squatting can be classified into two, the first is that the victim is the owner of a foreign mark that is not or has not been registered in the country of trademark squatters, considering the nature of trademark registration which is local or only valid in the country where the mark is registered. The second is the victim who is the owner of a local domestic brand which has used the brand but has not been registered.

The practice of trademark squatting abroad can be seen in the case of Starbucks Corporation, which is a company whose core business is mainly coffee sales by opening outlets. In 1997, Starbucks registered its brand in Russia and has obtained a certificate of trademark rights. However, Starbucks Corporation never officially opened its business in Russia by opening outlets but only selling it through small stores. In 2002, a trademark squatter a Russian named Sergei Zuikov registered the Starbucks brand for coffee products with "The Federal Service for Intellectual Property or Rospatent Russia" after previously applying for the cancellation of Starbucks trademark rights on the grounds that it was not used. After acquiring the rights to the Starbucks brand, Sergei Zuikov offered Starbucks Corporation as the actual owner of the Starbucks brand in the United States to buy the rights to the brand for \$600,000. Starbucks Corporation refused and decided to take the case to court by filing a trademark cancellation lawsuit. In the end, Starbucks won on the grounds that Sergei Zuikov registered the brand in bad faith.¹⁰

Trademark squatting has also befallen Apple companies in China that try to market their famous product, namely the iPhone, to China, which incidentally is one of the largest markets in the world. Apple already registered the iPhone trademark with the China Trademark Office in 2002. However, Apple only registers the mark in the "computer and computer software" subclass, without registering it in the "phones and mobile phones" subclass. Even though as is well known, the iPhone is a smartphone product that is classified as a mobile phone. Soon after, a Chinese company called Hanwang Technology registered the iPhone brand under the sub-class including "phones and mobile phones". The registration of the iPhone brand in Hanwang Technology's "phones and mobile phones" sub-class certainly gives them the right to ban Apple from selling iPhone products in China.¹¹ Apple fought hard to regain its own brand, but they lost their position in the Chinese Trademark Office as well as at the TRAB (Trade Mark Review and Adjudication Board). Ultimately Apple then agreed to pay \$3.65 million to

⁹ Doris Estelle Long, "Is Fame All There Is-Relating Global Monopolists at Their Own Marketing Game," *Geo. Wash. Int'l L. Rev.* 40 (2018): 123.

¹⁰ Kui Hua Wang and Christoph Antons, "Well-Known Trade Marks, Foreign Investment and Local Industry: A Comparison of China and Indonesia," *Deakin Law Review* 20, No. 2 (2015): 185-219.

¹¹ *Ibid*

Technology of Hanwang to regain the rights to the iPhone brand in the “phones and mobile phones” subclass.

The problems that befall the two large companies above were essentially caused by the trademark registration system which was localistic in nature or did not apply internationally but only in the country where it is registered. Besides that, the trademark registration system is weak in the two countries where trademark squatting is also a factor that makes this practice grow. How is it possible that brands as well-known as iPhone and Starbucks are not classified as well-known brands by the IPR authorities in these two countries. A well-known brand must register its trademark to acquire exclusive rights to its brand and legal protection.¹²

Trade in goods and services across national boundaries. Thus, the international trademark registration mechanism becomes one of the systems that should be utilized to protect national marks in the international world.¹³ Seeing so many practices of trademark squatting in other countries, it can be said that this practice also has high potential to develop in Indonesia as an impact of the first to file protection system on trademark rights that have legal loopholes. The actions taken by trademark squatters may be considered fraudulent and malicious, but from a legal perspective in this case the Law Trademark and Geographical Indications, what trademark squatters do is an attempt to preserve what belongs to them. In the first-to-file system, trademark registration clearly stipulates that the legal owner of a mark is the owner who has a trademark certificate. Therefore, the mark is protected at the time of applying for registration where it is proven by the issuance of a mark certificate.

Furthermore, regarding the protection of famous brands, the TRIPs Agreement only determines the criteria of famous brands. Referring to Article 16 point (2) of the TRIPs Agreement, it can be understood that, whether a brand is a well-known brand, must be considered information about the mark in the appropriate environment of the community concerned, including the knowledge of its members stated that as a result of the promotion of the person concerned. Trademark law in Indonesia has not provided a firm definition of what a famous brand really is. In the Law on Marks and Geographical Indications, it is established that an application for trademark registration will be refused if it has a major or complete similarity with a well-known mark used for similar services or goods, as well as popular brands owned by another party for dissimilar products or services that meet several obligations (Article 21 letter b and c of the Law on Marks and Geographical Indications).

Subaketti believes that the principle of good faith is one of the most significant keys in contract law. Moreover, Subekti says that a good faith agreement invokes the norms of propriety and decency in performing the work. The requirement to enter into a contract in good faith is generally recognized in international contract law principles. This international recognition is in consideration of the 1969 Vienna Convention which stipulates that “The principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized”. Furthermore, in UNIDROIT (The International Institute for the Unification of Private Law) Article 1.7. It states that, “each

¹² Inge Dwisvimiari, “Pengaturan Doktrin Dilusi Merek Sebagai Upaya Perlindungan Hukum Merek Terkenal Di Indonesia”, *Mimbar Hukum* 28, No. 2 (2022): 232-249.

¹³ Dharmawan, Ni Ketut Supasti, *Op. Cit*, h. 64.

party must act in accordance with good faith and fair dealing in international trade and the parties may not exclude or limit their duty".¹⁴ Therefore, the principle of good faith is a general principle applicable to any agreement. Trademark rights are special rights in Intellectual Property Rights (IPR) registration. These special rights are basically exclusive and monopoly in nature and can only be exercised by the right holder, although other rights cannot be used without the owner's permission. Trademark registration is a mark that can only be registered on the basis of an application submitted in good faith by the owner of the mark, otherwise known as the good faith principle.

Though there is no rule that explicitly prohibits the practice of trademark squatting in the Law on Marks and Geographical Indications, this can actually be prevented by applying the rules of the Law on Marks and Geographical Indications in Article 21 paragraph (3) which states that "An application is rejected if it is submitted by an applicant in bad faith". The act of trademark squatters registering a mark that does not belong to them and then reselling it at a higher price to the original owner of the mark is a form of bad faith. In reality, it is very difficult to detect at the beginning of a person's registration whether he registered a mark in good faith.¹⁵ Basically, the Directorate General of IPR must accept and consider everyone who wants to register a trademark as a person of good faith unless it can be proven otherwise.

In addition, the theory that is relevant to this problem is the theory of legal certainty is a characteristic that cannot be separated from the law, especially for written legal norms. Law without certainty value will lose meaning because it can no longer be used as a behavioral guide for everyone. According to Jan Michiel Otto, legal certainty is actually more juridical in dimension. Gustav Radbruch suggested 4 fundamental things related to the meaning of legal certainty, namely:¹⁶

1. Law is positive, meaning that positive law is legislation.
2. The law is based on facts, meaning that it is based on reality.
3. Facts must be formulated in a clear way so as to avoid confusion in interpretation, as well as being easy to implement, facts must be formulated in a clear way so as to avoid confusion in interpretation, in addition to being easy to implement.
4. Positive law should not be easily changed.

In order to know the legal certainty of the regulation of trademark squatting practices in Indonesia, the legal certainty conveyed by Gustav Radbruch can be a tool to analyze where the law is positive, meaning that the regulation of registered trademarks regarding trademark squatting must be regulated in the current legislation in Indonesia. In Indonesia, the regulation of registered trademarks regarding trademark squatting is not explicitly regulated. In this case it must be formulated in a clear manner so as to avoid confusion in interpretation, in addition to being easy to implement, known. The

¹⁴ Farly Lumopa, Suherman and Imam Haryanto, "Good Faith in Registration of Famous Marks in Indonesia", *Juridical Journal* 5, No. 2 (2018): 277-293.

¹⁵ Ali Masnun, M., et. all., "Menakar Kewajiban Penggunaan Bahasa Indonesia Pada Merek Dagang", *Mimbar Hukum* 32, No. 3 (2022): 392-406.

¹⁶ Sidharta, 2018, *Reformasi Peradilan dan Tanggung Jawab Negara, Bunga Rampai Komisi Yudisial, Putusan Hakim: Antara Keadilan, Kepastian Hukum, dan Kemanfaatan*, Komisi Yudisial Republik Indonesia, Jakarta, h. 3.

regulation of registered trademarks in the Law on Marks and Geographical Indications in the article is still unclear and creates confusion in the community so that it is difficult to implement, this is evident from the fact that there is no trademark squatting.

This is evident from none of the provisions of the article in the Law on Marks and Geographical Indications that regulate the practice of trademark squatting. According to the theory put forward by Gustav Radbruch and Jan Michiel Otto regarding legal certainty, the regulation of registered trademarks related to trademark squatting practices in Indonesia does not yet have legal certainty because it has not provided a clear formulation.

3.2 Legal Protection Against Registered Marks Due to Actions Trademarks Squatting in Indonesia

Until now, Indonesia does not have a specific regulation governing the act of trademarks squatting. This provides space to enforce legal protection of trademark rights as stipulated in the Trademark and Geographical Indications Law and the ITE Law. Referring to the regulations of the Law on Marks and Geographical Indications in Article 1 point 1, it is known that, "A mark 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, sounds, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by persons or legal entities in the trade of goods and/or services". In protection of Intellectual Property Rights, Jeremy Bentham's Utilitarian thought is often used as a basis or philosophical basis in discussing the legal protection of IPR. Referring to Bentham, "the ultimate end of legislation is the greatest happiness of the greatest number".

The law were created to ensure the happiness of the majority of society. In fact, Bentham's principle of utility is not only aimed at the society happiness, but also contains society in his person as an individual. Therefore, it can be said that Bentham's opinion can support both individual and community ideas. In that context, Bentham stated in detail that, "By utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, happiness, or to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered; if that party be the community in general, then the happiness of the community; if a particular individual, then the happiness of individual". Bentham suggests that in essence the law aims to realize the happiness of the majority of citizens. Thus, Bentham's thinking about the purpose of law can accommodate legal protection in both individual and communal dimensions.¹⁷

Legal protection of trademark rights is contained in the Trademark Law which explains that trademark rights can only be granted if a mark has been registered first. That is, trademark protection is attained after the Mark is registered, namely by applying for trademark registration through an examination process such as substantive examination, having gone through an announcement process and obtaining approval

¹⁷ Ningsih, Ayup Suran, Waspiah Waspiah, and Selfira Salsabilla. "Indikasi Geografis atas Carica Dieng sebagai Strategi Penguatan Ekonomi Daerah." *Jurnal Suara Hukum* 1, No. 1 (2019): 105-120.

from the Director General so that a trademark registration certificate can be issued as proof of trademark registration.¹⁸

Trademark registration is based on the principle of a first to file system or constitutive system, which means that rights to the mark are granted only to the trademark registrant on the basis of good faith with the trademark registrant.¹⁹ The final product of trademark registration is the issuance of a trademark registration certificate indicating that the rights to the mark are exclusive.

The term of protection for trademark rights as postulated in the Law on Marks and Geographical Indications is 10 years from the date of receipt of trademark registration and can be expanded. The Law on Trademarks and Geographical Indications also stipulates that trademark rights can be revoked if the mark is not used for a period of 3 (three) consecutive years or if the trademark registration violates the registered mark of another party. In the event of a violation of a well-known brand and/or mark, the registered mark owner can file a lawsuit against a person or legal entity for the unauthorized use of the mark. Claims can be filed by looking for similarity in principle or in total with registered marks and/or well-known marks for products or services.

If the owner of a registered mark wants to defend his rights, the brand owners can file civil lawsuits based on the Law on Marks and Geographical Indications in article 83. Referring to the Law on Marks and Geographical Indications, the stipulations of Article 83 point (1), it is regulated that, "The owner of a registered Mark and/or the licensee of a registered Mark may file a lawsuit against another party who without the right to use a Mark that has similarities in principal or in whole for similar goods and/or services in the form of: a) Compensation lawsuit; and/or; b) Cessation of all actions related to the use of the Mark". Claims can be filed by registered mark owners to the Commercial Court. Owners of well-known brands may also have the opportunity to file a lawsuit based on a court decision. Lawsuit for trademark infringement as referred to in Article 30 point (3), Article 68, Article 74, and Article 76 of the Law Trademark and Geographical Indications may be submitted to the Chief Justice of the Commercial Court in the jurisdiction where the Defendant resides or is domicile.

Referring to the provisions of Article 100 point (1) of the Law on Trademarks and Geographical Indications, it can be understood "that in the event that a party uses without right the same mark in its entirety as a registered mark belonging to another party, it penalty shall be imprisonment for a maximum of 5 (five) years and/or a maximum fine of IDR 2,000,000,000, (two billion rupiah). In the case of unlawful use of a mark which is similar in principle to a registered mark belonging to another party, the penalty shall be imprisonment for a maximum of 4 (four) years and/or a maximum fine of IDR 2,000,000,000, - (two billion rupiah)".

¹⁸ Sri Walny Rahayu and Makruf Makruf, "Perlindungan Pemilik Merek Dagang Yang Terdaftar Dikaitkan Dengan Tanggungjawab Pelayanan Publik Direktorat Jenderal Hak Kekayaan Intelektual", *Jurnal Ilmiah Mahasiswa Bidang Hukum Keperdataan 2*, No. 3 (2018): 564-75.

¹⁹ Mohammad Amar Abdillah, "Legal Protection of Unregistered Trademark Owners for the Act of Registration of Their Marks by Other Parties in Review of the Principle of Good Faith", *Jurist-Diction 2*, No. 4 (2019): 57-74.

In addition to resolving disputes by filing civil lawsuits as postulated in Article 83 of the Law on Trademarks and Geographical Indications, the trademark owner must also maximize trademark registration through an international registration process and conduct continuous promotions. Legal protection of marks abroad is also carried out by registering the mark in the destination country because marks that are only registered in Indonesia, do not have protection in other countries. The Law on Marks and Geographical Indications already regulates applications for international trademark registration as “Article 52 paragraphs (1) and (2) stipulates:

- 1) An application for international Trademark registration can be in the form of:
 - a. Applications originating from Indonesia are addressed to international bureaus through the Minister; or
 - b. Application addressed to Indonesia as one destination country received by the Minister from the international bureau.
- 2) An application for registration of an international Trademark as referred to in paragraph (1) point a can only be applied by:
 - a. Applicants who have Indonesian citizenship;
 - b. Applicants who has a domicile or legal domicile in the territory of the Unitary State of the Republic of Indonesia; or
 - c. Applicants who have real industrial or commercial business activities in the territory of the Unitary State of the Republic of Indonesia”.

Article 52 paragraph (4) regulates further provisions regarding international marks registration based on the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks regulated by Government Regulations. In this case, it can be a tool that helps national business actors to easily register their brands abroad. As explained above, it can be understood that in the event that the registered mark owner can file a civil lawsuit against the party who uses the mark without such rights. The lawsuit was filed in the Commercial Court. In addition, the brand owner must optimize the registration of the mark internationally and promote it continuously.

The theory related to this phenomenon is the theory of expediency according to Jeremi Bentham, the purpose of law is to provide the greatest benefit and happiness to as many citizens as possible. So, the concept puts expediency as the main goal of law. Bentham mentions “The aim of the law is the greatest happiness for the greatest number”.²⁰ The Law on Trademarks and Geographical Indications in Indonesia seeks to provide an overview of the law that can be of benefit to the public. This theory seems to be the rationale for the development of trademarks in Indonesia, that the purpose of the law is to provide benefits for many people, namely the benefits of the law that provide protection for every creative individual through trademark law by providing moral and economic protection for the creativity of his creations. The state participates in regulating the interests of citizens and maintains stability and legal order, which in turn is to create in a directed manner various conditions of social welfare desired by society. This research needs further research and study so that it is beneficial for the advancement of

²⁰ Sabartua Tampubolon, 2013, *Aspek Hukum Nama Domain di Internet dan Pengaturannya di Indonesia*, Kepel Press, Yogyakarta, h. 90-91.

the Indonesian people's economy by expanding the protection and legal certainty of trademark rights.

4. Conclusion

Referring to the explanation above, it can be concluded that the action of trademark squatting is not regulated in the Law on Marks and Geographical Indications provisions, on the other hand, according to WIPO, a trademark squatting in international arrangements is the registering action or the utilization of a mark of a generally well-known foreign mark that has not been certified in a country or has been registered but has never been employed by the questioned mark's owner. Due to trademark squatting in Indonesia, registered trademarks now own legal protection, including the ability to sue a party who unjustifiably benefits from a trademark that is identical to similar goods or services in principle or entirety, usually in the form of a claim for compensations; land/or cessation of all activities correlated to the use of the Mark referred to above based on the Law on Marks and Geographical Indications in Article 83 point 1. In addition, to get legal protection, by continuing to promote and register internationally.

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