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The Perspective of Indonesian State Law in Seeing the Superiority of Well-Known Brands at the International Level

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Abstract

A brand is the identity of a product of goods and services that have commercial value and are valuable. It has a commercial value because it becomes the identity of the product being traded and is valuable because it has a value that can be assessed as an asset of a company, can have a sale value and can be placed as collateral. In Indonesia, legal marks are regulated in Law Number 20 of 2016 concerning Marks and Geographical Indications (UU MIG). Protection of trademark rights that are formally registered (first to file) other than well-known brands. This research tries to find out the arrangements regarding similarities in principle or in its entirety to well-known brands and marks that apply to similar and non-similar goods/or services in Indonesia, other countries and international conventions. The research method used in writing this paper is a normative method with a statutory approach (The Statute Approach), meaning that the approach is taken by examining all relevant laws and regulations according to the law being handled. The conclusion obtained is that Indonesia has signed the Paris Agreement and TRIPS, where the concept and paradigm of a similar arrangement in principle or its entirety regarding well-known marks and marks currently in force in Indonesia and international conventions for similar and dissimilar goods/or services must be applied by all member countries. Including Indonesia and Indonesian legal politics regarding marks, it is necessary to make changes both in terms of substance by incorporating elements of rejection, namely status as a well-known brand, having similarities in principle or its entirety, may cause error and confusion, may cause loss, and traded by the use of the mark.

Keywords: *Well-Known Brands, Similar Goods and Services, Non Similar Goods/Or Services.*

INTRODUCTION

A brand is the identity of a product of goods and services that have commercial value and are valuable. It has a commercial value because it becomes the identity of the product being traded and is valuable because it has a value that can be assessed as an asset of a company, can have a sale value and can be placed as collateral (Katsikouli et al., 2021).

From the consumer side, a brand can act as a sign that can differentiate the results of one company from other companies in the market, both for similar and dissimilar goods or services. Mark as an identification or differentiating sign can describe the guarantee of

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personality (individuality) and the reputation of goods and services resulting from their business when traded (Lorenzo-Romero et al., 2020). When viewed from a producer's point of view, a brand guarantees its production results, especially regarding quality, and promotes its merchandise to seek and expand markets. Furthermore, from the consumer side, brands are needed to choose goods to purchase (Treiblmaier & Garaus, 2023).

In Indonesia, legal marks are regulated in Law Number 20 of 2016 concerning Marks and Geographical Indications (UU MIG). Legally, trademarks will receive protection after the trademark owner registers with the state, represented by the Directorate General of Intellectual Property Rights under the Ministry of Law and Human Rights. Protection of trademark rights that are formally registered (first to file) has had a juridical consequence that parties wishing to obtain trademark rights protection must follow a registration mechanism that has been determined formally so that the nature of registration is mandatory (compulsory) to obtain the protection of trademark rights (Fink et al., 2022). This also means that brands that are not registered will not receive protection from the state so that these marks can be used by everyone (the public) without permission from the first mark owner because a mark that is not legally registered is still considered a mark of public property (public domain) (Mark & Belton, 2020).

One of the reasons for the rejection of mark registration according to the MIG Law, which was amended by Law No. 11 concerning Job Creation (UU Ciptaker), is stated in article 20 point e, which states that the mark has no distinguishing features while in article 21 point 1 a, b and c states that "the mark rejected because it has similarities in principle or whole with a registered mark owned by another party or applied in advance by another party for similar goods and services and the mark is rejected because it has similarities in principle or whole with a well-known mark belonging to another party for goods and services similar as well as for goods and services that are not of the same type" (Rosati, 2020).

Differences in treatment for well-known brands regarding similar and non-similar goods and services are different from local brands, which have different arrangements in the current law (UU MIG) with Law Number 19 of 1992 and Law Number 14 of 1997 as well in several court decisions that differ from one another because the laws governing them are different. The differences from several other countries are also very interesting to examine with discussions based on theory, principles, legal philosophy and politics (Amezcua et al., 2020).

As a result of changes in determining the reasons for refusal, differences in marks that are approved or rejected for registration of local marks against well-known brands based on goods and services that are not of the same type, such as Mercy as a well-known brand for the class of motor vehicle goods, were also found to be the local brand Mercy for equipment. Households, trademark registrars registered Mercy for goods such as cigarettes, lighters and other registrars

registered for soft drinks, while the well-known BMW brand for motor vehicle goods was also found to have the same brand for underwear, consultants, tobacco, herbal medicines, bird's nests (Rulikova, 2020). The well-known brand Lexus for motor vehicles was also found to have the same brand for an amplifier, sound systems, locks, and hinges products. In contrast, the well-known brand Apple for electronic goods was found to be the same brand registered as a local brand for goods citric acid, straws, tea, catering, cloth textiles, flour, rice, corn, and clothing. In contrast, the Essensia brand was found to have many of the same brands for different classes (In & Palacios, 2021).

One of the reasons underlying the famous trademark lawsuit against local brands is based on MIG Law article 21, paragraph 3, which reads: "Application is rejected if submitted by an applicant with bad intentions." Because of bad faith because they want to take advantage of fame, the popularity of well-known brands makes it easier for local brands to market and sell their goods and services even though the goods and services are very different from well-known brands and now the latest MIG Law also prohibits local brands from registering goods/or services even though the types of goods/or services are different (Campbell & Farrell, 2020).

Based on the problems described in the research background section, this research tries to find out the arrangements regarding similarities in principle or in its entirety to well-known brands and marks that apply to similar and non-similar goods/ or services in Indonesia, other countries and international conventions, what are the consequences of the enactment of provisions for registration of marks that are rejected due to different types of goods and services in terms of legal norms, theory and philosophy, and the political attitude of Indonesian law which should be in regulating the provisions for registration of marks that are rejected due to different types of goods and services.

LITERATURE REVIEW

The theory of Intellectual Property Rights is heavily influenced by John Locke's thoughts on property rights. In his book, Locke says that the property rights of a human being to the objects he produces have existed since humans were born. Objects, in a sense here, are tangible objects and abstract objects, which are also called property rights over intangible objects that result from human intellect (Hill & Nidumolu, 2021). John Locke, a British philosopher, is considered the Father of Liberalism, the rationale is that the duty of humans is to safeguard the private property rights of its citizens by applying strict and just laws. The people's private property rights are very sacred, and the state must guarantee that every citizen can enjoy the private property rights of its citizens (McArthur, 2019). According to John Locke, property rights are natural rights owned by every human being and can never be taken away from him. Private property is a symbol of a person's authority over

himself. Private property rights symbolize that humans are sovereign over themselves and the results of their work (Rojek, 2022).

John Locke's opinion is considered the first theory that influences the ownership of rights and restrictions on rights. In his book entitled Second Treatise of Government, published in 1690, John Locke explained that God, who had given the world to all humankind, had also given common sense to make the best use of the earth's produce or nature for their lives. The earth and everything in it were given to humans to support and please their lives (Reid, 2021). Indeed, all the plants/earth products they produce, and all the animals that eat them (the crops), become the common property of the human race because all of them are produced spontaneously by nature, and no person has exclusive power over all people in the beginning. Another to those natural products, and thus all those natural products exist in their natural state (Emetere et al., 2021). But all-natural products are given to be used by humans, so there must be one way or another to manage them before natural products can benefit humans. The fruit or meat of the venison which fed the Indians who wandered everywhere but are still shared must become his property, and this means that other people can no longer have the right to the goods before the goods can be used for him to support his life (Shen et al., 2020).

Indonesia, as a rule-of-law country from the point of view of Intellectual Property Rights, Indonesia must be able to guarantee the property rights of legal subjects as a manifestation of human rights. Property rights Intellectual Property Rights are a fundamental principle in legal protection provided by the state because the protection provided by the state can be interpreted as a philosophical form of embodiment of legal objectives, namely: justice, legal certainty and legal benefits (Aditya & Al-Fatih, 2021). This is in line with Radbuch's view, which explains three (3) ideals of law: justice, benefit and legal certainty. Justice requires the law to prioritize balance, expediency requires the law to prioritize utility, and legal certainty requires legal regulations (Rangkuti & Lubis, 2020).

According to Friedrich Hegel, wealth (property) at a certain stage must become private (private), and private property becomes a universal institution. This is the basis for justifying trademark rights as part of Intellectual Property Rights. Trademark rights are considered as property rights that have special characteristics (exclusive), have a single right, monopoly rights and superior rights so that each trademark owner can act freely to use the rights he has and prohibit others without permission to use these rights (Bosakova & Bykova, 2021).

William van Caenegem explained that "at the most basic level, intellectual property benefits are said to provide an incentive for the production of intellectual goods that are of cultural or practical value to society". This can be interpreted that, in principle, incentives for Intellectual Property Rights can be considered a form of appreciation or

compensation for producing intellectual goods that have cultural value or are beneficial to society (Hoang et al., 2020).

Respect for trademark rights is an award given by the state to people who have taken the trouble to think of creating an idea as an intellectual work idea that is unique and personal so that protection of trademark rights must be given an award in the form of legal protection if it has been registered with the state. This is in line with the view of John Locke, who explained that efforts to produce intellectual creations are rights that must be respected directly (Hunt, 2019).

Brands are part of intellectual property rights (IPR), and recognition and recognition from the state for brands is by registering the mark so that the mark gets protection from the state (exclusive rights granted by the state). The protection provided by the state is economical, social and legal. Philosophically, protection in laws governing the granting and use of trademark rights is aimed at creating legal certainty so that justice and benefit, as the main objectives of the law, can be felt by brand rights holders and the public (Pujiyono et al., 2020).

Therefore, trademark registration may be refused for the following reasons:

1. If the registered mark has similarities in principle or whole with the registered mark belonging to another party or that was applied for earlier by another party for similar goods and services, the well-known mark belongs to another party for similar goods and services and not of a kind or registered geographical indication (Nasirov, 2020).
2. Is or resembles the name or abbreviation of a famous person's name, photograph or name of a legal entity owned by another person, is an imitation or resembles the name or abbreviation of a name, flag, symbol or symbol or emblem of a country, or a national or international institution, or is imitation or resembling an official sign or stamp or stamp used by the state or government agency (Kudaibergenova, 2019).
3. An application is rejected if an applicant submits it with bad intentions.

From the provisions above, especially for well-known brands, it is felt to be superior, dominant, and special treatment compared to registered marks. Well-known brands have very, very large privileges and authorities where goods and or services that are not of the same type can be refused, especially similar goods and or services, even though the well-known mark does not produce and trade said goods or services (Culpepper & Thelen, 2020). This is injurious and contrary to the sense of justice and theory, especially the 5th precept of Pancasila, namely social justice for all Indonesian people, as well as Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Baedhowi et al., 2022).

The Trademark Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition in article 2

reads, “Business actors in Indonesia carry out their business activities based on economic democracy by taking into account the balance between the interests of business actors and the public interest.” Meanwhile, Article 3 reads: “The purpose of establishing this law is to: a. maintaining the public interest and increasing the efficiency of the national economy as one of the efforts to improve people’s welfare; b. creating a conducive business climate through regulation of fair business competition to ensure certainty of equal business opportunities for large, medium and small business actors; c. prevent monopolistic practices and unfair business competition caused by business actors; and d. creating effectiveness and efficiency in business activities” (Wahyuningtyas, 2019).

METHOD

The research method used in writing this paper is a normative method with the Statute Approach, meaning that the approach is taken by examining all relevant laws and regulations according to the law being handled. After the researcher has successfully collected the research data, the data will then be processed by the researcher, so that the results of this research can be found.

RESULTS AND DISCUSSION

History of Rejected Non-Same Goods and Services

The history of the regulation of refusal to register goods and services that are not the same as well-known marks is in Law Number 21 of 1961 concerning Company Marks and Commercial Marks (1961 Trademark Law) to replace the Dutch colonial Trademark Law and was the first Indonesian law in the field of IPR. The 1961 Trademark Law does not regulate well-known marks, thus, the legal status is the same between well-known brands and local brands, that is, all of them must be registered and have legal protection. And 5 contains similarities in its entirety or principally with a mark registered for similar goods on behalf of another person, and the Industrial Property Office refuses the registration of said mark. The refusal to register said mark by the Industrial Property Office shall be notified as soon as possible in writing to the applicant for said registration by stating the reasons”. So, the 1961 Trademark Law adheres to the notion of similar goods whose registration is refused, and well-known marks have the same legal status as registered marks (Jain, 2021).

The 1961 Trademark Law was changed to Law Number 19 of 1992 concerning Trademarks (1992 Trademark Law) in article 6 (1) states that “The Trademark Office rejects a request for registration of a mark if it has similarities in substance or whole with a mark belonging to another person who has registered in advance for similar goods or services included in the same class. The 1992 Trademark Law does not recognize differences and special treatment of well-known marks, so legal recognition and protection is only for registered marks and reasons for rejection based on similar goods or services that belong to one class (more emphasized and clarified with the words “included in

one class"). So, the 1961 Trademark Law adheres to the notion of similar goods whose registration is refused, and well-known marks have the same legal status as registered marks.

The 1992 Trademark Law was amended by Law Number 14 of 1997 concerning Trademarks (1997 Trademark Law) because Indonesia participated in the World Trade Organization (WTO), which includes the field of Intellectual Property Rights, and signed an Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods/TRIPs) where Indonesia must adjust the provisions governing Intellectual Property Rights where Marks are included. There were several changes in the 1992 Trademark Law which were amended in the 1997 Trademark Law, namely the provisions of Article 6 paragraph (1) and paragraph (2) were amended, and new paragraphs (3) and (4) were added, so that Article 6 in its entirety reads as follows, "Article 6(1) The Trademark Office must reject an application for registration of a mark if it is similar in principle or whole to a mark belonging to another person which has been previously registered for similar goods and or services. (3) The Trademark Office may refuse a request to register a mark that has similarities in principle or whole with a well-known mark belonging to another person for similar goods and services. (4) The provisions as referred to in paragraph (3) can also be applied to goods and services that are not of the same type as long as they meet certain requirements which will be further stipulated in a Government Regulation." or similar and non-similar services remain the same.

With the times and the influence of global trade, the 1992 Trademark Law was replaced by Law Number 15 of 2001 concerning Trademarks (2001 Trademark Law), and article 6 (1) reads, "The Directorate General must reject the application if the Mark: a. has a similarity in principle or whole with a Mark belonging to another party which has been previously registered for similar goods and services; b. has similarities in principle or whole with well-known Marks belonging to other parties for similar goods and services; (2) The provisions as referred to in paragraph (1) letter b can also be applied to goods and services that are not of the same type as long as they meet certain requirements which will be further stipulated in a Government Regulation." The 2001 Trademark Law adheres to the notion of similar and dissimilar goods and services which must be rejected and supplemented by well-known trademarks registered after local marks have been registered. Registered marks (local marks) can be canceled due to an application for cancellation of a registered mark by a well-known mark for similar and dissimilar goods and services (Nguyen, 2020).

Changes to the Trademark Law are usually due to changes in international conventions where Indonesia has signed the convention, in this case relating to marks. The international conventions in which Indonesia has signed the mark, namely:

1. The Paris Convention is an international convention in the field of IPR which first appeared on the initiative of 11 countries in 1883, and Indonesia has ratified it since 1979 through Presidential Decree No. 24 of 1979;
2. The Madrid Agreement Concerning the International Registration of Marks signed in 1891;
3. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) – World Trade Organization (WTO) was signed in 1986;
4. Trade Mark law Treaty (TLT) was produced at the WIPO session in Geneva, Switzerland, on October 27, 1994.

Developments in technology and trade worldwide are accompanied by changes to international convention agreements signed by Indonesia and thus must be applied and also apply in Indonesia, especially for brands so that the 2001 Trademark Law needs to be amended to maintain fair and just business competition, consumer protection, and protection of Micro Enterprises, Small and Medium Enterprises (MSMEs) and domestic industry (Liu et al., 2023). Apart from the above, the reason for the amendment to the 2001 Trademark Law is to improve services and provide legal certainty for the world of industry, trade and investment in dealing with local, national, regional and international economic developments as well as developments in information and communication technology, and it needs to be supported by regulation more adequate legislation in the field of Mark (Roestamy et al., 2022). Amendment of the 2001 Trademark Law to the 2016 MIG Law to fill deficiencies in the 2001 Trademark Law to compete in the development of needs in society in the field of marks and to ensure the protection of the local and national economy.

The 2016 MIG Law in Article 21 states that "(1) The application is rejected if the mark has similarities in principle or whole with: a. a registered mark belonging to another party or applied in advance by another party for similar goods and services; b. Famous brand owned by another party for similar goods and services; c. Well-known marks belonging to other parties for goods and services that are not the same type that meets certain requirements; (3) An application is rejected if an applicant files it with bad intentions." The 2016 MIG Law still adheres to the understanding that marks with similar and dissimilar types of goods and services must be rejected if they have similarities in principle or whole with well-known marks even though the famous mark will be registered at a later date (not following the first to file rule).

Even though the 2016 MIG Law made changes to Law No. 11 of 2020 concerning Job Creation, there was no change to Article 21 so that the rules regarding the refusal of registration are maintained concerning well-known brands, and registered marks still refer to elements of similar goods and services and not the same.

Comparison with International Convention Regulations and Other Countries

Regulations regarding marks in Indonesia cannot be separated from regulations through international conventions regarding marks, but not all rules in international conventions are adopted in regulations that apply in a country because there are countries that regulate them differently by upholding the territorial principle to safeguard the interests of that country (McDermott et al., 2022). The provisions in the international convention on marks concerning registered marks that can be requested for cancellation and rejected for trademark applications due to similarities in principle or its entirety for goods and services of the same and or not the same type as well-known marks are as follows:

1. Paris Convention
   Article 6bis, Marks: Well-Known Marks in the Paris Convention regulates the prohibition of trademark registration for similar or similar or identical goods with an emphasis on reproduction, imitation/counterfeiting to cause confusion among consumers/buyers of well-known brand goods. The registration of such marks may be rejected and canceled by the mark offices of countries which have signed the Paris Convention.
2. TRIPs
   Article 16bis (3) TRIPS Agreement regulates the protection of well-known marks for owners of well-known marks, which is extended not only to similar limited goods but also includes goods and services that are not of the same type so that they are not used as fraudulent or unfair competition or in bad faith. Extension of well-known mark protection for similar and dissimilar goods and services insofar as it relates to the existence of a business connection with producers for goods and services that are not the same as those of well-known brands that cause consumer confusion (likelihood of confusion). The confusion that can lead to intentional misrepresentation can cause damage both in final terms and to the reputation of the owner of a well-known brand due to the use of a mark that has elements in common or is similar to a well-known brand as if the goods and services belonging to a well-known brand. Another disadvantage of a well-known brand is the loss of potential and opportunity to expand its business in other fields.
   The extension of the protection of well-known marks from article 6 of the Paris Convention makes famous brands even more superior, having very special rights over local marks and a country's economy (Upreti, 2019).
3. WIPO
   The World Intellectual Property Organization (WIPO) is an organization under the World Trade Organization (WTO) that deals with Intellectual Property Rights only by regulating the criteria for well-known brands, such as: a. the level of public

awareness of well-known brands; b. duration, scope, and coverage area of use of the brand; c. promotions carried out; d. a number of registrations in countries; d. lawsuit wins in multiple countries; e., brand commercial value.

4. Madrid Protocol
   The Madrid Protocol is only to facilitate the registration of marks in various countries (which have signed the Madrid Protocol, including Indonesia) both for local brands and well-known brands where the registration of a mark is a preventive legal protection for the mark.
5. Trade Mark USA
   Article 6bis of the 1967 Paris Convention for the Protection of Industrial Property requires member countries, such as the United States, to provide certain protections to well-known marks, regardless of whether they are registered. In particular, member states should provide means for refusing or canceling registration and prohibiting the use of well-known marks when presented or used by unauthorized persons for identical or similar goods when their use or registration is likely to give rise to confusion.
   Article 16(3) of the TRIPS Agreement extends the protection of Article 6bis to well-known marks when used on unrelated goods or services in cases where the famous mark is registered if such use indicates a relationship with the owner who is likely to be harmed.
   The United States implements this standard by protecting well-known registered and unregistered marks, both domestic and foreign, from use and registration by unauthorized parties under the provisions of the U.S. Lanham Act, which protects well-known marks against infringement or registration by other parties which are similar or similar for the same or similar goods or services and are not related or not similar if it will cause confusion or fraud or can be misleading (Bassiouny, 2022).
6. Trade Mark Malaysia
   Referring to the Paris Convention and the TRIPS Agreement, the protection of well-known marks in Malaysia according to the Trademark Act 1976 (UUMD 1976) in article 14(1)d protects well-known marks for goods and services of the same kind against registration of local registered marks.
   According to article 70B (1) of the 1976 Law, trademark owners entitled to protection under Article 6bis of the Paris Convention and TRIPS Agreement for well-known brands has the right to limit the use of brands used in trade in Malaysia if: a. without the owner's consent; b. if it resembles an essential part or is identical to a registered mark in respect of the same goods and services, where use is likely to be deceptive and cause confusion.
   Protection of a well-known mark in Malaysia, irrespective of whether it is registered or not as well as whether the owner of the

well-known mark is doing business in Malaysia or not, is only applicable if a conflicting trademark is used on the same goods or services as the well-known trademark (Sharma, 2019).

Whereas Article 13A of the 1997 Trademark Law stipulates that trademark registration is not permitted: a) If it is identical or similar or is a translation of a mark that is considered by the relevant authorities in Malaysia to be well-known in Malaysia, is the mark registered and used for identical goods or services? Or similar; b) If it is identical or similar or is a translation of a mark deemed well-known under Regulation 13B in Malaysia, registered in Malaysia, concerning goods or services registered as similar or different; insofar as the use of the mark indicates a relationship between the said goods and services and the owner of the registered mark and a well-known mark, with further provisions the interests of the said mark owner may be harmed by such use.

7. Trade Mark Singapore

The legal protection of well-known marks in Singapore under the Trade Marks Act (Trade Marks Act/TMA) amended in 1999 protects well-known registered marks and not where well-known marks can apply for cancellation or the Singapore mark office can refuse the registration of a mark which could be detrimental or misleading (delusions) or piggybacking on the fame of a well-known brand and profiting from the resemblance to that well-known brand.

Article 8(3) of the TMA states that for applications for trademark registration made before July 1, 2004, if the trademark is: (a) identical or similar to the previous trademark; and (b) will be registered for goods or services that are dissimilar to the previously protected trademark, the trademark subsequently being rejected if: (i) the former trademark was a well-known mark in Singapore; (ii) the use of the latter trademark concerning goods or services for which the latter is applied for registration would indicate a relationship between said goods or services and the former trademark owner; (iii) there is potential for confusion on the part of the public due to such use; and (iv) the interests of the former owner of the trademark may be harmed by such use.

Protection of a well-known mark registered or not with a registered mark or will register for elements of equality in principle or its entirety for similar goods and/services or will not be rejected and canceled as long as the registered mark can be detrimental to well-known brands and can be misleading, confusing to buyers of well-known brands (Markova, 2019).

Brand Law Politics

John Locke's theory states that the mind comes from God and that the ideas that exist in humans must be respected as property and need protection, especially if they are traded commercially. John Locke's theory has a weakness: Is a person's idea only shared by that

person across countries and time, and is there only one original and absolute idea that only a person has? This idea needs further research to disprove John Locke's theory, especially in the notion of intellectual property rights (IPR), which includes brands, especially the understanding adhered to in well-known brands where a brand that a well-known brand owns cannot have any idea of naming something (Ward, 2021). brand both for similar brands and also for non-similar brands, even though the well-known mark does not use and trade the said goods and services, if you look deeper, similar goods and/services mean that they are included in one class even though the goods and services Only one type of goods is traded by well-known brands, such as cars, motorcycles, computers, computer programs, mobile phones and so on.

Aristotle, in the theory of justice, states that where justice is a balance in numerical equality (meaning that every human being is equal in one unit, for example, equality before the law)) and proportional equality (meaning giving everyone what is their right according to their abilities and achievements) (Lewis et al., 2021).

John Rawls, in the theory of justice, argues that freedom has equality in justice, that every person has equal rights to basic liberties whose system is the same as freedom for all (liberty for all). Meanwhile, the opinion of Thomas Aquinas, which is almost the same as that of Aristotle, states that justice is appropriate for others according to a proportional similarity (Pandey & Jaiswal, 2022).

Suppose only the theory of ownership is held. In that case, justice is injured, and justice becomes meaningless, especially the superiority of well-known brands for rejection and cancellation of similar (maybe not the same) and dissimilar registered marks for goods and services. Especially now that well-known brands are taking over the dominance of registered marks for goods that are NOT traded goods (not sold on the public market) but promotional items registered in a different class (aimed at widening and extending the protection of well-known brands) from the main goods and/services from a famous brand (Kim & Phillips, 2021).

The legal politics of the Indonesian state must adhere to Pancasila, especially the 5th precept, namely social justice for all of Indonesia, where legal politics must stand and apply equally to every Indonesian as well as a foreigner who are in Indonesia as well as the same treatment for brands, both local and well-known brands. The legal norms contained in the MIG Law must be endeavored to remain oriented to the interests of national IPR, even though the provisions of international law cannot be ignored, especially since Indonesia has ratified them. The tendency of capitalist principles and being too dominant (superior) in the field of Intellectual Property Rights need to be watched out for and countered by maneuvering in laws and regulations. In the context of the development of Mark law, the formation of laws and regulations should refer to the philosophy of Pancasila, which promotes a balance (fairness) between individual

rights and the rights of the general public, the legal principles contained in the 1945 Constitution and the social reality of the Indonesian nation to realize welfare for all Indonesian people.

The politics of trademark law that is necessary and very important is the regulation of well-known marks where large investors and multinational entrepreneurs want to control all fields, in this case, the mark that is requested for protection, regardless of whether the goods/services owned are owned or not, traded or not. All parties are prohibited from imitating similar or the same brand name even though what is registered and traded is very different from the goods/services belonging to the Registered Mark. Here the author sees unfair competition (unfair competition), on the one hand, well-known brands have not been registered, and trademark protection is requested, on the other hand, other parties are prohibited from having brands that have similarities in principle or their entirety to all types of goods and services.

To get around what has been agreed by Indonesia in ratifying the TRIPS agreement, article 4.1 TRIPS requires that all agreements made and signed in the framework of IPR must be treated equally, and there may not be different and preferential provisions applied to a particular member country, namely with the principle of National Treatment. (NT) carried out by TRPs members who do not conflict with the existing TRIPs rules, namely by providing a statement (clause) that

CONCLUSION

Indonesia has signed the Paris Agreement and TRIPS whereby the concept and paradigm of a similar arrangement in principle or its entirety regarding well-known marks and marks currently in effect in Indonesia and international conventions for similar and dissimilar goods/or services must be enforced by all member countries, including Indonesia. In other words, regulations on brands cannot be separated from the domination of well-known brands. Indonesian legal politics regarding marks should, in terms of setting equality in principle or its entirety, regarding brands that are rejected for similar and dissimilar goods/or services, must protect local brands so that the potential for economic growth in Indonesia for MSMEs continues to grow and progress and is not colonized by the capitalist system of world organizations controlled by developed countries where famous brands are located and receive legal protection so that the legal politics of trademarks in Indonesia need to be made changes both in terms of substance and in terms of education for the Commercial Court Judges to the Supreme Court if a lawsuit occurs a well-known mark to a registered mark that needs to be proven first are the following elements: status as a well-known brand; having similarities in principle or its entirety; may cause error and confusion; may cause loss; and traded by the use of the mark.

REFERENCES

Aditya, Z. F., & Al-Fatih, S. (2021). Indonesian constitutional rights: expressing and purposing opinions on the internet. *The International Journal of Human Rights*, *25*(9), 1395-1419.

Amezcua, A., Ratinho, T., Plummer, L. A., & Jayamohan, P. (2020). Organizational sponsorship and the economics of place: How regional urbanization and localization shape incubator outcomes. *Journal of business venturing*, *35*(4), 105967.

Baedhowi, B., Utomo, S. T., & Muanayah, N. A. (2022). Rethinking the Position of Islam and Indonesianness Amid Hopes for the Emergence of Multipolar Powers. *International Journal Ihya"Ulum al-Din*, *24*(1), 1-14.

Bassiouny, A. A. M. (2022). Protecting Well-known Trademarks: A Comparative Study. *Journal of Positive School Psychology*, 673-681.

Bosakova, K., & Bykova, M. F. (2021). Hegel and Niethammer on the Educational Practice in Civil Society. *Journal of Philosophy of Education*, *55*(1), 99-125.

Campbell, C., & Farrell, J. R. (2020). More than meets the eye: The functional components underlying influencer marketing. *Business Horizons*, *63*(4), 469-479.

Culpepper, P. D., & Thelen, K. (2020). Are we all Amazon primed? Consumers and the politics of platform power. *Comparative Political Studies*, *53*(2), 288-318.

Emetere, M. E., Agubo, O., & Chikwendu, L. (2021). Erratic electric power challenges in Africa and the way forward via the adoption of human biogas resources. *Energy Exploration & Exploitation*, *39*(4), 1349-1377.

Fink, C., Fosfuri, A., Helmers, C., & Myers, A. F. (2022). Submarine trademarks. *Journal of Economics & Management Strategy*, *31*(4), 818-840.

Hill, L., & Nidumolu, P. (2021). The influence of classical Stoicism on John Locke's theory of self-ownership. *History of the Human Sciences*, *34*(3-4), 3-24.

Hoang, G., Le, H. T. T., Nguyen, A. H., & Dao, Q. M. T. (2020). The impact of geographical indications on sustainable rural development: A case study of the Vietnamese Cao Phong orange. *Sustainability*, *12*(11), 4711.

Hunt, S. D. (2019). The ethics of branding, customer-brand relationships, brand-equity strategy, and branding as a societal institution. *Journal of Business Research*, *95*, 408-416.

In, V., & Palacios, A. (2021). Dynamics and Bifurcations in Networks Designed for Frequency Conversion. *International Journal of Bifurcation and Chaos*, *31*(12), 2130037.

Jain, D. (2021). Genericization of trade-marks: an Indian perspective on challenges posed and potential solutions. *Journal of Intellectual Property Law & Practice*.

Katsikouli, P., Wilde, A. S., Dragoni, N., & Høgh-Jensen, H. (2021). On the benefits and challenges of blockchains for managing food supply chains. *Journal of the Science of Food and Agriculture*, *101*(6), 2175-2181.

Kim, D. Y., & Phillips, S. W. (2021). When COVID-19 and guns meet: A rise in shootings. *Journal of Criminal Justice*, *73*, 101783.

Kudaibergenova, D. T. (2019). The body global and the body traditional: a digital ethnography of Instagram and nationalism in Kazakhstan and Russia. *Central Asian Survey*, *38*(3), 363-380.

Lewis, E. O. C., MacKenzie, D., & Kaminsky, J. (2021). Exploring equity: How equity norms have been applied implicitly and explicitly in transportation research and practice. *Transportation research interdisciplinary perspectives*, *9*, 100332.

Liu, X., Yuan, S., Yu, H., & Liu, Z. (2023). How ecological policy stringency moderates the influence of industrial innovation on environmental sustainability: The role of renewable energy transition in BRICST countries. *Renewable Energy*.

Lorenzo-Romero, C., Andrés-Martínez, M. E., & Mondéjar-Jiménez, J. A. (2020). Omnichannel in the fashion industry: A qualitative analysis from a supply-side perspective. *Heliyon*, *6*(6), e04198.

Mark, S., & Belton, B. (2020). Breaking with the past? The politics of land restitution and the limits to restitutive justice in Myanmar. *Land Use Policy*, *94*, 104503.

Markova, M. (2019). Newest and actual basic points regarding the legal regulation of EU trademarks. *NTUT Journal of Intellectual Property Law & Management*, *7*(2), 67-89.

McArthur, N. (2019). A Fearful Asymmetry: Locke on Legal Moralism, Toleration, and Sexual Liberty. *History of Philosophy Quarterly*, *36*(4), 337-358.

McDermott, C. L., Montana, J., Bennett, A., Gueiros, C., Hamilton, R., Hirons, M., ... & Picot, L. (2022). Transforming land use governance: Global targets without equity miss the mark. *Environmental Policy and Governance*.

Nasirov, S. (2020). Trademark value indicators: Evidence from the trademark protection lifecycle in the US pharmaceutical industry. *Research Policy*, *49*(4), 103929.

Nguyen, A. L. T. (2020). FDI inflows and intellectual property rights for MNEs in emerging markets: an alternative approach through the lens of trademarks in Vietnam (1986-2016). *Multinational Business Review*.

Pandey, N. N., & Jaiswal, M. (2022). A Comparative Study of Theory of Justice: in Reference to Rawls and Nozick. *Journal of Positive School Psychology*, *6*(8), 2362-2373.

Pujiyono, P., Waluyo, B., & Manthovani, R. (2020). Legal threats against the existence of famous brands a study on the dispute of the brand Pierre Cardin in Indonesia. *International Journal of Law and Management*.

Rangkuti, A. B., & Lubis, M. Y. (2020). Land right's application in accordance with the use of existing space in Medan city. *Indonesian Journal of Business and Entrepreneurship (IJBE)*, *6*(3), 292-292.

Reid, D. (2021). Dispossession and legal mentalité in nineteenth-century South Africa: Grotian and Lockean theories of property acquisition in the annexations of British Kaffraria and Natalia. *Settler Colonial Studies*, *11*(1), 69-85.

Roestamy, M., Martin, A. Y., Rusli, R. K., & Fulazzaky, M. A. (2022). A review of the reliability of land bank institution in Indonesia for effective land management of public interest. *Land Use Policy*, *120*, 106275.

Rojek, C. (2022). John Locke, Private Property and the Birth of Achieved Celebrity. *Cultural Sociology*, 17499755211051835.

Rosati, E. (2020). The absolute ground for refusal or invalidity in Article 7 (1)(e)(iii) EUTMR/4 (1)(e)(iii) EUTMD: in search of the exclusion's own substantial value. *Journal of Intellectual Property Law & Practice*, *15*(2), 103-122.

Rulikova, M. (2020). "I would never wear those old clodhoppers!": Age differences and used clothing consumption in the Czech Republic. *Journal of Consumer Culture*, *20*(2), 175-193.

Sharma, S. (2019). RCEP and trans-pacific intellectual property norms: Implications for India. *The Journal of World Intellectual Property*, *22*(5-6), 313-348.

Shen, M., Song, B., Zeng, G., Zhang, Y., Huang, W., Wen, X., & Tang, W. (2020). Are biodegradable plastics a promising solution to solve the global plastic pollution?. *Environmental Pollution*, *263*, 114469.

Treiblmaier, H., & Garaus, M. (2023). Using blockchain to signal quality in the food supply chain: The impact on consumer purchase intentions and the moderating effect of brand familiarity. *International Journal of Information Management*, *68*, 102514.

Upreti, P. N. (2019). Trumping local marks: A note on well-known trade marks in Nepal. *Journal of Intellectual Property Law & Practice*, *14*(2), 144.

Wahyuningtyas, S. Y. (2019). Self-regulation of online platform and competition policy challenges: A case study on Go-Jek. *Competition and Regulation in Network Industries*, *20*(1), 33-53.

Ward, L. (2021). Trust and Distributive Justice in John Locke's Politics of Money. *The Review of Politics*, *83*(4), 510-532.