

Legal Protection of Trademark Owner Based on The First to File Ownership Principle

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Legal Protection of Trademark Owner Based on The First to File Ownership Principle

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ABSTRACT: A legal protection for the owner of a basic mark based on the principle of first to file ownership can be obtained if the owner of the mark makes an application to the Directorate General of Intellectual Property Rights. The application is based on the good faith of the applicant, so that the application will provide legal protection to the first applicant for a Mark because the applicant who filed the application for a Mark for the first time is considered to have good faith. This causes no party to register the same Mark a second time. If there is and there is a dispute in court, then what will be protected is the Mark owner who submits the application first. Furthermore, the characteristics of a Trademark based on the principle of ownership according to the applicable law is that a Trademark is considered an intangible object based on book 2 of the Civil Code in which the right owner has the authority to use the Mark indefinitely as needed, including also to carry out the agreement, either a license agreement or a right transfer agreement in any way.

Keywords: Legal protection; trademark; first to file

I. PRELIMINARY

The Indonesian government has an obligation to promote public welfare as stated in one of the objectives of the establishment of the Indonesian state, namely in the fourth paragraph of the Preamble to the Fourth Amendment of the 1945 Constitution which reads: "Then from that to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote general welfare, educate the nation's life", and participate in carrying out world order based on freedom, eternal peace and social justice.

The contents of the preamble to the 1945 Constitution are in accordance with Soekarno's thoughts in 1928-1933, which firmly curtailed an independent Indonesia as a golden bridge to the achievement of prosperity, the feasibility of living the Indonesian people as human beings.¹ Sri Soemantri stated that, as stated in the Preamble to the 1945 Constitution, the Unitary State of the Republic of Indonesia was founded on the idea of a welfare state.²

The achievement of the welfare mentioned above can be achieved by carrying out economic growth through several actions from the government, including poverty alleviation and improvements in the industrial sector. Industry, based on Article 1 number 1 of Law 3 of 2014 concerning Industry, hereinafter referred to as the Industry Law, says that "Industry is the order and all activities related to industrial activities.", while Article 1 number 2 of the Industry Law states that " Industry is all forms of economic activity that processes raw materials and/or utilizes industrial resources so as to produce goods that have added value or higher benefits, including industrial services.

The goods produced by this industry will later be traded, in which the meaning of trade is the practice of exchanging goods and services from one place to another, and this activity is generated from disparities in demand and resources from the regions involved.³ Article 1 number 1 of Law Number 7 of 2014 concerning Trade, hereinafter referred to as the Trade Law affirms that, "Trade is an activity arrangement related to

¹ Mudji Soetrisno, et.al., 2005, *Sejarah Filsafat Nusantara, Alam Pikiran Indonesia*, Jakarta: Galang Press, p. 18.

² A. Junaedy Ganie, 2011, *Hukum Asuransi Indonesia*, Jakarta: Sinar Grafika, p. 15.

³ Bambang Utoyo, 2009, *Geografi Membuka Cakrawala Dunia*, Pusat Perbukuan, Departemen Pendidikan Nasional, p. 12.

transactions of goods and/or services in the country and beyond the borders of the country with the aim of transferring rights to goods, and/or services to obtain rewards or compensation.”

Trade which begins with the existence of these industrial activities is an important process in meeting the needs of the community. The fulfillment of the community's needs is in practice influenced by the existence of a brand. People still see that the quality of the goods that will meet their needs is influenced by the brand. Certain brands have good quality when compared to other brands. Therefore, it is necessary to provide more protection to brands.

A brand is a kind of intellectual property that is the result of human activities that result in creations, innovations, or inventions. Innovation or creativity is a consequence of the realization of ideas for intellectual talent or human skills, such as inventions whose outputs are used to help humans in daily activities. In addition, the mark also provides economic benefits for the owner, including from a legal perspective, the regulation of intellectual property rights that provides exclusive protection so that it can provide benefits for the owner.⁴

Marks used in industrial activities as well as trade in goods and services, as an effort to promote buying and selling relations. The mark or marker is used to protect, maintain and promote the relationship between the entrepreneur and the community. Marks and other trade marks cannot be separated from trading activities and goods affixed with these marks. The mark itself as an object arises from its use in trading activities. So that intellectual property rights in the form of this Mark arise because of their use in trade.

Trademarks, as mentioned above, can¹⁹ said to be industrial property rights of their holders. This is because the brand is a differentiator from the goods and or services of the holder. Violation of the Mark can result in the reproduction, act, sale, distribution or even use of intellectual property that can be reproduced on a large scale and by others without the permission of the rightful person with the aim of seeking commercial profit. Of course this can lead to unfair business competition and harm consumers because they think they have given good quality goods by buying¹⁴ certain brand but instead get goods of different quality.

From the description of the background above, the formulation of the problem is determined as follows: 1. How is the legal protection of trademark owners based on the concept of first to file ownership? 2. What are the characteristics of a trademark based on the concept of ownership according to the applicable laws?

II. RESEARCH METHODS

1. Research Type

This research is a normative type of research, namely doctrinal legal research aimed at written regulations relating to the characteristics and legal protection of trademark rights holders so that this research is also related to libraries because in addition to statutory regulations, it will also require secondary information from library.⁵

2. Problem Approach

This thesis research applies a statutory approach which is carried out by reviewing all laws and regulations relating to the characteristics and legal protection of trademark rights holders. The second approach is a conceptual approach by using concepts and theories related to the characteristics and legal protection of Mark rights holders.

3. Sources of Legal Materials

Sources of legal materials are needed to solve legal problems and also determine what should be needed, namely in the form of primary and secondary legal materials.⁶

Primary legal materials are legal materials related to statutory regulations, namely:

1. Pembukaan Undang-Undang Dasar 1945 Republik Indonesia.
2. Undang-Undang Nomor 3 Tahun 2014 tentang Perindustrian.
3. Undang-Undang Nomor 7 Tahun 2014 tentang Perdagangan.
4. Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis.

Meanwhile, secondary legal materials consist of legal materials that provide an explanation of primary legal materials or are additional legal materials which can be in the form of scientific work from previous researchers or books, journals, and other secondary legal materials that contain theories and concepts regarding the characteristics and protections. law on Mark rights holders.

4. Collection and Processing of Legal Materials

Legal material is information that is collected through various kinds of searches in accordance with the applied approach, namely the statutory and conceptual approach. After that, the data that has been received is

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⁴ Suyud Margono, 2011, *Hak Milik Industri*, Bogor: Ghalia Indonesia, p. 2.

⁵ Soerjono Soekanto, 2014, *Pengantar Penelitian Hukum*, Jakarta: University of Indonesia, p. 6-7.

⁶ Jhonny Ibrahim, 2013, *Teori & Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia Publishing, p. 181.

collected with a scope so that it is easy to check and ensure that all the required data is complete. The selected data is data that is relevant to its scope by classifying the data.

5. Analysis of Legal Materials

The first analysis is an analysis conducted on the laws and regulations related to legal issues as well as theories and concepts. The main purpose of the analysis is to find and examine the answers to the two existing problem formulations.

III. DISCUSSION

A. LEGAL PROTECTION OF TRADEMARK OWNER BASED ON THE CONCEPT OF FIRST TO FILE OWNERSHIP

1. Trademark Registration Procedure

The system adopted by the Trademark Law in Indonesia is a constitutive system, in which the rights to a trademark are granted to the owner of a registered mark. Based on Article 4 of the Trademark Law, "Application for registration of a Mark shall be submitted electronically or non-electronically in the Indonesian language, signed by the applicant or his/her proxy to the Minister by stating:

1. The date, month and year of the application;
2. Full name, nationality, and address of the applicant;
3. Full name and address of the proxy if the application is submitted through a proxy;
4. Color if the Mark for which registration is being applied uses color elements;
5. The name of the country and the date of the first application for a Mark in the event that the application is filed with priority rights; and
6. Class of goods and/or class of services as well as a description of the types of goods and/or types of services;
7. The application is accompanied by a Mark label and proof of payment of the specified fee per class of goods and/or services;
8. If the Mark is in the form of 3 dimensions, then the Mark label attached is in the form of the characteristics of the Mark;
9. In the event that the Mark as referred to in paragraph (4) is in the form of sound, the attached Mark label is in the form of a notation and a sound recording;
10. The application as referred to in paragraph (1) must be accompanied by a statement of ownership of the Mark for which registration is requested."

"Applications are submitted by more than one applicant who are jointly entitled to the Mark, then all the names of the applicants are listed by selecting one of the addresses as the address of the applicant and signed by one of the applicants who are entitled to the Mark by attaching written approval from on the applicant's representative. The application is submitted through their proxies, and the power of attorney for that is signed by all parties entitled to the Mark." as stated in Article 5 of the Trademark Law. Meanwhile, Article 6 of the Trademark Law states that "Applications for more than one class of goods and/or services may be submitted in one application by stating the types of goods and/or services included in the class for which registration is requested."

Article 7 of the Trademark Law stipulates, "Administration of a Mark filed by an Applicant who resides or is permanently domiciled outside the territory of the Unitary State of the Republic of Indonesia must be submitted through a proxy and choose the address of the Proxy as legal domicile in Indonesia."

According to Article 1 of the Trademark Law number 17, "Priority rights are the rights of applicants to submit applications originating from countries that are members of the Paris Convention for Protection of Industrial Property or Agreement Establishing the World Trade Organization to obtain recognition that the date of receipt in the country of origin is the priority date. in the destination country which is also a member of one of the two treaties." In relation to this priority right, Article 9 of the Trademark Law states that "An application using a Priority Right must be submitted within 6 months from the date of receipt of the first application for registration of a Mark received in another country which is a member of the Paris Convention on the Protection of Industrial Property. (Paris Convention for the Protection of Industrial Property) or a member of the Agreement Establishing the World Trade Organization", accompanied by proof of receipt of the application for registration of the Mark that first gave rise to the Priority Right and must be translated into Indonesian and if not fulfilled within a maximum period of 3 (three) months after the expiration of the right to file an application, the application will still be processed but without using the Priority Right.", as stated in Article 10 of the Trademark Law.

The Directorate General of Intellectual Property Rights, hereinafter referred to as HKI, will conduct an examination of the completeness of the registration requirements for Mark applications. Article 11 of the Trademark Law states "In the event that there is a lack of completeness, then within 30 days from the date of receipt, the applicant is notified so that the completeness of the requirements is fulfilled within a maximum

period of 2 months from the date of sending the notification letter to fulfill the completeness of the requirements. In relation to priority rights, the period for fulfilling the lack of completeness of these requirements is no later than 3 months from the end of the period for submitting an application using Priority Right." Article 12 of the Trademark Law states, "if the complete requirements are not met within that time period, the Minister shall notify the Applicant or his Proxy in writing that the Application is deemed withdrawn."

"Applications that have met the minimum requirements are given a Filing Date," based on Article 13 of the Trademark Law. "The minimum requirements consist of an application form that has been completely filled out; Brand labels; and proof of payment of fees."

"The announcement of the application for a Mark is carried out by the Minister in the Official Gazette of Marks issued by the Minister periodically through electronic and/or non-electronic means, within a maximum period of 15 days from the date of receipt of the application and lasts for 2 months." (Article 14 of the Trademark Law). Based on Article 15 of the Trademark Law, "An announcement is made by stating:

- a. name and address of applicant, including proxy (if using power of attorney);
- b. class and type of goods and/or services;
- c. receipt date;
- d. the name of the country and the date of receipt of the first application (if the application is submitted using priority rights);
- e. Mark label, including information regarding color and if the Mark label uses a foreign language and/or letters other than Latin letters and/or numbers which are not commonly used in Indonesian, accompanied by their translation into Indonesian, Latin letters or numbers commonly used in Indonesian, as well as the way it is pronounced in Latin spelling."

Article 16 of the Trademark Law explains that "During the time the announcement takes place, a written objection may be submitted to the Minister on the relevant application with costs and evidence. A copy of this objection letter will be sent to the applicant and his/her proxies. The applicant or his/her proxy may file a rebuttal to the objection no later than 2 months after sending the copy of the objection.", as stated in Article 17 of the Trademark Law. Meanwhile, Article 18 of the Trademark Law states that "Remedies to an application are only allowed to write the name and/or address of the applicant or his proxies." Based on Article 19 of the Trademark Law, "As long as a Mark certificate or rejection letter from the Minister has not been issued, the Applicant may withdraw the application for Mark registration."

"Substantive examination is carried out if there is no objection within a maximum period of 30 days from the announcement date, whereas if there is an objection within a maximum period of 30 days from the end of the deadline for submitting a disclaimer, a substantive examination will be carried out on the application, as stated in Article 23 Trademark Law. The substantive examination is completed within a maximum period of 150 days and can be appointed by an expert on Mark examining outside the examiner and is considered the same as the examiner with the approval of the Minister."

Article 24 of the Mark Law states, "In the event that the Examiner decides that an Application can be registered, the Minister, registers the Mark, notifies the registration of the Mark to the Applicant or his Proxy, issues a Mark certificate, and announces the registration of the Mark in the Official Gazette of Marks, both electronic and non-electronic. Meanwhile, if the Examiner decides that the Application cannot be registered or is rejected, the Minister shall notify the Petitioner or his Proxy in writing by stating the reasons so that the applicant or his proxies can submit his response in writing with the reasons. Because if not, then the Minister rejects the application, the same thing also applies if the examiner decides that the response is not accepted."

The applicant, based on Article 25 of the Trademark Law, whose registration has been approved will receive a "Mark Certificate issued by the Minister containing the full name and address of the registered Mark owner, full name and address of the Proxy, in the event of an application through a proxy date of receipt, name of country and date of registration. Acceptance of the first application in the event that the Application is filed using Priority Right, the label of the registered Mark, including information regarding the kinds of colors if the Mark uses color elements, and if the Mark uses a foreign language, letters other than Latin letters, and/or unusual numbers. used in the Indonesian language accompanied by its translation into Indonesian, Latin letters and numbers commonly used in Indonesian and the pronunciation in Latin spelling, number and date of registration, class and type of goods and/or services for which the Mark is registered and the period of validity of the registration of the Mark. This Mark Certificate must be taken by the Mark owner within a maximum period of 18 months from the date of issuance of the certificate, because if not, then the registered Mark is considered to be withdrawn and abolished. application and pay fees", based on Article 26 of the Trademark Law.

The legal protection provided is regulated in Article 35 of the Trademark Law, "Registered marks receive legal protection for a period of 10 years from the date of receipt and can be extended for the same period. The application for extension is submitted electronically or non-electronically in the Indonesian language by the Mark owner or his Proxy within 6 months prior to the expiration of the protection period for the

registered Mark. ut is subject to a fee and can still be submitted within a maximum period of 6 months after the expiration of the protection period for the registered Mark and is subject to a fee and a fine equal to the renewal fee.”

Article 36 of the ²⁴Mark Law states that, "The application for extension is approved if the applicant attaches a statement that the relevant Mark is still being used on the goods or services as stated in the Mark certificate ¹⁹ the goods or services as referred to in letter a are still being produced and/or traded." However, Article 37 of the Trademark Law states that, "An application for an extension will be rejected if it does not meet the provisions and the refusal will be notified in writing to the Mark holder and his Proxy stating the reasons. The extension of the period of protection for registered Marks is recorded and announced in the Official Gazette of Trademarks."

2. Ownership Theory

Henry R. Cheeseman stated about property rights as follows: A fee simple absolute is highest form of ownership of real property. Ownership is infinite in duration, has no limitation on inheritability, And does not end upon the occurrence or nonoccurrence of an event.⁷

Cheeseman argues that property rights are the highest form of ownership because ownership is not limited in time, can be inherited and will not be erased unless there is an event that results in the abolition of the property rights.

Property rights can also be formulated by determining the usual nature, namely land ownership rights are a right to control the entire land by considering the regulations held by the state and those that apply in society.

The law, initially did not recognize the existence of private or individual property rights over something. At that time, all goods were considered as common property for all members of society. Regarding this matter, Roscoe Pound put forward the teachings of natural law regarding property rights which were also held by other Philosophy of Law figures such as Hugo de Groot (Grotius) and Puffendorf as follows:⁸

Because objects at that time were also said to be *res nullius* which means objects or objects that cannot be owned or owned by anyone personally. From this joint ownership, private property rights were gradually born and developed, the development of which according to Roscoe Pound took place in 3 phases. Roscoe Pound further explains that the three phases are:⁹

First phase: Initially community members reach an agreement to guarantee ownership rights to the goods they want, with the stipulation that each member can only have the things he wants. Ownership of goods at this stage or stage is still purely physical or natural, meaning that the objects are controlled by someone as his physical property, without any legal basis; Therefore, ownership at this early stage is better known as natural ownership or possession *naturalia*. Based on this, property rights in that period had a very weak position because the basis of ownership held by a person on an object could not be legally proven/defendable; Therefore, in the event of theft, the owner of the stolen goods cannot do anything even though they know who committed the crime and the location of the stolen goods because their rights to the goods were not protected by law at that time.

Second phase: In this phase, private or individual property rights have begun to receive legal attention, in addition to physical possession, have also been proven or defended legally. So that in addition to physical control, private property rights also include legal control, in which a person's ownership of an object is also guaranteed protection from the law, as long as the object itself is legally obtained by the owner.

Therefore, if there is a disturbance to a person's private property rights that are legal according to law, then with the actions of functional officials such as the police, courts, prosecutors, and others have the right to eradicate the disturbance by:

1. Return the object that is the object of the disturbed property right to the rightful party or the owner if this is still possible to do;
2. Taking firm action against those intruders on property rights according to the local law at that time.

The third phase: Individual private property rights have reached a more perfect level where not only their position, but also their use to the enjoyment of the results, are fully protected by applicable laws and regulations. Since reaching this phase of development, the quantity and significance of private property *res privatae* or *bonum privatum* has grown worldwide to fulfill state ownership as the highest social structure.

⁷ Henry R. Cheseman, 2001, *Business Law, E-Tahunical, International & E-Commerce Environment*, New Jersey: Prentice Hall, p. 1009.

⁸ A. Ridwan Halim, 1982, *Hak Milik Keadilan dan Kemakmuran Tinjauan Falsafah Hukum*, Jakarta: Ghalia Indonesia, p. 18.

⁹ A. Ridwan Halim, 2000, *Sendi-Sendi Hukum Hak Milik, Kondominium, Rumah Susun dan Sari-Sari Hukum Benda (bagian Hukum Perdata)*, Jakarta: Puncak Karma, p. 20.

3. First to File registration system

The trademark registration system in Indonesia is a declarative system (first to use) and a constitutive system (first to file). Law Number 20 of 2016 uses a constitutive system (first to file). The 2001 Trademark Law uses a constitutive registration system, similar to the previous law, namely Law no. 19 of 1992 and Law No. 14 of 1997. This is a fundamental change in the Trademark Law in Indonesia, which originally adopted a declarative system (Law No. 21 of 1961).¹⁰

The declarative registration system is a system in which legal protection is given to the first user of a trademark issued. In other words, the initial use of a Mark in Indonesia gives rise to or gives birth to the right to the mark, not registration. In the event of a difference of opinion, the registration is only used as evidence.¹¹

Mark registration with a constitutive system is a mandatory registration mechanism to obtain Mark rights. The State will not grant the Mark owner any rights without registration. This means that without registering a Mark, the state will not provide legal protection to the person whose Mark is duplicated. The constitutive system has been used for trademark registration in Indonesia since Law Number 19 of 1992. This constitutive system bases legal protection on the first registrant who has good intentions. This is also as stated in Article 21 paragraph 3 of Law Number 20 of 2016 which states that "Marks cannot be registered by applicants who do not have good intentions." This is because the first registrant of the Mark is considered to be in good faith.¹²

4. Legal Protection for Brand Holders Based on the First To File Ownership Concept

According to Satjipto Raharjo, legal protection is the protection of human rights that have been harmed by other parties, and this protection is given to the community so that they can enjoy all the rights that have been legally granted to them.¹³ Meanwhile, according to C.S.T. Kansil, legal protection is a legal effort that must be enforced by law enforcement officers to create a sense of security, both emotionally and physically, from interference and threats from any party.¹⁴

Protection of Marks is essentially a component of legal protection regarding fraudulent competition, which is a violation of law in the commercial sector. In general, trademark protection is aimed at two seemingly unrelated or even competing interests: the interests of the brand owners (producers/traders) and the interests of customers or the general public. In fact, the purpose of legal protection of Marks is to protect both parties fairly and impartially. The interests that must be protected by the Trademark Law can be broken down into four categories:¹⁵

1. The interests of the Mark owner with the consumers that he has cultivated in the market with the use of certain Marks, with the hope of obtaining permanent consumers in the future, all of which can be actualized by introducing the Mark to the public who can identify the owner of the Mark as the producer of the goods concerned;
2. Interests of producers or other competing traders, to be free to promote their products by using generic signs that can be used by anyone, so as not to hinder their freedom to sell their goods in fair and legal competition;
3. The interests of consumers must be guarded against practices that attempt to generate perceptions that may mislead, deceive or confuse consumers, by convincing consumers that one company is the same as another, or that the results of one company are also those of another company;
4. The public interest needs to be maintained in order to create and promote honest trading in the market, as well as to prevent dishonest and unethical practices, which are contrary to the norms of propriety in commerce.

Indonesia adheres to and applies the first to file system, which means that the first registrant who obtains a Mark certificate is the party who has the rights to the Mark. Therefore, if a Mark has been registered by a person or an entity, then any party can no longer register the same Mark.¹⁶

This Brand Protection is given on the basis that with the existence of a Mark, the public will easily identify the company that produces the goods. If the brand is already well known, it can increase the reputation

¹⁰ David Arnold, 1996, *Pedoman Manajemen Merek*, Surabaya: PT Kentindo Soho, p. 5.

¹¹ Sudargo Gautama dan Rizawanto Winata, 1993, *Hukum Merek Indonesia*, Bandung: PT. Citra Aditya Bakti, p. 14.

¹² Rachmadi Usman, 2003, *Hukum Hak Atas Kekayaan Intelektual, Perlindungan dan Dimensi Hukumnya di Indonesia*, Bandung: PT. Alumni, p. 320.

¹³ Satjipto Rahardjo, 2000, *Ilmu Hukum*, Bandung: PT. Citra Aditya Bakti, p. 54.

¹⁴ T. Kansil, 1989, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Jakarta: Balai Pustaka, p. 102.

¹⁵ Sud Margono, 2002, *Pembaharuan Hukum Merek*, Jakarta: Novindo Pustaka Mandiri, p. 12.

¹⁶ Oksidelfa Yanto, 2008, "Tinjauan Yuridis UU No. 15 Tahun 2001 tentang Merek: Sisi Lain Kelemahan Sistem First to File Dalam Perlindungan Hukum Atas Merek Sebagai Bagian Dari Hak Atas Kekayaan Intelektual (HAKI)", *ADIL* 3(1), p. 26.

of a product brand. Thus, in the event of a violation, such as counterfeiting or piracy, the original owner of the Mark will be harmed.¹⁷

"Protection of the right to a Mark is obtained after the Mark is registered.", Article 3 of the Trademark Law, which means that the right to the Mark is granted to a registered Mark.¹⁸

First to file system gives an assumption that the first applicant to apply for a Mark is a party who has good faith, is the party entitled to the Mark. This is because the Mark owner who registers after the first registrant is considered to have known of the existence of a registered Mark and has a bad intention to take consumers from the Mark owner who first applied for the Mark.

The first to file system is expected to guarantee more legal certainty. Legal certainty referred to in this case is related to legal protection. This legal protection is related to the existence of exclusive rights for Mark owners for 10 years and can be extended every ten years. The Mark can be used alone or give permission to other parties to use the Mark through an agreement. The first to file system can be used to prevent violations of applications for registration of existing or registered Marks, with this concept emphasizing the protection of registered Mark rights owners who have good intentions or who are the first registrants.¹⁹

The concept of first to file means that when a Mark is registered, it will get legal protection either civilly or criminally. Legal protection provided criminally is carried out by giving punishment to anyone who has committed a crime or infringement of a Mark as regulated in Articles 90, 91, and 94 of the Trademark Law. Article 90 of the Trademark Law provides a threat of imprisonment for a maximum of five years and/or a fine of a maximum of one billion rupiahs to any person who intentionally and without rights uses a Mark that is entirely the same as a registered Mark belonging to another party for goods and or services of the same type. produced and/or traded."

Article 91 of the Mark Law provides a threat of "a maximum imprisonment of eight hundred million rupiahs for anyone who intentionally and without rights uses a Mark that is essentially the same as a registered Mark belonging to another party for similar goods and/or services produced and/or traded." Whereas Article 94 provides a threat of "a maximum imprisonment of one year or a maximum fine of two hundred million rupiah for anyone who trades goods and/or services that are known or should be known that the goods and/or are the result of violations as referred to in Articles 90 and 91." Based on the Trademark Law, the crime as stated above is a complaint. This changes the provisions contained in Law Number 19 of 1992 as amended and refined by Law Number 15 of 1997.

In addition, civil legal protection is also provided to the owner of the right to the mark. The holder of the mark will receive legal protection. It means "If there is a violation of the right to the Mark, the holder of the Mark can file a lawsuit against other parties who violate the rights to the Mark. This lawsuit is aimed at obtaining compensation and terminating all actions related to the use of the Mark. The lawsuit was filed in the Commercial Court." as contained in Article 76 paragraph 1 and paragraph 2 of the Trademark Law.²⁰

Law enforcement if the Mark infringement is carried out by parties with malicious intent and is not responsible for a well-known Mark that is infringed, resulting in the owner of the Mark being harmed, then as the aggrieved party, have the right to take legal action to resolve cases of Mark infringement with the aim that the perpetrators of the Mark infringement stop using the Mark. similar in principle or in whole to a well-known brand, to the point of discontinuing its production activities. This is regulated in Article 83 and Article 84 of the Trademark Law, namely "The Mark Owner and/or Mark Licensee may file a lawsuit against another party who unlawfully uses a Mark that has similarities in principle or in its entirety for similar goods and/or services. in the form of: a claim for compensation and/or termination of all actions related to the use of the Mark to the Commercial Court." Article 83 also stipulates that "The lawsuit can be made based on a court decision." While Article 84 states that "As long as it is still under investigation and to prevent greater losses, the Mark owner and/or licensee as the plaintiff may submit an application to the judge to stop the production, distribution, and/or trade activities of goods and/or services using the mark without rights. The defendant party who is required to hand over the goods using the Mark without rights, the judge may order the delivery of the goods or the value of the goods to be carried out after the court's decision has permanent legal force. In addition, Article 93 of the Trademark Law also states that Such settlement can be carried out by alternative dispute resolution and or arbitration."

¹⁷ Arfi Dyah Chatarina, 2019, "Perlindungan Pemilik Merek Pertama Pada Sistem Konstitutif", *Hukum dan Dinamika Masyarakat*, 16(2), p. 117.

¹⁸ Dah Faradz, 2009, "Perlindungan Hak Atas Merek", *Jurnal Dinamika Hukum* 8(1), p. 3.

¹⁹ Echa Cristi, 2020, "Perlindungan Hukum Terhadap Pemilik Hak Atas Merek Berdasarkan Sistem First to File Principle (Studi Kasus: Putusan Mahkamah Agung Nomor 32 PK/Pdt.Sus-HKI/2018)", *Skripsi*, Bandar Lampung: Universitas Lampung, p. 2.

²⁰ Budi Agus Riswandi and M. Syamsudin, 2005, *Hak Kekayaan Intelektual dan Budaya Hukum*, Jakarta: PT. Raja Grafindo Persada, p. 82.

Article 91 of the Trademark Law states that "The implementation of court decisions is carried out after the Minister receives an official copy of the decision which has permanent legal force and is announced in the Official Gazette of Marks." Article 92 of the Mark Law states that "Cancellation or deletion of a Mark registration is carried out by the Minister by crossing out the Mark concerned by giving a note about the reasons and date of the cancellation or deletion, and confirmation that as of the date of deletion, the certificate of the Mark concerned shall be declared no longer valid. The deletion of the registered Mark shall be announced in the Official Gazette of Marks."

Article 94 of the Trademark Law is also proof that the protection given to the Mark owner has actually been given to the maximum. Article 94 of the Trademark Law states "Temporary stipulation with sufficient preliminary evidence by the Commercial Court regarding the prevention of the entry of goods suspected of being the result of infringement of the Right to Mark into the trade route, storage of evidence relating to the violation of the Right to Mark, safeguarding and preventing the loss of evidence by violators, and/or, termination of violations in order to prevent greater losses."

Article 95 of the Mark Law states that "A request for a provisional injunction shall be submitted in writing to the Commercial Court in the jurisdiction where the Mark infringement occurred with certain requirements. The first requirement is that the Mark owner must attach proof of Mark ownership, Mark owner must attach evidence of strong initial indications of Mark infringement, Mark owner must attach clear information regarding the goods and/or documents requested, sought, collected, and secured for the purposes of evidence, and the last condition is the obligation for the Mark owner to submit a guarantee in the form of cash and/or bank guarantee in proportion to the value of the goods to be subject to a provisional determination."

Article 96 of the Trademark Law states "Regarding the recording of the application submission by the clerk within a maximum period of 1x24 (one time twenty-four) hours to the chairman of the Commercial Court. (1) The head of the Commercial Court appoints a judge of the Commercial Court to examine the application for a provisional decision, while the decision must be made within 2 (two) days from the date of appointment. In the event that the application for provisional injunction is granted, the judge of the Commercial Court issues a letter of provisional court decision and is notified within 1x24 (one time twenty-four) hours as well as if the application for determination is rejected along with the reasons."

Article 97 of the Trademark Law states that "In the event that the Commercial Court issues a provisional injunction, the Commercial Court shall summon the party subject to the provisional determination within a period of 7 (seven) days from the date of issuance of the provisional injunction for questioning, submit information and evidence regarding the Mark within a maximum period of 7 (seven) days from the date of receipt of the summons. Within a maximum period of 30 (thirty) days from the date of issuance of the provisional decision, the judge of the Commercial Court must decide to affirm or cancel the provisional decision of the court. If the court's provisional decision is upheld, the security deposit that has been paid must be returned to the applicant for the determination, the applicant for the determination may file a claim for compensation for the infringement of the Mark and/or the applicant for the determination may report the infringement of the Mark to the investigating officer of the Indonesian National Police or the investigating officer of a civil servant. Meanwhile, if there is a limitation on the provisional decision of the court, the security deposit that has been paid must be immediately submitted to the party who is subject to the provisional decision as compensation due to the provisional decision."

5. Analysis of Brand Violation Cases that have used the First To File Ownership Concept as the basis for Decisions

A dispute between the famous name Ruben Onsu and the owner of the dairy business Jesy Handalim, who goes by the short name Bensu. Ruben Onsu with his company PT. Onsu Pangan Perkasa felt aggrieved because the management of the trademark rights to their products, namely Bensu Sausage, Bensu Meatballs, Bensu Nugget, Geprek Bensu, Bensu Otak-otak, Bensu Drink and Bensu Painting was delayed because the name Bensu was first used and registered with the Director General of Intellectual Property Rights (HKI) on behalf of Jesy Handalim who is registered with the number IDM000622427 product/jasa in item class 43, namely bar services, cafes, canteens, catering, rental of chairs, tables, tablecloths, glass utensils, restaurants, self-service restaurants, cafeterias, places to eat that serve snacks, rental of drinking water dispensers. This is detrimental to Onsu Pangan Perkasa as the owner is a well-known public figure and his name has been confirmed by the South Jakarta District Court Number: 384/Pdt.P/2018/PN.Jkt.Sel. Therefore, the owner, Ruben Onsu, filed a lawsuit with the Central Jakarta Commercial Court with Register Number 48/Pdt.Sus-HKI/Merek/2018/PN Niaga Jkt.Pst. to cancel the Bensu Mark registered by Handalim with Number IDM000622427 in Class 43, besides that Ruben Onsu also demands to state that Bensu is an abbreviation of a famous person's name, namely his own name and declares the Geprek Bensu Mark belonging to Ruben Onsu is a well-known mark. The Bensu Mark Certificate was issued by the Directorate General of Intellectual Property Rights to Jesy on June 7 2018, with a validity period of until September 3, 2025. Since Jesy submitted an

application for registration on September 3, 2015, the certificate has a validity period of 10 years, and when it was issued, there were no objections.

On 7 February 2019, the Central Jakarta Commercial Court decided that Ruben Onsu's lawsuit was unacceptable, on the grounds that according to the Trademark Law, Ruben Onsu should have gone through an appeal mechanism to the Minister, and was waiting for an appeal decision from the appeals commission, and if in the end it was decided to reject the appeal, then the Plaintiff will file a lawsuit to the Commercial Court. In other words, the case of Ruben Onsu which was submitted to the Commercial Court for the revocation of the Mark was premature. Therefore, the non-acceptance of the case shows that Jesy Handalim is the owner of the Benu Mark rights and that the trademark registrar has explicit rights.

The principle of first to file in trademark registration in Indonesia causes the placement of a famous name by Ruben Onsu and his products, but because the trademark has not been registered in accordance with the applicable laws and regulations, legally this cannot be considered a well-known mark.

The application of the first to file principle in the registration of Marks can also be seen in the previous Mark Decision which received a lot of attention, namely the Supreme Court Review Decision in the Pierre Cardin case, where the Pierre Cardin Mark was won by an Indonesian citizen named Alexander Satryo Wibowo, who obtained the trademark rights from an exclusive right. The Pierre Cardin Mark was registered on July 29, 1977, while the original owner of the Pierre Cardin Mark, a French citizen, only registered it in Indonesia in 1999 or later. The Panel of Judges PK is of the opinion that the registration of a Mark by Alexander Satryo Wibowo is not intended to complement the Mark belonging to Pierre Cardin France, so that it cannot be considered in bad faith according to the Trademark Law.

In addition, PT Application Karya Anak Bangsa (Gojek) and PT Tokopedia were sued by PT Terbit Financial Technology for the use of the GOTO Mark. This lawsuit was registered by PT Terbit Financial Technology to Gojek and Tokopedia on Tuesday, November 2, 2021, with case number 71/Pdt.Sus-HKI/Merek/2021/PN Niaga Jkt.Pst. In its petition, PT Terbit Financial Technology as the plaintiff stated that they are the owner and legal right holder of the registered Mark "GOTO" and all its variations, this is evidenced by the registration of the Mark numbered: IDM000858218 at the Directorate General of Intellectual Property of the Ministry of Law and Human Rights, RI and get trademark rights protection until May 10, 2030.

Meanwhile, the status of the GOTO Mark registered by PT Application Karya Anak Bangsa has been registered in various classes and there are still those who are in the substantive examination stage. PT Terbit Financial Technology also asked the court to punish the defendants jointly and severally to pay compensation material loss of Rp. 1.8 trillion and immaterial compensation of Rp. 250 billion to them.

Mark registration in Indonesia adheres to the Stelsel principle of first to file, in which the applicant who registers a Mark first is the only party entitled to the Mark so that third parties must respect the rights of the said Mark applicant as an absolute right in the registration of a Mark. Still from the same source, this constitutive system adheres to the first to file principle, which means that if "the application submitted has met the minimum requirements" as stated in Article 13 of the Trademark Law, an applicant whose application is submitted earlier and registered first, then that party is entitled to protection. The brand. "Markets that have been registered will get legal protection for a period of 10 years from the Filing Date." Article 35 of the Trademark Law. For information, Article 1 point 5 of the Trademark Law states that "Rights to Marks are exclusive rights granted by the state to owners of registered Marks for a certain period of time by using the Mark themselves or giving permission to other parties to use them." The use of a constitutive system to regulate rights to Marks arises because of registration, not because of the first use. As stated in Article 3 of the Trademark Law that "Rights to Marks are obtained after the Mark is registered." Therefore, it is the party who first registers the Mark who is entitled to the protection of the Mark. Thus, "Other parties without the right to use a Mark that has similarities in principle or in its entirety to similar goods and/or services, the owner of a registered Mark may file a claim for compensation and/or the termination of all actions related to the use of the Mark." pursuant to Article 83 paragraph (1) of the Trademark Law.

Article 1 point 3 Regulation of the Minister of Law and Human Rights Number 12 of 2021 concerning Amendments to Regulation of the Minister of Law and Human Rights Number 67 of 2016 concerning Registration of Marks, hereinafter referred to as Permenkumham 12/2021 which amends Article 16 paragraph (2) letter a of Permenkumham 67 /2016 explains that the application for registration of a Mark may be rejected by the Directorate General of Intellectual Property (DJKI) if the Mark applied for has similarities in principle or in its entirety to a registered Mark belonging to another party/requested first by another party for similar goods and/or services.

"Evaluation of similarity is basically carried out by taking into account the similarity caused by the presence of a dominant element between one Mark and another, so that it gives the impression of a similarity, both in terms of form, placement method, writing method or combination of elements, as well as the similarity of speech sounds, which contained in the Mark." Article 17 paragraph (1) Permenkumham 67/2016. So that if it is proven that there is a similarity with the registered Mark, the application for registration of the GOTO Mark by PT Applications Karya Anak Bangsa can be rejected. This is based on Article 21 paragraph (1) letter a of the

Trademark Law which stipulates that "An application is rejected if the Mark has similarities in principle or in its entirety to a registered Mark belonging to another party or is first applied for by another party for similar goods and/or services."

B. CHARACTERISTICS OF TRADEMARKS BASED ON THE CONCEPT OF OWNERSHIP UNDER APPLICABLE LAW

1. Characteristics of Trademarks As Intangible Assets

Article 1 point 1 of the Trademark Law states that a Mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in 2 (two) and/or 3 (three) dimensional form, sound, hologram, 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 activities of trading goods and/or services.

Based on the understanding of Mark from the Trademark Law above, the most important elements of a Mark can be drawn, namely:²¹

1. The mark used as a sign;
2. The brand must have a distinguishing power;
3. Marks are used in goods/or services trading activities

Article 2 of the Trademark Law states that "Marks consist of trademarks and service marks". Article 1 point 4 of the Trademark Law explains that "Marks can also be carried out collectively. This collective mark is a combination of trademarks and service marks." Article 1 number 2 of the Trademark Law, namely "Trademarks are marks used on goods traded by a person or several persons jointly or by a legal entity to distinguish them from other similar goods."²²

The purpose of a brand is to differentiate the company's products from those of competitors. Therefore, when customers see, hear or read a Brand, they can infer the appearance and quality of the products and services sold by the manufacturer. Thus, it can be said that a Brand identifies a particular product.²³

Molengraaf gives an understanding of the Mark as a sign for indicates the source of the goods and their quality assurance in order to be compared to similar goods produced and traded by other people or companies. Purwosutjipto argues that a brand is a symbol or sign that personalizes an item so that it can be distinguished from other similar goods. contribution. Soeryatin put forward his formulation by analyzing the Brand from the aspect of its function.²⁴ Referring to the opinions of the experts described above, it can be concluded that the Mark is a differentiator so that the goods are given a Mark as a sign of origin and guarantee the quality of similar goods produced by other manufacturers, which have distinguishing power over their quality assurance and are used in trading activities for goods and services. service.

A brand, apart from being a differentiator, also has meanings, including:²⁵

- a. Brand Value which is the value for the owner. A brand that has a high value will be appreciated by consumers as a classy brand, so it is used as a reflection of the user;
- b. Culture of the place of origin of the Mark;
- c. Personality for the user;
- d. Types of consumers who use or buy;
- e. Reminds of certain attributes;
- f. Attribute benefits are divided into two, namely functional and emotional benefits. Functional benefits are associated with the functional value of a product, while emotional benefits are related to the value of a product that can provide a connection to emotions and feelings.

Brands also have several functions, namely:²⁶

- a. As a sign of differentiating the company's goods from one another. This function builds a relationship between a commodity or service and its producer as a guarantee of the reputation of their business results when traded, so that they are given a comparable class;
- b. As a tool or means to promote trade. Advertising is used for promotion. A brand is a representation of an entrepreneur's efforts to expand the market for his goods or merchandise; it is referred to as goodwill which is intended to attract customers;
- c. As an indication of where the product or service is produced (source of origin). A mark is an indicator of the origin of a product or service that connects it to the producer or region/country of origin;

²¹ Fajar Nurcahya Dwi Putra, 2014, "Perlindungan Hukum Bagi Pemegang Hak Atas Merek Terhadap Perbuatan Pelanggaran Merek", *Mimbar Keadilan: Jurnal Ilmu Hukum*, January-June 2014 edition, p. 97-108.

²² Tomi Suryo Utomo, 2010, *Hak Kekayaan Intelektual di Era Global*, Yogyakarta: Graha Ilmu, p. 209.

²³ Casavera, 2009, *Kasus Sengketa Merek di Indonesia*, Yogyakarta: Graha Ilmu, p. 3.

²⁴ H.M.N. Purwo Sutjipto, 1984, *Pengertian Pokok-Pokok Hukum Dagang Indonesia*, Jakarta: Djambatan, p. 82.

²⁵ Philip Kotler, 2002, *Manajemen Pemasaran Jilid 2*, Jakarta: Prehalindo, p. 460.

²⁶ Direktorat Jenderal HKI, 2000, *Buku Panduan Hak Kekayaan Intelektual (Pertanyaan & Jawabannya)*, Jakarta: Direktorat HKI Depkeh & HAM, p. 42.

- d. As a guarantee for the quality of goods or services (quality guarantee). This can provide benefits for the brand owner and also provide protection for the quality of the product or service for consumers;
- e. As proof of ownership of the Mark.

According to Suryatin, the shape and form of a Mark is to distinguish it from products belonging to other manufacturers which are said to be similar. As a result of this differentiation, there are various kinds of Brands, including:²⁷

1. Painting brand (beel mark); This painting brand is a way that anyone can easily see.
2. The word mark (word mark); Brand with words.
3. Brand form (form mark); Brand combination of sight and speech. Sometimes there is also a product display.
4. Brand sounds (clank mark);
5. Title mark (title mark).

The brand in this case can be said as an intangible fixed asset. Intangible fixed assets are intangible assets that often span multiple accounting periods. In addition, the brand also denotes a privilege or position that benefits the company in terms of generating revenue. The characteristics which state that a Mark is an intangible fixed asset are:²⁸

1. Giving absolute and special rights to the owner (company);
2. Provide benefits and use in the normal operations of the company;
3. Has a relatively permanent useful life or more than one period.

Brand as an intangible fixed asset plays an important role in meeting the company's goals and strategies in determining its market value. This is indicated by the use of knowledge that produces innovation and becomes the basis for increasing responsiveness to the needs of consumers and stakeholders.

The grouping of intangible assets can be grouped as follows:²⁹

1. Its age is limited by laws, regulations, agreements or by the nature of the assets themselves, for example: Trademarks, patents, copyrights and so on;
2. Not limited in age, such as: goodwill and so on;
3. Excess value of investment in shares for the parent company in the company subsidiary above the value of its interest in the assets of the subsidiary.

Article 1 number 5 states, "Mark is an exclusive right granted by the state to the owner of a registered Mark for a certain period of time by using the Mark himself of giving permission to other parties to use it."

Article 2 paragraph 3 of the Trademark Law states, "A protected mark consists of a sign in the form of an image, logo, name, word, letter, number, arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by people or bad law in the activities of trading goods and/or services."

2. The Concept of Ownership of Trademarks

The theory of ownership according to Roscoe Pound states that in its development it is divided into three phases, namely phase one where ownership of an item is only physical ownership. The second phase is a development where the ownership of the goods already includes ownership of the physical and juridical goods, but the ownership of the goods only provides protection against interference from other parties to the goods. While the third phase is the phase where ownership which is physical and juridical ownership also provides protection for enjoyment in addition to protection from third parties. As explained in the discussion of the previous chapter, Mark ownership also provides legal protection for enjoyment apart from interference from other parties, because Mark ownership based on Roscoe Pound's ownership theory has entered its third phase.

2.1. Ownership Rights According to the Civil Code

Article 570 of the Civil Code states that "Property rights are the rights to fully enjoy objects and to control them freely." authorized in this regard. Of course this does not reduce the possibility of revocation of rights in the public interest and payment of compensation in accordance with the provisions of the applicable law.

Article 570 of the Civil Code provides two basic rights to mark owners, namely:

1. The right to enjoy the use of a Mark, namely by enjoying the profits from the sale and purchase of products from that Mark;

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²⁷ Suryatin, 1980. *Hukum Dagang I dan II*, Jakarta: Pradnya Paramita, p. 87.

²⁸ Abdul Halim, 2007, *Akuntansi Keuangan Menengah (Intermediate Accounting) Ringkasan Teori, Soal Jawab, dan Latihan Mandiri, Buku 2*, Yogyakarta: BPFE Yogyakarta, p. 35.

²⁹ OK. Saidin, 2012, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, Edisi Revisi, Jakarta: Rajawali Pers, h. 442.

- The right to act freely on the object with full sovereignty. This means that the Mark owner has the right to sell, grant, deliver and also to carry out license agreements with other parties.

Article 571 and Article 574 of the Civil Code give again two rights to the Mark owner, namely to utilize the Mark and maintain it in his position as the owner.

Ownership rights to Marks can also be said to be the most perfect material rights which have the following characteristics:

- Trademark rights which have property rights are parental rights to other material rights and are the most complete rights;
- Property rights are permanent, meaning they will not disappear, unless the period of protection has expired;

How to obtain property rights based on Article 584 of the Civil Code, namely:

- Ownership (Article 585 of the Civil Code);
Mark rights are obtained by submitting an application for registration to the Directorate General of Intellectual Property Rights.
- Attachment (Article 500 to 502 and Article 586 to Article 609 of the Civil Code);
Mark rights cause what is attached to a mark because the law of attachment is included in something material, as well as those that are the result of trademark rights, including those that are the result of a license agreement for the trademark rights.
- Past time/expired (Article 610 of the Civil Code);
Ownership of a Mark has a time limit as stipulated in the Trademark Law, which is 10 years;
- Inheritance (Article 611 of the Civil Code);
So it can be concluded that by registering a Mark the Mark owner has the authority to:
 - The right to use or allow others to use the Marks;
 - The right to prohibit others from using the Mark;
 - The right to transfer and/or license the trademark rights.

2.2. Ownership Rights in Trademarks Based on Trademark Law

Intellectual Property Rights, hereinafter referred to as Intellectual Property Rights, are rights that come from the results of intellectual thought that are able to create a product or process that is useful for human life. Objects regulated in IPR are works that originate or are born as a result of human intelligence, which gives birth to the right to obtain monetary benefits from the results of intellectual innovation.³⁰ Rights in material law are part of intangible or immaterial objects. This can be seen in Article 499 of the Civil Code which states that "Objects include goods and rights." Article 503 of the Civil Code also confirms that "Objects consist of tangible objects and intangible objects." Based on this, the rights mentioned in Article 499 of the Civil Code are intangible objects in Article 503 of the Civil Code. Thus, rights can be attached to material and immaterial objects. The rights to material objects are referred to as absolute rights to an object, while the rights to immaterial objects are referred to as absolute rights to a right.³¹

Tangible objects, including houses, land, chairs, products, vehicles, electronic goods, books, paintings with transfer are property rights, control of objects, through agreements. Meanwhile, intangible objects, between On the other hand, property rights, rental rights, usufructuary rights, copyrights, trademark rights, patents by transfer are the use of intellectual property rights, through licenses or permits. The legal protection provided is in the form of civil law, criminal law, intellectual property rights law. As objects the properties of material rights are also attached to Mark rights, one of which is that they can be transferred to other parties. Transfer of Mark rights refers to the transfer of movable objects, namely through trade, inheritance, grants, or agreements. A license agreement is a type of agreement to transfer Mark rights. Licensing is defined as a form of granting permission to utilize other party's trademark rights through payment of royalties. There are two theories regarding the importance of the trademark rights system from the perspective of legal science which are explained below:³²

- Natural Right Theory;
According to this theory, the individual owner of the Mark has the right to control the use and profits of the use of the Mark, regardless of the products produced. The Mark is marketed and known to the public as a Trademark.

³⁰ Rudi Agustian Hassim, 2009, *Kompilasi Rubrik Konsultasi Hak Kekayaan Intelektual*, Jakarta: RAH & Partners Law Firm, p. 3.

³¹ Abdulkadir Muhammad, 2007, *Kajian Hukum Ekonomi Hak Kekayaan Intelektual*, Bandung: PT. Citra Aditya Bakti, p. 3.

³² Tomi Suryo Utomo, *op.cit.*, p. 10.

2. Utilitarian Theory

This theory was developed by Jeremy Bentham in response to the natural rights theory. According to Bentham, natural rights are simple nonsense. This argument stems from the fact that only the owner of the Mark is granted unlimited rights according to natural rights. According to utilitarian theory, the state must implement policies such as enacting laws and regulations that increase the happiness of members of society. This theory limits the ownership of the Mark other than the right holder. So, based on this theory, it is hoped that the brand will also provide benefits to the community.

The Brand ownership system is based on the principles:³³

1. The principle of natural justice

The creator of a work or someone whose work creates innovation from his cognitive abilities, needs to be compensated. The compensation or rewards can be material or immaterial, such as feeling safe because they are protected and recognized for their work. The law provides such protection in the interests of the creator in the form of the power to act on his work, which is called a right. According to the law, every right has a title, which is a certain event that forms the basis for the attachment of that right to its owner. Regarding trademark rights, the thing that becomes the basis for binding is registration with the Directorate General of Intellectual Property Rights as a result of his intellectual ability to distinguish his product from other comparable products. This is because one person's right obliges the other party to perform or refrain from performing certain actions;

2. Economic principles (the economic argument)

Trademark rights are rights that come from the results of creative activities, an ability of human thought that is expressed in various forms to the general public, which has benefits and uses in supporting human life, implies that ownership is natural because of the economic nature of humans, which makes it a must to support life in society. Based on this, Mark rights are a form of wealth for the owner. Someone will benefit from their ownership, such as in the form of royalty payments and technical fees.³⁴

3. Principles of culture (the cultural argument)

Trademark is basically a differentiator for the products issued. This differentiator will certainly have its own uniqueness that other similar products will not have. This uniqueness sometimes provides a positive assessment for consumers who use the product. Moreover, if a differentiator is related to the culture of an area which is later expected to have a positive impact on the area, either to be known by the public or for the progress of the area.

4. Social principles (the social argument)

The law does not regulate the interests of humans as individuals who are independent from other people; it regulates the interests of humans as members of society. Thus, humans in relation to other humans are equally bound socially. Therefore, every right recognized by law or law and granted to another person, partnership, or entity, may not be granted solely to fulfill the interests of that person, partnership, or entity; but granting rights to individuals, partnerships, or entities recognized by law so that the interests of the whole community in general will be fulfilled.

Disputes over trademark rights cover several aspects, including technological, industrial, social, cultural, and various other aspects. However, the legal aspect is the most important in terms of efforts to protect trademark rights. The law is expected to be able to overcome various problems related to trademark rights in order to grow the creative power of the community which will ultimately arrive at the protection of trademark rights effectively.

Trademark rights have more positive economic, social and cultural consequences than the disadvantages. However, there are several subjects that are excluded from the protection of Mark rights as contained in Article 20-21 of the Trademark Law, including:

1. "Marks cannot be registered if they conflict with state ideology, statutory regulations, morality, religion, decency, or public order, are the same as, relate to, or only mention goods and/or services for which registration is requested, elements that can mislead the public about the origin, quality, type, size, type, purpose of use of goods and/or services for which registration is requested or is the name of a protected plant variety for similar goods and/or services, contains information that is not in accordance with the quality, mania, or the efficacy of the goods and/or services produced, have no distinguishing power; and/or a common name and/or symbol of public property.
2. An application is rejected if the Mark has similarities in principle or in its entirety to a registered Mark belonging to another party or is previously applied for by another party for similar goods and/or services, a well-known mark belonging to another party for similar goods and/or services, a well-known mark

³³ Muhamad Djumhana and Djubaedillah, 2003, *Hak Milik Intelektual (Sejarah, Teori dan Prakteknya di Indonesia)*, Bandung: PT. Citra Aditya Bakti, p. 26.

³⁴ *Ibid.*

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- belonging to the other party, other parties for goods and/or services of a different kind that meet certain requirements, or registered geographical indications.
3. The application is rejected if the Mark is or resembles the name or abbreviation of the name of a famous person, photo, or name of a legal entity owned by another person, except with the written consent of the person entitled, is an imitation or resembles a name or abbreviation of a name, flag, symbol or symbol, or emblem of a country, or national or international institution, except with the written approval of the competent authority, or is an imitation or resembles an official sign or stamp or seal used by a state or government institution, except with the written approval of the competent authority.”

According to Law No. 4 of 1994 concerning the Ratification of the WTO, the term IPR is a translation of Intellectual Property Rights. What is meant by Intellectual Property Rights are those who control all intellectually created works. Thus, IPR is knowledge about property rights that come from intellectual abilities, which are tied to personal rights, or human rights.³⁵

Brands that are also part of IPR of course also have a relationship with physical and spiritual ownership. So that the owner and the right of the mark have a relationship that cannot be released, of course for a mark that has a first to file system, this linkage will arise if there has been registration with evidence of a trademark certificate first. The ownership rights contained in the Mark are intellectual property rights with a right that has special and special characteristics when compared to other property rights because these rights are granted by the state based on an application.

W.R. Cornish provides the following formulation “intellectual property rights protects applicants of ideas and informations that are of commercial value”.³⁶ Based on the opinion of W.R. Cornish, then the trademark right can only be granted by the state if it is tangible, in this case is a picture, name, word, letters, numbers, color arrangement, or a combination of these elements which have distinguishing features and are used in trading activities, goods or services.

While the concepts of ownership and wealth are related to rights, there are rights related to ownership and rights related to objects from a legal point of view. Basically, material rights also contain ownership rights, because ownership is always associated with material and immaterial aspects of certain goods. Trademark rights are personal assets that can be owned and treated the same as other forms of property.

IV. CONCLUSION

1. That the legal protection of the basic Mark owner based on the concept of first to file ownership can be obtained if the Mark owner makes an application to the Directorate General of Intellectual Property Rights. The application is based on the good faith of the applicant, so that the application will provide legal protection to the first applicant for a Mark because the applicant who filed the application for a Mark for the first time is considered to have good faith. This causes no party to register the same Mark a second time. If there is and there is a dispute in court, then what will be protected is the Mark owner who submits the application first.
2. That characteristic A trademark based on the concept of ownership according to the applicable law is that a trademark is considered an intangible object based on book 2 of the Civil Code in which the right owner has the authority to use the mark indefinitely as needed, including also to carry out a good agreement, license agreement or agreement to transfer rights in any way.

V. SUGGESTIONS

1. The first to file system is a system based on good faith as the basis for the protection of Mark rights so that the first applicant is the protected party. Of course this has a weakness, the weakness is if the Mark is the creative power of a party who has not registered for some reason, but is registered first by another party. Of course, examination in court is necessary and the judge in deciding a case should not only be based on the good faith of the first Mark applicant.
2. The unrestricted trademark ownership would be better if it was also followed up with supervision so that it would not create unfair legal competition among producers offering similar products.

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³⁵ Etty Susilowati, 2007, *Kontrak Alih Teknologi Pada Industri Manufaktur*, Yogyakarta: Genta Press, p. 105.

³⁶ *Ibid.*

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