

The Legal Certainty Of Pierre Cardin Brand Rights Holders In Indonesia Is Linked To Law Number 20 Of 2016 Concerning Brands And Geographical Indications

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ABSTRACT

One of the results of human work is the effort to create, or process something using tools and skills, until it becomes a new product. The role of brands is very important, especially in pursuing healthy business competition. The ability of a person named Pierre Cardin to produce designs – brand designs of various products that are loved by many people. In this study there are 2 (two) problem formulations, namely, 1). How is the legal certainty of a registered mark related to Law Number 20 of 2016 concerning Trademarks and Geographical Indications in connection with the pierre cardin brand dispute between the plaintiff and the defendant?. 2). What is the Decision of the Judiciary in relation to the trademark dispute between the plaintiff and the defendant in the pierre cardin case in Indonesia?. While the type of research method used is normative legal research, which is a research process to find a rule of law, legal principles, and legal doctrines to answer legal issues that are being faced. The resulting conclusions are: 1. The legal certainty of registered marks is associated with Law Number 20 of 2016 concerning Trademarks and Geographical Indications, in connection with the pierre cardin brand dispute between plaintiffs from Indonesia, and defendants from abroad, legal certainty is very clear from the 3 stages of pierre cardin lawsuits from commercial courts, cassations, and judicial review. 2. The judgments of the judicial bodies of the 3 legal judgments issued in connection with the pierre cardin suit there is one judgment that has a different opinion among the panel of judges, namely on the judgment of the cassation level.

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I. Introduction

The Indonesian state is based on law (rechstaat), not based on mere power (machstaat). A state based on law, then national development must be carried out based on the law and accountable according to the law based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Thus, the law is a basic principle that must be applied and firmly held in planning, implementing and supervising development so that the implementation of development runs orderly, orderly, constrained, effective and efficient in order to improve the quality of people and the Indonesian society as a whole. To further improve services and provide legal certainty for the world of trade industry, and investment in the face of local, national, regional, and international economic developments, as well as the development of information and communication technology, it is necessary to be supported by a more adequate Legislation in the field of Brands and Geographical Indications [1]. Branddevelopment is very important, especially in promoting healthy business competition, especially in the era of globaltrade ization, which must follow world-class conventions, and which in the end our country ratified. A brand is a right to industrial property, which is also the scope of IPR or Intellectual Property Rights. IPR has become the focus of attention of many countries in the world, starting from even undeveloped countries, let alone developed countries, such as America, Japan [7]. Because this field of IPR strengthens the export performance of these large countries, it is very reasonable for countries to protect the IPR field. On that basis, the Indonesian government also made adequate regulations on the Brand to provide improved services for the community

One of the results of human work is an effort to find, create, or process something using tools and skills, until it becomes a new product [8]. The intellectual ability of a Frenchman named Pierre Cardin produced fashion designs that many people liked, so he used his name as a brand, which was registered in his home country. Widjojo Surijano, an Indonesian citizen, also has intellectual abilities that he registered as a Brand named Pierre Cardin in Indonesia with Registration Number 120180 dated July 29, 1977, which is based on the Decision of the Supreme Court of the Republic of Indonesia Number 2468 K / Sip / 1982 dated May 21, 1983 juncto Central Jakarta District Court Decision Number 363 / 1981 / Pdt.G dated December 22, 1981, the brand has a definite and permanent legal force, is legally the property of Wenas Widjaja.

Pierre Cardin filed a lawsuit because he felt that he was entitled to ownership of the Pierre Cardin brand in Indonesia, which would then lead to Supreme Court Decision Number 49 PK/PDT. SUS-HKI/2018, which rejected the review petitioner Pierre Cardin's application for review, even sentenced the Review Petitioner to pay the costs of the case in the review hearing. This legal decision is very interesting to analyze, because Pierre Cardin, a French designer, has been known internationally as the owner of this brand since 1974.

II. Methods

The type of research used is normative legal research, which is a research process to find a rule of law, legal principles, and legal doctrines to answer legal issues that are being faced[15]. The research was conducted by examining legal principles, laws and regulations regarding brands, and this research is also literary in nature, namely using books, journals, laws and regulations and documents related to brands. It is also known as literature research, that is, by the study of books, laws and regulations and other documents related to case research, which have to do with the dispute of a well-known brand, which already has a fixed legal force. While the approach used is a case approach (case approach), the case approach is carried out by reviewing cases related to the issues faced about brand disputes based on Law Number 20 of 2016 concerning Brands and Geographical Indications has become a court decision that has permanent legal force[16].

III. Result and Discussion

A. *Legal Certainty of Registered Trademarks based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications Associated with Pierre Cardin Indonesia Brand Disputes.*

The legal certainty of Pierre Cardin's registered mark under Judicial Review refused on legal grounds, that Pierre Cardin had been registered before 1981, the second filing of the cancellation suit after the filing of the first cancellation suit, namely on December 22, 1981, was rejected by *Judex Juris* and has become a judgment of permanent legal force, and a new lawsuit cannot be made, if the material of the lawsuit is still the same. In civil law this is referred to as the principle of *ne bis in idem* which is in accordance with Article 1917 of the Book, which states, if the judgment handed down by the court is to refuse to grant or is of a positive nature. This judgment has permanent legal force, so in this judgment there is the principle of *ne bis in idem*, based on the Circular letter from Bagir Manan as the chief justice of the Supreme Court affirming the application of this principle of *ne bis in idem* [17]who asks the clerk to be careful in examining the case and providing a report to the Chief Justice, if there is a similar case and it has been decided beforehand. Furthermore, the Chief Justice has the obligation to provide records to the Panel of Judges, so as to avoid and the existence of different judgments for similar cases. The Supreme Court had issued a Circular to address the many complaints about the repetition of cases with the same Subject and Object. In fact, the case *a quo* has been decided and has permanent legal force, starting from the *judex factie stage*, until the Supreme Court The number of this Circular is No. 3 of 2002.

In the opinion of M. Yahya Harahap, an expert on civil procedural law, in his book, Civil Procedural Law, that it is not permissible to file a second time against the same case and party[18]. In the judgment on the level of cassation numbered 557 K/Pdt.Sus-HKI/2015, the decision of the judge rejecting Pierre Cardin's suit on juridical grounds, on the basis of proof was found that the Defendant/Respondent, namely the registrant and the first user of the Pierre Cardin mark in

Indonesia, had registered the mark on July 29, 1977, at which time the Pierre Cardin brand was unknown and never registered, so that such registration is acceptable. Pierre Cardin sued Alexander on February 25, 2015, resulting in the law in force at that time Law Number 15 of 2001 concerning Brands.

In accordance with the provisions of Article 69 paragraph (1) and Law Number 20 of 2016 concerning Trademarks and Geographical Indications, Article 77 paragraph (1), which reads, "A lawsuit for cancellation of trademark registration can only be filed within a period of 5 (five) years from the date of registration of the Mark" [19]. This is also stated in the Paris Convention Article 6 paragraph (2), it states the period for applying for cancellation of a mark, which is 5 years from the date the trademark registration is carried out ([20]. Pierre Cardin's suit case is a case relating to the Principle *ne bis in idem*, which is a case that cannot be processed anymore, because it has been sued by the same plaintiff with the same suit material. Based on the decisions of each level starting from the Commercial Court, the Court is conducted on the basis of applicable law in Indonesia. Brands have a differentiating function, which can be a differentiator for the products of one business entity or individual with the products of other individuals or companies [21]. Inclusion of the word "Product by PT. Warehouse of Fortune, is a differentiating effort.

According to AB. Susanto, that brands are most easily recognized by their visual physical identity such as brand name, by line, tag line [22]. By line in question is By PT. Gudang Rejeki and Tag Line have been included in the sentence "Indonesian Products", it is very clear, that the defendant has an effort to distinguish his products from brands, by line, and tag lines and has become a differentiator with products from other companies. In this case the Directorate General of Intellectual Property Rights c.q. The trademark directorate is indeed given administrative authority over the mark to carry out its mandate, in accordance with the Law of the Republic of Indonesia Number 15 of 2001 concerning Trademarks, Article 73, so that its decision to accept the extension of trademark registration, is in accordance with the applicable Law. Other evidence mentions a biography concerning pierre Cardin which also contains investment, promotion, trade and registration of the Pierre Cardin brand and the Logo for class 03 [23] The unilateral statement of the plaintiff, could not be collected evidence of promotion, on the grounds that it had been done around 1974 [23] This does not meet the requirements set out in the Regulation of the Minister of Law and Human Rights. In an *online* search located in Singapore, there were no types of products disputed by Pierre Cardin, such as: powder for women and children, fragrance – wanian/ scented oil, hair oil, shampoo, oil – cosmetic juice oil, nail cuff, hair dye, hair lotion, skin lotion, and much more. Only found lingerie products disputed by Pierre Cardin. The absence of disputed products abroad, indicates, that the promotions carried out are not much different from those in Indonesia.

B. Judicial Judgment With Respect to Brand Dispute Between Plaintiff and Defendant Over Pierre Cardin Case

At the time of the first time the brand was 'Pierre Cardin; registered in Indonesia, the Law of the Republic of Indonesia concerning trademarks in force in Indonesia, namely Law of the Republic of Indonesia Number 21 of 1961. This Law of the Republic of Indonesia was enacted at a time when Indonesia was experiencing bad political and economic conflicts[24].

At a meeting of the Indonesian IPR community with several Japanese people, the Anti-Counterfeiting Group, this 'Pierre Cardin' case received the spotlight because it was considered that this brand was a well-known brand from France, but it was still won by Indonesians [24]. However, historically, the way to obtain legal certainty for brands has differed from country to country. The majority of trademark laws in countries basing protected marks in their respective countries are not automatically protected in other countries.

Pierre Cardin is a well-known designer from France declaring himself a famous person who owns the rights of a well-known brand for trade under the name Pierre Cardin and claims to have the circulation of products to dozens of countries, for the following reasons[23]:

1. Pierre Cardin's fame as a designer began in the 1950s with his futurist ideas, a collection of women's clothing he created in 1953, otherwise known for his prominent design "*bubble dress*" in 1954, as well as ready-to-wear clothing that was already popular at the time and ready-to-wear his first collection for Printemps Department S tore was designed in 1959.

2. Pierre Cardin, also claims that he was the first fashion designer to tour Asian countries such as Japan and was successful in selling his products in 1960.
3. In 1972, Pierre Cardin, in addition to being known as a fashion design designer, developed also on furniture designs, home décor designs, accessories jewelry and cars, to perfumes launched under the brand "Pierre Cardin Por Monsieur" for the first time;
4. Pierre Cardin also stated that his contributions have been countless so that he has been dubbed the Master of Invention for 60 years in the fashion world, especially since Pierre Cardin was the one who introduced licensing and retail strategies in the fashion world, which in the end Fashion Group International (FGI) awarded Pierre Cardin the Superstar Award;
5. Pierre Cardin claims to also be the rightful owner of the Exclusive Rights to the Famous Trademarks under the name PIERRE CARDIN and the PIERRE CARDIN LOGO", which was utilized from the beginning of March 1974 to protect any type of goods in the class: 3, 5, 6, 8, 9, 10, 11, 14, 16, 17, 18, 20, 21, 24, 25, 33. Jenis goods in grade 3 include powder for children and women and, fragrances / perfumes, shampoos, hair oils, cosmetics, cosmetic juice oils, lotions, nail nails, teeth, hair oils, polyters, mascara, sandpaper, nail rouge,
6. Pierre Cardin also claims to have registered, traded and promoted massively and continuously around the world for the PIERRE CARDIN Trademark and PIERRE CARDIN LOGO, directly or through Pierre Cardin's Pierre CardinSARL de Gestion, whose distribution has exceeded regional borders and knows no national borders in the world.
7. Pierre Cardin also claims to have a high reputation as a sign in front of the public / constituents of original products that originated from him with good quality so as to consider the Pierre Cardin brand as a well-known brand
8. In his lawsuit, Pierre Cardin also reminded that the word Pierre Cardin is not an ordinary word that is commonly used in Indonesian associations even though the Defendant is an Indonesian citizen;

On the basis of the brand's notoriety, Pierre Cardin sued for cancellation of the registration of the mark owned by Alexander Satriyo Wibowo for "Unkind Faith" as stipulated in Article 4 jo. Article 6 paragraph (1) point b and paragraph (3) letter a of Law Number 15 of 2001 concerning Brands, so that there is an application of the principle: "*Pirate Non Mutat Dominium*"; that uses shortcuts that result in fraudulent competition situations or result in losses to or. Whereas in the decision of MARI Number 220 PK / Pdt / 1986 dated December 16, 1986 it is very clear to state: "The Indonesian people are obliged to emphasize very strongly that perlu use a brand that can show national identity and do not use foreign brands, let alone cheat on well-known foreign brands";

An Indonesian named Alexander S Wibowo, has registered the Pierre Cardin class 03 logo and trademark with the numbers IDM000199948, IDM000223196, IDM000234122, and IDM000028783

As the plaintiff, Pierre Cardin sued Alexander Satriyo Wibowo, pleading with the court to :

1. Stating Plaintiff is a well-known designer used as a trademark of Plaintiff;
2. Declared the Pierre Cardin Trademark to be part of the name of Pierre Cardin as Plaintiff, who is a well-known person;
3. Declare the Trademark on behalf of the Plaintiff and the Pierre Cardin Trademark is a *wellknown mark* that was first used in early March 1974 and has been registered in various countries around the world, including Indonesia;
4. Declaring the registration of the Pierre Cardin Trademarks List Number IDM000223196, IDM000199948, IDM000234122, IDM000028783, in its entirety of Class 03 on behalf of Defendant I is based on bad faith, as it is a copying, impersonation of the Plaintiff's Trademarks which are well-known Marks (Well Known Mark) and in the name of Pierre Cardin as a well-known Plaintiff.
5. Cancelled the registration of Trademark Pierre Cardin List Number IDM000199948, IDM000223196, IDM000234122, IDM000028783, in its entirety of Class 03 on behalf of Defendant I of the General Register of the Directorate of Marks.

Law Number 20 of 2016 concerning Brands and Geographical Indications. Didik Taryadi as Head of the sub-directorate of Brand Inspection, Directorate of Trademarks and Geographical Indications of IPR, Ministry of Law and Human Rights Directorate of Trademarks and Geographical Indications of IPR, Ministry of Law and Human Rights, stated that the provisions in the new law do not apply retroactively (Online.com, 2016).[25](Online.com, 2016)

In the case between a person named PIERRE CARDIN domiciled in France, as a Review Petitioner/Cassation Petitioner/Plaintiff against ALEXANDER SATRYO WIBOWO domiciled in Indonesia as a Review Respondent/Cassation Respondent/Defendant, it can be summarized for the decision of the Supreme Court as follows :

The result of the Supreme Court's decision and Amar's Judgment of Judicial Review of the case of Pierre Cardin [26]which reads :

1. Rejecting the review request of the Review Petitioner Pierre Cardin
2. Punishing the Review Petitioner must pay the costs of the case in the examination. Review of Rp. 10,000,000 (ten million rupiah)

The reason for the Supreme Court's refusal was because the filing of a trademark cancellation suit did not qualify for a lawsuit. The plaintiff had already filed a suit for cancellation of the mark a quo in 1981 over the same mark, i.e. case in no. 363/1981.G dated December 22, 1981 juncto number 2468 K/SIP/1982 dated May 21, 1983.

IV. Conclusion

The Legal Certainty of Registered Trademarks is associated with the Law of the Republic of Indonesia number 20 of 2016, in connection with the Pierre Cardin brand dispute between owners in Indonesia and owners abroad, the legal certainty is very clear. Of the 3 stages of Pierre Cardin's lawsuit from the Courts of Commerce, Cassation, and Judicial Review, all of his decisions rejected Pierre Cardin's suit. It can be concluded that this implies legal certainty for the Pierre Cardin Brand, which has been registered since 1977 in Indonesia, is real. That this suit for cancellation and suit of the PIERRE CARDIN brand, which in this case in March 2015 was filed by Pierre Cardin and his attorney is the filing of a second cancellation suit where, according to the record, the first suit was dismissed on December 22, 1981, This second suit was filed in 2015 or after 34 years since the first lawsuit was rejected, even after 38 years since the PIERRE CARDIN brand was first used and registered in the territory of the Indonesian state on July 29, 1977. Here it is very visible legal certainty against trademark registration in Indonesia even though it has been tried more than once but the result remains the same where the article 1917 civil code, it has been affirmed that for claims based on the same reasons and the party who filed it is also the same, it cannot be sued again

Judicial Decisions Of the 3 legal judgments issued in connection with Pierre Cardin's lawsuit, there is 1 judgment that has a different opinion among the Panel of Judges, namely on the cassation level decision. This dissent has been earnestly pursued by each panel of judges but still did not reach a consensus, so that under Article 182 paragraph (6) of the Criminal Procedure Code, the Panel of Judges held deliberations to give the decision that had the most votes, whose decision rejected the appeal of the plaintiff of the cassation of Pierre Cardin. Thus, it can be concluded that the decision of this judicial body is in accordance with what has been regulated in the laws and regulations..

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