

# The Legal Protection of Jeniper Product Brand Rights Associated with Brands and Geographical Indications

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## ABSTRACT

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This study aims to discover the legal protection of trademark rights from its law and geographical indications. In addition, this study also determines the implementation of the trademark law on Jeniper products. This study employed empirical legal approach involving interviews, observations, and literature studies. This study revealed that the legal protection regulation of trademark right is governed by several laws and regulations. This includes trademark and geographical indications Act, Government Regulation of the Republic of Indonesia Number 22 of 2018—International trademark Registration—Protocols Related to the Madrid Agreement on International trademark Registration, and Ministry of Law and Human Rights Regulation Number 67 of 2016—Trademark Registration and Regional Regulation of West Java Province Number 10 of 2018—Intellectual Property Management. Furthermore, the implementation of legal protection, trademark rights of Jeniper products, have been registered at the Directorate General of Intellectual Property Rights of the Republic of Indonesia. Thus, they are legally by the State. In conclusion, the Regional Government of Kuningan Regency lacks a specific Regional Regulation, governing Trademark Rights in Kuningan Regency.

## Introduction

The rapid growth of global economy, particularly the industrial sector and technological facilities, has made people's ways of thinking more creative and innovative. This is shown from the growing number of human creative works that are realized through the use of power, taste, and intention, rooting from their intellectual abilities to enrich their lives. To date, a work usually entails a lengthy process because it requires a significant amount of time, effort, and cost. Therefore, creators of creative works, technology inventors, designers, and trademark holders are respected and given adequate legal protection.

Intellectual Property Rights are non-tangible human assets that have a major role in advancing human civilization. The intellectual property right, the legal protection is provided by the state to stimulate the creators, inventors, designers, and breeders' interest. Thus, they can be more enthusiastic in producing new intellectual works for the betterment of society. Generally, intellectual property rights are divided into two groups: Copyright and Industrial Property Rights. Industrial property rights covers Patents, Trademarks, Industrial Designs, Integrated Circuit Layout Designs, Trade Secrets, and Plant Variety Protection<sup>1</sup>.

Basically, the trademark is attached to the rightful owner and legal entity but it is not easy to obtain. The brand must be firstly registered for its right, If the person or legal entity has successfully obtained the right, those individuals may grant a license to another person or legal entity.

<sup>1</sup> Iswi Hariyani, *Prosedur Mengurus Haki Yang Benar*, Penerbit Pustaka Yustisia, Yogyakarta, 2010, p. 6.

The registered brand will get 10 years legal protection which can be extended. the extension can be done in the same period, but it is only valid if : <sup>2</sup> The trademark of goods or services listed on the certificate since the registration made; and as long as they are actively produced. Jeniper stands for Jeruk Nipis Peras (squeezed lime) which is a refreshing drink owns and manufactures from Kuningan. It is made from lime juice, selected ingredients and fruit and processed hygienically. This product produces natural flavour of lime and prioritizes quality which have been passed down from generation to generation. Lime fruit contains a lot of vitamin C and antioxidants which has numerous benefits. There are two types of jeniper drink, ready to drink and syrup-drink. The former are packaged in small bottles, while the latter are packaged in fairly large packages. Jeniper is widely known and firmly entrenched in people's hearts since it was firstly processed and packaged by CV (Commanditaire Vennootschap), Mustika Flamboyan sejak tahun 1996. Accordingly, this study develops the following research questions: How to arrange legal protection based on trademark and Geographical Indications Act? and How do these laws apply in Jeniper product?

### **Research Methods**

This research employed descriptive-exploratory, solving a widely explored problems such as causes or things that effect something in reality. Meanwhile, empirical legal research is obtaining primary data from society.<sup>3</sup> These data were collected by conducting interviews with respondents, obtaining reliable data. In addition, secondary data was also involved by studying textbooks, laws and regulations, articles and scientific writings. This is to obtain theories and concepts related to the problem under study.

### **Results and Discussion**

#### **A. Legal protection, Trademark right in Law and Geographical Indication**

Referring to Article 1, the trademark and Geographical Indications Act, A trademark is a graphical representation of a sign. It can be an image, logo, name, word, letter, number, color arrangement projected in two and/or three dimensions, sound, hologram, or a combination of two more dimensions. These elements are to distinguish goods and/or services produced by individual or legal entities in trading goods and/or services. Essentially, trademark rights, intellectual property rights, are a beginning that is preceded by the work discovery in which a logo or name is listed in other intellectual property rights, a copyright, for instance. In general, trademark rights are a symbol or logo used to distinguish one's work from others that people can recognize<sup>4</sup>.

The parties who own the brand are typically entrepreneurs. In this field, business actors and competitors are increased, it is not limited to one or two people. Therefore, entrepreneurs have a vested interests in protecting their brands, particularly if they are involved in global business competition. In the globalization era, trademark protection is important for securing and maintaining the originality of a product. Therefore, trademark must be registered to avoid loss and violation and to obtain legal protection. Trademark protection can be use to prevent fraud and ensure high quality for consumerthe consumer

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<sup>2</sup> Maria Jayanti, *Analisis Yuridis Pengalihan Hak Atas Merek Terdaftar Berdasarkan Akta Perjanjian Jual Beli*, Universitas Indonesia, Depok, june 2012, p. 4.

<sup>3</sup> Roni Hanitjio Soemitro, *Metodologi Penelitian Hukum Dan Judimetri*, Ghalia Indonesia, Jakarta, 2000, p. 20

<sup>4</sup> Sulastri, "Perindungan Hukum Terhadap Merek", *Jurnal Yuridis*, Vol. 5 No. 1, 2018, p. 162.

expected product A to be high quality, in fact, it is low in quality as it produced by other parties, Thus, the consumers are at loss<sup>5</sup>.

Trademark laws are also included in Government Regulation of the Republic of Indonesia Number 22 of 2018—International trademark Registration—Madrid Agreement protocols, the Minister of Law and Human Rights regulation of the Republic of Indonesia Number 67 of 2016—Trademark Registration, and West Java Provincial Regulation Number 10 of 2018, Intellectual Property Management. The Jeniper brand has been officially registered with the Ministry of Law and Human Rights on July 04, 2013. The register number is IDM000646710 and it is valid for 10 years from the date receipt, until 2023.

A protected trademarks are registered in the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights. A registered brand is a legal brand that is recognized by law and has a register number, thus they obtain protection from the State through the Commercial Court. Meanwhile, unregistered trademarks are not legally protected by the state. Trademark infringement is a complaint offense, if a legal party files a complain, the Commercial Court will process it. The concept of legal protection, the brand rights, is exclusive and monopolistic in nature, which means the right can only be exercised by the brand owners. Without their permit, the exclusive rights cannot be used by other parties. There will be a sanctions if they insist to use the right without permission<sup>6</sup>.

The study revealed jeniper brand has been registered and this brand is still used, produced, and traded today because it adheres to the trademark and Geographical Indications Act. However, Jeniper products have not extended their legal protection, while their existence has aided in poverty alleviation due to the large number of people employed in this industry.

## **B. Jeniper Products: Implementation of Trademark and Geographical Indications Act**

A brand reflects the level of consumer trust in an item or service. well-known brands are easier to market and bring financial benefits to their owners. Accordingly, trademark protection is required for three following reasons:<sup>7</sup>

1. To ensure legal certainty for brand inventors, brand owners, or trademark rights holders.
2. To prevent trademark violations and crimes so that legal justice can be given to the entitled party.
3. To provide benefits to the community so that they are more motivated to create and register their brand.

According trademark and Geographical Indications act, a brand cannot be registered if it contains the following elements<sup>8</sup>:

1. Contrary to state ideology, laws and regulations, morality, religion, decency, or public order;
2. Same and relating to, but only mentioning the goods and/or services for which registration is requested;

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<sup>5</sup> Khoirul Hidayah, "Kajian Hukum Islam Terhadap Hak Merek Sebagai Obyek Dalam Perjanjian Rahn", Jurnal Syariah Dan Hukum, Vol. 6, No. 1, 2014, p 2.

<sup>6</sup> Agung Sudjatmiko, *Perlindungan Hukum Hak Atas Merek*, Jurnal Yuridika, Vol. 15 No. 5 September-August, 2000, p. 349.

<sup>7</sup> Iswi Hariyani, op.cit, p. 89

<sup>8</sup> H. OK. Saidin, 2002, *Aspek Hukum Intelektual*, Jakarta: PT. Raja Grafindo Persada, p. 329

3. Contains deceptive elements about the origin, quality, type, size, goods and or services for which registration is sought, or is the name of a protected plant for similar goods and or services;
4. Contains misleading information on the quality, benefits, or efficacy of the goods and or services produced;
5. Has no distinguishing power; and
6. Is a common name and or symbol of public property.

Trademarks are considered intellectual property rights in Indonesia, and as such, they are legally protected. This is done due to the high level of unhealthy competition in the business sector. The authenticity of an item can be determined by its brand. People sometimes buy an expensive brand because it is a well-known brand, not because of its shape. This is because the brand is an immaterial object that cannot be enjoyed and can only provide satisfaction, whereas the brand's products are enjoyable material objects.<sup>9</sup>

Meanwhile, trademark registration employs a constitutive system in which the ownership or condition of the brand is acknowledged both *de jure* and *de facto*. The constitutive system adopted the "first to file" principle, which states that the first party who registers the brand will own and be recognized, and if another party later registers a similar brand, the country will reject its registration. Third parties (parties with the same brand) must accept this provision in accordance with applicable law. Therefore, registration is essential for protecting one's intellectual property. This constitutive system offers more benefits than the declarative system, such as giving a definite law, only the first party has the right to the brand.<sup>10</sup>

Year after year, sales are steadily increasing and Jeniper becomes a well-known healthy drink and souvenirs from Kuningan Regency. This modification also changed the name of PD (trading company) Flamboyant to CV (Commanditaire Vennootschap) Mustika Flamboyant, resulting in an alteration in the existing company structure. In 2005, Jeniper was expanding and its mostly production reached 40 thousand bottles. In addition, numerous orders outside the city began to pile up that they had difficulty in finding the raw material, Lime. This year, they receive Halal certification from MUI, and the product becomes increasingly well-known, not to mention in print media and on television. According to the survey, Jeniper is the only natural and refreshing Lime drink. Jeniper's development began in 2006, when the company built a factory and showroom, replaced all equipment, and improved the quality control group and product. Jeniper received an award from the Governor of West Java this year for being one of the developing and unique home industries.

Jeniper received orders from all over the world in 2007, and held national exhibitions in several SOEs and Ministries in Jakarta. Jeniper acquired the label in 2008 and changed its packaging from red and white to colorful boxes. Jeniper began using labeled bottle caps instead of plain bottle caps in 2009. Jeniper changed the label of its syrup and ready-to-drink products in 2010. (fresh drink). Jeniper's logo was changed several times between 2011 and 2014, with the 2014 logo still in use today. In addition, Jeniper group created a new product, Kolang Kaling (Kolka), which has been marketed since the end of December 2013.

A brand owner or licensee can sue someone who, without permission, has used a similar goods or services that has been registered. There are several ways to resolve trademark

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<sup>9</sup> Karlina Perdana, "Kelemahan Undang-Undang Merek Dalam Hal Pendaftaran Merek", Jurnal Privat Law, Vol. 5 No. 2, 2017, p. 85.

<sup>10</sup> Novianti, "Perlindungan Merek", Yayasan Pustaka Obor, Jakarta, 2017, p. 103.

violation other than civil and criminal prosecutions as a response of failure in reaching an agreement. Thus, to create an effective dispute resolution process, both parties must pay attention to or uphold the right to hear and be heard. There are three main factors affecting the dispute resolution process, as follows:<sup>11</sup> Interest; Rights; and Power.

According to Lawrence M. Friedman, the effectiveness and success of law enforcement are determined by three factors: the structure of the law, the substance of the law, and the legal culture. The structure of law is law enforcement officers, the substance of the law includes legal instruments, and legal culture is a living law adopted in a society. Here is some more information:<sup>12</sup>

1. According to Lawrence Meir Friedman's theory, the structure of law is a structural system that determines whether or not the law can be properly implemented.
2. In Lawrence Meir Friedman's theory, the substance of law is known as substantial system which determines whether or not the law can be implemented. Moreover, substance refers to the product created by people who are in the legal system, covering not only the rules stated in the law books, but also issuing decision, drawing up new rule, and living law.
3. Legal culture, according to Lawrence Meir Friedman's theory, is human attitudes toward beliefs, values, thoughts, and expectations of the law and legal system. Furthermore, it refers to social thought and social forces that influence how the law is applied, avoided, or misapplied. Legal culture is closely related to public legal awareness; the greater their awareness level, the better the legal culture will be created due to a shift in their mindset. In summary, the level of community compliance demonstrates the law function.

### **Conclusion**

Finally, brand owners are legally protected under the provisions of trademark and Geographical Indications act. They must, however, register their brand with the Directorate General of Intellectual Property Rights and follow the procedures outlined in the trademark and geographical indications act. Essentially, legal trademark protection on goods and services is required to prevent and avoid dishonest practices such as counterfeiting and piracy, as well as to obtain legal certainty. As a result, the state has legal provisions on trademark protection that are consistent with the globalization era, with the goal of accommodating existing interests to create legal protection..

### **Suggestion**

The unregistered goods and services brand should be immediately registered with the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights. Thus, they could get a legal protection. Furthermore, if trademark dispute exists, the Regional Government should provide socialization, particularly to SMEs Businesses (Small and Medium Enterprises) with superior products related to the Trademark and Geographical Indications act.

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<sup>11</sup> Sulastrri, Satino, dan Yuliana Yuli W. *Perlindungan Hukum Terhadap Merek (Tinjauan Terhadap Merek Dagang Tupperware Versus Tulipware)*, Jurnal Yuridis, Fakultas Hukum Universitas Pembangunan Nasional "Veteran", Jakarta, 2018, p.168

<sup>12</sup> Slamet Tri Wahyudi, *Problematik Penerapan Pidana Mati Dalam Konteks Penegakan Hukum Di Indonesia*, Jurnal Hukum dan Peradilan, Vol. 1, No 2, Juliz012, p. 217 – 219.

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### Regulations

- The 1945 Constitution of the Republic of Indonesia
- Trademarks and Geographical Indications Act,
- Government Regulation of the Republic of Indonesia Number 22 of 2018, International brand Registration, the Protocols of Madrid Agreement.
- Ministry of Law and Human Rights Regulation Number 67 of 2016 concerning Trademark Registration and
- West Java Provincial Regulation Number 10 of 2018 concerning Intellectual Property Management