

**The Urgency of Trademark Registration for Business Actors**  
**(Case Study of Supreme Court Decision No 575 K / Pdt.Sus-HKI / 2020 Between Ruben**  
**Samuel Onsu vs PT Ayam Geprek Benny Sujono)**

By :

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**ABSTRACT**

Brand registration is very important for business people. A brand is one of the distinguishing entities between the business activities of business actors. The problem occurs when business actors already have a trademark which is then well known in the community but in fact they have not registered the trademark, as experienced by Ruben Samuel Onsu with his Geprek chicken business. However, in its development, it turns out that there are other business actors using the same mark but have registered the mark. This research was conducted using a normative method through a statutory approach and concepts. This research examines the Supreme Court's decision rejecting the appeal from Ruben Samuel Onsu and analyzes the urgency and procedures for trademark registration. Based on the research results, trademark law in Indonesia is regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. The terms and procedures for application for registration of a mark are regulated in Article 4 - Article 8 and further regulated in the Regulation of the Minister of Law and Human Rights No. registration of a mark and being recognized as the legal owner of the mark and rights to the mark are obtained after the mark is registered. Ruben Onsu's Bensu mark was declared invalid because Ruben Onsu was not the first party to register the mark, and the Supreme Court decided to cancel all trademark applications made by Ruben Onsu.

**Keywords: Bensu; Supreme Court; and Trademark Registration.**

## A. BACKGROUND

In trading practices in Indonesia, from micro, small and medium enterprises, you can find a wide variety of goods using well-known brands, but they are actually just imitations. Likewise with large business actors, although they do not escape cases regarding business disputes, especially brands.

Business people should realize how important it is to have their business brand registered. A brand is an entity that differentiates between business actors' business activities. With the existence of a brand, consumers can distinguish one business actor from another. However, many business people are not aware of the trademarks they have to register. In fact, when a business actor's brand is well known and no registration has been made, it will cause problems.

Brand is one of the most important things in every business, therefore it is important to get protection both at the national and international levels. Besides functioning as an identity, a trademark is also a manifestation of intellectual property that needs to be protected by ownership through registration at the Ministry of Law and Human Rights.

Trademarks, marks (in Dutch), or brands (in English) were previously regulated in Law No. 15 of 2001. However, currently marks are regulated in Law No. 20 of 2016 concerning Trademarks and Geographical Indications.

Trademark cases in Indonesia tend to be dominated by violations of well-known brands, but that does not mean that there are no local brands being used illegally by other parties who are also local entrepreneurs, for example the STMJ and esteemje brands belonging to PT Sido Muncul have been used by parties. others against the law. Even now, other ways of violating the law have developed in the form of imitating well-known packaging, such as juice drink products, aloe vera syrup which is branded as Kavera.<sup>1</sup>

One of the cases concerning brands that is interesting to observe at this time is the case of Ruben Samuel Onsu vs PT Ayam Geprek Benny Sudjono which is owned by Yangcent. Ruben Samuel Onsu's team sued the Bensu brand used by Yangcent because Ruben's team felt that they were the first to use the Bensu brand. However, Ruben Samuel Onsu's team was not the first to

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<sup>1</sup> Haedah Faradz, Perlindungan Hak Atas Merek, Jurnal Dinamika Hukum, Vol. 8 No 1, 2008, Fakultas Hukum, Universitas Jenderal Soedirman, Purwokerto.

register the trademark, because the Yangcent team registered the Bensus trademark for the first time.

## **B. PROBLEM FORMULATION**

Based on the background above, the problems to be examined in this study are:

1. What is the trademark registration system in Indonesia?
2. How is the legal protection of a registered mark?
3. How is the application of the principle of brand legal certainty to the Supreme Court decision No 575 K / Pdt.Sus-HKI / 2020 between Ruben Samuel Onsu vs PT Ayam Geprek Benny Sujono?

## **C. RESEARCH METHODS**

According to Soerjono Soekanto, when viewed from the point of view of research objectives, legal research can be classified into two types, namely normative research and empirical research.<sup>2</sup> This research is a normative research. Normative legal research or library research is research that examines document studies, which uses various secondary data such as statutory regulations, court decisions, legal theory, and can be in the form of scholars' opinions. The normative legal research includes:

- a. Research on legal principles

- b. Research on legal systematics

- c. Research on the level of legal synchronization

- d. Legal history research; and

- e. Comparative law research.

Normative legal research methods are also commonly called doctrinal legal research or library research. It is called doctrinal law research because this research is only aimed at written regulations so that this research is very closely related to the library because it will require secondary data in the library. This study examines legal principles with the approach of statutory regulations and the decision of the Supreme Court No 575 K / Pdt.Sus-HKI / 2020 between Ruben Samuel Onsu vs PT Ayam Geprek Benny Sujono.

## **D. DISCUSSION**

### **1. Trademark Registration System**

Brand registration is very important for business people so that their brand identity can be protected. The application for Mark registration is submitted by the Applicant or his Proxy to the Minister electronically or non-electronically in Indonesian. Trademark Registration functions as:<sup>3</sup>

<sup>2</sup> Soerjono Soekanto, Pengantar Penelitian Hukum, Jakarta: Universitas Indonesia, 2014, hal. 1-2.

<sup>3</sup> <https://dgip.go.id/pengenalan-merek> accessed on pada 2 November 2020

- a. Evidence for the owner entitled to a registered Mark;
- b. The basis for rejection of a Mark that is the same in whole or in principle the other person is requesting for registration for similar goods / services;
- c. The basis for preventing other people from using the same Mark in whole or in principle in the distribution for similar goods / services.

The Law on Trademarks and Geographical Indications adheres to a constitutive principle, meaning that registration is a must to obtain legal protection, therefore registration is proof of ownership, as well as a basis for refusal for other parties to register their marks because there are similarities in essence and prevent other parties from using the mark. that is not his right.

Based on the Regulation of the Minister of Law and Human Rights Number 67 of 2016 concerning Mark Registration, the terms and procedures for applying for a trademark are:

- (1) An application is submitted by filling in duplicate forms in Indonesian by the applicant or his proxy to the minister.
- (2) The application contains at least:

- a. the date, month and year of the Application;
- b. the full name, nationality and address of the Petitioner;
- c. full name and address of the Proxy if the application is filed by a proxy;
- d. color if the mark being applied for registration uses a color element;
- e. name of country and date of the first application for Mark, if the Application is filed with Priority Right;
- f. brand labels, and
- g. class of goods and / or class of service and description of the types of goods and / or types of services.

Registration applications can be made electronically and non-electronically.

The trademark registration system is first to file, which means that the party who first applies for registration is given priority to obtain the registration of a mark and is recognized as the legal owner of the mark and the rights to the mark are obtained after the mark is registered.

## **2. Legal Protection of Registered Marks**

In trademark law, if a business actor has registered for the first time, then he is entitled to legal protection. Brand plays an important role in the business world because

in addition to being the identity of a product and recognizing the origin of the product, it is also a promotional tool and a symbol of certain quality of the product concerned, therefore business actors with bad intentions will try to imitate other people's brands.<sup>4</sup>

who have registered or who have not in order to achieve their goals. Brand terms which now applies requires that the mark be registered meaning the owner apply for registration to the Directorate General of Intellectual Property in order the brand has legal protection. This means an unregistered mark does not receive protection according to the trademark law, so the owner of the mark cannot file a lawsuit through the trademark law regime if there are parties who are commit violations by imitating the mark concerned.

To apply for a mark must meet administrative requirements, namely letters and forms that need to be completed at the time of filing and substantive requirements, namely that the mark is an object that can be protected through the trademark law. If the administrative and substantive requirements are fulfilled, then the mark becomes a registered mark which is protected for a

certain period of time be extended. The registered trademark owner has exclusive rights, namely the right to use the mark himself in his business activities or give permission (license) to other parties to take advantage of it. According to Black's Law Dictionary license (license) is A personal privilege to do a particular act or series of acts on land without possessing any estate or interest therein, and is ordinarily revocable at the will of licensor and is not assignable. The permis-sion by competent authority to do an act which without such permission would be illegal, a trespass, a tort or otherwise would not be allowed.<sup>5</sup> Meanwhile, Article 1 number 18 Law No. 20 of 2016 concerning Trademarks and Geographical Indications states "License is a license granted by a registered Mark owner to another party based on a written agreement in accordance with the laws and regulations to use a registered Mark".

A registered mark does not mean that it is safe from deletion or cancellation of the mark, because the Trademark Law regulates the provisions concerning it, so to registered mark can be deleted and cancellation if the criteria comply fulfilled laws. Removal and

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<sup>4</sup> Sudjana, Akibat Hukum Penghapusan Dan Pembatalan Merek Terdaftar Terhadap Hak Atas Merek, Res Nullius Law Journal, Fakultas HUKUM Universitas Komputer Indonesia, Vol 2 No 2 Juli 2020.

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<sup>5</sup> Gunawan Suryomurcito (Ketua Tim). (2006, 11). Laporan Akhir Tentang Kompilasi Bidang Hukum Perjanjian Lisensi. Jakarta: BPHN Departemen Hukum dan Hak Asasi Manusia.

cancellation of registered marks has consequences law for other parties related to the protection of marks, for example licensee as well as to the position of the owner of the mark himself, namely take legal actions such as lawsuits and proof of ownership or mark certificates.

### **3. Application of the principle of brand legal certainty to the Supreme Court decision No 575 K / Pdt.Sus-HKI / 2020 between Ruben Samuel Onsu vs PT Ayam Geprek Benny Sujono**

The ideal of law according to Gustav Radbruch is supported by three values, namely: justice (Gerechtkeit), benefit (Zweckmässigkeit) and legal certainty (Rechtssicherheit). Certainty in this case is defined in four ways, namely:

- a. Law is positive meaning it is law (Gesetzliches)
- b. The law is based on facts (Tatsachen), not a formula about the judge that will be carried out by the judge.
- c. That the facts must be clearly formulated so as to avoid confusion in meaning, besides being easy to implement

- d. Positive laws should not change frequently.<sup>6</sup>

Legal principles (beginsel) are abstract basic norms and generally provide the background for concrete regulations and law enforcement. Legal principles are not concrete legal principles, but rather are concrete and general and abstract regulatory backgrounds. There are legal principles in implicit form and tone which is express. If it is written, legal certainty will be born.

The opinion that law is certainty is in accordance with Fuller's opinion who proposes 8 principles as legal certainty:

- a) A legal system consists of regulations that are not based on momentary decisions for certain matters (ad hoc)
- b) The regulation is announced to the public
- c) Not retroactive
- d) Made in a formula that is understood by the public
- e) There should be no conflicting regulations
- f) Must not contain an action that exceeds what can be done
- g) Should not be changed frequently

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<sup>6</sup> Satjipto Rahardjo, Ilmu hukum, (Bandung, Citra Aditya Bakti, 2006), hlm. 146.

- h) There must be a match between the regulations and daily implementation.<sup>7</sup>

When examined with the principle of legal certainty, the Supreme Court Decision No 575 K / Pdt.Sus-HKI / 2020 between Ruben Samuel Onsu vs PT Ayam Geprek Benny Sujono, who tried to reject the appeal from the appeal applicant: Ruben Samuel Onsu and punished the appeal applicant to pay case fee in cassation level of Rp. 5,000,000, - (five million rupiah) is in accordance with the principle of legal certainty contained in Law No. 20 of 2016 concerning Marks and Geographical Indications, which states that the Right to a Mark is obtained after the Mark is registered, and is the first to file an application. trademark registration is a Yangcent party.

This case began with Ruben's lawsuit against PT Ayam Geprek Benny Sujono, which owns the I Am Geprek Bensu Sedep Beneerrr trademark on September 25, 2018. Ruben sued for Rp. 100 billion and asked the judge to remove the trademark belonging to PT Ayam Geprek Benny Sujono. However, from the district court to the cassation, Ruben lost in court. On the other

hand, PT Ayam Geprek Benny Sujono won when he filed a counterclaim against Ruben.

The facts revealed during the trial:

1. Benny Sujono's family registered IPR early In his lawsuit, Ruben argued that he first registered the trademark 'Bensu' which was filed on September 3, 2015 and registered on June 7, 2018. Ruben considers that he is the first registrant and owner of the only Bensu mark in Indonesia, refers to the first to file argument, namely the first registrant is entitled to legal protection. However, Benny Sujono's family Yangcent, Kurniawan and Stefani Livinus have registered the trademark 'I am Geprek Sedep Beneerrr' which was requested on May 3, 2017 and registered on May 24, 2019 with class code 43 for the food business category. Yancent and his two siblings use the name Bensu in a trademark which is an acronym for their father's name Benny Sujono. Later, Ruben also registered the HAKI 'I am Geprek Sedep Beneerrr' with a logo and writing similar to those of the Benny Sujono family. Ruben applied for the trademark on August 8, 2019 and was registered on May 24, 2019 with a class code of 45 for the service business category.
2. Benny Sujono's family built the geprek chicken business early Benny Sujono's family built the culinary business 'I Am Geprek Bensu' for the first time in the Pademangan area, North Jakarta on April 17, 2017. In court files, Yangcent said the geprek chicken business started from his father's suggestion Benny Sujono. In honor

<sup>7</sup> Sudarga Gautama, Hukum Merek Indonesia, (Jakarta, Citra Aditya Bakti, 1993), hlm.21

of his father, he uses the acronym Bensu. This business is progressing rapidly, within a month they managed to open 10 new branches and until the case rolled in the court they had 40 branches spread across Indonesia. On their official website, they now have branches in Malaysia. On the other hand, Ruben started a food business in August 2017 or four months after the establishment of I Am Geprek Bensu, owned by Yangcent and his brother.

3. Adik Ruben became operational manager for Ruben's brother, Evan Jordi Onsu, as an operational manager during the early days of the Benny Sujono family's geprek chicken culinary business. Yangcent and Stefani are friends of Evan Jordi, and when they started their business they were busy with other jobs, so they accepted Evan's offer. At that time Evan Jordi also asked a quality control person who worked in the kitchen. In the copy of the verdict, Yangcent suspects that the employee who was stationed in the kitchen had to know the formula or recipe for how to cook the 'I am Geprek Bensu' menu. In July 2017, Evan Jordi pulled back his employees. Furthermore, in August 2017, Jordi and Ruben opened a food business 'Geprek Bensu' with a type of food, logo and arrangement similar to 'I Am Geprek Bensu'.
4. Ruben received a transfer of IDR 663 million as a promotional ambassador. Evan Jordi also offered Ruben as a promotional ambassador for the food business brand 'I Am Geprek Bensu'. Ruben, who is an artist, helps promote the

Benny Sujono family-owned business. As a promotional ambassador, Ruben's photo was displayed at several 'I Am Geprek Bensu' outlets. As compensation, Yangcent and his siblings provided the golden share which was transferred from 9 May 2017 to 14 August 2017. From the evidence in the copy of the decision, the total money transferred to Ruben was IDR 663 million.

5. Ruben was prohibited from using the six 'Geprek Bensu' brands. In court it was found that Ruben Onsu registered 34 trademarks that were applied for from 8 August 2017 to 31 July 2018. All of these trademarks were registered successfully on 24 May 2019. The registered trademarks varied from I Am Geprek Bensu Sedep Beneerrr, I Am Geprek, Geprek Bensu, Bensu Nugget, Bensu Sosis to Bensu Bakso. The judge ordered Ruben's six trademarks to be canceled because they had similarities with the brand of PT Ayam Geprek Benny Sujono, namely I Am Geprek Bensu Sedep Beneerrr. Six trademarks belonging to Ruben that were removed from IPR registration, namely I Am Geprek Bensu Sedep Beneerrr, Geprek Bensu, I Am Geprek Bensu, Geprek Bensu, Bensu and Geprek Bensu Real.<sup>8</sup>

The Supreme Court Decision No 575  
K / Pdt.Sus-HKI / 2020 between Ruben

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<https://katadata.co.id/yuliawati/berita/5ee41cb9c506f/5-fakta-sidang-buat-ruben-onsu-kehilangan-merek-dagang-geprek-bensu> accessed on 3 November 2020 WIB.



Samuel Onsu vs PT Ayam Geprek Benny Sujono reminded us of the Supreme Court's decision which stated that the holder of the Pierre Cardin brand was a Kayu Putih, East Jakarta, Alexander Satryo Wibowo. French designer, Pierre Cardin, was judged to be late in registering his trademark in Indonesia.

In trademark law, there are two principles of trademark registration, namely a declarative system (first to use) and a constitutive system (first to file). First to use means whoever uses a mark first, he is the one who is deemed entitled by law to the mark concerned. As for the first to file principle, whoever registers a mark for the first time is the trademark holder, as long as it cannot be proven otherwise within a certain deadline. Indonesia adheres to the first to file principle. This is in accordance with Article 3 of Law No. 20 of 2016, namely the right to a mark is obtained after the mark is registered. Registration of marks using a constitutive system (first to file) guarantees more legal certainty for holders of trademark rights, however business actors still lack awareness of registering trademarks.

## **E. CONCLUSION**

1. The trademark registration system in Indonesia is first to file, which means

that the party who first applies for registration is given priority to obtain the registration of a mark and is recognized as the legal owner of the mark and the right to the mark is obtained after the mark is registered. The Law on Trademarks and Geographical Indications adheres to a constitutive principle, meaning that registration is a must to obtain legal protection, therefore registration is proof of ownership, as well as a basis for refusal for other parties to register their marks because there are similarities in essence and prevent other parties from using the mark which is not their right. .

2. In trademark law, if a business actor has registered for the first time, then he is entitled to legal protection. However, a registered mark does not mean that it is safe from deletion or cancellation of a mark, because the Trademark Law stipulates the provisions on this matter, so that registered marks can be removed and cancellation if the criteria according to the law are met.
3. The application of the principle of legal certainty in the Supreme Court decision regarding the mark between

Ruben Onsu and Yangcent, the Supreme Court Decision No 575 K / Pdt.Sus-HKI / 2020 between Ruben Samuel Onsu vs PT Ayam Geprek Benny Sujono, who tried to reject the appeal from the appeal applicant : Ruben Samuel Onsu and sentenced the appeal applicant to pay court fees at a cassation rate of Rp. 5,000,000, - (five million rupiah) is in accordance with the principle of legal certainty contained in Law No. 20 of 2016 concerning Marks and Geographical Indications, which states that the Right to a Mark is obtained after the Mark is registered, and is the first to file an application. trademark registration is a Yangcent party.

## F. SUGGESTIONS

It is better for business actors to register their trademarks immediately in order to obtain legal protection, because if they are not registered it can become a problem in the future if another business actor uses the same mark.

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