

The Impact and Handling of Criminal Law on Trademark Counterfeiting in Medan City (Study of Medan District Court Decision No. 2152/Pid.Sus/2024/PN Mdn)

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ABSTRACT

Trademark counterfeiting is a form of crime that has serious impacts on the business world and consumers. In the era of global and digital trade, the existence of brands is very vital. Therefore, brand protection through a criminal law approach is absolutely necessary. Effective and responsive law enforcement in Medan City is an important representation in providing legal certainty and protection of intellectual property rights in Indonesia's regions. The crime of trademark counterfeiting is a form of violation of Intellectual Property Rights (IPR), especially trademark rights. This counterfeiting occurs when someone uses the same or similar brand to a registered brand owned by another party without permission, thereby harming the rightful owner and misleading consumers. In Indonesian positive law, this act is regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, specifically Article 100 paragraphs (1) and (2), and can be expanded by the application of Article 263 of the Criminal Code if accompanied by the use of false documents. Based on the objective and subjective elements in criminal law and Moeljatno's opinion, trademark counterfeiting meets the qualifications as a criminal act. In the Medan District Court Decision No. In case No. 2152/Pid.Sus/2024/PN Mdn, the panel of judges found the defendant guilty of using the "Yamalube" brand without permission from PT Yamaha Indonesia Motor Manufacturing, with visual evidence resembling the original product. The judge sentenced him to prison, a fine, and ordered the destruction of evidence. However, law enforcement in Medan City faces obstacles, such as the nature of the complaint offense, differing legal interpretations, weak coordination among law enforcement officials, the prevalence of counterfeit products in the market, and low legal awareness among business actors and consumers. This demonstrates the need for preventive and coordinated efforts to optimize brand protection.

Keywords: Impact, Trademark Counterfeiting, Medan City

INTRODUCTION

TA crime is an act prohibited by law and punishable by law. In criminal law, there is a term known as *Strafbaar Feit*, which contains objective elements (the unlawful act) and subjective elements (the perpetrator's fault, such as *dolus* or *culpa*). If both of these elements are met, the perpetrator can be held criminally responsible. As technology and the global flow of information advance, crime has also changed, both in terms of *modus operandi* and the tools used to carry out the crime. One form of modern crime that is now prevalent is trademark counterfeiting. A trademark is not only a symbol or identity for a product, but also serves as a guarantee of quality, a marketing strategy, and a valuable intellectual property asset. Therefore, brands must receive adequate legal protection.

In today's era of free trade and digitalization, people are increasingly familiar with global trends and branded products. However, unscrupulous businesses are exploiting this situation by counterfeiting well-known brands for quick profits. This phenomenon not only harms legitimate brand owners but also misleads consumers and undermines healthy business competition. Medan, as the economic center of North Sumatra, is not immune to the problem of trademark counterfeiting. The practice of trademark counterfeiting in this city is quite widespread and has

negatively impacted economic growth, the credibility of local businesses, and consumer safety. This indicates that criminal law enforcement against trademark infringement remains ineffective.

METHODS

This research uses a juridical-empirical legal approach, a method that examines legal norms written in legislation and analyzes their application in practice, through a case study of Medan District Court Decision Number 2152/Pid.Sus/2024/PN Mdn. The nature of this research is descriptive-analytical, which aims to provide a comprehensive overview and analysis of the application of criminal law in this case. Data are analyzed descriptively qualitatively, through the stages of data reduction, data presentation, and drawing conclusions.

RESULTS AND DISCUSSION

Results

Legal Regulations Against Trademark Counterfeiting

Trademark counterfeiting is the act of using a trademark that is essentially or completely similar to a registered trademark belonging to another party illegally, without permission, and with the aim of imitating or misleading consumers. Article 83 paragraph (1) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications states that: Registered Trademark owners can file lawsuits against other parties who without the right use Trademarks that are essentially or wholly similar for similar goods or services.

Furthermore, Article 100 paragraph (1) and (2) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications states that:

1. Any person who without the right uses a trademark which is the same in its entirety as a registered trademark belonging to another party for similar goods or services shall be punished by imprisonment for a maximum of 5 (five) years and/or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).
2. If the act referred to results in health problems, environmental problems or death, the perpetrator shall be subject to a heavier penalty.

Several articles in the Criminal Code can also be linked to the crime of forgery, such as: Article 263 of the Criminal Code concerning forgery of documents which states the following:

1. Anyone who makes a false letter or falsifies a letter which can give rise to a right, obligation or release from debt, or which is intended as evidence of something with the intention of using or ordering another person to use the letter as if its contents were true and not falsified, is threatened with a maximum prison sentence of six years.
2. Anyone who intentionally uses a fake or falsified letter as if it were genuine and not falsified, if the use of the letter can cause loss, shall be subject to the same penalty.

In the explanation of Article 263 of the Criminal Code, it is stated that the elements of the crime in paragraph (1) are:

1. Make a fake letter or falsify a valid letter.
2. The letter can cause:
 - a. Rights;
 - b. Commitment (e.g. contract);

- c. Debt Relief;
- d. Used as Evidence.
- 3. There is an intention (*mens rea*) to use or order someone else to use the letter as if it were genuine.
- 4. Threat of punishment: maximum imprisonment of 6 years.

Meanwhile, the elements of the crime in Article 263 Paragraph (2) of the Criminal Code state that:

- 1. The perpetrator did not make or falsify it, but used the fake letter.
- 2. Use is done intentionally.
- 3. This use has the potential to cause harm to other parties.
- 4. Threat of punishment: the same as paragraph (1), namely a maximum prison sentence of 6 years.

The elements of a crime are:

- 1. Objective elements

In general, this element consists of an action or a consequence.

- 2. Subjective elements

This element consists of a will or purpose, which exists within the perpetrator's soul, an element formulated with the terms deliberate, intention, and purpose. Meanwhile, the Criminal Code (KUHP) classifies criminal acts from various laws concerning criminal law, namely the classification of crimes and violations. Classification in the Criminal Code.

The act of brand counterfeiting in the Criminal Code related to the trade sector is contained in Article 256 which explains that:

- 1. Anyone who affixes a brand other than those mentioned in articles 254 and 255, which according to the provisions of the law must or may be affixed to goods or their packaging, falsely to the goods or packaging, with the intention of using or ordering other people to use the goods, as if the brand were genuine or not fake;
- 2. Whoever, with the same intention, affixes a brand to the goods or their packaging as mentioned above using a genuine stamp in an unlawful manner;
- 3. Anyone who uses a genuine trademark for goods or their packaging, even though the trademark is not for those goods or their packaging, with the intention of using or ordering others to use those goods as if the trademark were designated for those goods.

This article contains a form of crime in the field of brands or stamps by affixing a fake brand or stamp on the packaging as if the goods were genuine with the intention of using or ordering others to use it. The stamp referred to in this article is a stamp or brand that according to statutory regulations must or can be held on goods or their packaging, a stamp or brand other than those specified in articles 254 and 256, namely on gold or silver and government-issued calibration stamps. It can be said that the Criminal Elements in Trademark Crimes depend on indications related to the Criminal Elements in general.

Article 256 of the Indonesian Criminal Code previously served as the primary provision for prosecuting those involved in the trade of counterfeit branded goods. However, as the intellectual property rights (IP) legal system has evolved, Law No. 20 of 2016 provides stronger legal protection, broader coverage, and stricter sanctions to combat the crime of trademark

counterfeiting in Indonesia. In addition to the law, legal regulations regarding trademark counterfeiting are also regulated in the TRIPs Agreement (WTO) where Indonesia as a WTO member is obliged to follow the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which requires member countries to provide legal protection for brands and enforcement of their rights.

Legal Protection of Trademarks in Medan District Court Decision No. 2152/Pid.Sus/2024/PN.Mdn

In District Court decision No. 2152/Pid.Sus/2024/PN.Mdn, the Judge issued the following verdict:

1. Declaring that the Defendant BONDAN WINARNO has been legally and convincingly proven guilty of committing the crime "The perpetrator who committed or participated in the act of producing and/or trading goods and/or services, namely lubricants/oils of the Yamalube brand which do not meet or do not comply with the required standards and provisions of laws and regulations as in the first alternative indictment.
2. Therefore, the defendant is sentenced to 3 (three) months in prison.
3. Determining that the period of arrest and detention that the Defendant has served is deducted in full from the sentence imposed.
4. Determine that the defendant remains in detention.
5. Determine the evidence in the form of:
 - 43 (forty three) bundles of Yamalube brand cardboard
 - 2 (two) sacks of empty bottles of Yamalube Gear motor oil;
 - 3 (three) yellow lubricant drums
 - 2 (two) blue lubricant drums
 - 85 (eighty five) boxes of Yamalube brand automatic lubricant, contents 0.8 liters @ 24 bottles
 - 96 (Ninety six) boxes of Yamalube silver brand lubricant, contents 0.8 liters @ 24 bottles
 - 10 (ten) green lubricant drums
 - 290 (two hundred and ninety) boxes of Yamalube brand automatic lubricant, contents 0.8 liters @ 24 bottles
 - 220 (two hundred and twenty) boxes of Yamalube silver brand lubricant containing 0.8 liters @ 24 bottles.
 - 18 (eighteen) boxes of Yamalube super silver brand lubricant, contents 0.8 liters @ 24 bottles.
 - 1 (one) unit of shark brand compressor machine
 - 1 (one) unit of Yama brand compressor machine
 - 2 (two) units of Yuema brand road carpet machines
 - 1 (one) unit of orange Meiwa Pack Indonesia machine
 - 1 (one) unit of blue Indonesian packing machine
 - 20 (twenty) boxes of Yamalube brand automatic lubricant, contents 0.8 liters @ 24 bottles

- 5 (five) boxes of Yamalube silver brand lubricant, contents 0.8 liters @ 24 bottles
- 5 (five) boxes of Yamalube sport lubricant, 1 liter @ 24 bottles
- 13 (thirteen) bottles of Yamalube silver lubricant, 0.8 liter contents.
- 8 (eight) bottles of Yamalube super sport lubricant, 1 liter each.
- 20 (twenty) bottles of Yamalube automatic lubricant, 0.8 liter contents.
- 4 (four) bottles of Yamalube sport lubricant, each containing 1 liter
- 31 (thirty one) bottles of Yamalube Gear lubricant containing 110 ml.

Seized to be destroyed,

6. Charge the Defendant with paying court costs of Rp. 5,000 (five thousand rupiah).

In this case, the elements that are met are:

Article 100 paragraph (2) of the Republic of Indonesia Law No. 20 of 2016 concerning Trademarks and Geographical Indications.

"Any person who without the right uses a trademark that is essentially the same as a registered trademark belonging to another party for similar goods and/or services produced and/or traded, shall be punished with imprisonment for a maximum of 4 (four) years and/or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah)." Elements of Article 100 paragraph (2) as follows: each person: that what is meant by "every person" is anyone who is an individual, whether an Indonesian citizen, a foreign citizen, or a legal entity who can be held responsible for all his actions, referring to this case, namely: Suspect BONDAN WINARNO Born in Jakarta, August 1, 1993, Christian, Indonesian Citizenship, Male, Occupation: Private employee, Residential address: MMTC Complex Block J No. 27, Jalan Selamat Ketaren, Medan Estate Village, Percut Sei Tuan District, Deli Serdang Regency, North Sumatra Province. (fulfilled)

Without the right to use the same brand in principle: means that someone does an act without his/her rights, or an act that violates objective law or violates the rights of others. Without permission means that someone does an act without obtaining a license or permission from the owner who has the rights to an object. In this case, the suspect BONDAN WINARNO without the right to use the same brand which is essentially owned by Yamalube which is used or attached to the oil bottle packaging so that the oil bottle produced resembles the Yamalube brand which is registered with the Directorate General of Intellectual Property Rights (Fulfilled).

Registered Trademarks belonging to other people: ThatThe YAMALUBE brand has been registered with the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia with registration number IDM000235273 dated February 3, 2010 registered in the name of Yamaha Hatsudoki Kabushiki Kaisha, never giving a license/permission to the suspect HARIS THENTANDO to use the YAMALUBE brand or logo. (Fulfilled)

Article 102 paragraph of Law of the Republic of Indonesia No. 20 of 2016 concerning Trademarks and Geographical Indications.

"Any person who trades goods and/or services and/or products who is known or reasonably suspected to know that the goods and/or services and/or products are the result of a criminal act as referred to in Article 100 and Article 101 shall be punished with imprisonment

for a maximum of 1 (one) year or a maximum fine of Rp. 200,000,000 (two hundred million rupiah)"

The elements of Article 102 are as follows: each person: that what is meant by "every person" is anyone who is an individual, whether an Indonesian citizen, a foreign citizen, or a legal entity who can be held responsible for all his actions, referring to this case, namely; Suspect BONDAN WINARNO Born in Jakarta, August 1, 1993, Christian, Indonesian Citizenship, Male, Occupation: Private employee, Residential address: MMTC Complex Block J No. 27, Jalan Selamat Ketaren, Medan Estate Village, Percut Sei Tuan District, Deli Serdang Regency, North Sumatra Province. (fulfilled)

Trading goods and/or services and/or products that are known or reasonably suspected to be the result of a criminal act: This means that someone trades goods knowing that the goods being sold are the result of a trademark infringement;

In this case, the suspect BONDAN WINARNO and the suspect HARIS THENTANDO (prosecuted separately) based on witness statements, evidence and the suspect's statement, knew that the oil found and used as evidence by investigators that was traded was the result of a trademark violation (Fulfilled). That the YAMALUBE brand has been registered with the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia with registration number IDM000235273 dated February 3, 2010 registered in the name of Yamaha Hatsudoki Kabushiki Kaisha; The suspect who traded goods in the form of oil resulting from trademark violations has fulfilled the elements of trading goods and/or services and/or products which are known or reasonably suspected to be known that the goods and/or services and/or products are the result of a criminal act as referred to in Article 102 of Law of the Republic of Indonesia No. 20 of 2016 concerning Trademarks and Geographical Indications;

The actions of the suspect BONDAN WINARNO in trading the oil have fulfilled the elements of without the right to use a Trademark that is essentially the same as a registered Trademark belonging to another party for similar goods and/or services that are produced and/or traded and/or trading goods and/or services and/or products that are known or reasonably suspected of knowing that the goods and/or services and/or products are the result of a criminal act as referred to in the provisions of Article 100 paragraph (2) and/or Article 102 of Law of the Republic of Indonesia No. 20 of 2016 concerning Trademarks and Geographical Indications.

The similarities between the two YAMALUBE brand products are that there is a similarity in the YAMALUBE writing, while the differences are:

The original product is:

- a. Made of high quality materials;
- b. The bottle cap has a Yamaha logo made with specific characteristics determined by Yamaha Hatsudoki Kabushiki Kaisha (Yamaha Motor Co., Ltd.);
- c. The label on the bottle is made with specific characteristics determined by Yamaha Hatsudoki Kabushiki Kaisha (Yamaha Motor Co., Ltd.);
- d. Sold at official outlets (shops and workshops) appointed by Yamaha Hatsudoki Kabushiki Kaisha (Yamaha Motor Co., Ltd.);

Products suspected of being counterfeit are:

- a. Made of low quality materials;

- b. The bottle cap has a Yamaha logo that is NOT made with the specific characteristics set by Yamaha Hatsudoki Kabushiki Kaisha (Yamaha Motor Co., Ltd.);
- c. The label on the bottle is NOT made with the specific characteristics set by Yamaha Hatsudoki Kabushiki Kaisha (Yamaha Motor Co., Ltd.);
- d. Sold at official outlets (shops or workshops) not appointed by Yamaha Hatsudoki Kabushiki Kaisha (Yamaha Motor Co., Ltd.).

The Medan District Court's decision No. 2152/Pid.Sus/2024/PN Mdn complies with applicable legal provisions and meets the criminal elements in Article 100 paragraph (1) of Law No. 20 of 2016. The judge has carried out his judicial function professionally, considering aspects of justice, legal certainty, and protection for the public and brand owners. However, this decision does not yet cover the civil losses suffered by the brand owner. The brand owner should also be able to file a civil lawsuit to claim compensation for damages to their good name and potential loss of market share.

According to Prof. Dr. Saidin, SH, M.Hum, an intellectual property law expert, "Legal protection for brands is not only administrative through registration, but must also be enforced repressively against violations through criminal and civil channels." Trademark law issues are crucial because they involve legal protection and legal certainty for both brand owners and consumers. Consumers must be protected from being misled by counterfeit or imitation trademarks. Meanwhile, brand owners need legal certainty to prevent their trademark rights from being infringed by others.

Law Number 20 of 2016 concerning Trademarks and Geographical Indications adopts a first-to-file system, meaning trademark rights are granted to the party who first registers it, not the party who first uses it (first to use). Furthermore, Article 90 explains that goods or services are considered similar if they have similar characteristics, manufacturing methods, and intended uses. However, from a criminal law perspective, there are obstacles to law enforcement against trademark infringement because this crime falls under the category of complaint-based offenses as stipulated in Article 103 of Law No. 20 of 2016. This means that law enforcement officials can only act upon a complaint from the trademark owner who feels aggrieved. Without a complaint, no investigation or inquiry will be conducted.

This complaint-based offense system is seen as flawed because it positions trademark infringement as a private matter, rather than a public legal issue affecting the wider public interest. As a result, many trademark counterfeiters are not prosecuted because the trademark owners are unaware of the infringement or are reluctant to report it. However, brand counterfeiting can cause significant losses, both to legitimate brand owners and to consumers. Therefore, this system is considered ineffective in deterring perpetrators and inadequate in providing adequate protection for consumers.

The complaint-based offense, as defined in Article 1, number 25 of the Criminal Procedure Code, is a criminal offense that can only be prosecuted upon notification from the injured party. This means that the victim's active role is crucial to the legal process, while the public interest tends to be overlooked. In this context, many have suggested that trademark infringement no longer be classified as a complaint-based offense, but rather as a common offense, allowing law enforcement to act proactively without having to wait for a report from

the injured party. This change is expected to make law enforcement more effective and provide broader legal protection for both brand owners and consumers.

Overall, reform of the complaint offense system in the Trademark Law is very necessary so that protection of intellectual property rights and justice for consumers can be optimally realized in the national legal system. This complaint offense can only be processed if there is a notification report accompanied by a request from the injured party. In this case, the injured party is the registered trademark owner.

The process for handling criminal acts of brand counterfeiting is:

- a. Receiving Complaints
- b. Conducting Investigations
- c. Conducting Searches and Seizures
- d. Making an Examination Report (BAP) and Filing

Obstacles Faced in Legal Protection of Trademarks Based on Law Number 20 of 2016 Concerning Trademarks and Geographical Indications

The issue of trademark protection is actually not new for Indonesia. In the history of trademark legislation, it can be seen that during the Dutch colonial period, the Industrial Estate Regulation (RIE) was in effect, which was contained in the 1912 Staatblad Number 545 in conjunction with the 1913 Staatblad Number 214. During the Japanese occupation, trademark regulations were issued, called Osamu Seire Number 30 concerning Trademark Registration which came into effect on 1st of the 9th month of Syowa (Japanese year 2603). After Indonesia's Independence (August 17, 1945), these regulations were still enforced based on Article II of the Transitional Provisions of the 1945 Constitution. Furthermore, since the era of open economic policy in 1961, Law Number 21 of 1961 concerning Company Marks and Trade Marks was enacted, replacing the legacy regulations of the Dutch colonial era which were considered inadequate, even though the law basically had many similarities with the Dutch colonial legal products.

The influence of globalization on all aspects of social, economic, and cultural life is increasingly driving the pace of economic development. Furthermore, the increasing development of information technology and transportation has led to rapid growth in the trade of goods and services. This trend of increasing trade in goods and services will continue in line with increasing national economic growth. Considering these realities and trends, it is understandable that there is a need for more adequate regulations to create certainty and strong legal protection. Moreover, several countries increasingly rely on products derived from human intellectual abilities for their economic and trade activities. Given this reality, trademarks, as a product of human intellectual activity closely related to economic and trade activities, play a crucial role. Trade in goods and services crosses national borders. Therefore, the international trademark registration mechanism is a system that should be utilized to protect national trademarks internationally. The international trademark registration system, based on the Madrid Protocol, is a very helpful tool for national businesses to register their trademarks abroad easily and affordably.

In addition, Indonesia's participation in ratifying the Convention on the Establishment of the World Trade Organization, which also includes the agreement on Trade-Related Aspects of

Intellectual Property Rights (TRIPs), as ratified by Law Number 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization, has required Indonesia to comply with and implement the contents of the international agreement. Ratification of this regulation encourages Indonesia's participation in ratifying the Paris Convention for the Protection of Industrial Property (Paris Convention), which has been ratified by Presidential Decree Number 15 of 1997 and the Trademark Law Treaty, which has been ratified by Presidential Decree Number 17 of 1997. These international agreements make it mandatory for Indonesia to adjust the applicable Trademark Law to the provisions of the ratified international agreements.

Building a brand reputation requires significant costs and considerable time. Another important aspect is that a good reputation will generate consumer trust. Companies tend to try to prevent other people/companies from using the brand in their products. Counterfeiting will clearly harm not only the business owner or holder of the rights to the brand but also the consumer community. Businesses will be disappointed and disadvantaged if their brand, which has been built, promoted, and developed at great expense, is lost even if the business owner is able to maintain the quality and reputation of their business so that it is widely known by the public. One development in the field of trademarks is the emergence of protection for new types of trademarks, known as non-traditional trademarks. This law also includes sound trademarks, three-dimensional trademarks, and hologram trademarks, which fall under the category of non-traditional trademarks.

Furthermore, several improvements are being made to further improve services to the Trademark Applicant community. To make it easier for Applicants to register Trademarks, several revisions or changes need to be made in the form of simplifying the Trademark registration process and procedures. The existence of regulations regarding the minimum requirements for Applications will make it easier to submit Applications by simply filling out the Application form, attaching a label or sample of the Trademark being applied for registration, and paying the Application fee. By fulfilling the minimum requirements for Applications, a Trademark Application will be given a Receipt Date or filing date.

Changes to the Trademark registration process flow in this Law are intended to further expedite the completion of the Trademark registration process. The announcement of the Application before the substantive examination is intended to ensure that the substantive examination can be carried out simultaneously if there are objections and/or rebuttals, thus eliminating the need for further examination. In relation to the Application for Extension of Trademark Registration, the Trademark owner is given an additional opportunity to be able to extend his Trademark registration up to 6 (six) months after the expiry of the Trademark registration period. This provision is intended so that the registered Trademark owner does not easily lose his Trademark Rights due to delays in submitting an application for extension of Trademark registration.

In addition, to provide greater legal protection for registered trademark owners from trademark infringements by other parties, criminal sanctions for trademark infringements are increased, particularly those that threaten human health, the environment, and can result in death. Considering that trademark issues are closely related to economic factors, this Law increases the criminal sanctions, including fines. Trademark infringement often occurs because a brand's

function is to identify a product or service that already has a reputation and also because it guarantees product quality. This is because a brand carries inherent economic benefits, especially for well-known brands. A brand's function is to identify a product from a particular company, allowing consumers to distinguish between one product and another within the same type.

Trademark piracy occurs when an unregistered trademark, usually a well-known foreign trademark, is registered by an unauthorized party. As a result, the original trademark owner's application for registration is rejected by the local trademark office because it is deemed similar to a previously registered trademark. Legal protection for trademarks is growing, with individuals capitalizing on the popularity of well-known and fast-selling brands. Any attempt to profit from these well-known brands violates the law, moral norms, and business ethics. Brands are crucial for maintaining healthy business competition, and as a basis for this consideration, laws or regulations concerning trademarks are needed to improve services to the public. Brands themselves are essentially immaterial objects that cannot provide anything physically, and this proves that they are immaterial property rights.

A brand is essentially a distinguishing feature that cannot be the same as another, the same or similar, including being less clear or obscure. Protected brands are brands registered in accordance with the list at the Intellectual Property Rights Agency and the request or application of the brand owner, brands that are not registered and not protected by law. The requirements regarding this brand are as follows:

- a. Does not conflict with morality and public order;
- b. Have distinguishing power;
- c. Not a brand that has become public property;
- d. Does not constitute information or relate to the goods or services for which registration is requested.

Criminal provisions only recognize the type of trademark infringement and do not recognize trademark crimes. As in Article 103 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, it is clearly stated that the criminal acts referred to in Articles 100, 101, and 102 are complaint-based offenses. The implication of a complaint-based offense means that the police are simply waiting for a complaint from the injured party. In other words, if no one complains, even if trademark counterfeiting has occurred, the police can simply ignore or allow the perpetrator to go free without legal process. The method used by trademark infringers to commit crimes is by making the product resemble the original product, trading the goods resulting from trademark infringement at a price that is cheaper than the original price so that consumers or the general public are easily attracted to buy the product.

The form of handling carried out by the police is to take action by receiving an official report from the consumer who has been harmed, namely by carrying out an examination process (reporter, witness), confiscating evidence based on the results of field findings from the case, transferring files to the Medan City Prosecutor's Office, transferring the suspect and evidence to the Prosecutor's Office. Violations of brand counterfeiting in the trade of goods or services basically include the following methods:

- a. Trademark Imitation Practices Entrepreneurs who have bad intentions in this kind of unfair competition are in the form of using efforts to use brands by imitating existing

well-known brands so that the brands for the goods or services they produce are essentially the same as the brands for goods or services that are already well-known (for similar goods or services) with the intention of creating an impression on the general public, as if the goods or services they produce are the same as the production of the goods or services that are already well-known.

- b. Trademark Counterfeiting Practices In this case, unfair competition is carried out by entrepreneurs who do not have good intentions by producing goods using brands that are already widely known in the community, which are not their rights.

For example, imitation goods of well-known brands are currently on the rise, often labeled as "KW," with the categories "KW 1," "KW 2," "KW Super," and so on. In this case, entrepreneurs certainly hope to gain substantial profits without spending money on introducing the brand to the public because the brand is already well-known. Although these imitation goods are usually sold at a lower price than the original, the holders of well-known brands will certainly suffer because people who find it difficult to buy the original will switch to buying the imitation goods.

Preventing the occurrence of criminal acts of brand counterfeiting is basically not as easy as turning the palm of your hand, as in preventing brand counterfeiting, the police often experience several obstacles, including:

- a. Limited to complaint offenses From the explanation of complaint offenses in the previous discussion, it is said that in absolute complaint offenses, it is an offense in which there is only prosecution if there is a complaint from the injured party. In the case of trademark crime, the original brand owner is clearly harmed by the existence of imitation/fake brands that are the same as the original brand owner, so that this has an impact on consumer assessment of goods sold on the market.
- b. The Directorate General of Intellectual Property's legal considerations are always different. This is based on the knowledge of the Directorate General of Intellectual Property and the different trademark experts. The Directorate General of Intellectual Property provides legal considerations on a case-by-case basis. Experts, on the other hand, provide legal considerations based on the substance of a case and refer to the law. Experts, in providing legal considerations for a case, also rely on their expertise and knowledge gained through trademark education. This seems to confuse police investigators in determining the type of crime committed in a case. Therefore, after obtaining legal considerations, investigators also conduct a case review to obtain legal certainty regarding the imposition of criminal sanctions in a trademark case.
- c. The case resolution process at the Prosecutor's Office is not always clear and transparent. After the police complete the case file and transfer the case to the Prosecutor's Office, the police still have to wait for the Prosecutor's decision. The Prosecutor's Office itself lacks coordination and transparency with investigators regarding the judge's decision, causing investigators to wait long, sometimes years. This means that cases transferred to the Prosecutor's Office never provide legal certainty, and the police are unable to prosecute perpetrators of trademark crimes. This allows perpetrators of trademark crimes to continue to produce and sell goods resulting from their crimes with great freedom,

because they have not received legal certainty from the Prosecutor's Office's decision.

Discussion

The crime of trademark counterfeiting is part of the violation of Intellectual Property Rights (IPR), especially trademark rights. Trademark counterfeiting is the act of using a trademark that is the same or similar to a registered trademark belonging to another party without permission, which can harm the legitimate owner and mislead consumers. Legally, trademark counterfeiting is regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, especially in: Article 100 paragraph (1): Threatens a maximum sentence of 5 years and/or a maximum fine of IDR 2 billion for anyone who without the right uses a registered trademark for similar goods/services. Article 100 paragraph (2): Mentions a more severe sentence if the counterfeiting causes serious impacts such as health problems or death. In addition, the perpetrator can also be charged with Article 263 of the Criminal Code if the counterfeiting is accompanied by false documents, such as fake invoices or certificates, with a maximum prison sentence of 6 years. In a legal context, the elements of a crime consist of objective elements (unlawful acts) and subjective (intentions/intentions of the perpetrator). Moeljatno stated that a criminal act must meet the following elements: an act, a legal prohibition, and a criminal threat. Therefore, trademark counterfeiting is a crime that meets the elements of a criminal violation because it harms the trademark owner, misleads consumers, and violates the principles of fair business competition.

Criminal legal protection against trademark counterfeiting in the Medan District Court decision No. 2152/Pid.Sus/2024/PN Mdn where in its consideration, the panel of judges considered that: the defendant used the "Yamalube" brand without official permission from the legal owner, namely PT Yamaha Indonesia Motor Manufacturing; the evidence shows a striking similarity to the original product where the act has the potential to mislead consumers, harm official business actors, and damage public trust in trademarks. Therefore, the judge decided to impose a prison sentence and a fine, and ordered the destruction of evidence. This shows that the state protects the rights of brand owners and the interests of consumers through criminal channels.

Obstacles to Legal Protection of Trademarks Based on Law Number 20 of 2016 in Medan City are as follows:

- a. Complaint Offense
Law Number 20 of 2016 stipulates that trademark infringement is a complaint-based offense (Article 103), so that law enforcement can only be carried out if there is a report from the injured party.
- b. Differences in Legal Interpretation
There are differences between the opinions of trademark experts and the Directorate General of Intellectual Property Rights in providing legal considerations regarding infringement cases, which causes confusion for police investigators in determining the criminal elements and types of infringements.
- c. Lack of Coordination and Transparency of Law Enforcement

After the files are transferred from investigators to the prosecutor's office, the legal process often proceeds slowly, sometimes even dragging on for years without any certainty. A lack of transparency and coordination from the prosecutor's office hampers further legal proceedings.

d. Massive Imitation and Counterfeit Products

In Medan, counterfeit or imitation goods of well-known brands are still widely available, sold freely in the market at low prices. This complicates oversight and exacerbates losses for genuine brand owners.

e. Lack of Legal Awareness among Business Actors and Consumers

The low level of public understanding, particularly among MSMEs and consumers, regarding the importance of brand protection has resulted in a rise in violations that are allowed to occur without action.

CONCLUSION

Based on the conclusions above, several suggestions are proposed that can be used as input, namely as follows:

1. To create a healthy and fair trade climate, it is hoped that all stakeholders, including business actors, law enforcement officials, and the public, will improve their understanding and compliance with the Trademark Law and the criminal provisions of the Criminal Code. Firm law enforcement, ongoing public education, and synergy between institutions are key to ensuring legal protection for trademarks and legal certainty in the trade sector.
2. To strengthen the effectiveness of legal protection for brands, it is recommended that the government and law enforcement officials not only rely on a repressive approach, but also develop preventive strategies through legal education and ongoing market supervision, as well as curative efforts through optimizing civil lawsuit mechanisms to recover losses suffered by brand owners.
3. It is recommended that all stakeholders strengthen coordination across law enforcement agencies such as the Police, the Prosecutor's Office, and the Directorate General of Intellectual Property Rights in handling trademark infringement cases. Furthermore, a massive public education program should be promoted regarding the importance of trademark protection and the urgency of revising the provisions on complaint offenses so that law enforcement does not solely rely on reports from the injured party.

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