



ISSN 2809-7572 (Online)
YURIS (Journal of Court and Justice)
Vol 1 Issue 2, 2022
<https://journal.ifpublisher.com/index.php/jci>

Attemption of Brand Protection from The Equality of Brand Infringement: A Case Study of Indonesian Supreme Court Decision No. 332K/Pdt.Sus-HKI/2021

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ABSTRACT

The dispute over the brand infringement from the use of word 'Strong' by PT Unilever Indonesia, Tbk on their oral care product, 'Pepsodent Strong 12 Jam' has the same name as 'Strong' on the product belonging to Hardwood Private Limited (holding company of the Orang Tua Group). Indonesian Supreme Court Decision on March 30, 2021 No. 332K/Pdt.Sus-HKI/2021, they do not provide legal protection for the first registrant of 'Strong' mark and legal certainty for registered brand owners and this is contrary to the passive judges principle in the KUHP (Criminal Procedure Code). The word of 'Strong' has a distinguishing power with the brand 'Pepsodent Strong 12 Jam'. The brand naming 'Strong' is formed from a descriptive word which is a common word in a foreign language which has a certain meaning and the owner of the registered brand cannot monopolize it. The TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement provides exceptions for brand protection based on fair use principles contained in brand dispute jurisprudence involving common words. This research method is normative research through a legal approach. The comprehension and regulation will be reviewed on Law No. 20/2016 concerning of Marks and Geographical Indications and HIR (Herzien Inlandsch Reglement). The word 'Strong' is an adverb, which means 'in a strong or forceful manner' which is quoted from Merriem Webster. Therefore, using its word is public property and it can be used by everyone, but not for personal used.

Keywords: Brand, Brand Dispute, Protection

INTRODUCTION

Brand or trademark is one of the importance in intellectual work, especially in the world of trade. The brand is used as a sign to distinguish the goods produced by a company with another company.¹ Since the brand is really exclusive, then it necessary to have protection for the brand itself. One of the efforts to obtain legal protection for trademarks is by registering it in Directorate General of Intellectual Property.

A registered brand is exclusive which is expected to be the only brand owned by the brand owner, although it is often found that registered brand are used and registered by other parties without any rights. The cases of brand infringement that have similarities in principle with registered brand belonging to other parties in Commercial Court in Indonesia. After the brand is known, customer loyalty will arise, the term customer loyalty shows the customer loyalty to certain objects, such as brands, products, services, or stores. In general, brands are often used as a benchmark for customer loyalty (brand loyalty). Likewise with brand loyalty which reflects customer loyalty to certain brands.²

The previous research conducted by budi³ regarding Batik Zie, who first started the batik business, has developed into a batik industry that is well known even to the international scene. Besides Batik Zie, the other batik industries are less developed and well known. Salma Batik, Delima Batik and Batik Manggis have difficulty in marketing their products because the products are not yet known.

Brand dispute between PT Unilever Indonesia, Tbk and Hardwood Private Limited (holding company of Orang Tua Group). The word 'Strong' on their oral care product becomes the center of the problem. PT Unilever Indonesia, Tbk with their oral care product, 'Pepsodent Strong 12 Jam' and Hardwood with their product 'Formula Strong'. This dispute has been decided in Indonesian Supreme Court Desicion No. 332K/Pdt. Sus-HKI/2021 on March 30, 2021 by granting the appeal for PT Unilever Indonesia, Tbk and canceling the decision of the Central Jakarta Commercial Court No.30/Pdt.Sus-Merek/2020 on November 18, 2020.⁴

¹ Uus Mulyaharja, *Penegakan Hukum Pelanggaran Merek Berdasarkan Undang Undang Merek 2016* (Bandung: PT Alumni, 2020).

² Budi Santoso et al., "Brand Registration as a Marketing Strategy and Customer Loyalty of Natural Color Batik in Kampung Alam Malon Village," *Indonesian Journal of Advocacy and Legal Services* 1, no. 1 (September 10, 2019): 79–96, <https://journal.unnes.ac.id/sju/index.php/ijals/article/view/33735>.

³ Ibid.

⁴ Direktori Putusan Mahkamah Agung Republik Indonesia, "Putusan Mahkamah Agung 332 K/PDT.SUS-HKI/2021," in *Putusan Mahkamah Agung Nomor 332 K/Pdt.Sus-HKI/2021 Tanggal 30 Maret 2021 — PT Unilever Indonesia, Tbk VS Hardwood Private Limited* (Jakarta, 2021), 1–7.

This research aims to explain the judge decision about the case of brand dispute between PT Unilever Indonesia and Hardwood Private Limited regarding the same word “Strong” in their oral care product based in the Court Decision. Indonesian Supreme Court Decision on March 30, 2021 No. 332K/Pdt.Sus-HKI/2021, they do not provide legal protection for the first registrant of ‘Strong’ mark and legal certainty for registered brand owners and first register. The decision caused unclear criteria for brand equality as described in Article 21 paragraph (1) of Law no. 20/2016 concerning of Marks and Geographical Indications in this dispute case.

RESEARCH METHODOLOGY

This research analysis used normative research which is applied in the descriptive qualitative method through a legal approach. The author examines the provisions of positive law in order to find the rule of law, legal principles, and legal doctrines in order to answer the analyzed legal issues.⁵ The comprehension and regulation will be reviewed on Law No. 20/2016 concerning of Marks and Geographical Indications and HIR (Herzien Inlandsch Reglement). The descriptive method is a method that used in describing the characteristic of individual, condition, group, and other phenomenons.⁶

The source of data is classified into two types, there are primary data and secondary data. This research gathered through primary data and secondary data as a completed data in this research. The researcher conducted an in interview to some people to find out community behavior. Those interview results as a primary data. While the secondary data of this research is literature materials, such as legal documents, some books, and some research reports.⁷

Collecting data was conducted through direct interviews with the Head of Legal Services and Facilitation of the Mark Appeal Commission Sub Directorate, Directorate General of Intellectual Property, Law and Human Rights (HAM) Ministry. Those interviews were conducted to obtain a formal clarification from the Directorate General of Intellectual Property about the reasons of acceptance registration 'Pepsodent Strong 12 Jam' brand offered by PT Unilever Indonesia, Tbk. Therefore, the results of this research were the statement respondents orally

⁵ Elshalinge Dinata, “LARANGAN KEBERLAKUAN SURUT PADA ATURAN MEREK DALAM STUDI KASUS SENGKETA MEREK BENSU,” *Jurnal Hukum Magnum Opus* 3, no. 2 (2020): 201–212.

⁶ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Penerbit Universitas Indonesia (UI-Press), 2015).

⁷ Ibid.

and community behaviour as research object. This research was conducted by describing those data and it would be answer the problems in this research.

In determining the conclusions used deductive thinking. It means that the activity of thinking about something general and then concluding it into something specific.⁸

RESULT AND DISCUSSION

Attemption of Brand Protection from The Equality of Brand Infringement based on TRIPS Agreement and Law No. 20/2016 concerning of Marks and Geographical Indications

Brand is a crucial naming and symbol used by every person and company in marking their products, then it is making easier for them to market their goods and services.⁹ According to Law No. 20/2016 concerning of Marks and Geographical Indications, brand is a sign of an image, logo, name, word, letter, number, color arrangement that can be 2D or 3D, sound, hologram. The combination of those elements is intended as a differentiator and it is used in the activity of selling goods or services.¹⁰

Legal protection of brand in Law no. 20/2016 concerning Marks and Geographical Indications is based on the first to file principle or a constitutive system which prioritizes whoever does the first registration of the brand, then that person is the one who has the right to the mark and uses it exclusively. The brand that are not registered automatically will not get legal protection.¹¹ The nation provides a legal protection to registered brand owners for ten years.

The exclusive rights can only be used by the brand holder and the rules for using the brand by others must not be violated, and prohibit others from using a brand that has been registered as a registered brand without the brand holder's permission.¹² It means that the brand owner rights is an exclusive right provided by nation to the owner's brand which registered its brand in the Brand General List for a certain period time in using the owned brand or giving permission to a person or

⁸ Izhar, "Mengidentifikasi Cara Berpikir Deduktif Dan Induktif Dalam Teks Bacaan Melalui Pengetahuan Konteks Dan Referensi Pragmatik," *Jurnal Pesona* 2, no. 1 (2016): 63–73.

⁹ Santika Rianti, Fauza Mayana & Tisni, *Hukum Merek: Perkembangan Aktual Perlindungan Merek Dalam Konteks Ekonomi Kreatif Di Era Disrupsi Digital* (Bandung: Refika Aditama, 2021).

¹⁰ Pemerintah Pusat, "Undang-Undang (UU) Tentang Merek Dan Indikasi Geografis LN.2016/NO.252, TLN NO.5953," in *Undang-Undang* (Jakarta, 2016), LL Setneg : 51 hlm.

¹¹ Viona Talitha Syafira, "Perlindungan Hukum Bagi Pemegang Hak Merek Superman Terhadap Pelanggaran Merek," *Jurnal Suara Hukum* 3, no. 1 (March 9, 2021): 85, <https://journal.unesa.ac.id/index.php/suarahukum/article/view/11377>.

¹² Supramono, *Menyelesaikan Sengketa Merek Menurut Hukum Indonesia* (Jakarta: Rineka Cipta, 2008).

several persons. The brand has a function, that is a distinction between one item and another, especially similar goods or services.

Legal protection provided by the government aims to prevent the infringement. Even if there is a brand infringement, it will be detrimental to the businessman who owns the registered brand, who has tried to use its brand for his business.¹³ Brand infringement is an act that is intentionally applied in using others registered brand which has an equational of similar goods or services.

There is some evidence demonstrated by Hardwood Private Limited and PT Unilever Indonesia, Tbk in the Commercial Court Decision No.30/Pdt.Sus-Merek/2020/PN.Niaga.Jkt.Pst. The evidences published by Hardwood Private Limited at the first trial are a proof P-4a, a photocopy of the 'Strong' brand certificate on behalf of Blissful Centany International Limited, and a proof P-4b, a photocopy of the span extension of registered mark protection certificate on the brand of 'Strong' on behalf of Hardwood Private Limited. In case, it is compared with the proof from PT Unilever Indonesia, Tbk, there are proof of T-18, a photocopy of the Indonesian brand registration form for 'Pepsodent Strong 12 Jam' and T-19 proof, a photocopy of the Indonesian brand registration form for 'Pepsodent Strong 12 Jam' logo. Registered brand is a brand whose application for its brand that has been approved is registered legally¹⁴. Then, it means that the 'Strong' brand has been registered and a certificate has been issued for it. Meanwhile, the 'Pepsodent Strong 12 Jam' brand has not been registered and a certificate has not been issued, based on the Article 3 of Law No. 20/2016 concerning Marks and Geographical Indications, PT Unilever Indonesia, Tbk reviewed in *mutatis mutandis* does not yet have the right to use the brand in Indonesia.¹⁵

According to official website of Directorate General of Intellectual Property, Hardwood Private Limited offered a request for registration of Strong's brand to the Directorate General of Intellectual Property, Indonesian Law and Human Rights Ministry, on July 9, 2008 with Agenda No. D002008024970 to protect class 3 item types. Based on Article 3 of Law No. 20/2016 concerning Marks and Geographical Indications, Hardwood Private Limited has the right to use that brand in Indonesia because the registration brand of 'Strong' was registered on July 13, 2010 and it has a certificate No. IDM000258478.

¹³ Meli Hertati Gultom, "Perlindungan Hukum Bagi Pemegang Hak Merek Terdaftar Terhadap Pelanggaran Merek," *Jurnal Warta* (2018).

¹⁴ President of The Republic of Indonesia, "Undang-Undang Republik Indonesia Nomor 20 Tahun 2016," in *Merek and Indikasi Geografis* (Jakarta, 2016).

¹⁵ Ibid.

Meanwhile, according that website, PT Unilever Indonesia, Tbk had only offered the request for brand registration of 'Pepsodent Strong 12 Jam' on September 25, 2019 with Agenda No. DID201905667025, then it has other Agenda No. DID2019056670 on October 1, 2019¹⁶. Therefore, the brand of 'Pepsodent strong 12 Jam' has not been registered and no certificate when accusation and cassation request is being offered to Indonesian Supreme Court. Consequently, PT Unilever Indonesia, Tbk has no right in using 'Strong' brand in Indonesia based on the Article 3 of Law No. 20/2016 concerning Marks and Geographical Indications. Hardwood Private Limited is the first owner and first register of 'Strong' brand which registered legally in Registration No. IDM000258478 and they have an exclusive right which can prohibit PT Unilever Indonesia, Tbk from using the 'Strong' brand because the use of the same brand can cause consumer confusion.

The equitional of brand regulated in Article 21 Paragraph (1) Letter A of Law No. 20/2016 concerning Marks and Geographical Indications and jurisprudence of Indonesian Supreme Court No. 279/PK/Pdt/1992 on January 6, 1998. In principle, brand is a promise of sellers or producers who continually brings a unit series of performance, benefits and service to buyer¹⁷. There are two theories that is used to determine the equational of brand, (1) Holistic Theory Approach, which is used to determine the equaty of things from overall of orthography and its appearance; and (2) Dominancy Theory, in determining the equaty of things can only be taken from dominant factor.¹⁸

Dominant factor in 'Strong' brand infringement dispute case is 'Strong' brand with register number IDM000258478 of class 3 owned by Hardwoord Private Limited, there are some of lettering composition s-t-r-o-n-g. While, dominant factor in 'Pepsodent Strong 12 Jam' with Agenda No. DID2019056670 owned by PT Unilever Indonesia, Tbk, there are some of lettering and numbers composition P-e-p-s-o-d-e-n-t-S-t-r-o-n-g-1-2- J-a-m. The main problem is the similarity in naming the brand 'Strong' and the difference between two products is the word 'Pepsodent' and '12 Jam' which added in PT Unilever Indonesia, Tbk oral care product and it is also an additional factor. Based on Endang Purwaningsih statement, there is no equational of brand 'Strong' between brand Hardwoord Private Limited and PT Unilever Indonesia, Tbk product. In this case, the researcher agreed with the arguments of PT Unilever Indonesia, Tbk in the first trial.

¹⁶ Ibid.

¹⁷ Bambang Sukma Wijaya, "Dimensions of Brand Image: A Conceptual Review from the Perspective of Brand Communication," *European Journal of Business and Management* 5, no. 31 (2013): 55–65.

¹⁸ Endang Purwaningsih, *Paten Dan Merek Economic and Tecnological Interests Dalam Eksploitasi Paten Dan Merek* (Malang: Setara Press, 2020).

Based on the similarity of Goods Class between Strong's brands List No. IDM000258478, Class 3 owned by Hardwood Private Limited, while the 'Pepsodent Strong 12 Jam' with Agenda No. DID201905667025 and Agenda No. DID2019056670 owned by PT Unilever Indonesia, Tbk has complied with Law and Human Rights Ministry Regulation No. 67/2016 concerning Mark Registration provides provisions in determining the class of similar goods.

The Hardwood Private Limited oral care product and the 'Pepsodent Strong 12 Jam' brand owned by PT Unilever Indonesia, Tbk are in the same product class, that is product class 3 and two of them in the same type of product, that is oral care product which focused on dental care.

Endang Purwaningsih also stated that a product brand has the similarity with others if they have a similarity in identity and its brand with similarities very nearly resembles, there are color and sound which caused the actual confusion and misleading consumer. The society would be think that the product from the same company (likelihood confusion).

When it is only reviewed from the word 'Strong' in two products from difference company, it will be found similarities in naming. Meanwhile, when it is reviewed overally, then there is no resemblance between the two products because there is an additional of naming in PT Unilever Indonesia, Tbk product, that is 'Pepsodent' and '12 Jam.'

According to the researcher arguement, if the oral care product owned by PT Unilever Indonesia, Tbk does not contain the additional word of 'Pepsodent' and '12 Jam' and it is only contain the word of 'Strong', it could be confuse consumers towards the product brand of PT Unilever Indonesia, Tbk. However, the problem is that using word 'Strong' not can be only for personal use but it had already been used by the public, such as the 'Formula Strong' brand, the 'Strong Protection Formula' brand, the 'Strong Herbal Formula' brand, and the 'Pepsodent Strong 12 Jam' brand. Because the existence of those products with the same word of 'Strong', it will not cause confusion or misdirection for consumers because consumers know that each brand produces from the different company.

According to previous description, it described that legal protection of 'Strong' brand owned by Hardwood Private Limited as a first owner and first register with register number IDM000258478 legally has an exclusive right to prohibit others in using their brand naming which will cause consumer confusion. Fair use principles provide limited exceptions of right given to the brand, such as the use of reasonable descriptive terms.

Fair use principles can be found in various jurisprudence that decides on brand disputes involving common words.¹⁹ These principles can be applied in brand infringement of 'Strong' case between Hardwood Private Limited and PT Unilever Indonesia, Tbk, these are (1) the word of 'Strong' is one of common words which is written in dictionary, and someone should not be monopolize it as personal use; (2) even though the word 'Strong' has been registered as a product brand, the word 'Strong' can still be used by everyone as long as it is not for singular use, and in this case, the use of the word 'Strong' by PT Unilever Indonesia, Tbk on the oral care product brand 'Pepsodent Strong 12 Jam' is not singular use, there are additional words, there are the words of 'Pepsodent' and '12 Jam'; (3) oral care product which used the word of 'Strong' is produced in two well-known companies, there are 'Pepsodent Strong 12 Jam' produced by PT Unilever Indonesia, Tbk and Formula Strong produced by Hardwood Private Limited; (4) the concept of fair use principle avoids the brand protection of 'Strong' which is belonging to a common word and it cannot be protect third parties which used of word 'Strong'; (5) PT Unilever Indonesia, Tbk stated that the word of 'Strong' is a singular and common word in English which means in power condition or manner.

In this context, the researcher had a same perception with one of Indonesian Supreme Court judge consideration and that perception is the word of 'Strong' is not the plaintiff's findings and the word contains the meaning 'in power condition or manner' and it is an adverb. The application of the fair use principle with the judge's consideration in the 'Strong' brand case, Hardwood Private Limited as the owner of the 'Strong' brand remains protected in its sole sense, and as long as Hardwood Private Limited uses its brand in their trade.

Indonesian Supreme Court Decision No. 332K/Pdt. Sus-HKI/2021 in terms of the Civil Procedure Code on March 30, 2021

Judge as a central figure in the judicial process. They are required to sharpen conscience sensitivity, maintain integrity, moral intelligence, increase professionalism in upholding law and justice for the community. The behavior of a judge is one of the important things that people notice to trust the judge. A judge is required to always maintain the honor, dignity, ethics and behavior as specified in the legislation. They must implement this behavior concretely and consistently in their judicial duties and outside their duties because it is quite related to law enforcement and justice efforts.²⁰

¹⁹ B. Permata, R. R., Ramli, T. S., & Utama, *Pelanggaran Merek Di Indonesia* (Bandung: Refika Aditama, 2021).

²⁰ "Keputusan Bersama Ketua Mahkamah Agung RI Dan Ketua Komisi Yudisial RI Nomor: 047/KMA/SKB/IV/2009 02/SKB/P.KY/IV/2009," in *Tentang Kode Etik Dan Pedoman Perilaku Hakim* (Jakarta, 2009).

Passive judge principle also known as the principle of *ultra petita non cognoscitur*, which requires judges to sort out cases filed by clients and they should not give more than the client's request. Basically, there is no difference of judge duty in investigating the civil case, but for judges of the Supreme Court who investigating civil cases, it is generally regulated in Article 30 and Article 50 of Law No. 5/2004 concerning Amendments of Law No. 14/1985 concerning the Supreme Court and Article 178 HIR or Article 189 RBG. Cassation is related to the Supreme Court task as the highest supervisor of *judex pacti* decision. However, based on cassation judges in implementing their duties, they only examine legal matters or its application. Therefore, unchecking the facts of the case is known as *judex juris*. The phrase *judex juris* means that the Supreme Court only considers legal matters.

The statement of V Harlen Sinaga stated that law consideration presented by judge in determining the case based on *posita* (argument or reason) and *petitum* (final conclusion) of plaintiff's lawsuit, defendant's statement and evidence from the people proven in the trial. In this case, case investigating at the first level with investigation at the cassation level of Supreme Court is regulated in Article 50 paragraph (2) of Law No. 14/1985 concerning the Supreme Court. During the case investigation, the Supreme Court finds that the *judex pacti* was wrong in applying the law, then the Supreme Court will repeal the *judex pacti* decision and they will handle it using the evidence law at the first level. Therefore, law is a normative system structure related to one of another non-permanent structure and investigation in first trial is conducted some of data investigation and related incident with *posita* and *petitum* on accusation letter, defendant's statement, and evidence from the people proven in the trial.

In this dispute case of 'Strong' brand, the judge of Supreme Court has actively intervened by expanding the *posita* and *petitum* described by the plaintiff on accusation letter, and the arguments for defendant in the trial and the evidence from the people proven in the trial. There is no statement stated by the plaintiff both in the *posita* and *petitum* of accusation letter, the word 'Strong' in 'Pepsodent Strong 12 Jam' brand product owned by defendant has been registered on September 25, 2019 with Registration No. DID 2019056670 in Class 3, and the Registration No. DID2019057948 in Class 3 has been registered on October 1, 2019. There are no evidences published by others, such as the evidence of Pepsodent Strong 12 Jam' brand certificate. The evidences published by Hardwood Private Limited at the first trial are a proof P-4a, a photocopy of the 'Strong' brand certificate on behalf of Blissful Centany International Limited, and a proof P-4b, a photocopy of the span extension of registered mark protection certificate on the brand of 'Strong' on behalf of Hardwood Private Limited. In case, it is compared with the proof from PT Unilever Indonesia, Tbk, there are proof of T-18, a photocopy of the Indonesian brand registration form for 'Pepsodent Strong 12 Jam' and T-19 proof, a photocopy of the Indonesian brand registration form for 'Pepsodent Strong 12 Jam' logo.

Based on Article 21 Paragraph (1) Letter A of Law No. 20/2016 concerning Marks and Geographical Indications contained the first brand applied is brand application approved for registration. Then, it means that the 'Strong' brand has been registered and a certificate has been issued for it. Meanwhile, the 'Pepsodent Strong 12 Jam' brand has not been registered and a certificate has not been issued, based on the Article 3 of Law No. 20/2016 concerning Marks and Geographical Indications, PT Unilever Indonesia, Tbk reviewed in *mutatis mutandis* does not yet have the right to use the brand in Indonesia. Actually, the Supreme Court provided legal consideration with new arguments in the decision No. 332K/Pdt.Sus-HKI/2021 on March 30, 2021 which stated the word 'Strong' in 'Pepsodent Strong 12 Jam' brand product owned by defendant has been registered on September 25, 2019 with Registration No. DID 2019056670 in Class 3, and the Registration No. DID2019057948 in Class 3 has been registered on October 1, 2019 and the defendant has the right to use its brand. Based on Supreme Court consideration, the Supreme Court granted the cassation request from the cassation defendant and rejected the plaintiff's claim by using arguments that were never argued by the plaintiff and defendant and it proved in the process of first trial. Meanwhile, there was intervention by Supreme Court judge regarding the information of registered brand owned by defendant at the Directorate General of Intellectual Property.

In this case, the Supreme Court is considered to have infringed the passive judge principle. The Supreme Court in deciding civil case is attached in incidents offered by the parties and it is not allowed to provide the consideration in its decision by adding or expanding the scope of cases that have been offered by the parties, proven evidence at trial, and expanding the scope of case.

Law consideration presented by judge in determining the case based on *posita* (argument or reason) and *petitum* (final conclusion) of plaintiff's lawsuit, defendant's statement and evidence from the people proven in the trial and they have to focus on them. Judges have to sort out cases filed by clients and they should not give more than the client's request. It is applied to avoid a cancellation due to a wrong decision. Errors in the intentional application of the law can be a smuggling of involvement in the investigation and decision of cases. In this case, Supreme Court adjudicates the case for the 'Strong' brand itself based on considerations that have never been offered in case investigation by *judex pacti* or it is not contained in the lawsuit, the defendant's arguments and proven evidence at trial, then the Supreme Court decided a wrong decision and contrary to the passive judge principle. As a result, the decision does not provide justice, legal protection and legal certainty to registered brand owners.

CONCLUSION AND SUGGESTION

Conclusion

The brand naming 'Strong' is formed from a descriptive word which is a common word in a foreign language which has a certain meaning and the owner of the registered brand cannot monopolize it. There is no difference of judge duty in investigating the civil case, but for judges of the Supreme Court who investigating civil cases, it is generally regulated in Article 30 and Article 50 of Law No. 5/2004 concerning Amendments of Law No. 14/1985 concerning the Supreme Court and Article 178 HIR or Article 189 RBG. In this case, Supreme Court adjudicates the case for the 'Strong' brand itself based on considerations that have never been offered in case investigation by *judex pacti* or it is not contained in the lawsuit, the defendant's arguments and proven evidence at trial, then the Supreme Court decided a wrong decision and contrary to the passive judge principle. In conclusion, the Supreme Court granted PT Unilever Indonesia Tbk's appeal for the dispute over the 'Strong' brand against Hardwood Private Limited. As a result, Unilever was declared not to have plagiarized the 'Strong' brand product belonging to Hardwood Private Limited (the holding company of the Orang Tua Group).

Suggestion

There is a need for clarity in Law no. 20/2016 concerning Marks and Geographical Indications, for the protection of registered trademarks which have similarities in essence derived from trademarks from general words which are public domains which are everyday language. Besides, Judges both at Commercial Court and at the Supreme Court in providing legal considerations in their decisions must adhere to the principle of "Passive Law" in the Civil Procedure Code. And as a guide for judges to resolve the same case in forming written law and provide legal certainty, the need for the benefits of jurisprudence for judges.

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