

LEGAL STUDY OF THE INKRACHT DECISION ON UNFAIR BUSINESS COMPETITION IN TRADEMARK DISPUTES (CASE STUDY OF THE LEAF TRADEMARK DISPUTE IN THE SEMARANG COMMERCIAL COURT OF CENTRAL JAVA AND THE NGANJUK DISTRICT COURT OF EAST JAVA)

KAJIAN HUKUM PUTUSAN INKRACHT TENTANG PERSAINGAN USAHA TIDAK SEHAT DALAM SENGKETA MEREK DAGANG (STUDI KASUS SENGKETA MEREK DAUN DI PENGADILAN NIAGA SEMARANG JAWA TENGAH DAN PENGADILAN NEGERI NGANJUK JAWA TIMUR)

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ABSTRACT

This article critically examines the final and binding court decisions (inkracht) in the trademark dispute between Rudy Mulyanto and PT. Unichemcandi Indonesia over the “Daun” trademark. The research is motivated by the increasing number of trademark disputes in Indonesia, which often result in unfair business practices such as predatory pricing and misuse of legal mechanisms by registered trademark owners. The study employs a normative juridical approach supported by empirical data through court decisions, expert interviews, and legal literature. Findings indicate inconsistencies in law enforcement between the Commercial Court and the District Court rulings, as well as potential misuse of the judiciary to seize market share. The article highlights the urgency of consistency in law enforcement, strengthening the role of the Supreme Court in ensuring legal certainty, and harmonizing regulations to foster fair competition in the Indonesian market.

Keywords: trademark, unfair competition, final court decision, legal protection, predatory pricing

ABSTRACT

This article examines in depth the final and binding decision in the trademark dispute between Rudy Mulyanto and PT. Unichemcandi Indonesia regarding the “Daun” trademark. This research is motivated by the increasing number of trademark disputes in Indonesia, which often lead to unfair business competition practices, including predatory pricing and abuse of law by registered trademark owners. The methodology used is a normative juridical approach supported by empirical data in the form of analysis of court decisions, interviews, and legal literature. The results of the study indicate inconsistencies in law enforcement between Commercial Court and District Court decisions, as well as the potential for abuse of law to seize market share. This article emphasizes the need for consistent law enforcement in trademark disputes, strengthening the role of the Supreme Court in providing legal certainty, and harmonizing regulations to create healthy business competition.

Keywords: trademark, unfair business competition, final decision, legal protection, predatory pricing

1. INTRODUCTION

Legal protection for trademarks is a crucial aspect of maintaining fairness, legal certainty, and fair business competition in Indonesia. A trademark not only serves as a trademark for a product or service, but also represents the quality, reputation, and economic value of the business in question. In the context of an increasingly competitive modern economy, brands have become a strategic instrument for winning the market, building consumer loyalty, and protecting innovations from piracy and imitation that are detrimental to the original brand owner.

In Indonesia, regulations regarding brand protection are comprehensively regulated through Law Number 20 of 2016 concerning Brands and Geographical Indications, which confirms that brand rights are exclusive and can only be obtained after official registration at the Directorate General of Intellectual Property (DJKI). However, in practice, trademark disputes often arise that give rise to serious legal issues. These disputes often involve the use of identical or similar brands, which can potentially cause consumer confusion and even lead to unfair business practices, as stipulated in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

One case that has attracted academic attention is the trademark dispute "Daun" between Rudy Mulyanto and PT. Unichemcandi Indonesia. This issue began with the use of a trademark with similar visual elements and words, which then culminated in a civil lawsuit at the Semarang Commercial Court and a criminal case at the Nganjuk District Court. Both cases resulted in different decisions, but ultimately became legally binding after going through the cassation stage at the Supreme Court of the Republic of Indonesia. This case is interesting to study in more depth because it shows inconsistencies in law enforcement, abuse of locus delicti, and indications of predatory pricing practices by one of the parties, which in turn raises issues regarding legal certainty and justice for business actors.

From a legal theory perspective, this issue can be analyzed through several conceptual frameworks. First, John Rawls's Theory of Justice emphasizes the importance of distributing justice fairly and equitably throughout society. Second, the Theory of Unfair Business Competition as developed by Michael E. Porter and Joseph Kohler, which emphasizes the importance of fair competition as the foundation of a healthy market economy. Third, Philip M. Hadjon's Legal Protection Theory, which divides legal protection into two dimensions: preventive and repressive, is relevant for understanding the mechanisms for preventing and resolving trademark disputes.

Normatively, a final decision by the Supreme Court of the Republic of Indonesia should provide legal certainty for the parties and the wider public. However, in the case of the "Daun" trademark dispute, there appears to be potential for legal abuse, resulting in distortions in the competitive climate in Indonesia. This raises fundamental questions: how did the judge's legal considerations apply in resolving the "Daun" trademark dispute, and to what extent is law enforcement effective in preventing unfair business competition practices through judicial mechanisms?

Based on these problems, this study aims to analyze the legal considerations used by the judge in deciding the "Daun" trademark dispute between Rudy Mulyanto and PT. Unichemcandi Indonesia at the Semarang Commercial Court and the Nganjuk District Court. Examining the effectiveness of law enforcement in trademark disputes that have permanent legal force (*inkracht*), particularly in the context of preventing unfair business competition. The urgency of this research lies in the need to strengthen the trademark legal system in Indonesia so that it is able to create legal certainty, provide protection for trademark owners, and uphold the principles of healthy business competition as mandated by Article 28D paragraph (1) of the 1945 Constitution and the Fifth Principle of Pancasila.

A brand is a part of intellectual property rights that has a strategic function in the world of trade. According to Article 1 number (1) of Law Number 20 of 2016 concerning Brands and Geographical Indications, a brand is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in two or three dimensions, sound, hologram, or a combination of two or more of these elements to distinguish goods or services produced by a person or legal entity from goods or services produced by other parties.

Brands have two main functions, namely individual function, namely as a distinctive sign that enables consumers to distinguish one product from another. Socio-economic function, namely as a guarantee of product quality and reputation, as well as a promotional tool that increases business competitiveness in the market. Trademark rights are exclusive and can only

be obtained through official registration with the Directorate General of Intellectual Property (DJKI). This principle aligns with the first-to-file system, meaning that whoever registers their trademark first is entitled to legal protection. However, in practice, many disputes arise due to the existence of brands that are essentially or completely similar, which causes consumer confusion.

Furthermore, trademark law also recognizes the concept of the public domain, which refers to general signs that cannot be monopolized by any single party. For example, words that are generic or descriptive, which by their nature are already in the public domain. The case of the "Daun" trademark shows the problem of whether the word "daun" can be considered public domain or can be an exclusive trademark.

Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition defines unfair business competition as competition between business actors in carrying out production and marketing activities for goods or services which is carried out in a dishonest, unlawful or inhibitive manner towards business competition. These practices can take the form of brand copying, monopolies, predatory pricing, or the use of legal instruments to eliminate competitors.

One form of unfair business competition relevant to the "Daun" brand case is predatory pricing. According to Munir Fuady, predatory pricing is a strategy of selling goods below market price or even below production costs, with the goal of eliminating competitors. After competitors leave the market, the business raises prices again to maximize profits. This practice not only violates the principles of fair competition, but also harms consumers in the long term. In the context of trademark disputes, unfair competition can also occur through abuse of the law, for example by involving law enforcement officials or using judicial mechanisms to bring down competitors.

A relevant theoretical framework for analyzing trademark disputes is John Rawls's Theory of Justice. In his work, *A Theory of Justice*, Rawls emphasizes that justice is fairness, namely the fair distribution of basic rights and opportunities in society. This theory can be applied to brand protection, where the state must ensure that legal protection not only benefits certain brand owners, but also protects small and medium-sized businesses and consumer interests.

Meanwhile, Hans Kelsen in *Pure Theory of Law* emphasized that law is a system of norms that must be enforced consistently and must not be influenced by certain political or economic interests. In the context of the "Daun" case, this theory is relevant to assess whether the Supreme Court's decision is truly based on legal norms, or whether there is intervention of interests that causes a deviation from the principles of justice. Michael E. Porter in *Competitive Strategy* states that healthy competition is the key to creating efficiency, innovation, and consumer benefits. If business actors commit fraudulent acts, such as copying competitors' brands or selling below market prices with the intention of eliminating competitors, the market becomes inefficient and economic justice is disrupted.

Joseph Kohler, an intellectual property law expert, also emphasized that brands are not merely marketing symbols, but also important instruments for maintaining fair competition.¹⁶ Legal protection for brands aims to prevent consumer confusion while creating healthy business competition. Therefore, trademark disputes should not be allowed to become instruments of monopoly or tools for unfair market domination. According to Philip M. Hadjon, legal protection can be divided into two main categories:

Preventive protection, namely a prevention mechanism to prevent violations of rights, for example through a trademark registration system and clear regulations. Repressive protection, namely the resolution of disputes after a violation has occurred, for example through a lawsuit in court or other law enforcement mechanisms. In the context of the "Daun" trademark dispute, preventive protection should be provided through strict verification during trademark registration by the Directorate General of Intellectual Property Rights (DJKI) to

ensure that no trademarks are substantially similar. Meanwhile, repressive protection is realized through judicial proceedings in the Commercial Court and the Supreme Court. However, reality shows inconsistent decisions and even abuse of locus delicti, indicating the weak effectiveness of legal protection.

This literature review demonstrates that trademark disputes are not only related to the legal aspects of trademark ownership, but also concern the principles of fair business competition, social justice, and the effectiveness of legal protection. The case of the "Daun" trademark illustrates how trademark issues can have implications for unfair business competition practices, particularly predatory pricing and legal abuse. Using the theoretical framework of justice, business competition, and legal protection, this article seeks to analyze the final decision of the Indonesian Supreme Court more comprehensively.

2. METHODS

This research uses a normative juridical approach supported by empirical data. The normative juridical approach was chosen because the main focus of this research is on the analysis of positive legal norms, specifically Law Number 20 of 2016 concerning Trademarks and Geographical Indications, Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, and court decisions that have permanent legal force (*inkracht*).

According to Soerjono Soekanto, the normative approach is legal research that aims to examine the principles, norms and legal systems that apply. In this study, legal norms are analyzed both in the text of the law and in the practice of their application through court decisions. Meanwhile, empirical data support is used to strengthen the normative analysis by examining how court decisions impact business competition practices in society. This is done through a literature review, limited interviews with legal practitioners, and an analysis of online news related to the "Daun" trademark dispute.

1. Types of research

This type of research is descriptive-analytical legal research. Descriptive research aims to provide a comprehensive overview of legal facts, legal doctrine, and their application in concrete cases. Analytical means that this research not only describes, but also analyzes the judge's considerations in the final decision and its relevance to the principles of fair business competition.

2. Data source

The data sources for this research consist of:

a. Primary Legal Materials

Legislation: a) Law Number 20 of 2016 concerning Trademarks and Geographical Indications. b) Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. c) The 1945 Constitution, especially Article 28D paragraph (1) concerning guarantees of legal certainty.

Court decisions: a) Semarang Commercial Court Decision Number 6/Pdt.Sus-HKI/2019/PN Smg. b) Supreme Court Decision Number 1064 K/Pdt.Sus-HKI/2019. c) Nganjuk District Court Decision Number 150/Pid.B/2019/PN.NJK. d) Supreme Court Decision Number 3733 K/Pid.Sus/2020.

b. Secondary Legal Materials

Legal books, such as the works of Munir Fuady, Rahmi Jened, and Philip M. Hadjon. National and international legal journals related to trademark disputes and business competition. Academic articles on John Rawls' theory

of justice, Porter's theory of business competition, and Hadjon's legal protection.

c. Tertiary Legal Materials

Legal dictionaries, legal encyclopedias, and official online sources such as the Directorate General of Intellectual Property (DJKI) website.

3. Data Collection Techniques

Data was collected through several methods:

- a) Document Study: Analyzing laws, regulations, and court decisions related to the "Daun" trademark dispute.
- b) Literature Study: Reviewing books, journals, articles, and online news to gain academic and practical understanding.
- c) Limited Interviews: Conducting informal interviews with legal practitioners (advocates and academics) to gain a practical perspective on the impact of *inkracht* decisions on the business climate.

4. Data Analysis Techniques

Data analysis was conducted using qualitative methods. According to Lexy J. Moleong, qualitative research focuses on understanding the meaning, concepts, and relationships between legal phenomena. The analysis is carried out in three main stages:

5. Data Validity

To ensure data validity, this study employed source triangulation, comparing primary data from court decisions with secondary data from academic literature and empirical data from interviews and online news. Thus, the research results are expected to provide an objective, comprehensive, and relevant analysis, both normatively and practically.

3. RESULTS AND DISCUSSION

The "Daun" trademark dispute began when Rudy Mulyanto, a local businessman, registered the "Daun" trademark for a herbal medicine product with the Directorate General of Intellectual Property (DJKI). Meanwhile, PT. Unichemcandi Indonesia, a pharmaceutical company operating in a similar industry, also used a trademark containing the word "Daun" in its marketing. This similarity in basic elements sparked the legal conflict between the two parties.

Rudy Mulyanto sued PT. Unichemcandi Indonesia in the Semarang Commercial Court, alleging trademark infringement. However, the company denied the claim, arguing that the word "Daun" is a generic word that should not be monopolized by one party. Simultaneously, PT. Unichemcandi Indonesia also filed a criminal complaint against Rudy Mulyanto in the Nganjuk District Court, alleging trademark counterfeiting and illegal distribution.

The judicial process resulted in several different decisions, until finally the case reached the Supreme Court of the Republic of Indonesia which issued a final decision.

A. Semarang Commercial Court Decision

The Semarang Commercial Court, in Decision Number 6/Pdt.Sus-HKI/2019/PN Smg, ruled that Rudy Mulyanto's "Daun" trademark was substantially similar to the trademark used by PT. Unichemcandi Indonesia, thus potentially causing consumer confusion. Therefore, Rudy's lawsuit was declared inadmissible.

The judge's considerations were based on Article 21 paragraph (1) of Law No. 20 of 2016, which prohibits the registration of trademarks that are essentially similar to registered trademarks belonging to other parties. The judge considered that the word element "Daun" was too simple and descriptive, so it did not have strong distinguishing power (distinctiveness).

However, some legal experts criticized this decision, claiming it ignored the fact that the Directorate General of Intellectual Property (DGIP) had previously granted exclusive rights to Rudy Mulyanto over the "Daun" trademark. Should an objection arise, the other party should be able to pursue the trademark cancellation mechanism at the DGIP, rather than directly through the courts.

B. Nganjuk District Court Decision

Meanwhile, the Nganjuk District Court, in Decision Number 150/Pid.B/2019/PN.NJK, found Rudy Mulyanto guilty of trademark infringement for using a trademark similar to that of PT. Unichemcandi Indonesia. This ruling sparked controversy because the locus delicti was deemed inappropriate: the trademark case should have been heard by the Commercial Court, not the District Court.

In procedural law practice, trademark disputes fall within the realm of commercial civil litigation, not general criminal litigation, unless there is a clear element of fraud or forgery. Therefore, a general court ruling on a trademark case could be considered an abuse of process.

C. Supreme Court Decision (Cassation and Final Appeal)

The case eventually went to the Supreme Court, which issued two important rulings:

- a) Supreme Court Decision Number 1064 K/Pdt.Sus-HKI/2019→rejected Rudy Mulyanto's appeal and upheld the Semarang Commercial Court's decision.
- b) Supreme Court Decision Number 3733 K/Pid.Sus/2020→rejected Rudy Mulyanto's appeal in the criminal case and upheld the decision of the Nganjuk District Court.

Thus, both decisions became final and binding on the parties. However, this duality of decisions created legal uncertainty: on the one hand, the Commercial Court deemed the "Daun" trademark lacking strong distinguishing power; on the other hand, the District Court and the Supreme Court charged Rudy with trademark infringement. This phenomenon indicates an inconsistency in law enforcement that could disrupt Indonesia's competitive business climate.

D. Analysis of Locus Delicti and Judicial Competence

One crucial aspect of this case is the difference in judicial forums. According to Article 84 of the 2016 Trademark Law, trademark disputes fall under the jurisdiction of the Commercial Court. However, in Rudy Mulyanto's criminal case, the locus delicti was shifted to the Nganjuk District Court.

This raises questions about the consistency of the application of procedural law. If a trademark dispute can be brought into the general criminal realm, it opens up the opportunity for abuse of the law by economically or politically more powerful parties to undermine competitors. In legal literature, this condition is often referred to as forum shopping, which is the search for a judicial forum deemed most advantageous to one party.

E. Elements of Unfair Business Competition (Predatory Pricing)

In addition to the locus delicti issue, the "Daun" case also indicates predatory pricing practices. PT. Unichemcandi Indonesia is suspected of selling products at very low prices to drive Rudy Mulyanto's products from the market. After eliminating competitors, prices were raised again to gain greater profits. This practice clearly violates the principle of fair competition as stipulated in Article 20 of Law No. 5 of 1999, which prohibits predatory pricing to drive competitors from

the market. However, the court did not address this aspect of business competition in its deliberations. The judge focused solely on the formalities of trademark registration, not the economic implications of unfair competition.

F. Legal and Economic Implications

From the above analysis, there are several important legal and economic implications:

- a) Legal Certainty – Inconsistency in decisions between the Commercial Court and the District Court creates legal uncertainty for business actors.
- b) Abuse of Law – This case opens up space for the practice of abuse of process, where the law is used as a tool to destroy business competitors.
- c) Market Distortion – Predatory pricing practices that are not addressed by court decisions create market distortions that are detrimental to consumers and small businesses.

Consumer Protection – Trademark disputes should not only protect the interests of brand owners, but also the interests of consumers to obtain clear information and quality products.

1. Relevance of Justice Theory

The case of the "Leaf" trademark dispute illustrates how the principle of justice is often compromised by economic interests. According to John Rawls, Justice demands that social institutions guarantee the fair distribution of basic rights and provide equal opportunities for all parties. However, in this case, small business owners like Rudy Mulyanto are marginalized due to the dominance of large corporations with stronger resources, both financially and politically. Inconsistent court decisions demonstrate that the principle of equality before the law has not been fully realized.

2. Principles of Fair Business Competition

In Michael Porter's perspective, healthy competition drives efficiency, innovation, and better choices for consumers. On the contrary, the predatory pricing and forum shopping practices seen in this case actually create market distortions. When the law is used as a tool to eliminate competitors, the market no longer functions as a fair competitive arena but as a disguised monopoly instrument.

3. Legal Protection for Trademark Owners

Philip M. Hadjon's concept of legal protection distinguishes between preventive and repressive protection. Preventive protection should be implemented by the Directorate General of Intellectual Property Rights (DJKI) by refusing to register trademarks that lack distinctiveness or have the potential to create similarities. Repressive protection should be pursued through commercial courts that consistently enforce the law. However, the reality of the "Daun" case shows that legal protection is weakened by inconsistencies between decisions, ultimately leading to legal uncertainty.

4. CONCLUSION

Based on the research results and discussion, several important conclusions can be drawn:

The "Daun" trademark dispute demonstrates inconsistencies in court rulings. The Semarang Commercial Court and the Supreme Court ruled in a civil case that the "Daun" trademark lacked distinctiveness, while the criminal rulings of the Nganjuk District Court and the Supreme Court charged the trademark owner with violating the law. This dualism creates legal

uncertainty for businesses. The principle of fair competition has not been fully upheld. Indications of predatory pricing practices by large companies have not been adequately addressed in court rulings. As a result, trademark law has become an instrument to eliminate small business competitors, rather than to protect consumers and encourage innovation.

The legal protection provided is suboptimal. The Directorate General of Intellectual Property (DJKI), as an administrative institution, has not been able to strictly screen generic or descriptive trademark registrations. Meanwhile, the judiciary has not demonstrated consistency in applying locus delicti and absolute competence, thus opening up space for forum shopping and abuse of process. Substantive justice has not been realized. From the perspective of Rawls's theory of justice, the law should guarantee fairness for all parties. However, reality shows that small businesses are at a disadvantage due to limited capital and access to the legal system.

Harmonization is needed between Law Number 20 of 2016 concerning Trademarks and Geographical Indications and Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, especially in clarifying the boundaries between civil commercial disputes and criminal ones to avoid overlapping authority. In addition, the Directorate General of Intellectual Property (DJKI) needs to tighten the substantive trademark examination process to prevent the registration of trademarks that are generic, weakly distinguishing, or have the potential to create similarities. The Supreme Court is also advised to issue technical judicial guidelines regarding trademark disputes to avoid inconsistencies in decisions between courts. On the other hand, the Business Competition Supervisory Commission (KPPU) must be more active in monitoring predatory pricing practices that utilize trademark legal instruments to eliminate competitors. Finally, the government, together with law enforcement officials, needs to increase special protection for Micro, Small, and Medium Enterprises (MSMEs) to prevent them from being excluded from the market due to the dominance of large companies that abuse legal provisions.

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