



## LEGAL PROTECTION OF ECONOMIC RIGHTS OF BUSINESS ACTORS AGAINST COUNTERFEITING AND CIRCULATION OF COUNTERFEIT COSMETIC BRANDS

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### Abstract

This study aims to analyze Law Number 20 of 2016 concerning Brands and Geographical Indications, and the role of government in related agencies is not optimal in protecting business actors from counterfeiting cosmetic product brands. The method used is normative juridical. The research result is that as a consideration of the changes to Indonesian Law Number 15 of 2001 concerning Marks to Indonesian Law Number 20 of 2016 concerning Marks and Geographical Indications that in the era of global trade, in line with international conventions that have been ratified by Indonesia, licensing of trademarks and Geographical Indications are very important, especially in maintaining fair and just business competition, protecting consumers, and also protecting Micro, Small and Medium Enterprises and domestic industries, it is also to improve services further and provide legal certainty for the world of industry, trade and investment in facing the development of local, national, regional and international economy also the development of information and communication technology, it is necessary to be supported by an adequate statutory regulation in the field of Marks and Geographical Indications. Based on the positive law in Law No. 20 of 2016 concerning Brands and Geographical Indications. That the mark is an Intellectual Property Right protected by the government and the law. So, the writer can conclude that those who violate or plagiarize a well-known mark can be subject to imprisonment and a fine as described in the law because the mark is a protected asset. The government has also made an appeal or socialization regarding the importance of Intellectual Property Rights (IPR), and trademarks are included in (IPR).

**Keywords:** legal protection, economic rights of business actors, circulation and counterfeiting of trademarks

### INTRODUCTION

Based on the 1945 Constitution of the Republic of Indonesia Article 1 Paragraph (3), it is stated that the State of Indonesia is a state of law. Thus, every action has legal consequences. Some countries rely on their economic and trade activities for products. Hence, the brand becomes one of the human intelligence works closely related to economic and trade activities that play a very important role.

Utrecht defines law as a set of rules (orders and prohibitions) that govern the order of a society so that society must obey it. Meanwhile, Meyers defines law as all rules that contain considerations of morality, which are aimed at human behaviour in society and becomes a guide for state authorities in carrying out their duties. Therefore, elements in the law can be mentioned as rules about community behaviour made by the authorities, containing orders and prohibitions, are coercive. Therefore, every violation has strict sanctions (Coordinating Ministry for Economic Affairs, 2010).

Globalization in the economic, social and cultural fields, as well as information technology, drives the pace of economic development and people's needs for lifestyles and community needs. The development of information technology and activities in the trade sector

has developed very rapidly, so there is a tendency for increased trade flows to continue continuously in line with increasing national economic growth.

Intellectual property rights are exclusive rights whose legal protection occurs due to prior recording, except for copyright and trade secrets whose registration is territorial. The protection period will become public property. Several conventions ratified by the government of the Republic of Indonesia have initiated intellectual property rights.

Cosmetics are one of the pharmaceutical preparations, and this statement is contained in the general provisions of Article 1 Paragraph (4) of Law Number 36 the Year 2009 concerning Health, which states that pharmaceutical preparations are drugs, medicinal ingredients, traditional medicines and cosmetics. Furthermore, cosmetics, according to BPOM regulation Number 25 of 2019 concerning CPKB guidelines states that cosmetics are materials or preparations intended for use on external parts of the human body such as the epidermis, hair, nails, lips and external genital organs, or teeth and oral mucous membranes, especially for cleaning, perfuming, changing appearance and improving the body odour or protect or maintain the body in good condition.

The issue of trade in counterfeit goods in Indonesia and several countries is an old issue. Forgery of branded goods is a phenomenon of trade in counterfeit goods. Counterfeit goods or counterfeit products in Indonesia are often a problem that needs to be completely resolved. A lot of counterfeit goods are circulating in the market, increasing consumers' desire to buy counterfeit goods.

Counterfeiting of products will have an impact on end consumers or consumer users related to product quality and assurance, while the impact on intermediate consumers is on material losses and *brand image* in the eyes of consumers if counterfeit products circulating in the market have low quality and cause adverse impacts including harming health. Furthermore, if counterfeit products used by consumers do not fulfil standards and result in health problems, it will have a detrimental impact on society, especially on users of counterfeit products.

Currently, the criminal provisions for misusing marks are contained in the Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Geographical Indications. They are Article 100-102, which states that the use of the same mark as a whole or the mark has similarities in principle with the mark of another party to be produced or traded, may be subject to imprisonment or a fine, especially if the type of goods causes health problems, environmental disturbances, and human death. Furthermore, article 103 states that the crime is a complaint offence (UU No.20.2016).

The initial principle of brand protection is that no one has the right-right to sell their goods to the public as if they were other people in the business's goods, namely by using the same sign that is known to the public as a sign of someone's property. Gradually, protection is given as an acknowledgment that the mark belongs to the person who has used it and becomes a distinguishing mark from other goods that do not use it (Indriyanto dan Yusnita, 2016:2)

Currently, the government is not optimal in eradicating counterfeit brand products, so the victims are the public. The party harmed, or the victim harmed, as a result, is a company that owns the brand that produces it because the brand or product is the uniqueness of each company or brand owner. Counterfeiting of products or brands. In reality, there are still many things going on. His Das Sollen or legal regulations that counterfeiting is still a complaint offence as stated in Law number 20 of 2016 concerning Marks and Geographical Indications article 103 is not effective, and it is recommended that anyone who sees counterfeiting can report it.

## **PROBLEM FORMULATION**

Based on the background of the problems described above, several problem formulations can be formulated. They are whether Law Number 20 of 2016 concerning Marks

and Geographical Indications and the role of government-related agencies could be more optimal in protecting business actors from counterfeiting cosmetic product brands.

## **METHOD**

Peter M. Marzuki suggests that “if legal research can be used to produce arguments, theories, or concepts as a description of solutions to problems that will occur soon, so the expected results of analysis in legal research are *right, appropriate, inappropriate or wrong*, then it can be said that the results obtained in legal research have contained value (Marzuki, 1998).

The method used in writing this dissertation uses the normative method of legal issues, which includes conceptualizing the law into a norm, the principle of using the legal method, which is also described descriptively based on various legal rules and problems in the literature. Finding the choice of law problem becomes the object of the problem.

## **RESEARCH RESULTS AND DISCUSSION**

### **Famous Brand**

Definition of a Famous Brand, According to Tommy, a famous brand is a brand that has a high reputation, has great appeal to the public, and it is suggestive because it is widely known beyond national boundaries, transcends regional boundaries, and is even known throughout the world and has high value (Purwaka, 2017). A brand becomes famous through hard work of research and development (*research and development-R&D*) in the creation, engineering and modification of goods and services products, in the field of finance and pricing, in the field of promotion and consumer interest and in the field of placement and distribution. The building and development of trademarks and service mark to become well-known is a business that is costly and takes a long time. Therefore, the reputation of a famous brand needs to be legally protected. Ownership of a product with a famous brand that is expensive often becomes the identity of certain upper-class people. The middle and lower-class people who want to imitate the lifestyle of the upper-class society cannot afford to buy genuine, favourite, branded products. Therefore, the government views it necessary to provide legal protection to well-known brands and educate the public to produce and obey the law.

A brand can be called a brand if it fulfils the absolute requirement of sufficient distinguishing power (*capable of distinguishing*). It means the sign that is used (*sign*) they have the power to differentiate the goods or services produced by one firm from those of other firms. To have this distinguish power, the brand must be able to provide a determination.

### **The Theory of Law's Role in Economic Development**

Paul A Samuelson, Nobel laureate in 1970. Economic historian Randall E. Parker calls him the Father of Modern Economics. Meanwhile, *The New York Times* views it as *the foremost academic economist of the 20th*. (Sumadi, 2018)

Law has a very central role in the success of a country's economic development, especially in providing business and investment certainty. In developing countries, the law has a major role in providing economic development opportunities (Krismiaji, 2011). Law has a role in the success of economic development in a country, and it is because the function of the state is to provide business and investment certainty. Therefore, in developing countries, the law has a big role in increasing and providing opportunities for economic development.

Economic development in a country cannot be separated from legal aspects. Without clear legal certainty, foreign investment will not enter a country. Therefore, support from the legal field for the economic development of a country is very much needed. Law has a very central role in the success of a country's economic development, especially in providing

business and investment certainty (Krismiaji, 2011). Mochtar Kusuma Atmadja developed the theory of development law by providing a rational basis for the function of law in the structure of state life as a “*tool of social engineering*” (Wignjoesuebrotto, 2012). According to Mochtar Kusuma-Admaja, the function of law is to regulate to achieve legal goals in the form of justice (Sidharta, 2012). Law plays an important role in the economic development of a nation. However, for the law able to play its role in providing legal certainty to business actors/economic actors, the government, as the policy maker of the law, is responsible for making the law authoritative by responding and following up on improvements to the legal system, so for a longer period In the future, it is hoped that the law will be able to play its role as a guiding, guiding factor, and creating a conducive climate in the economic field.

According to Max Weber, if the law wants to play a role in economic development, then the law must have 5 qualities, they are (1) *stability*; (2) *predictability*; (3) *Fairness*; (4) *education*; and (5) *the special development abilities of the lawyer* (Rajagukguk, 2017).

### **Legal Basis of Brand**

Brand protection in Indonesia is based on the following national and international provisions: International Conventions related to trademark protection (Harris, 2019):

TRIP's Agreement (1994), ratified by Law Number 7 of 1994;

1. Paris Convention (1967), ratified by Presidential Decree No. 15/1997;
2. Trademark Law Treaty (TLT), ratified by Presidential Decree No. 17/1997; 4. *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, ratified by Government Regulation Number 22 of 2018.

The laws and regulations related to brands:

1. Law Number 20 of 2016 concerning Marks and Geographical Indications;
2. Government Regulation Number 23 of 1993 concerning Procedures for Application for Marks;
3. Government Regulation Number 24 of 1993 concerning Classes of Goods and Services;
4. Government Regulation Number 7 of 2005 concerning the Mark Appeal Commission;
5. Government Regulation Number 22 of 2018 concerning International Mark Registration;
6. Government Regulation of the Republic of Indonesia Number 36 of 2018 concerning the Recording of Intellectual Property License Agreements;
7. Government Regulation Number 29 of 2019 concerning Types and Tariffs of Non-Tax State Revenue (PNBP);
8. Regulation of Law and Human Rights Minister Number 67 of 2016 concerning Trademark Registration;
9. Regulation of Law and Human Rights Minister of Republic of Indonesia Number 42 of 2016 concerning Electronic Intellectual Property Application Services;
10. Regulation of Law and Human Rights Minister Number 12 of 2019 concerning Geographical Indications.
11. Republic of Indonesia Presidential Decree dated May 7<sup>th</sup> 1997, Number 15 of 1997, concerning Amendments to Presidential Decree Number 24 of 1979 concerning Ratification *Paris Convention for The protection of Industrial Property and Convention Establishing The World Intellectual Property Organization*.
12. Republic of Indonesia Presidential Decree dated May 7<sup>th</sup> 1997, Number 17 of 1997, concerning the Ratification *Trademark Law Treaty*.

In addition to the 2 (two) brand scopes above, the Trademark Law and Geographical Indications also protect collective marks. A collective mark is a mark used on goods and services with the same characteristics regarding the nature, general characteristics, and quality of goods or services and their control which several people will trade or legal entities jointly to distinguish them from goods and services of another kind.

The following are some examples of registered and non-registerable brands:

Terdaftar		Tidak dapat didaftar
Pemilik Luar Negeri	Pemilik dalam Negeri	
		
		

### Brand Protection Purpose

The exclusive rights to the brand granted by the state to the owner of the brand have the following purposes:

1. Use the brand itself.
2. Grant permission to other parties to use them in goods and services trading activities.

In addition to having the objectives mentioned above, a brand also has the following functions:

1. As one of the identification marks to distinguish one product or service from another;
2. As a means of promotion/advertising of goods or services;
3. As a basis for building an image/reputation and providing a guarantee for the quality of the said product or service;
4. As an indication of the origin of goods or services to be more easily recognized by consumers.

Legal protection is a description of the work of legal functions to realize legal goals so that it can give justice, expediency and legal certainty. Legal protection is attached to a brand as an object against which it relates to the rights of individuals or legal entities. Competitors can imitate other parties' brands without spending money or legal protection.

Zen Umar Purba stated the reasons why IPR needs to be protected by law as follows (Purwaka, 2017):

1. Reasons that are "non-economic in nature" state that legal protection will encourage those who produce intellectual works to continue to carry out intellectual creativity. It will increase self-actualization in humans. For the community, it is useful to improve the development of their lives.
2. The reason for being economical is to protect those who give birth to such intellectual works means that those who give birth to the work benefit materially from their works.

On the other hand, it protects them from impersonation, piracy, plagiarism or other fraudulent acts committed by others for entitled works. Meanwhile, according to Philipus M. Hadjon, there are 2 (two) types of legal protection, they are ((Purwaka, 2017):

1. First, Preventive Legal Protection Means. In this preventive legal protection, the subject of law can raise his objection or opinion before a government decision gets the definitive Tommy form. The goal is to prevent disputes from occurring. Preventive legal protection is very meaningful for government actions based on freedom of action because, with preventive legal protection, the government is encouraged to be careful in making decisions based on discretion. Unfortunately, in Indonesia, there is no specific regulation regarding preventive legal protection.
2. Second, the Repressive Legal Protection Means aims to resolve disputes. The handling of legal protection by general courts and administrative courts in Indonesia belongs to this legal protection category. The principle of legal protection against government actions rests and originates from the concept of recognizing and protecting human rights because, according to history from the west, the birth of the recognizing and protecting human rights concept is directed at the limitations and laying down of community obligations and government. The second principle underlies the legal protection of government action is the principle of law country. Associated with the recognition and protection of human rights, the recognition and protection of human rights take precedence.

As a country with an open economy principle, Indonesia cannot escape the era of free trade, which is the application of economic globalization. At this time, national boundaries are almost invisible, and it is because trade traffic and information technology have run very fast. Moreover, product competition in trade or international business competition is increasing due to deregulation in all fields so that quality products will dominate the market.

### **Law Number 20 of 2016 concerning Marks and Geographical Indications and the role of the relevant government agencies could be more optimal in protecting business actors from counterfeiting cosmetic product brands**

Cosmetics include pharmaceutical preparations, with the definition of cosmetics are ingredients or preparations intended to be used on the outside of the human body, such as the epidermis, hair, nails, lips and external genital organs, or teeth and mucous membranes of the mouth mainly to clean, perfume, change the appearance and improve body odour or protect or maintain the body in good condition.

Law Number 20 of 2016 concerning Marks and Geographical Indications Article 103 states that Criminal Acts Articles 100-102 are Complaints Offenses (UU No.20. 2016). If there are counterfeit products, the Directorate General of Intellectual Property is only authorized to take action if there is a report from the aggrieved party, namely the brand owner. Adam Agung Indriyanto, Director of the Directorate General of Intellectual Property (DJKI), stated that according to Intellectual Property Rights that the right-right to a Mark is an exclusive right granted by the state to the owner of a registered Mark for a certain period by using the mark himself or giving permission to another party to use it or prohibit other parties. Therefore, the burden of responsibility lies with the brand owner to do business and be active, which is the Brand Complaints Act. Thus fake cosmetics are a burden on the brand owner's responsibility. Meanwhile, fake brand reporting requires several things that make it difficult for brand owners.

DJKI Kemenkumham does not act as a supervisor or oversee brand counterfeiting. From the results of interviews and analysis of existing regulations, it is clear that the government is not optimal in protecting brands because brand owners are given the responsibility to protect their brands. If there is a problem, it can be submitted as a complaint offence. Agung Indriyanto also explained that until now, the function of IPR is the function of certification which only issues CERTIFICATE, not including supervision.

There are 3 cycles of trademark protection, namely (1) the registration stage when submitted, (2) the Commercialization Cycle, and (3) The Rule of Law Stage Cycle if there is a Mark dispute. Haki is involved in cycle 1 and has never been involved in the commercialization

cycle and the dispute stage in cycle 3. Based on Law Number 20 of 2016 concerning Marks and Geographical Indications Article 103, Articles 100-102 Crimes are Complaints Offenses (UU No.20. 2016).

Fake brands of cosmetic products are still widely produced and circulated/sold in the market *online* or directly in traditional markets, and it is because many consumers buy these products, possibly due to consumer ignorance. In addition to fake cosmetics that are similar to the real thing, there are also fake cosmetics that promise instant beauty results, for example, instantly making pure white skin brilliant. This advertisement or promotion is in great demand by consumers because it promises instant beauty results. Promise beautiful and white instantly, and there is the possibility of using raw materials prohibited by BPOM. Business actors who comply with brand owner regulations will not make excessive advertisements because BPOM supervises them following the Regulation of the Food and Drug Supervisory Agency Number 3 of 2022 concerning Technical Requirements for Cosmetic Claims.

The consideration issued by this BPOM regulation is that to ensure the safety, benefit, and quality of cosmetics for the community, cosmetics must meet the technical requirements of cosmetics, including cosmetic claims to protect the public from misleading and non-objective cosmetic claims. The Regulation of the Food and Drug Supervisory Agency, Number 23 of 2019, concerning the technical requirements of cosmetic raw materials, explains the cosmetic ingredients used to manufacture cosmetics and which are prohibited.

Decision case number 2269 K/Pid. Sus/2010, in the case of defendant Djon Djin Kong as Andi, the defendant made cosmetic products with the fake CR brand, which at the time of BPOM examination found hazardous materials containing Mercury and Hydroquinone. So it can say that this case also violates BPOM Regulation No. 23 of 2019 concerning the technical requirements for cosmetic raw materials. Moreover, the use of Mercury and Hydroquinone can cause serious health problems. Thus, it can be suspected of violating Health Law Number 36 of 2009 Articles 196 and 198. In this case, PT Dunia Sehat Prosperous, the owner of the CR brand, was blamed because BPOM found during an audit that CR brand cosmetics contained Mercury and Hydroquinone. Fake CR Brand Cosmetics are made not based on Good Cosmetics Manufacturing Practices. Therefore, it is likely to cause deviations during production.

Based on the Presidential Regulation of the Republic of Indonesia Number 80 of 2017, it is stated in article 2 that BPOM has the task of carrying out government duties in the field of Drug and Food supervision following the provisions of the legislation. BPOM carries out the functions of implementing Supervision Before Circulation and During circulation, coordinating the implementation of Drug and Food supervision with central and regional government agencies. BPOM also acts against violations of the laws and regulations in the drug and food supervision field.

However, from the existing regulations and the results of interviews with Mr Adam P.W. A. Wibowo, Coordinator of the Legal Advocacy Substance Group of BPOM, BPOM has many legal instruments related to IT, online circulation and work units that handle it. It used to be under the auspices of IT. Currently, there are cyber-related cyber patrols related to circulation in the network. BPOM determines BPOM's priority, not the brand, but no distribution is permitted. BPOM knows that cosmetics are fake or genuine from information from the public or the company that owns the brand. Indeed, BPOM sees the relationship between the production line or distribution line and the data in BPOM.

BPOM does not have the authority to decide or determine whether it violates other people's marks; if it happens and BPOM makes a notification, BPOM, in principle, will cancel the notification following the applicable rules by submitting it to the authorities. BPOM's priority for supervision is the existence of criminal acts that impact health. The authority of BPOM to conduct investigations is stated in Law Number 36 of 2009 concerning Health. In

Article 196, it is stated that any person who intentionally produces or distributes pharmaceutical preparations and medical devices that do not meet the standards and requirements for safety, efficacy or benefit, and quality. Article 197 states that any person who intentionally produces or distributes pharmaceutical preparations and medical devices that does not have a distribution permit. Article 198 relates to anyone who does not have the expertise and authority to practice pharmacy (UU No. 36 - 2009).

Regarding brand counterfeiting, according to BPOM, in terms of legal aspects, BPOM carries out supervision based on risk management. In addition, law enforcement is carried out in coordination with investigators. BPOM's discovery related to brand counterfeiting was because the product did not have a distribution permit and was then coordinated with the product owner registered with BPOM. Currently, BPOM does not have the authority to take action against counterfeit cosmetics, except those related to health problems or industrial permits, distribution permits and CPKB.

Based on the 1945 Constitution of the Republic of Indonesia Article 1 Paragraph (3), it is stated that the State of Indonesia is a state of law. Thus every action has legal consequences (UU No.20 - 2016). Thus every action has legal consequences. Some countries rely on their economic and trade activities for the products they produce. Thus, the brand becomes one of the human intelligence works closely related to economic activities and trade plays a very important role.

Based on the 1945 Constitution of the Republic of Indonesia, Article 1 Paragraph (3) affirms that the State of Indonesia is a state of law, implying that all life structures of the nation, society and state are based on a state of law. Thus every action has legal consequences. Furthermore, the rule of law is a country in which various aspects of regulations are coercive and have strict sanctions if violated. It further emphasizes to the whole community that Indonesia is a state of law, so the people are obliged to obey the applicable rules (Purwaka, 2017).

A state of law or *the rule of law* is a country that, in acting, is based on the rules or by applicable law. If someone violates the rules, he has the right-right to get punishment because he is considered to have violated the law. The term the rule of law began to develop around the 19th century. According to Plato, the rule of law is a country with aspirations to pursue truth, decency, beauty and justice. Meanwhile, according to Aristotle, the rule of law is a state that stands on the law that guarantees justice for all its citizens (Purwaka, 2017).

The State of Law has the characteristics of, among others, (1) Law as a benchmark for all fields or the Rule of Law, where the rule of law is the state uses the law as a benchmark or rule in all fields. The attempt to place the law in the highest place as a means of protection of its people. In the absence of intervention and abuse of the law, including the state's top brass. (2) This is an effort to place the law in the highest place to protect its people without any intervention and abuse of the law, including state officials. It is not only the central judiciary, and an independent and impartial judicial system also applies to regional courts. The judiciary must run according to the law and apply the same law so that there is no one-sidedness between the people and the higher-ups of the state. (4) The existence of criminal and civil courts. Criminal courts are courts that deal with law violations involving many people, while civil courts deal with violations of law that only involve individuals. The existence of criminal law and civil law characterizes a state of law, and the state can be called a state of law. (5) Legality in the sense of law itself, Legality in law is a fundamental principle to maintain legal certainty.

The state of law, or having the term or *the rule of law*, is a state that, in acting, is based on rules or following applicable law. If someone violates the rules, he has the right-right to get punishment because he is considered to have violated the law. The term the rule of law began to develop around the 19th century. According to Plato, the rule of law is a country with aspirations to pursue truth, decency, beauty and justice. Meanwhile, according to Aristotle, the

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The State of Indonesia is the State of Law and has characteristics including (1) Law as a benchmark for all fields or the Rule of Law, where the Rule of Law is that the country uses the law as a benchmark or rule in all fields. It is an attempt to place the law in the highest place to protect its people in the absence of intervention and abuse of the law, including the state's top brass. (2) There is protection and recognition of human rights (HAM) for all its people. (3) A impartial judicial system with equal standing before the law. This judicial system includes judges, prosecutors, and court administration members that have been determined under applicable law. It is not only the central judiciary but also a free and impartial justice system also applies in regional courts. The judiciary must proceed following the law and apply the same law so there is no one-sidedness between the people and the higher-ups of the state. (4) The existence of criminal and civil justice. Criminal justice is a court that deals with law violations that concern many people, while civil deals with law violations that only involve individuals. The existence of criminal and civil law are the characteristics of a law state, and the state can be called a state of law. (5) Legality in the sense of law itself, Legality in law is a fundamental principle to maintain legal certainty.

This principle of legality is established and then used to protect all individual interests. This legality also limits the authority of state officials to take responsibility if they violate applicable laws. The reasons for a state to become a state of law include the sake of democratic legitimacy, legal certainty, demands for equal treatment and demands for a reason. The theoretical framework in this research is the rule of law theory. The implementation of the rule of law theory is stated in the 1945 Constitution, which reads that Indonesia is a state of law, which implies that everything is based on applicable law. Related to brand and brand counterfeiting is also related to this theory.

As a consideration of changing the Republic of Indonesia Law Number 15 of 2001 concerning Marks to the Republic of Indonesia Law Number 20 of 2016 concerning Marks and Geographical Indications that in the global trade era, it is in line with international conventions that Indonesia has ratified. Therefore, brand Licensing and Geographical Indications become very important, especially in maintaining healthy business competition, fairness, and consumer protection. It also protects Micro, Small, and Medium Enterprises and domestic industries, and it further improves services and provides legal certainty for the world of industry, trade, and investment in the face of local, national, regional, and international economic developments. Therefore, information and communication technology development needs to be supported by adequate legislation in Trademarks and Geographical Indications.

Meanwhile, Philipus M. Haddon, in his book *Tommy Hendra Mark Protection*, said that there are 2 (two) kinds of legal protection means. The first is Preventive Legal Protection Means. In this preventive legal protection, legal subjects can submit their objections or opinions before a government decision gets a definitive form. The aim is to prevent disputes from occurring. Preventive legal protection is very meaningful for government actions based on freedom of action because, with preventive legal protection, the government is encouraged to be careful in making decisions based on discretion. Unfortunately, in Indonesia, there is no specific regulation regarding preventive legal protection (Purwaka, 2017).

Second, Repressive Legal Protection Means it aims to resolve disputes. The handling of legal protection by general courts and administrative courts in Indonesia belongs to this category of legal protection. The principle of legal protection against government actions rests and originates from the concept of recognizing and protecting rights. As a country with an open economy principle, Indonesia cannot escape the free trade era which is the application of economic globalization. At this time, national boundaries are almost invisible, and it is because trade traffic and information technology have run very fast. Product competition in trade or international business competition is increasing due to deregulation in all fields so that quality products will dominate the market (Purwaka, 2017).

Violation of the mark occurs because it is considered that the brand can provide immediate benefits for irresponsible parties. The concept of legal protection for brand holders. Implicitly, the existing regulations do not provide direct legal protection for business actors whose trademarks are used by unfair business competition. The law only provides imprisonment and penalty, and it is necessary to provide administrative sanctions for business closure for business actors who commit violations in carrying out their business activities related to trademarks. Restoration of the good name of products imitated and counterfeited by such dishonest business competitors and the need for regulations that regulate the law strictly and fairly for business actors who do not register their trademarks so that there is no imitation and counterfeiting of trademarks. From this statement, it can be seen that there currently needs to be a satisfactory solution to brand counterfeiting.

The issue of legal protection for trademarks registered with the Directorate General of Intellectual Property Rights is an important aspect of the trademark system. The mark should protect because it can trigger irresponsible parties to act illegally. Counterfeiting and trade in fake cosmetics generally use well-known brands or are well-known to the public because it makes it easier for products to be traded without promoting products that can sell. Well-known products require high costs for promotion, and this is a fee or cost that needs to be paid or incurred by business actors.

Based on the positive law in Law No. 20 of 2016 concerning Brands and Geographical Indications. That the mark is an Intellectual Property Right protected by the government and the law. So, the writer can conclude that those who violate or plagiarize a well-known mark can be subject to imprisonment and a penalty as described in the law because the mark is a protected asset. The government has also made an appeal or socialization regarding the importance of Intellectual Property Rights (IPR), and trademarks are included in (IPR).

## **CONCLUSION**

As a consideration from the change in the Republic of Indonesia Law Number 15 of 2001 concerning Marks becomes the Republic of Indonesia Law Number 20 of 2016 concerning Marks and Geographical Indications, it is if in the era of global trade, in line with international conventions that have been ratified by Indonesia, licensing of Marks and Indications Geography becomes very important, especially in maintaining fair, fair business competition, consumer protection, it is also protecting Micro, Small, and Medium Enterprises and domestic industries, it is also to improve services further and provide legal certainty for the world of industry, trade and investment in the face of challenges local, national, regional and international economic developments. Also, information and communication technology development needs to be supported by adequate statutory regulation in the field of Marks and Geographical Indications. Based on the positive law in Law No. 20 of 2016 concerning Brands and Geographical Indications. That the mark is an Intellectual Property Right protected by the government and the law. So, the writer can conclude that those who violate or plagiarize a well-known mark can be subject to imprisonment and a fine as described in the law because the

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