



UDC 332

LEGAL RATIONAL OF THE REFUSION OF TRADING A TRADE WITH THE NAME OR SUMMARY OF A FAMOUS PERSON IN INDONESIA

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ABSTRACT

The use of the name or abbreviation of a famous person's name as a trademark of goods and/or services in trade is something that can benefit consumers, but if such goods or services have poor quality results in the name of such famous persons becoming bad anyway, although not necessarily the famous people as the owner of the bar and / or such services so in the Law No. 20 of 2016 on Marks and Geographical Indications in Article 21 paragraph (2) Application is rejected if such a Brand: a. is or resembles name or shortcut of famous man, photo, or b. name of legal entity owned by another person, except with the written consent of the right holder. The ration legis of the formulation of these rules is based on the philosophical foundation of the Second Pancasila of Fair and Civilized Humanity, the jurisdictional foundation is Article 28D paragraph (1) which reads "everyone is entitled to the recognition of guarantees of protection, and the certainty of justice and equal treatment before the law". And the basis of sociology is the appreciation of the reputation of famous people.

KEY WORDS

Mark, name, famous name, intellectual property right.

Indonesia is one of the countries that has ratified the establishment of the World Trade Organization (WTO) through the Act No. 7 of 1994 on the approval of the Agreement Establishing The World Trade Organisation (Agreement establishing the WTO) invited in the State Gazette of the Republic of Indonesia 1994 No. 57, of 2 November 1994. The WTO generally regulates 4 (four) things: General Agreement on Tariff and Trade (GATT), General Agree on Trade in Services (GATS), Trade Related Aspects of Intellectual Property Right (TRIPs), Traderelated Investment Measures (TRIMs). Ratifies the establishment of the WTO promotes Indonesia's membership also ratifies the products of rules issued by WTO and other related regulations including the Paris Convention for the Protection of Industrial Properties which has been ratified by Presidential Decree No. 15 of 1997 issued in the State Gazette of the Republic of Indonesia No. 31 of 1997 and Trademark Law Treaty approved by the President's Decision No. 17 of 1997 invited in the Government Gazette No. 34 of the Republik of Indonesia of 1997. With the ratification of the WTO then the rules in Indonesia relating to such matters must be adjusted.

Regulations relating to TRIPs, the Paris Convention, trademark law can be incorporated into the sphere of private law and such matters are largely regulated in regulations of a specific nature. The book of the Law of Personnel (KUHPer) as the general foundation of private law in Indonesia contains four books: one book about people (van personen), the second book about things (van zaaken), the third book about bonds (van verbintenissen) and the fourth book about proof and validation (van bewijs en verjaring). In the second book KUHPer read about things, In the Book of Revelation 499 every property and every right is possessed by property, so that the property can be divided into two groups (Budi Santoso, 2008):

- Real property: that is to say, on the material property (e.g. the right to land, buildings, vehicles);
- Intellectual property: this is the right on the non-material property. In this case, one has to do some kind of creativity in order to be able to have rights. For example, making books, songs, computer programs, etc.



Furthermore, as explained by Mahadi, the goods under Article 499 of the Perdata are material (stof-felijk voorwerp), while the right is intangible. This classification is in line with the classification of objects according to Article 503 of the Civil Code, i.e. classifying objects into groups of physical and non-physical objects. (Saidin, 2007)

Intellectual Property Rights (IPRs) are part of a long-known property right to protect the results of human creativity in the fields of industry and commerce. Problems in the fields of industry and trade prompted the birth of a new theory of the establishment of rights related to intellectual property rights that serves to solve problems both at the local and international levels.

The terms used by Indonesian authors and academics regarding intellectual property rights include Intellectual Property Rights (Mahadi, 1985), Intellectually Properties Rights (Muhammad Jumhana and R. Djubaedillah, 2003), and Intellectional Properties Rights (Eddy Damian, 2002), as well as Intelligence Rights (Saidin, 2007), which were subsequently, on the invitation of the Minister of Law and Law of RI No. M.03.PR.07.10 2000 and the approval of the Ministry of State for Disclosure of State Appliances of RI in accordance with letter No. 24/M/PAN/1/2000 officially used the term intellectual property rights. (The next one is called the IPRs).

Intellectual property rights are rights arising from human intellectual activity in the fields of industry, science, art and literature (WIPO, 2001a). IPRS according to the advanced state system is an individual property or individual right (personal right) that is not in intervention or in interference claimed by anyone or considered a violation (infringement) for anyone who violates the personal rights of the holder of IPRS (Ariyanti, 2011). The concept of individual and developing IPRS is not difficult to accept, especially in a society that upholds common values such as the society of Java, Bali or Indonesia in general. The Java society believes that when there is a creation of one's creativity used or imitated by another is a pride, without having to ask for a reward for the creation (Budi Santoso, 2008).

Intellectual property rights are divided into two categories: industrial property and copyright. Industrial property includes patents, utility models, industrial designs, trademarks, service marks, trade names, geographical indications while copyright also includes related rights or so-called neighbouring rights (WIPO, 2001b). Almost the same is expressed by Tim Lindsey who stated that "IPRs can be grouped into copyrights consisting of copyright itself as well as neighbouring rights and industrial property rights which can be classified into patents, utility model, Industrial design, trade mark, trade secrets, service mark, trade names or commercial names, Appellations of Origin, indication of Origin, unfair competition protection (Tim Lindsey, Eddy Damian, Simon Butt, 2006).

Brands that are part of IPRs are interesting to discuss because they have a fairly high commercial value, but often after buying branded goods/services, we cannot enjoy the brand but enjoy the product. A brand may only bring satisfaction to its buyer, its material things to enjoy. According to OK Saidin, a brand is an intangible object of something attached or attached to a product, but it is not the product itself (Saidin, 2007). According to Lindsey's team, a brand is something (image or name) that can be used to identify a product or company on the market (Tim Lindsey, Eddy Damian, Simon Butt, 2006).

Rahmi Jenet argues that a brand is a name and symbol used in doing business and marketing goods and services. These symbols will help to indicate the origin of goods or services, as well as commercial companies that operate in the field and suppliers of the goods & services. Brands are a tool used as a spear to the trade of goods and services (Jened, 2017).

There are generally two types of trademark protection systems in the world: a Declarative system based on who uses the trademark first and a Constitutional system that bases protection on who registers the trademarks first. In Indonesia, under the Law No. 20 of 2016 on Marks and Geographical Indications 2016 (MIG Act 2016) the system of protection is a constitutive system. So the registration of a trademark to the Directorate IPRS of the Ministry of Law and Human Rights of the Republic of Indonesia is a must to get protection.

A trademark is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, colour arrangements, in the shape of two (two) dimensions



and/or three (three) dimensional sounds, holograms, or a combination of two or more such elements to distinguish goods and / or services produced by a person or legal entity in the trade of goods or services.

Currently, the creative economic conditions in Indonesia are experiencing positive growth. According to data from the Central Statistical Agency (BPS) for the second quarter of 2021, the contribution of the creative economy to Indonesia's gross domestic product (GDP) reached 7.3 percent or about Rp 1.149.22 trillion.

The principle of making a trademark for such goods and services is the right of the owner of the goods or services, provided that it is not contrary to the applicable legislation. The Indonesian culture of naming/ giving a name to someone often has something in common, this can be based on admiration for a figure like the name of Prophet Muhammad SAW then named Muhammad, admiration of President Sukarno then naming Sukarno and others or the name is a family name such as Nasution, Bakrie, and others. Giving a child a name by the name of a famous person can be done for a variety of reasons, such as: such as: Respect and Inspiration, Personality and Personal Interests, Cultural and Historical Origin, Positive Image (Fahimah, 2019).

Such a person's name was then used as a trademark that was actually permitted but if it happened to be the same as the name of such a famous person both nationally and internationally it could be a problem.

Article 21 Paragraph (2) Application is rejected if the Trademark:

- is or resembles the name or abbreviation of the name of a famous person, photo, or name of the legal entity owned by another person, except with the written consent of the right holder;
- is an imitation or a resemblance of a name or acronym of name, flag, emblem or emblem of a State, or national or international institution, unless by written agreement of the authority; or
- is a replica or resemble an official mark or stamp or stamp used by a State or Government agency, exceeding the written approval of a authority.

So is this a form of prohibition as the meaning of Article 21 paragraph (2) letter a? Some examples of brand cases that use the name of a famous person as a trademark of goods and/or services.

First, Donald J. Trump, a famous U.S. businessman who served as President of the United States, on November 12, 2013 filed a lawsuit against Indonesian businessman, Robin Wibowo, to the Trade Court at the Central Jakarta State Court, for objections to Robin's acts allegedly recording part of his name. Robin uses TRUMPS as a Brand and has been registered with the Directorate-General of Intellectual Property Rights since 17 June 2010 for grade 35, namely, protecting types of employment placement agency services, auction services, advertising services, and provision of services for advertising models. The dispute was recorded in case number 83/HAKI/Merek/2013/PN Jkt Pst, and the judge's assembly resigned by a verdict and dismissed Donald J. Trump's lawsuit.

Second, Pierre Cardin, headquartered at 59, rue du Faubourg Saint-Honore, F-75008, Paris, France, in this case authorizes an Indonesian lawyer dealing with Alexander Satryo Wibowo of Indonesia by involving also the President of The Republic of Indonesia, Department of Justice and Human Rights, Director General of Intellectual Property Rights, Directorate of Brands. Pierre Cardin in his lawsuit referred that the plaintiff (Pierre Cardin) is the name of a designer (designer) from France whose name is very famous among the consumer community in various countries of the world, including in the country of Indonesia, this dispute is recorded in case No. 557 K/Pdt.Sus-IPRS/2015.

Some examples of controversy over the use of the name of a famous person as a trademark may be due to the lack of legal certainty as to what the person is referring to, so clarifying the meaning of "Rejection of a Trademark Application if it is or Resembles a Name or Abbreviation of a Name of a Famous Person" is something important in order to enforce the function of the state to provide legal certainty on one side of the trade.

Understanding property rights first we try to understand the term right. Black's Law Dictionary explains a fairly broad sense:



“As a noun. And taken in an abstract sense, means justice, ethical correctness, or consonance with the rules of law or the principles of morals... rights are defined generally as power of free action. And the primal rights pertaining to men are enjoyed by human beings purely as such, being grounded in personality, and existing antecedently to their recognition by positive law. But leaving the abstract moral sphere, and giving to the term a juristic content, a right is well defined as a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others.”

Bambang Pratama, “Rekonseptualisasi Karakteristik Hak Kekayaan Intelektual Dalam Hukum Siber 1,” Prosiding Seminar Nasional, 2015, 414–433, www.seconlife.com. A.M. Honoré’s rights are right to use, right of exclusion (possession), right to compensation, right to destroy, waste or modify, Right to income, absence of term, liability to execution, power of transfer.

Rights are prerogatives or privileges held by individuals or groups in society, which give them a certain freedom, protection, or advantage (Kusmaryanto, C. B. 2021). These rights give them the ability to act, pursue a purpose, or obtain a certain benefit without interference or intervention from others. These rights are based on the moral, legal, or social principles recognized in a country or society.

According to Rasjidi, ownership is the relationship of a person with a thing that forms the right of ownership of the thing (Rasjidi, L. 1988). According to Darji Darmodiharjo, the property is a relationship between the subject and the thing, which gives the authority to the subject to dispose and / or defend the thing from the claims of another party (Darji Darmodiharjo and Shidarta, 2006).

When we understand property as a right, not just a property, there is a compulsory claim against a use or benefit of something, whether it is the right to enjoy a common source or an individual right on a certain property. The logical implications of the definition of ownership as an enforceable claim, that ownership is an interpersonal political relationship (Darji Darmodiharjo and Shidarta, 2006). That ownership is a political relationship between individuals is equally obvious because every ownership system is a system of rights of each individual in relation to other individuals (Macpherson, C.B. 1989).

A person is free to apply or register his intellectual work or not. The exclusive rights granted by the state to a person who has committed IPRs are intended as an appreciation of the results of the work and so that others are encouraged to be able to further develop it again, so that with such IPRS system the interests of the public are determined through the market mechanism. (Marpaung, 2019) Intellectual Property Rights (IPRs) are the legal rights granted to the owner of an intellectual work to possess and use the results of its work, both for commercial and non-commercial gain. The purpose of IPRs protection is to encourage innovation, creativity, and investment in the development of new technologies and products. The IPRS protection also aims to protect the intellectual property rights of the owner of the work from being abused by others without proper permission or compensation.

Part of Intellectual Property Rights, a trademark has a definition of something (image or name) that can be used to identify a product or company on the market (Tim Lindsey, Eddy Damian, Simon Butt, 2006). Entrepreneurs usually try to prevent others from using their brands because by using such brands others gain good reputation and trust from consumers and can build a relationship between such a reputation with the brands that the company has used regularly. All of the above can be detrimental to the real brand owner.

The history of the brand's development flourished in the mid-19th century, as part of the law that regulated the issue of fraudulent competition and counterfeiting of goods. The basic norm of trademark protection is that no one has the right to offer to the public as if it were the product of his business. It is a recognition that the trademark is the property of the person who carries it as an identification mark of its goods and to distinguish it from other goods that do not use it. This recognition is based on the recognition or knowledge of the public that the trade mark serves as a distinguishing feature. Such recognition encourages the public to buy goods which use the particular trademark, thus making it the object of the property rights of the owner of the mark (Jened, 2000).



A trademark is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, colour arrangements, in two dimensions and/or three dimensions, sounds, holograms, or a combination of two or more of these elements to distinguish goods and / or services produced by a person or entity in the trade of goods or services (Pasal 1 ayat 1 Undang-undnag No mor 20 tahun 2016 tentang Merek and Indikasi Geografis).

OK. Saidin, stated that a mark is a sign to distinguish goods or services that are similar to those that are traded by a person or group of persons or legal entities with similar goods and services produced by others, which have a distinctive power or as a guarantee of its success and are used in the trade of goods (Saidin, 2007).

H.M.N. Purwo Sutjipto, a mark is a sign, by which a certain object is personified, so that it can be distinguished from other similar objects (H.M.N. Purwo Sutjipto, 1984). A trademark is used to distinguish the goods concerned from other similar goods, therefore, the products concerned with the given trademark have; sign of origin, name, warranty, against its success (Ichsan, 1980).

Philosophically, there are three justifications for the protection of trademark rights according to Bently and Sherman, namely: (Hasil Penyelarasan Naskah Akademik RUU Tentang Merek, Badan Pembinaan Hukum Nasional Kemnterian Hukum and Hak Asas Manusia RI, Jakarta 19 Maret 2015):

- Thus, the brand law encourages the production of quality products and continuously pressures those who hope to sell low-quality goods by exploiting consumer weaknesses to quickly assess the quality of goods;
- This information is the primary justification of brand protection, because the brand is used in the public interest thus improving the supply of information to consumers and thus increasing the efficiency of the market. By protecting a brand, by preventing counterfeiting by other parties, it will reduce the cost of buying and making decisions;
- Ethical theory, the main argument of brand protection based on the idea of fairness or justice (justice). Specifically the principle is that one should not reap from what he hasn't planted. More specifically, that by taking someone else's brand, one has taken advantage of the goodwill generated by the original brand owner.

Theory Kotler and Keller perceive brand image as the process by which a person selects, organizes, and interprets input information to create a meaningful image (Kotler and Keller, 2009). According to Kotler and Gary Armstrong, "Brand Image is the assembly of consumer beliefs about different brands" (Kotler and Armstrong, 2007). while Roslina states that "brand image is a group of associations organized into something meaningful (Roslina, 2010).

Shiu Li Huang and Hsiao Hsuan Ku: Brand image is the knowledge, feelings and beliefs people have about an organization, and through which they know, describe, remember, and relate to that organization) (Shiu Li Huang and Hsiao Hsuan Ku, 2016).

The concept of brand image refers to the perception, impression, and association that consumers have with a brand or company. Brand image reflects how consumers view, understand, and respond to a brand based on their experiences, information, and perceptions (Freddy Rangkuti, 2008).

There are several components that make up a brand image:(Efendi et al., 2020)

- Brand Attribute: This includes the characteristics and features of the product or service associated with the brand. For example, whether a brand is considered to be of high quality, innovative, reliable, or environmentally friendly;
- Brand value: This reflects the benefits expected or perceived by consumers when using the brand's product or service. For example, whether a brand provides the best quality, comfort, social status, or pleasure;
- Brand identity: It involves visual and verbal elements used to identify a brand, such as logos, slogans, and packaging designs. A strong brand identity can help distinguish brands from competitors and strengthen the desired impression in the eyes of consumers;



- Brand image: This is the perception and association that consumers have of a brand. Brand image reflects an image built through consumer interaction and experience with a brand over time. For example, whether a brand is considered modern, credible, classy, or friendly.

According to Rangkuti, brand image is "a set of brand associations formed and embedded in the mind of consumers." The concept of Brand Image Theory refers to the perception and association that consumers have about a particular brand. The concept focuses on how consumers perceive a brand and give value to the brand (Freddy Rangkuti, 2008).

The brand image is formed by a number of factors, including consumer personal experiences with the brand, information from family, friends, and advertisements, as well as the joint brand image formed from public information and marketing. The Brand Image concept is important in marketing because a strong and positive brand image can help a brand to distinguish itself from other brands in the market and motivate consumers to buy the product. Therefore, companies often strive to build a consistent and positive Brand Image through proper marketing and communication strategies.

Factors supporting the formation of brand image in connection with brand association: (a) Favorability of brand associations. (b) Familiarity of Brand association. (c) It's the uniqueness of the product (Kotler and Keller, 2009).

According to the experts above, it can be inferred that Brand Image is the consumer's belief in a trusted brand which has embedded its positive image in the mind of consumers. The concept of brand image or brand image theory is the theory that describes the way consumers perceive and interpret a particular brand or product based on the image formed in their mind.

Ratio legis is the rational thinking of law according to common sense, reason or reason which is the reason or purpose of the birth of the rule of law (Pringgogidgo, R. G. 1994). Based on this understanding, in relation to a law, it should be understood also that ratio legis almost equals the understanding of the truth of law that is an intisari or the foundations of the law.

As an attempt to know the ration legis (the basis of thought) the formation of a law can be known by reading academic manuscripts that have been previously compiled. Academic manuscripts are structured in a scientific research activity that produces rational, critical, and objective thinking. Therefore, the existence of an academic manuscript is essential to delineate deep thoughts, before eventually the thought is articulated in a legal manuscript.

An academic manuscript is a formal written document containing works or research results in the academic field. These manuscripts are generally written by researchers, students, or academics with the aim of presenting their findings, analysis, or ideas to an audience interested or related in the same field. Academic manuscript can include various types of writing, such as scientific articles, theses, dissertations, conference papers, research reports, and so on (Eko Supriyanto, 2017).

The purpose of academic manuscripts is to share knowledge, contribute to the development of knowledge in a particular field, and facilitate discussion and collaboration among researchers.

Philosophy or epistemology is a branch of philosophy that studies the essence of knowledge and how to acquire it. Some of the experts discussing philosophical foundations include Immanuel Kant, John Locke, and René Descartes. The path of philosophy is the basis of all forms of knowledge, both empirical and non-empirical (Immanuel Kant, 1781).

The philosophical element of the establishment of the MIG Act is understood as the consideration or reason that describes that the rule formed by considering the views of life, consciousness, and the spirit of law that covers the atmosphere of corruption and the philosophy of the Indonesian nation that originates from Pancasila and the opening of the Constitution of the Republic of Indonesia in 1945. (UUD NRI 1945) (Asshiddiqie, 2010). Therefore, the philosophical ideals contained in the law should reflect the philanthropic ideals of the society of the nation concerned and should not reflect philosophy of other nations.



Pancasila's philosophy is the result of the deepest thinking of the Indonesian people who are considered, believed and believed as something (facts, norms, values) that is the most true, fair, wise, best and most appropriate to the Indonesia people Burhanuddin Salam, 1988). As the basis of the State of Indonesia is used to regulate the entire order of life of the nation and the country of Indonesia. So here it means that everything related to government, regulation, implementation of the state system in Indonesia must be based on Pancasila (Ferry Irawan Febriansyah, 2017).

Pancasila is the Philosophical Pathway of the Indonesian nation, the most appropriate basis for the adoption of the MIG Act is a request to two "Just and civilized humanity". The State tries to balance the rights and duties of its citizens. Citizens who have achievements deserve more. A famous man can be said to be a man who performs according to his field so that his name should be protected.

In this context, the legal provisions which form the basis of the law concerning trademarks and geographical indications are the provisions of law which are formed to address legal problems or to fill a legal vacuum by considering existing rules, which are to be amended, or which will be abolished in order to guarantee legal certainty and a sense of justice of the public.

The Constitution of Indonesia is the UUD RI 1945 is the main jurisprudence in the regulation of laws in Indonesia, in UUDRI 1945 has given the Yuridis foundation on the establishment of rights that in Article 28H paragraph 4 "Everyone has the right to personal property rights and such property rights may not be arbitrarily taken over by anyone." In general rights can be classified (Darji Darmodiharjo and Shidarta, 2006):

- Perfect right and imperfect. Perfect right if its application and scope is clear, fixed and certain. Incomplete right is the opposite;
- The right of person and the right of in person impose obligations on a particular person;
- Primary and secondary rights Primary rights arise without reference to existing rights. Secondary rights can only arise for the purpose of protecting or enforcing primary rights;
- Preventive or protective secondary and reparative right. The preventive right is the right to prevent the violation or loss of the primary right where preventive rights can be enforced by law (judicial). The repressive right can be distinguished as: (a) the right to recovery of the original condition, (b) a right to make according to the law, (c) an absolute right and (qualified) a qualified right;
- The absolute rights granted to a person in connection with an object without being bound by time and can be assigned to all purposes, whereas the limited right is the right of an object granted a person for a certain purpose or under certain conditions anyway;
- The rights based on the law and based on equitable rights. The rights under the law are recognized by the court common law and the rights under equity are the rights recognised by the courts chancery.

Referring to various classifications of rights above the name of a famous person can be categorized as a perfect right (perfect) and if used as a trademark then applies the MIG Act 2016 Article 1 paragraph 5 "The right to a brand is the exclusive right granted by the state to the owner of a registered brand for a certain period of time by using the brand itself or giving permission to other parties to use it."

The sociological tracks are also filled in the minds of considerations of legislative regulations. Sociological paths reflect the state of society or the reality that exists in society. Sociological path describes that the rules are formed to meet the needs of society in various aspects. The true sociological trajectory concerns empirical facts about the development of problems and needs of societies and states (Zainal Arifin Hoesein, 2012)

Reading the consideration of the Act No. 19 of 1992 on Trademarks, where for the first time there is a phrase refusing the registration of trademarks when using the name or abbreviation of a famous person's name, there are considerations of sociological value that



in order to implement national development in general and the development of the economic sphere in particular, the brand as one of the entities of intellectual work, has an important role for the smoothness and increase of trade of goods or services; The need to establish trademark protection in the society is driven by the growth of the enterprise world and the industrial world in Indonesia so fast, so that entrepreneurs and industry players need a set of rules that can encourage creativity and provide legal protection, so national development can be achieved.

Indonesia, as the eye of a chain of developing countries, has also been exposed to the fever of industrialization. Since the planned start of economic development in 1969, Indonesia has begun to use an industrialization strategy approach. The aspirations of national industrialization are to create prosperity for the entire people, in the sense; the needs of goods and services are satisfied, the society has purchasing power, because of a worthy income with high productivity, and science and technology advances fairly and fairly. Parallel to this, industrialization also means building national economic resilience, so that sovereignty as real nations is realized (Vivin Retno Damayanthi, 2008).

The idea of national industrialization as an alternative answer deserves welcome. This answer, of course, includes changes in other social dimensions such as political, socio-cultural, bureaucratic, defence-security, living environment, etc. Therefore, it will be very important to know how the process of industrialization in Indonesia takes place through a political-economic perspective (Vivin Retno Damayanthi, 2008).

The Paris Convention (or "Convention for the Protection of Industrial Property") was an international treaty signed in 1883 to protect intellectual property rights between its member states. The primary objective of the Paris Convention is to promote the protection of patents, trademarks, and industrial designs worldwide by facilitating cooperation between member States in the field of protection of such rights.

Since its first agreement, the Paris Convention has undergone many changes and revisions, including the addition of new protocols and amendments to broaden its scope and increase its effectiveness. Currently, the Paris Convention has more than 170 member states worldwide, making it one of the most important international treaties in the field of intellectual property rights.

The Paris Convention for the Protection of Industrial Property (Paris Convention) has been ratified by Presidential Decree No. 15 of 1997 and has been promulgated in the State Gazette of the Republic of Indonesia No. 31 of 1997.

The Paris Convention is an international convention that seeks to standardize and streamline efforts to protect intellectual property rights with the aim of forming organizations of nations to protect industrial property and fulfil the rights of the right holders in each member state. The Paris Convention provides a general overview of the scope of industrial rights, principles of protection, priorities of application and enforcement and implementation to member states.

The Paris Convention was the first convention to mention the word "well known" which means protection of a well-known trademark. Article 6bis:

Marks: Well-Known Marks

- *The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.*

Substance Article 6bis of the Paris Convention deals with three legal issues:

- the obligation of a member to protect a well-known trademark by refusing or revoking the registration of trademarks that violate a well-known mark;



- that the establishment of a well known trademark shall be based on (a) a decision of an authorized official of the registered State, or (b) a ruling of an official authorized in the State in which the trademark is located; used; and
- Defining a violation of the well - Known Trademark for the whole or a substantial part of a trademark, or an imitation, or translation of such a mark that may cause confusion with a renowned trademark.

Thus, the Paris Convention has provided general provisions, and become an important source of fundamental law on well-known trademarks and their protection. The other side of using the name or abbreviation of the name of a famous person as a real trademark is the exploitation of the reputation of a well-known person who pretends to be the owner and has gained the advantage that this is the wrong way. The Paris Convention also provides general provisions on fraudulent competition, specifically set out in article 10bis:

- *The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition;*
- *Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.*

The following in particular shall be prohibited:

- *all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;*
- *false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;*
- *indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.*

See the meaning of article 10 bis of the Paris Convention, in which in the world of the trade of goods or services (Article 1 paragraphs 5 & 6 of the Act No. 7 of 2014) there must be a competition and as long as such competition is done well is not a problem, but if done with fraudulent methods then it is not allowed.

Brand is one of the elements of the trade of goods and services. To distinguish between goods and services, whether similar or non-similar, it requires a distinctive mark that we know as a brand. In a brand has a value that can discredit the product so that when the product is judged by the consumer is good then automatically the brand gets the impression of good quality judgement.

The commercial value of brands is getting higher, especially when it comes to famous brands. Protection of famous trademarks is an important issue in international trade. Quality impressions are also important to retailers, distributors and various other channel posts. Imaging and product quality can be important factors, brand expansion; quality impact can be exploited by introducing various brand extensions, i.e. by using a particular brand to enter a new product category. A brand that is strong in terms of quality impact will be able to expand itself further and will have a greater chance of success compared to an older brand.

Commercial value refers to the economic value of a product, service, or asset in a market context. It is a measure of value determined by the extent to which a product or service has the potential to generate profit or economic use. In a business context, commercial value covers a number of factors such as market demand, supply, uniqueness of the products or services, quality, brand reputation, competitive position, and other aspects that affect the ability of the product or services to sell and generate revenue. Commercial value analysis helps in setting correct prices, identifying market opportunities, managing competition, and optimizing profits (BPHN, 2014).

A brand of a product must not use the name of a famous person as in Article 21 paragraph 2 of UUMIG 2016 with the intention of worrying that the use of such a name of famous people creates confusion over the ownership of the product and the deterioration of the quality of such product is not as good as the reputation of a well-known person or discrediting the brand of other products.



A name as an identity of a person is inherent in character, attitude and personality so that it produces a judgment of that person which can also be called a reputation. Everyone must have a reputation, each has a good reputation for having more excellence in their respective fields so that they become famous people or public figures like Artists, Grand Teachers, Religious Shops, Officers, Politicians and others, while those who are not good for having committed acts of contempt like prisoners.

Trade Related Aspects of Intellectual Property Rights Agreements (TRIPs), is one of the pillars of the International Treaty on Intellectual Properties Rights in Trade Aspects within the WTO space, in addition to the TRIPS, the World Trade Organization (WTO) also regulates in general regarding the General Agreement on Tariff and Trade (GATT), the General agreement on Trade in Services (GATS), trade Related Investment Measures (TRIMs).

One of the provisions of the TRIPs contains about trademarks as one of the assets of the industry (TRIPs Agreement Part II section 2 artikel 15 -21). These provisions relate to the understanding of trademarks, the grounds for refusal of registration, the terms of a trademark that has been used but has not been registered, the trademark of goods or services that can be registered and the procedural requirements and the protection of trademark.

Trademark protection in TRIPs is one of the first ones, protecting trademarks of goods and services, previously in the Paris Convention which focused on trademark protection of commodities. TRIPs Agreement Part II section 2: *“artikel 16 paragraf 1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.”*

Secondly, in determining whether a trademark is a well-known trademark, Member States are required to take into account knowledge of trademarks in the relevant public sector, including knowledge in the Member State concerned acquired as a result of the promotion of the trademark. TRIPs Agreement Part II section 2 “Article 16 paragraph 2. Article 6 bis of the Paris Convention (1967) shall apply, mutatis mutandis, to services. In determining whether a trademark is well-known, Members shall take into account the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trade mark.

Thirdly, protection for well-known trademarks may also apply to goods or services that are not identical or similar to the goods and services of a registered trademark. Article 16 para. 3. Article 6 bis of the Paris Convention (1967) shall apply, mutatis mutandis, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods/services would indicate a connection between those Goods or Services and the owner of the registered trademark and provided that the interests of the proprietor of the registrated trademark are likely to be damaged by such use.

The TRIPs Agreement is a minimum basic protection of intellectual property rights in which the protection of well-known trademarks and WTO members can develop it according to the needs of Member States.

In 1995, the World Intellectual Property Organization (WIPO) established the Committee of experts on the international registration of brands and the protection of well-known marks to discuss issues relating to trademarks of renown and protection of trademarks worldwide. The aim of the Committee is to develop guidelines and recommendations that can help Member States of the WIPOs in addressing problems associated with trademark and protecting trademark effectively (The tendency and the development of the trade mark in the global level”, WIPO’s Asian regional workshop on international protection of trade mark, held at Ho Chi Minh City, Vietnam, from 23 to 25 October 2001).



In September 1999, the Paris General Assembly and the WIPO jointly endorsed their General Recommendation consisting of six Articles intended to clarify and amend the relevant provisions relating to the protection of trademarks under the Paris Convention and the TRIPS Agreement. The contents of the document make the following recommendations (The tendency and the development of the trade mark in the global level”, WIPO’s Asian regional workshop on international protection of trade mark, held at Ho Chi Minh City, Vietnam, from 23 to 25 October 2001):

- *Listing non-fulfilment of criteria which must be considered by the competent authorities of countries in order to define whether a trademark is well-known or not*
- *Making it clear that to relevant sectors of the public be utilized as an important factor for determinations of well-known trademark status*
- *Listing a number of factors which will not be necessary conditions for determining whether a trademark is a well-known mark*
- *Providing criteria under which a trademark shall be deemed to be in conflict with a well-known trademark, and*
- *Providing sanctions or punishments, which can be, used when there is any conflict between a well-known trademark and business identifiers as well as between a well-known trademark and a domain name.*

The importance of the Joint Recommendation lies in the fact that, although there is no definitive definition of a well-known trademark made for the first time in an international document issued by the WIPO, it is expected to be used to resolve a disputed brand, the recommendation, among other things, provides an overview of the factors that can be said to be well known trademarks, namely (The tendency and the development of the trade mark in the global level”, WIPO’s Asian regional workshop on international protection of trade mark, held at Ho Chi Minh City, Vietnam, from 23 to 25 October 2001):

- *The degree of knowledge or recognition of the mark in the relevant sector of the public;*
- *The duration, extent and geographical area of any use of the mark;*
- *The duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies;*
- *The duration and geographical area of any registrations, and/or any applications for registration, of the mark, to the extent that they reflect use or recognition of the mark;*
- *The record of successful enforcement of rights in the mark, in particular, the extent to which the mark was recognized as well known by competent authorities;*
- *The value associated with the mark.*

Along with guidelines on the factors to determine which trademarks are well-known, the Joint Recommendation also recommends the exclusion of conditions and/or requirements as to whether a trademark is well known or not (The tendency and the development of the trade mark in the global level”, WIPO’s Asian regional workshop on international protection of trade mark, held at Ho Chi Minh City, Vietnam, from 23 to 25 October 2001):

- *That the mark has been used in, or that the mark has been registered or that an application for registration of the mark has been filed in or in respect of, the Member State;*
- *That the mark is well known in, or that the mark has been registered or that an application for registration of the mark has been filed in or in respect of, any jurisdiction other than the Member State; or*
- *That the mark is well known by the public at large in the Member State.*

However, it should be noted that the provisions of the Joint Recommendation are only guidelines and not binding obligations. The recommendations are therefore only significant to the extent that Member States implement them into their own legislation.

The researchers argue that this WIPO recommendation can also be applied to the name of a famous person used as a brand, the criteria of famous persons:



- The State that determines the criterion of the names of the famous people used as the brand;
- Public knowledge on behalf of such famous individuals.

The condition of the name that famous ones used as trademarks: (a) Has been used in the trade of goods and services; (b) The length and extent of the distribution territory of the goods or services that use the name; (c) There is a promotion of the products and goods, or services, that use such a name; (d) The name of such a celebrity person has been registered as in several member states.

Policy is an extra-judicial domain name dispute resolution policy through a simple and quick process. This policy establishes a legal framework for resolving disputes between domain name registrants and third parties (i.e., non-registrants) over registration and Internet use of domain names that harass generic or gTLD domains (e.g., biz,. com,. info,. mobi,. name,. net,. org), and country code domains or ccTLDs that have adopted the UDRP Policy on a voluntary basis.

This policy was created by the Internet Corporation for Assigned Names and Numbers (ICANN), the global regulator for the Internet domain name system. The purpose is to provide an effective and efficient way to resolve a domain name dispute of a speculative nature, i.e. when another party uses the same or similar domain name as your trademark or business name without your permission or consent. This policy states that a party who feels that their domain name has been stolen or used illegally may file a claim to an independent dispute settlement panel. This panel will review the claim and make a decision on the ownership of the domain name in dispute. The panel's decision is final and binding on all parties involved in the dispute. This policy has been widely implemented worldwide and has become a commonly used way to resolve domain name disputes.

This UDRP policy generally governs the General Overview of Administrative Procedures, Preparation and Submission of Complaints, Preparing and Submitting Replies, Roles of the Administrative Assembly, Decisions of the administrative assemblies, The Role of the Arbitrator, The role of the WIPO Arbitration and Mediation Centre, Fees, Evidence. UDRP has a provision that can be used as a reference about certain parties can not use the domain name because the particular parties do not have the right, this can be seen on *According to Paragraph 4(a) of the UDRP Policy, the UDRP Administrative Procedure is only available for disputes concerning an alleged abusive registration of a domain name; that is, which meet the following criteria:*

- *the domain name registered by the domain name registrant is identical or confusingly similar to a trademark or service mark in which the complainant (the person or entity bringing the complaint) has rights; and*
- *the domain name registrant has no rights or legitimate interests in respect of the domain name in question; and*
- *the domain name has been registered and is being used in bad faith.*

The law protects those who have a reputation from those who want to spoil their success. So passing off prevents people from doing two things: 1. Showing that the goods are someone else's goods/services; and 2. Creating the assumption that they are related to someone else's good/s (Tim Lindsey, Eddy Damian, Simon Butt, 2006).

The principle of "legitima persona stands in iudicio" means that the party that believes that he has a right and wants to defend his right has the authority to act on behalf of the parties in a case in a court of law. This principle can be used as a basis for a famous person to claim his right so that his name or trademark is not used by others because a celebrity person does have the right to his name and/or trademark (Muhamad Amirulloh, 2018).

Although famous people often receive special treatment from others, in the world of trademarks they are subject to the same laws and rules that other trademark applicants must abide by in the registration process. Many celebrities have taken the path of entrepreneurship, and have started branding programs using their name to sell a variety of items like clothes, fragrances, cosmetics, jewellery, handbags, and the like; in addition to promoting services such as entertainment services and public speaking and motivation.



Under US trademark law, celebrity names must serve as trademarks, and indicate the source of goods or services.

Many celebrities who succeeded in registering their name as a trademark include former US President Donald Trump, former Miss Melania Trump, Beyonce, Taylor Swift, Rihanna, Victoria Beckham, Justin Bieber, Bruce Springsteen, Katy Perry, Kylie Jenner, etc. However, not only should the name be used as a source identification, but other things that can cause possible confusion with the product of goods and/or services such as initials, abbreviations or specific code of a famous person. If a celebrity's name is confused with another brand in the application or registration, the celebrity's application will be rejected (<https://www.ny-trademark-lawyer.com>).

Section 1125A of the U.S. Code Title 15, also known as the Anti-cybersquatting Consumer Protection Act (ACPA), protects trademark and personal name owners from acts of domain acquisition of a website without permission or use of their personal name or trademark without authorization for unauthorized economic purposes. Section (a) (1) clarifies that the use of words, terms, names, symbols, or devices in trade as well as false indications of origin, false or misleading facts, or false representations of facts relating to the goods or services offered are illegal and may lead to criminal proceedings.

This means that such action is not permitted and may result in legal action by the owner of the damaged brand or personal name. This article provides protection to consumers against misleading or confusing action regarding the origin, quality, or association of the goods or services they obtain. This section is designed to ensure that consumers are not fooled with false or misleading information in the context of trade. Thus, such actions are strictly prohibited in business practice and can have serious legal consequences.

Referring to Section 1125A of the United States Trademark Act (US Code Title 15), called the Anti-cybersquatting Consumer Protection Act (ACPA). Article D(1)(A) states that a person shall be liable in civil proceedings by the brand owner, including a personal name protected as a trademark under this section, if, without regard to the goods or services of such parties, the person: i. has a malicious intention to gain advantage of such a brand, including personal names protected as trademarks under this Section. Referring to Cyberpiracy prevention (1) (A) (i), can be interpreted as a person's name can be protected by making a brand/ register as a brand so that persons of malicious will not be able to use such a name to gain without the consent of the name owner.

The use of the name of a famous person for a brand can be considered as "false or misleading use of a trademark" if it misleads the consumer about the origin or relationship of the trademark with the famous one. So, if the use of famous people's name for the brand can give the impression that the person is supporting or engaged in the brand, while not, then it can be regarded as misleading use.

Publicity rights are intellectual property rights that protect against the misuse of names, similarities, or other personal identity marks such as surnames, pseudonyms, voices, signatures, resemblances, or photographs for commercial gain (Maulidda Hafsari, Y. 2021).

Advertising protects famous people from using their names, pictures, or characteristics without their permission or consent. So, if a brand wants to use the name of a famous person, they have to get permission from that person and pay royalty fees.

A person's brand viewpoint, name or similarity can also develop into a trademark through the use and/or registration of an appropriate trademark. As a result, some celebrities register their names and/or similarities as trademarks. When considering rights over publicity issues, trademark claims, privacy claims and reputation pollution claims can also arise.

In general, the use of the name of a famous person for a trademark in the United States requires the permission of the person concerned and may be subject to a royalty fee, unless such use is deemed legitimate under publicity laws. It is important to note that the use of the name of a famous person for a brand can be a complicated and sensitive issue, and should be carefully considered in order not to violate the applicable trademark law.

The criteria of a well-known trademark used in the United States are regulated by the U.S. TRADEMARK LAW, Title VIII 1125 - False designations of origin, false descriptions, and dilution forbidden. (c) (1) amended that in order to determine whether a trademark has the



distinctive and well-known characteristics, the Court may take into account the following factors:

- The degree of the characteristics which are inseparable or have the distinct characteristics of the trademark;
- the duration and scope of the use of the trade mark relating to the goods or services of the brand;
- the time and scale of the advertising and publicity of the mark;
- the geographical area of the area of trade in which the mark is used;
- the trade network of the commodity or service of the used brand;
- the degree of recognition of such a trade mark from the trading arena and the trading network by the brand owner and the prohibition against the person to use such a brand is implemented;
- the general nature and score of the same use by third parties.

Japan has a very rapid economic activity and development. So many products are produced by manufacturers in Japan, in the form of goods or services. Therefore, it takes brands to keep business competition healthy. With regard to the protection of trademark rights, Japan has a legal regulation called the Japan Trademark Act. If followed, the law has regulated the trademarks rights and trademark registration procedures, as well as the criminal sanctions inherent therein. With such legislation, it is expected to contribute to industrial development and protect consumer interests. Bearing in mind, trademarks also have important meanings not only for manufacturers, but also for consumers (Nopiana & Disemadi, 2021)

Japan Brand Act No. 127 of 1959 (original) and Last Year Revision 2019, the Japan Brand Law is regularly revised to ensure that the law remains in line with the needs and demands of the time. The aim is to maintain a balance between brand protection and public interest, as well as ensuring that trademarks and service marks in Japan are effectively protected. In addition to the Act in its implementation based on the Implementing Regulations of the Japanese Trademark Act is the "Regulations for Enforcement of Trademarks Act" or abbreviated as "TMA Implements Regulations". The latest version of the TMA Implications Regulations is revised on April 1, 2019 (Nopiana & Disemadi, 2021).

The Japanese Trademark Act on Chapter (Unregistrable trademarks) contains:

Article 4(1) Notwithstanding the preceding Article, no trademark shall be registered if the trademark:

(viii) contains the portrait of another person, or the name, famous pseudonym, professional name or pen name of another person, or famous abbreviation thereof (except those the registration of which has been approved by the person concerned).

Article 4 para. (viii) of the Japanese Trademark Act stipulates that a registered trademark is not permitted to contain a portrait of another person, name, renowned nickname, professional name, or pen name of other person, or an abbreviation of that name, unless the person concerned has given his consent.

This is intended to protect the intellectual property rights and the privacy rights of others. Trademarks that contain portraits or names of others without permission can be considered a violation and can be the basis for legal action. Therefore, potential brand owners must ensure that the registered trademark does not violate the privacy or intellectual property rights of other people.

The criteria for determining whether a person is considered famous in the Japanese Trademark Act are not specifically described. However, in practice, factors such as popularity, public recognition, contributions and achievements in specific fields, and the media of publication are used as considerations in assessing whether a person's name or nickname is a well-known name protected by the Japanese Trademark Act.

Article 26:

(1) A trademark right shall have no effect on any of the following trademarks (including those which constitute part of other trademarks):



(i) a trademark indicating, in a common manner, one's own portrait, name, famous pseudonym, professional name, pen name or famous abbreviation thereof.

Article 26 (1) letter (i) of the Japanese Trademark Act states that a trademark consisting of an image of itself, name, famous name, stage name, pen name, or famous abbreviation of such name shall not be recognized as a trade mark and shall not obtain the protection of intellectual property rights normally granted to the trademark. The reason behind these restrictions is to protect the public interest.

This article also supports general principles in trademark law that lead to non-misleading trademark protection, protect the public interest, and prevent certain groups or individuals from monopolizing the use of certain personal identities that may cause conflict or confuse consumers.

The aforementioned article, namely article 26, paragraph 1, of the Japanese trademark law, speaks of "Limitations of effects of trademark right." The purpose of this article is to establish restrictions on trademarks that cannot be protected as trademark rights for a certain reason. An important point of this article is that trademark rights do not apply to trademarks that include elements of a trademark that generally indicate a person's portrait, name, celebrity nickname, professional name, pen name, or famous abbreviation of such things. Example: Suppose there is a famous celebrity in Japan named "Haruka Tanaka." Then there is another party trying to register a trademark under its full name, "Haruke Tanaka," then the trademark law in Japan may not protect that trademark. Similarly, if the party attempts to register a trademark with an abbreviation of its name, e.g. "HT", this trademark will not be protected by trademark rights either. This is done to prevent the monopoly of the trademark on a person's name or personal identity that may be an obstacle for others to use their name in business or other legitimate activities.

According to the Japanese Trademark Act, a trademark using the name of a famous person may not be registered unless it has the consent and permission of the person concerned. This means that the trademark that uses the names of famous people may be protected if it is authorized by that person.¹

The Japanese Trademark Law Implementation Regulations generally state that a famous person is an individual who has been widely known for his academic, artistic, or business achievement, this regulation does not provide a specific definition for the criteria of a celebrity person. On the contrary, when determining whether a person is considered famous, the case will be judged on the basis of the facts relating to the person.

It may refer to:

Chapter 7: Article 4(1)(viii) (Name of another person).

(viii) A trademark containing the portrait of another person, or the name, famous pseudonym, professional name or pen name of another person, or famous abbreviation thereof (except those the registration of which has been approved by the person concerned);

1. Regarding the expression "another person":

"Another person" means a person who actually exists other than the applicant him/herself and includes not only natural persons (including foreigners) and corporations but also associations without capacity.

2. Regarding "abbreviations":

(1) Trademarks created by removing the type of corporations such as a stock company or general incorporated associations from the "name" of a corporation fall under the category of "abbreviation." The name of an association without capacity does not include the type of corporation, etc. and thus will be handled according to "abbreviations."

(2) "Names" of foreigners fall under the category of "abbreviations" if they do not have middle names.

3. Regarding "famous" abbreviations, etc.

It is not necessarily required to determine whether or not the trademark in question falls under the "famous" pseudonym, professional name or pen name of another person, or

¹ *Ibid*



"famous" abbreviation thereof based on solely the consumers of the designated goods or services of said trademark from the perspective of protecting moral rights of authors.

4. Regarding the expression "contains"

The judgment on whether or not the trademark in question is a trademark which "contains" the name, etc. of another person will be made based on the determination on whether the relevant part will be objectively recognized as the name, etc. of another person and will evoke or remind of the other person.

(Example) The trademark "TOSHIHIKO" does not evoke or remind of another person's famous abbreviation "IHI."

5. Regarding trademarks representing the applicant's own name.

Trademarks that are representing the name, pseudonym, professional name or pen name of the applicant's own name or abbreviations thereof and fall under the "the name, famous pseudonym, professional name or pen name of another person, or famous abbreviation thereof" fall under this item for damaging the moral interest of the other person.

6. Regarding the expression "has been approved by the person concerned".

The registration of the trademark must have been "approved by the person concerned" at the time of decision to grant trademark registration.

Some legal cases relating to the use of the name of a famous person as a trademark in Japan based on the Japanese Trademark Law enforcement regulations, there are several factors that have been taken into account to determine whether a person is considered famous, such as: (1) Frequency of appearance of the person's name in the media: The more often the name appears in the mass media, the higher the likelihood that the person is deemed famous. (2) The amount of award received: If a person has received various awards related to a particular discipline or field, this can be proof that the individual is recognised as a prominent figure in that field. (3) Achievement related to his field: If someone has achieved outstanding achievement or made a real contribution in a particular field, it can be evidence that he or she is regarded as known. (4) How well-known a person is by the general public: A judgment of whether or not someone is considered famous may also depend on how well known someone is in the public or the relevant group (Yukiko Ohtaka, 2019).

However, the above factors are not definitive criteria and may vary depending on the case and the facts. Therefore, the proof that a person is considered famous depends on the assessment of the case to determine facts relevant to the process.

CONCLUSION

A person becomes famous so that his name or abbreviation of his name becomes valuable because he has a reputation according to his field. The name of the person may be misused by other persons who are malicious or irresponsible to seek personal gain by violating the rights of the famous person. The State must have a stake in the process of protecting the name of famous people on the basis of the philosophical foundation of the second Pancasila "Just and civilized humanity", where humanity relates to achievements, obligations and rights. Well-known people have done more than their duty and then they are entitled to protection. The jurisdictional path is Article 28D paragraph (1) which reads "everyone has the right to the recognition of guarantees of protection, and to fair legal certainty and equal treatment before the law", the name is categorized as an absolute right because it is unlimited in time and place. And the sociological foundation is the appreciation of the reputation of famous people and the protection of brands in order to trigger economic growth.

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