

THE INFLUENCE OF TRADEMARK BULLYING ON BRAND OWNERS OF LARGE BUSINESSES AND UMKM ACTORS BASED ON POSITIVE LAW IN INDONESIA

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Abstract

This study analyze the impact of Trademark Bullying in influencing business competition in Indonesia on business owners and efforts can be made in the event of legal uncertainty for business actors who own UMKM brands in the event of Trademark Bullying based on the applicable positive law. Use study juridical normative, this research find that Trademark Bullying is an intimidation practice carried out by brand owners of large businesses or well-known brands against brand owners of small businesses carried out with unwarranted threats. or unfounded which leads to continued ownership, use of registered marks which leads to unfair business competition. Trademark Bullying practices also involve threats of litigation or legal reporting to the authorities. Where if this happens small business brand owners will be greatly disadvantaged because of the large costs required if this takes place in the litigation process because small business brand owners do not have the financial capacity to fight legally so in the end they give up using the brand they own. legally due to the lawsuit process filed by the perpetrator of Trademark Bullying.

Keywords: Trademark; Brand Owners; Trademark Bullying.

Abstrak

Penelitian ini menganalisis dampak *Trademark Bullying* dalam mempengaruhi persaingan bisnis di Indonesia terhadap para pemilik pelaku usaha dan upaya yang dapat dilakukan dalam hal adanya ketidakpastian hukum bagi pelaku usaha pemilik merek UMKM dalam terjadinya *Trademark Bullying* ditinjau berdasarkan hukum positif yang berlaku. Menggunakan penelitian yuridis normatif, penelitian ini menemukan bahwa *trademark Bullying* merupakan praktik intimidasi yang dilakukan oleh pemilik merek pelaku usaha besar atau merek terkenal terhadap pemilik merek pelaku usaha kecil yang dilakukan dengan ancaman yang tidak beralasan atau tidak mendasar yang mengarah terhadap keberlangsungan kepemilikan, penggunaan merek terdaftar yang mengarah kepada persaingan usaha tidak sehat. Praktik *Trademark Bullying* juga menggunakan ancaman litigasi atau pelaporan hukum kepada pihak yang berwenang. Dimana apabila hal ini terjadi pemilik merek pelaku usaha kecil akan sangat dirugikan karena besarnya biaya yang diperlukan apabila hal ini berlangsung pada proses litigasi karena pemilik merek pelaku usaha kecil tidak memiliki kemampuan secara finansial untuk bertarung secara hukum sehingga pada akhirnya mereka menyerah menggunakan merek yang mereka miliki secara sah akibat adanya proses gugatan yang dilayangkan oleh pelaku *Trademark Bullying*.

Kata Kunci: Merek; Pelaku Usaha; Trademark Bullying.

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INTRODUCTION

A country's economic structure must fundamentally alter, and equality for its citizens must coexist with the process of raising total income and per capita income while accounting for population increase. Economic growth promotes economic development, and vice versa; economic growth makes economic development possible.¹ Economic development is characterized by increasingly rapid technological developments so that an approach to law and technology is needed, in order to anticipate rapid technological and economic changes.² The current development of digital technology has encouraged increased mobility in the distribution of information throughout the world, such as changes in the structure of society from a local one towards a society with a global structure.

The development of digital technology has caused significant social changes to take place quickly which has encouraged increased mobility in the dissemination of information throughout the world which has provided new adaptations in a number of fields, especially in Intellectual Property. New issues like commercial rivalry over the idea of intellectual property rights held by business actors, such as trademarks, patents, industrial designs, geographical indications, or trade secrets, may also arise as a result of this technical advancement.

Intellectual Property Rights are an exclusive right that arises and/or is granted by the state to a person or group of people who are creators, inventors, designers, designers or stakeholders in the fields of works of art, literature or science, or inventions in various fields of technology.³ In Intellectual Property Rights, it is also known that there is an exclusive right that can protect the owner so that his work can always protect the personal interests of the Intellectual Property owner. Legal protection for a work that can be protected by Intellectual Property Law must have its own value, such as having a benefit or usefulness, as well as having economic value for the work. With the economic value contained in intellectual works, this will give birth to the concept of intellectual property which can be used as *an asset* for business owners in the world of trade.

A brand or *trademark* is one of the Intellectual Property Rights that is used by business actors as a distinguishing mark on products and/or services produced by other business actors. A brand is a sign that can be used as a form of trade in goods and/or services. In a brand, there are 3 things that need to be considered, namely as a distinguishing mark, the mark must be applied to certain goods and services, and the mark must be used in the trade of goods and/or services.⁴

One of the nations that ratified the convention on the establishment of the World Trade Organisation is Indonesia. The convention, also known as Law Number 7 of 1994 concerning Agreement Establishing the World Trade Organisation or Agreement on the Establishment of the World Trade Organisation, covers Trade Aspects of Intellectual Property Rights/IPR (Trade Related Aspects

¹Edi Suharto, "Building Communities Empowering People (Strategic Study of Social Welfare Development and Social Work)" (Bandung: Refika Aditama, 2014) p. 67.

²Danrivanto Budhijanto, "Theory Law Convergence" (Bandung: Refika Aditama, 2014) p. 49.

³ Ahmad M. Ramli, "Cyberlaw and Haki in the Indonesian Legal System" (Bandung: Refika Aditama, 2004) p. 7.

⁴ Rika Ratna Permata Zakiah (et.al), "The Importance of Brands for Micro, Small and Medium Enterprises in West Java: Government Policy Support" (Dialogica Iuridica Journal , Vol. 10, No. 2, 2019)

of Intellectual Property Rights/TRIPs). The ratification of the Trademark Law Treaty, which was accomplished with the Decree of the President of the Republic of Indonesia Number 17 of 1997 concerning Ratification of the Trademark Law Treaty, is one of the requirements of the international agreement that Indonesia must, of course, fulfil and put into effect. Indonesia is required to modify the relevant Trademark Law to comply with the terms of the approved international agreement in light of its establishment.

This international agreement, which Indonesia has ratified, has become very significant in light of recent developments, particularly with regard to the function that trademarks and geographical indications play in Indonesia in the age of free or global commerce. This agreement may be utilised to preserve and guarantee justice, fair business competition protection, consumer protection, and protection of micro, small, and medium-sized enterprises with its ratification. In order for brand owners to refrain from acting in a way that would be detrimental to others, both ethically and monetarily, it is imperative that brands be protected within the intellectual property framework.⁵

The rapid trade carried out by business actors, especially business actors who fall into the classification of micro and small and medium enterprises, is seen as very important for improving the economy. One of the business sectors that may grow and remain stable in the national economy is UMKM activities. In an era that has entered free trade, it can be said that a brand is very important to protect. With a brand, it can play an important role in a company's image and marketing strategy as well as *the goodwill*, customers' perceptions of a company's goods' image and reputation. Because the existence of a brand reputation begins with consumers trust in the goods offered by a business actor, so that from this experience they will get consumers/customers who are loyal in using the goods/services brand.⁶

Indonesia as a country of law means that everything has legal protection because it has been regulated that way, this is also found in the trademark protection legislation in Indonesia which is contained in Law Number 20 of 2016 concerning Marks and Geographical Indications. Long before this Law was formed, brand protection was contained in the IPR regulations in Indonesia, namely in Law no. 21 of 1961 concerning Company Marks and Business Marks which is a replacement for the 1912 ⁷*Reglement Industriële Eigendom*.

Protection of Trademarks is also contained in the 1961 Trademark Law which contains the regulation and legal protection of Marks. Law Number 19 of 1992 covering Trademarks, as revised by Law Number 14 of 1997, which was later updated, was a refinement of the 1961 Trademark Law. becomes Law No. 15 of 2001 addressing Trademarks once again. This law was then improved and revised to become Law No. 20 of 2016 concerning Brands and Geographical Indications. Whence, in accordance with Law Number 20 of 2016 respecting Trademarks and Geographical Indications, Article

⁵ Ahmad M. Ramli (et.al), "Compilation of Actual International Agreements in the Field of Intellectual Property Ratified by Indonesia" (Bandung: Refika Aditama, 2022) p. 98.

⁶ Abdul Halim, "The Influence of the Growth of Micro, Small and Medium Enterprises on the Economic Growth of Mamuju Regency" (GROWTH: Scientific Journal of Development Economics, Vol. 1, No. 2. 2020) p. 158.

⁷ Rachmadi Usman, "Law on Intellectual Property Rights" (Bandung: Alumni Publishers, 2003) p. 15.

1 Paragraph 5, the right to a trademark, a trademark is an exclusive right taking into account the words of Article 3 which confirms that the right to a trademark is obtained after the trademark is registered.

A brand that has a good reputation will bring usefulness and benefits to its owner. The existence of a brand can also be said to be a guarantee of reputation, because apart from being a sign of the origin of the product, the brand can personally provide reputation for the branded product with the manufacturer so that can provide a guarantee of the quality of its products. Therefore, the more valuable a brand is, the more widely known it will be by consumers. However, in the midst of increasingly fierce business competition, brand owners in Indonesia are increasingly faced with a serious challenge known as “*Trademark Bullying*”.

Trademark Bullying is oppression or (*bullying*) by a registered Trademark that threatens other Trademarks. "Actions in which a trademark holder exercises his or her trademark rights to harass and intimidate another business beyond the limits permitted by law" is the definition of "trademark bullying" according to the United States Patent and Trademark Office. Trademark bullying is the practice of a major company trying to halt small firms and people that it believes pose a danger to its intellectual property, even while the corporation has no or bogus legal rights against these other parties.⁸ The practice of *Trademark Bullying* will also usually ask the victim to change their Trademark by taking the matter to court. Although on Basically, *Trademark Bullying* involves two trademark owners, but in general the perpetrators in *Trademark Bullying* are large or multinational companies.⁹ *Trademark Bullying* also usually refers to the practice where Trademark owners use their power or resources to bully or intimidate other Trademark owners who are perceived as having identical or similar Trademarks.

The practice of *Trademark Bullying* can be categorized as unhealthy business competition against small entrepreneurs/UMKM because it is carried out with the alibi that the brand owners of large business actors have a high reputation which is known as a *well known mark* or famous brand.¹⁰ If you look at Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises, there is a principle of just efficiency, which means that the implementation of empowering Micro, Small and Medium Enterprises should prioritize equitable efficiency in efforts to create a fair, conducive and competitive business climate. So that the practice of *Trademark Bullying* can create conditions for unhealthy business competition.

Trademark Bullying cases have actually occurred a lot, for example in the PUMA vs PUMADA case. This case began with a trademark cancellation lawsuit by PUMA, a well-known international brand for shoes and sports equipment from Germany owned by Eudolf Dassler, against PUMADA owned by a local businessman. The reason for the trademark cancellation lawsuit by PUMA is related to the basic similarities between the PUMADA and PUMA brands so that PUMA considers that there is bad faith *carried* out by PUMADA and this results in conceptual similarities between PUMA and PUMADA. PUMA also considers that the PUMADA brand has the potential to lead to misdirection of

⁸Rika Ratna Gemstone Zakiah (et.al), “Identifying, Preventing and Overcoming Trademark Bullying” (Journal of Intellectual Property Rights, Vol 27, 2022)

⁹ Nigam A, “Trademark bullying: Enforcement of rights or excess” (International Journal For Legal Research & Analysis, 2 2, 2021), <https://ijlra.com/wp-content/uploads/2021/07/Archita-Nigam.pdf>

¹⁰ M. Yahya Harahap, “General Overview of Brands and Brand Law in Indonesia Based on Law no. 19 of 1992” (Bandung: Citra Aditya Bakti, 1996) p. 35.

its brand products. In this case, the plaintiff took issue with the word *PUMA* contained in the PUMADA brand, according to the PUMA brand owner, the word *PUMA* is an inseparable part of the PUMA brand owners trademark, so that the word is an inseparable part of the PUMA brand and with the existence of the PUMADA brand it can There is potential for misdirection of PUMA brand products and will cause confusion in the community.

The rise of Trademark Bullying that occurs in Indonesia is partly due to the absence of specific regulations regarding the prohibition of Trademark Bullying. So, in this case Indonesia still needs protection specifically regulates *Trademark Bullying practices* so that trademark owners can know the limits of their rights so as not to violate the authority established by law so as to minimize the occurrence of *Trademark Bullying perpetrators* in submitting threats or intimidation on the grounds of protecting their trademarks by how to sue other business trademark owners.

Based on this, a problem identification can be obtained, first, how is the impact of *Trademark Bullying* in influencing business competition in Indonesia on business owners based on the applicable positive law? Second, what efforts can be made in the event of legal uncertainty for business actors who own UMKM brands in the event of *Trademark Bullying* carried out by business actors who own large business brands reviewed based on applicable positive law?

METHOD

The research method used by the author in this study is normative juridical research. Juridicalnormative approach method This is research into legal principles, norms and legal rules, especially regulations related to this research, namely Law Number 20 of 2016 concerning Trademarks and Geographical Indications.¹¹ The research carried out is Descriptive Analysis research, analytical, namely explaining the data as it is and then analyzing the data based on relevant rules. used to analyze the Juridical Review of the Influence of Trademark Bullying on Brand Owners of Large Businesses Based on Positive Law in Indonesia.¹²

RESULT AND DISCUSSION

1. *The Impact of Trademark Bullying in Affecting Business Competition in Indonesia on Business Owners Reviewed Based on Positive Applicable Laws*

Notary/PPAT is official generally given authority for make deeds authentic about deed law certain about right on land or right owned by on unit house arrange, and deed giving power for charge right dependents. Deed Notary/PPAT is deed made by a Notary/PPAT as proof has implemented it deed law certain about right on land or right owned by on unit House arrange.

A brand is an intellectual property which has exclusive rights granted to the state to the owner of the registered mark based on the time period determined by the applicable law, this is as stated in Article 1 Paragraph 5 of the MIG Law Number 20 of 2016 concerning Trademarks and Geographical Indications. The existence of exclusive rights to this brand is used to prevent unwanted parties or parties who do not have permission from using the brand in trade activities. However, sometimes the exclusive

¹¹Soerjono Soekanto and Sri Mamuji, "Normative Legal Research: A Brief Overview" (Jakarta: Rajawali Press, 2003) p. 13.

¹²Soerjono Soekanto, "Introduction Study Law" (Jakarta: UI Press, 1982) p. 50.

rights owned by brand owners are used to emphasize other brands that are *unfairly competitive* or unhealthy competition which can be referred to as *Trademark Bullying* .

Trademark Bullying is an action that uses exclusive features of a brand to intimidate, sue targets or competitors on the basis of claims that are unwarranted or can appear to be exaggerated. Furthermore, *Trademark Bullying* is aimed at preventing other business actors from registering their brands in a country in order to restrain the market which will later lead to anti-competence as was done in the cases of *Big Basket vs Daily Basket in India*, *Apple vs Prepear* in the United States, and *PUMA vs PUMADA* in Indonesia.

Before *Trademark Bullying* there was a concept called *Abuse of Intellectual Property* which was based on *Abuse of Monopoly* contained in British patent law and adopted in *Article 5a paragraph (2) of the Paris Convention of the Protection of Industrial Property* where *Abuse of Intellectual Property* occurs when there is a right The exclusivity given to intellectual property such as brands, patents or industrial designs is misused and monopolized by intellectual property owners who have exclusive rights.

Basically, *Abuse of Intellectual Property* is an abuse of intellectual property rights that occurs when the owner of a good or service is protected by law because he has exclusive rights to his brand and has a tendency to use his position to dominate the market.¹³ This practice of *Abuse of Intellectual Property* has similarities with *Trademark Bullying* where the owner of the rights to a brand or intellectual property is the owner of a well-known brand or a large company that abuses its position in threatening other competitors who are considered to have a similar brand. *Abuse of Intellectual Property* also uses legal channels to intimidate smaller business victims even though the threat of a lawsuit is basic.

From these two concepts, it can be seen that both *Trademark Bullying* and *Abuse of Intellectual Property* are abuses of intellectual property rights, especially brands, which are based on market control by blocking smaller business competitors and this market control is carried out by the owner or right holder. brands that have superior or well-known conditions. The implications of *Abuse of Intellectual Property* lead to *Trademark Bullying*, and if it is not prevented or addressed, it can lead to unhealthy business competition and can affect small business brand owners.

The practice of *Trademark Bullying* can threaten the continuity of a healthy business environment and lead to a negative business ecosystem such as unhealthy business competition. In more detail, the practice of *Trademark Bullying* has a pattern that can be used as a parameter in defining an action as *Trademark Bullying*, including:

- a. *Trademark Bullying* is carried out by brand holders who usually consist of two business actors;
- b. *Trademark Bullying* is carried out against other businesses or individuals. The perpetrators of *Trademark Bullying* are business actors who own well-known brands or large companies, and the victims are small business actors/UMKM;

¹³ “Intellectual Property Law The Abuse of Intellectual Property Rights and Legal Regulation Introduction” accessed via [https:// www.lawteacher.net/free-law- essays/copyright-law/abuse-of-intellectual-property-rights-and-legal-regulation.php](https://www.lawteacher.net/free-law-essays/copyright-law/abuse-of-intellectual-property-rights-and-legal-regulation.php) on May 20, 2024 at 3:42 pm.

- c. There is an element of intimidation from or disturbing victims of small business actors by filing a lawsuit, or sending a summons to the business actor owners of small brands who are deemed to threaten the use of *Trademark Bullying perpetrators brands*;
- d. Lawsuits filed by perpetrators of *Trademark Bullying* are usually unreasonable interpretations of rights or are anti-competitive in nature.
- e. and if the lawsuit is not fulfilled, they will threaten to ban all use of the victims trademark;
- f. Victims will be offered the option to take legal action or give up the use of their brand to comply with the demands of the perpetrator of *Trademark Bullying*.

Apart from that, the practice of *Trademark Bullying* against trademarks can cause a number of losses for such as:¹⁴

- a. The market will experience a reduction in legitimate competition

By reducing competition between legitimate businesses, it will cause detrimental effects such as higher product prices and fewer choices of products on the market. Apart from that, the existence of *Trademark Bullying* can also create new obstacles for consumers in identifying the source of the product to be purchased or the product that is most profitable for them.

- b. Can hinder other business actors

Large business actors usually have beliefs that give rise to excessive or distorted feelings towards. This is because the brand owners of these large business actors mistakenly believe that they must monitor every use of their brand by other parties, which in the end, without realizing it, can lead to *Trademark Bullying*.

- c. Damaging brand reputation

The existence of *Trademark Bullying* can significantly damage other trademarks, this is due to misuse of the brand by competitors which causes the victims brand image to be tarnished in the eyes of consumers. Dissemination of negative information about the trademarks of victims of *Trademark Bullying* can affect perception consumers regarding the quality and integrity of the trademark owner.

Another form of loss with *Trademark Bullying* is that there can be a decrease in consumer trust in the brand being attacked, meaning this will cause large financial losses to small business trademark owners because it can result in a decrease in sales. Apart from causing losses, *Trademark Bullying* can cause psychological harm to trademarks that are attacked by trademark owners of large businesses, because intimidating or threatening actions on false grounds can create anxiety for the brand owner.

Recalling *the Trademark Bullying case PUMA vs PUMADA* , where there was a trademark belonging to a large company or large business actor who filed a Commercial Court lawsuit at the Central Jakarta District Court to examine and adjudicate the trademark registration lawsuit against the Defendant, the owner of the brand, a small business actor or Indonesian UMKM and Participant. The defendant (Directorate General of Intellectual Property cq. Directorate of Trademarks cq. Ministry of Law and Human Rights of the Republic of Indonesia cq. Government of the Republic of Indonesia) is

¹⁴Irina D. Manta, "Bearing Down On Trademark Bullies" (Fordham Intellectual Property, Media and Entertainment Law Journal, Vol. 22, No. 4, 2012) h. 855.

the competent authority to carry out the registration and recording of trademarks applying for registration, as well as having the authority to announce it to the public regarding the naming of the small business actors brand PUMADA which is considered similar and similar to the well-known brand PUMA.

Looking at the forms of loss above, the practice of *Trademark Bullying* is very worrying if it is not followed up by the government which acts as the executor of the law. Although basically the regulation of *Trademark Bullying* in Indonesia has not been explicitly regulated. The case examples above can also be used as a reference in protecting victims of Trademark Bullying which occurs among brand owners who are small business actors against the perpetrators who are well-known brands. If you look at the MIG Law, the letter a's consideration section states that, in the age of global trade and in accordance with international conventions that Indonesia has ratified, trademarks and geographical indications play a crucial role, particularly in preserving a healthy and fair business environment, protecting consumers, and safeguarding micro, small, and medium-sized enterprises as well as domestic industries. ("UMKM").

Apart from considering letter a of the MIG Law, the governments role in protecting small business actors from the threat of unfair business competition and *Trademark Bullying* can be seen in Article 21 paragraph (1) of the MIG Law concerning "equality in essence" where this equality is caused by the existence of elements that dominant between the two brands, thus creating an impression of similarity, whether in form, placement, writing, or combination of elements, or the sound of the pronunciation of the two brands. If related to the case example above, this article is concrete evidence that can be used as a form of protection against *Trademark Bullying*, because this article can show the division of elements that stand out from the equation in essence, namely in terms of form, placement and way of writing so that you can conclude whether These two brands look the same or different from each other.

Article 21 paragraph (2) can also be used as protection against victims of *Trademark Bullying* for small business actors or UMKM, wherein this article clarifies that wide public awareness of both marks in the relevant business area is necessary if a proposed mark is substantially or fully identical to a well-known mark belonging to another party for comparable products or services.

The MIG Law's Article 21 paragraph (3) can also be used to protect against the practice of trademark bullying, which involves making threats for irrational reasons. For example, the perpetrators of trademark bullying may claim that the victim of the small business actor's brand registration was registered in "bad faith" because they believe the victim purposefully named his brand after his brand in order to become well-known. "The application is rejected if it is submitted by an applicant who has bad intentions," according to this article. According to this article, an applicant who is genuinely suspected of registering his trademark with the intent to copy or plagiarise for the benefit of his company, creating unfavourable conditions for unfair business competition and deceiving customers, is considered to be acting in bad faith.

The principle of bad faith contained in Article 21 paragraph (3) of the MIG Law can be used as a form of protection for victims of *Trademark Bullying*. Because from the explanation of the article, if a mark has met the complete requirements to be accepted and then undergoes a substantive examination by an official based on their expertise and then appointed by the Ministers decision as a team of brand

examiners in the General Directory of Intellectual Property in accordance with the procedures and procedures for registering marks, then the This registered brand can avoid threats and excuses given by *Trademark Bullying perpetrators*.

Article 21 of the MIG Law can be used to protect business brand owners who are victims of an act of *Trademark Bullying*, because if there is a practice like this that can threaten unfair business competition then, in the end, this activity will prevent other business actors from registering their marks. they. So with this, action this can be subject to the principle of bad faith because the registration carried out by business actors who carry out *Trademark Bullying* is only used to restrain the market and exploit the market. With the principle of bad faith in Article 21 of the MIG Law, it can be used as a basis for protection by victims from *Trademark Bullying practices*.

As is known, the practice of *Trademark Bullying* often begins when a large or well-known brand company intimidates smaller brand businesses. In many cases, these smaller brand companies do not have sufficient financial resources to pursue lengthy and complex legal proceedings against larger or well-known brand companies. Therefore, there are many cases where small business brands are forced to give in and stop using their brand. From this it can be seen that the practice of *Trademark Bullying* reflects an imbalance of power in business competition which refers to unhealthy business competition.

Although there are several implied articles in the MIG Law that can be used as protection against Indonesian *Trademark Bullying practices as well* need to consider more descriptive settings for *Trademark Bullying*.

2. *Efforts That Can Be Taken In The Event Of Legal Uncertainty For Business Actors Who Own UMKM Brands In The Event Of Trademark Bullying Carried Out By Business Actors Who Own Large Business Brands Are Reviewed Based On The Applicable Positive Law*

Micro, Small and Medium Enterprises (UMKM) dominate the business sector in Indonesia. Based on data provided by the Indonesian Chamber of Commerce and Industry or KADIN, the role of UMKM is very large in Indonesias economic growth, with the number reaching 99% of all business units. In more detail, in 2023 there will be around 66 million UMKM entrepreneurs and the contribution of UMKM to Indonesias Gross Domestic Income (GDP) will reach 61% or the equivalent of Rp. 9.5800 trillion. Apart from that, this sector is also the backbone of absorption national workforce by absorbing around 97% of the total workforce.¹⁵

Looking at the data above, it can be ascertained that one of the businesses that supports state income is UMKM. Brands are also an important milestone in the protection of intellectual property in UMKM, so that adequate protection of brands is required for brand owners of UMKM. Recalling the theory stated by Robert C. Sherwood, namely the stimulus theory which is economic growth, the existence of intellectual property protection is the most important tool in the progress of trade. Because,

¹⁵ KADIN Indonesia is accessed via [https://kadin.id/data-dan-statistik/umkm-indonesia/#:~:text=At%20year%202023%20performer%20business,%25\)%20of%20total%20energy%20work](https://kadin.id/data-dan-statistik/umkm-indonesia/#:~:text=At%20year%202023%20performer%20business,%25)%20of%20total%20energy%20work) . on 05 June 2024 o'clock 05.50

a region with a pattern of intellectual property protection that functions well and correctly will give birth to good economic growth.¹⁶

Recalling the opinion expressed by Irina D. Manta, that the meaning of *Trademark Bullying* is a large company trying to stop the activities of individuals or small businesses that are considered dangerous to their intellectual property. The relationship between *Trademark Bullying* and UMKM in Indonesia can be seen based on the example of the case against him, namely PUMA vs PUMADA which arose from excessive exploitation of brand rights by the owner of the famous brand PUMA, a giant company engaged in shoe manufacturing against the owner of the UMKM brand PUMADA, a small company engaged in the manufacture of underwear and has been registered with the Directorate General Intellectual Property Rights. The well-known brand PUMA sued the UMKM PUMADA brand on the grounds that there were similarities in essence or in whole and could be considered to cause confusion in the community.

If we look back at the *Trademark Bullying parameters* put forward by Leah Chan Grinvald, the case above can be explained that what PUMA did is the basis for a lawsuit based on unreasonable interpretation of the law, this is because PUMA as the brand owner does have an obligation to monitor unauthorized use. or has similarities to its brand by other parties or other business actors. However, these obligations sometimes exceed the limits imposed by law, thereby triggering *Trademark Bullying*. The obligation to supervise turns out to be unreasonable and crosses the line in interpreting rights over its brand to other business actors. Unwarranted enforcement by large companies or well-known brands resulting in *Trademark Bullying* is usually carried out because they do not carry out a complete and objective assessment of other parties brands for the use of their own marks, exaggerate the brands differentiating power thereby giving rise to intimidation, exaggerate confusion over similarities. that occurred and gave rise to baseless claims. The case example above is a real illustration of the *Trademark Bullying practice* that occurs in Indonesia, this is also used by large business actors or owners of well-known brands to monopolize the market, giving rise to unhealthy business competition.

In relation to unfair business competition in brands, the term *Trademark Misuse is also known*, which refers to when a brand owner uses their brand to violate the law for illegal purposes such as anti-competition. Actions on *Trademark Misuse* include actions that go beyond the use of a trademark beyond reasonable limits in protecting the products brand, so that Ultimately, this action is taken to suppress business competition or monopolize the market.

In relation to unhealthy business competition, in Indonesia itself a law has been formed that regulates it, namely Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition. Apart from the MIG Law, Law Number 5 of 1999 can also be used as a reference as a solution in protecting small brand businesses in facing *Trademark Bullying practices*.

Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, if there is a brand owner who commits *Trademark Bullying* then the consequences of the act of “*bullying*” or intimidating other businesses can fulfill *the rule of reason* contained in Law Number 5 of 1999 regarding prohibited activities, especially in Article 17 Paragraphs (1) and (2) Apart

¹⁶Sudaryat, Sudjana, and Rika Ratna Permata, “Intellectual Property Rights” (Bandung: Oase Media, 2013) h. 19-20.

from the provisions stated in article 17 concerning Monopoly, Law Number 5 of 1999 also regulates the dominant market position contained in Article 25 Paragraph (1) letters b and c.

Article 25 Paragraph (1) letters b and c can be used as protection referring to victims of *Trademark Bullying* where there is a well-known brand owner or large company carrying out market domination which is prohibited in accordance with applicable regulations.

Law Number 20 of 2016 concerning Marks and Geographical Indications does not contain any specific regulations regarding Trademark Bullying; however, victims of these actions may find additional protection from Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. Trademark bullying to achieve steady and continuous economic development and to foster a favourable business climate. In addition to the MIG Law, the Prohibition of Monopolistic activities and Unfair Business Competition may be utilised to safeguard UMKM from unfair and harmful business competition activities, as well as to ensure compliance with Indonesian laws pertaining to trademarks and geographical indications.

Even though the Trademark Law in Indonesia does not currently regulate descriptively the practice of *Trademark Bullying*, the use of the principle of good faith in the MIG Law can be used as a form of defense or protection for victims of *Trademark Bullying*. However, the use of the principle of bad faith cannot be fully used to regulate *Trademark Bullying practices* which can give rise to unhealthy business competition, so a solution is also needed which can be found in Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Business Competition. It is unhealthy so that the practice of *Trademark Bullying* does not become a business that can monopolize the market so that it can kill other competitors, especially small businesses. Thus, there is Law Number 20 of 2016 concerning Marks and Geographical Indications or MIG Law, Law Number 5 of 1999 concerning Prohibition of the Practice of Monopoly and Unfair Business Competition and legal comparisons that were mentioned in the previous IM, namely Article 142 paragraph (1) *The Trade Mark Act 1999, India* can be used as a varied solution and reference that can be applied as a protective measure for small business brand owners in facing the problem of *Trademark Bullying*.

CONCLUSION

The impact of *Trademark Bullying* in influencing business competition in Indonesia on business owners is reviewed based on applicable positive law, namely *Trademark Bullying* is an intimidation practice carried out by brand owners of large businesses or well-known brands against brand owners of small businesses carried out with unwarranted threats or unfounded which leads to continued ownership, use of registered marks which leads to unfair business competition.

Efforts that can be taken in the event of legal uncertainty for business actors who own UMKM brands in the event of *Trademark Bullying* carried out by perpetrators The business of large business brand owners is reviewed based on applicable positive law, namely that *Trademark Bullying practices* also involve threats of litigation or legal reporting to the authorities. Where if this happens small business Pekuku brand owners will be greatly disadvantaged because of the large costs required if this takes place in the litigation process because small business brand owners do not have the financial capacity to fight legally so in the end they give up using the brand they own legally due to the lawsuit process filed by the perpetrator of *Trademark Bullying*.

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