

# SIMPLIFICATION OF TRADEMARK DISPUTE RESOLUTION BETWEEN STATE ADMINISTRATIVE COURTS AND COMMERCIAL COURTS IN ACHIEVING JUSTICE

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## Abstract

Trademarks are valuable assets for businesses that are legally protected, yet trademark disputes involving various parties often occur. The settlement of trademark disputes in Indonesia involves two different judicial institutions, namely the State Administrative Court (PTUN) and the Commercial Court, which have the potential to cause disparities in decisions, necessitating simplification efforts to achieve legal certainty and justice. The purpose of this study is to identify the problems that arise in the settlement of trademark disputes between the PTUN and the Commercial Court that hinder the realization of legal certainty and justice, as well as to formulate simplification efforts that can be carried out to achieve legal certainty and justice in the settlement of these trademark disputes. This research uses a normative legal research method with a statutory and conceptual approach, as well as using primary, secondary, and tertiary legal materials collected through literature and document studies. The data analysis technique used is a qualitative analysis of the legal materials obtained systematically and logically to answer the problem formulation and produce recommendations for simplifying dispute resolution. The research results explain that the main problem in the settlement of trademark disputes between the PTUN and the Commercial Court that hinders the realization of legal certainty and justice is the potential for different or contradictory decisions from the two judicial institutions in the same trademark case. This is due to the unclear division of authority, as well as the absence of clear rules regarding the authority of each judicial institution in handling trademark disputes. To achieve legal certainty and justice, efforts that can be made include revising the Trademark Law to clarify the authority of the judicial institutions, regulating alternative dispute resolution mechanisms, increasing coordination and synergy between relevant institutions, increasing the capacity of judges, and establishing an independent and integrated special



*trademark court.*

Mustaqim, Yenny Febrianty, Ardian, Mustika Mega Wijaya: *MODEL KEPEMIMPINAN ORGANISASI DALAM*

## I. Introduction

A brand is an intangible asset that is extremely valuable for business operators in promoting their products or services. A brand functions as an identity to distinguish it from other products or services.(Khotimah & Apriani, 2022) Thus, a brand becomes very important for protecting the reputation and goodwill of a business. In a legal context, brands are protected by Law Number 20 of 2016 concerning Brands and Geographical Indications (Trademark Law). However, in practice, trademark disputes often occur involving various parties, both between business actors and with related government agencies.

A brand is one of the important assets for a company or business entity. A brand functions as a differentiator between the products or services produced by one company and those of another company.(Rizadian & Rahaditya, 2022) Therefore, brands need to be legally protected to prevent violations or misuse by unauthorized parties. In Indonesia, legal protection for brands is regulated under Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

In practice, disputes related to trademarks often occur, both administrative and civil disputes. Administrative disputes related to trademarks can occur between the brand owner and the Directorate General of Intellectual Property (DGIP) as the agency responsible for the registration and management of trademarks. These disputes can be resolved through the Administrative Court as regulated by Law Number 51 of 2009 concerning Administrative Courts. On the other hand, civil disputes related to trademarks, such as infringement or misuse of trademarks, can be resolved through the Commercial Court in accordance with Law Number 20 of 2016 concerning Trademarks and Geographical Indications.(Gunawan, 2022)

One common trademark dispute that often occurs is related to the rejection of a trademark registration application by the Directorate General of Intellectual Property (DJKI) as the authorized party. In this case, the applicant for the trademark registration can file a lawsuit with the Administrative Court (PTUN) to challenge the rejection decision. On the other hand, if there is a trademark dispute between two applicants or trademark owners, the dispute can be resolved through the Commercial Court.(Rahardjo & Santoso, 2024)

The existence of two different judicial institutions handling trademark disputes creates its own set of issues. Article 83, paragraph (1) of the Trademark Law states that "An appeal to the Supreme Court can be filed against the final decision of the Commercial Court in trademark cases." Meanwhile, Article 95, paragraph (1) of the Trademark Law states that "An appeal to the Supreme Court can be filed against the decision of the State Administrative Court." Consequently, there is a possibility of

differing decisions from these two judicial institutions in the same trademark case.

It is not uncommon for there to be disparities in the decisions between these two judicial institutions in similar cases. This situation can certainly lead to legal uncertainty and hinder comprehensive trademark enforcement efforts.(Romdoni & Fitriasih, 2022) Therefore, it is necessary to simplify the resolution of trademark disputes to create legal certainty and fairness for the disputing parties. This situation certainly contradicts the principles of legal certainty and justice that should be realized in the resolution of trademark disputes. Legal certainty is important to avoid contradictory decisions, while justice must be upheld so that the rights of the disputing parties can be proportionally protected.(Yanto, 2020) Therefore, an effort to simplify the resolution of trademark disputes is needed to achieve legal certainty and justice.

One simplification effort that can be undertaken is to integrate the handling of trademark disputes, both administrative and civil, into a single specialized judicial body, namely the Commercial Court. This is in line with the spirit of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which grants authority to the Commercial Court to handle civil disputes related to trademarks.(Hermanto & Aryani, 2023) With this integration, it is expected that consistency in decisions and legal certainty in trademark dispute resolutions can be achieved. Additionally, the simplification of trademark dispute resolution can also be accomplished by strengthening coordination and synergy between the Administrative Court (PTUN) and the Commercial Court. One of the efforts that can be made is to establish a coordination forum or a special body that facilitates communication and harmonizes decisions between the two judicial institutions.(Muhammad Anwar Ibrahim et al., 2023) With good coordination, it is hoped that uniformity in the interpretation and application of the law in handling trademark disputes can be achieved, thus ensuring justice for all parties involved in the disputes.

This effort must certainly take into account the legal, economic, and social aspects related to trademark protection in Indonesia. By simplifying the resolution of trademark disputes, it is expected that legal certainty and optimal justice can be achieved for all parties involved in trademark disputes. Based on the above background, this study will further examine the problems in resolving trademark disputes between the Administrative Court (PTUN) and the Commercial Court, as well as the efforts that can be made to simplify the resolution of such disputes in order to achieve justice for the disputing parties. The formulation of the problems in this research is as follows:

- a. What are the problems that arise in resolving trademark disputes between

the Administrative Court (PTUN) and the Commercial Court, thus hindering the realization of legal certainty and justice?

- b. What simplification efforts can be made in resolving trademark disputes between the Administrative Court (PTUN) and the Commercial Court to achieve legal certainty and justice?

## **2. Research Method**

This research utilizes the normative legal research method. The normative legal research method is a method conducted by examining only library materials or secondary data. The aim of this normative legal research is to examine the principles or norms within positive law (Marzuki, 2021). The aspects related to trademark dispute resolution between the State Administrative Court (PTUN) and the Commercial Court. The approach used in this research is both statutory and conceptual. The statutory approach involves examining all laws and regulations related to trademark dispute resolution, particularly in the context of PTUN and the Commercial Court. Meanwhile, the conceptual approach involves examining relevant legal concepts and principles such as legal certainty, justice, and others.

Legal sources in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation related to trademark dispute resolution, such as Law Number 20 of 2016 concerning Trademarks and Geographical Indications, Law Number 51 of 2009 concerning State Administrative Court, and Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Secondary legal materials include books, journals, articles, and other literature discussing trademark dispute resolution, PTUN, Commercial Court, and relevant legal concepts. Tertiary legal materials include legal dictionaries and encyclopedias.

Data collection techniques involve library research and document study. Library research entails gathering, reading, and analyzing legal materials such as legislation, books, journals, articles, and other literature related to trademark dispute resolution, PTUN, and the Commercial Court. Document study involves collecting and analyzing important documents related to trademark dispute resolution, such as court decisions, jurisprudence, and other relevant documents. (J. Moleong, 2017)

After the data has been collected, the data analysis technique used in this research is qualitative analysis. Qualitative analysis is conducted by interpreting and constructing legal materials obtained systematically and logically. (Sugiyono, 2019) This analysis aims to find answers to the formulated problems and to generate recommendations or solutions to simplify the resolution of trademark disputes between the Administrative Court (PTUN) and the Commercial Court, in order to achieve legal certainty and justice. With this research method, it is hoped that this study can produce in-depth and comprehensive analysis related to the issues and efforts to simplify the resolution of

trademark disputes between PTUN and the Commercial Court in realizing justice.

### **3. Results And Discussion**

#### **A. The Issues Arising in the Settlement of Trademark Disputes Between the State Administrative Court (PTUN) and Commercial Courts, Hindering the Realization of Legal Certainty and Justice.**

The resolution of trademark disputes in Indonesia involves two different judicial bodies, namely the Administrative Court (PTUN) and the Commercial Court. This is regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law). Article 83 paragraph (1) of the Trademark Law states that "Against the final decision of the Commercial Court in trademark cases, an appeal can be made to the Supreme Court." Meanwhile, Article 95 paragraph (1) of the Trademark Law states that "Against the decision of the Administrative Court, an appeal can be made to the Supreme Court." (Muhammad Anwar Ibrahim et al., 2023)

The main issue that arises in resolving trademark disputes between the Administrative Court and the Commercial Court is the possibility of different or even conflicting decisions from both judicial bodies in the same trademark case. (Denny et al., 2022) This is because the authority to settle trademark disputes is divided between the Administrative Court (PTUN) and the Commercial Court based on the type of dispute and the different stages of the process.

According to Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law), PTUN is authorized to handle disputes related to the rejection of trademark registration applications by the Directorate General of Intellectual Property (DJKI). In this case, the applicant for trademark registration can file a lawsuit with PTUN to challenge the rejection decision. Meanwhile, the Commercial Court is authorized to handle trademark disputes between two parties, such as trademark infringement disputes, trademark cancellations, and others. (Denny et al., 2022)

Article 83 paragraph (1) of the Trademark Law states that "An appeal can be filed with the Supreme Court against the final decision of the Commercial Court in trademark cases." Meanwhile, Article 95 paragraph (1) of the Trademark Law states that "An appeal can be filed with the Supreme Court against the decision of the State Administrative Court." Therefore, there is a possibility of different rulings from the Administrative Court and the Commercial Court in the same trademark case when an appeal is filed with the Supreme Court.

The next issue is the legal uncertainty in resolving trademark disputes. This legal uncertainty arises because there are no clear and specific rules regarding the authority of each judicial institution in handling trademark disputes. Article 76 paragraph (1) of the Trademark Law only states that "Petitions for the cancellation of trademark registration can be filed with the Commercial Court." However, there are no rules specifically

regulating the authority of the Administrative Court in handling trademark disputes, especially regarding the rejection of trademark registration applications by the Directorate General of Intellectual Property Rights (DGI). (Aprita, 2019)

Another issue is the potential for conflicting decisions between the Administrative Court (PTUN) and the Commercial Court in the same case involving the same trademark. This certainly contradicts the principles of legal certainty and justice that should be realized in trademark dispute resolution. Legal certainty is important to avoid conflicting decisions, while justice must be fulfilled to ensure that the rights of the disputing parties are protected proportionally. (Ida Laela, 2020)

Another issue is the overlapping jurisdiction between the State Administrative Court (PTUN) and the Commercial Court in handling trademark disputes. This can occur when PTUN grants the applicant's trademark lawsuit that was rejected by the Directorate General of Intellectual Property (DJKI), while the Commercial Court decides to invalidate the trademark because it is deemed to infringe upon another party's trademark rights. (Muhammad Anwar Ibrahim et al., 2023) This situation can create legal uncertainty and injustice for the disputing parties.

The last issue is the potential for inconsistency in rulings within the same trademark case. This can occur if there are differences in the interpretation and application of the law between the Administrative Court and the Commercial Court in handling trademark disputes. Such inconsistency in rulings can lead to legal uncertainty and injustice for the disputing parties. (Gunawan, 2022) This situation certainly has the potential to create legal uncertainty and injustice for the disputing parties. Legal uncertainty arises from differing or conflicting rulings from two different judicial bodies in the same case. Meanwhile, injustice can occur if one party is harmed by such conflicting decisions.

These issues are clearly contrary to the principles of legal certainty and justice that should be realized in resolving trademark disputes. Legal certainty is crucial to avoid conflicting judgments, while justice must be upheld to ensure that the rights of the disputing parties are proportionally protected. (Irwan, 2022) Therefore, simplification efforts are needed in resolving trademark disputes to address these issues and achieve legal certainty and justice. Simplification efforts can be carried out by revising the Trademark Law or other relevant regulations. One alternative is to consolidate the authority for resolving trademark disputes into a single judicial institution, either the Administrative Court (PTUN) or the Commercial Court. This can prevent conflicting or contradictory decisions in the same trademark case. Additionally, simplification efforts can also be made by implementing more effective and efficient alternative dispute resolution mechanisms, such as mediation or arbitration. These mechanisms can provide disputing parties with faster, cheaper, and confidential dispute resolution options, without the need for lengthy and convoluted judicial processes.

However, such simplification efforts must consider various aspects such as legal certainty, justice, effectiveness, and efficiency. Additionally, attention must be paid to the readiness of human resources, infrastructure, and adequate budget to support the implementation of these simplification efforts. With appropriate simplification efforts, it is hoped that optimal legal certainty and justice can be achieved in resolving trademark disputes in Indonesia. This will provide better protection for trademark owners and foster a healthy investment climate and business competition in the country.

#### **B. The Simplification Effort of Trademark Dispute Resolution between the Administrative Court (PTUN) and Commercial Court: Measures to Achieve Legal Certainty and Justice**

As previously discussed, the resolution of trademark disputes in Indonesia involves two different judicial institutions, namely the State Administrative Court (PTUN) and the Commercial Court. This has the potential to create issues such as differing judgments, legal uncertainty, conflicting judgments, overlapping jurisdictions, and inconsistency in rulings.(Muhammad Anwar Ibrahim et al., 2023) Therefore, efforts to simplify the resolution of trademark disputes between the Administrative Court (PTUN) and the Commercial Court are needed to achieve legal certainty and justice for the disputing parties.

The first effort that can be undertaken is to revise Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law). This revision aims to clarify the jurisdiction of each judicial institution in handling trademark disputes and to provide legal certainty for the disputing parties. In the revision of the Trademark Law, it is necessary to affirm that the Commercial Court has absolute jurisdiction in handling trademark disputes, including disputes related to the rejection of trademark registration by the Directorate General of Intellectual Property (DJKI). Thus, the PTUN no longer has the authority to handle trademark disputes, thereby avoiding conflicting decisions between the PTUN and the Commercial Court in the same trademark case.(Rifqi Muttaqin, 2022)

In addition, in the revision of the Trademark Law, it is also necessary to regulate a more effective and efficient mechanism for resolving trademark disputes. One option that can be considered is to make the Commercial Court the sole judicial body in handling all trademark disputes, whether related to the rejection of trademark registration applications by the Directorate General of Intellectual Property (DJKI) or disputes between trademark owners. With the existence of a single judicial body, it is hoped that conflicting decisions and inconsistencies in rulings in the same trademark case can be minimized. This is in line with the principles of quick, simple, and cost-effective dispute resolution, as stipulated in Article 2 paragraph (4) of Law Number 48 of 2009 concerning

the Judicial Authority.(Gunawan, 2022)

The second approach that can be taken is to implement alternative dispute resolution (ADR) mechanisms in trademark dispute resolution. ADR can be a more effective and efficient option compared to resolving disputes through litigation in court. One form of ADR that can be applied is mediation. In the Trademark Law, obligations can be stipulated for disputing parties to first pursue mediation before proceeding with the dispute to court.(Kurniawaty, 2017)

Mediation in trademark disputes can be conducted under the coordination of the DJKI or an independent institution specifically handling trademark mediation. This mediation process is expected to produce a fair and mutually beneficial agreement for the disputing parties, thus avoiding the need to proceed to court. If mediation fails, then the trademark dispute can be escalated to court according to the jurisdiction stipulated in the revised Trademark Law.(Gunawan, 2022)

The third effort that can be made is to enhance coordination and synergy among the Administrative Court (PTUN), Commercial Court, and Directorate General of Intellectual Property Rights (DJKI) in handling trademark disputes. This coordination and synergy are necessary to prevent conflicting judgments and inconsistency in decisions within the same trademark case. For example, if PTUN grants a trademark applicant's lawsuit that was rejected by DJKI, PTUN needs to communicate this to the Commercial Court and DJKI to avoid conflicting judgments in the future.(Denny et al., 2022)

The fourth effort is to enhance the capacity and competency of judges in the Administrative Court (PTUN) and Commercial Court in handling trademark disputes. This can be done by conducting specialized training and certification for judges handling trademark disputes. With the increased capacity and competency of judges, it is hoped that differences in the interpretation and application of law in handling trademark disputes can be minimized, thus realizing consistent and fair judgments for the disputing parties.(Prasetyo, 2023)

The fifth effort is to enhance socialization and education to the community, especially business actors, regarding the importance of trademark protection and the appropriate mechanism for resolving trademark disputes. This socialization and education aim to increase public awareness and understanding of trademark rights as well as the procedures to be followed in the event of a trademark dispute. With a good understanding, it is hoped that trademark disputes can be minimized and if they do occur, parties can choose the appropriate resolution mechanism in accordance with applicable rules.(Doly, 2012)

Another simplification measure that can be undertaken is to establish a Special Trademark Court within the General Judiciary framework. This Special Trademark Court would have absolute authority in handling all trademark disputes, whether related to trademark registration rejections by the DGIP or trademark disputes between applicants

or trademark owners. The establishment of this Special Trademark Court can be accomplished by amending Law Number 48 of 2009 concerning Judicial Authority and Law Number 49 of 2009 concerning the General Judiciary. In this amendment, it is necessary to regulate the authority, organizational structure, and procedural rules in the Special Trademark Court. The existence of this Special Trademark Court is expected to ensure legal certainty and justice in resolving trademark disputes. This is because all trademark disputes will be handled by the same judicial body, thus avoiding contradictory judgments and inconsistencies in decisions.(Adiputra et al., 2020)

Besides simplification efforts through the revision of regulations, simplification can also be achieved through the establishment of an independent Trademark Dispute Settlement Body (BPSM). This BPSM is tasked with handling all trademark disputes, whether related to trademark registration rejections by the Directorate General of Intellectual Property (DJKI) or trademark disputes between applicants or trademark owners. The establishment of this BPSM can be done through the revision of the Trademark Law or through the enactment of separate legislation regulating the BPSM. In the legislation, provisions need to be made regarding authority, organizational structure, procedural rules, and the mechanism for executing BPSM decisions. The existence of this independent BPSM is expected to ensure legal certainty and fairness in trademark dispute resolution. This is because the BPSM is a specialized institution established specifically to handle trademark disputes, thus possessing expertise and specialization in this field. Additionally, the BPSM is also expected to provide consistent and non-contradictory decisions in the same trademark case.(Denny et al., 2022)

With these simplification efforts, it is hoped that legal certainty and justice can be achieved in trademark dispute resolution in Indonesia. Legal certainty is needed to avoid conflicting decisions and inconsistency in judgments, while justice must be fulfilled so that the rights of the disputing parties can be protected proportionally.

#### 4. Conclusion

The main issue arising in the resolution of trademark disputes between the Administrative Court (PTUN) and the Commercial Court, hindering the realization of legal certainty and justice, is the possibility of differing or even conflicting judgments from both judicial bodies in the same trademark case. This is due to the division of jurisdiction in resolving trademark disputes between PTUN and the Commercial Court based on the type of dispute and different stages of the process, as well as the lack of clear and precise rules regarding the jurisdiction of each judicial body in handling trademark disputes. This situation potentially leads to legal uncertainty and injustice for the disputing parties.

Efforts to simplify the resolution of trademark disputes between PTUN and the

Commercial Court to achieve legal certainty and justice include revising Law Number 20 of 2016 concerning Trademarks and Geographical Indications to clarify the jurisdiction of each judicial body, regulating alternative dispute resolution mechanisms such as mediation, enhancing coordination and synergy between PTUN, the Commercial Court, and the Directorate General of Intellectual Property (DJKI), improving the capacity and competency of judges, and establishing specialized judicial bodies such as a Special Trademark Court or an independent Trademark Dispute Resolution Body to handle all trademark disputes comprehensively to avoid conflicting judgments and inconsistency in decisions.

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