

LEGAL PROTECTION FOR WELL-KNOWN TRADEMARK BETWEEN INDONESIA AND SPANISH (Case Study between Lois and NewLois)

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ABSTRAK

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Penelitian ini membahas mengenai persamaan dan perbedaan perlindungan hukum merek terkenal antara Indonesia dan Spanyol dan faktor yang menjadi penyebab perbedaan perlindungan merek terkenal di Indonesia dan Spanyol. Penelitian ini menggunakan metode penelitian hukum normatif. Hasil pembahasan dari penelitian terdapat beberapa persamaan antara Undang-Undang Nasional Merek Indonesia dengan Undang-undang Merek Spanyol, seperti pengaturan mengenai pengertian merek, pertama mengajukan, dan ganti rugi dalam gugatan perdata. Politik hukum, sistem hukum, dan budaya hukum menjadi faktor penyebab perbedaan perlindungan hukum Indonesia dan Spanyol.

Keywords: Trademark, Legal Protection, Intellectual Property Rights

INTRODUCTION

Trademarks have an important role in global economic development, the existence of the trademark itself is useful for differentiating similar products. If the trademark owner has not been registered/without permission, it can be detrimental to himself, because business competition is getting tougher and there is a possibility of fraud or goods that imitate the trademark. (Jened 2015). Diversity of goods and services raises awareness of the importance of legal protection of Intellectual Property Rights which includes matters concerning trademarks, patents, copyrights, industrial designs, plant varieties, and geographical indications for the protection of trade secrets. This awareness gave birth to the Trade Relations Aspects of Intellectual Property Rights agreement, which is an international agreement under the World Trade Organization in the field of Intellectual Property Rights in trade to uniform the system of Intellectual Property Rights.

The issue of Intellectual Property Rights cannot be separated from the world of trade and the world of investment. Intellectual Property Rights have an important role in economic development and trade which has spurred the start of a new era of science-based economic development. Trademarks are part of intellectual property rights, so there is a need for legal protection of trademark rights. The theoretical basis for

justification for the protection of Intellectual Property Rights states that Intellectual Property Rights are the result of a creation or an initial invention that has not been registered as a patent, for example opening up the possibility for other parties to be able to find out or further develop the invention produced by the inventor secretly. Therefore, fundamental inventions that have not been registered or published must also be protected, although they may not be able to obtain protection under patent, copyright, and design laws, but can be categorized as trade secrets or confidential information. With the justification for the protection of Intellectual Property Rights, this certainly further emphasizes the importance of protecting Intellectual Property Rights. (Riswandi 2009)

The existence of legal protection for the owner of a legal mark is intended to provide exclusive rights for the owner of the mark so that other parties cannot use the same or similar marks as their own for the same or almost the same goods. A mark is defined as "any sign capable of being graphically represented in the form of drawings, logos, names, words, letters, numerals, or colors arrangement, in 2 (two) or 3 (three) dimensional shape, sounds, holograms, or combination of 2 (two) or more of those elements to distinguish goods and/or services produced by a person or legal entity in trading goods and/or services" (Article 1 Paragraph 1 of Law Number 20 of 2016 Concerning Marks and

Geographic. From this definition, the form of a trademark can be divided into traditional trademarks, in the form of pictures, logos, names, words, letters, numbers, color schemes, or trademarks that take the form of 2 (two) dimensions and non-traditional trademarks, in the form of sound, 3 (three) dimensional trademarks, or holographic trademarks.

There is also a stipulation that the mark can be accepted and considered a well-known mark is that the well-known mark must have sufficient distinguishing power. In other words, the sign used by a trademark must have a special character as a differentiator between goods produced by a company or commercial goods (trade) or services from one person's production with goods or services produced by other people. Whereas based on the laws of Spain, it can be said that a trademark that has received legitimacy as a well-known mark must be protected by the law of a country because well-known marks have a higher risk of being counterfeited or used as mounts by parties who are not responsible for selling their merchandise by imitating well-known trademarks because the reputation of well-known trademarks has been trusted by the public, this has a significant impact on trade in goods with trademarks that resemble well-known trademarks.

The number of trademark infringements in Indonesia indicates that trademark protection in Indonesia has not been maximized, this of course

causes losses for producers whose trademarks are registered but have been imitated by other manufacturers. Many cases of trademark infringement are the result of the lack of firmness of the authorities, in this case, the Directorate General of Intellectual Property was inaccurate and less giving warnings to parties known to be distributing products whose trademarks do not match the registered marks. This is because the DJKI is passively waiting for reports from the aggrieved parties for cases of infringement of their marks to be imitated.

In addition, the easy acceptance of applications for trademark registration is granted is one of the causes of violations as unfair business competition. With trademark rights, the mark used as a mark should be the monopoly of the trademark owner, so that other parties cannot use the same or similar trademarks even though the types of products produced are different. The trademark protection used by Spain is the Paris Convention and the TRIPs Agreement, which explains the protection of a mark if the mark has been registered in the country of origin, then the trademark request for the mark is accepted for submission and protected in that country. Article 6 bis of the Paris Convention states that, to the extent permitted by domestic law, the Unitary State has the right to refuse or cancel the registration or prohibit the use of trademarks that are reproductions, copies, or translations, causing

confusion.

Intellectual property protection in Spain, for instance, requires registration at the relevant industrial property agency. This country uses the "first-to-file" method, in which the first applicant for registration is granted the necessary rights. The use of famous trademarks does not grant third parties any rights, unless those trademarks are famous, which means a registration fee is necessary, the amount of which is determined by factors including the territory, the number of classes, and the exact type of privileges requested. (Garrigues 2022) A trademark or patent owner's registration in the country of origin does not automatically grant protection in other nations. As a result, further measures must be taken to obtain protection.

Spain has accepted the key international agreements in this field to make it simpler to defend intellectual property rights in various countries. International intellectual property accords, with a few notable exceptions, permit non-Spanish nationals to safeguard their rights in Spain and grant protection to Spanish nationals in the majority of other nations. Spanish legislation has benefited from being in line with those of the other EU Member States as a result of Spain's membership in the EU. (Garrigues 2022) By submitting an application to the Spanish Patents and Trademarks Office, you can register a trademark in Spain. The application procedure typically takes between six and fifteen months. Words, names or surnames,

signatures, numbers and number combinations, slogans, illustrations, sounds, colors, and three-dimensional shapes, including packaging, are all acceptable components of Spanish trademarks. The SPTO awards trademarks for products and services and trade names that provide legal protection for distinctive signs. The Lois trademark is used by the Saez company Moreno group in Spain which began production in 1950 until today. The Saez Moreno group began to develop with the production of goods in the form of jeans which then shot to expand outside Spain, namely European countries so that its products penetrated the vastness of the country itself. (Jeans n.d.) The Lois trademark penetrates regional boundaries so that it can be categorized as a well-known trademark, which at first was only based on marketing in the city of Valencia and then developed in other countries. Saez moreno group is a garment company that provides a variety of fashion products but is more famous than jeans.

The Lois mark is registered as a well-known international mark to protect these countries, so the protection obtained by the Lois mark is absolutely mandatory for the respective country where the mark is registered. The entry of the Lois trademark into Indonesia through a licensing process, this licensing process is a process of transferring a trademark with an agreement to be implemented in Indonesia. The transfer process through this agreement was accepted

by PT. Intigramindo Persada which is located on Jalan Marble 31 Sumur Batu Kemayoran, Central Jakarta. Licensing is basically an agreement between the two parties to agree that there has been a transfer of responsibility for a trademark with one party giving rights to the other giving the obligation to carry out the things that have been agreed upon by each party. PT. Intigramindo persada was founded in 1978 and is engaged in fashion trademarks, thus making the Saez Moreno Group believe in PT. Intigramindo to license the LOIS trademark in Indonesia through PT. Intigramindo because it has similarities in the implementation of business products. (Trademark n.d.)

It has been found pants products with the trademark Newlois and Redlois at the Gerimis Store in the Tanah Abang area on 15 until 18 April 2015 in Central Jakarta owned by Agus Salim, the registration of the Newlois and Redlois trademarks were registered in bad faith by piggybacking, imitating or plagiarizing the Lois trademark. So Intigarmindo Persada made a report to the Directorate General of Intellectual Property (DJKI) to follow up on alleged trademark crimes. Investigations related to witnesses, experts, and evidence were carried out, and the holder of the Lois trademark license, PT Intigarmindo Persada, filed a lawsuit for the cancellation of the Newlois and Redlois trademarks. The two trademarks are considered to have a fundamental similarity to the Lois trademark

belonging to Lois Trade Mark-Consultores E Servicios S.A.

Agus trademark trademarks have been since registered on 28 July 2005, with registration numbers IDM000043020 and IDM000043201. In this case, Intigarmindo Persada also included DJKI as a co-defendant. Moreover, the Lois trademark belonging to Lois Trade Mark-Consultores E Servicios S.A was filed first, namely on May 12, 2003. Meanwhile, Agus only applied for the trademark on July 28, 2005. In its petition, Intigarmindo Persada asked the panel of judges to cancel Agus Salim's Newlois and Redlois trademarks because they have similarities in principle with Lois Trade Mark-Consultores E Servicios S.A. Based on this, the writer wants to examine the comparison of the legal protection of well-known marks that occur in Indonesia and Spain, and explain the differences and similarities in legal protection that occurs in Indonesia and Spain.

PROBLEM FORMULATION

First, What are the similarities and differences in the legal protection of well-known trademarks between Indonesia and Spain?

Second, What are the factors contributing to the differences in the protection of well-known trademarks in Indonesia and Spain?

RESEARCH METHODOLOGY

This research is normative legal research, which according to the legal expert is a process to find a rule of law, legal principles, and legal doctrines to answer the legal problems faced. (Ibrahim 2005) The problem approach used in this study is the statutory and comparative approach, the statutory approach is an approach that is carried out by examining and studying the statutory regulations relating to the legal issues to be studied. (Marzuki 2022) Then, this study also uses the case approach method by examining cases that already have final and binding decisions.

DISCUSSION AND RESULTS

Similarities and Differences Legal Protection of Well-Known Trademarks Between Indonesia and Spain

Trademark registration is carried out at the request of the owner mark or those entitled to the mark or through their counselor, mark registration aims to obtain certainty and legal protection regarding rights to their trademark. Registration is absolutely necessary for the rights of a mark to occur however, local trademark registrations often intersect with well-known trademarks that already existed. As happened between two jeans trademarks named Newlois originating from Indonesia and Lois originating from

Spain, where the Directorate General of Intellectual Property had neglected to grant the trademark application by Lois trademark made in Spain which has a similar type of goods and trade name as Newlois from Indonesia.

Directorate General of Intellectual Property is considered negligent because Lois is considered a well-known trademark that has been recognized by several countries around the world. Both countries Indonesia and Spanish, certainly have different regulations regarding trademarks. The Indonesian National Law uses Law Number 20 of 2016 on Trademarks and Geographical Indication, while the Spanish national law uses Law Number 17 of 2001 on Trademarks, to answer the first problem formulation, the author will make a comparison between the two regulations which of course have similarities and differences. (Nursalim 2021)

The first similarity between Spanish law and Indonesian law regarding regulations prohibiting trademark registration, in Article 20 letters (e) and (f) Law number 20 of 2016 Marks and Geographical Indication states "that a mark which has no distinguishing features and/or is a common name and /or public property symbols may not be worn". The same thing is also regulated in the Spanish Law Article 5 paragraph (1) point (b) Law Number 17 of 2001 on Trademarks, it is stated "that those

which are not distinctive in nature may not be registered as trademarks". Then, based on Article 3 Law of Number 20 of 2016 Marks and Geographical Indication, Indonesia adheres to a constitutive registration system (first to file), namely whoever first registers a mark has the right to the mark. Spain also has the same regulations in Article 2 paragraph (1) Law of Number 17 of 2001 on Trademarks which states "The right of ownership in a trademark and a trade name shall be acquired by means of valid registration in accordance with the provisions of this law".

Furthermore, in Article 21 paragraph (2) letter (a) Law Number 20 of 2016 on Trademarks and Geographical Indication, which is equivalent if an application for a trademark can be rejected because it is in the form of or resembles the name or abbreviation of a famous person's name or a photo belonging to another person, except with the approval of the rightful person. The Spanish law also mentions the same thing in article 9 paragraph (1) parts (a) and (b) Law Number 17 of 2001 on Trademarks, which states that "Without a valid permit, the following trademarks cannot be registered if they resemble the exact name or image that identifies a person other than the applicant trademark". Whereas Part b describes the prohibition of trademarks that resemble first names, last names, pseudonyms, or other signs which, in the eyes of the general public, identify someone other than the applicant.

Further similarities in laws regarding legal protection between Indonesia and Spain are contained in Article 35 paragraphs (1) and (2) Law Number 20 of 2016 on Trademarks and Geographical Indication, concerning the term of protection and extension of trademarks which states "Registered marks receive legal protection for a period of 10 years and can be extended for the same period". Then the Spanish law states in article 31 Law Number 17 of 2001 on Trademarks, regarding duration, namely "trademarks are given for ten years and can be renewed for a period of ten consecutive years.

Furthermore, there are similarities in lawsuits for trademark infringement in article 83 paragraph (1) letters (a) and (b) Law Number 20 of 2016 on Trademarks and Geographical Indication which states "You can submit a lawsuit for similar goods or services in the form of a lawsuit for compensation and termination of all related to the use of the mark". This can be detrimental to owners of well-known trademarks, and in an effort to prevent greater losses, trademark owners in Indonesia can apply for the termination of the production or distribution of trademarks that are not entitled to use the rights to well-known trademarks. And Spain states the same thing in article 41 paragraph (1) Law Number 17 of 2001 on Trademarks "Owners whose rights to trademarks have been violated can submit civil lawsuits, namely in the form of terminating acts

that violate their rights and compensation for damages suffered.

The first difference in legal protection for well-known trademarks between Indonesia and Spain regulates in Article 21 paragraph (1) letter (d) Indonesian Law Number 20 of 2016 on Trademarks and Geographical Indication which regulates "registered Geographical Indications". Whereas in article 6 concerning prior trademarks and article 7 concerning prior trade names Law Number 17 of 2001 on Trademarks, where there are no detailed rules regarding Geographical Indication, but are regulated in international agreements or Europe Union legislation. The Europe Union regulation on geographical indication trademarks is an intellectual property right (IP) that functions to identify a product that originates from a certain geographical area and has quality, reputation, or other characteristics that can basically be linked to its geographical origin which only regulates agricultural products, foodstuffs, spirit drinks, flavored wines.

In subsequent differences in legal arrangements, Spanish law regulates prohibitions into two (2) parts, namely Relative Prohibitions and Absolute Prohibitions contained in articles 5 and 6 of Law Number 17 of 2001 on Trademarks where there are many provisions in these articles. Whereas in Indonesia it only regulates trademarks that cannot be registered and are rejected in article 20 of law

number 20 of 2016 concerning geographical indication marks.

The last difference is in the criminal provisions, Spain does not regulate criminal provisions and does not provide criminal sanctions against violators of well-known trademarks, but owners of well-known trademarks whose brands are registered can take civil action according to what they have violated and request actions that need to be determined to protect their trademarks before the jurisdictional authority. Spain regulates the possibility of taking civil and criminal action in article 40, Law Number 17 of 2001 on Trademarks, but no clear criminal provisions such as imprisonment or fine arrangements are given. Whereas in Indonesia it regulates criminal provisions which are regulated in Article 101 paragraph (2), law number 20 of 2016 concerning geographical indication marks which states "Any person who without rights uses a sign that has similarities in essence with Geographical Indications belonging to other parties for goods or products that are the same or similar to the goods or products registered, shall be punished with imprisonment for a maximum of 4 (four) years or a fine of up to Rp. 2,000,000,000.00 (two billion rupiahs)".

In Indonesia, a trademark owner can use his mark if he has exclusive rights (rights to the mark) granted to the trademark owned by the state and is the only owner entitled to the mark and prohibits other people from using and owning the mark. In

this case, the use of the Lois trademark was given to PT. Intigramindo Persada, as the licensee and power of attorney for Lois Trade Mark-Consultore e Servicos. This right can be infringed upon with permission from the trademark owner, namely in the form of granting a license through a licensing agreement

Then the actions committed by Newlois were acts in the absence of good faith because Newlois intentionally imitated, whether or not in its entirety, the fame of another person's trademark that has been widely known by many people, and the act of impersonating the brand was considered to have misled the wider community in choosing and know the

goods from the actual trademark. Moreover, if the use of someone else's trademark is without rights with the aim of unfairly seeking profit / economic wealth (unfair competition).

In the case of trademark infringement by Newlois, according to researchers, this was included in the act of violating the law and accompanied by bad faith. The definition of faith cannot include acts of fraud, circuits that mislead other people, as well as behaviour that ignores legal obligations to gain profit. It can also be interpreted as an act that is not consciously justified to achieve dishonest goals.

Tabel

Table 1 Similarities and Differences Legal Protection of Well-Known Trademarks Between Indonesia and Spain

No	INDONESIAN LAW	SPANISH Law	Description
1	Art. 20 point e & f : “undifferentiated” & “is a common name and/or a symbol resembling public property.”	Art. 5 paragraph (1) point b : “Those w are not distinctive in nature.”	Similarity
2.	There is no more spe division.	Prohibitions are divided into Rela Prohibitions and Absolute.	Difference
3.	Art. 21 paragraph (1), The application is rejected if: a. Registered trademarks belong to other parties or are applied for in advance. b. Well-Known trademark for c. similar	Art. 6 paragraph (1) point b, signs may not beregistered if they are identical or similar to a prior trademark. paragraph (2) ☑ well- known trademarks in Spain. Art. 7 paragraph (1) point b, signs may beregistered if they are identical or sim to a prior trade name.	Similarity

	<p>goods/services.</p> <p>d. Well-known trademarks for goods/services that are not of the same kind. registered Geographical Indication.</p>	<p>There are no detailed rules regarding Geographical Indication, regulated in international agreements or EU legislation</p>	<p>Difference</p>
4.	<p>Art. 21 paragraph (2) point a. the application is rejected if it is or resembles the name or abbreviation of a famous person's name or a photo owned by another person, except with the consent of the person entitled.</p>	<p>Art. 9 paragraph (1), without due authorization, the following may not be registered as trademarks:</p> <ul style="list-style-type: none"> a. The proper name or image which identifies a person other than the trademark applicant. b. The first name, surname, pseudonym, or any other sign which, in the eyes of the general public, identifies a person other than the applicant. 	<p>Similarity</p>
5.	<p>Art. 35:</p> <ul style="list-style-type: none"> (1) A registered mark shall receive legal protection for a period of 10 years. (2) Can be extended for the same period of time. 	<p>Art. 31 → a trademark shall be granted for ten years and may be renewed for successive ten-year periods.</p>	<p>Similarity</p>
6.	<p>Art. 83 paragraph (1), Can file a claim for similar goods/services in the form of:</p> <ul style="list-style-type: none"> a. Compensation lawsuit b. Termination is all related to the use of the mark. 	<p>Art. 41 paragraph (1) : Owner whose right to a trademark is infringed may in a civil action claim</p> <ul style="list-style-type: none"> a. The cessation of the acts infringing his right b. Compensation for the damage suffered 	<p>Similarity</p>
7.	<p>Art. 101 Paragraph (2) Any person who unlawfully uses a sign that is similar in principle to a Geographical Indication belonging to another party for goods or products that are the same or similar to the</p>	<p>Spanish law does not provide for criminal sanctions, only that the owner of a trademark whose mark is registered may, before the jurisdictional authority, take appropriate civil or criminal action against those who infringe on their rights and request measures necessary for the protection of the trademark, without prejudice to</p>	<p>Difference</p>

	<p>goods or products registered shall be punished with imprisonment for a maximum of 4 (four) years or a fine of up to Rp. 2,000,000,000.00 (two billion rupiah).</p>	<p>submission case to arbitration</p>	
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Factors That Cause Difference in The Protection of Well-Known Trademarks in Indonesia and Spain

People in general may only know well-known trademarks in terms of the difference between European and Asian countries that make a trademark and product famous, but in fact there are elements of differences in names, terms, signs, symbols, designs, or some other identifying characteristics. A trademark manufacturing company It should also be noted that every business actor or company from various countries has laws governing differences in legal protection that must be understood there is no carrying of a well-known trademark that causes economic loss to owners of well-known trademarks. One of the criteria for a trademark can be said to be a well-known trademark, namely that it has penetrated or has been in several countries and the trademark has been widely known by almost every community in that country. Indeed, until now there have been no rules or agreements between countries that regulate and explain specifically because it tends to produce subjective judgments.

Regarding the minimum limit of how many countries know the trademark has entered an agreement, there is no agreement on this matter. However, according to researchers, a brand cannot be said to be a well-known brand if it only refers to how much the brand has penetrated various countries. So that the conditions mentioned above must complement each other in order to be assessed objectively. Because this often happens, the author will provide an explanation of several factors that influence differences in the protection of well-known marks between Indonesia and Spain, namely:

1. Politics of law

As a modern country, Indonesia in the constitution or the 1945 Constitution of the Republic of Indonesia has principles as a democratic country and a rule of law that aims the welfare of society, so there are 2 (two) basic foundations that must become pillars in the implementation of legal development in Indonesia, that is (Nasional 2012) :

- a. The foundation of justice is the basic norm of national

and state life, namely the law which has the character of Pancasila.

- b. Operational Basis, namely:
- 1) Fair and prosperous laws;
 - 2) Laws that strengthen democracy;
 - 3) Laws that protect human rights;
 - 4) Laws that strengthen the Unitary State of the Republic of Indonesia;
 - 5) Laws that are diverse in diversity; and
 - 6) Laws that protect the nation and the homeland of Indonesia.

Basic of the foundation has become the basis for the implementation of Indonesian national legal politics because legal politics determines the direction of national development policies in Indonesia as a whole which will be carried out in a certain period. Legal politics is basically an idea that forms the basis for state intervention through state instruments (government, DPR, and others) in law. The House of Representatives has the authority to enact laws, and the President and the House of Representatives consult on each proposed law before approving it. The President has the authority to send bills to the House of

Representatives; see Article 20 paragraphs (1) and (2) of the 1945 Constitution. (Nasional 2012).

Therefore, the President (executive) and the People's Representative Council (legislative) must mutually agree for a Draft Law to be ratified and become Law. This is the current legal politics as mandated by the Constitution. State interference with its instruments in the law, in terms of: (Nasional 2012)

- a) Law creation, motivated by the state's obligation to maintain justice and order. To maintain justice and order, the state creates law;
- b) Implementation of Law, motivated by the obligation of the state to provide state equipment in charge of implementing or enforcing the law in a certain way determined by the state, including through the courts.
- c) The development of law, namely that the law is prepared based on the legal awareness of society. The state seeks to

influence the development of public legal awareness so that the state influences legal development.

Legislation is the main door in carrying out legal politics in Indonesia, as a country that upholds the law (nomocracy) and democracy in administering the country. For this reason, building the quality of national and regional legislation products is very important to realize the goals of the state as a welfare state as mandated in the constitution, so producing quality legislation products is a big responsibility. (Putuhena 2012)

Contrast to the Spain state, having a Cortes Generales (the Spanish legislature is a bicameral parliament, consisting of the Congress of Deputies, and the Senate. Cortes Generales has the power to pass all laws and to amend the constitution) establishes the principle of separation of powers of the state, which is divided into three branches: the legislative, executive and judicial. According to del campo (2018). Several checks and balances are

carried out to ensure that a branch does not exceed its authority: (Pastor t.thn.)

- a. The Cortes Generales oversees government action. It can put formal questions to the government and each of its members and appoint fact-finding committees (Comisiones de Investigación). The Cortes Generales also proposes certain high officers of the state who are formally appointed by the King (for example, judges of the Supreme Court and Constitutional Court and members of the governing body of the judiciary).
- b. The Congress of Deputies can challenge government policy by passing a motion of censure, which is approved on a vote by an absolute majority of its members.
- c. The government:
 - 1) Propose legislation and constitutional amendments;
 - 2) Lodge an appeal for its declaration as

- unconstitutional (recurso de inconstitucionalidad)
- 3) Dissolve the Cortes Generales in certain circumstance.
 - 4) The judiciary can ask for the execution of judgements in addition to rendering judgments. Additionally, it is involved in parliamentary control and the need for government liability, as well as other governmental and administrative duties

The Cortes Generales oversee the general legislative procedure, which is then completed by the houses' standing orders (Reglamentos de las Cortes Generales). Legislation may be proposed pursuant to Article National Spain 87, CE:

- a) The government, in a. The Proyecto de Ley, a bill of legislation submitted by the government, is an active

- element of the legislative process. The Council of Ministers approves any legal proposals made by the government before submitting them to the Congress of Deputies along with a statement outlining the justifications and supporting evidence.
- b) The Senate and the Congress of Deputies. A proposal of law (Proposición de Ley) may be made by these organizations. The standing orders of the houses provide rules governing legislative proposals. The Congress of Deputies is given non-legislative bills that the Senate has considered for enactment.
 - c) The meetings of the independent communities. The assemblies have the power to ask for the passage of a law from the government or to recommend a non-legislative measure to the Congressional Steering Committee (Mesa del Congreso).
 - d) Citizen initiative. Such an initiative cannot be related to topics such as taxation, international affairs, or the right to give pardons and requires at least 500,000 certified signatures.

After a bill or proposed law is presented and approved by the Congress of Deputies' full plenary session, it is then discussed by the members to decide whether it will be accepted, rejected, or amended. The Spanish government is present to exercise oversight. The Standing Legislative Committee receives bills and legal recommendations for assessment. The Congress of Deputies' plenary sessions are where the summaries of the text—called "dictamen"—are considered and decided. The Standing Legislative Committee designates a committee to create the dictamen. The President of the Congress of Deputies submits a bill or bill proposal to the Senate once its text has been accepted. The Senate follows a similar process. (Sanchez 2016)

The process that resulted in the law's approval and enactment was likewise carried out by the Spanish government. The King gave his approval to a measure passed by the Cortes Generales within 15 days. He then issued the law and commanded that it be published right away. Unless the State Gazette specifies otherwise, the law takes effect 20 days after it is published in the Official Gazette.

(Masferrer 2010).

2. Legal System

The legal system in Indonesia that refers to court decisions are the applicable laws and regulations, namely the UUD 45, MPR Decree, Laws/Perpu, Government Regulations, Presidential Decrees/Presidential Decrees, Supreme Court, Ministerial Decrees, and others. So, the court's decision is flexible (changing) depending on the judge who decides based on the facts/evidence available. (Alfaroby t.thn.) The legal system adopted by Indonesia has a complete unity of orders consisting of parts or elements that are interconnected and closely related to one another. Achieving a unitary goal requires cooperation between the parts or elements according to a certain plan and pattern.

Indonesian legal system is a legal system characterized by the existence of various systematically codified (compiled) legal provisions which will be further interpreted by judges in their application. The system adopted by the Indonesian state which is based on Roman law is referred to as the Civil law system, the Civil Law system has characteristics, namely codification, judges are

not bound to the president so that laws become the main source of law, and the judicial system is inquisitorial which gives understanding that in that system, judges have a major role in directing and deciding cases. Judges are active in finding facts and careful in assessing evidence. The forms of legal sources in the formal sense in the Civil Law legal system are in the form of statutory regulations, customs, and jurisprudence. (NURhardianto 2015)

While in Spain has a civil law system based on comprehensive legal codes and laws rooted in Roman Law. Civil law is applied throughout the entire territory of Spain, but there are autonomous communities that have their own civil law system, which is applied in relation to certain legal issues. The sources of Spanish law are statutes, customs, and general legal principles. Case law complements the legal system as the Supreme Court upholds legal doctrine in its interpretation of the various sources of law. The opinions of legal experts also provide interpretations and clarifications of the law. (Pastor t.thn.)

There is a hierarchy of laws (Spain National Law, Article 9.3, CE). Any provision that contradicts another of higher rank is invalid according to

article 1.1, Spanish Civil Code. Customs are considered to be supplementary law, as they only apply in the absence of applicable statutes, provided that they are not contrary to morals or public order. On the other hand, general legal principles apply in the absence of applicable statutes or customs and may help to shape the law. Exceptions to the hierarchy principle exist in relation to certain areas of the law. For instance, commercial law establishes that commercial customs rank more highly than other non-commercial laws. The Cortes Generales has priority over all other sources of the law because it is the. The Cortes Generales, which is the highest court in Spain, is at the top of the Spanish legal structure. (Pastor t.thn.)

International treaties, organic laws, and common laws passed by the Cortes Generales, Decree-laws and legislative decrees passed by the government regulations (Reglamentos), which is a legislation of a lower status. European Union legislation, which is directly applicable as part of the national system once passed. International treaties become part of Spanish law once they are formally published in Spain (Spain National Law Article 96.1, CE). As a result, Spanish law does not directly apply to

international treaty provisions prior to their full publication in the Spanish Official State Gazette. (Pastor t.thn.)

3. Legal Culture

Legal Culture in Indonesia or better known as customary law is the forerunner of law because indeed this law arises by adjusting the conditions of the local community, what the behavior of the people is like and in the end the law adjusts it. So that the law that is formed in accordance with and does not conflict with the culture and habits of the local community becomes a reflection of the socio-cultural values of a society, in its development, it can turn into an adherence that is inherent in each of these communities and can further develop into a rule and what is called customary law.

Legal culture is a response that is acceptance or rejection of a legal event, it shows the attitude of human behavior towards legal issues and legal events that are carried into society. The legal system is a linking relationship between humans, society, power and rules, so the focus of legal anthropology is on human behavior involved in legal events. The link between human legal behavior and its

legal culture lies in its response to ideological law and practiced law from an eclectic point of view. Conceptually, legal culture refers to attitudes and actions that are clearly visible, which are a reflection of the values and orientations, and expectations of a person or group. So any attitudes and actions taken by anyone, especially those related to law, are formulated and accepted as a legal culture. (Sesse 2013)

According to the relationship that occurs between law and socio-culture is born from the habits of people who have to interact between one community and another, and give rise to compliance and become rules (customary law) and in its development, customary law becomes one of the references for Indonesian positive law. Legal texts are never out of context, in the process when a law is formed, for example by the People's Legislative Assembly and the Government as legislators, the draft law must accommodate the needs of the community which is the target of the legal norms. That is, the law that is made must be in line with the demands of the needs of society. (Ahmad t.thn.)

The demand for this need is not something that is in the air, but a need that actually

exists in people's lives and is seen as urgent to be regulated into positive law. This means that when a law, specifically in the form of a statute, is enacted, then there is already a guarantee that this positive law can apply sociologically (because the community really needs it) and apply philosophically because the community views it as necessary to make rules. Thus, it is the duty of the state to stipulate these arrangements into positive law, so that these regulations apply juridically.

Whereas Spanish Legal Culture is based on various historical influences, primarily based on the culture of ancient Rome, Spain follows a civil law tradition and is guided by the Spanish Constitution as its primary source of law. When the interpretation is made, the Constitutional Court will deal with the problem. The court system includes the Supreme Court, national courts, provincial courts, municipal courts, and courts that serve civil purposes in autonomous communities. The lasting influence of Ancient Rome on Spanish religion and language is undeniable, but many other cultural aspects and traditions were added during the course of succeeding Spanish history after the fall of the Roman

Empire. Spanish culture is frequently referred to be Latin due to its rich Roman background, but it has also been greatly impacted by other European and Mediterranean nations. (Country t.thn.)

Rules and cultural authority in the Spanish state are uncertain, usually having a preference for rules. While this may have happened in Spain, there is no respect to follow them. The expression, "Quien hizo la ley, hizo la trampa" (Whoever makes laws makes loopholes) encapsulates the attitude of many Spaniards, that rules are made for the benefit of legislators rather than the people. For example, it is commonly assumed that the political environment is corrupt and that people's taxes are being sucked into the wrong places. Spaniards' hatred of the government is particularly strong among the younger generation, a recent study by the European Foundation for Progressive Studies found that the majority of young people believe politicians are more interested in their own generation than their own. (Evason t.thn.)

There is a cultural affection for the role of the rogue or anti-hero (el pícaro) in Spain. Spaniards often like to support the oppressed. Many

folktales follow the adventures of low-class outsiders, such as bandits, who can overcome the corrupt system of society. In fact, very few Spaniards like to be targeted by pickpockets. However, these stories reflect general skepticism of the government system and distrust of authority figures. This attitude can encourage spontaneity and a mild disregard for law and order in everyday life. (Evason t.thn.)

CONCLUSION

Taking off from the discussions above, the Author would like to draw the following points of conclusion:

1. It can be concluded that there are some similarities between Indonesian National Law on Trademarks and Spanish National Law on Trademarks, such as regulations regarding the meaning of a trademark, the first to file, and compensation in civil lawsuits. Besides, there are also differences, including the regulation regarding Geographical Indications and the application of criminal law in trademark disputes.
2. The differentiating factors that lead to differences in the protection of well-known trademarks between Indonesia and Spain are the Politic of Law factors in Indonesia is Democracy while in Spain Monarchy, the Indonesian Legal System factor

refers to the 1945 law while the Spanish civil law rooted in Roman law, and the Legal culture factor of Indonesia believes in the customs of the local community while the Spanish people do not like the rules of cultural authority.

SUGGESTIONS

From deviant events where imitating well-known and registered trademarks for personal interests in order to enrich/benefit oneself in economic affairs. Therefore, some suggestions are given by the author for parties that play the role in determining:

1. The Directorate General of Intellectual Property should be more thorough and careful when registering a trademark so that there are no mistakes in registering well-known trademarks.
2. If any sign is deemed as suitable to be registered as a trademark, therefore it is recommended to start the registration immediately to avoid unwanted intentions from a person and/or a group of persons toward the product.

REFERENCES

Books

Budi Agus Riswandi, Selayang Pandang Hak Cipta Indonesia, Total Media, Yogyakarta, 2009.

- Garrigues, Guide to Bussines in Spain 2022, ICEX, Madrid, 2022.
- Johnny Ibrahim, Normative Legal Research Theory and Methodology, Surabaya, Bayumedia Publishing, 2005.
- Peter Mahmud Marzuki, Penelitian Hukum (edisi revisi), pick up from Moch. Chairul Rizal,
- Ragam Metode Penelitian Hukum, Lembaga Studi Hukum Pidana, Kediri, 2022.
- Pusat Perencanaan Pembangunan Hukum Nasional, Perencanaan Pembangunan Hukum Nasional 2015-2019, Jakarta, Badan Pembinaan Hukum Nasional, 2012.
- Rahmi Jened, Hukum Merek (Trademark Law) Dalam Era Global & Integrasi Ekonomi, Kharisma Putra Utama, Jakarta, 2015.

Journals

- Aniceto Masferrer, Plurality of Laws, Legal Traditions and Codification in Spain, Journal of Civil Law Studies, Volume 4, Number 2, 2010.
- Fajar Nurhardianto, "SISTEM HUKUM DAN POSISI HUKUM INDONESIA", Jurnal TAPIS, Edision No. 1, Vol. 11, Media Neliti, 2018.
- F. Putuhena, Law Politics of Legislation in Efforts to Improve Quality Product Legislation, Jurnal Rechtsvinding, Volume 1 Number 3, 2012.
- Irfan Nursalim, Thesis: "Perlindungan Hukum Pemegang Merek Terkenal Lois Internasional Tidak Terdaftar Menurut Hukum Kekayaan Intelektual Indonesia", Jakarta, UIN Jakarta, 2021.
- Muh. Sudirman Sesse, "Budaya Hukum dan Implikasinya Terhadap Pembangunan Hukum Nasaional, Jurnal Hukum Diktum, Volume 11, Nomor 2, 2013.
- Ricardo Juan Sánchez, The Administrative Justice in Spain, Current Situation and Challenges, BRICS Law Journal, Volume 3, Number 2, 2016.

Website

- Antonio Tapia Frade and Amalia del Campo Pastor, "Legal System in Spain, Overview, Thomson Reuters Practical Law", Occurred in a link, [https://uk.practicallaw.thomsonreuters.com/7-634-0207?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#co_anchor_a488905](https://uk.practicallaw.thomsonreuters.com/7-634-0207?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a488905), accessed on December, 2022.
- Dimas Rijalul Ahmad, "Hubungan Budaya Dengan Kebudayaan Hukum", Occurred in <https://osf.io/5sp6a/download>, accessed on December, 2022.
- Indo Trademark, "Pemegang LisensiLOIS Gugat NEWLOIS", Occurred in <https://indotrademark.com/baca>

-43-

Pemegang Lisensi LOIS Gugat N
EWLOIS.html?lang=id accessed
on October, 2022.

Nina Evason, "Budaya
Spanyol", Occurred in
[https://culturalatlas-sbs-com-
au.translate.google.com/spanish-
culture/spanish-culture-core-
concepts?_x_tr_sl=en&_x_tr_tl=id
&_x_tr_hl=id&_x_tr_pto=sc](https://culturalatlas-sbs-com-au.translate.google.com/spanish-culture/spanish-culture-core-concepts?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=sc),
accessed on December,
2022.

Rizqy Sultan Alfaroby, "Sistem
Hukum", Occurred in

[https://alfaroby.wordpress.com/
2009/01/13/sistem-hukum/](https://alfaroby.wordpress.com/2009/01/13/sistem-hukum/),
accessed on December, 2022.

Lois Jeans, "The Original Spanish Jeans",
<https://loisjeans.id/> accessed on
October, 2022. Study Country,
"Budaya, Tradisi, dan Warisan
Spanyol", Occurred in
[https://www-
studycountry-
com.translate.google.com/guide/ES-
culture.htm?_x_tr_sl=en&_x_tr_tl=
id&_x_tr_hl=id&_x_tr_pto=sc](https://www-studycountry-com.translate.google.com/guide/ES-culture.htm?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=sc),
accessed on December,
2022.