



The Effectiveness of Alternative Dispute Resolution in Trademark Protection in Indonesia: Challenges and Solutions

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Abstract: This article examines the challenges and solutions in trademark dispute resolution in Indonesia, with a particular focus on the effectiveness of existing regulations and the implementation of Alternative Dispute Resolution (ADR) methods, such as mediation and arbitration. While Law No. 20 of 2016 provides legal protection for registered trademarks, law enforcement in the digital era faces numerous challenges, including trademark infringements occurring on e-commerce platforms. The article demonstrates that ADR can offer a more efficient and cost-effective alternative to litigation; however, a key challenge lies in the limited awareness among business actors about the benefits of ADR. Consequently, this article recommends enhancing education for business owners, strengthening regulations related to ADR, and improving the quality of mediators and arbitrators in the field of intellectual property law. Furthermore, the article emphasizes the need for integrating technology into the dispute resolution process to improve efficiency and accessibility.

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Introduction

Dispute resolution concerning trademarks in Indonesia has become an increasingly important issue within the context of intellectual property rights (IPR) protection. In recent years, with the growth of the business sector and the increasing level of globalization, trademark infringements have become more frequent. In the digital age, advancements in information technology have facilitated easier access to products and information, but also heightened the potential for trademark violations. As a result, many trademark owners face significant challenges in protecting their registered trademark rights, both domestically and internationally. The protection of registered trademarks has become increasingly critical, as trademarks represent valuable assets for companies in building their identity and reputation in the market.

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Law No. 20 of 2016 on Trademarks and Geographical Indications (the Trademark Law) provides the legal framework for the protection of registered trademarks in Indonesia. This law governs the trademark registration process and grants exclusive rights to trademark owners to prevent others from using similar or identical marks. However, the implementation of the Trademark Law often faces various obstacles. One such challenge is the lengthy and costly litigation process, which makes it difficult for many trademark owners, especially micro, small, and medium enterprises (MSMEs), to enforce their rights. Additionally, the relatively low awareness of alternative dispute resolution methods, such as mediation and negotiation, further complicates the efficient resolution of trademark disputes.

According to the Directorate General of Intellectual Property (DGIP) report, the number of trademark disputes filed with the Commercial Court in Indonesia has been steadily increasing year by year. In 2020, more than 500 trademark disputes were recorded, the majority of which were resolved through litigation, a process often prolonged and costly (Prameswari & Aidi, 2024). This data suggests that the current dispute resolution system is not sufficiently effective in ensuring prompt and efficient legal protection for trademark owners.

One of the primary challenges in resolving trademark disputes is the lack of awareness regarding the importance of trademark registration and a limited understanding of the applicable legal procedures. In reality, many small and medium-sized enterprises (SMEs) are still not fully aware of the benefits of trademark registration or the significance of legal protection for their brands. Moreover, although alternative dispute resolution (ADR) mechanisms, such as mediation and arbitration, exist, their usage remains limited. This is due to a low understanding of the effectiveness of ADR and the ongoing legal uncertainties surrounding out-of-court dispute resolutions (Jasmine, 2021; Betlehn & Samosir, 2018).

The rapid development of the e-commerce sector and digitalization has also given rise to new challenges in trademark protection. Digital platforms and online transactions have created opportunities for trademark infringements, such as product counterfeiting or the use of domain names similar to registered trademarks. For instance, trademark disputes related to the use of domain names resembling well-known brands, as evidenced in cases involving the TikTok platform, highlight the increasingly complex nature of potential infringements in the digital world (Pambudi et al., 2023). This underscores the need for more adaptive regulations to address technological advancements, as well as a broader understanding of intellectual property rights among business actors, including micro, small, and medium-sized enterprises (Jasmine, 2021; Ramin, 2023).

On the other hand, the principle of distinctiveness plays a critical role in trademark protection. Trademarks with strong distinctive characteristics enable

consumers to easily differentiate the products or services offered from others in the market. A distinctive trademark, whether inherently or through use, is more likely to receive legal protection as it helps prevent market confusion (Sufilah, 2021; Ayuhandika et al., 2023). This is particularly significant in the context of the increasing number of trademark disputes, both domestically and internationally.

Dispute resolution in trademark matters in Indonesia can be pursued through two main avenues: litigation and non-litigation. Litigation, conducted through the courts, offers the advantage of legal certainty and binding decisions, with the potential to establish legal precedents for future cases. However, this route often involves significant time and financial costs and can strain the relationships between the disputing parties. In contrast, non-litigation methods, such as mediation, negotiation, and arbitration, provide faster and more cost-effective solutions. Nevertheless, the primary drawback of non-litigation avenues is the lack of legal certainty, as the outcomes are not always binding, which may lead parties to resort to litigation if agreements are not enforced (Hidayat & Komarudin, 2020).

In this context, the present study aims to analyze trademark dispute resolution in Indonesia, focusing on the effectiveness and challenges encountered when utilizing both litigation and alternative dispute resolution (ADR) mechanisms. This article also seeks to contribute to the development of a deeper understanding of trademark protection in Indonesia and provide recommendations for stakeholders, particularly small and medium-sized enterprises (SMEs), to better comprehend and optimize their intellectual property rights.

Methods

This study employs a qualitative methodology with a descriptive-analytical approach to analyze legal phenomena within the context of trademark disputes in Indonesia. The qualitative approach was chosen as it allows for an in-depth exploration of various perspectives related to the resolution of trademark disputes, encompassing both legal and practical dimensions. This methodology offers a more holistic understanding of the dynamics involved in resolving trademark disputes and examines the factors that influence both the process and the outcomes of these resolutions.

The descriptive-analytical approach is used to describe and analyze the characteristics and dynamics of trademark disputes in Indonesia. The focus of this study is to gain a comprehensive understanding of how trademark disputes are resolved, whether through litigation in commercial courts or through alternative dispute resolution (ADR) mechanisms such as mediation and arbitration. This approach not only outlines the legal processes involved but also critically analyzes the issues that arise at each stage of the dispute resolution process.

The data utilized in this article was sourced from both online and print materials, encompassing: 1) An analysis of various applicable regulations, including Law No. 20 of 2016, as well as other legal documents related to trademark disputes, such as court rulings and the outcomes of arbitration and mediation proceedings. The purpose of this legal document analysis is to understand the legal framework governing trademark dispute resolution and to evaluate the practical application of relevant legal provisions in legal practice (Gurning et al., 2023). 2) The article also incorporates case studies to provide a detailed account of how specific trademark disputes have been resolved. These case studies offer insights into the processes, outcomes, and factors influencing the resolution of trademark disputes (Ariani, 2018; Sulistianingsih & Prabowo, 2019). The analyzed cases shed light on the effectiveness of both litigation and non-litigation routes in resolving trademark disputes.

Results and Discussion

Result

The Law No. 20 of 2016 on Trademarks and Geographical Indications provides a clear legal foundation for registered trademark owners to protect their rights. This law grants exclusive rights to trademark owners to use their trademarks in commerce and to prevent others from using similar trademarks without permission (Rahaditya et al., 2023). Additionally, the regulation addresses the cancellation of trademarks that fail to meet legal requirements and outlines legal actions that can be taken against trademark infringements, such as counterfeiting and unauthorized use.

However, despite the presence of a well-defined legal framework, the implementation of this law faces significant challenges, particularly in terms of enforcement. One of the major issues highlighted in this study is the high frequency of trademark violations in e-commerce transactions, which are often difficult to address due to the anonymous nature of many infringements. E-commerce platforms, such as online marketplaces, have a legal responsibility to take action against the sale of goods suspected of infringing trademark rights. Nonetheless, many platform providers are still reluctant to take responsibility for the activities of third-party vendors operating on their platforms, which exacerbates trademark violations (Pokrovskaya, 2024; Fitri et al., 2024). Therefore, stronger collaboration between platform providers and trademark owners is essential to reduce the prevalence of trademark violations in the e-commerce sector (Silalahi & Soemartono, 2024).

The principle of trademark distinctiveness plays a crucial role in the acceptance of trademark registrations in Indonesia. Trademarks that possess a high degree of distinctiveness, such as arbitrary or fanciful marks, are more easily

accepted for registration compared to descriptive or generic marks (Adarsh et al., 2024). According to Law No. 20 of 2016, a registered trademark must be capable of distinguishing the goods or services it represents from those of other providers in the market, thereby creating a clear identity that avoids consumer confusion (Putri et al., 2023). Trademarks that fail to meet these distinctiveness criteria are typically rejected, as they may mislead consumers regarding the quality or origin of the products.

This article demonstrates that Indonesian courts tend to prioritize the protection of trademarks that possess uniqueness and clarity in their identity, thus providing legal certainty for trademark owners (Budiono et al., 2022). In this context, it is advised that trademark owners select distinctive and uncommon names to ensure maximum legal protection. Furthermore, descriptive or generic marks may still be accepted for registration if they can demonstrate significant recognition in the market. For instance, evidence such as market surveys or sales data indicating consumer recognition of the trademark may suffice (Svinarky et al., 2018).

Alternative Dispute Resolution (ADR) mechanisms, particularly mediation and arbitration, are increasingly becoming relevant options for resolving trademark disputes in Indonesia. Mediation allows the parties involved in a dispute to reach a mutually acceptable agreement with the assistance of a neutral mediator. One of the key advantages of mediation is its efficiency, offering a faster process, lower costs, and the potential to create solutions that are more satisfactory for both parties (Prayuti et al., 2024). This article highlights that mediation can also help reduce tensions between parties and prevent further reputational damage in the market (Hadiati & Tampi, 2017).

On the other hand, arbitration provides the benefit of privacy and confidentiality, which is especially crucial for trademark owners who wish to protect their reputation from the negative publicity that may arise from litigation in court (Waruwu et al., 2023). Arbitration is also generally faster than litigation, as it is not bound by the complex legal procedures often involved in court trials, making it a more straightforward alternative (Adityanto, 2017). However, a significant challenge in arbitration is the limited awareness among businesses regarding the process, as well as the uncertainty surrounding the enforcement of arbitral awards in court, particularly if one party refuses to comply with the arbitral decision (Syamhadi et al., 2023).

Although Alternative Dispute Resolution (ADR) offers many advantages, it faces several challenges, including the lack of experienced mediators or arbitrators in intellectual property law and a shortage of trained human resources, which hinder the effectiveness of this process (Nusantara, 2024; Jamilus, 2020). Therefore, further education and strengthening of regulations related to ADR are crucial to

enhancing the effectiveness of this dispute resolution method in Indonesia.

An important example of the application of trademark law principles in Indonesia is the “Geprek Benu” trademark dispute. This case involved two parties claiming rights to the same trademark: Ruben Onsu and PT. Ayam Geprek Benny Sujono. The Commercial Court ruled that PT. Ayam Geprek Benny Sujono, which registered the “I Am Geprek Benu” trademark first, had exclusive rights to the trademark, based on the “first to file” principle that applies in Indonesia (Abdurahman, 2020; Aspriola & Israd, 2022). This decision affirms that under Indonesian trademark law, the first registration of a trademark is a determining factor in establishing ownership of the trademark, even if the trademark has not been used previously.

In addition to the “first to file” principle, courts also consider the element of good faith in trademark registration. The party registering the trademark must demonstrate that the registration is not intended to deceive or mislead consumers (Herfianto et al., 2024). In this regard, the court ruled that PT. Ayam Geprek Benny Sujono acted in good faith when registering their trademark, thereby granting them legal protection for the trademark (Nanda et al., 2023).

Enforcement of trademark violations, particularly in the context of e-commerce, remains a significant challenge in Indonesia. Many violations occur anonymously, and e-commerce platforms often lack adequate mechanisms to prevent trademark infringements or respond swiftly to infringement reports. This highlights the need for increased legal awareness among platform providers and business operators to minimize trademark violations and ensure effective legal protection.

Discussion

One of the main findings of this study is the importance of integrating the legal system with Alternative Dispute Resolution (ADR) mechanisms in enhancing the effectiveness of trademark dispute resolution. ADR methods, particularly mediation and arbitration, offer faster, more efficient, and cost-effective solutions compared to traditional litigation. However, to fully realize the potential of these methods, there is a need for clearer and more detailed regulatory support regarding ADR procedures and mechanisms. This includes the establishment of specific regulations on standards for mediators and arbitrators, as well as more transparent processes for trademark dispute resolution (Adityanto, 2017).

It is important to note that while legal regulations are in place, their implementation often faces challenges, such as a lack of understanding of ADR among business actors, especially Micro, Small, and Medium Enterprises (MSMEs). Awareness-raising programs, involving government institutions such as the Ministry of Law and Human Rights, can help increase awareness of the advantages

of ADR and provide a clearer understanding of how these mechanisms can be effectively utilized. As a result, business actors will be more motivated to choose ADR as a dispute resolution method, rather than undergoing the complex and time-consuming litigation process.

Furthermore, if the outcome of mediation or arbitration is not complied with by one of the parties, it is essential to introduce mechanisms that allow such decisions to be recognized by the court as binding rulings. This would provide legal certainty, ensure more effective enforcement of the decision, and reduce the need for further litigation ([Aisy, 2022](#)).

An enhancement in the quality of mediators and arbitrators plays a crucial role in improving the effectiveness of dispute resolution through Alternative Dispute Resolution (ADR) mechanisms. Well-trained human resources with a deep understanding of intellectual property (IP) rights, particularly trademarks, will expedite the dispute resolution process and offer more satisfactory solutions for both parties ([Gojali, 2023](#)). Therefore, it is essential to increase specialized training for mediators and arbitrators in the fields of trademark law and intellectual property.

Furthermore, the introduction of online platforms that facilitate mediation and arbitration processes is crucial, especially in the digital age. These platforms enhance accessibility, enabling parties to connect with mediators or arbitrators without the need for physical meetings, thereby saving both time and costs ([Putri et al., 2023](#)). The relevance of these online platforms is heightened by the rapid growth of the e-commerce sector, where numerous trademark disputes arise in the digital domain.

While Law No. 20 of 2016 provides a clear legal framework for trademark protection in Indonesia, significant challenges persist regarding its enforcement, particularly within the context of e-commerce transactions. Many trademark infringements occur anonymously on digital platforms, making it difficult to identify and penalize offenders in accordance with existing laws ([Vitalii, 2024](#)). Additionally, e-commerce platforms often lack sufficient mechanisms to prevent trademark violations or are not proactive enough in addressing infringement reports.

To address the issue at hand, strengthening regulations that govern the responsibility of platform providers is essential. These regulations should mandate platform providers to take proactive steps and implement effective tools for monitoring and enforcing trademark rights. Active involvement of platform providers in protecting intellectual property rights will not only enhance the trust of businesses but also of consumers engaging in transactions on digital platforms.

This article also emphasizes the importance of regulatory reforms to support the implementation of Alternative Dispute Resolution (ADR) mechanisms,

particularly in trademark disputes. Clearer and more detailed regulations concerning the rights and obligations of parties involved in trademark disputes would provide legal certainty, reduce confusion, and create a more efficient process. One necessary step is to clarify the procedures for mediation and arbitration, which can serve as viable alternatives for resolving disputes outside the court system (Widiatmika et al., 2023).

Additionally, strengthening the legal infrastructure that supports alternative dispute resolution (ADR) will be crucial. The government needs to collaborate with relevant institutions to enhance the trademark registration system, ensuring it is faster, more efficient, and more accessible for businesses to officially register their trademarks. This improvement will reduce trademark disputes related to similar or identical marks, which often arise when businesses fail to register their trademarks in a timely manner (Broekhuizen et al., 2017).

The synergy between law and technology is essential for improving the effectiveness of trademark dispute resolution. One such innovation that can be implemented is the use of artificial intelligence (AI)-based technology in arbitration and mediation processes to expedite dispute resolution. The integration of AI can make these processes more efficient, enhance accessibility for the parties involved in the dispute, and help reduce the operational costs incurred during the resolution process (Agus et al., 2023).

Stricter regulations to protect well-known trademarks need to be implemented, given the increasing number of violations targeting such brands. By identifying widely recognized trademarks, governments can provide additional protection to prevent misleading use by third parties, which could harm the trademark owners (Jia, 2024). This protection would not only enhance public trust in well-known trademarks but also contribute to creating a fairer and more secure market environment for businesses.

Conclusion

This article highlights the challenges and opportunities in trademark dispute resolution in Indonesia, focusing on the effectiveness and implementation of laws, as well as alternative dispute resolution (ADR) methods such as mediation and arbitration. While Indonesia has clear regulations in place through Law No. 20 of 2016 on Trademarks and Geographical Indications, the enforcement of these laws still faces significant obstacles, particularly in the context of e-commerce. Trademark infringements carried out anonymously on digital platforms, along with the limited involvement of platform providers in enforcing trademark rights, pose major challenges to the protection of intellectual property (IP) rights in the digital realm.

The application of ADR as an alternative dispute resolution mechanism holds great potential for offering more efficient and cost-effective solutions compared to litigation. However, there are still barriers due to a lack of awareness among business actors, especially Micro, Small, and Medium Enterprises (MSMEs), regarding the benefits and procedures of ADR. Therefore, there is a critical need for increased education and outreach to business operators, particularly focusing on the advantages of ADR and how to utilize it effectively.

Clearer and more detailed regulations regarding the mechanisms of mediation and arbitration, as well as the strengthening of the legal infrastructure supporting out-of-court dispute resolution, would significantly help reduce litigation burdens and expedite trademark dispute resolution processes. Additionally, enhancing the quality of mediators and arbitrators, along with the integration of technology into the dispute resolution process, could accelerate and improve accessibility for disputing parties.

Overall, this article demonstrates that while there is a sufficient legal framework in place, further improvements are needed in the areas of regulation, human resource training, and technology integration to enhance the effectiveness and efficiency of trademark dispute resolution in Indonesia.

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