

Elements of Good Faith in Trademark Registration Under Indonesian Law

(Case Study of Supreme Court Decision No. 781 K/Pdt.Sus-HKI/2022)

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Abstract: The purpose of this study is to determine and analyze the legal certainty of the element of good faith as the protection of the implementation of trademark registration in Indonesia, the legal implications of the registration of a trademark that is canceled because it does not meet the elements of good faith in Indonesia; and legal considerations of judges in deciding cases in the Supreme Court decision number 781 K/PDT.SUS-HKI/2022 in providing legal certainty for trademark owners who register their trademarks in good faith. This type of research is normative research and descriptive analysis. This research uses library data collection techniques and is done by collecting and reviewing secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials. The data collected is then analyzed with qualitative methods. The results of the study concluded that the strength of the element of good faith as the protection of the implementation of trademark registration in Indonesia can be said to still not be able to provide protection and legal certainty maximal. The legal implications of the registration of a trademark that is canceled because it does not meet the elements of good faith in Indonesia is the cancellation and removal of trademarks by the Minister. Legal considerations of judges in deciding the case in the Supreme Court decision number 781K/Pdt.Sus-HKI/2022 in providing legal certainty for trademark owners who register their trademarks in good faith is wrong. The panel of judges should not use Article 21 paragraph (1) items b and c, but rather use Article 21 paragraph (3) of Law Number 20 Year 2016 as the basis for legal considerations in deciding the case.

Keyword: Good Faith, Legal Certainty, Trademark Registration.

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1. Introduction

The significant increase in the field of technology and information in this era has made Intellectual Property Rights (IP) play an important role in supporting economic progress towards free trade. IP is a property right, a right to something that comes from the work of the brain, the work of the ratio, the result of the work of human ratios that reason (OK. Saidin, 2015).

There are various kinds of IP in Indonesia, namely Copyright and Industrial Property Rights. In Industrial Property Rights, there are Trademarks, Patents, Trade Secrets, Industrial Designs, Integrated Circuit Layout Designs, Plant Variety Protection. According to Article 1 Paragraph (1) of Law Number 20 Year 2016 on Trademarks and Geographical Indications, Trademark is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in the form of 2 (two) dimensions and / or 3 (three) dimensions, sound, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and / or services produced by persons or legal entities in the activities of trading goods and / or services.

A brand is something that is affixed or attached to a product, but it is not the product itself. Often after the goods are purchased, the brand cannot be enjoyed by the buyer. It is the material object that can be enjoyed. The brand itself is only an immaterial object that cannot provide anything physically. To introduce the production of a company, the brand has a very important role for the owner of a product. This is due to the function of the trademark itself to distinguish a good and / or service with other goods and / or services that have criteria in the class of goods and / or similar services produced by different companies (OK. Saidin, 2015).

At a high level, a brand is an identity of a good or service so that consumers can distinguish the origin of its production, quality, and guarantee that the product is original. Even brands are often used as a tool to show the social level of consumers. A product without an identity or brand can certainly encounter difficulties in marketing, because the brand is the "initial seller" for a product to be sold to consumers. Consumers buy certain products by looking at the brand, because according to consumers the brand purchased is of high quality and safe for consumption due to the reputation of the brand (Rizaldi, 2009).

Indonesia adheres to the first to file system which means that to have rights to a trademark requires registration. According to Article 13 of the Regulation of the Minister of Law and Human Rights No. 67 of 2016, Article 4 Paragraph (1) Trademark applications that have completed the minimum requirements for trademark registration, namely in the form of a completed trademark registration form, trademark label and proof of payment of fees, will be given a date of receipt. Within a maximum period of 15 (fifteen) days from the date of receipt, the Directorate General will conduct an examination of the completeness of the documents required for registration of the trademark or often referred to as the examination of formalities.

The absolute requirement of a trademark must be met by every person or legal entity that wants to register a trademark is that the mark must have sufficient distinguishing power. In other words, the mark used must be such that it has enough power to distinguish the goods produced by one person from the goods produced by others. In other words, the registration of a product must be based on the principle of good faith (Margono, 2011).

Good faith in trademark registration is important because if a trademark is registered without good faith, it will cause problems in the future. Indonesia's experience for 30

years using the declarative system recorded a lot of unauthorized declarations of trademark ownership. Trademarks that are declared to be recognized as his trademark turns out to belong to someone else. Owned by foreigners abroad. They get around the law, because, the declarative system recognizes who first registered his trademark in Indonesia, he will be recognized as the owner. Property rights to such a mark are further confirmed through a request for registration at the Trademark Office (Soelistyo, 2016).

The strength of the element of good faith in trademark registration in Indonesia can be said to be weak, this is because the trademark office cannot refuse the registration of a trademark if the application has met the requirements. So that the element cannot be proven during the trademark registration process, but can be proven when there is another party who filed a lawsuit over trademark registration. As one of the trademark cases that occurred in Indonesia is a trademark dispute between Health And Happiness (H&H) Hong Kong Limited (Formerly Named BIOSTIME Hong Kong Limited) against PT Bogamulia Nagadiyang contained in the Supreme Court decision number 781K/Pdt.Sus-HKI/2022. Health And Happiness (H&H) Hong Kong Limited (Formerly BIOSTIME Hong Kong Limited) filed a lawsuit to the Central Jakarta Commercial Court against PT Bogamulia Nagadi regarding the use of the Biotism trademark which has overall similarities, the Central Jakarta Commercial Court decided to grant the lawsuit filed by the plaintiff. After that, the defendant filed an appeal to the Supreme Court with the decision to grant PT Bogamulia Nagadi's appeal and cancel the decision of the Commercial Court at the Central Jakarta District Court Number 48/Pdt.Sus-Merek/2021/PN.Niaga.Jkt.Pst.

Based on the above description, this research is important to do because good faith is one of the important components for the legal protection of trademarks under Act No. 20 of 2016 on Trademarks and Geographical Indications and the issue of the limits of good faith in Act No. 20 of 2016 on Trademarks and Geographical Indications can lead to different interpretations and perceptions.

2. Research Method

This type of research is normative research and descriptive analysis. This research uses library data collection techniques and is carried out by collecting and reviewing secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials. The data collected is then analyzed with qualitative methods and deductive conclusions are drawn.

3. Result and Discussion

3.1 Legal Certainty of Good Faith Elements as Protection of Trademark Registration Implementation in Indonesia

Certainty is a matter or condition that is certain, a provision or a decree. The law must essentially be certain and just. It must be certain as a code of conduct and just because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty can the law fulfill its function. Legal certainty is a question that can only be answered normatively, not sociology (Rato, 2014).

Since the Dutch colonial rule, there has been trademark legislation, namely the Reglement Industrielle Eigendom (RIE) or Reglement of Industrial Property Rights in 1912 contained in Stb. 1912 No. 545 Jo. Stb. 1913 No. 214. Reglement Industrielle Eigendom is a duplicate of the Dutch Trademark Act which consists of 27 Articles. The system adopted in Reglement Industrielle Eigendom is a declarative system which means, the party who gets the main protection is the first trademark user not the first registrant (Hasibuan, 2003).

After Indonesia's independence on August 17, 1945, the Reglement Industrielle Eigendom was declared to continue to apply until the provisions were replaced by Law Number 21 of 1961 concerning Company Marks and Trademarks. This proves that the government has a strong commitment to provide brand protection for brand owners in Indonesia, over time the government argues that this law is made too simple, and to further improve services and provide legal certainty for the world of industry, trade, and investment in the face of local, regional, regional, and international economic developments as well as the development of information and communication technology, it needs to be supported by a legislation in the field of Trademarks and Geographical Indications that are more adequate so that Law No. 21 of 1961 was formed, in addition to not including criminal sanctions, Law No. 21 of 1961 also does not require further regulations on its implementing regulations. In fact, Law No. 21 of 1961 can be said to be an extension of the provisions stipulated in the Reglement Industrielle Eigendom, because many provisions are adopted from the Reglement Industrielle Eigendom (Hasibuan, 2003).

The difference lies only in the validity period of trademark protection which is 10 years according to Act No. 21 Year 1961 and 20 years according to Reglement Industrielle Eigendom. Another difference is the classification of goods in 35 classes in Act No. 21 Year 1961 which is not known in Reglement Industrielle Eigendom.

In 1992, the Trademark Act was updated and replaced by Act No. 19 Year 1992 on Trademarks which came into force on April 1, 1993. Trademark Act of 1961 is considered no longer in accordance with the development of circumstances and needs, so that Act No. 21 Year 1961 is declared invalid, but all implementing regulations made under Act No. 21 Year 1961 that have existed on April 1, 1993 are declared to remain in force as long as it does not conflict or has not been replaced with a new one based on Act No. 19 Year 1992 (Kansil, 1997).

The significant change from the Trademark Act of 1961 to the Trademark Act of 1992 is the change of trademark registration system. First, the old Act (Act No. 21 of 1961) only regulates trademarks while the new Act (Act No. 19 of 1992) regulates goods marks and service marks; Second, the old Act adopts a declarative registration system, while the new Act adopts a constitutive registration system. In the declarative registration system, the first user of a trademark will obtain legal protection, while in the constitutive registration system, the first registrant will obtain legal protection. Third, registration under the old law is only by formal examination, while examination under the law is done through substantive examination. Substantive examination where the trademark examiner at the Directorate-General of Intellectual Property will

assess whether the trademark is acceptable according to Articles 4 and 5 of the Trademark Law, as well as comparing the trademark to be registered with the trademarks owned by others who have been registered first, in case there are similarities both in whole and in essence according to Article 6 of the Trademark Law. Fourth, the new law applies priority rights, transfer of trademarks by license and criminal sanctions while the old law does not provide for priority rights, transfer of trademarks by license or criminal sanctions (Hasibuan, 2003).

Trademark Act of 1992 was refined again in order to adapt to the provisions contained in TRIPs, namely by Act No. 14 Year 1997. Trademark Act of 1997 is complementary, add and change the provisions of the Trademark Act of 1992, and not replace. The added things are the Protection of geographical indications, which is a sign indicating the region of origin of an item which is due to geographical environmental factors including natural factors or human factors or a combination of both factors that give certain characteristics and quality to the goods produced. In addition, Law No. 14 of 1997 also regulates the Protection of indication of origin, which is a sign that is almost similar to the sign protected as a geographical indication, but the Protection is given without having to be registered. Other things that are changed in Act No. 14 Year 1997 is the right to a registered service mark that is closely related to a person's personal ability or skill, can be transferred or licensed to other parties provided that it must be accompanied by a quality guarantee from the owner of the mark (Hasibuan, 2003).

In 2001, the Trademark Act again underwent changes with the enactment of Act No. 15 Year 2001 on Trademark which came into force on August 1, 2001. This change was made to anticipate the development of information technology and transportation that has made the activities in the trade sector increased rapidly and also to maintain a healthy business competition climate, as well as to accommodate some aspects or provisions in the TRIPs agreement that have not been accommodated in the Trademark Act of 1997. Until 2016 the government issued new regulations on trademarks as outlined in Act No. 20 Year 2016 on Trademarks and Geographical Indications to provide legal protection against trademark registration (Usman, 2003).

In essence, a trademark is used by the manufacturer or owner of the trademark to protect its products, either in the form of services or trade goods. With the registration of a trademark, the owner gets the right to a trademark that is protected by law. When someone applies for trademark registration that has been completed according to the applicable provisions, the Directorate-General of Intellectual Property will only provide the application number as well as the date of receipt of the application.

Legal certainty of the element of good faith as Protection of the implementation of trademark registration in Indonesia has been clearly stated in the Act No. 20 Year 2016 on trademarks and geographical indications Article 21 paragraph (3) which states the application is rejected if submitted by the applicant who has bad faith. Meanwhile, for trademark owners who are in good faith, their registration can be accepted and get protection in accordance with the provisions of Article 35 of Law Number 20 Year 2016 on Trademarks and Geographical Indications.

3.2 Legal Implications of the Registration of a Trademark that is Canceled because it does not meet the elements of good faith in Indonesia

The action of canceling a registered trademark can only be done in a trademark dispute related to the ownership of the rights to the trademark not to the trademark dispute regarding the use of the rights to the trademark. This means that this cancellation action is only applied in trademark disputes where one of the parties has obtained rights to the trademark in bad faith. Arrangements regarding the cancellation of registered trademarks are contained in Article 76 to Article 79 of the Trademark Act 2016. Cancellation of a registered trademark can only be filed by an interested party or trademark owner, either in the form of an application to the Directorate-General of Intellectual Property or a lawsuit to the Commercial Court in Jakarta if the plaintiff resides outside the territory of Indonesia, on the basis of the reasons referred to in Article 20 and / or 21 which regulates the trademark that cannot be registered and which is rejected (Usman, 2003).

Regarding the grace period of the trademark cancellation lawsuit, it is stated in Article 77 of the Trademark Law of 2016, that the trademark registration cancellation lawsuit can only be filed within a period of 5 (five) years from the date of registration of the trademark. Especially for cancellation lawsuits based on reasons contrary to religious morality, decency, or public order can be filed at any time without any time limit.

In the event of infringement of a mark, the plaintiff must be able to prove that the defendant's mark at least has similarities that mislead consumers when purchasing the defendant's products or services, and is substantially similar to the mark owned by the plaintiff (Endang, 2012).

The crime of using a trademark that is substantially the same as another's registered trademark that any person who intentionally and without right uses a trademark that is substantially the same as a registered trademark owned by another party for similar goods and/or services that are produced and/or traded, shall be punished with imprisonment of 4 (four) years and/or a maximum fine of Rp 800.000.000,- (eight hundred million rupiahs). The excerpt of Article 91 of the Trademark Law of 2016, if detailed, consists of elements, namely the subjective element where there is intentional misconduct, while the objective element consists of unlawfully without rights, the act of using, the object is a mark that is substantially the same as the registered mark, owned by another party for similar goods and/or services produced and/or traded (Chazawi, 2019).

Settlement of trademark disputes in Indonesia can be through three trademark dispute resolution institutions, namely alternative dispute resolution, arbitration and court. All three have advantages and disadvantages in resolving trademark disputes. However, the path that is quite often used is the court. As is known, the Commercial Court was originally intended to hear bankruptcy and PKPU cases only. However, after entering the millennium, the scope of the Commercial Court was expanded to try IPR cases in line with changes in the law in the field of IPR (Endang, 2012).

With the replacement of Act No. 19 Year 1992 jo Act No. 15 Year 2001 on Trademark has changed that the settlement of trademark disputes that used to be brought to the district court, since then tried in the Commercial Court. For this purpose, the Commercial Court has been established in several places in Indonesia, namely Medan, Jakarta, Semarang, Surabaya, and Makassar. Against the decision of the Commercial Court in question can only be filed at the cassation level. Clerk of the court concerned immediately convey the contents of the Court's decision to the Directorate-General of Intellectual Property which will only carry out the removal of the relevant trademark from the General Register of Trademarks if the decision of the judicial body has been accepted and legally binding. The legal implications of the canceled trademark because it is proven to register the trademark is not in good faith, then the license to the trademark is lost and the legal protection of the trademark is also lost. In addition to the trademark owner who by the verdict is proven to commit trademark infringement can be punished in accordance with Article 100 to Article 103 of the Trademark Act of 2016.

3.3 Analysis of Judges' Legal Considerations in Deciding Cases in Supreme Court Decision Number 781 K/PDT.SUS-HKI/2022 in Providing Legal Certainty for Trademark Owners Who Register Their Trademarks in Good Faith

The feud between PT Bogamulia Nagadi and Health and Happiness (H&H) Hong Kong Limited began with a lawsuit filed by Health and Happiness (H&H) Hong Kong Limited (hereinafter referred to as the Plaintiff) against PT Bogamulia Nagadi (hereinafter referred to as the Defendant) on July 21, 2021. Based on the lawsuit file received and registered at the Registrar of the Commercial Court at the Central Jakarta District Court with Register Number 48 /Pdt.Sus-Merek/2021/PN Niaga Jkt Pst, the lawsuit contains a trademark cancellation lawsuit against BIOSTIME registered trademarks on behalf of the Defendant in various classes.

The Plaintiff in its lawsuit stated that the BIOSTIME mark with the above classification is a well-known mark owned by the plaintiff, this is based on the widespread use and promotion throughout the world, the Plaintiff's BIOSTIME mark has become a well-known mark, and was declared a well-known mark in the People's Republic of China in 2006. In January 2013, according to the Plaintiff, the Defendant applied for registration of the BIOSTIME mark which is identical to the Plaintiff's BIOSTIME mark for similar types of goods. According to the Plaintiff, this is an act of bad faith by the Defendant so that the Defendant's BIOSTIME mark can be canceled even though it has passed the period of five years from the date of registration of these marks. Article 77 paragraph (2) of the Trademark Law states that there is no time limit for filing a trademark cancellation lawsuit if the trademark to be canceled is filed and registered in bad faith.

The Plaintiff's BIOSTIME mark was first used in 2002 in the People's Republic of China for children's probiotic products, and to date, the Plaintiff's BIOSTIME products have been distributed in various countries/regions. The Plaintiff's BIOSTIME Trademark was first registered in 2003 in Hong Kong, and to date has been registered in more than 50 (fifty) countries. The Plaintiff's BIOSTIME Trademark, which is part of the name of the Plaintiff's founding company, is an invented mark and a name created and first used for

children's probiotic products in 2002, then for a range of infant formula products launched in 2008. In 2010, BIOSTIME International Holdings Limited was listed on the Hong Kong Stock Exchange in 2010 and the group companies were restructured or re-branded under the name BIOSTIME International Holdings Ltd. which was incorporated on 30 April 2010. In 2017, the group changed its name to H&H Group headquartered in Hong Kong, with more than 3,000 members operating in 14 countries Australia, New Zealand, China, India, Singapore, Malaysia, Thailand, France, Italy, Switzerland, Netherlands, Ireland, United Kingdom and United States.

The BIOSTIME mark was first registered in September 2003 in Hong Kong under registration number 300130283, followed by registration in France around the end of 2003. By 2013, the year in which the Defendant applied for registration of the BIOSTIME mark in Indonesia, the Plaintiff had obtained registration of the BIOSTIME mark in the following countries and territories: Argentina, Australia, Pakistan, Brazil, Belarus, Iceland, Denmark, France, Philippines, Kazakhstan, South Korea, Kyrgyzstan, Canada, Cambodia, Malaysia, United States, Bangladesh, Peru, South Africa, Nigeria, Norway, European Union, Japan, Switzerland, Thailand, Turkey, Turkmenistan, Brunei Darussalam, Singapore, New Zealand, India, Indonesia, United Kingdom, United Kingdom, Vietnam, Chile, China, Macao, Taiwan, and Hong Kong and specifically in Indonesia.

The Plaintiff states that there are similarities in the Trademark registered by the Defendant, clear similarities between the Defendant's BIOSTIME Trademark and the Plaintiff's BIOSTIME Trademark in terms of visual, letter composition, writing style and speech sounds which are clear indications of bad faith. The similarities consist of the visual similarities of the Defendant's BIOSTIME Trademark consisting of the exact same/identical font selection with identical order as the Plaintiff's BIOSTIME Trademark. The font selection (lettering style) in the Defendant's BIOSTIME Mark also closely resembles the Plaintiff's BIOSTIME Mark; Speech sound similarity As the two marks consist of identical letter selection with identical letter arrangement, the Defendant's BIOSTIME Mark has the same pronunciation as the Plaintiff's BIOSTIME mark; and Similarity in type of goods The type of goods of the Defendant's BIOSTIME Mark for products related to infants, cereals, pharmaceuticals, and dairy products are similar to the main type of goods of the Plaintiff's BIOSTIME mark which are products related to probiotics, milk, and nutritional food products.

The similarity as described above, claimed by the Plaintiff as an act of registration of the trademark is not in good faith so that the Plaintiff argues that the lawsuit for cancellation of the Defendant's BIOSTIME Trademark can be based on Article 76 paragraph (1) jo. Article 76 paragraph (1) of the Trademark Law (1) A lawsuit for the cancellation of a registered Trademark may be filed by any interested party based on the grounds as referred to in Article 20 and/or Article 21. Article 77 paragraph (2) of the Trademark Law (1) A cancellation lawsuit may be filed indefinitely if there is an element of bad faith and/or the relevant Trademark is contrary to the state ideology, laws and regulations, morality, religion, decency, and public order. Referring to the above provisions, the Plaintiff filed a trademark cancellation lawsuit against the Defendant's

BIOSTIME Trademarks because the Defendant's trademarks were filed and registered in bad faith according to Article 21 paragraph (3) of the Trademark Law, which the Plaintiff quotes as follows: Article 21 paragraph (3) of the Trademark Law "An application shall be refused if it is filed by an applicant who is acting in bad faith.

Based on this explanation, it is necessary first to know that basically the brand can be divided into three types based on the reputation (reputation) and renown (renown) of a brand, namely: normal marks, well-known marks and famous marks. A normal mark is a mark that is classified as not having a high reputation. This "ordinary" brand is considered to be less symbolic of lifestyle both in terms of usage and technology. The public sees the brand as low quality. This brand is also considered to have no drawing power that is able to give a touch of familiarity and mythical power (mythical power) that is suggestive to the consumer community, and is unable to form a layer of markets and users. A well-known brand is a brand that has a high reputation. This brand has a stunning and attractive radiant power, so that the types of goods under the brand immediately cause a touch of familiarity (familiar) and mythical ties (mythical context) to all layers of consumers. While the illustrious brand is a brand that is such a worldwide *masyhumya*, resulting in its reputation is classified as a brand of world aristocrats. Between well-known trademarks and well-known trademarks there are similarities of criteria so that all international conventions and legislation in the field of trademarks basically only recognize ordinary trademarks and well-known trademarks (Marwiyah, 2010).

In general, the scope of the notion of bad faith includes acts of fraud, a series of misleading others, and behavior that ignores legal obligations to gain an advantage. It can also be defined as behavior that is not justified consciously to achieve a dishonestly purpose (Mardianto, 2010).

Supreme Court Decision number 781 K/Pdt.Sus-HKI/2022 which handled a trademark dispute case between Healt and Happiness (H&H) against PT Bogamulia Nagadi, the panel argued that the *Judex Facti* / Commercial Court Decision at the Central Jakarta District Court which stated that the Plaintiff's trademark was a well-known trademark based on registration in many countries, vigorous promotion, and court decisions in China were incorrect and had misapplied the law. The *Judex Facti* should have considered the fame of the Plaintiff's trademark when the Defendant's BIOSTIME trademark was registered in Indonesia in 2013, not when the Plaintiff filed a lawsuit in 2020.

Related to the article that became the basis of the judge's consideration, namely Article 76 paragraph (1) UUMIG 2016 states that the lawsuit for the cancellation of a registered trademark can be filed by an interested party based on the reasons referred to in Article 20 and / or Article 21. Article 77 paragraph (2) UUMIG 2016 states that the cancellation lawsuit can be filed indefinitely if there is an element of bad faith and / or the relevant trademark is contrary to the ideology of the state, legislation, morality, religion, decency, and public order. In the lawsuit, the plaintiff, Healt and Happiness (H&H) Hong Kong Limited, filed a lawsuit based on UUMIG article 76 paragraph (1) the lawsuit for the cancellation of a registered trademark can be filed by an interested party based on

the reasons referred to in Article 20 and / or article 21 jo article 77 paragraph (2) the cancellation lawsuit can be filed indefinitely if there is an element of bad faith and / or the trademark in question is contrary to the state ideology, laws and regulations, morality, religion, decency, and public order. Referring to these provisions, the plaintiff filed for trademark cancellation against the defendant's BIOSTIME trademark because the defendant's trademark was filed and registered in bad faith according to Article 21 paragraph (3) UUMIG 2016 which states that the application is rejected if it is filed by an applicant with bad faith”.

Supreme Court decision number 781 K/PDT.SUS-HKI/2022, the panel of judges used article 21 paragraph (1) items b and c where the refusal of trademark registration was based on a well-known trademark. The panel of judges argued that the registration, award, promotion and status of the well-known mark obtained by H&H was only recognized abroad, while there was no massive contribution and promotion made by the plaintiff or the respondent in cassation during the registration period carried out by PT Bogamulia as the applicant in cassation, namely in 2013.

Basically, a well-known trademark or not must be protected. Judges should be suspicious of the origin of the idea of making the BIOSTIME trademark that has first been coined in China, because the idea of a trademark does not arise spontaneously in human thought moreover BIOSTIME trademark has appeared first in another country. So that the legal considerations of judges in deciding cases in the Supreme Court decision number 781 K/PDT.SUS-HKI/2022 does not provide legal certainty for trademark owners who register their trademarks in good faith, instead of using article 21 paragraph (1) items b and c as the basis for legal considerations, but should use article 21 paragraph (3) UUMIG 2016, namely the defendant or PT Boga Mulia Nagadi has registered its trademark in bad faith. As the facts revealed in the trial that the defendant is a manufacturer of various products for babies and children who has expanded its business to several countries such as Malaysia, Thailand, and the Philippines in 2013. For this reason, it can be believed that PT Boga Mulia Nagadi basically knew or at least had heard/seen the cassation respondent's BIOSTIME product at the time of applying for registration of the BIOSTIME trademark, given that the cassation respondent's BIOSTIME product with the same product and classification had been filed and available in the country.

4. Conclusion

Based on the results and discussion above, it is concluded that the legal certainty of the element of good faith as the protection of the implementation of trademark registration in Indonesia has been contained in Act No. 20 Year 2016 on Trademarks and Geographical Indications, Article 21 paragraph (3) UUMIG 2016 states that the application is rejected if filed by an applicant who has bad faith. In the explanation, it is stated that what is meant by an applicant who has bad faith is an applicant who is reasonably suspected in registering his trademark has the intention to imitate, plagiarize, or follow other parties' trademarks for the sake of his business interests to cause unfair business competition conditions, deceive, or mislead consumers. However, even so, the trademark owners who want to register their trademarks can still

cover up their bad faith at the time of registration, this is because, the application for trademark registration with a constitutive system or first to file cannot be rejected by the Directorate-General of Intellectual Property if the examination has fulfilled all the terms and conditions in Article 4 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

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