



## **Arrangement of Special Power of Attorney Related to Brand Management Authority: Indonesian Case**



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### **Keywords**

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### **Abstract**

Revocation of Law Number 15 Year 2001 concerning trademark for new trademark law, namely Law Number 20 Year 2016 concerning Trademark and Geographical Indications, automatically, brings fundamental changes to the regulation of brands in Indonesia. One of them is precisely in the provisions of Article 19 paragraph (2) of Law Number 20 the Year 2016, concerning Trademarks and Geographical Indications. It is stated "if a withdrawal as referred to in paragraph (1) is carried out by his Proxy, the withdrawal must be based on a special power of attorney for the need for the recall ". The meaning of the phrase 'special power of attorney' arises to diverse interpretations. The cause of the multiple interpretations and ambiguity of norms is whether the advocate profession based on Law No. 18 of 2003 concerning advocates who have the authority as the recipient of legal counsel in a special power of attorney cannot be a power of attorney in handling matters related to intellectual property in the domain of the brand. This paper attempts to describe the phenomena as well as explain the phrase clearly.

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### **1. Introduction**

The Government of Indonesia has issued Law Number 20 the Year 2016 concerning Trademark and Geographical Indications, which in principle is part of the protection of intellectual property rights. That humans have whatever is in them, including their intellect, ideas, and sensitivities, which are then processed by combining, separating, reducing or adding to what already exists in

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nature. That right is granted by the state and validated as his own because his ideas or products have commercial value and can be used as personal assets and used for the benefit and progress and human welfare.

Trademark rights which are part of intellectual property rights (IPR) are private (civil) rights, in the sense that someone is free to apply for registration and protection of their IPR or not (Munandar, 2009:2-3; Fanggidae, 2019). If it is not done, he will not be prosecuted for anything, but he will lose himself if others arbitrarily take advantage of or even acknowledge his work. Jill McKeough and Andrew Stewart define IPR as "a set of rights granted by law to protect the economic investment from creative endeavours" (Kwan & Lai, 2003).

The principles that underlie Intellectual Property Rights (IPR) are as follows (Riswandi & Syamsudin, 2004:32-34).

- a. The principle of justice (The Principal of Natural Justice). Intellectual Property Rights adheres to this principle by giving rights to creators, investors, or designers to obtain compensation by giving economic rights and moral rights.
- b. Economic principles, namely the principle of being able to enjoy profits. For example, in the form of royalties, technical fees, etc.
- c. Cultural principles, namely that the results of inventors, creations, or designers, can improve the standard of living, civilization, and human dignity.
- d. Social principles, namely the principle that in the rights granted by the state also contained the fulfilment of community interests that must be fulfilled.

Intellectual property rights, which are abbreviated as IPR, are the equivalent words commonly used for Intellectual Property Rights, namely "a right that arises for the product of a thought that produces a product that is beneficial to humans" (Kwan & Lai, 2003). Intellectual Property Rights is closely related to the rights to a trademark.

Revocation of Law Number 15 the Year 2001 concerning Trademark for the birth of new trademark law, namely Law Number 20 the Year 2016 concerning Trademark and Geographical Indications, automatically brings fundamental changes to the regulation of brands in Indonesia. One of them is in the provision of Article 19 paragraph (1), as long as the Trademark certificate or rejection letter from the Minister has not yet been issued, the Application can be withdrawn by the Applicant or his Proxy. Furthermore, in Article 19 paragraph (2) if withdrawal, as referred to in paragraph (1), is carried out by a proxy, the withdrawal must be made based on an extraordinary power of attorney for the withdrawal.

Explicitly in the provision of Article 19 paragraph (2) of Law Number 20 the Year 2016 concerning Trademarks and Geographical Indications, it is stated "if withdrawal, as referred to in paragraph (1), is carried out by his Proxy, the withdrawal must be based on an extraordinary power of attorney for withdrawal purposes the return ". The meaning of the phrase 'extraordinary power of attorney gives rise to diverse interpretations, the purpose of the unique power of attorney in the explanation is not explained in detail but only called quite clear. If referring to Article 1 number 12 of Law Number 20 Year 2016 concerning Trademark and Geographical Indications, what is meant by Proxy is an intellectual property consultant residing or permanently domiciled in the territory of the Unitary Republic of Indonesia. The question is whether other than intellectual property consultants cannot be authorized in an extraordinary power of attorney. The cause of the multiple interpretations and ambiguity of norms is whether the advocate profession based on Law No. 18 of 2003 concerning advocates who have the authority as the recipient of legal counsel in an extraordinary power of attorney cannot be a power of attorney in handling matters related to intellectual property in the domain of the brand.

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The substance of Article 19 paragraph (2) of Law Number 20 the Year 2016 concerning Marks and Geographical Indications related to Power of Attorney and Special Power of Attorney, in this case, it creates a vague norm which results in legal uncertainty regarding the regulation of the article.

If the law has determined certain patterns of behaviour, then everyone should behave according to the predetermined pattern. In line with Hans Kelsen, Gustav Radbruch is of the view that the law must contain 3 (three) values of identity, namely the principle of legal certainty (*rechtmatigheid*), the principle of legal justice (*gerechtigheid*), and the principle of legal usefulness (*zwechtigheid*) (Tanya, 2010: 127). The explanation of the legal theory is related to the substance of the regulation in Article 19 paragraph (2) of Law Number 20 Year 2016 concerning Geographical Marks and Indications, the need for legal certainty of the meaning of the phrase related to the Proxy and Special Power of Attorney.

Whereas in this case, it creates a vague norm which results in legal uncertainty over the phrases related to the Power of Attorney and the Special Power of Attorney, a future revision (*ius constituendum*) is needed in order to create legal certainty and does not cause vagueness of the norm (vague norm). Based on the description of the background of the problem above, the writer in this study seeks to analyze the title Arrangement of Special Power of Attorney Related to Brand Management Authority.

## 2. Materials and Methods

This research used normative juridical legal research type that is studying and analyzing legal materials and issues based on statutory regulations. This research was conducted to solve legal problems that arise while the results to be achieved are prescriptions about what should be done (Marzuki, 2005:1).

The method used in this study uses several techniques, as follows.

### a. Statute Approach

It is the approach using legislation and regulation. Legal research at the level of legal dogmatics cannot be separated from the legislative approach because the subject matter examined comes from statutory regulations. The legal approach is carried out by examining all laws and regulations relating to the regulation of extraordinary powers of attorney related to the authority to manage the mark. It is conducted to learn whether there are consistency and compatibility between a law with other laws, or between laws with the constitution or between regulations and laws, or not.

### b. Conceptual Approach

It is an approach that moves from the views and doctrines that develop in the science of law, in order to find ideas that give birth to legal understandings and the principles of law or legal arguments that are the back of researchers to build legal arguments in solving issues faced (Marzuki, 2005:95). This conceptual approach is used to discover the views and doctrines that develop in the science of law, the study of legal principles relating to the regulation of special powers of attorney related to the authority of brand management.

## 3. Results and Discussions

There are no laws that are as complete as possible or as clear as possible because the function of law is to protect human interests by regulating all human activities. In contrast, human interests are

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not numbered, and types and continue continuously developing throughout the ages (Sudikmo via Sutiyo, 2012:190).

The provisions of Article 19 paragraph (2) of Law Number 20 Year 2016 concerning Marks and Geographical Indications, stated "in the case of withdrawal as referred to in paragraph (1) shall be carried out by its Proxy, that is, the withdrawal must be made based on a special power of attorney for the recall". The meaning of the phrase 'extraordinary power of attorney gives rise to diverse interpretations, the purpose of the special power of attorney in the explanation is not explained in detail but only called quite clear.

Whereas if referring to Article 1 number 12 of Law Number 20 Year 2016 concerning Trademark and Geographical Indications, what is meant by Proxy is an intellectual property consultant residing or permanently domiciled in the territory of the Unitary Republic of Indonesia. The question is whether other than intellectual property consultants cannot be authorized in a special power of attorney.

The cause of the multiple interpretations and ambiguity of norms is whether the advocate profession based on Law No. 18 of 2003 concerning advocates who have the authority as the recipient of legal counsel in a special power of attorney cannot be a power of attorney in handling matters related to intellectual property in the domain of the brand.

The substance of Article 19 paragraph (2) of Law Number 20 Year 2016 concerning Trademarks and Geographical Indications related to Power of Attorney and Special Power of Attorney, in this case, creates a vague norm which results in legal uncertainty arising from the regulation of the article. The phrase in Article 19, paragraph (2) of Law Number 20 Year 2016 has to be revised.

The author's reasoning is based on the method of interpretation, namely juridical hermeneutics. It is the method for interpreting the text of the law that is unclear (Sutiyo, 2012:135), so that the law can be applied to certain concrete events, in this context the need for interpretation or interpretation is needed to interpret the text of the law. The law here refers to Article 19 paragraph (2) of Law Number 20 Year 2016 concerning Trademarks and Geographical Indications related to Power of Attorney and Special Power of Attorney.

The authority in managing the mark in a special power of attorney must be given legal protection because it is part of the property rights intellectual property in this case IPR as a set of rights granted by law to protect the economic investment from creative endeavours (Kwan & Lai, 2003). In addition, the need for legal exposition/construction methods is a method that explains the words or forms an understanding (law). The definition of law in question is the construction of law (*rechts constructie*) which are tools used to arrange legal material which is carried out systematically in the form good terms (Mertokusumo, 1996:69), the legal exposition/construction method is needed to explain words or form legal understandings so as not to cause multiple interpretations that result in the emergence of vague norms.

#### 4. Conclusion

Grammatical interpretation is interpretation according to grammar or words. Words and language are tools for legislators to state their intentions and desires. The words must be concise, clear and precise. Grammatical interpretation, in this case, the interpretation of words must be related to the arrangement of sentences and with other rules (Latupeirissa et al., 2019) In essence, the interpretation of the meaning of the word is only the first interpretation and must be followed by other interpretations. Interpretation of the phrase in Article 19 paragraph (2) of Law Number 20 the Year 2016, concerning Marks and Geographical Indications, is related to Power of Attorney and Special Power of Attorney. It must be clear and do not cause blurring of norms; and Special Power of

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Attorney, in this case, it is explained that what is meant by the Power of Attorney and Special Power of Attorney are those authorized by the applicable laws and regulations. This was done so that not only interpreted only intellectual property consultants who can be a power of attorney in special brand management.

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**Anak Agung Sagung Ngurah Indradewi** was born in Denpasar, April 1965. She completed her elementary education up to high school in her birthplace, Denpasar- Indonesia. She has earned her Bachelor in Faculty of Law at Mahasaraswati University, and completed a postgraduate program at the Master of Law in Post Graduate Program of Udayana University. She is a lecturer in University of Dwijendra Bali- Indonesia, and currently, she is completing her dissertation to earn her doctor (Dr.) degree of Law, Faculty of Law, in Brawijaya University- Indonesia.

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