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LEGAL PROTECTION OF A TRADEMARKS FROM DEEP LINKING IN THE DIGITAL WORLD

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ABSTRACT

Issues surrounding the practice of deep linking as brand infringement represent a new transformation in the form of digital brand infringement. Legal protection against new forms of digital trademark infringement is urgently needed in order to protect brands as intellectual property rights in the ICT era. The approach method used in this research is normative juridical by using secondary data in the form of literature on laws and regulations, books and articles related to deep linking and brands. From the exposure and discussion of the act of deep linking of a brand digitally which is studied through the analysis in this article, it can be concluded that the theory and legal principles used in underlying the formation of a trademark protection law from deep linking as a trademark violation on the internet include the theory of brand protection in the era of ICT, the theory of development law and the theory of economic analysis of law (economic analysis of law). The principles that can underlie the law on trademark protection from deep linking include the Droit de Suite principle and the Good Faith principle. As a legal basis for civil lawsuits and criminal prosecution of deep linking of current brands, the articles contained in the ITE Law can be used because Law Number 20 of 2016 concerning Marks and Geographical Indications does not yet regulate deep linking.

Keywords: legal protection; brand violation; deep linking; legal theory and principles.

INTRODUCTION

Deep linking is a networking technology that makes it easy for website owners to guide website visitors to the page the owner wants on a website. Deep linking as a linking technology certainly requires a link to guide the user to the website the linker wants. This is where a gap can occur when a brand violation occurs when deep linking practices use links with brand names in them for commercial purposes without the consent of the

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brand owner in the link. Recent developments in the world of Information and Communication Technology (ICT), the use of brands as a means to carry out electronic transactions can be in the form of using them as meta tags, framing, or deep linking.¹ The categorization of deep linking as a form of brand infringement is still being debated among experts. Deep linking was originally a form of copyright infringement in the digital world by linking digital information originating from different pages so that its authenticity is unknown.² However, this is overcome by granting a page linking license (linking license) by the rights holder or creator to another person. However, deep linking remains a problem when adding or linking pages without permission occurs to brands, especially well-known brands in e-commerce.

The practice of deep linking actually provides many benefits to internet users, both managers and users. Unfortunately deep linking has the potential to cause various problems such as confusion because automatic forwarding that takes users to deep linking links can irritate some parties.³ Because deep linking itself has the potential to be used for commercial purposes such as advertising, in this case it is possible to have various advantages but also disadvantages for using links from websites linked in deep linking, especially if it involves someone else's brand.

On the other hand, the mark linked by this deep linking action is part of Intellectual Property Rights (hereinafter referred to as IPR) which is defined as a right granted to a person as the owner or legal subject of an intangible object, which in this case is in the form of a name or logo used to distinguish goods/services from other goods/services. The purpose of using this mark is to prevent unfair business competition, because when using it, a mark can show or show the principle of origin, quality, and guarantee the authenticity of a product, either in the form of goods or services.⁴ However, regulatory conditions related to regulation of brand infringement in the form of deep linking are currently not regulated in Indonesian positive law products.

Brand regulation in Indonesia actually has a long history of regulation, starting from the Dutch Colonial Colonial era in Indonesia and has continued to develop to the present. The development of this brand regulation is also influenced by the international agreement that regulates it and has been ratified by Indonesia as a sign of its participation in the international agreement. While still under Dutch East Indies Colonial

¹ Muhammad Amirulloh and Aneke Putri Kusumawati. (2014). Perlindungan Merek Terhadap Framing, Meta Tag, dan Deep Linking Berdasarkan UU No. 15 tahun 2001 tentang Merek dan Perbandingannya dengan Regulasi dan Praktik di Amerika Serikat, *Padjadjaran Jurnal Ilmu Hukum*, 1(3), p. 469.

² Budi Agus Riswandi. (2006) Framing dan Deep Linking dalam Perspektif Hukum Hak Cipta di Indonesia. *Jurnal Hukum Ius Quia Iustum Universitas Islam Indonesia*, 2(13), 256-260.

³ Gerrie Ebersohn. (2003). Hyperlinking and Deep-Linking, *Juta's Business Law*, 11(2), p. 120.

⁴ Saidin, O.K., (2010), *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Right)*, Jakarta: PT Rajagrafindo Persada, p. 329.

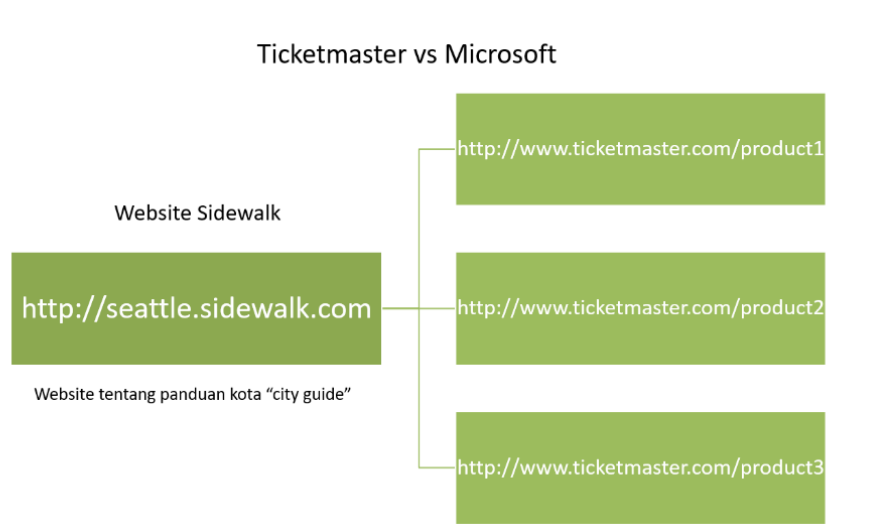
rule, in the territory of Indonesia (formerly the Dutch East Indies) the *Industrieele Eigendom* Regulation was in effect in 1912. After Indonesia became independent from colonialism, laws were formed in the field of Marks including, Law Number 21 of 1961 concerning Company Marks and Commercial Marks, Law Number 19 of 1992 concerning Marks, Law Number 14 of 1997 concerning Amendments to Law Number 19 of 1992 concerning Marks.⁵ With the ratification of the 1995 TRIPs-WTO Agreement or Agreement by Indonesia, both directly and indirectly regulations related to trademark law in Indonesia must also refer to the TRIPs Agreement. In 2001, Indonesia established a new trademark law that was more in line with the TRIPS Agreement, which began to contain protection for well-known marks, namely Law Number 15 of 2001 concerning Marks. And finally, in 2016, the form of regulation of the trademark law was further refined by adding regulations regarding Geographical Indications as a separate mark protection system that associates the place of origin of the product and is placed side by side with the trademark legal protection regime. Therefore, the name of the trademark law referred to is Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which attaches the geographical indication protection system as another legal protection regime in addition to the trademark protection regime. However, Law Number 20 of 2016 itself still does not contain regulations regarding the use of marks in the digital world.

This article examines exclusively the use of brands as deep linking as a trademark violation under Law Number 20 of 2016 concerning Marks and Geographical Indications which is the newest trademark law in Indonesia. The state of the art that raises similar matters has not raised the theme of deep linking exclusively but is still discussing it together with other brand infringement practices and on the legal basis of trademark laws that have not been updated, as in the article *Brand Protection Against Framing, Meta Tags, and Deep Linking Based on Law no. 15 of 2001 concerning Trademarks and Comparison with Regulations and Practices in the United States* by Muhamad Amirulloh and Aneke Putri Kusumawati published in the *Padjadjaran Journal of Legal Sciences*. In addition, this article also discusses deep linking as a trademark violation, unlike the previous article which discussed deep linking as a copyright infringement in the article *Framing and Deep Linking in the Perspective of Copyright Law in Indonesia* by Budi Agus Riswandi which was published in the *Ius Quia Iustum Law Journal* at the University of Indonesia. *Islam Indonesia and Hyperlinking and Deep-Linking* by Gerrie Ebersohn published in the journal *Juta's Business Law*.

⁵ Laina Rafianti, *Perkembangan Hukum Merek di Indonesia*, *Fiat Justitia Legal Studies*, Vol. 7 No. 1 January-April 2013, p. 2.

One of the legal phenomena behind which deep linking is considered a trademark infringement is when Microsoft was sued by Ticketmaster which sparked controversy in the use of deep linking technology compared to trademark infringement. Ticketmaster is a party that is considered to interfere with the fair level of use of a technology that can be considered a violation of the law. Deep linking technology provides benefits for developers to link various websites on one page. Unfortunately inside the case between Ticketmaster is of the opinion that the deep linking that has been done by Microsoft through its sidewalk.com website has harmed Ticketmaster.

In Microsoft's case the dispute was settled out of court with an agreement for Microsoft to stop all deep linking activities related to the Ticketmaster brand. Microsoft removed all deep linking links that redirected its visitors to the Ticketmaster website and agreed to link link that goes to the main page of the Ticketmaster website only.



In this case, it turns out that there has not been a legally binding decision to determine whether deep linking is a violation of the mark or not. Disputes about deep linking between Microsoft and Ticketmaster have been going on for years, but an out-of-court settlement closes the possibility of any jurisdiction over this case.

Another case that underlies deep linking as a brand violation is the case between Ticketmaster and Tickets.com. Where this case was similar to the previous case but this case was resolved up to a court decision. From the conclusion of the decision in this case, it turns out that there is still an open possibility of brand violations and unfair competition in deep linking practices. Even though deep linking is allowed, the judge gives a map what is allowed and not to do deep linking. Especially if it causes confusion as to the source of the content linked to within the interior of another website.

Indonesia itself, following technological and internet developments, has known deep linking for a long time as one of the most useful networking features on the internet. However, the issue of deep linking as trademark infringement is still not regulated. Both brand owners and deep linking users, let alone the general public, are unknowingly involved in deep linking practices as in the two cases previously mentioned. Law enforcement on trademarks in Indonesia is still very concerning especially with increasingly sophisticated technology that can expand trademark violations in Indonesia to the realm of cyberspace.

The presence of law is necessary when brand violations occur in the digital world, as happened in deep linking. Without legal protection, this practice will continue and cause harm to brand owners, both material and immaterial. As previously stated, dilution and confusion from users or consumers are the main elements in assessing deep linking as a brand violation abroad. Law Number 20 of 2016 concerning Trademarks and Geographical Indications in Indonesia itself still does not reach deep linking as a mark violation. Even so, Law Number 11 of 2008 concerning ITE exists to provide protection to various parties in the realm of cyberspace, including deep linking. Even though it has not clearly regulated deep linking, parties who feel aggrieved can use existing regulations as protection for their violated rights. It would be nice if the Indonesian trademark law embraced and covered more developments in trademark violations that occurred in connection with developments in technology, information and communication.

Based on the brief description above, it can be identified problems arising from legal protection of trademarks from deep linking. Identification of problems that can be formulated include:

1. What legal theories and principles can be used as a basis for legal protection of brands in the digital world from deep linking?
2. What is the legal basis that can be used to sue or sue deep linking as a trademark infringement according to the laws in force in Indonesia?

RESEARCH METHOD

The research method used in this article is normative juridical using secondary data obtained from data sources in the form of library materials or written data either in the form of books, scientific journals or encyclopedias of scientific work related to the problem the legality of deep linking from a legal perspective is related to brand protection and regulation in Indonesia. The discussion of the problems in this article will be described in an analytical descriptive manner by explaining the whole object that is studied in a sequential and systematic manner based on the data obtained.

DISCUSSION

Legal Theories and Principles that Can Underlie Trademark Legal Protection from Deep Linking

A mark is a sign used in trading activities to differentiate a product from other products. Marks used for trade include trademarks and service marks. According to the 2016 Trademark Law (UU No. 20 of 2016 Concerning Trademarks and Geographical Indications), a mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to differentiate goods and/or services produced by persons or legal entities in trading of goods and/or services. From the definition of a mark formulated by the Trademark law above, the definition of a mark is very broad and gives the possibility to be developed for use in electronic commerce.

The definition of a mark is also given by legal experts, including:⁶

1. Purwosutjipto defines a mark as a sign to personalize a certain object, so that it can be distinguished from other similar objects.
2. According to R. Soekardono, a brand is defined as a sign that personalizes a particular item, where it is also necessary to personalize the origin of the item or to guarantee the quality of an item in comparison with similar goods traded by other people or corporate bodies.
3. According to Vollmar, a mark consists of a factory mark or a trade mark, which is used as a sign affixed to goods or on their packages, which is useful for distinguishing said goods from other similar goods.

The definition of a brand is also given by Tim Lindsey who defines a brand as something (image or name) that can be used to identify a product or company in the market. Lindsey's team explained further, that entrepreneurs will usually prevent other parties from using their brand, because a brand that has a good reputation and the trust of consumers requires a sacrifice of time, effort and money to achieve it.⁷ Therefore, a brand needs to be protected, bearing in mind that apart from containing reputation, good name, and product quality, it is also the result of the efforts of the brand holder or owner to build it.

Besides being used as a distinctive sign, a brand is also an efficient business tool and has a strong iconic impression. This is as stated by Kamil Idris, who states that a brand is an effective business tool and can convey strong and focused messages on

⁶ Saidin, O.K., *Ibid.*, p. 343.

⁷ Lindsey, Tim, d.k.k., (2013), *Hak Kekayaan Intelektual Suatu Pengantar*, Bandung: PT Alumni, p. 131.

products, technology, culture and individuals.⁸ Because of its high value in trade, brands are very vulnerable to unauthorized use by parties who are not the holders of the rights. The use of trademarks without permission by other parties who are not the holders of these rights does not only occur in the practice of using conventional brands, but has also developed into the use of brands in the digital world (e-commerce), one of which is deep linking. The use of trademarks without permission in the digital world is more common in well-known brands. The use of brands that occur in the digital world (e-commerce) is a continuation of the use of conventional brands that use ICT facilities as an influence from the development of information and communication technology in the world of commerce.

Trading practices in the digital world (e-commerce) are a continuation of conventional economic developments which are growing rapidly. One of the causes of this rapid development is a revolution in technology and industry, namely the industrial revolution 4.0. Industrial revolution 4.0. not only offers a new type of industrial face, but also shows very significant progress, namely with the massive use of the internet by people in their daily lives.⁹ The use of the internet in everyday life also includes trading activities with marketing using electronic media. The use of the internet as a medium for trading activities also raises its own legal issues, namely when there is unauthorized linking of an additional link to a main link which is a brand in the cyber world.

This phenomenon has not been categorized as a form of trademark violation in the Indonesian Trademark Law which is only concerned with conventional trademark protection. The newest Trademark Law, namely Law Number 20 of 2016 concerning Marks and Geographical Indications, is no more the same as the old Trademark Law which did not protect the use of marks in trade in the digital world. This is what still leaves a legal void in the trademark legal protection system.

The phenomenon of legal vacuum in terms of brand protection in the digital world has given rise to various brand infringement practices in new forms, namely framing, meta tags, and deep linking. This legal vacuum occurs because the mindset of the legislators is still based on the concept of conventional marks so that they do not anticipate and accommodate the use of marks in electronic commerce. This problem must be addressed immediately by making regulations on more comprehensive brand protection which also includes regulations regarding brand protection in electronic commerce, especially violations in the form of deep linking.

Deep linking or Hypertext link is defined by Claire Wright, d.k.k. as the addition of a special page that allows users (users) to move from one website page to another

⁸ Idris, Kamil, (2003), *Intellectual Property, A Powertool for Economic Growth*, Geneva: WIPO, p. 21.

⁹ Priowirjanto, Enni Soerjati, (2021), *Hukum Ekonomi Indonesia Suatu Pengantar*, Bandung: Keni Media, p. 25.

website page on the website or other websites simultaneously.¹⁰ The categorization of deep linking as a form of brand infringement is still being debated among experts.¹¹ Deep linking was originally a form of copyright infringement in the digital world by linking digital information originating from different pages so that its authenticity is unknown. However, this is overcome by granting a page linking license (linking license) by the rights holder or creator to another person.¹² However, deep linking remains a problem when adding or linking pages without permission occurs to brands, especially well-known brands in e-commerce.

Deep linking is categorized as a form of trademark infringement in the United States and includes forms of brand dilution that obscure or tarnish a brand's identity.¹³ In the United States, trademark dilution violations are regulated in "The Federal Trade Mark Dilution Act 1995". In the deep linking dispute in the United States, the Microsoft company was sued by the Ticketmaster company because it had provided a link to users who were on the Microsoft page to be able to go directly to the Ticketmaster page without first needing to go through the ad-filled landing page, causing a false association of the original page.¹⁴ However, this case was not decided by the court because the two parties resolved it amicably by making an agreement.¹⁵ However, broadly speaking qualifying deep linking as brand infringement is defined as infringement that results from the form of a link on a page that does not originate from a link on the original page.¹⁶

Regarding transactions in the electronic world, the Indonesian state has regulated them in Law Number 11 of 2008 concerning Information and Electronic Transactions. However, this law which was born out of the need for regulation in the field of ICT (information & communication technology) also does not yet explicitly regulate forms of brand infringement in the digital world. The ICT Law only regulates the use of marks in the digital world in the form of domain names as regulated in Articles 23 to 25 without further elaborating and regulating the forms of trademark infringement. The regulations in the ICT Law have not included material regarding infringement of intellectual property rights on the internet, particularly brand infringement as its substance.

¹⁰Wright, Claire, et.all., (2005), *Internet Law in Hong Kong, China: Sweet & Maxwell Asia*, Second Reprint, p. 53.

¹¹*Ibid*

¹²Damian, Eddy, (2012), *Glosarium Hak Cipta dan Hak Terkait*, Bandung: PT Alumni, p. 64.

¹³Permata, Rika Ratna, (2017), *Hukum Merek dan Dilusi Merek di Jepang dan Amerika Serikat*, Bandung: Global Synergy Indonesia, p. 32.

¹⁴Wright, Claire, et.all., *Loc. Cit.*, p. 53.

¹⁵Muhamad Amirulloh dan Anekke Putri Kusumawati, *Op. Cit.*, p. 475.

¹⁶Wright, Claire, et. all., *Loc. Cit.*, p. 53.

To answer the legal vacuum of regulations related to trademark violations in the digital world, especially brand violations in the form of deep linking, several theories and legal principles can be used to overcome them and can also become a theoretical and philosophical basis for the establishment of regulation on brand protection in the digital world. In legal research on brands in deep linking, the study of ICT era brand protection theory, development law theory and economic analysis of law theory from Richard A Posner will be used to analyze legal issues regarding the use of other people's marks as deep linking. These theories are then intended to be used in answering this deep linking problem from a legal theoretical point of view which will also be collaborated with several principles in legal science. These legal principles include: the principle of Droit de Suite and the principle of Good Faith.

The theory of protection of conventional intellectual property rights consists of several theories consisting of reward theory, recovery theory, incentive theory, risk theory, and economics growth stimulus theory. Theories put forward by Robert M. Sherwood to protect intellectual property rights, both in terms of protecting the subject of rights (Reward theory, Recovery theory, and Incentive theory) as well as IP objects (Risk theory, and Economics Growth Stimulus Theory theory).

The theory of brand protection in the ICT era is a combination of conventional IPR protection theory and interest theory.¹⁷ The theory of conventional IPR protection is the basis of the most fundamental trademark protection regulations. Due to its fundamental nature, this theory must be implemented and enforced in the face of brand infringement in the form of deep linking as a new form of brand infringement in the digital world.¹⁸ Trademark violations that occur in the digital world are not an independent and separate phenomenon, but are a development of conventional brand violations that occur in the cyber world.¹⁹ Therefore, the theory of protecting conventional intellectual property rights can also be used as a basis for protecting brands in the digital world against infringements in the form of deep linking.

Risk theory can be used to protect brands in the form of links or pages against deep linking actions. According to this theory, intellectual property rights are a work that contains a risk that can allow other people who have previously found such a way to imitate or improve it so that it is reasonable to provide a form of legal protection for works that are full of risks. The risk of illegal use by persons who are not the holders of the rights resulting in economic and moral losses for the owners or rights holders can be

¹⁷ Amirulloh, Muhamad, (2017), *Cyberlaw Perlindungan Merek Dalam Cyberspace (Cybersquatting terhadap Merek)*, Bandung: Refika Aditama, p. 133.

¹⁸ Muhamad Amirulloh and Aneke Putri Kusumawati, *Loc. Cit.* p. 471.

¹⁹ Ahmad M. Ramli, *Dinamika Konvergensi Hukum Telematika Dalam Sistem Hukum Nasional, Jurnal Legislasi Indonesia*, 5(4), 2008, p. 8-10.

overcome by providing a legal basis which serves to protect such intellectual property rights.²⁰ This theory is applied to protect and anticipate the risk of brand infringement in cyberspace in the form of deep linking. The application of this theory has the consequence that a mark used in electronic commerce must be protected by a system of legal protection that extends from conventional concepts to modern concepts, especially against deep linking activities which are a risk of violation of brands in trading activities in the digital world.

The theory of brand protection in the ICT era is relevant for use in overcoming the problem of deep linking as a brand violation. Initially, this theory was proposed by Muhamad Amirulloh to regulate the concept of protecting domain names from cybersquatting. However, if you look at the core elements of this theory which consist of: object, subject, legal action qualifications, and legal consequences, then this theory is also relevant for use for deep linking.²¹ The use of this theory for deep linking considering that deep linking is a form of brand violation in the digital world. If described, then the object element of this theory of deep linking is the use of brands in e-commerce. Then the legal subject elements in deep linking can include brand owners, individuals, legal entities, and state/government institutions. The qualifying elements of legal action in this case can categorize deep linking as a form of brand violation, especially the use of brands in the form of links or website pages. Regarding the element of legal consequences, against deep linking this act can result in compensation if it is done without the permission of the link owner/brand owner being linked. Therefore, the use of this theory is very relevant to deep linking cases.

Robert M Sherwood's economic stimulus theory suggests that protecting industrial property rights is a tool for economic development. Sherwood continued, this theory is suitable as a basis for protecting industrial property rights at this time, especially in the face of today's free trade situation.²² In relation to the trademark infringement in the form of deep linking, this theory can be used as a basis for regulation of brand protection against deep linking so that it can directly or indirectly enhance economic development which in practice uses brands as an efficient economic tool. This protection also provides sanctions for brand infringement activities in the form of deep linking which is an obstacle in trading activities, especially trading in the cyber world.

Interest theory is used to qualify deep linking as a form of brand infringement with the aim of protecting individual interests as well as the interests of society. Protection of

²⁰ Amirulloh, Muhamad & Helitha Novianty Muchtar, (2016), *Buku Ajar Hukum Kekayaan Intelektual*, Bandung: Unpad Press, p. 18.

²¹ Amirulloh, Muhamad, *Loc. Cit.*, p. 133

²² Amirulloh, Muhamad & Helitha Novianty Muchtar, *Loc. Cit.*, p. 18

individual interests here is defined as the interests of brand owners which are protected because of the exclusive rights contained in the brand and the resulting reputation. So that the interests of the brand owner in the form of links or pages are also protected from linking without permission by other parties. Likewise with the public interest, which is defined as the interest in protection from acts of misdirection or misrepresentation of information about a product, in this case misdirection of the truth of information on a page or link.

The legal theory of development is used in this paper to explain the form of national development using the legislative method. The relation of this theory with brand protection against deep linking is the extension of conventional brand protection to include protection in electronic commerce from deep linking which is legally regulated through statutory legislation. In this case, provisions for protecting brands in the digital world that protect pages or website links which are brands from deep linking activities are very appropriate to regulate. In short, the use of this theory for brand protection against deep linking is carried out as a basis for expanding brand protection which is part of the building of the national legal system, in particular by adding the development of ICT law and trademark law as part of the national legal system. Development that has been regulated through statutory channels will guarantee more order and legal certainty for the community, than development that is not preceded by legal regulations as a basis.

The theory of economic analysis of law is a theory put forward by Richard A. Posner who argues that it is possible to apply economics methods to overcome legal problems in everyday people's lives.²³ The use of economic standards in solving legal problems is because there are normative standards in economics which can also be used in evaluating laws and policies. This normative standard in economics is in the form of precise mathematical theory and empirical methods to analyze the effect of prices on behavior. The use of these normative standards in legal science is manifested in the form of streamlining values in the framework of formulating social decisions related to the regulation of public welfare.²⁴ In relation to brand protection against violations in the form of deep linking, this theory forms the basis for extending brand protection which was originally conventional which can also include its protection in the electronic world. The values of brand protection which were originally conventional, are also streamlined by being applied to protect brands in e-commerce activities.

²³Sutrisno, (2019), *Economics Analysis of Law: Perspektif Sengketa Transaksi Derivatif Valuta Asing di Indonesia*, Bandung: Citra Aditya Bakti, p. 37.

²⁴Amirulloh, Muhamad, (2021), *Perlindungan Hukum Bagi Karyawan Inventor Paten di Indonesia*, Bandung: Keni Media, p. 119.

The principle of *droit de suite* is a principle which states that the right of a legal subject to an object will always follow wherever the object to which it is attached is. This principle is one of the classic principles in property law. In relation to brand protection in e-commerce, especially in the practice of deep linking of brands, this principle can still be used. The use of this principle is carried out with the thought of equating material rights to a brand with ownership rights to a link or page on the internet. Ownership rights to links are analogous to material rights to brands which result in all actions taken without the permission of the rights holder or subject of the rights and result in losses for the rights holders including the category of civil rights violations.

The principle of good faith must also be applied in cases of deep linking violations, bearing in mind that the act of linking without permission on a link which is a well-known brand is carried out with the intention of piggybacking on the brand's fame, so that it appears as if the linked link is part or an integral part of the original brand link. In identifying whether good faith exists or not, there are several ways that can be used, for example by looking at whether there is permission to use the brand owner, in this case the link owner's permission to link.²⁵ If this linking occurs without the permission of the original link owner who is also the owner of the brand, then the act of linking can be qualified as an act of bad faith by piggybacking on the fame of a brand by way of linking.

In this case what qualifies as a violation of the rights of the link owner is when the link owner is harmed by linking without permission by another link owner to access the link belonging to the linked link owner. The result is the obscuration of the true link identity. Linking or linking according to Eddy Damian is defined as linking a digital/electronic information originating from a different page so that its authenticity is not known.²⁶ Because of the consequences it causes, deep linking can be categorized as a form of violating the property rights of other parties, in this case, the material rights of a page or link.

Currently, the protection of trademarks in Indonesia has been regulated in Law Number 20 of 2016. This law has accommodated several important changes related to the material regulated therein. One of the materials that has become an important change in this trademark law is the inclusion of modern types of marks in the brand category which includes marks in two-dimensional and/or three-dimensional forms, holograms and sound. However, related to the use and protection of brands in the electronic world, this law still does not regulate them. In order to overcome this problem, legislators must

²⁵Muhamad Amirulloh dan Aneke Putri Kusumawati, *Op. Cit.* p. 473.

²⁶Muhamad Amirulloh dan Aneke Putri Kusumawati, *Op. Cit.*, p. 473.

regulate brand protection against deep linking, bearing in mind that the resulting legal consequences can be widespread with the occurrence of dilution of the brand which is also a link thereby eliminating the authenticity of the original link.

Legal Basis for Setting Deep Linking as a Brand Violation According to Indonesian Positive Law

As previously explained, deep linking has not been clearly regulated in Law Number 20 of 2016 concerning Marks and Geographical Indications as a trademark violation. Acts of trademark infringement in Indonesia are still limited in terms of similarities in principle or in its entirety. The legal basis for a claim for damages for trademark infringement is contained in Article 83 paragraph (1) of Law Number 20 of 2016 concerning Marks and Geographical Indications which reads:

The owner of a registered Mark and/or the recipient of a registered Mark License may file a lawsuit against another party who unlawfully uses a Mark that is similar in principle or in whole for similar goods and/or services in the form of:

- a. compensation claim; and/or
- b. termination of all actions related to the use of the Mark.

Deep linking has not been clearly regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. The legal basis for being able to sue deep linking as a violation of a new mark is generally regulated in Law Number 11 of 2008 concerning ITE as a legal basis for protection in the realm of cyberspace. Deep linking can be sued or prosecuted based on the articles in Law Number 11 of 2008 concerning ITE in this case both civil and criminal. On the basis of article 25 of Law Number 11 of 2008 concerning ITE which states that.

Article 25

Electronic Information and/or Electronic Documents compiled into intellectual works, internet sites, and intellectual works contained therein are protected as Intellectual Property Rights under the provisions of Laws and Regulations invitation.

Civilly, deep linking allows for immaterial and material losses when using a brand as a deep linking link. The immaterial losses incurred are losses that confuse website visitors about the source of the content and the brand owner in the link. Subject or patternity rights, namely the moral rights of who owns the content and brands linked in deep linking become blurred and make deep linking website visitors get the impression that the content and brands in deep linking links belong to the party that linked the deep linking on his website. In addition, deep linking can also provide material losses if deep linking causes a decrease in the number of ad hits on the source website and instead diverts source website visitors to the deep linking linker's website.

The above can fulfill the elements in Article 38 of Law Number 11 of 2008 concerning ITE as the legal basis for a claim for compensation for deep linking. Article 38 of Law Number 11 of 2008 concerning ITE states that.

Article 38

Everyone can file a lawsuit against the party that operates the Electronic System and/or uses Information Technology which causes losses.

Meanwhile, criminally, it can be subject to articles with the qualification of complaint offenses. For brand or website content owners who feel aggrieved and want to report this deep linking act, they can use the legal basis in Law Number 11 of 2008 concerning ITE in conjunction with Law Number 19 of 2016 concerning ITE with the following articles:

Article 28 paragraph (1) of Law Number 11 of 2008 concerning ITE.

- 1) Everyone intentionally and without right spreads false and misleading news that results in consumer losses in Electronic Transactions.

Article 45 A Law Number 19 of 2016 concerning ITE

The everyone who intentionally and without right spreads false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of up to Rp.1,000,000.000.00 (one billion rupiah)

Confusion for website visitors can potentially mislead consumers, especially if deep linking offers certain products and services. With the unclear sources of links and content, it will be difficult for consumers to determine who is responsible for the product or service they use. Especially if there are a large number of consumers or website visitors, misinformation can mislead the public.

Article 32 paragraph (1) and (2) of Law Number 11 of 2008 concerning ITE prohibits any actions in the form of:

- 1) Everyone intentionally and without rights or against the law in any way changes, adds, reduces, transmits, destroys, removes, moves, hides Electronic Information and/or Electronic Documents belonging to other people or public property.
- 2) Every person intentionally and without right or against the law in any way moves or transfers Electronic Information and/or Electronic Documents to another Person's Electronic System who has no right. Article 48 of Law Number 11 of 2008 concerning ITE

In order to strengthen the above sanctions, offenses are then attached to these provisions as an element of criminal threats against them as stated in Article 48 paragraphs (1) and (2) as follows:

- (1) Everyone who fulfills the elements referred to in Article 32 paragraph (1) shall be subject to imprisonment for a maximum of 8 (eight) years and/or a maximum fine of Rp.2,000,000,000.00 (two billion rupiahs).
- (2) Everyone who fulfills the elements referred to in Article 32 paragraph (2) shall be subject to imprisonment for a maximum of 9 (nine) years and/or a maximum fine of Rp.3,000,000,000.00 (three billion rupiahs).

Link is an electronic information in which there is an address The URL of a website that is the property of the website's domain name registrar. Transmitting this URL without rights or against the law may violate article 32 paragraph (1). Deep linking is done by transmitting the website URL into a link on the page, so the possibility of deep linking can violate this article. In addition, because links can usually be in the form of text or images in which there is a URL address, the original website address of the link cannot be seen. This can include hiding electronic information from the website the source of the link. In the second paragraph it is also mentioned about moving and transferring, URLs that are transferred or moved to other people's websites can violate article 32 paragraph (2). If this happens, the brand or domain name owner can sue the deep linking creator with this article.

CONCLUSIONS

In the science of law, there are several theories that can be used to overcome legal problems that cannot be solved by applying concretization of statutory articles into practical problems. These theories are used as the theoretical basis for future law development, in which these theories are put forward by legal experts. The theories put forward are inseparable from the influence of the underlying truth values which are referred to as legal principles. Regarding the problem of deep linking of brands in electronic commerce, there are several theories used to overcome them and the legal principles that underlie efforts to resolve them.

The legal theory used to overcome deep linking of brands on the internet includes the theory of brand protection in the ICT era which is also influenced by the theory of development law as a theoretical basis for legal development, the theory of economic analysis of law, the theory of vested interests. protecting the interests of legal subjects consisting of rights holders and the public from deep linking without permission on a brand, as well as the risk theory which states that to protect intellectual property that continues to grow, a legal product is needed that can minimize violations that occur with regulations that are anticipatory to community development.

Trademark infringement in the form of linking to a brand's web page or a well-known mark may result in civil lawsuits and criminal charges against them. Civil

lawsuits can be filed based on Article 38 paragraph (1) or (2) which are distinguished by individual lawsuits or class action lawsuits. The legal basis for criminal prosecution can also be used to address deep linking issues of brands in the digital world at the final stage of legal proceedings (*ultimum remedium*). Criminal norms that can be used include Article 32 paragraphs (1) and (2) which are applied together with Article 48 paragraphs (1) and (2) as a threat of delict.

Legislative and executive bodies in Indonesia, in this case the Government of the Republic of Indonesia and the People's Representative Council (DPR), which are authorized and tasked with making laws, should immediately enact a new Trademark law which qualifies deep linking as a trademark violation on the internet and amend the law. -ICT law by adding provisions regarding deep linking as a violation of intellectual property. The two statutory products should incorporate the above theories and principles into the substance of their regulation and harmonize the two arrangements in the two regulations equally to create legal certainty for their application.

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