TRADEMARK VALUATION AS CAPITAL IN COOPERATION AGREEMENTS: A FORM OF FAIR TRADEMARK LAW DEVELOPMENT IN INDONESIA

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Abstract

A trademark is not only a distinguishing sign of goods or services but also an intangible asset that hold high economic value. In business practice, trademarks are often used as objects of cooperation agreements, such as licensing, franchising, or joint ventures. However, Indonesia does not yet have legal standards governing trademark valuation, creating legal uncertainty and potential injustice. This paper discusses the urgency of trademark valuation as an asset in cooperation agreements and examines steps to develop a fair trademark law in Indonesia.

Keywords: *Trademark Valuation, Intangible Assets, Cooperation Agreement, Trademark Law, Justice.*

INTRODUCTION

The growth of the creative economy in Indonesia has transformed how both the public and business stakeholders view brands. Brands function as distinguishing marks for goods or services, while also serving as strategic resources that contribute to enhancing the overall value of a company. Brands have evolved beyond mere names or logos that distinguish one product or service from another; they are now recognized as strategic assets that can enhance a company's value and competitiveness. A brand can undoubtedly be regarded as one of the most valuable intangible assets.

As a consequence, in numerous business cooperation agreements, ranging from licensing and franchising to joint ventures, brands frequently play a central role in the agreement. The parties necessitate a clear basis for assessing the value of brands that are transferred or used collaboratively. An accurate and transparent brand valuation is essential for the fair distribution of royalties, compensation, and other rights. A recent development has emerged in cooperation agreements, wherein one party uses the brand as a form of capital within the agreement. In the context of a cooperation agreement, the precise valuation of a brand as capital is essential to determining the rights and obligations of the involved parties.

Unclear brand valuation can result in information imbalance and contribute to fair contractual results. Furthermore, the power to bargain of the involved parties in a contract often shows an imbalance, leading to the possibility of injustice.[2]

In Indonesia, the legal framework governing trademarks is established by Law Number 20 of 2016, which pertains to Trademarks and Geographical Indications (hereinafter referred to as the Trademark Law). The Trademark Law acknowledges that ownership of a trademark is exclusive to its owner, allowing for the possibility of transfer or the establishment of agreements regarding its use. Nonetheless, as of now, there are no specific regulations outlining the comprehensive framework for brand valuation. This situation creates a level of legal ambiguity as well as potential unfairness for corporations engaging in brand-oriented cooperation agreements.[3] Consequently, the development of fair trademark law should focus on creating regulations that offer frameworks for valuation of brands as intangible assets.

Compared to other countries, numerous already have brand value regulations based on professional valuation standards. This approach not only provides legal certainty, promotes beneficial transactions, and increases tax revenue, but also provides fairness among the parties engaged in these cooperative agreements. Recognizing the significance of brand valuation, Indonesia must prioritize the creation of a thorough and just legal framework by implementing regulations for brand valuation, complemented by fair valuation mechanisms and standards.

This paper aims to explore the urgency of brand valuation as a valuable asset in cooperation agreements and offers insights for developing fair brand valuation regulations in Indonesia.

LITERATURE REVIEW

Recent literature emphasizes that trademarks, as intangible assets, play a crucial economic role and require clear legal recognition in cooperation agreements. Scholars such as Keller (2016) and international standards like ISO 10668 highlight that brand valuation integrates financial and non-financial elements, influencing business decisions and market value. However, studies by Borges and Caglio (2019) and the OECD (2022) reveal that the absence of transparent valuation regulations often leads to contractual imbalances and legal uncertainty. In Indonesia, Law No. 20 of 2016 on Trademarks and Geographical Indications governs ownership and licensing but lacks provisions on economic valuation. National legal scholars (Setiadi, 2019; Rahardjo, 2020; Wibisono, 2022) underline the resulting disparities, especially in franchise and joint venture agreements. From a theoretical perspective, legal protection theory ensures the safeguarding of rights, while law and economics theory supports regulatory efficiency and equitable resource allocation. Justice theory and Pancasila legal philosophy stress fairness and social balance in legal development. Therefore, the reviewed literature indicates a normative gap: Indonesia needs a fair, transparent, and standardized legal framework for trademark valuation to promote justice and sustainable economic legal development.

RESEARCH METHOD

This study uses a normative juridical methodology, employing both statutory and conceptual approach. The foundational legal documents consist of Law Number 20 of 2016 regarding Trademarks and Geographical Indications along with its derivative regulations. In contrast, the secondary legal materials include literature on economic law, academic papers, and guidelines for brand valuation.

RESULT AND DISCUSSION

Kotler defines a brand as a name, term, sign, symbol, or design, or a combination thereof, that serves to identify the goods or services of a certain seller or group of sellers, distinguishing them from those of competitors. A brand is a product or service that incorporates a distinguishing element, setting it apart from other offerings intended to fulfil the same demand. A brand serves to identify the source or manufacturer of a product, allowing consumers, whether people or organizations, to attribute accountability to a particular maker or distributor.

BRANDS AS INTANGIBLE ASSETS

The Civil Code's Article 503 specifies that "objects are distinguished into tangible and intangible objects." Meanwhile, Article 499 of the Civil Code defines an object as "every item or every right that can be controlled by ownership." According to this regulation, objects can be categorized as objects (*zaak*), goods (*goed*), and rights (*recht*). Objects are classified into two categories: tangible and intangible, whereas goods are characterized as concrete and tangible.

In the Civil Code, trademarks are classified as intangible movable assets with specific material characteristics. The material attributes of a trademark comprise two fundamental rights:

- Moral rights are rights inherently linked to the trademark owner and are non-transferable.
- Economic rights are transferable rights that can be conveyed to another party under a legal agreement, allowing for the monetization of profits, such as royalties, for both the original owner and the receiver of the trademark transfer.

The Trademark Law states that trademark owners possess the right to use their trademarks or to permit others to use them.[2] In the modern economic context, trademarks are classified as intangible assets that hold value and can be transferred. Brand value is determined through reputation, market share, and consumer loyalty, necessitating an objective and measurable valuation method.

According to the Trademark Law, a brand is a sign that can be graphically represented as an image, logo, name, word, letter, number, color arrangement, in two or three dimensions, sound, hologram, or a combination of two or more of these elements, serving to distinguish goods and/or services produced by an individual or legal entity in trade.

Economically, a brand is an intangible asset that may generate revenue in the future. The value of a brand encompasses promotional costs, reputation, consumer loyalty, and expected future financial flows. The International Accounting Standards 38 (IAS 38) acknowledges brands as a type of intangible asset that may be included in financial statements if specific requirements are fulfilled.

In business practice, a strong brand enables its owner to charge a premium price, expand market share, and facilitate access to capital. Therefore, the role of a brand has transitioned from merely serving as an identification to becoming a generator of value. Brand value has become essential for investment decisions, mergers, acquisitions, and agreements for cooperation.

THE URGENCY OF BRAND VALUATION IN COOPERATION AGREEMENTS

Business agreements for cooperation often involve the shared use of brands. These agreements manifest in diverse formats, including as licensing, franchising, joint ventures, or strategic partnerships. In these agreements, the brand owner grants usage rights to the partner in return for royalties, profit sharing, or alternative compensation. In the absence of a clear valuation, the disadvantaged party in the contract is at risk obtaining inequitable benefits.

In Indonesia, the determination of brand value in partnership agreements is still subjective and lacks standard guidelines. Valuations typically pertain to financial methodologies (e.g., the income approach, market approach, or cost approach); nevertheless, there are no legal regulations requiring a particular method. This circumstance creates legal ambiguity and paves the way for potential conflicts.

In the context of culinary franchising, famous brand owners may impose high royalty rates without transparent calculations. Business partners, mostly MSMEs, are compelled to agree due to their low bargaining power or knowledge of brand valuation. This underscores the necessity of trademark valuation guidelines to establish fair contracts.

Having an official brand valuation standard benefits the government by allowing for more accurate tax calculations on licensing transactions or brand transfers. This promotes a healthy business environment and equal legal development.

Cooperation agreements that involve brands as assets require transparency concerning brand valuation. In the absence of clear value standards, parties with weak bargaining positions often face disadvantages. Valuation standards are essential for guaranteeing legal certainty, protecting the interests of all stakeholders, and reducing the likelihood of future disputes.

DEVELOPMENT OF FAIR TRADEMARK LAW

Indonesian law presently lacks specific regulations concerning trademark valuation standards. Current regulations are confined to general stipulations concerning the transfer of trademark rights. Indonesia is comparatively lacking in regulating the valuation of intangible assets, especially trademarks, when compared to many other countries.

Normatively, trademark rights, registration, transfer, licensing, and infringement are governed by the Trademark Law. Nonetheless, the Trademark Law does not specifically govern the methodology to determine the economic value of trademarks. No governmental or ministerial regulations exist concerning trademark valuation. Brand valuation is referenced just briefly in relation to financial reports or taxation. This situation contrasts with the regulation of fixed asset valuation, which is regulated by established official valuation standards set forth by the Ministry of Finance and the Financial Services Authority (OJK). This legislative void resulted in:

- Standards for brand valuation are adopted from private organizations, such as ISO 10668 for Brand Valuation.
- The lack of an objection procedure for parties that find the trademark valuation as too high or low.
- Weak protections for small enterprises obtaining licenses or franchises.

To ensure fairness in the use of brands as assets, the government must develop regulations establishing brand valuation standards. This may involve revising the Trademark Law, which regulates brand value. This may then be succeeded by the issuance of a Government Regulation related to brand valuation methodologies (cost approach, market approach, income approach), with the establishment of brand appraiser certification to foster a healthy and fair business environment.

COMPARATIVE ANALYSIS OF BRAND VALUATION BETWEEN COUNTRIES

The author provides a comparison of brand valuations across several countries listed below:

Country	**Trademark Valuation Regulations/Guidelines**	**Official Valuation Institutions**	**Legal Impact**
United States	The USPTO acknowledges guidelines for brand valuation; The IRS regulates the taxes of intangible asset transfers;	Certified independent appraisers	Contract and tax disputes can be settled more easily.
European Union	The European Valuation Standards (EVS) and ISO 10668 are widely adopted.	*European Valuers* (TEGoVA)	Royalties and licenses are more transparent.
Australia	The Australian Accounting Standards Board (AASB) requires the recognition of intangible assets in financial statements.	Official appraisers under ASIC	Improved protection for MSMEs
Indonesia	The trademark law does not specify a specific brand valuation method.	No official appraisal institutions for trademarks.	Uncertainty over the valuation of trademarks in contracts, combined with unfairness for either party, making them prone to legal action.

RECOMMENDATIONS FOR BRAND VALUATION

1. Revise the Trademark Law that regulates brand valuation, then issuing a Government Regulation that specifies the methods for brand valuation (cost approach, market approach, income approach).
2. Value-Based Brand Positioning (VBP) aims to integrate the ideas of brand positioning and brand value into a unified framework. Positioning strategies, which once focused only on product characteristics and features, are now being combined with perceived value, taking into account both the company's viewpoint and that of the consumer[4]. A successful brand will convey its core identity, distinguish itself from competitors, and shape a particular perception of its product.[5]

   VBP is based on:

- Appropriate and dynamic segmentation, where brands invest effort in comprehending consumers beyond mere demographics, delving into their psychographic profiles as well.
- Focus on understanding the requirements of consumers within each segment, specifically how their personas, values, and beliefs connect to their needs and the challenges that the product can address.
- Integrated communication that highlights the reasons why consumers should trust a brand, by emphasizing points of differentiation capable of eliciting both functional and emotional responses.
- Functional product benefits, supported by a comprehensive understanding of consumer usage habits, are essential.

3. Establish an official agency dedicated to brand valuation that includes certification and a code of ethics, following the framework established by Interbrand's brand valuation methodology, which comprises:[6]
   a. Market segmentation involves the division of the market into distinct segments to analyze differences in brand value across these existing segments.
   b. Financial analysis involves analyzing price, volume, and purchase frequency to calculate forecasts for brand revenue (forecasting).
   c. Analyzing the role of the brand involves determining its revenue share across various segments by conducting marketing research with the target consumers.
   d. Assessment of brand strength, aimed at determining the brand's potential to achieve future revenue projections derived from forecasting and analysis of brand roles. This phase depends on analyzing competitors and conducting a systematic assessment of factors such as brand clarity, commitment, responsiveness, authenticity, relevance, differentiation, consistency, presence, and understanding.
   e. Brand value assessment involves calculating the Net Present Value (NPV) of expected brand revenue.

4. Adopting ISO 10668:2010, *Brand Valuation – Requirements for Monetary Brand Valuation* as the reference methodology for brand value assessment.

CONCLUSION

Brand valuation as an asset in cooperation agreements is critical to ensuring legal certainty and fairness for all parties involved. Indonesia should establish a fair legal framework for trademarks by creating an official appraisal institution and subsequently formulating official brand valuation guidelines. The establishment of a brand valuation institution is essential for upholding intellectual property rights and offers advantages and legal protections for those that use brands as assets in cooperative agreements. Therefore, this action will foster the growth of the creative economy, enhance the brand ecosystem, and promote greater public welfare by maximizing the use of intellectual assets.

SUGGESTION

The government should consider revising the Trademark Law that regulates brand valuation. Following this, it is essential for a Government Regulation to be enacted that addresses brand valuation methodologies (including cost approach, market approach, and income approach) and to establish a certification process for brand appraisers, thereby fostering a healthy and fair business environment.

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