

The Legitimacy of CJEU in the Settlement of Trade Mark Disputes between Non-European Union Foreign Companies: A Case Study

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<p>Keywords: <i>Intellectual Property, The CJEU, and Trademark.</i></p> <p>DOI: 10.25041/lajil.v5i2.3206</p>	<p><i>Protection of Intellectual Property Rights (IPR) is important for companies to maintain brand awareness. One of the challenges in trademark protection involves resolving disputes under a supranational organization, specifically The Court of Justice of the European Union (CJEU). This Court has jurisdiction to adjudicate cases involving foreign companies from non-EU countries, which can present complexities for those entities navigating the legal framework and protections afforded within the EU. This research examined the authority, legitimacy, and application of justice through CJEU in resolving disputes between foreign companies. This normative legal research used a statute approach, case study, and library research. Based on the research results, the authority and legitimacy of CJEU in resolving disputes with foreign companies have been regulated in the Maastricht treaty. The submission of foreign companies is also related to the opposing party, a company flagged by an EU member state. The use of CJEU in resolving disputes requires parties to maximize all judicial remedies available at the national before proceeding to the international level.</i></p>

A. Introduction

The European Union (EU) acts as a supranational organization that establishes cooperation in various sectors to develop the running of EU member states. EU developed a dispute resolution system, namely the European Court of Justice, in 1952, now called The Court of Justice of The EU (CJEU).¹ The establishment of CJEU aims to ensure the interpretation and application of the tree established in EU law without infringing on the sovereign jurisdiction of member states.² The General Court and some specialized courts are among the judicial institutions established by the EU. They are responsible for the territorial jurisdiction of the EU, as stated in Article 19 paragraph (1) of the Treaty on EU (TEU).³

The establishment of CJEU has become critically important for enforcing the EU Treaty, particularly for resolving civil disputes involving foreign non-union companies. Based on Court reports: The Court of Justice published by The CJEU shows that the EU General Court has resolved 183 disputes in the first quarter of 2023.⁴ One of the cases tried at CJEU was a civil case involving China Construction Bank Corp (now referred to as CCB). The CCB case was a civil case relating to IPR in the form of a trademark dispute between China Construction Bank Corp (CCB) and *Groupement des cartes bancaires* (GIE CB). CCB is a financial company established in 1954 in Beijing, China⁵, while GIE CB was founded in 1984 in France.

The choice of the Court in the trademark dispute between CCB and GIE CB was a strategic move in EU law. In this action, the financial company CCB expressly chose CJEU as the institution that would handle its dispute with GIE CB by filing a lawsuit with CJEU court. The choice had the legal effect that the parties chose CJEU as the Court to hear their case, placing themselves under the jurisdiction of the CJEU. They were required to obey and submit to the decisions issued by CJEU to settle this trademark dispute.⁶ The CJEU's decision would have binding legal force as a primary guide in resolving this dispute. The CJEU, as the highest institution in the EU legal system, is responsible for ensuring consistency in the interpretation and application of EU law across EU members. Therefore, using CJEU as the Court signifies that the parties consider the dispute relevant to EU law and want to ensure that the decision taken is aligned with the EU legal framework. In a CJEU court, EU law is applied. Every party involved should refer to rules, principles, and precedents relating to EU law (choice of law) in their proceedings at the CJEU.⁷

¹ Arjen Boin and Susanne K. Schmidt, "The European Court of Justice: Guardian of European Integration," in *Guardians of Public Value*, ed. by Arjen Boin, Lauren A. Fahy, and Paul 'T Hart (Cham: Springer International Publishing, 2021), 135–59, https://doi.org/10.1007/978-3-030-51701-4_6.

² Sabine Saurugger and Fabien Terpan, *The Court of Justice of the European Union and the Politics of Law*, The European Union Series (London: Palgrave Macmillan education, 2017).

³ The European Union, "Consolidated Version of The Treaty on European Union 1992," 7.6.2016 OJ C 202 § (1992).

⁴ The Court of Justice of The European Union, "Court Reports-General: Court of Justice," Informational reports (Luxembourg: The Court of Justice of The European Union, 2023), https://curia.europa.eu/jcms/jcms/P_106311/en/.

⁵ China Construction Bank Indonesia, "The Annual Report 2020 of China Construction Bank: Annual Report, Good Corporate Governance & Sustainability Report 2020," Annual reports (Jakarta: China Construction Bank Corp, 2020).

⁶ Thomas Verellen, "In the Name of the Rule of Law? CJEU Further Extends Jurisdiction in CFSP (Bank Refah Kargaran)," *European Papers - A Journal on Law and Integration* 2021 6 (29 Maret 2021): 1724, <https://doi.org/10.15166/2499-8249/447>.

⁷ Trevor C Hartley, "Basic Principles of Jurisdiction In Private International Law: The European Union, The United States and England," *International and Comparative Law Quarterly* 71, no. 1 (2022): 211–26, <https://doi.org/10.1017/S0020589321000427>.

Carina Etta Siahaan, Arif, and Deni Purba conducted research under the title "The Role of the European Union in the Dispute Resolution Process for Member States and Non-Member States" " In the study explained that CJEU has the authority to make binding decisions in legal cases relating to European Union law. This means that CJEU decisions must be respected and applied by all EU member states, even if they conflict with the national laws of those states. This reflects that the European Union is a legal entity with independent legal powers binding on all its members.⁸ In addition, the research also explained that the EU had a strong oversight function, including the ability to request reports from authorized officials to handle disputes. This shows that the EU has strict control and monitoring of the implementation of its policies and laws, both at the national and EU levels. Therefore, EU can ensure that its laws and principles are applied consistently and effectively throughout its territory.⁹

Another research conducted by Boin and Schmidt also explored a similar topic under the title "The European Court of Justice," which explains that the main role of CJEU is to ensure that EU law is applied uniformly throughout the EU. EU member states have to apply EU law and comply with the provisions and principles of EU law. CJEU has the authority to resolve disputes involving the interpretation or implementation of EU law. In non-compliance or a difference in interpretation, member states, legal entities, or individuals can submit their case to CJEU for a binding legal decision.¹⁰ In addition, CJEU also has an important function in sanctioning individuals or legal entities that violate EU law and imposing fines or other legal action that can be taken against the offender. CJEU holds a pivotal role in maintaining discipline and compliance with EU law throughout the EU.¹¹

Wizna Gania Balqis and Budi Santoso, in a research titled "The Importance of Registered Trademark Protection for the Creative Economy Product Producing Community," explain that trademark protection is an exclusive right granted to the owner of a registered trademark for a certain period. A trademark is a visual representation or symbol used to identify a particular product or service originating from a company or manufacturer. It includes the brand name and logos, slogans, and other elements used to distinguish the product or service from others.¹² The protection of a trademark reserves the exclusive right to use the mark. This ensures the protection of the brand owner's investment in cultivating the brand's image, reputation, and consumer loyalty. Should another individual or company attempt to use a similar or identical mark without authorization, the brand owner has the legal right to take action to safeguard their exclusive rights.¹³

Another research examining the trademark was conducted by Adia Irvan, Rory Jeff Akyuwen, and Agustina Balik titled "Legal Protection for Unregistered Trademark Owners." The study explains that trademark protection in Indonesia is limited to trademarks that have been officially registered through a declarative or constitutive system. The declarative system

⁸ Carina Etta Siahaan, Arif, and Deni Purba, "Peran Uni Eropa Dalam Proses Penyelesaian Sengketa Bagi Negara Anggota dan Negara Non Anggota," *Journal of USU Internasional Law* 1, no. 3 (2013): 1–16.

⁹ Boin and Schmidt, *Loc. Cit.*

¹⁰ Wizna Gania Balqis and Budi Santoso, "Arti Penting Perlindungan Merek Terdaftar Bagi Komunitas Penghasil Produk Ekonomi Kreatif," *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (10 Mei 2020): 205–21, <https://doi.org/10.14710/jphi.v2i2.205-221>.

¹¹ *Ibid.*

¹² Wizna Gania Balqis, "Perlindungan Merek sebagai Hak Kekayaan Intelektual: Studi di Kota Semarang, Indonesia," *Journal of Judicial Review* 23, no. 1 (1 Juni 2021): 41, <https://doi.org/10.37253/jjr.v23i1.4360>.

¹³ *Ibid.*

allows trademark owners to register their marks if the mark has been used in commerce. In contrast, the constitutive system allows the registration of marks that have not been used but the owner intends to use the mark in commerce. Both systems provide legal protection against the use of such marks by other parties without the owner's permission.¹⁴

This research was carried out to examine the legitimacy of CJEU and its application in resolving trademark disputes involving non-EU foreign companies in the CCB case.

This normative legal research employed 3 (three) research approach methods, namely the statute approach, case study research, and library research. The regulatory approach was used to review the legislation related to the regulation of trademarks and the European Union General Court. Meanwhile, the case study approach examined the case based on the decision that has permanent legal force. Finally, the library study approach analyzed relevant literature such as books, journals, theses, and other scientific works. The data of this research were then analyzed through several steps: data reduction, data modeling, and conclusion verification.¹⁵ Data reduction simplified the data with the objective of this research. The data were systematically modeled and compiled to draw comprehensive conclusions.

B. Discussion

1. The Legitimacy and Jurisdiction of CJEU

As stated in Article 13 of the Treaty on EU (Maastricht Treaty), CJEU is a part of the EU institutions besides the European Parliament(EP), the European Council (Euco), the Council, the European Commission(EC), The CJEU, the European Central Bank(ECB), and the Court of Auditors(ECA).¹⁶ CJEU provides legitimacy to the EU's judicial power by imposing an obligation on the member EU to grant the Court the competence to ensure the interpretation, application, protection, and enforcement of EU law in national legislation.¹⁷

The recognition of the CJEU's role in judicial authority stems from its independence, which has functionally established the Court within the framework of European legal principles.¹⁸ CJEU resolves disputes based on the fulfillment of 3 (three) criteria: independence, impartiality, and effectiveness of CJEU in helping to produce fair decisions in the settlement of certain disputes.¹⁹

The authority and legitimacy of CJEU in adjudicating non-EU disputes has been regulated in the EU supranational treaty, as stated in Article 19 paragraph (3) of the Maastricht Treaty which regulates the authority of the EU General Court, namely deciding actions filed by individuals, legal entities, institutions, and member states of the EU, providing preliminary decisions at the request of EU member courts regarding the interpretation of the laws or the

¹⁴ Nadia Irvan, Rory Jeff Akyuwen, and Agustina Balik, "Perlindungan Hukum Bagi Pemilik Merek Tidak Terdaftar," *Tatohi: Jurnal Ilmu Hukum* 1, no. 12 (2022): 1230–42, <https://doi.org/10.47268/tatohi.v1i12.878>.

¹⁵ Asfi Manzilati, *Metodologi Penelitian Kualitatif: Paradigma, Metode, dan Aplikasi* (Malang: Universitas Brawijaya Press, 2017), 87.

¹⁶ The European Union, Consolidated Version of The Treaty on European Union 1992.

¹⁷ Erik Rydén, "Exploring the Scope of Article 19(1) TEU: A New Horizon for the Enforcement of the Rule of Law in EU Member States?" (Thesis, Uppsalla, Uppsala University, 2020).

¹⁸ Dominique Ritleng, "The Independence and Legitimacy of the European Court of Justice," dalam *Independence and Legitimacy in the Institutional System of the European Union* (Oxford: Oxford University Press, 2016), 83–124, <https://doi.org/10.1093/acprof:oso/9780198769798.003.0004>.

¹⁹ Birju Kotecha, "The International Criminal Court's Selectivity and Procedural Justice," *Journal of International Criminal Justice* 18, no. 1 (1 Maret 2020): 107–39, <https://doi.org/10.1093/jicj/mqaa020>.

legality of actions applied by institutions, and the government in other matters regulated in the treaty.²⁰ The existence of CJEU in adjudicating non-EU foreign companies is strengthened by Article 4 of Regulation The EU No 1215/2012 Of The Jurisdiction and The Recognition And Enforcement Of Judgments In Civil And Commercial Matters, which stipulates that the jurisdiction, recognition, and enforcement of CJEU applies to all persons or legal entities domiciled in member states.²¹ The jurisdiction and enforcement also apply to prosecutions from member and non-member states where a particular offense has been proven.

The participation of non-EU foreign companies in dispute resolution at CJEU categorizes their home countries as non-party states (third states). A non-party state does not qualify as a party to a treaty or international law, either because it fails to meet the necessary criteria for participation or because, despite ratification, it is not fully obligated by the treaty's terms.²² The attachment of a non-party state to an international treaty can be expressed in 5 (five) forms: signing, ratification, acceptance, approval, and exchange of instruments that cause the state to be bound by international treaties adopted by certain countries.²³ As stipulated in Article 11 of the 1986 Vienna Convention. The mechanism of consent is bound to an international treaty.²⁴

In general, dispute resolution filed in CJEU relates to 5 (five) as follows:²⁵

a. Preliminary Rulings (PR)

The preliminary ruling procedure is a mechanism that facilitates collaboration between CJEU and the national courts of EU member states. This process enables the issuance of preliminary decisions regarding the interpretation of EU treaties and judgments on the interpretations of actions taken by any EU institution, body, office, or agency. The PR procedure applies when, in a case before a national court, a new interpretation arises, and it is in the public interest for the unified application of EU law that CJEU acts to provide an interpretation as a guide to the new legal situation.

Infringement Proceedings (IP)

Article 226 of the Treaty establishing the EC states that infringement proceedings are pre-trial proceedings for non-compliance brought by the European Commission through its discretionary powers. Pre-trial proceedings authorize certain courts to examine and decide on pre-trial claims through procedures set out in the applicable statutory law.²⁶

b. Actions for Annulment

An annulment action is a legal process that the CJEU uses to ensure that individual acts, regulatory acts, and legislative acts comply with the higher standards of the EU legal system. CJEU classifies applicants into three categories based on their rights: privileged candidates,

²⁰ The European Union, Consolidated Version of The Treaty on European Union 1992.

²¹ the European Parliament and of the Council, "Regulation The European Union No 1215/2012 Of The Jurisdiction And The Recognition And Enforcement Of Judgments In Civil And Commercial Matters" (2012).

²² Anthony Aust, *Modern Treaty Law and Practice*, 2nd ed (Cambridge: Cambridge University Press, 2007).

²³ Ivor Roberts dan Ernest Mason Satow, ed., *Satow's diplomatic practice*, Seventh edition (Oxford ; New York, NY: Oxford University Press, 2017), 634.

²⁴ The United Nations, "Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations 1986" (2005).

²⁵ European Union Agency for Criminal Justice Cooperation., *Case Law by the Court of Justice of the EU on the European Arrest Warrant: 15 March 2020*. (Den Haag: Publications Office, 2020).

²⁶ Jaholden, *Praperadilan dan Pembaharuan Hukum Pidana* (Serang: CV AA Rizky, 2021), 3.

semi-privileged candidates, and non-privileged candidates. The establishment of annulment actions attempts to preserve these applicants' rights.

c. Actions for Failure to Act

Taking action for failure refers to action or enforcement by CJEU on claims concerning alleged breaches of law in the sense of treaty violations and failures to act by European institutions, bodies, offices, or agencies.

d. Actions for Damages

Claims for damages are direct claims brought before CJEU by individuals, legal entities, or EU member states seeking compensation for damage or loss caused by the actions, administrative, or legislative activities of the EU institutions and legal entities within.

2. Settlement of Trademark Dispute Cases

One of the disputes resolved by a judgment of CJEU was the civil case of China Construction Bank Corp (CCB). The settlement of the CCB case by the CJEU has raised several questions regarding the authority, procedures, and laws used by the CJEU to resolve disputes relating to non-EU foreign companies. In the CCB case, the problem emerged from refusing the CCB trademark registration application with the EU Intellectual Property Office (EUIPO) filed by GIE CB.²⁷

Under the principle of exhaustion of domestic remedies, the resolution of the CCB case necessitated the full utilization of all legal avenues available within the jurisdiction of the country hearing the case. Resorting to an international court, such as the CJEU, is permissible if the national judicial mechanisms prove ineffective or fail to deliver a satisfactory resolution to the dispute parties.²⁸ Concerning the CCB case, the National Court in France was deemed ineffective and unsatisfactory for the disputing parties, so the case proceeded with the filing of a lawsuit at CJEU. The CJEU's jurisdiction to adjudicate lawsuits brought by Cross-Border Cooperation (CCB) entities, including foreign companies or non-EU flagged companies, is grounded in Article 19(3) of the Maastricht Treaty. This provision outlines the CJEU's authority to hear all cases involving individuals, legal entities, institutions, or states within the EU. The existence of CJEU in accepting claims from foreign companies indirectly subjects the foreign companies to all applicable regulations in the EU.

The CCB case pertains to matters of intellectual property, defined as any original creation, idea, invention, or expression of human intellect, including artistic, literary, technical, or scientific works. Society recognizes these as warranting property status due to their unique and innovative contributions.²⁹ Arrangements regarding intellectual property rights are classified into 2 (two) types: copyright and industrial property rights. Copyright is a privilege for creators and recipients of rights to distribute or replicate their creations or give permits

²⁷ The Court of Justice of The European Union, "Judgement of The Court C-115/19 P" (The Court of Justice of The European Union, 2019).

²⁸ Febriansyah Ramadhan dan Ilham Dwi Rafiqi, "Menggal Asas-Asas Pengadilan Hak Asasi Manusia dalam Pengujian Undang-Undang Pengadilan Hak Asasi Manusia," *Journal of Judicial Review* 24, no. 1 (3 Juni 2022): 35, <https://doi.org/10.37253/jjr.v24i1.5376>.

²⁹ Chandra Nath Saha dan Sanjib Bhattacharya, "Intellectual property rights: An overview and implications in pharmaceutical industry," *Journal of Advanced Pharmaceutical Technology & Research* 2, no. 2 (2011): 88–93, <https://doi.org/10.4103%2F2231-4040.82952>.

without reducing the limitations according to applicable laws and regulations.³⁰ At the same time, industrial property rights are exclusive rights registered as industrial products commercialized or traded, including Patents, Trade Secrets, Trademarks, Industrial Designs(ID), Plant Variety (PV), and Design of Integrated Circuits(IC).³¹

CCB case relates to issues regarding the protection of the mark based on the similarity of the mark that consisted of 2 (two) consecutive letters, namely the letter C and the labor B in the Logo of both companies.³² The granting of rights to trademarks as stipulated in Article 9 of Regulation of EU 2017/1001 of the EU trademark requires the protection of trademarks in the EU to assign several rights to the owner, including the exclusive rights, rights to prevent the use of trademarks, rights to transfer trademarks, and rights against the use of trademarks.³³ The acknowledgment of a trademark is closely tied to its definition, characterized as a sign capable of distinguishing the goods or services offered or produced by one company from others.³⁴ The mark includes any word, letter, number, image, label shape, Logo, or combination used to distinguish goods or services that can be considered a trademark.³⁵ In general, trademarks are categorized into 3 (three), namely Trademarks, Service Marks, and Collective Marks.³⁶ A trademark is a mark or combination of marks that distinguishes goods a company trades with other companies.³⁷ In contrast, service marks are defined as trademarks used on products in the form of services trafficked by a company or corporate entity to differentiate them from similar services.³⁸ Lastly, Collective Trademarks are those displayed on goods or services with substantially similar features regarding the mark, generic characteristics, nature, and quality traded by individuals.³⁹

The regulation of trademark classification applicable in the EU refers to the Nice Classification (NCL) regulations of trademark registration, an international classification system used specifically in trademark registration to classify existing goods and services. NCL 12 Edition 2023 on List of Classes with Explanatory Notes mentions 45 classes of goods and services as a reference for trademark protection applications.⁴⁰ In the CCB case, the Nice Classification (NCL) application categorized the trademarks owned by CCB and GIE CB as Class 36 trademarks. This Classification encompasses banking, monetary, financial, assurance, and real estate services. The use of NCL for both companies is specifically related to the banking sector, which represents the core business activity of each entity.

³⁰ Nanda Dwi Rizkia dan Hardi Fardiansyah, *Hak Kekayaan Intelektual: Suatu Pengantar* (Bandung: Widiana Bhakti Persada Bandung, 2022), 37.

³¹ *Ibid.*

³² Gordon Humphreys, Nedim Malovic, dan Stefan Martin, "Round-up of EU Trade Mark Decisions in 2020," *Journal of Intellectual Property Law & Practice* 16, no. 6 (6 Juli 2021): 547–60, <https://doi.org/10.1093/jiplp/jpab081>.

³³ The European Union, "Regulation of the EU 2017/1001 of the European Union trade mark" (2017).

³⁴ World Intellectual Property Organization, *Making a Mark: Intellectual Property for Business Series* (Geneva: World Intellectual Property Organization, 2006), 8.

³⁵ *Ibid.*

³⁶ President of the Republic of Indonesia, "Law of the Republic of Indonesia Number 20 of 2016 on Marks and Geographical Indications" (2016).

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ World Intellectual Property Organization, *Nice Classification- 12th Edition, Version 2023 on List of Classes with Explanatory Notes* (Geneva: World Intellectual Property Organization, 2023).

The decision to grant trademark rights in the CCB case is particularly urgent in the context of intellectual property rights (IPR) protection. This urgency arises from shifting the focus from merely assessing the similarity of the sign or Logo in question to evaluating the brand's reputation, which has been highly regarded in France for the past 25 years.⁴¹ The existence of both brands in Europe does not cause significant harm. The similarity in the use of the Logo is only limited to the similarity of the use of 2 letters, namely C and B. The statement is reinforced by the use of shapes in logos that are not similar, including the type of font or letter used. The override of the assessment of the similarity of marks with the reputation of the brand refers more to the theory of brand reputation that classifies brands based on public or consumer perceptions that reflect the level of the general public's knowledge of the brand. The Classification of brand reputation is divided into 3 (three) types, namely:⁴²

a. Normal Marks

A type of brand that does not have a high reputation either at the national or international level. Ordinary brands refer to brands registered in the national brand inventory but do not have a high enough reputation in the community.

b. Well Known Marks

A well-known brand is a brand that is widely recognized in the public sector and has a relatively high reputation internationally.⁴³ The existence of a well-known mark is based on the length, breadth, and scope of the area of utilization of the mark, including the publication and presentation of the goods or services that use the mark.⁴⁴

c. Famous Marks

Famous Marks are marks with a higher recognition than a well-known mark or a well-known mark that is already known and has the highest reputation in several countries whose existence is even recognized before being registered as a mark in a country.⁴⁵

Trademark protection is granted by the state to the holder of a trademark, with the scope of this protection being determined by the applicable laws within a country.⁴⁶ The protection of trademarks in Indonesian and international regulations provides a limitation of protection within 10 (ten) years from receipt. It can be extended within the same period. Legal protection is provided through trademark registration to the authorized government agency. Trademark applications are made through 2 (two) systems, namely the constitutive system and the declarative system. In the Constitutive system, the right to the trademark is acquired through registration, where the exclusive right to a trademark is awarded after registration.

⁴¹ Humphreys, Malovic, dan Martin, "Round-up of EU Trade Mark Decisions in 2020."

⁴² M. Yahya Harahap, *Tinjauan Merek Secara Umum dan Hukum Merek di Indonesia Berdasarkan Undang-Undang No. 19 Tahun 1992* (Bandung: Citra Aditya Bakti, 1996), 80–81.

⁴³ Lionita Putri Lobo dan Indirani Wauran, "Kedudukan Istimewa Merek Terkenal (Asing) Dalam Hukum Merek Indonesia," *Masalah-Masalah Hukum* 50, no. 1 (31 Januari 2021): 70–83, <https://doi.org/10.14710/mmh.50.1.2021.70-83>.

⁴⁴ Weltorganisation für Geistiges Eigentum, ed., *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks: Adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (WIPO) at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO September 20 - 29. 1999* (Geneva: WIPO, 2000).

⁴⁵ Insan Budi Maulana, "Merek Terkenal Menurut TRIPS Agreement dan Penerapan dalam Sistem Merek Indonesia," *Jurnal Hukum* 7, no. 13 (2000): 119–29.

⁴⁶ Zaenal Arifin dan Muhammad Iqbal, "Perlindungan Hukum Terhadap Merek Yang Terdaftar," *Jurnal Ius Constituendum* 5, no. 1 (13 Mei 2020): 47, <https://doi.org/10.26623/jic.v5i1.2117>.

Meanwhile, the declarative system, which grants trademark rights based on first use rather than registration, often lacks legal certainty. This can create challenges and obstacles in the business world, particularly for companies operating in countries that follow the constitutive system, where registration is required for trademark protection.⁴⁷

C. Conclusion

The existence of CJEU in resolving disputes has been stated in the Maastricht treaty, which regulates the existence of the EU General Court or CJEU as a part of the EU institutions. The legitimacy of CJEU is strengthened by EU instruments that provide jurisdiction, recognition, and enforcement of justice. The legitimacy and engagement of non-EU foreign companies in resolving disputes through CJEU can be binding if the state or legal entity signs, ratifies, accepts, approves, or exchanges instruments that cause the state or legal entity to be bound by international treaties that refer to the recognition of CJEU.

The application of the settlement of trademark disputes through CJEU, as referred to in the CCB case regarding trademark disputes, gives CJEU the authority to hear the lawsuit that has been filed. The authority's position is reinforced by the submission of CCB company, as a foreign entity, to EU law. Consequently, the Court will fully apply EU law to resolve the case. The approach to dispute resolution in the CCB case adheres to the principle of exhaustion of domestic remedies. This principle mandates that disputes involving CCB must be addressed to the fullest extent possible within national courts before escalating to the Court of Justice of the European Union (CJEU). Thus, in settling the CCB case, the regulation subjects CCB, a non-EU foreign company, to the jurisdiction and laws of the EU. The CCB company's attachment is based on a lawsuit submitted to CJEU that indirectly shows an agreement to be bound by EU law. CCB's trademark dispute was resolved by granting the trademark's rights to both companies. The granting of rights to both companies was based on the issue's core relating to the similarity of the marks or logos used. The use of a logo has its meaning in a product. Still, in this case, the assessment of logo similarity is irrelevant because there is only a similarity in using 2 letters. The override of the assessment of the logo is based on public knowledge of the community or consumers who have considered the two brands to be famous in France.

REFERENCES

- Arifin, Zaenal, dan Muhammad Iqbal. "Perlindungan Hukum Terhadap Merek Yang Terdaftar." *Jurnal Ius Constituendum* 5, no. 1 (13 Mei 2020): 47. <https://doi.org/10.26623/jic.v5i1.2117>.
- Aust, Anthony. *Modern Treaty Law and Practice*. 2nd ed. Cambridge: Cambridge University Press, 2007.
- Balqis, Wizna Gania. "Perlindungan Merek sebagai Hak Kekayaan Intelektual: Studi di Kota Semarang, Indonesia." *Journal of Judicial Review* 23, no. 1 (1 Juni 2021): 41. <https://doi.org/10.37253/jjr.v23i1.4360>.

⁴⁷ *Ibid.*

- Balqis, Wizna Gania, dan Budi Santoso. "Arti Penting Perlindungan Merek Terdaftar Bagi Komunitas Penghasil Produk Ekonomi Kreatif." *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (10 Mei 2020): 205–21. <https://doi.org/10.14710/jphi.v2i2.205-221>.
- Boin, Arjen, dan Susanne K. Schmidt. "The European Court of Justice: Guardian of European Integration." Dalam *Guardians of Public Value*, disunting oleh Arjen Boin, Lauren A. Fahy, dan Paul 'T Hart, 135–59. Cham: Springer International Publishing, 2021. https://doi.org/10.1007/978-3-030-51701-4_6.
- Carina Etta Siahaan, Arif, dan Deni Purba. "Peran Uni Eropa Dalam Proses Penyelesaian Sengketa Bagi Negara Anggota Dan Negara Non Anggota." *Journal of USU Internasional Law* 1, no. 3 (2013): 1–16.
- Chandra Nath Saha dan Sanjib Bhattacharya. "Intellectual property rights: An overview and implications in pharmaceutical industry." *Journal of Advanced Pharmaceutical Technology & Research* 2, no. 2 (2011): 88–93. <https://doi.org/10.4103%2F2231-4040.82952>.
- China Construction Bank Indonesia. "The Annual Report 2020 of China Construction Bank: Annual Report, Good Corporate Governance & Sustainability Report 2020." Annual reports. Jakarta: China Construction Bank Corp, 2020.
- Erik Rydén. "Exploring the Scope of Article 19(1) TEU: A New Horizon for the Enforcement of the Rule of Law in EU Member States?" Thesis, Uppsala University, 2020.
- European Union Agency for Criminal Justice Cooperation. *Case Law by the Court of Justice of the EU on the European Arrest Warrant: 15 March 2020*. Den Haag: Publications Office, 2020.
- Hartley, Trevor C. "Basic Principles Of Jurisdiction In Private International Law: The European Union, The United States And England." *International and Comparative Law Quarterly* 71, no. 1 (2022): 211–26. <https://doi.org/10.1017/S0020589321000427>.
- Humphreys, Gordon, Nedim Malovic, dan Stefan Martin. "Round-up of EU Trade Mark Decisions in 2020." *Journal of Intellectual Property Law & Practice* 16, no. 6 (6 Juli 2021): 547–60. <https://doi.org/10.1093/jiplp/jpab081>.
- Insan Budi Maulana. "Merek Terkenal Menurut TRIPS Agreement dan Penerapan dalam Sistem Merek Indonesia." *Jurnal Hukum* 7, no. 13 (2000): 119–29.
- Jaholden. *Praperadilan dan Pembaharuan Hukum Pidana*. Serang: CV AA Rizky, 2021.
- Kotecha, Birju. "The International Criminal Court's Selectivity and Procedural Justice." *Journal of International Criminal Justice* 18, no. 1 (1 Maret 2020): 107–39. <https://doi.org/10.1093/jicj/mqaa020>.
- Lobo, Lionita Putri, dan Indirani Wauran. "Kedudukan Istimewa Merek Terkenal (Asing) Dalam Hukum Merek Indonesia." *Masalah-Masalah Hukum* 50, no. 1 (31 Januari 2021): 70–83. <https://doi.org/10.14710/mmh.50.1.2021.70-83>.
- M. Yahya Harahap. *Tinjauan Merek Secara Umum dan Hukum Merek di Indonesia Berdasarkan Undang-Undang No. 19 Tahun 1992*. Bandung: Citra Aditya Bakti, 1996.
- Manzilati, Asfi. *Metodologi Penelitian Kualitatif: Paradigma, Metode, dan Aplikasi*. Malang: Universitas Brawijaya Press, 2017.
- Nadia Irvan, Rory Jeff Akyuwen, dan Agustina Balik. "Perlindungan Hukum Bagi Pemilik Merek Tidak Terdaftar." *Tatohi: Jurnal Ilmu Hukum* 1, no. 12 (2022): 1230–42. <https://doi.org/10.47268/tatohi.v1i12.878>.

- Nanda Dwi Rizkia dan Hardi Fardiansyah. *Hak Kekayaan Intelektual: Suatu Pengantar*. Bandung: Widiana Bhakti Persada Bandung, 2022.
- President of the Republic of Indonesia. Law of the Republic of Indonesia Number 20 of 2016 on Marks and Geographical Indications (2016).
- Ramadhan, Febriansyah, dan Ilham Dwi Rafiqi. "Menggali Asas-Asas Pengadilan Hak Asasi Manusia dalam Pengujian Undang-Undang Pengadilan Hak Asasi Manusia." *Journal of Judicial Review* 24, no. 1 (3 Juni 2022): 35. <https://doi.org/10.37253/jjr.v24i1.5376>.
- Ritleng, Dominique. "The Independence and Legitimacy of the European Court of Justice." Dalam *Independence and Legitimacy in the Institutional System of the European Union*, 83–124. Oxford: Oxford University Press, 2016. <https://doi.org/10.1093/acprof:oso/9780198769798.003.0004>.
- Roberts, Ivor, dan Ernest Mason Satow, ed. *Satow's diplomatic practice*. Seventh edition. Oxford ; New York, NY: Oxford University Press, 2017.
- Saurugger, Sabine, dan Fabien Terpan. *The Court of Justice of the European Union and the Politics of Law*. The European Union Series. London: Palgrave Macmillan education, 2017.
- The Court of Justice of The European Union. "Court Reports-General: Court of Justice." Informational reports. Luxembourg: The Court of Justice of The European Union, 2023. https://curia.europa.eu/jcms/jcms/P_106311/en/.
- The Court of Justice of The European Union. "Judgement of The Court C-115/19 P." The Court of Justice of The European Union, 2019.
- the European Parliament and of the Council. Regulation The European Union No 1215/2012 Of The Jurisdiction And The Recognition And Enforcement Of Judgments In Civil And Commercial Matters (2012).
- The European Union. Consolidated Version of The Treaty on European Union 1992, 7.6.2016 OJ C 202 (1992).
- The European Union. Regulation of the EU 2017/1001 of the European Union trade mark (2017).
- The United Nations. Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations 1986 (2005).
- Verellen, Thomas. "In the Name of the Rule of Law? CJEU Further Extends Jurisdiction in CFSP (Bank Refah Kargaran)." *European Papers - A Journal on Law and Integration* 2021 6 (29 Maret 2021): 1724. <https://doi.org/10.15166/2499-8249/447>.
- Weltorganisation für Geistiges Eigentum, ed. *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks: Adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (WIPO) at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO September 20 - 29. 1999*. Geneva: WIPO, 2000.
- World Intellectual Property Organization. *Making a Mark: Intellectual Property for Business Series*. Geneva: World Intellectual Property Organization, 2006.
- World Intellectual Property Organization. *Nice Classification- 12th Edition, Version 2023 on List of Classes with Explanatory Notes*. Geneva: World Intellectual Property Organization, 2023.

