

The Urgency of the Registration of the Brand that is Safe for Employers in Ciburial Village, Regency Bandung

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Abstract—This sign is a sign attached on the product or service as well as the signs of the differences. The brand achieved by the business through the registration process or through an application to the Directorate General of intellectual property. The business already has a list of this brand can forbid others to use such marks. the problems that occur in Ciburial Village are a lot of businesses that have not registered a brand the product and do not know widely about the importance of the protection of trade listed the top products business of hers. The goal is to determine the registration of a trademark that is safe for SME entrepreneurs in Ciburial. The method used in this research is the method of literature study with the use of the basic law, namely the Law and legal articles associated with the brand. The results of this research is to SME entrepreneurs should pay attention to the requirements of the substantial and formal in the process of registration of the brand, and to avoid similarities with the existing brand. With the mark is registered, it will provide legal certainty for businesses and SMES.

Keywords—*trademark, registration safe, entrepreneur, SMES*

I. INTRODUCTION

Micro Small and Medium Enterprises (MSMEs) are national economic actors who have an important role in Indonesia's economic development [1]. It is proven that MSME business activities are able to expand employment and provide broad economic services to the community. MSMEs as one of the main pillars of the national economy, contribute positively to economic growth and dominate the structure of the national economy [2].

Ciburial Village is geographically bordered by several administrative areas, both those included in the administrative area of Bandung Regency, West Bandung Regency and Bandung City. The potential that Ciburial Village has, quite potentially, can be seen from the table 1[3]:

TABLE I. CIBURIAL VILLAGE ECONOMIC ACTIVITIES

No.	Category	Type of Business	Sum
1.	Economic Institute and Village Business Unit	Bumdes	1
2.	Lodging Services Business	Hotel	4
3.	Entertainment Services Business	Music Group / Band	12
4.	Lodging Services Business	Home Rent	12
5.	Gas, Electricity, Fuel and Water Services Business	Bottled water / refill business	1
6.	Lodging Services Business	Villa	4
7.	Skill Service Business	Carpenter	5
8.	Service and Trade Business	Number of Store / Kiosk Businesses	6
9.	Legal Services and Consulting	Notary	1
10.	Service and Trade Business	Grocery store	2
11.	Lodging Services Business	Home Stay	30
12.	Lodging Services Business	Boarding house	1
13.	Land Transport		30 units
14.	Honey Bee		35
15.	Handicrafts		65

Based on the table above, the condition of economic activities carried out by the people of Ciburial Village, this shows that the activity of business activities carried out by the village community is very high. The number of MSMEs in Ciburial Village reached 180 MSMEs, with the total number of labour availability reaching 444 people.

Ciburial village community has enormous economic potential, whether in the field of tourism, culinary or other crafts. This is seen from the number of activities carried out by the ciburial village community, but there are still many businesspeople who do not know the importance of the marks of the products they sell, and do not know about the benefits of the mark or in this case is the brand. In addition, Ciburial Village is a village that has characteristics and can have a positive impact on the community, in this case the economic development of the community [4].

In developing his business, every entrepreneur has the right to propagandize his manufactured goods to expand the market. This effort should be done honestly and not violate the rights of others. One way is to register a brand. Many businesses in giving their products a name and brand are limited to existing and have the name of their products [5]. Having the name in common with other products, they do not mind it, so there will be disputes in marketing, and another result is consumers who are confused in the selection of products that are the same brand but different qualities [6]. This activity will run well and in accordance with expectations to improve the development of village communities and in efforts to improve village government development.

Every MSME product, both goods and services have material and immaterial wealth. One of these immaterial riches is in the form of a brand. A brand is a sign given by the manufacturer of the goods and / or services it produces as something that can distinguish from other similar products. As a sign, the brand is used so that consumers easily recognize the product, because without the brand will cause the public difficult to explain to others about the product they will consume [7]. This reason is what makes the brand as one of the forms of intellectual work that has an important role for the smooth and increasing trade in goods and / or services. The important role of brands in trading activities often causes problems. The brand problem such as impersonation, counterfeiting, even brand abuse by other parties that leads to losses on the continuity of business carried out by business actors. Thus, how do MSMEs in Ciburial village register their brands honestly and not harm other business actors?

II. DISCUSSION

A. Brand Understanding

Brands, as part of intellectual property rights, have an important role in avoiding unhealthy business competition practices, because brands can distinguish the origin, quality, and guarantee of the originality of an item [8]. Brands can also be classified into immaterial object categories, because a brand is something that is affixed to a product but not the product itself and that can be enjoyed by consumers is a product not a brand. A brand can only cause satisfaction for its customers.

In law No. 20 of 2016, brands have an understanding as a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, colour arrangements, in the form of 2 (two) dimensions and / or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more elements to distinguish goods and / or services produced by people or legal entities in the trading of goods and / or services (Article 1 number 1). The brand itself is divided into 2 (two) types, namely trademarks and service marks [9].

Article 1 number 2 of Law No. 20 of 2016 Trademark is a Mark used on goods traded by a person or several persons together or a legal entity to distinguish with other similar goods.

Article 1 number 3 of Law No. 20 of 2016 Brand Services is a Brand used in services traded by a person or several people together or legal entity to distinguish with other similar services.

In addition to that in UU No. 20 Of 2016 is also known as Collective Brand, which is a brand used in goods and / or services with similar characteristics regarding the nature, general characteristics, and quality of goods or services and their supervision that will be traded by several people or legal entities together to distinguish with other similar goods and / or services (Article 1 number 4).

Based on the definition of a trademark, service mark, or collective brand, the brand refers to the mark in the form of an image, logo, name, word, letter, number, colour arrangement, sound, hologram, or combination used by the manufacturer as a differentiator of the products it produces with similar goods / services produced by other manufacturers. The consequences of such a definition, in a brand, protected by the Act are marks as mentioned in the brand definition of Article 1 number 1, as explicitly stipulated in Article 2 paragraph (2) of Law No. 20 of 2016. The definition of a brand stipulated in Law No. 20 of 2016 shows that there is a development or expansion of the definition of a brand stipulated in Law No. 15 of 2001 on Brands, namely the inclusion of new brand types in the protected brand scope including voice brands, 3 (three) dimensional brands, hologram brands, which fall into the category of non-traditional brands.

B. Brand Registration

The acquisition of rights to the brand owned by a person or legal entity only occurs after the brand is registered with the Directorate General of Intellectual Property Rights (DJHKI) of the Ministry of Law and Human Rights [10]. In other words a brand may be used by anyone, but a new person or legal entity has exclusive rights to its brand and may prohibit the other party from using his or her trademark or services if the mark has been registered with the Ministry of Law and Human Rights (Article 3 and Article 4 paragraph (1)). The requirements for brand registration in the utilization of brand rights indicate that the brand registration regime in Indonesia adheres to a constitutive system [11]. Whether or not trademark rights protection in a constitutive system is dependent on whether or not the brand is registered. In a constitutive system, brand rights are recognized *de jure* and *de facto*. This constitutive system adheres to the principle of first to file which means that the registration of a brand will only be given to the party who first submits a registration request for a brand, and the state does not provide registration for brands that have similarities with the brand submitted first to other parties for similar goods / services [12]. The party who first registered the brand is the party entitled to the brand and the third party must respect the rights of the brand registrar as an absolute right in the registration of a brand. Thus, in intellectual property rights, registration is very important and becomes a determinant of the intellectual property it registers.

The constitutive system has more advantages than declarative systems, namely legal certainty, because the party who registers first for a brand is entitled to the brand and has the right to give permission to others to use the brand. The party also reserves the right to sue other parties who use its brand without permission. In contrast to declarative systems that do not necessarily make the first brand registration as a brand rights holder. Brand registration on the declarative system only raises the suspicion that the first brand registrant should be suspected of being the rightful owner of the brand rights, if it is not refuted by others. With the constitutive system, unfair competition can be prevented, because legal certainty against brand law protection entitles brand owners to sue parties who commit brand violations in the form of brand impersonation or brand implementation.

C. Safe Brand Registration for MSMEs in Ciburial Village

MSME businesspeople in Ciburial Village are basically in fact there are still many businesspeople who have not registered their product brands and do not know widely about the importance of registered brand protection of their business products. This is due to the lack of knowledge about the importance of protecting Intellectual Property Rights against its trademarks. So that most businesspeople prioritize by growing their business first, what they think about is how to keep their business growing, growing and can be known by many people. While regarding the importance of registration of Intellectual Property Rights contained in the brand is not a priority, although basically business actors realize that IPR is important in their business activities.

This is based on the results of surveys to business actors before and after counselling activities, with the following results in Figure 1:



Fig. 1. Result of brand knowledge before socialization.

From the results of questionnaires distributed to participants socializing the public's understanding of brand definition is enough to know with the number of presentations by 82% of participants know the brand. While 18% of the participants were those who did not know about the brand. Thus, people's understanding of the brand is quite good.

It was then given an understanding and counselling with regard to the brand, and the results showed in Figure 2:



Fig. 2. Result of brand knowledge after socialization.

After socialization about the brand, the public experienced a fairly good understanding, this is indicated by the amount of understanding of the definition of the brand has been 100% knowing about the brand. In other words, the increase in understanding for MSME business actors in Ciburial Village succeeded at the level of understanding the definition of the brand.

In article 20 of Law No. 20 of 2016 on Brands and Geographical Indications, it is explained that the Marks cannot be registered if:

- Contrary to state ideology, laws and regulations, morality, religion, decency, or public order;
- Same with, relating to, or simply mentioning the goods and/or services requested for registration;
- Contain elements that may mislead the public about the origin, quality, type, size, type, purpose of use of goods and/or services requested for registration or are the names of protected plant varieties for similar goods and/or services;
- Contain information that is not in accordance with the quality, benefits, or efficacy of goods and / or services produced;
- It has no differentiating power; and/or
- It is a common name and/or common symbol.

In article 20 letter a it is explained that the brand is prohibited contrary to the ideology of the state, laws and regulations, morality, religion, decency, or public order, which is meant by state ideology as meant by Soerjanto Poespowardoyo who states that ideology is a complex of knowledge and also various values, which universally become the basis for a person or society to be able to understand the universe and also the whole earth and also determine the basic attitude to be able to process it [14]. It can be concluded that ideology is a universal value on which society is based for understanding and determining attitudes.

The basis of Indonesian ideology is Pancasila. So in the context of brand registration should not be with Pancasila which reflects the five precepts. It cannot be contrary to (1) the Supreme Divinity, (2) a just and civilized humanity, (3) the Unity of Indonesia, (4) the people led by wisdom in consultative/representative, and (5) social justice for all Indonesian people.

While the prohibition is contrary to the laws and regulations of the registered brand must reflect compliance and compliance with applicable laws and regulations in Indonesia. Then prohibition contrary to morality is interpreted as a prohibition contrary to human activities that are seen as good / bad, right / wrong, right / inappropriate, or regarding the way a person behaves in relationships with others [15]. Then prohibition is contrary to religion and decency that applies in the lives of Indonesian people. While prohibition contrary to public order is not in line with existing regulations in society that are comprehensive such as offending people or groups, offending civility or general ethics of society, and offending the peace of society or group.

In letter b it is explained that the brand to be registered must not be the same as, related to, or only mention the goods and / or services requested registration. The point is that the use of the brand to be registered must not be the same as the goods or services that will be requested, such as the goods are soy sauce, the applicant registers it with the brand of soy sauce. Such registration is prohibited under the Marks Act [16].

In letter c, it is explained that the brand to be registered must not contain elements that can mislead the public about the origin, quality, type, size, type, type, purpose of use of goods and / or services requested registration or is the name of the protected plant variety for similar goods and / or services, the intent of containing elements that can be misleading e.g. The Brand "Soy sauce No. 1" cannot be registered because it misleads the public related to the quality of goods, the Brand "netto 100 grams" cannot be registered because it misleads the public related to the size of the goods [16].

Then in letter d it is explained that the prohibition of containing information that is not in accordance with the quality, benefits, or efficacy of goods and / or services produced, it means that it contains information that is not in accordance with the quality, benefits, or efficacy of the goods and / or services produced is to include information that is not in accordance with the quality, benefits, efficacy, and / or risks of the product in question. For example: drugs that can cure a thousand and one diseases, cigarettes that are safe for health [16].

In the letter e it is explained that it does not have a differentiating power, meaning that you are considered not to have a differentiating power if the sign is too simple such as a line sign or a dot, or too complicated so that it is not clear [16].

Then the letter f is explained that the brand to be registered is a common name and / or a commonly owned emblem, which is meant by a common name including the brand "restaurant"

for restaurants, brand "coffee shop" for café. "Commonly owned emblems" include the "skull emblem" for dangerous goods, the "poison mark" emblem for chemicals, the "spoon and fork emblem" for restaurant services [16].

In addition to brands that cannot be registered as referred to in article 20, for applicants must also avoid brands that will be rejected, the registration of rejected brands as described in article 21 of the brand law, which reads:

Article 21

- (1) The application is rejected if the Brand has in common with:
 - a. Registered marks belonging to other parties or requested in advance by other parties for similar goods and/or services;
 - b. Well-known brands belonging to other parties for similar goods and/or services;
 - c. The other party's well-known brand for non-similar goods and/or services that meet certain requirements; or
 - d. Geographical indications are registered.
- (2) The application is rejected if the Brand:
 - a. constitute or resemble the name or abbreviation of a famous person's name, photograph, or legal entity name owned by another person, except with the written consent of the entitled;
 - b. is an imitation or resembles the name or abbreviation of the name, flag, emblem or symbol or emblem of a country, or a national or international institution, except with the written consent of the competent authorities; or
 - c. it is a imitation or resembles an official mark or stamp or stamp used by a state or Government agency, except with the written consent of the competent authorities.
- (3) The application is rejected if submitted by the Applicant who is not in good faith

Based on these provisions, MSMEs are expected to avoid the similarity of brands to be registered, avoiding using names or famous figures, unless they have obtained prior approval with the name voter. In addition, it is expected that applicants avoid using registered brands of well-known brands that are already registered. Then in paragraph (2) the application will also be rejected when using the brand using the name of a famous person, the coat of arms of the state as well as imitation of the official sign used by state institutions.

III. CONCLUSION

MSME business actors in the brand registration process must certainly pay attention to all aspects, whether social aspects, religion, norms or social order. Safe registration for MSMEs in Ciburial Village must pay attention to social norms that apply in the community, in addition, of course, must pay attention to religion and laws and regulations that apply in Indonesia. In addition, businesspeople are no less important to pay attention to the brands that will be registered with brands that have been registered in terms of similarities on the subject and all. Thus, minimizing the possibility of rejecting the brand to be registered.

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