



Brand Registration in the Context of Legal Protection Micro Small Medium Business Products in Indonesia

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Abstract. MSMEs continue to play an important role in improving the Indonesian economy, both in terms of the number of businesses, in terms of job creation, as well as in terms of national economic growth as measured by gross domestic product. The business sector can never escape Intellectual Property. Every business carried out must have intellectual property contained in it, one of which is a Mark, as well as MSMEs, a brand is not only used or used by its owner to distinguish a certain product or service from other goods of similar shape, a mark also contains a very broad legal aspect. Both for the owner or holder of brand rights as well as for the public as consumers who use or utilize goods or services of a particular brand. As a small-scale business, Micro, Small and Medium Enterprises still consider that intellectual property protection is not an important thing. This is evidenced by the lack of registration/registration of Trademarks for Micro, Small and Medium Enterprises. On this basis, it is necessary to further explore how trademark registration fits into the context of legal protection for the products of micro, small and medium enterprises in Indonesia.

Keywords: Trademark Registration · Legal Protection · MSMEs

1 Introduction

Micro, small and medium enterprises (MSMEs) are one of the commercial enterprise sectors that may develop and combine within the countrywide economy. MSME is a good forum for effective job creation. MSMEs are labor-intensive businesses that do not require certain requirements such as the education level, skills (skills) of the workers, and the relatively low use of venture capital and technology. Used tends to be simple. MSMEs retain to play a vital function in enhancing the Indonesian economy, each in phrases of the variety of businesses, in phrases of activity creation, in addition to in phrases of country wide monetary increase as measured through gross home product.

In addition, MSMEs also play a role in the delivery of development outcomes. The life of the Micro, Small and Medium Enterprises quarter isn't most effective visible as a transient safe haven for employees who've now no longer entered the formal quarter, however additionally as a using pressure for the boom of monetary activity. This is due to

the large amount of labor absorbed. Given Indonesia's experience during the economic crisis, it would not be too difficult to focus on private sector development of MSMEs.

The business sector can never escape Intellectual Property. Every business carried out must have intellectual property contained in it, as well as MSMEs. The intellectual property in question can be in the form of trademarks, copyrights, patents, business designs, change secrets, incorporated circuit format designs and geographical indications. It is the same with MSMEs, although the scale of the business that is run in MSMEs is not a large scale, but in general all MSMEs have a Mark, either a Mark used in trade or can be referred to as a Trademark or a Mark used in a Service product.

Along with the development of technology and information, The logo is a shape of human highbrow paintings that has a totally decisive role. In addition to being used or used by the owner to distinguish certain goods or services from other goods of the same type, a mark also contains a very broad legal aspect, both for the owner or holder of brand rights and for the public as consumers who use or utilize the goods or services of the mark. Certain.

Micro and Small Enterprises (UMK) as a small-scale industry, considers that the protection of their intellectual property is not an important thing. It may be visible that till now, there are nonetheless only a few MSME merchandise which have been registered with the Ministry of Law and Human Rights. Whereas according to the view given by World Intellectual Property Rights (WIPO), MSMEs have the potential to grow and develop innovations and creativity for the products they produce. However, it is unfortunate that in fact the awareness of MSMEs on the importance of protecting Intellectual Property Rights, especially in the field of brands to support their business activities, is still relatively low.

Based on this, what needs to be studied further is how is trademark registration in the context of legal protection for Micro, Small and Medium Enterprises products in Indonesia?

2 Findings and Discussion

Intellectual Property Protection is actually very closely related to the development of Intellectual Property law itself, related to the registration of such intellectual property. The change from a declarative system or the principle of "First to Use" to a constitutive system or the principle of "First to File" also determines the historical development of intellectual property protection in Indonesia. The change in the registration system is due to the fact that only a statement or assumption as a right holder has caused many problems, and the government cannot control the circulation of various marks in Indonesia. With this constitutive registration, it is hoped that it will be easier to carry out supervisory actions. With the registration system for law enforcement officers, it will be easier to carry out law enforcement duties in the intellectual property sector. Because registration is a strong evidence for the owner of the right to prove that he is the rightful owner of the right, while for someone who cannot show proof of ownership, he is automatically considered a perpetrator of the violation.

Intellectual Property Rights are rights that stand up from the capacity to suppose relatively reasoned people with a view to then broaden to supply a product or procedure

this is beneficial for human interests. Intellectual property is recognized and protected by the state in the form of law and is exclusive, usually this right is granted for the use of the author's ideas within a certain period of time [1].

What is meant by legal protection of Intellectual Property is the existence of a legal acknowledgment of the existence of intellectual property rights inherent in the owner, to claim his rights if those rights are disturbed by people who harm him [2].

Thus, the purpose of adequate legal protection of intellectual property in general is to prevent the emergence of barriers to trade related to intellectual property. In addition, another purpose of the protection of intellectual property law is to encourage economic growth and technological development, investment or investment. This means that the protection of intellectual property law is not meant to kill monopolies in trade, on the contrary, it is to promote fair competition in trade.

Satjipto Rahardjo in the theory of legal protection explains that protection is an effort to protect the interests of a person by allocating a Human Rights (HAM) power to him to act in the context of his interests [3]. Legal protection is a protection given to legal subjects in the form of legal instruments both preventive and repressive, both written and unwritten. In other words, legal protection is a description of the function of law, namely the concept where the law can provide justice, order, certainty, benefit and peace [4].

According to Philipus M. Hadjon. Philipus M. Hadjon stated that "Legal protection is the protection of dignity and respect for human rights owned by state legal subjects based on the legal provisions in force in the country in order to prevent arbitrariness. Legal protection is generally in the form of a written regulation, so that it is more binding and results in sanctions that must be imposed on those who violate it. According to Philipus M. Hadjon, legal protection is divided into two types of protection.

1. Preventive legal protection aimed at preventing disputes from occurring.
2. Repressive legal protection aimed at resolving problems or disputes that arise.

According to Robert M. Sherwood. Robert argues that a person has the right to the work he does so as to produce a work that contains economic benefits. Robert also argues that if creative individuals are given incentives in the form of exclusive rights, then this will stimulate other individuals to be creative [5].

Based on Robert M. Sherwood's theory, a brand that is part of Intellectual Property must receive an award from the state to the brand owner as a reward for his creative efforts in finding/creating these intellectual works. Robert also stated that the owner who has spent time, money and energy in producing his intellectual work must get back what he has spent [6].

With the development of technology and information, a brand is a form of human intellectual work that has a very decisive role. In addition to being used or used by the owner to distinguish certain goods or services from other goods of the same type, a mark also contains a very broad legal aspect, both for the owner or holder of brand rights and for the public as consumers who use or utilize the goods or services of the mark certain. Therefore, every person or company organization is very concerned about the importance of a name and symbol used in running a business and marketing goods and services. These symbols are useful in showing the origin of goods and/or services, as

well as commercial companies engaged in goods and services. In market share, names and symbols are known as brands (trademarks), business names (businessnames), and company names (company names) [7].

As a small-scale business, Micro, Small and Medium Enterprises still consider that intellectual property protection is not an important thing. This is evidenced by the lack of registration/registration of Micro, Small and Medium Enterprises Trademarks at the Directorate General. Intellectual Property.

There are many obstacles faced by MSMEs to protect their trademarks through trademark registration. The limited knowledge of MSME actors regarding Intellectual Property Rights, including in this case knowledge about the importance of brands for business actors, the mechanism or procedure for registering a mark that is not simple for the size of MSMEs in general, as well as the awareness of MSME actors to protect their trademarks, are some of the reasons that cause MSMEs there are still many who exercise their intellectual rights through trademark registration. Therefore, the role of the government, especially local governments in encouraging MSMEs to obtain protection of their intellectual rights in the field of brands, is very much needed [8].

Law No. 20 of 2016 concerning Brands and Geographical Indications is expected to be an alternative way for the government to provide protection for Micro and Small Business (UMK) products. Law No. 20 of 2016 regarding Brands and Geographical Indications is anticipated to be an opportunity manner for the authorities to offer safety for Micro and Small Business (UMK) products. This way that a brand new mark may be included if it's been registered with the authorities via the Ministry of Law and Human Rights. Therefore, if an MSME Business Owner uses a trademark for their product but is not or has not been registered, the MSME Business Owner will lose legal protection of their trademark. Legal protection for registered marks is intended to provide an exclusive right for the brand holder so that the mark is not used by other parties, either the same mark or similar to his own for the same or almost the same goods. This exclusive right can only be used by the brand holder and must not violate the rules in the use of the mark and prohibit other parties from using the mark without the permission of the brand holder [9].

In Law no. 20 of 2016, mark means a sign that can be displayed graphically as an image, symbol, name, word, letter, number, arrangement of colors, as 2 (two) dimensions and/or 3 (three) dimensions, sound, holograms or a combination of 2 (two) or more elements to distinguish goods and/or services produced by natural or juridical persons in the course of business activities. Sale of goods and/or services (Article 1 point 1). The brand itself is divided into 2 (two) types, namely trademarks and service marks.

Article 1 number 2 of Law no. 20 Year 2016.

Trademark is a mark used on goods that are traded by a person or several people together or a legal entity to distinguish them from other similar goods.

Article 1 point 3 of Law no. 20 Year 2016.

A service mark is a mark used for services marketed by one or more persons or legal entities to distinguish them from other similar services.

The function of the brand according to Riswandi [10] is first, as an identifier to distinguish the products of one company from the products of other companies (product identity). This function also links goods or services with their producer as a guarantee

of the credibility of their business results when transacted. Second, as a business promotion vehicle (business promotion vehicle). Promotion takes place through advertising by manufacturers or entrepreneurs marketing goods or services. Brand is a means of attracting consumers, a symbol of entrepreneurs to expand the market for their products and goods. Third, as a guarantee of the quality of goods or services (quality assurance). Fourth, a mark as an indication of the origin of the goods or services produced (origin). A trademark is a sign that identifies the origin of goods or services with the region/country of origin.

In the context of MSMEs, IPR in this case the brand has a positive influence, at least there are several benefits that can be seen from the economic side, legal protection as well as from the side of stimulating creativity, including [11] as a Supporter of Business Development, a business that in producing certain products/services always strives to maintain that the quality of the products/services it produces is always good, guaranteed to immediately gain public trust. To attract people's attention and at the same time introduce it quickly and tactically, the use of certain brands is expected to be able to realize that desire. Products can also develop in the form of other products/services, or with the increasing number of places of business.

Preventive protection in Law no. 20 of 2016 is a protection before a criminal act or law violation occurs against well-known marks and marks. In this case the preventive protection provided by Law no. 20 of 2016 is very dependent on the brand owner. As a consequence of using the constitutive system, legal protection for new trademark rights will be provided by the state when the mark has been registered with the DJHKI Ministry of Law and Human Rights, as stated in the provisions of Article 3 of Law no. 20 of 2016. Thus, in order to obtain legal protection from the state, every intellectual property right must be registered, therefore registration that meets the legal requirements is an acknowledgment and justification of a person's intellectual property rights which is realized by a registration certificate, so that the owner of a registered mark gets protection law. So is the case with brands owned by SMEs. Based on the constitutive system adopted in Indonesian trademark law, MSME's trademark rights can only be recognized and protected by law if the trademark rights are registered.

3 Conclusion

The protection provided is especially through the protection of intellectual property contained in MSME products in the form of brands. This means that a new mark will be protected if it has been registered with the government through the Ministry of Law and Human Rights. Therefore, if an MSME Business Owner uses a trademark for their product but is not or has not been registered, the MSME Business Owner will lose legal protection of their trademark. Legal protection for registered marks is intended to provide an exclusive right for the brand holder so that the mark is not used by other parties, either the same mark or similar to his own for the same or almost the same goods. This exclusive right can only be used by the brand holder and must not violate the rules in the use of the mark and prohibit other parties from using the mark without the trademark holder's permission.

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