

Legal Protection of Ownership of Intangible Assets in the Form of Trademarks for MSME Business in Indonesia

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Abstract

The purpose of this research are to explore and analyze regulations about legal protection for Micro, Small, Medium Enterprise (MSMEs) in Indonesia, also to formulate legal protection for Micro, Small, Medium Enterprise (MSMEs) by registering intangible assets in the form of trademark. This research uses normative legal research methods, using philosophical approach, statute approach, and conceptual approach. The form of legal protection for MSMEs is the registration of the MSMEs trademark which consists of implementation of laws and regulations, law weekend socialization, Intellectual Property socialization, trademark registration and trademark certificates.

Keywords: intangible assets; trademark; MSMEs

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1. INTRODUCTION

Indonesia has entered the era of the industrial revolution 4.0. where speed is the main key to face the era of revolution. This applies in all sectors, especially businesses engaged in by MSMEs (Micro, Small and Medium Enterprises) in the country. Micro, small and medium enterprises (MSMEs) have an important and strategic role in national economic development, the strength of MSMEs in building the Indonesian economy is due to their advantages in several factors, namely the ability to focus specifically, national flexibility, low costs, and speed of innovation. Therefore, MSMEs are one of the pillars of the economy that drives the wheels of the economy in Indonesia. However, there are still quite a lot of MSME industry players who have not registered their intellectual property, especially their trademarks due to a lack of understanding of the benefits of trademark registration for the MSME industry and limited capital, so they do not or have not received legal protection, because a trademark will get protection if it has done so. application for registration and until a brand certificate or granted certificate is issued.¹

Concerning Mark protection, it is a form of legal certainty needed by investors, both domestic and foreign.² Indonesia is a country where most of its income comes from MSMEs (Micro, Small and Medium Enterprises) so that MSMEs are one of the factors that have a big role in increasing the country's foreign exchange. Many of the products produced by MSMEs in Indonesia have high economic value and are unique, especially when they enter foreign markets.³

Therefore the important role of the government is needed to encourage MSME activities so that they can continue and support access to capital and assistance in registering brands. Besides that, there must also be a mentoring role that can help MSME, IKM, UKM actors. In addition, there are things that are no less important than the aspects of capital and assistance but also socialization, education, bleaching, special regulations are made regarding regulations related to Intellectual Property (IP) policies. Like it or not, there is or is not a role for MSME products in creating jobs and equalizing opportunities. MSMEs can absorb jobs, alleviate poverty and also contribute to the national economy through tax revenues, levies and other forms of revenue.⁴ MSMEs as a small-scale industry still considers that intellectual property protection is not important. This is evidenced by the lack of registration of MSME Marks at the Directorate General of Intellectual Property. Statistical data for the registration of the Directorate General of IP shows that during the period 2016-April 2018 the registration of Non-MSME Brands dominated by 91.45% while for MSME brands it was only 8.55%. In fact, according to the

¹ Sulasno, Penerapan Kekayaan Intelektual (KI) Terhadap Umkm Sebagai Upaya Mewujudkan Persaingan Bisnis Berkeadilan. *Ajudikasi: Jurnal Ilmu Hukum*, (Desember 2019): 173, doi:10.30656/ajudikasi.v2i2.958

² Dian Novita, Hak Kekayaan Intelektual bagi Pemegang Hak Merek Suatu Karya Intelektual. *Jurnal Jendela Hukum. Jurnal Jendela Hukum UNIJA*, (April, 2020): 35-40, doi:10.24929/jh.v7i1.1566

³ Zulfikri Toguan, Problematika Hak Kekayaan Intelektual di Bidang Merek Bagi Pelaku Usaha Mikro Kecil Menengah. *UIR Law Review*, (Oktober 2021): 42-56, doi:10.25299/uirlrev.2021.vol5(2).7168

⁴ Sulasno, Op.Cit.

view of World Intellectual Property Rights (WIPO), MSMEs have a lot of potential for growth and development of product innovation and creativity. However, unfortunately the awareness of MSME entrepreneurs about the importance of utilizing Intellectual Property Rights to support their business activities is still low.¹ Among SMEs, their understanding of the brand already exists, although there are some who use the term label, namely a sign to distinguish similar products, even so, there are some SMEs that do not care about the use of the brand..²

In 1974 the Government of Indonesia ratified the TRIPs International Agreement (Agreement Trade Related Aspects Of Intellectual Property Rights) by ratifying the agreement the government is obliged to protect Intellectual Property Rights, one of which is Trademarks and also following up on the ratification of the agreement, Indonesia has currently produced legislation concerning Marks, namely the Trademark Law Number 21 of 1961, the Trademark Law Number 19 of 1992, the Trademark Law Number 14 of 1997, and the Trademark Law Number 15 of 2001, and the Law Number 20 of 2016 concerning Marks and Currently valid Geographical Indications as the legal basis for Marks. And also the rules related to the obligation to protect MSMEs are in Law Number 20 of 2008 concerning micro, small and medium enterprises. The Government Regulations related to brands are Government Regulation Number 45 of 2016 concerning Types and Tariffs for Non-Tax State Revenues that apply to the Ministry of Law and Human Rights. And also Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 67 of 2016 concerning Mark Registration. And as for the Decree of the General of Intellectual Property in the field of marks, namely the Decree of the Director General of Intellectual Property Number HKI-02.KI.06.01 of 2017 concerning the determination of the Trademark Application Form. There are also MSME business actors who do not understand the importance of registering trademark rights. Weak legal culture support results in distrust of legal effectiveness. This is also an obstacle in the application of IPR in Indonesia.³

Based on the background above, the writer takes the title Research: “Legal Protection Of Ownership Of Intangible Assets In The Form Of Trademarks For Msme Business”. The formulation of the problem is what form of legal protection for ownership of intangible assets for MSME business actors in Indonesia and what is the conception of legal protection for ownership of intangible assets for MSME business actors who have used the brand for a long time, but have not registered legal protection.

2. METHOD

This study uses normative legal research methods and is a form of literature study based on legal materials obtained in legal materials relating to SMEs and intellectual property rights. This research approach uses a statutory approach.

3. RESULTS AND DISCUSSION

3.1. Small, Micro, and Medium Enterprises

Small, Micro, and Medium Enterprises is an industry that is growing very fast and is large in Indonesia. The MSME industry is one of the pillars of the economy that drives the economy in Indonesia. This is supported by the facts obtained in a study from the ministry of industry where the MSME sector contributed 60.34% to Indonesia's gross domestic product in 2016. Another fact obtained is that the MSME sector in the same period absorbed 97.22% of the workforce. work in Indonesia. MSMEs are regulated based on Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises.

The MSMEs are divided into three business sections, namely micro businesses, small businesses, and medium businesses. Micro Enterprises are productive businesses owned by individuals and/or individual business entities that meet the criteria for Micro Enterprises. Small Business is a productive economic business that stands alone, which is carried out by individuals or business entities that are not subsidiaries or not branches of companies that are owned, controlled, or become part either directly or indirectly of medium or large businesses that meet the criteria of Small Business. . Furthermore, Medium Business is a productive economic business that stands alone, which is carried out by individuals or business entities that are not subsidiaries or branches of companies that are owned, controlled, or become a part either directly or indirectly with Small Businesses or large businesses with total assets. net or annual sales results.

The MSME Business Fields are divided based on certain criteria, namely as follows:

a. Micro business

Micro Enterprises as referred to according to the Law of the Republic of Indonesia No. 20 of 2008 concerning Micro, Small and Medium Enterprises, namely productive

¹ Andrew Bethelen dan Prisca Octavani Samosir, Upaya Perlindungan Hukum terhadap Merek Industri UMKM di Indonesia. *Law and Justice Journal*, (April 2018): 3-11. Doi: <https://doi.org/10.23917/laj.v3i1>

² Inayah. Kesadaran Hukum Umkm Terhadap Ketentuan Di Bidang Kekayaan Intelektual. *Law and Justice*. (November 2019): 120–136. doi:10.23917/laj.v4i2.8942

³ Sigit Nugroho. Perlindungan Hak Kekayaan Intelektual Dalam Upaya Peningkatan Pembangunan Ekonomi di Era Pasar Bebas Asean. *Supremasi Hukum: Jurnal Penelitian Hukum*. (Agustus 2015): 164–178 doi:10.33369/jsh.24.2.164-178

businesses owned by individuals and/or individual business entities that meet the criteria for Micro Enterprises as regulated in the Law. The criteria for micro business are as follows:

- 1) Have a maximum net worth of IDR 50,000,000.00 excluding land and buildings for business premises; or
- 2) Have a maximum sales proceeds of IDR 300,000,000.00 (note: nominal value can be changed in accordance with economic developments regulated by Presidential Regulation)

b. Small business

The definition of small businesses according to the Law of the Republic of Indonesia No. 20 of 2008 concerning Micro, Small and Medium Enterprises, namely independent productive economic enterprises carried out by individuals who are carried out or business entities that are not subsidiaries or not branches of companies that are owned, controlled, or become part either directly or indirectly of medium or large businesses that meet the criteria for small businesses. The criteria for small businesses are as follows:

- 1) Have a maximum net worth of IDR 50,000,000.00 up to a maximum of IDR 500,000,000.00 excluding land and buildings for business premises; or
- 2) Have annual sales proceeds of more than IDR 300,000,000.00 up to a maximum of IDR 2,500,000,000.00 (note: nominal value can be changed in accordance with economic developments regulated by Presidential Regulation).

c. Medium Business

Medium Enterprises as referred to in the Law of the Republic of Indonesia No. 20 of 2008 concerning Micro, Small and Medium Enterprises are productive economic businesses that stand alone, which are carried out by individuals or business entities that are not subsidiaries or branches of companies that are owned, controlled, or become a part either directly or indirectly with small businesses. or large businesses with a total net worth or annual sales proceeds as stipulated in the law. The medium business criteria are as follows:

- 1) Have a net worth of more than IDR 500,000,000.00 up to a maximum of IDR 10,000,000,000.00 excluding land and buildings for business premises; or
- 2) Have annual sales proceeds of more than IDR 2,500,000,000.00 up to a maximum of IDR 50,000,000,000.00 (note: nominal value can be changed in accordance with economic developments regulated by Presidential Regulation).

The characteristics of medium-sized businesses, among others:

- 1) In general, they have better management and organization, more organized and even more modern, with a clear division of tasks, among others, the finance department, the marketing division and the production division;
- 2) Has carried out financial management by implementing an accounting system regularly, making it easier for auditing and assessment or examination including by banks;
- 3) Labor regulations or management and organization have been implemented, there has been Jamsostek, health care etc.;
- 4) Already have all the legal requirements including neighbor permits, business licenses, location permits, NPWP, environmental management efforts etc.;
- 5) Have access to banking funding sources; And
- 6) In general, they have trained and educated human resources.

3.2. Trademark

A mark is a sign to distinguish similar goods that are produced or traded by a person or group of people or a legal entity with similar goods produced by other people, which have different characteristics and serve as guarantees for their quality and are used in business activities. trade in goods or services.

Trademark protection in Indonesia adheres to a constitutive principle (registration) with the first to file principle. This means that the Mark only gets protection if the Mark is registered with the government through the Ministry of Law and Human Rights and in this case it is at the Directorate of Intellectual Property. If MSMEs have products in the form of goods or services using a brand but are not registered, then the MSME business actor loses legal protection for his brand.

MSMEs as a small-scale industry still considers that intellectual property protection is not important. This is evidenced by the lack of registration of MSME Marks at the Directorate General of Intellectual Property. Statistical data for the registration of the Directorate General of IP shows that during the period 2016-April 2018 registration of Non-MSME Brands dominated by 91.45% while for MSME brands it was only 8.55%. In fact,

according to the view of World Intellectual Property Rights (WIPO), MSMEs have a lot of potential for growth and development of product innovation and creativity. However, unfortunately the awareness of MSME entrepreneurs about the importance of utilizing Intellectual Property Rights to support their business activities is still low. The types of brands themselves are found in Article 1 Paragraph (2-4) of Law Number 20 of 2016 concerning Marks, as follows:

- a. A Trademark is a Mark that is used on goods traded by a person or several people jointly or a legal entity to differentiate it from other similar goods.
- b. Service Mark is a Mark used for services traded jointly or by a legal entity to differentiate it from other similar services.
- c. Collective Mark is a Mark that is used for goods and/or services with the same characteristics regarding the nature, general characteristics, and name of goods or services and their supervision which will be traded by several people or legal entities together to differentiate goods and/or services other kind. In particular, collective marks cannot be said to be a new type of mark because these collective marks actually also consist of trademarks and service marks. It's just that this collective mark is used collectively.

The trademark registration procedure is divided into two parts, namely the application of the mark by the applicant directly and through the verification process carried out by the Directorate General of Intellectual Property Rights. The applicant will fill out the trademark registration form with various other requirements that must be met, such as a Micro, Small and Medium Enterprises (MSMEs) certificate, brand label, special power of attorney, proof of payment for trademark registration, and proof of acceptance of the trademark registration request. After this, the Directorate General of Intellectual Property Rights will examine the registration, until finally a brand certificate is issued.

3.3. Industrial Design

AA Industrial design based on Article 1 paragraph 1 of Law Number 31 of 2000 concerning Industrial Design is a creation of shape, or composition of lines or colors or lines and colors, or a combination thereof in a three-dimensional or two-dimensional form which gives an aesthetic impression and can be embodied in three-dimensional or two-dimensional patterns and can be used to produce goods, industrial commodities, or handicrafts. According to WIPO, in its publication it is explained that:

- a. From the regulations on Intellectual Property Rights, industrial design only refers to the ornamental and aesthetic aspects of a product. In other words, industrial design only refers to the appearance (outer shape) for example, a chair. Although the design of a product has certain technical and functional features, industrial design as part of intellectual property rights only refers to the aesthetic value of the finished product, and does not consider technical and functional aspects at all.
- b. Industrial design relates to a wide range of industrial products, fashion products and handicraft products, ranging from technical and medical devices to watches, jewelry and other luxury goods; or ranging from household products, toys, furniture, electronic equipment to cars and architectural structures; from textile design to sports equipment. Industrial design is also important in relation to packaging, place or container and appearance or external form of a product.
- c. In general, industrial designs can be:
 - 1) Three-dimensional features, such as the shape of a product;
 - 2) Two-dimensional features, such as ornaments, patterns, lines and colors of a product;
 - 3) A combination of one or more of the liturgy.

Industrial design is a field that is very much related to human life, especially in the industrial sector. The scope of industrial design objects includes works in the form of drawings or initial models of an item to be mass-produced, especially in a factory or industry.

3.4. MSMEs Legal Awareness in Trademark Registration and Industrial Design

Legal consciousness is a mental and moral interdependence, each of which depends on the human ego. In this regard, Widjaya argues that legal awareness is a condition in which there are no life clashes in society. Society in life is balanced, harmonious and harmonious. Legal awareness is accepted as awareness, not accepted as coercion, even though there are restraints from outside the human being or society itself in the form of legislation.

Apart from that, Purbacaraka and Soekanto define legal awareness as "faith/awareness of peaceful social life which forms the basis of regulation (constantness) and beslissingen (decisions). Both of these limitations clearly show that legal awareness is compliance to implement legal provisions not only depending on understanding and knowledge, but more priority on attitude and personality to manifest a form of legally aware behavior. Paul Scholten explains more clearly that legal awareness is the awareness that exists in every human

being about what the law is, what the law should be, a certain category of our psychological life with which we distinguish between law and not law, between what should be done and what should not be done.

Legal awareness can be interpreted as an individual's or society's perception of the law. This perception may or may not be the same as the applicable law, the law here refers to the applicable law and the desired law. Thus the law here includes written law and unwritten law. For example Islamic law and customary law, although these two laws do not have a formal (written) form within the scope of national law, these laws are often used as the basis for determining an action. Legal awareness is related to values that grow and develop in a society, thus people obey the law not because of coercion, but because the law is in accordance with the values that exist in the community itself.

Among MSMEs, their understanding of the brand already exists, although there are some who use the term label, namely a sign to distinguish similar products, however, there are some MSMEs who do not care about the use of the brand because:

1. The quality of goods is the most important factor in selling the products produced, this is because MSME actors are domiciled as manufacturers (producers) so their products are purchased in large quantities (as wholesalers), then these buyers will give brands according to the brands they have .
2. Their perception that the trademark registration process is considered "complicated" and expensive. This has caused several MSMEs to have branded their products but not registered.

As for industrial design, the designs of the products of MSME actors come from the customer, some of their own creations (with notes that imitate products that are currently selling or new) only old products are added in the form of ornaments so that design registration is considered unnecessary considering that the "new" element is not fulfilled .

According to Soerjono Soekanto, there are four indicators to assess legal awareness, namely legal knowledge, legal understanding, legal attitudes and patterns of legal behavior. Of the four indicators, most MSMEs have fulfilled three indicators, namely:

1. Their legal knowledge understands that there is a Trademark Law and an Industrial Design Law.
2. Understanding of the law, especially regarding their mark (MSMEs) are already aware of the importance of protecting the mark for their products, while for Industrial Designs because some of the ordered products and designs are widely known, no registration is required.
3. The legal attitude has been fulfilled, only because the implementation is considered complicated is the reason for not registering.

Based on the above, it can be said that basically MSMEs already know the importance of registering trademarks and industrial designs so that the products produced receive legal protection, however, there are several reasons that become obstacles to registering industrial brands and designs. For this reason, the participation of the government and certain groups of people, such as universities and business communities, is needed to carry out intensive outreach.

3.5. Forms of Legal Protection for Intangible Assets (Brands) for MSMEs in Indonesia

Legal protection is an effort to protect the government or authorities with a number of existing regulations. In short, legal protection is a function of the law itself; provide protection. According to Philipus M Hadjon, legal protection is protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions of arbitrariness. Furthermore, Hadjon classifies two forms of legal protection for the people based on the ingredients, namely preventive and repressive protection:

- 1) Preventive protection is that the people are given the opportunity to submit their opinions before the government's decision gets a definitive form to prevent disputes from occurring;
- 2) Repressive protection aims to resolve disputes. Legal protection is a guarantee given by the state to all parties to be able to exercise their legal rights and interests in their capacity as legal subjects.

The legal protection provided by the state to the people is given to all legal subjects without exception. While protected objects are protected based on statutory regulations. Legal subjects can be divided into two, namely people and entities. One body that is recognized as a legal subject is UMKM. MSMEs are Micro, Small and Medium Enterprises. Broadly speaking, the legal protection provided by the government for MSMEs related to brands can be divided into preventive and repressive, which can be described in the following points:

- 1) Preventive Protection;
Preventively, the legal protection given to brands is regulated in 2 laws, including:
 - a. Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises;

- b. Law Number 20 of 2016 concerning Marks and Geographical Indications;
2) Repressive Protection.

Protection under Article 96 of Law Number 11 of 2020 concerning Job Creation states that "The Central Government and Regional Governments in accordance with their authority are obliged to provide legal assistance and assistance services for Micro and Small Enterprises." This is a new thing added to provide repressive legal protection for micro and small businesses that require legal aid services and legal assistance. In the previous law, namely Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises, there is no obligation for the government to provide legal aid services and legal assistance to micro and small businesses.

In short, intellectual property rights are rights to enjoy economically the results of an intellectual creativity. Objects regulated in intellectual property are works produced by human intellectual abilities. This results in discussing intellectual property rights of course very closely related to business, so legal protection is absolutely necessary. In the context of international law, intellectual property rights have actually been regulated in various legal sources such as conventions, one of which is regulated in Article 27 (2) of the Universal Declaration of Human Rights. The regulation shows that intellectual property rights are part of human rights that must be protected, respected and fulfilled by the government. However, the awareness of the Indonesian people regarding intellectual property rights and its legal aspects is still very concerning, so it often results in various legal issues that lead to disputes in court.

4. CONCLUSION

Community legal awareness is closely related to legal knowledge, in this case, MSME. The most important thing that must be considered is socialization from related parties, be it companies, universities or IPR observers to become the main agenda in increasing public legal awareness. Massive and structured socialization is a model of public education, especially MSME business actors, so that they have legal awareness to protect their products by registering industrial brands and designs. With the registration of the brand and industrial design of MSME products, it is hoped that product quality and MSME sales will increase and be able to compete in cross-border trade.

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