



Trademark Legal Protection for Micro, Macro and Medium Enterprises in Indonesia

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ABSTRACT

Legal protection for trademarks plays a crucial role in supporting the development of Micro, Small, and Medium Enterprises (MSMEs) in Indonesia. This study aims to analyze the forms of legal protection for trademarks for MSMEs in Indonesia and the obstacles faced in their implementation. The research method used is normative legal research with a statutory approach and a conceptual approach. The data used is secondary data consisting of primary, secondary, and tertiary legal materials, analyzed qualitatively. The results show that legal protection for trademarks for MSMEs in Indonesia is regulated by Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which grants exclusive rights to registered trademark owners. This protection includes preventative protection through trademark registration and repressive protection through civil lawsuits and criminal sanctions for trademark infringement.

INTRODUCTION

Indonesia's national economic development is inextricably linked to the existence of Micro, Small, and Medium Enterprises (MSMEs), which make a significant contribution to economic growth, job creation, and the improvement of public welfare. MSMEs are a strategic sector capable of weathering various economic crises and serve as the primary driver of the people's economy. Pursuant to Law No. 20 of 2008 on Micro, Small, and Medium Enterprises, MSMEs are business activities capable of expanding employment opportunities and providing broad economic services to the public. Therefore, the existence of MSMEs must be supported through an adequate legal protection system, including protection of trademark rights. In the modern world of commerce, trademarks serve a vital function as they distinguish the goods or services produced by a business entity from those of others. A trademark functions not only as an identifier but also holds economic value that can enhance consumer trust and a product's competitiveness in the market. Through trademarks, consumers can recognize a product's quality, reputation, and origin, making trademarks a crucial asset in business operations.

For SME operators, trademarks hold strategic significance as they can build a business's image and expand marketing opportunities. However, many SME operators in Indonesia still do not understand the importance of legal protection for trademarks. Most business operators focus solely on production and marketing without considering the legal protection of the business identity they possess. As a result, it is not uncommon for SME products to have their trademarks used or registered by third parties, causing losses for the business owners who actually used the trademark first. Legal protection for trademarks in Indonesia is regulated by Law No. 20 of 2016 on Trademarks and Geographical Indications, which grants exclusive rights to the owner of a registered trademark to use the trademark themselves or grant permission to others. Indonesia's trademark protection system follows the "first to file" principle, meaning trademark rights are granted to the party that first registers the trademark with the state. Thus, trademark registration is crucial for obtaining legal protection and legal certainty regarding those trademark rights.

Although legal protection is clearly defined, in practice, various obstacles still exist in implementing trademark protection for SMEs. One of the main obstacles is the public's low legal awareness regarding the importance of trademark registration. Many SME operators view trademark registration as non-urgent because it involves costs and specific administrative procedures. Additionally, limited knowledge regarding trademark registration procedures is a factor contributing to the low number of registered SME trademarks. Another common issue is the prevalence of trademark infringement practices, such as counterfeiting, imitation, and unauthorized use of trademarks by third parties. This situation indicates that legal protection for trademarks is not yet functioning optimally. Weak oversight and enforcement of trademark infringement laws result in many SME operators suffering economic losses as well as damage to their business reputation. In some cases, SME operators even lose rights to their own trademarks because another party registered the trademark first with the

Directorate General of Intellectual Property. From a legal perspective, trademark protection is part of Intellectual Property Rights (IPR) protection aimed at providing legal certainty to rights holders. According to OK Saidin, legal protection for trademarks is necessary to prevent unfair business competition and to recognize the creative achievements of business operators. With robust legal protection, SME operators can conduct their businesses with confidence and have certainty regarding the identity of their business.

In addition to protecting trademark owners, legal protection also aims to safeguard consumers from potential deception or confusion regarding specific products. Trademarks with a good reputation are often counterfeited by others to gain illicit profits. Therefore, legal trademark protection is not only related to the interests of business operators but also to the interests of the public as consumers. The growth of digital commerce and marketing through electronic media has also increased the risk of trademark infringement for SMEs. SME products marketed online are more easily imitated and misused by others without permission. This situation underscores that legal protection for trademarks is becoming increasingly important in the era of technological advancement.

LITERATURE REVIEW

Legal protection is an effort provided by the state to guarantee and protect the rights of the people in order to create peace, justice, and legal certainty. According to Satjipto Rahardjo, legal protection is an effort to protect a person's interests by granting them the authority to act in accordance with those interests. Legal protection essentially aims to create a sense of security for the public against actions that violate their rights. From the perspective of positive law in Indonesia, legal protection is divided into two forms: preventive legal protection and repressive legal protection. Preventive legal protection is protection provided before a legal violation occurs, while repressive protection is provided after a legal violation occurs through legal resolution and enforcement mechanisms. In the context of Intellectual Property Rights (IPR), legal protection is crucial because it relates to the exclusive rights granted by the state to an individual or legal entity over their intellectual work. One form of IPR that receives legal protection is a trademark.

A trademark is a sign used to distinguish goods or services produced by an individual or legal entity from those produced by other parties. The definition of a trademark is regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which states that a trademark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, or a combination of these elements, used in the trade of goods and/or services. According to Sudargo Gautama, a trademark's primary function is to identify the origin of goods or services and as a promotional tool to attract consumer interest. In modern trade practices, trademarks not only have economic value but also serve as company assets that can enhance a business's reputation and competitiveness. The trademark protection system in Indonesia adheres to the first-to-file principle, meaning that trademark rights are granted

to the party who first registers the trademark. Therefore, trademark registration is a crucial requirement for obtaining legal protection for the trademark.

Intellectual Property Rights (IPR) are rights arising from human thought processes that result in works in the fields of science, art, literature, or commerce. IPR grants the rights holder exclusive rights to use and obtain economic benefits from their intellectual creations. According to OK Saidin, IPR is a property right derived from human intellectual ability that needs to be protected because it has economic value. IPR protection aims to reward creativity and encourage innovation and economic development. Brands, as part of IPR, play a crucial role in the business world because they are related to product identity and reputation. Therefore, legal protection for brands is necessary to prevent counterfeiting, imitation, and unfair business competition.

Micro, Small, and Medium Enterprises (MSMEs) are a business sector that makes a significant contribution to national economic development. The definition of MSMEs is regulated in Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises, which differentiates micro, small, and medium enterprises based on net assets and annual sales revenue. MSMEs play a strategic role in increasing economic growth, creating jobs, and reducing poverty. However, in practice, many MSMEs still lack legal protection for their trademarks. This leaves MSMEs vulnerable to trademark infringement and unfair business competition. In the era of global and digital trade, trademark protection is a crucial requirement for MSMEs to compete in national and international markets. Therefore, the government needs to prioritize legal trademark protection for MSMEs through legal policies and facilitate access to trademark registration.

The theory of legal certainty is one of the theories used in this research. Legal certainty aims to ensure that the law provides clarity, order, and protection to the public. According to Gustav Radbruch, legal certainty is certainty regarding the law itself, namely that the law must be clear and can be applied consistently.⁷ In the context of brand protection, legal certainty is realized through a brand registration system that grants exclusive rights to registered brand owners. With legal certainty, MSMEs gain protection against unauthorized use of their brands by other parties.

METHODOLOGY

Type of Research

The type of research used in this study is normative legal research. Normative legal research is conducted by examining library materials or secondary data related to the legal issue being studied. According to Peter Mahmud Marzuki, normative legal research is a process of discovering legal rules, legal principles, and legal doctrines to address the legal issues faced¹. This research was conducted to analyze legal protection for trademarks for Micro, Small, and Medium Enterprises (MSMEs) in Indonesia based on applicable laws and regulations, specifically Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

Nature of Research

This research is descriptive and analytical in nature, aiming to provide a systematic, factual, and accurate overview of trademark legal protection for MSMEs in Indonesia, which is then analyzed based on applicable legal theories and provisions. This research not only describes the legal provisions regarding trademarks but also analyzes the obstacles to implementing trademark legal protection for MSMEs.

Type of Data

The main data used is secondary data supported by interviews with several sources who are considered to understand the legal principles of trademarks which will later support the analysis of secondary data. The secondary data used is in the form of primary, secondary and tertiary legal materials.

Method of Data Collection

The data collection method in this research was conducted through library research. Library research is a data collection technique conducted by reviewing and studying various legal materials related to the research object. In normative legal research, library research is the primary method because the data used is secondary data obtained from various legal literature sources. Data collection was conducted by identifying, inventorying, and reviewing primary, secondary, and tertiary legal materials relevant to trademark legal protection for Micro, Small, and Medium Enterprises (MSMEs) in Indonesia.

The primary legal materials used in this research include laws and regulations related to trademarks and MSMEs, including Law Number 20 of 2016 concerning Trademarks and Geographical Indications and Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises. In addition, this research also utilized secondary legal materials in the form of law books, scientific journals, articles, previous research results, and the opinions of legal experts related to legal protection and Intellectual Property Rights. Furthermore, tertiary legal materials used in this research included legal dictionaries, the Big Indonesian Dictionary (KBBI), encyclopedias, and other sources that helped explain the primary and secondary legal materials.³ Data collection techniques included reading, recording, categorizing, and reviewing the obtained legal materials for subsequent analysis in accordance with the research problem formulation. Using this method, the author was able to obtain systematic and comprehensive data to support the analysis of trademark legal protection for MSMEs in Indonesia.

Data Analysis

The data analysis in this study was conducted qualitatively using the deductive method. Qualitative data analysis is a method of analysis conducted by understanding, reviewing, and interpreting legal materials obtained from legislation, legal literature, scientific journals, and expert opinions related to legal protection of trademarks for Micro, Small, and Medium Enterprises (MSMEs) in Indonesia.¹ The deductive method is used by drawing conclusions from general legal provisions to specific issues. In this study, the author first examines the

general provisions regarding legal protection, intellectual property rights, and trademarks as stipulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, then applies these provisions to legal protection of trademarks for MSMEs in Indonesia.

How to Draw Conclusions

The conclusions drawn in this research were drawn using the deductive method, a method of reasoning that proceeds from general provisions to specific conclusions. In normative legal research, the deductive method is used to analyze laws and regulations, legal theories, and expert opinions, which are then applied to the research problem. In this research, conclusions were drawn by linking the analysis results to the provisions of Law Number 20 of 2016 concerning Trademarks and Geographical Indications with legal protection theory, legal certainty theory, and the concept of Intellectual Property Rights related to trademark protection for Micro, Small, and Medium Enterprises (MSMEs).

Conclusions were drawn based on the discussion of the research problem formulation, namely regarding the form of trademark legal protection for MSMEs and the obstacles faced in its implementation. Furthermore, the results of this analysis were formulated into a systematic, logical conclusion that aligns with the research objectives. Conclusions were also drawn by considering the alignment between theory and the practice of implementing trademark legal protection in Indonesia. Thus, the conclusions produced are expected to be able to provide answers to research problems and contribute to the development of legal science, especially in the field of Intellectual Property Rights.

RESEARCH RESULT

Based on research findings, legal protection for trademarks for Micro, Small, and Medium Enterprises (MSMEs) in Indonesia is regulated by Law Number 20 of 2016 concerning Trademarks and Geographical Indications. This law grants registered trademark owners exclusive rights to use their trademarks or grant permission to others. This legal protection aims to provide legal certainty and prevent unauthorized use of trademarks by others. In practice, trademarks play a crucial role for MSMEs because they serve as a business identity that differentiates products or services from others. Brands also serve to increase consumer confidence in the quality of marketed products. Therefore, legal protection for trademarks is a crucial requirement for MSMEs to operate their businesses safely and sustainably.

The research findings indicate that the trademark protection system in Indonesia uses the first-to-file principle, meaning that trademark rights are granted to the party who first registers the trademark. Therefore, trademark registration is a primary requirement for obtaining legal protection. MSMEs that have registered their trademarks have exclusive rights and can file lawsuits in the event of trademark infringement by another party. In addition to preventative protection through trademark registration, the law also provides repressive protection in the form of defense settlement through civil and criminal channels. Injured trademark owners can file a lawsuit for damages, obtain a license to use the trademark, or file a criminal lawsuit against the trademark

infringer. This protection demonstrates the state's attention to the importance of trademark rights as part of Intellectual Property Rights (IPR).

However, research shows that legal protection for MSMEs has not been optimal. Many MSMEs have not registered their trademarks due to a lack of legal awareness regarding the importance of trademark protection. Most business owners assume that a trademark is simply a business name and do not understand the economic value and legal protection inherent in such a trademark. Furthermore, MSMEs also face various obstacles in the trademark registration process, such as limited funds, limited understanding of registration procedures, and minimal legal assistance. This situation leaves many MSMEs without legal protection for their trademarks, making them vulnerable to imitation and use by others.

Low legal awareness is a major obstacle to trademark protection for MSMEs. Many business owners do not yet understand that trademarks are important assets that must be legally protected. As a result, MSMEs often fail to promptly register their trademarks, even though they are already using them in their business activities. This lack of legal understanding leads to many MSMEs experiencing losses due to trademark use by others. In some cases, trademarks already used by MSMEs are actually registered first by others because business owners do not understand the first-to-file system applicable in Indonesia. Another obstacle identified in this study is economic factors. Some MSME owners consider trademark registration fees to be relatively burdensome, especially for newly developing small businesses. Business owners' limited economic conditions mean that trademark protection is not a top priority compared to other business operational needs.

The study also shows that many MSME owners do not understand trademark registration procedures. This lack of information regarding registration procedures makes it difficult for business owners to handle trademark registration administration at the Directorate General of Intellectual Property. Furthermore, limited legal assistance for MSMEs contributes to the low number of registered trademarks. Many business owners find the trademark registration process complicated and time-consuming. Another obstacle is weak law enforcement against trademark infringement. In practice, unauthorized trademark use, product counterfeiting, and imitation are still common, harming MSMEs. Weak oversight and enforcement of trademark infringement prevent legal protection from providing an optimal deterrent effect.

DISCUSSION

Based on the results of the research conducted, it can be concluded that, in principle, legal protection for trademarks of Micro, Small, and Medium Enterprises (MSMEs) in Indonesia has a strong legal foundation under Law No. 20 of 2016 on Trademarks and Geographical Indications. This law recognizes the exclusive rights of registered trademark owners and provides legal protection mechanisms in the event of trademark infringement. However, in its implementation, various obstacles remain, preventing legal protection for MSME trademarks from functioning optimally. Theoretically, legal trademark protection is part of Intellectual Property Rights (IPR) protection aimed at

providing legal certainty to rights holders regarding their intellectual creations. In the context of SMEs, trademarks serve a crucial function as they not only act as the identity of a product or service but also as a promotional tool, a means of business competition, and an economic asset with commercial value. Therefore, legal protection for trademarks is essential to ensure that SME operators receive legal assurance regarding the businesses they operate.

Research findings indicate that Indonesia's trademark protection system follows the "first-to-file" principle, meaning trademark rights are granted to the party that first registers the trademark. This system fundamentally provides legal certainty because the state only recognizes rights to trademarks that have been officially registered. However, in practice, this system often disadvantages SME operators who do not yet understand the importance of trademark registration. Many business operators have been using a particular trademark for a long time, but because it has not been registered, the trademark is instead registered first by another party. This situation indicates that the public's low legal awareness remains the primary obstacle to trademark protection in Indonesia. In addition to low legal awareness, economic factors also pose a challenge for SME operators in obtaining legal protection for their trademarks. Some business owners consider trademark registration fees to be quite burdensome, particularly for micro and small businesses with limited capital. On the other hand, SME owners prioritize using capital for production and marketing activities over managing trademark rights. Consequently, legal protection for trademarks is not yet viewed as an urgent necessity.

This study also found that a lack of understanding regarding trademark registration procedures is a barrier to legal trademark protection for SMEs. Many business owners do not yet understand the procedures for trademark registration, the administrative requirements, or the legal benefits of such registration. This situation indicates that awareness campaigns regarding the importance of trademark protection remain uneven, particularly among MSMEs in rural areas. When analyzed using Gustav Radbruch's theory of legal certainty, trademark protection through the registration system constitutes a form of legal certainty granted by the state to registered trademark owners. This legal certainty aims to protect the rights of trademark owners so that their trademarks are not used without authorization by others. However, legal certainty will not be effective if the public lacks the awareness to register their trademarks. Therefore, legal certainty must be supported by increased public legal awareness and easier access to the trademark registration process.

In addition to the theory of legal certainty, the findings of this study are also relevant to the theory of legal protection proposed by Philipus M. Hadjon, who distinguishes legal protection into preventive and repressive forms. Preventive protection for trademarks is realized through the trademark registration mechanism, which grants exclusive rights to registered trademark owners. Meanwhile, repressive protection is realized through the resolution of trademark disputes via litigation or non-litigation channels in the event of trademark rights infringement. In practice, repressive protection of trademarks still faces challenges in law enforcement, particularly regarding trademark counterfeiting

and imitation that harm SME operators. Based on the research findings, the government has actually undertaken various efforts to enhance legal protection of trademarks for SMEs, including simplifying the electronic (online) trademark registration system, offering special fees for SMEs, and raising awareness about the importance of Intellectual Property Rights protection. However, the effectiveness of these policies still needs to be improved because not all SME operators have adequate access to information and trademark registration services. From the perspective of national economic development, legal trademark protection for SMEs is of great importance because SMEs are one of the sectors that contribute significantly to economic growth.

CONCLUSIONS AND RECOMMENDATIONS

Based on the research and discussion regarding legal protection of trademarks for Micro, Small, and Medium Enterprises (MSMEs) in Indonesia, the following conclusions can be drawn: Legal protection of trademarks for MSMEs in Indonesia is clearly regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. This protection is provided through a trademark registration system that adheres to the first-to-file principle, meaning that trademark rights are granted to the party who first registers the trademark. With trademark registration, MSMEs obtain exclusive rights and legal certainty regarding the use of their trademarks in business activities. In practice, legal protection of trademarks for MSMEs has not been optimal due to various obstacles, such as low awareness among MSME legal actors regarding the importance of trademark registration, limited funding, lack of understanding of registration procedures, and weak law enforcement against trademark infringement. These obstacles mean that many MSMEs still lack legal protection for their trademarks. The government has made various efforts to improve legal protection for trademarks for MSMEs, including simplifying the electronic trademark registration system, providing special rates for MSMEs, and raising awareness about the importance of Intellectual Property Rights. However, these efforts still need to be improved to ensure that legal protection for trademarks is enjoyed equally by all MSMEs in Indonesia. Legal protection for trademarks plays a crucial role in supporting the development of MSMEs because brands serve as both business identities and economic assets that can enhance product competitiveness in the market. Therefore, legal protection for trademarks not only provides legal certainty but also supports national economic growth and healthy business competition.

Based on these conclusions, the author offers the following recommendations: The government needs to increase legal outreach and education for MSMEs regarding the importance of trademark registration and intellectual property protection. This outreach can be conducted through training, seminars, and direct legal assistance for MSMEs in various regions. The government needs to provide greater convenience in the trademark registration process, both through simplifying administrative procedures and reducing registration fees for MSMEs, so that small businesses are more encouraged to register their trademarks. The Directorate General of Intellectual Property needs to improve the quality of service and expedite the trademark registration

examination process so that MSMEs obtain legal certainty more effectively and efficiently. Law enforcement officials need to increase supervision and enforcement against trademark violations, such as counterfeiting and unauthorized use of trademarks, so that legal protection for trademark owners can be optimal and provide a deterrent effect to violators. MSMEs are expected to increase legal awareness regarding the importance of trademark protection as a business asset with high economic value. By registering their trademarks, MSMEs can obtain legal protection and increase their product competitiveness in both national and international markets.

ADVANCED RESEARCH

Based on the research findings on "Legal Trademark Protection for MSMEs in Indonesia," there are still several aspects that can be developed in further research. Further research is needed to expand scientific studies and provide more comprehensive solutions to brand protection issues for MSMEs in Indonesia. Further research could focus on the effectiveness of law enforcement against trademark infringements experienced by MSMEs. This research is crucial to determine the extent to which law enforcement agencies are able to protect registered trademark owners, particularly in cases of counterfeiting, imitation, and unauthorized use. Furthermore, the research could analyze barriers to law enforcement and the factors influencing the low level of legal protection for MSME trademarks in practice.

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