



Implementation of the Use of Trademark Rights in the Development of UMKM in Medan City

Atika Sunarto¹, Keren Trifena Ompusunggu², Muhammad Ali Adnan³.

¹Universitas Prima Indonesia, North Sumatera, Indonesia, atikasunarto@unprimdn.ac.id.

²Universitas Prima Indonesia, North Sumatera, Indonesia, kerenompusunggu10092003@gmail.com.

³Universitas Prima Indonesia, North Sumatera, Indonesia, muhammadaliadnan@unprimdn.ac.id.

Corresponding Author: kerenompusunggu10092003@gmail.com¹

Abstract: A brand is a logo or symbol representing a company's identity. Brands are highly influential in attracting customers and differentiating products from competitors. A brand is considered intellectual property, allowing differentiation between similar products and services, thereby maintaining quality. Trademark laws emphasize the exclusive rights of the brand owner to use it personally or to grant permission to others. Small and Medium Sized (SMEs) play a crucial role in the Indonesian economy by creating jobs and increasing community income. This highlights the importance of branding for SMEs, especially in Medan, where SMEs significantly contribute to economic growth and development. Trademark registration for SMEs actors involves a trademark renewal process that adds to the burden due to additional costs and periodic administrative requirements. All of this makes SMEs actors reluctant to register trademarks, even though this step is crucial for protecting and strengthening their business in the market

Keyword: Implementation, SMEs, Brand.

INTRODUCTION

A brand is a distinctive logo or symbol that represents a company's identity. A trademark, a form of intellectual property, protects a brand's ability to distinguish its goods and services from those of competitors. This ensures clarity and can serve as a reference point for quality improvement. As outlined in Article 3 of Law No. 15 of 2001 on Trademarks, trademark rights are exclusive privileges granted by the state to registered trademark owners for a specific period. These rights allow the owner to use the trademark or authorize others to do so. Consumer loyalty to a brand stems from recognition and preference within specific market segments and across broader markets like Indonesia. Micro, Small, and Medium Enterprises (MSMEs) play a pivotal role in job creation, income generation, and inclusive economic growth.

Based on Article 1 paragraphs (1), (2), and (3) of Law No. 20/2008 on Micro, Small, and Medium Enterprises, MSMEs are defined as follows:

1. Micro Business: Productive businesses owned by individuals or individual business entities that fulfill certain criteria outlined in the law.

2. Small Business: A stand-alone productive economic enterprise, conducted by an individual or business entity that is neither a subsidiary nor a branch of a larger company and meets certain criteria.
3. Small Business: An independent productive economic enterprise, which is not a subsidiary or branch of a larger company and meets certain criteria.

METHOD

This method of research is normative empirical juridical, where this research examines the norms of principle rules, legal systematics, and legal history and also normative empirical research is a form of research that has the aim of evaluating or assessing an entity or situation by referring to previously established norms or standards and examining the law not only from a normative angle or applicable regulations, but also how the law is applied in social reality or studying applicable legal provisions and real situations that occur in society. This research is conducted to understand the actual situation in society with the aim of finding facts that will be used as research data. Furthermore, the data is analyzed to identify problems, which are then directed at solving the problem. Data collection in this research usually involves analyzing various legal documents, especially Law Number 15 of 2001 concerning trademarks, Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which is the main legal basis related to trademarks in Indonesia and Law Number 20 of 2008 concerning micro, small businesses. Empirical normative juridical research in this case will examine various provisions in the law, such as the definition of trademark, rights and obligations of trademark holders, trademark registration procedures, as well as sanctions for violations of trademark rights and the main objective is to improve or perfect the implementation of the law based on factual findings in society.

RESULTS AND DISCUSSION

Implementation of Brand Use in the Development of MSMEs in Medan City

A brand is an image, logo, number, symbol, or letter that becomes the identity or character of a product or company. Trademarks have an important role as a symbol that distinguishes a product or service from its competitors. Trademark protection is necessary to prevent unauthorized use and maintain the reputation of the manufacturer. In Indonesia, the trademark protection mechanism is regulated by Law Number 20 Year 2016. (Atika Sunarto, 2023). MSMEs are micro, small and medium enterprises. Business entities produced by individuals, groups of individuals, small business entities, or household production. MSMEs are a reference for developing countries, one of which is Indonesia, and also the main foundation for the Indonesian economy. Micro, small and medium enterprises are independent productive business units, which are carried out by individuals or business entities in all economic sectors. (Kustanto & Prabowo 2022).

In Medan city, the principle of brand usage is also closely related to cultural values and locality. Brands that reflect local cultural identity can build closeness with local consumers. For example, using names, logos or symbols that have special meaning to the people of Medan can create a sense of pride and belonging among consumers. It can also attract travelers who seek authentic experiences from products or services that reflect local culture. that reflects the local culture. Not only that, a good brand can also attract investment and business partnerships. The performance of MSME actors has a significant impact on the progress of MSMEs. Therefore, program evaluation is needed to assess the performance improvement of MSME actors. (Suwandi, 2023). In Medan City, the implementation of the use of MSME brands in accordance with this Law involves several important steps:

1. MSMEs should understand the importance of brands as a means of identifying their products or services. Brands help MSMEs in building identity and consumer trust. The process of registering a brand at the Directorate General of Intellectual Property (DGII) involves filing

- an application that includes documents such as a registration form, proof of payment of registration fees, and a sample of the brand to be registered.
2. Law No. 20 Year 2016 provides legal protection to registered trademark owners. This is important for MSMEs in Medan to protect their products from imitation or misuse by other parties. Infringement of trademark rights can be legally actionable, which provides more security for MSMEs in running their businesses.
 3. The implementation of brand use also involves an understanding of Geographical Indications. MSMEs whose products have distinctive characteristics due to the geographical factors of Medan can utilize Geographical Indications to increase the selling value of their products. It also provides additional protection against imitation of products that claim the same origin without authorization.

This improvement in performance can be measured after an evaluation of the mentoring program for MSME players. Investors and business partners tend to have more confidence in companies that have a clear brand identity and good reputation. Some MSME products that utilize the brand well get good value for consumers who eat or consume these products, so there is very good trust for consumers to MSME actors. As for some MSME brands in Medan city penetrating the international market, namely. (Sasli, 2023):

1. Husk as much as 2 tons (Samirah Agro Indonesia) to Japan
2. Pinus bark as much as 5 tons (Samirah Agro Indonesia) to Japan
3. Broom sticks as much as 20 tons (Harapan Berkah Selalu) to India
4. 19 tons of coffee products (Mandiri Kopi) to America
5. 300 kg of home-made chili sauce products (Sambal Gerilya) to the Netherlands
6. Palm sugar and liquid palm sugar totaling 500 kg (Puri Food and Healthy) to the Netherlands
7. Moringa leaves totaling 100 kg (Keloria Morina Jaya) to Australia
8. Telang flower tea products 700 kg (Aljannahs Farm Kitchen) to Saudi Arabia
9. Ulos products of 1,000 pcs (Galery Ulos Sianipar) to Zimbabwe and Germany 9.

Brand quality has an impact on brand loyalty, while brand influence affects consumer attitudes towards brand extension with the mediation of brand loyalty. In addition, brand quality also affects consumer attitudes towards brand extension mediated by brand loyalty. The implementation of the use of MSME brands in Medan City in accordance with Law Number 20 Year 2016 on Trademarks and Geographical Indications involves various important aspects that include education, registration, legal protection, socialization, and collaboration between the government, institutions, and business actors.

The Weakness of the Use of Trademark Rights in the Development of MSMEs in Medan City

The right to Trademark is an exclusive right granted by the state to the registered Trademark owner for a certain period of time by using the Trademark itself or giving permission to other parties to use it (Sugiarti, 2021). Currently, trademarks have weaknesses, especially in the laws governing trademark rights that are closely related to MSMEs. Indonesia has a special principle in the trademark registration process called “first registrant.” This principle means that the government will accept anyone who first registers the mark above without requiring requirements regarding its use. This principle emphasizes that the first registrant owns the registered mark. However, in practice, problems often arise and there are other parties who want to use the mark directly. Sometimes, the first registrant does not immediately use the registered mark, so that other parties who want to register and use the mark are hindered by the first registrant who has not started his business but has registered the mark first. If carefully considered, this principle provides an opportunity for parties with bad intentions to hijack other trademarks that have not been registered in Indonesia. Registering a trademark requires high costs, including the costs of maintaining and renewing the trademark rights. The expensive cost

of registering trademark rights can be a significant challenge for Micro, Small and Medium Enterprises (MSMEs). (M. Choirul Anwar, 2022).

Starting from the registration fee that includes the official fees payable to the trademark authority, which can reach millions of rupiah. For MSMEs that often have limited capital, these costs can feel overwhelming. Law Number 20 Year 2016 on Trademarks and Geographical Indications regulates the legal protection of trademarks in Indonesia, covering various aspects ranging from registration, use, to enforcement of trademark rights. While this law aims to provide strong protection for brand owners, there are some weaknesses or limitations that may affect the effectiveness of the protection provided. Law Number 20 Year 2016 on Trademarks and Geographical Indications in Indonesia regulates various aspects of trademarks, including trademark weaknesses. One of the weaknesses in Law Number 20 Year 2016 is the examination and enforcement process which is sometimes considered less efficient and time consuming. The trademark registration process, which involves formal and substantive examination, as well as publication in the Official Gazette of Trademarks, can take months to years. The length of this process can be an obstacle for brand owners who need immediate protection, especially in fast-paced and highly competitive industries. In addition, the provisions regarding the cancellation of trademarks due to non-use or non-use cancellation can also be a weakness. Article 72 of Law Number 20 of 2016 states that a trademark can be canceled if it is not used for three consecutive years after the date of registration. Although Law No. 20 Year 2016 has regulated law enforcement mechanisms, including criminal and civil sanctions against trademark infringement, implementation in the field often faces various challenges. Law No. 20/2016 regulates the protection of well-known marks, which provides broader protection to brands that have been widely recognized in the community. However, the definition and criteria for determining whether a mark can be considered a well-known mark are not explained in detail in the law, giving rise to uncertainty in its application. This may lead to differences in interpretation and judgment among law enforcers, which may ultimately affect decisions regarding infringement of well-known marks. The replacement of Law Number 15 Year 2001 on Trademarks which has been in effect for 15 years, has contained articles that are in accordance with TRIP'S (Trade-Related Aspects of Intellectual Property Rights) and accommodates the provisions of other international agreements in the field of trademarks. (Astarini, 2021).

Law No. 15 Year 2001 on Trademarks and Geographical Indications and Law No. 20 Year 2016 on Trademarks and Geographical Indications have some significant differences.

Here are some of the main points of difference:

1. Terminology and Definitions: Law No. 20/2016 introduces some new terminology and expands the existing definitions, including clearer definitions of collective marks and well-known marks.
2. Trademark Registration: In Law No. 20/2016, the procedures for trademark registration are clarified and simplified. There are also additions regarding the electronic registration system.
3. Protection of Famous Marks: Law No. 20 Year 2016 provides better protection for well-known marks, including more detailed arrangements regarding the criteria for well-known marks.
4. Sanctions and Enforcement: Law No. 20 Year 2016 introduces stricter and more detailed sanctions for infringement of trademark rights, including administrative and criminal sanctions.
5. Validity and Renewal Period: The validity period of trademark registration under Law No. 15 of 2001 is 10 years and can be extended. In Law No. 20 Year 2016, renewal is also regulated in more detail, including an electronic renewal mechanism.
6. Assignment of Rights and License: Law No. 20 Year 2016 regulates in more detail the transfer of rights to trademarks and the granting of licenses, including the obligation to record the transfer of rights at the Directorate General of Intellectual Property.

7. Geographical Indications: Law No. 20 Year 2016 provides more detailed arrangements regarding geographical indications, including registration procedures, protection, and sanctions for violations of geographical indications.

Legal Efforts Made Against Trademark Infringement Cases in MSMEs in Medan City

The implementation of the Intellectual Property Rights (IPR) system qualitatively and quantitatively in Indonesia is still not running as it should, especially in the university environment, while universities are institutions that produce a lot of Intellectual Property (Venia Utami Keliat, 2022) Trademark infringement often occurs with the aim of obtaining personal gain by unauthorized means, such as imitating or counterfeiting well-known trademarks without regard to the rights of the injured party (Rahmadany, 2021). These actions not only threaten the stability of the national economy, but also have a negative impact on society in general. In addition, infringement of these trademark rights is detrimental to consumers, as they may receive goods or services of inferior quality compared to genuine products, and even these counterfeit products can sometimes endanger the health and safety of consumers.

The interview is the owner of an MSME whose brand has been registered on the DIKI website whose brand is called darinurani handmade, which was registered in 2017. Darinurani focuses on the service sector, where MSMEs open souvenir production services such as bags, wallets, scarves, hats, key chains, or goodie bags And for orders starting from 50 pcs until today it is 1000 pcs. Darinuram handmade started this MSME from 2013, with capital sewing tools and also ulos cloth which is the hallmark of thus MSME product. According to Darinurani, a brand is important for a product, because it is a characteristic that is recognized by consumers and increases consumers of the businesses undertaken by MSME actors. Under this program, registered SMEs can take advantage of the brand registration facility free of charge. Nonetheless, the process is not completed immediately. For Darinuram Handmade, the trademark registration was done three times in three years. This shows the consistent commitment of this SME to ensure that its brand is legally protected. After Darinurani Handmade's trademark registration is filed, there is a waiting period of about one year before the Ministry of Law and Human Rights (Kemenkumham) issues an official certificate for the brand. The process that is a concern for MSME players in the weakness of a brand is the long time, uncertainty of the process, additional costs of registering intellectual property through stricter laws, such as Law Number 20 Year 2016 on Trademarks and Geographical Indications. These regulations provide a strong legal basis to protect brand rights and prevent irregularities. However, regulation alone is not enough without effective law enforcement. Therefore, law enforcement is conducted between various law enforcers such as the police, prosecutors, and courts. Enforcement operations against trademark rights infringement are often conducted to ensure that infringement is taken seriously and perpetrators are sanctioned accordingly. In addition to law enforcement, and public awareness is also very important.

The brand owner can file a civil lawsuit in the commercial court to demand the termination of the infringing party's use of the mark. In this process, the mark owner needs to prove that it has exclusive rights to the mark and that infringement has occurred. If the court finds that infringement has indeed occurred, the infringer may be ordered to cease use of the mark and pay damages to the mark owner. These damages may include compensation for financial losses suffered by the mark owner, as well as costs incurred in the legal proceedings. Institutions responsible for the protection of intellectual property rights in Indonesia, such as the Directorate General of Intellectual Property (DJKI) under the Ministry of Law and Human Rights, also have an important role in law enforcement. The DIKI conducts various supervision and enforcement activities, including investigating reports of infringement, mediating between disputing parties, and cooperating with law enforcement officials to take action against infringement of trademark rights in MSMEs.

CONCLUSION

The intellectual property rights system in Indonesia is crucial in supporting the development of MSMEs (Micro, Small, and Medium Enterprises) This system includes various types of rights, such as copyrights, trademarks, and patents, which provide their owners with exclusive rights and legal protection

For MSMEs, having a registered brand adds significant value, supports business development, and helps with product issues and inventory management.

Intellectual Property Rights (IPR) is an important component that includes brands, patents, and other proprietary rights relating to the output of individuals IPRs play a crucial role in the Indonesian economy, including in Medan city, particularly in trade IPR protection is the foundation of economic activities, where the results of ideas that have commercial value need to be protected so that only the inventor or the authorized party can use them

To make it easier for MSMEs to protect their brands, the government provides assistance and facilitation in the trademark registration process, including technical guidance and registration fee assistance. The development of an online brand registration system makes it easier for MSMEs to register their brands more quickly and efficiently without having to face complicated bureaucracy.

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