

## Optimization of Trademark Registration Policy for Small Business Actors in Indonesia

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### Abstract

The growing economy is accompanied by increased business competition among business actors, including Micro, Small, and Medium Enterprises (MSMEs). Trademark infringement is a risk inherent in such business competition. Therefore, it is crucial to mitigate disputes and trademark infringement by other business actors through trademark registration. However, the number of MSMEs registering trademarks remains very low, accounting for only 0.06% of the total. The results of this study highlight the urgency of a legal approach to MSME trademark registration. This urgency is underscored by the history of trademark regulation in Indonesia and international influences, the need for MSMEs to register trademarks to obtain protection, encourage innovation and creativity, and enhance their value and financing. Despite these benefits, the number of MSMEs that register their trademarks remains low due to a lack of awareness about the benefits of trademark registration and unfamiliarity. Therefore, it is necessary to improve trademark registration policies. This can be achieved by the Regency/City Government allocating a proportional and planned budget for socialization and assistance activities for MSMEs registering trademarks in their area. Additionally, the Government can encourage the private sector and financial institutions to contribute to the financing of MSME trademark registrations. Such measures are expected to increase the rate of trademark registration among MSMEs with government policies aimed at promoting such registration.

## 1. Introduction

The legal approach has an influence on the trademark registration process carried out by Small Business Actors (called MSMEs). That is because the trademark registration process is regulated in law. On the other hand, there are many legal policies that provide incentives, facilities, and encouragement for the registration of trademarks. However, the number of Indonesian small businesses' trademark registration is low. This is the focus of this research which will be elaborated further. As the development of information technology continues to grow, especially in the field of business and marketing, the economy has also developed. It is no exception to the ability of businesses to compete through creativity in producing and creating a trademark of a good or service. The trademark is intellectual property that is protected by the State if it has been legally registered at the Directorate General of Intellectual Property of the Ministry of Law and Human Rights. Through the existence of a trademark, then the business actors and consumers, can make a distinction between the product of a good or service produced by a business with others. In addition, with a registered trademark, it can prevent businesses from economic risks and trademark disputes in the future, such as from the practice of imitating, hijacking, or hijacking a trademark by other businesses for the sake of goods or services in demand by consumers.

Micro, small, and medium enterprises (MSMEs) are one of the types of businesses in Indonesia that need to register their trademarks. This is due to the character of MSMEs that

have a small business scale, but are run by many Indonesian human resources. Based on data from the Ministry of Cooperatives and SMEs in 2021, there are 64.2 million MSME units in Indonesia<sup>1</sup>. The number consists of micro businesses with a total turnover of IDR 2 billion per year, accounting for 99.62%, small businesses with a turnover of IDR 2-15 billion per year accounting for 0.3%, and medium-sized businesses with sales of IDR 15-50 billion per year accounting for 0.07%<sup>2</sup>. Of this total, according to the Indonesian Ministry of Finance, Indonesian MSMEs are able to absorb 97% of Indonesia's labour force. In addition, MSMEs contribute 57% to Gross Domestic Production (GDP), as well as 15% of national exports<sup>3</sup>. In addition, by registering a trademark, MSMEs avoid the risk of disputes over the products they produce in the future. Where the dispute not only causes sales losses, but also the reputation of MSMEs to consumers who buy their products.

Despite its great contribution and the benefits of avoiding the risk of disputes, MSMEs that register their trademarks are still very small in Indonesia. This is as revealed by the Directorate General of Intellectual Property, which states that there are still many MSME players who have not registered their<sup>4</sup>. The lack of brand registrants from MSMEs was also revealed by the Secretary of the Ministry of Cooperatives and Small and Medium Enterprises (Kemenkop UKM) Arif Rahman Hakim in 2022, who said that only 38,395 MSME units had registered brands, out of a total of 64 million, or only about 0.06% of MSMEs that had registered brands<sup>5</sup>.

Therefore, the Government has made several efforts to encourage trademark registration for MSMEs, including by issuing several policies and laws and regulations. These include the enactment of Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (Job Creation Law), which amends Law No. 20 of 2016 on Trademarks and Geographical Indications (Trademark Law 2016) and Law No. 20 of 2008 on Micro, Small, and Medium Enterprises (MSME Law). In these provisions, several substantial changes were made with the aim of MSMEs registering their trademarks. The substantial changes include lowered trademark registration fees, shortened duration of the trademark registration process, ease of trademark registration services, and other aspects.

Therefore, this research intends to examine the following 3 problem formulations. Firstly, what is the urgency of the legal approach in trademark registration for MSMEs. Second, how to improve the trademark registration policy in the future. Research related to legal approaches in trademark registration for MSMEs has been researched by several previous researchers with their respective characteristics and differences. First, by Francisco Campos, Markus Goldstein, David McKenzie titled "How should the government bring small firms into the formal system? Experimental evidence from Malawi" in 2023. In this study, the authors explain the Malawi Government's efforts to reduce informal companies (such as small businesses) with the aim of obtaining taxes, business growth, legal recognition, and access to information. Therefore, the government did two things to achieve this, namely assisting

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<sup>1</sup> Nabilah Muhamad, "Micro Enterprises Still Dominate MSMEs, How Many," Katadata.co.id, 2022.

<sup>2</sup> Nabilah Muhamad.

<sup>3</sup> Nabilah Muhamad.

<sup>4</sup> "Many MSME Players Have Not Protected Trademarks," Dgip.go.id, 2024.

<sup>5</sup> Herman, "Kemenkop UKM Records Trademark Registration by MSMEs at 38,39," Berisatu.com, 2022.

enterprises to register their businesses with or without tax obligations, as well as banking information. Through these means, it was found that the company's sales increased by 20% and profits by 15%<sup>6</sup>.

Second, by Nicky Winata and Winshery Tan titled "Trademark Registration for MSMEs" in 2022. In her research, Nicky stated that MSMEs are the driving entity of the Indonesian economy. Therefore, the Government seeks to encourage MSMEs to develop their businesses, including in trademark registration. In the study, Nicky explained that she had conducted education to the MSMEs studied regarding trademark registration. As a result, MSMEs understand how to register a brand, and the documents needed. Third, by Nurul Fibrianti entitled "Trademarks and The Protection for Business Actors in Indonesia: Some Contemporary Issues and Problems" in 2022. In the publication, Nurul explained that trademarks are very important to protect a business. Even though it has been regulated in Law Number 20 Year 2016, the number of trademark registrants from MSMEs is still very small, at 4%. This is due to the non-obligation of trademark registration, lack of understanding of the importance of a trademark, paid registration, and the complicated process and requirements of trademark registration for MSMEs.

Fourth, by Endang Purwaningsih entitled "Role of Trademark in Improving Legal and Competitive Awareness" in 2020. In this study, it was found that MSME players in Brebes Regency have low awareness of trademark registration, due to low legal awareness and competition among business actors. Therefore, according to him, it is necessary to provide assistance from the Regional Government for MSMEs in Brebes Regency in registering trademarks. On the other hand, it is necessary to conduct continuous socialisation to increase legal awareness and the importance of trademark registration<sup>7</sup>. Fifth, by Jane Kabubo-Mariara, Phyllis Mumia Machio, Michael Murigi Njoroge, and Margaret Chemengich entitled "Links between firm registration and performance: Does it pay to register?" in 2023. The study states that 80% of MSMEs in Kenya are informal (unregistered), despite the positive impact on the country. In their study, the researchers found that with firm registration, MSMEs gained an increase in revenue of between 45% and 51%. This is due to the more open space for potential performance of MSMEs that have been registered, compared to before registration, which is limited.

Sixth, by Khairul Akmal Riyadi, Budi Santoso, and Paramita Praningtyas entitled "The Urgency of Registration of Brand Rights for Micro Small Medium Enterprises to Increase Business Competitiveness: Study in Kebumen Regency, Central Java, Indonesia" in 2023. According to this study, brand registration for MSMEs has several reliefs provided by the Government, such as cost reduction and facilitation. However, in Kebumen Regency, MSME brand registrants are still very limited. This is due to the fact that MSME actors are not aware

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<sup>6</sup> Francisco Campos, Markus Goldstein, and David McKenzie, "How Should the Government Bring Small Firms into the Formal System? Experimental Evidence from Malawi," *Journal of Development Economics*, no. 161 (2023): 1.

<sup>7</sup> Endang Purwaningsih, "Role of Trademark in Improving Legal and Competitive Awareness," *Journal Law Reform* 16, no. 1 (2020): 1.

of the relief provided by the Government in registering trademarks, both cost reduction and facilitation assistance<sup>8</sup>.

Seventh, by Sati-Salmah Sukarmijana and Olivia De Vega Saponga entitled "The importance of intellectual property for SMEs; Challenges and moving forward" in 2014. In this study, the researchers mentioned that intellectual property such as brands is an important economic tool in the consideration of business decisions. In addition, the existence of IPR such as brands prevents unfair business competition practices. Thus, it is expected that policy makers encourage businesses to register such intellectual property, either through reduced registration fees or discounts.

Based on seven previous studies, this research identifies five differences and novel aspects. First, this research concentrates on the legal issues related to trademark registration for MSMEs. Specifically, it examines the laws and regulations governing trademark registration in Indonesia, particularly following the enactment of the Job Creation Law, which modifies certain provisions regarding trademark registration for MSMEs. Second, this research addresses issues of trademark registration for MSMEs identified in prior studies. Referencing Endang Purwaningsih's study on trademark registration in Brebes District and Khairul Akmal Riyadi et al.'s study in Kebumen District, this research utilizes these works as reference data on MSME perceptions of trademark registration. Consequently, the causes and challenges of trademark registration among MSMEs can be identified using field data.

Third, researchers focus on policy recommendations to encourage increased registration of trademarks from MSMEs. From the various legal and field issues in trademark registration, outlined previously, the following will be outlined regarding policy recommendations that can be issued by the government and policy makers in encouraging an increase in trademark registration from MSMEs. These three things are the focus of this research which is also a differentiator and novelty from previous studies related to the legal aspects of MSME brand registration.

## 2. Methods

The research method used in this research is descriptive qualitative research with a case approach, and a statute approach. The approach is used so that the discussion is in accordance with the focus of the intended scope. According to Marzuki, the case approach is an approach that is carried out by examining cases related to the issues faced related to law<sup>9</sup>. Meanwhile, the statutory approach is carried out by examining all laws or regulations related to the research. Qualitative descriptive research is a method of examining the status of a group of people, an object with the aim of containing a description, description, or painting systematically, factually, and accurately, regarding the facts or phenomena being investigated<sup>10</sup>.

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<sup>8</sup> Khairul Akmal Riyadi, Budi Santoso, and Paramita Prananingtyas, "The Urgency of Registration of Brand Rights for Micro Small Medium Enterprises to Increase Business Competitiveness: Study in Kebumen Regency, Central Java, Indonesia," *International Conference on Sustainability in Technological, Environmental, Law, Management, Social and Economic Matters*, 2022, 1.

<sup>9</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

<sup>10</sup> Consuelo Sevilla, *Pengantar Metode Penelitian* (Jakarta, 1993).

### 3. Results and Discussion

#### 3.1. Urgency of Legal Approach in Trademark Registration for MSMEs in Indonesia

##### a. International Influence in Trademark Law Setting in Indonesia

Several international covenants influence brand legal regulations in Indonesia. This began when Indonesia officially became a member of the World Trade Organization (WTO), ratified through Law No. 7 of 1994 concerning the Agreement Establishing the World Trade Organization. By joining the WTO, Indonesia committed itself to international trade and traffic. As a WTO member, Indonesia is obligated to participate in and ratify all agreements established by the organization. Consequently, this membership compels Indonesia to adjust and harmonize its national legislation with various WTO agreements.<sup>11</sup>

One of the agreements that Indonesia must ratify is related to the protection of intellectual property rights and law enforcement of intellectual property rights violations, as stipulated in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs). The TRIPs agreement regulates several standard norms that apply universally regarding intellectual property rights and law enforcement, including: 1) Copyright and Related rights; 2) Trademarks; 3) Geographical Indications; 4) Industrial Designs; 5) Patents; 6) Layout-Designs of Integrated Circuits; 7) Trade Secrets (Protection of Undisclosed Information); and 8) Prohibition of Anti-Competitive Practices and Licence Agreements (Control of Anti-Competitive Practices in Contractual Licenses).<sup>12</sup>

Regarding trademark registration, Article 15 and Article 16 of TRIPs stipulate that the owner of a registered trademark has the exclusive right to prohibit third parties who without the permission of the owner of the relevant trademark to use the same or similar trademark for goods or services that are the same or similar to the goods and services for which the relevant trademark has been registered. The use of the relevant trademark shall not cause confusion in the public as to the origin of the goods. Furthermore, with Indonesia's participation in the TRIPs agreement, Indonesia must also ratify several other international covenants, namely The Paris Convention for the Protection of Industrial Property and Convention Establishing the World Intellectual Property Organization (Paris Convention) and The Trademark Law Treaty.

In the Paris Convention, it regulates the registration of trademarks, where Article 6 bis stipulates that Member States of the Paris Convention must refuse or cancel the registration and prohibit the use of Trademarks that are reproductions, imitations or translations that can cause confusion from a Trademark that is considered as famous where the Trademark is registered or used as a well-known Trademark. The provisions of Article 6 bis of the Paris Convention can also be used as a basis or reason for refusing or cancelling Marks for the same or similar goods that may cause confusion or confusion to the public.

Furthermore, as global trade develops, the dynamics of trademark protection also need to be improved. Therefore, WTO Member States including Indonesia, agreed on the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks

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<sup>11</sup> Wilson Rajagukguk, "The Impact of Joining WTO on Indonesia's Economy: Econometric Modelling Approach," *Scientific Economic Journal* 2, no. 176 (2016): 59.

<sup>12</sup> Tri Setiady, "Harmonisasi Prinsip-Prinsip TRIPS Agreement dalam Hak Kekayaan Intelektual dengan Kepentingan Nasional," *Fiat Justitia Jurnal Ilmu Hukum* 8, no. 4 (2014): 601-602.

(hereinafter referred to as the Madrid Protocol), as a follow-up to the problems of trademark registration in several member countries. In the agreement, based on the Madrid Protocol system, trademark registration in several countries that are also members of the Madrid Protocol can be done at once by filing only one trademark application, cheaper and more efficient. The above are aspects of international influence in the regulation of trademark law in Indonesia to date.

By Indonesia, the applicability of the Madrid Protocol was followed up with the addition of substance in Article 52 of the Trademark Law 2016, which regulates the international registration of marks based on protocols related to the Madrid agreement. Specifically, the protocol was ratified through Presidential Regulation No. 92 Year 2017 on the Ratification of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989. The further provisions of the Madrid Protocol related to the international registration of marks are regulated in Government Regulation No. 22 Year 2018 on the International Registration of Marks Based on the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.<sup>13</sup>

It should be understood, that the existence of various international agreements eventually affect the applicable trademark law in Indonesia. However, there are challenges to the application of these international agreements/protocols in Indonesia, due to differences in legal systems, which generally other countries use continental legal systems, while Indonesia uses a civil law legal system. This results in legislation that strictly regulates trademarks, which risks limiting the creativity of the community, while the practice of other countries is more flexible because it leaves it to the court judge to determine a dispute / problem so that it becomes jurisprudence and adhered to by business actors.

#### b. Trademark Registration Process

After knowing the history of the regulation of trademark registration in Indonesia as well as the international influence on trademark legislation, the process of trademark registration is then described. The regulation that regulates the procedures for trademark registration is the Minister of Law and Human Rights Regulation No. 67 of 2016 concerning Trademark Registration as amended by Permenkumham No. 12 of 2021 (Permenkumham Trademark Registration).<sup>14</sup> In the Permenkumham Trademark Registration, several matters related to trademark registration are regulated, which include: a. terms and procedures for application; b. class of goods or services; c. rejection of application; d. repair of registered trademark certificate; e. terms and procedures for application for extension of the term of protection of registered trademarks; f. terms and procedures for application for registration of changes in name and/or address; g. terms and procedures for application for registration of transfer of rights to trademarks; h. application for collective trademark registration; and i. official quotation of certificate.

The application for trademark registration can be done electronically or non-electronically. If the application is electronic, it is done through the official website of the

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<sup>13</sup> Novianti, "Implikasi Akses Protokol Madrid bagi Indonesia," *Jurnal Negara Hukum* 7, no. 2 (2016): 196.

<sup>14</sup> Stevi Josua Leimena, Merry Tjoanda, and Nancy Silvana Haliwela, "Pendaftaran Merek Dagang dengan Menggunakan Kata Umum," *Tatohi Jurnal Ilmu Hukum* 3, no. 1 (2023): 78.

Directorate General of Intellectual Property. Furthermore, the applicant fills in the application data on the form provided electronically. In addition, the applicant must also upload the required documents. Meanwhile, if the application is made non-electronically, it is submitted in writing to the Minister. In addition, like the electronic one, the Applicant must also attach the documents required in trademark registration.

In the case of a non-electronic application, as stipulated in Article 3 of the Minister of Law and Human Rights Trademark Registration Regulation, it must be submitted by the Applicant with 2 copies of Indonesian language forms to the Minister of Law and Human Rights. The form contains the date, month, year of the application, the identity of the applicant, the name of the country (if the application is accompanied by Priority Rights), the mark label, the colour (if the application uses colour elements), the class of goods and/or the class of services and the description. In the event that the trademark label is 3-dimensional, the visual characteristics and description shall be attached. If the trademark label is in the form of sound, the notation and sound recording are attached. Meanwhile, if the brand label is in the form of a hologram, then what needs to be attached is a visual display from various sides. Furthermore, an examination of the completeness of the required documents is carried out. The examination is conducted within 15 days from the date of receipt. If the result of the examination states that there is a lack of completeness of the required documents, a notification is sent to the Applicant to be completed. The Applicant is obliged to complete the incompleteness of the required documents no later than 2 months from the delivery of the notification letter. If during that period the Applicant does not complete the missing required documents, the Application shall be deemed withdrawn by the Applicant.

Furthermore, referring to Article 4 of the Minister of Law and Human Rights Regulation on Trademark Registration, if the application fulfils the requirements in Article 3, it will be given an acceptance date. The Minister then announces the trademark application in the Official Trademark Gazette for 2 months. During the duration of the announcement, any party may file an objection in writing to the Minister of Law and Human Rights on the trademark registration application. Against any objections, the Applicant or its Proxy may submit a written rebuttal to the Minister, which is submitted no later than 2 months after the objection is filed. If no party files an objection to the application for trademark registration, the Directorate General of Intellectual Property then conducts a substantive examination, with a period of 30 days from the end of the announcement of the objection. The substantive examination is conducted for a maximum of 150 days, with one of them considering the objections of other parties.

The results of the substantive examination are in the form of acceptance, refusal, or unregistrability. In the event that the application for trademark registration is decided to be unregistrable, due to:

- a. Contrary to state ideology, laws and regulations, morality, religion, decency, or public order;
- b. same as, related to, or merely mentioning the goods and/or services for which registration is sought;

- c. contains elements that may mislead the public about the origin, quality, type, size, variety, purpose of use of the goods and/or services for which registration is sought or is the name of a protected plant variety for similar goods and/or services;
- d. contain information that is not in accordance with the quality, benefits, or efficacy of the goods and/or services produced;
- e. does not have differentiating power; and/or
- f. is a public name and/or symbol of public property.

Meanwhile, the application for trademark registration can be rejected by the Minister, if the applied trademark has similarities in principle or in whole with registered trademarks owned by other parties or applied for in advance by other parties for similar goods and/or services; b. well-known trademarks owned by other parties for similar goods and/or services; c. well-known trademarks owned by other parties for non-similar goods and/or services that meet certain requirements; or d. registered geographical indications. Other than on the basis of similarity, a trademark registration application can also be refused if it fulfils the following conditions:

- a. is or resembles the name or abbreviation of a famous person, photograph, or the name of a legal entity owned by another person, except with the written consent of the rightful owner;
- b. is an imitation or resembles the name or abbreviation of the name, flag, emblem or symbol or emblem of a country, or national or international institution, except with the written consent of the competent authority; or
- c. imitates or resembles an official mark or seal used by the state or a Government agency, except with the written consent of the authorised party.

It should be understood that, in addition to these conditions, the Directorate General of Intellectual Property can also refuse an application for trademark registration if the application is filed by an Applicant who is in bad faith. The criteria for a mark to be assessed as having similarities is due to the presence of dominant elements between one mark and another, giving the impression of similarity, both in form, placement, writing or combination of elements, as well as the sound of speech. In addition, the assessment of the similarity of a trademark is determined based on:

- a. the nature of the goods and/or services;
- b. purpose and method of item utilisation;
- c. complementarity of goods and/or services;
- d. competition for goods and/or services;
- e. distribution channels for goods and/or services;
- f. relevant consumers; or
- g. origin of production of goods and/or services.

Furthermore, if there are no conditions that lead to refusal or unregistrability, then the application for registration of the mark is accepted. It should be understood that Minister of Law and Human Rights Regulation no. 12 of 2021 is an amendment to Permenkumham No. 67 of 2016, adapting the Trademark Law as amended by the Job Creation Law. The changes in Permenkumham 12 of 2021 include provisions for trademark registration in Article 12, Article 13 and Article 16 paragraph (1). However, there are shortcomings in Permenkumah No. 12 of



2021 means there is too much repetition of the provisions of the Trademark Law, even though as implementing provisions it should provide more detail in the implementation of the Law rather than repeating it.

Apart from that, the main provisions for trademark registration, namely the Trademark Law which was amended by the Job Creation Law, also have several problems. First, the use of foreign language or words as a disharmonious brand. In the Trademark Law, it is not prohibited to use foreign words/language/terms as trademarks/services, but in Law no. 24 of 2009 concerning the National Flag, Language and Emblem, as well as the National Anthem, it is mandatory to use Indonesian for trademarks. Second, the provisions regarding the transfer of rights to the trademark during the trademark registration application process. This is certainly not appropriate considering the right to a new trademark exists when the trademark has been registered which is marked by the issuance of the trademark certificate. Third, related to the provision of temporary court orders. It was mentioned that one of the problems regarding the temporary determination of the court arises at the concept level where in the construction of civil law this determination is born from a non-contentious application, there is no opponent / only one party. However, the formulation in the Trademark and Geographical Indications Act shows that there are other parties subject to this temporary injunction. In addition, there is also a consideration of good faith which in article 20 of the Trademark and Geographical Indications Act, good faith is still included in the absolute reason for the inadmissibility of trademark registration.

#### c. The Urgency of MSMEs to Register Trademarks

Even though in practice there are difficulties in registering trademarks for MSMEs as described above, the registration of trademarks for MSMEs is an effort that must continue to be encouraged by various parties. This is due to several reasons: First, brand protection. Referring to Khairul Akmal Riyadi's research in 2023, which states that trademark registration for MSMEs in Kebumen Regency has the advantage of avoiding the risk of infringement of trademarks registered by other businesses<sup>15</sup>. This is because the most vulnerable risk of trademark infringement by MSMEs in Kebumen is the imitation of well-known trademarks. This is due to the lack of public knowledge of intellectual property rights, especially trademarks, and the belief that by imitating well-known trademarks, it can increase sales of the goods/services they produce<sup>16</sup>.

Second, it encourages innovation and creativity of a product in the market. It is understood that a product is born from human innovation and creativity, and MSMEs are the driving force behind this. However, many MSMEs do not realise that the results of their innovation and creativity are vulnerable to infringement related to intellectual property. As a result, products from that innovation and creativity can be lost and replaced by competitors who imitate and sell, at a more affordable price. Thus, the owner of the original product who innovated and created it ends up experiencing a decline in sales, or even no profit at all for his hard work. Therefore, trademark registration prevents the occurrence of such adverse risks.

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<sup>15</sup> Khairul Akmal Riyadi, Budi Santoso, and Paramita Prananingtyas, "The Urgency of Registration of Brand Rights for Micro Small Medium Enterprises to Increase Business Competitiveness: Study in Kebumen Regency, Central Java, Indonesia."

<sup>16</sup> Khairul Akmal Riyadi, Budi Santoso, and Paramita Prananingtyas.

With the registration of trademarks by MSMEs, it allows MSME businesses to protect the results of their innovation and creativity from imitation by other businesses. In addition, MSMEs also have the potential to earn more income/profit from licensing, selling, or commercialising an intellectual property product or service that they produce<sup>17</sup>. In the end, the MSME business actors concerned will continue to innovate and create to produce the best products for customer satisfaction. Likewise, other MSME businesses will also compete to create innovations and creativity to compete with other businesses to gain market share, without infringing on the brands of other businesses.

Third, increasing the value and financing for MSMEs. Financing institutions, such as banks and non-banks, must accept the collateral/guarantee object of a credit from an intellectual property right. This is as stipulated in Article 9 of Government Regulation No. 24 of 2022 on the Implementation Regulation of Law No. 24 of 2019 on Creative Economy (referred to as PP 24/2022), which reads:

"In the implementation of the Intellectual Property-Based Financing Scheme, bank financial institutions and non-bank financial institutions use Intellectual Property as an object of debt collateral. Provisions for registration of trademarks."

Furthermore, Article 10 of PP 24/2022 confirms that Intellectual Property that can be used as an object of debt collateral is Intellectual Property that has been recorded or registered at the ministry that organises government affairs in the field of law and Intellectual Property that has been managed either alone and/or transferred its rights to other parties. Therefore, with brand registration, it can be an added value of a credit or financing needed by MSMEs in developing their business.

Third, it encourages the development of MSME products. The existence of a registered brand owned by MSMEs will give consumers trust, confidence, and loyalty to the products marketed by MSMEs to buy them. This is because the presence of a legally authorised image and reputation guarantees the quality and consumer confidence in the product. This is also to overcome the challenges of MSMEs in marketing their products, because of their small scale, they are not yet known/popular among consumers, but to be popularised, they are worried that they will be copied by other business actors. With a registered trademark, the risk can be prevented, because infringers can distinguish at a glance a trademark, either from products, services belonging to registered businesses, with other businesses that have similar products. In other words, a trademark is the identity of a product to identify it with a difference from others.

Fourth, there are various Government supports in encouraging trademark registration for MSMEs. Based on the derivative regulations of the Job Creation Law, the Government seeks to ease the burden on MSMEs in registering trademarks. First, the reduction of registration rates. Referring to the tariff information on the website of DKI and East Java Regional Office of the Ministry of Law and Human Rights Subianta Mandal, the trademark registration fee for MSMEs was reduced to IDR 500 thousand<sup>18</sup>. This is different from the

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<sup>17</sup> Sati-Salmah Sukarmijana and Olivia De Vega Saponga, "The Importance of Intellectual Property for SMEs; Challenges and Moving Forward."

<sup>18</sup> Fitri Novia Heriani, "Trademark Registration Requirements and Procedures for MSMEs," [Hukumonline.com](http://Hukumonline.com), 2022.

period before the Job Creation Law and companies, which were charged a rate of Rp1.8 million. However, MSMEs that register trademarks are required to have a Recommendation Letter for Micro, and Small Business Trademark Registration, issued by the Ministry of Cooperatives and SMEs, Ministry of Industry, Ministry of Trade, Office of Cooperatives and SMEs, and Office of Industry and Trade. In addition, MSME applicants who register a brand also need to attach a MSE Statement Letter, the format of which can be downloaded on the Directorate General of Intellectual Property website.

In addition, the Government, especially through the Office of Cooperatives and SMEs in all districts / cities in Indonesia, also often facilitates brand registration for MSMEs. This includes from the socialisation stage, registration assistance, to the submission of brand certificates. In other words, MSMEs are greatly assisted by such facilitation, even at no cost. However, the facilitation depends on the policy of each district/city, and the number is limited by the number of MSMEs in a region with limited resources of related agencies and their budgets. These four things are the reasons why it is important for MSMEs to register their trademarks.

#### d. Challenges of Trademarks Registration of MSMEs

Despite the urgency for MSMEs to register their brands, very few MSMEs have done so. According to the Secretary of the Ministry of Cooperatives and Small and Medium Enterprises (Kemenkop UKM) Arif Rahman Hakim in 2022, only 38,395 MSME units have registered their trademarks, out of a total of 64 million MSMEs in Indonesia, or only around 0.06% of MSMEs that have registered their trademarks. The same thing was also revealed by the Directorate General of Intellectual Property, which stated that there are still many MSME players who have not registered their trademarks<sup>19</sup>. In fact, when looking at the data on the accumulation of MSMEs in Indonesia, the number continues to increase. Based on data from the Ministry of Cooperatives and Small and Medium Enterprises (Kemenkop UKM) in 2021, there were 64.2 million micro, small and medium enterprises (MSMEs) in Indonesia. When categorised, micro business units, with a turnover of at most IDR 2 billion per year, dominate the MSME structure, reaching 63,955,369 units in 2021 or contributing 99.62% of the total business units in Indonesia.

Then, business units with a higher turnover value in the range of IDR2 billion to IDR15 billion per year, there are 193,959 units or 0.3% of all MSMEs in Indonesia. Meanwhile, there are 5,550 units or only 0.01% of all MSMEs with a turnover of Rp15 billion to Rp50 billion per year<sup>20</sup>. Of these, according to the Ministry of Finance, MSMEs contribute greatly to the absorption of 97% of Indonesia's labour force. In addition, 57% of Indonesia's national Gross Domestic Product (GDP) is contributed by MSMEs, as well as 15% of national exports. In other words, MSMEs contribute greatly to driving the Indonesian economy<sup>21</sup>.

Despite their large numbers, as previously described, very few MSMEs have registered their trademarks. There are several problems and challenges, which make MSMEs minimal in registering trademarks. This can be seen from field research conducted by Khairul Akmal Riyadi, Budi Santoso, and Paramita Praningtyas in 2023 in Kebumen District and Endang

<sup>19</sup> "Many MSME Players Have Not Protected Trademarks."

<sup>20</sup> Nabilah Muhamad, "Micro Enterprises Still Dominate MSMEs, How Many."

<sup>21</sup> Nabilah Muhamad.

Purwaningsih in 2020. Khairul Akmal Riyadi's research found that even though trademark registration for MSMEs has some relief provided by the Government, such as cost reduction and facilitation. However, in Kebumen Regency, MSME brand registrants are still very limited. This is due to the fact that MSME actors are not aware of the relief provided by the Government in registering trademarks, both cost reduction and facilitation assistance<sup>22</sup>.

Meanwhile, in Endang Purwaningsih's research, it was found that MSME players in Brebes Regency have low awareness of trademark registration, due to low legal awareness and competition among business actors. Therefore, according to her, it is necessary to provide assistance from the Regional Government for MSMEs in Brebes Regency in registering trademarks. On the other hand, it is necessary to conduct continuous socialisation to increase legal awareness and the importance of trademark registration<sup>23</sup>. Based on these 2 (two) studies, it is concluded that the problems that cause the low registration of trademarks by MSMEs are due to 2 factors, namely: the low awareness and understanding of MSME businesses of the benefits of trademark registration. Then because they are not aware of the Government's convenience policy in encouraging registration of MSME brands, both through fee waivers and facilitation.

In the context of law enforcement, having a trademark registered by a business actor will certainly strengthen the protection of business actors from brand infringement practices. Based on Article 100 of the Trademark Law, there are 2 types of trademark infringement that are subject to criminal sanctions. First, Article 100 paragraph (1) regulates that acts without the right to use a mark that is completely the same as a registered mark belonging to another person is punishable by imprisonment for a maximum of 5 years and/or a fine of a maximum of IDR 2 billion. Second, Article 100 paragraph (2) regulates that acts without the right to use a mark that are substantially similar to a registered mark belonging to another person are subject to a maximum prison sentence of 4 years and/or a fine of a maximum of IDR 2 billion. For these two types of acts, if the act causes health problems, environmental disturbances, and/or human death, then it is punishable by imprisonment for a maximum of 10 years and/or a maximum fine of IDR 5 billion. The existence of this criminal legal framework will certainly provide a deterrent effect for other business actors who intend/attempt to infringe registered trademarks. However, there needs to be a registered trademark first for it to be said to be an infringement. Therefore, it is important for business actors to register their brands so that they are legally protected.

#### e. Problems of Trademarks Registration Policy Arrangement for MSMEs

Although the current regulation seeks to facilitate and encourage MSMEs to register their trademarks, there are still some weaknesses and problems in the regulation, including:

##### a. Requirement for Recommendation from the Office of Cooperatives and SMEs

Referring to the Annex of Government Regulation No. 28/2019 on Types and Tariffs on Types of Non-Tax State Revenue Applicable to the Ministry of Law and Human Rights (PP 28/2019), the tariff charged to general businesses that want to

<sup>22</sup> Khairul Akmal Riyadi, Budi Santoso, and Paramita Prananingtyas, "The Urgency of Registration of Brand Rights for Micro Small Medium Enterprises to Increase Business Competitiveness: Study in Kebumen Regency, Central Java, Indonesia."

<sup>23</sup> Endang Purwaningsih, "Role of Trademark in Improving Legal and Competitive Awareness."

register a trademark electronically is Rp1,800,0000, while if the registration is done electronically, the tariff is Rp2,000,0000. However, for MSMEs, the trademark registration fee is Rp500,000 if the registration is done electronically and Rp600,000 if the registration is done non-electronically. Even though it is relatively low, the rate for MSMEs can only be obtained if MSMEs get a recommendation from the Office of Cooperatives and SMEs in their region. In other words, MSMEs must first apply for registration in order to be recognised as an MSME in the area of the local Cooperative and SME Agency. This is certainly a difficulty for MSMEs in the regions, which are located far from the Cooperative and SME Office and have difficult access, do not meet the criteria for MSME registration, but on the other hand, after fulfilling the registration requirements, are not recommended by the local Cooperative and SME Office for trademark registration.

b. Obscurity of the Famous Mark Element

According to Article 21 paragraph (1) letter b of the Trademark Law 2016, a trademark application can be rejected if the trademark is substantially or wholly similar to a well-known trademark owned by another party for similar goods and/or services by taking into account the public's general knowledge of the trademark in the relevant field of business.

In addition, it is also noted that the reputation of the trademark is obtained due to vigorous and massive promotion, investment in several countries in the world made by the owner, and accompanied by evidence of registration of the trademark in several countries. If this is not considered sufficient, the Commercial Court can order an independent institution to conduct a survey in order to obtain a conclusion regarding whether or not the trademark is famous which is the basis for refusal.

Based on the description of the article and its explanation, there is no definite basic benchmark/measure in determining a brand to be famous. This is because the element of general public knowledge is clearly different for each individual and region. Then the element of vigorous and massive promotion and investment in several countries, is not clear and definite enough to determine as a well-known brand.

On the practical side, many cases of counterfeit trademarks of the original trademark actually won the case in court. Where the famous mark has fulfilled the required elements, but is considered insufficient to prove that the mark is a famous mark. One of the cases was during the Pierre Cardin trademark dispute, which as a well-known trademark that was imitated, the Panel of Judges told Pierre Cardin to present evidence of trademark registration in several countries not when the dispute occurred but when the trademark was first registered in Indonesia.

Furthermore, although the regulation regulates and recognises the existence of independent institutions that conduct surveys to obtain conclusions regarding famous marks, the regulation does not regulate the criteria of the institution in question, whether it must be an official government agency, or commercial. On the other hand, it also does not regulate the terms of payment of the institution by the

service user and the obligation of independence of the institution in carrying out its duties, due to the risk of conflict of interest.

One case that shows the problem of regulating well-known brands is the Central Jakarta District Court Decision No. 04/Pdt.Sus-Brand/201/PN.Niaga.Jkt.Pst. In this decision, the Panel of Judges stated that they accepted the plaintiff's petition that the trademark and registration had been accepted. This is because the plaintiff had registered a mark for 10 years, then someone else registered a similar mark and during the substantive examination it was accepted by the DJKI. In fact, apart from having been previously registered, the plaintiff's trademark has also been registered in 35 countries around the world. Therefore, the Panel of Judges canceled the registration of the defendant's mark and accepted the validity of the plaintiff's mark. The lack of clarity in the formulation of well-known trademarks results in legal uncertainty for business actors, who ultimately do not trust the trademark registration mechanism.

c. Vagueness of Elements in Principal or Entire

Based on Article 21 paragraph (1) of the Trademark Law 2016, it is stipulated that the application for trademark registration is rejected if the trademark is similar "substantially or entirely". However, for this element, the Trademark Law 2016 does not further explain what is meant by substantially or entirely as a condition for declaring a trademark to be similar to another trademark, even though the two elements are clearly different. The lack of clarity of the element has led to various interpretations by the public and policy makers, in handling a trademark registration and dispute.

### 3.2. Improvement of Trademark Registration Policy in the Future

Based on this description, it is known that in general the trademark registration policy for MSMEs is good. This is especially after the enactment of the Job Creation Law, which regulates the reduction of trademark registration rates for MSMEs. In addition, the Office of Cooperatives and SMEs in the Regency/City has also made efforts to facilitate the registration of trademarks for MSMEs in its area. However, it is necessary to improve the trademark registration policy in the future, to encourage more MSMEs to do so. This can be done in the following ways.

a. District/City Government Allocates Proportional and Planned Budget for Socialisation and Assistance Activities for MSMEs that Register Trademarks in their Region

Referring to previous research, the District/City Cooperative and SME Office has attempted to encourage SME brand registration in its area, with various assistance and facilitation. However, there are limitations to these efforts, especially the budget. Therefore, in the future, there needs to be a policy that requires Local Governments to allocate part of their budget for MSME assistance in registering trademarks. The amount of the allocation is adjusted to the ability of the regional budget as well as the percentage of MSMEs in the region concerned in a representative manner and certain criteria. For this reason, it is necessary to conduct long-term planning on the budget allocation each year and the number of MSMEs that register their trademarks each year. Thus, it can be a trigger for trademark registration for other MSMEs in the region.

b. Encouraging Private Parties and Financial Institutions to Contribute in Financing MSME Brand Registration

In addition to requiring Local Governments to allocate a special budget for trademark registration for MSMEs in the region, it is also necessary to consider policies, both at the Central Government and Local Government levels, that encourage Private Parties in the region to assist in financing trademark registration, both in the form of business partners and social responsibility (CSR). The policy can be in the form of a Circular Letter of the Regional Head or other forms. In addition, the Government can also encourage financial institutions, especially Regional-Owned Enterprises (BUMDs) to provide light credit facilities for brand registration of MSMEs in the region. Thus, it will encourage the interest of MSMEs to register their brands.

c. Encouraging the Ease of Providing Recommendations from the Co-operative and SME Directorate for MSMEs Registering Trademarks

As outlined in the previous section, one of the obstacles to MSMEs not registering a trademark is the high cost of registration, if without a recommendation from the local Office of Cooperatives and SMEs. On the other hand, obtaining the recommendation itself is not easy, due to the distance between the office and SMEs, bureaucracy, and the non-acceptance of requests for recommendations for trademark registration by the Office of Cooperatives and SMEs. Therefore, in the future, a policy should be issued at the central level, in the form of a Regulation of the Minister of Cooperatives and SMEs or a revision of PP 28/2019, which basically encourages the Cooperatives and SMEs Office in the regions to facilitate the flow of issuing recommendations for SMEs that want to register a brand. This can be done by utilising digital tools, such as uploading document requirements online until issuance, time limits for issuing recommendations, complaints if recommendations are not issued, and imposing sanctions on the relevant agencies if they violate the provisions. Thus, the risk of MSMEs having difficulty obtaining recommendations for trademark registration can be avoided and more MSMEs will do so.

d. Explanation of the Elements of a Famous Mark

Trademark is refused registration there is an unclear element. Therefore, it is necessary to revise the Trademark Law 2016 with the addition of an explanation of the requirements of well-known trademarks in Article 21 paragraph (1) letter b. One of the references used in determining well-known trademarks is the criteria published by the World Intellectual Property Organizations (WIPO) which provides the requirements of a trademark said to be famous as agreed in the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks. The conditions are as follows <sup>24</sup>:

- i. level of brand knowledge or recognition in sectors relevant to the community;
- ii. the duration, extent and geographical area of use of the Mark;
- iii. duration, level and geographical area of the Brand promotion;
- iv. duration and geographical area of any registration or application for registration of a Trademark;
- v. record of the successful fulfilment of the right to the Trademark;

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<sup>24</sup> Risa Amrikasari, "Famous Mark Protection Under Indonesian Law," *Hukumonline.com*, 2019.

## vi. Brand value;

These requirements are more certain and clearer, when compared to the well-known trademark requirements stipulated in the Explanation of Article 21 paragraph (1) letter b of the Trademark Law 2016, which regulates the criteria of general public knowledge of the trademark in the relevant business field; the reputation of the trademark from promotion and investment as well as proof of registration in several countries; and if it is not enough, at the order of the Commercial Court, a survey conducted by an independent institution to assess the well-knownness of the trademark

#### 4. Conclusions

Based on the description, it can be concluded 2 (two) things. First, the urgency of the legal approach in trademark registration for MSMEs in Indonesia, it is due to several reasons, namely the history of trademark regulation in Indonesia from the past and international influence, which makes Indonesia involved in various agreements regarding trademarks; the existence of laws and regulations that comprehensively regulate trademark registration; and the need for MSMEs to register trademarks for the sake of trademark protection, encouraging innovation and creativity, increasing value and financing. Developing MSME products, and Government support. Nevertheless, there are challenges that prevent MSMEs from registering their trademarks, namely low awareness and understanding of the benefits of trademark registration and lack of knowledge of the Government's trademark registration facilitation policy. On the other hand, there are also problems in the regulation of trademark registration, including the requirement for recommendations from the Office of Cooperatives and SMEs, the unclear elements of well-known trademarks, and the unclear formulation of elements in essence or in whole.

*Second*, the improvement of trademark registration policy in the future. Based on the description and challenges, it is necessary to formulate a breakthrough to encourage an increase in trademark registration for MSMEs. This can be done in 2 ways, namely the District/City Government allocates a proportional and planned budget for socialisation and assistance activities for MSMEs that register trademarks in their area. Then the Government can also encourage the private sector and financial institutions to contribute to the financing of MSME brand registration. Furthermore, on the regulatory side, it is necessary to issue and improve provisions regarding the ease of providing recommendations from the Office of Cooperatives and SMEs for MSMEs to register trademarks, changes in the explanation of the elements of well-known trademarks, and explanations of the elements in their main or overall. Thus, it is expected that more MSMEs will regist.

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