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E-COMMERCE BUSINESS LAW IN INDONESIA LEGAL PROTECTION EFFORTS OF MSME BRANDS IN INDONESIACase Study: Sumedang Regency Regional MSMEs

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ABSTRACT

Micro, Small and Medium Enterprises (MSMEs) have an important and strategic role in national economic development. As much as 60% (sixty percent) of Indonesia's economic strength is in the MSME industrial sector. The number of MSMEs in Indonesia has increased quite significantly every year. However, there are still quite a lot of MSME industry players in Indonesia who have not registered their trademarks due to limited capital and a lack of understanding of the benefits of trademark registration for the MSME industry. Thus, MSMEs that do not register their trademarks do not receive legal protection, because a trademark will receive legal protection if the trademark has been registered. Thus, policies are needed that regulate the MSME industry in Indonesia to obtain legal protection for their trademarks. So this research will examine how legal protection efforts are taken for MSME industrial brands in the Sumedang area. This research uses normative juridical research methods based on knowledge obtained from various sources such as books and the internet.

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INTRODUCTION

Small Micro Medium Enterprises (hereinaftercalled MSMEs) is an industry that is growing very quickly and is large in Indonesia. The MSME industry is one of the economic pillars that drives the wheels of the economy in Indonesia. This is supported by facts obtained in a study from the Ministry of Industry where the MSME sector contributed 60.34% to gross domestic product in Indonesia in 2016. Another fact obtained is that the MSME sector in the same period absorbed 97.22% of the workforce. work in Indonesia.

Despite this, the MSME sector in Indonesia is still very synonymous with various traditional businesses. In 2018, the results of the Creative Economy Agency's records found that 96% of MSMEs had not yet incorporated a legal entity or had a legal umbrella. 2 This means that, whether in the form of business or the form of legal entity, the majority of MSME business actors do not focus on legal protection or business development but on a simple profit and business pattern without any future development planning. Apart from that, according to the Head of the Creative Economy Agency, Triawan Munaf, he revealed that business actors do not register their businesses to avoid business taxes.

The business sector can never escape Intellectual Property. Every business undertaken must have intellectual property contained in it. The Intellectual Property in question can be in the form of Brands, Copyrights, Patents, Industrial Designs, Trade Secrets, Basic Layout of Integrated Circuits, and Geographical Indications. It is the same with MSMEs, even though the scale of business carried out in MSMEs is not a large scale, in general all MSMEs have a brand, either a brand that is used in trade or can be called a trademark or a brand that is used in a service product. A brand is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in 2-dimensional or 3-dimensional form, sound, hologram, or a combination of 2 or more of these elements to differentiate goods and/or services. produced by individuals or legal entities in the course of trading goods and/or services. In modern business, a business cannot be separated from trademarks or services because brands are the identity of the products being traded. As an identity, a brand is a sign of differentiation between similar goods or services traded by business actors. With the existence of a brand, consumers can also make a choice without confusion. Brand protection in Indonesia adheres to the constitutive principle (registration) with the first to file principle. This means that a brand only gets protection if the brand is registered with the government through the ministry

Law and Human Rights and in this case it is found in the Directorate of Intellectual Property. If an MSME has a product in the form of goods or services using a brand but it is not registered, then the MSME business actor loses legal protection. MSMEs as a small-scale industry still consider that intellectual property protection is not important. This is proven by the lack of MSME Brand registration at the Directorate General of Intellectual Property. The registration statistics data from the Directorate General of Information and Technology shows that during the 2016-April 2018 period, non-UMKM brand registrations dominated at 91.45%, while for MSME brands it was only 8.55%.6

In fact, according to the World Intellectual Property Rights (WIPO), MSMEs have a lot of potential for growth and development of product innovation and creativity. However, unfortunately, MSME entrepreneurs' awareness of the importance of utilizing Intellectual Property Rights to support their business activities is still low.

On the other hand, identity or trademark as a form of intellectual work has an important role in smoothing and increasing trade in goods or services. This cannot be separated from the fact that a brand is used to differentiate a particular item from other items of a similar shape. Various counterfeits of trademarks for similar goods of lower quality than the goods using the forged brand. To gain profits quickly and surely to the detriment of entrepreneurs such as MSMEs who produce original goods. By paying attention to the above, it is necessary to protect the brands of goods produced by MSMEs. Based on the description above, the author in this case tries to raise a main issue as follows: "What are the legal protection efforts for MSME industrial brands in Indonesia?" This research is limited to normative juridical research which only uses secondary data in the form of intellectual property books and applicable laws and regulations. Research and analysis of the problems raised uses the inductive thinking method, where the author thinks based on specific matters and then in the end a general conclusion is made while still paying attention to various legal principles and rules related to the problem being studied.

METHOD

This research uses normative and empirical juridical research with the nature of research carried out by examining secondary data in the form of legal rules or regulations as a building system related to a legal event. Furthermore, to strengthen the research study, it will look at the development of creative economy through IPR

protection at an empirical level which is also focused on the implementation of IPR protection on creative creative products, especially in the areas studied.

This research is descriptive in nature, namely by accurately describing or explaining the problem being studied based on rules, norms, principles and synchronization of laws and regulations obtained from book sources. In this regard, the analysis carried out refers to statutory regulations in the field of IPR and Creative Economy to then be analyzed in accordance with the research objectives. This research uses secondary data related to the research problem. Secondary legal materials include books, scientific magazines, clippings, journals, papers, internet sites and other data sources. Sugiono (2018: 90)

All of this data is described and used to help analyze the data obtained, arranged systematically according to the research problem and then analyzed qualitatively by describing and interpreting norms related to IPR protection in creative and creative products. The data is also described using the existing theoretical framework in order to obtain a form of regulation for the legal protection of intellectual property rights in creative and creative products as expected and implemented in the future.

To obtain primary data, the analysis stage also used a quick interview method which was predominantly conducted directly with the owner of one of the MSMEs in the area studied, namely the Sumedang Regency area.

Sumedang Regency is a city rich in MSMEs with superior products that will be able to compete with superior products from the archipelago and even abroad.

RESULTS AND DISCUSSION

1. Brands as Intellectual Property

Brands are one of the industrial assets. A product cannot be separated from a brand, because the brand is the identity of the product. Brands are economic assets for their owners, both individuals and companies (legal entities) that can generate large profits, of course if they are utilized by paying attention to business aspects and good management processes. Such is the importance of the role of this brand that legal protection is attached to it, namely as an object regarding the rights of individuals or legal entities. The holder or owner of trademark rights is a person or company, several people as joint owners and a legal entity that has obtained the rights to a trademark which is called a registered trademark.

There are several signs that should not be used as a brand, namely as follows:

a) Brands that have no distinguishing power, for example just a piece of lines, very complicated lines, or tangled lines.
b) Brands that are contrary to decency and public order, for example pornographic images or images that offend religious feelings.
   Brands are in the form of descriptions of goods, for example the peanut brand for peanut products.
c) Brands that have become public property, for example traffic signs.
d) General words, for example the words house or city

Trademark protection or trademark rights are exclusive rights granted by the state to trademark owners registered in the general register of trademarks. For a certain period of time he uses the Mark itself or gives permission to someone, several people together or a Legal Entity to use it. Protection of Registered Marks means that there is legal certainty over Registered Marks, whether they are used, extended, transferred or deleted as evidence in the event of a dispute over violation of a Registered Mark. A brand is a sign that differentiates goods or services for one company from another company or from one individual owner to another. As a sign of distinction, brands in one qualification of goods/services must not be similar to one another, either in whole or in substance. The overall definition of similarity is that they have similarities in terms of origin, properties, method of manufacture and purpose of use. The basic definition of equality is if you have similarities in shape, similarity in placement method, similarity in shape and method of placement, similarity in speech sounds. Brands on goods are commonly referred to as trademarks, namely marks used or affixed to goods traded by a person or several persons or legal entities. Brands as distinguishing marks can be names, words, images, letters, numbers or a combination.

2. The Urgency of Legal Protection for MSME Industrial Brands in Indonesia

Brand protection is very important, a brand functions as an identification mark that shows the origin of goods and services, as well as connecting the goods and services in question with the producer. Brands, apart from being assets that can generate profits for entrepreneurs as brand owners, are also a tool to protect the public as consumers from fraud on the quality of certain goods. Consumers will feel disadvantaged if the brand they consider to be of high quality turns out to be produced by another party with low quality. Brands describes the guarantee of personality

(individuality) and reputation of goods and services resulting from business when traded. 15 Guarantee of the quality of a good or service is very useful for producers in business competition and at the same time provides product guarantee protection to consumers. The Director General of KI stated that the use of a Mark functions as an identification mark to differentiate the production results produced by a person or several people together or a legal entity with those produced by other people or other legal entities, then as a promotional tool so that promoting the production results is enough to mention the brand, as a guarantee of the quality of the goods, and as an indicator of the origin of the goods or services 16 Due to the reasons above, legal protection for brands is very important so that they are not used by other parties in an unlawful manner such as counterfeiting, imitation which can create unhealthy trade competition and will ultimately harm the brand owner. To obtain legal protection for the mark, the mark must be registered first. The Director General of KI stated that trademark registration functions as evidence for the owner who has the right to the registered trademark, as a basis for rejection of the trademark

Discussion

which is the same in its entirety or essentially the same as the one for which another person is requesting registration for similar goods or services, and also serves as a basis for preventing other people from using the same Mark in its entirety or substantially the same in circulation for similar goods or services. The importance of trademark registration for perpetrators business in Indonesia has not yet been fully recognized by the classes of business actors. In Indonesia, there are classes of business actors such as Micro, Small and Medium Enterprises (MSMEs), where in percentage terms there are still fewer brands

registered with the Director General of IP compared to non-MSME business actors. As previously described, the registration statistics of the Directorate General of Information and Technology show that during the 2016-April 2018 period, non-UMKM brand registrations dominated at 91.45%, while for MSME brands it was only 8.55%. 18 MSME business actors are different from non-MSME business actors. which can be seen from the scale of capital, assets and annual profits obtained. MSMEs are under

the auspices of the Ministry of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia.

The definition and criteria for MSMEs in accordance with Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises are as follows:

a. Micro business

Micro businesses are productive businesses owned by individuals and/or individual business entities that meet the criteria for micro businesses. Micro businesses are productive businesses that have a net worth of a maximum of IDR 50,000,000.00 (fifty million rupiah) excluding land and buildings where the business is located; or have annual sales proceeds of a maximum of IDR 300,000,000.00.

b. Small business

Small businesses are productive economic businesses that stand alone, which are carried out by individuals or business entities that are not subsidiaries or branches of companies that are owned, controlled, or are part, either directly or indirectly, of medium or large businesses that meet the business criteria. Small as regulated in this Law. The criteria for a small business are having a net worth of more than IDR 50,000,000.00 (fifty million rupiah) up to a maximum of IDR 500,000,000.00 (five hundred million rupiah) excluding land and buildings where the business is located; or have annual sales proceeds of more than IDR 300,000,000.00 (three hundred million rupiah) up to a maximum of IDR 2,500,000,000.00 (two billion five hundred million rupiah).

c. Medium Business

Medium Enterprises are productive economic enterprises that stand alone, which are carried out by individuals or business entities that are not subsidiaries or branches of companies that are owned, controlled, or are part either directly or indirectly with Small Businesses or Large Businesses with total net assets or annual sales proceeds as regulated in this Law. Medium Business Criteria are having net assets of more than IDR 500,000,000.00 (five hundred million rupiah) up to a maximum of IDR 10,000,000,000.00 (ten billion rupiah) excluding land and buildings where the business is located; or have annual sales proceeds of more

than IDR 2,500,000,000.00 (two billion five hundred million rupiah) up to a maximum of IDR 50,000,000,000.00 (fifty billion rupiah). Based on the function of Mark registration as has been described in particular towards MSME brands, and because the emergence of MSME brand protection by means of brand registration will further motivate work and have positive implications in increasing competitiveness thereby increasing the income of MSME business actors. Thus, it is necessary to make efforts to increase the percentage of MSME industrial brand registrations

Legal Protection Efforts for MSME Industrial Brands in Indonesia

Trademark Law no. 20 of 2016 concerning Brands and Geographical Indications does not discuss much regarding MSME Brands in Indonesia. The mention related to MSME Brands is contained in the preamble to letter a of the 2016 Trademark Law which states "that in the era of global trade, in line with international conventions that have been ratified by Indonesia, the role of Brands and Geographical Indications is very important, especially in maintaining healthy, fair business competition. , consumer protection, as well as protection of Micro, Small and Medium Enterprises, and domestic industry;".19Based on these considerations, it can be seen that the focus of the 2016 Trademark Law is to provide legal certainty and protection, especially to consumers and domestic business actors, and maintain healthy business competition. However, healthy business competition can only occur if large industries do not take advantage of their dominant position to suppress the MSME industry, but rather they must be able to synergize in running the economy together without monopolizing.

The existence of the 2016 Trademark Law is expected to be one of the government's ways of protecting MSME businesses through protecting their intellectual property in the form of trademarks. With Brand recognition given to MSME business actors, large industries or business actors who have bad intentions will not necessarily be able to take intellectual property belonging to MSME business actors because ownership of registered Trademarks is recognized and protected by the government.

If a dispute arises as a result of a trademark ownership dispute, the government will only refer to the trademark certificate as proof of ownership of the rights to the

trademark,20unless there is cancellation of the right to the trademark based on a trademark lawsuit brought by one of the parties in the Commercial Court. Then, as an effort to legally protect the brands of the MSME industry in Indonesia, this is done by increasing the MSME industry to register brands by MSME players. because the MSME industry will only get legal trademark protection if it has registered its trademark. Efforts that have been made are by:

MSME brand registration fees are cheaper than non-MSME brands

The small number of MSME Brand registrants does not mean that the government remains silent. The government, through the Director General of IP, continues to encourage increasing trademark registrations from the MSME industry by charging much cheaper fees compared to non-UMKM trademark registrants. This shows the government's concern for increasing the development of MSME businesses by protecting the intellectual property of MSME business players. A registered mark is protected so that other people cannot use it and will receive protection for ten (10) years from the date of receipt of registration as regulated in Article 35 of Law no. 20 of 2016 concerning Brands and Geographical Indications. This term may be extended for an indefinite period of ten (10) years upon payment of a fee. Owners, however, must apply for a 12-month extension before the mark expires. The validity period of a brand will only be extended if the owner still uses the mark in trading goods and/or services. The Director General of IP provides special treatment for the MSME industry in supporting the MSME industry to register brands, namely by providing a cheaper registration price compared to general business actors. Below is a comparison of registration prices for trademark registration applications between MSME brands and general brands.

Collaboration Between The Directorate General Of Information And Technology, Ministry Of Environment, Law And Human Rights And The Ministry Of Cooperatives And UMKM

Efforts have been made to provide protection for trademarks produced by the MSME industry in collaboration between the Ministry of Law and Human Rights of the Republic of Indonesia and the Ministry of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number M-10-UM .06.07.TH 2006 concerning Increasing Understanding and Utilization of the Intellectual Property Rights System. It includes trademark protection for cooperatives and MSMEs. The considerations for holding this collaboration are as follows:

1. MSMEs are one of the business actors that have a real contribution to the

national economy

2. Knowledge and understanding regarding the existence and importance of the use of the Intellectual Property Rights system (especially Brand Rights) among MSMEs in the industrial sector, both food, snacks and processed household goods, still needs to be socialized.
3. Coordination and synergistic cooperation between the parties and efforts to increase the dissemination, understanding and utilization of the Intellectual Property Rights system have not been optimal in protecting food product trademarks.

The aim of the collaboration between the Ministry of Law and Human Rights of the Republic of Indonesia and the Ministry of Cooperatives and Small and Medium Enterprises is:

1. Increasing knowledge and understanding and utilization of the IPR system, especially trademarks, among MSME players.
2. Realizing IP-oriented MSMEs, especially Brand Rights, that have high quality and competitiveness in global competition.
3. Increase synergistic and productive coordination and cooperation between parties in developing MSMEs and empowering the national Intellectual Property Rights (IPR) system.

Providing Intensive Financing For Msme Brand Registration

Legal basis for the Decree of the Director General of Intellectual Property Rights of the Ministry of Law and Human Rights of the Republic of Indonesia Number HKI-09.OT.03.01 of 2013 concerning Intellectual Property Rights Incentives for High Schools, Universities, Micro and Small Businesses and Correctional Inmates in 2013. Providing incentives in the form of providing financing for the registration of applications for Intellectual Property Rights, namely brands in the form of images, names, words, letters, numbers, color arrangements or combinations of these elements that have distinguishing power and are used in goods or service activities.

The scope of providing brand incentives includes submitting trademark registration applications for a maximum of 3 (three) types of goods or services in 1 (one) class for each application. Providing incentives is aimed at Micro and Small Businesses with the following requirements:

1. Bring a statement letter stating that you are an MSME with sufficient

stamp duty.

2. Requirements for applications for registration based on trademark law, namely:
   a. Fill out the form in Indonesian
   b. Photocopy of KTP (3 sheets)
   c. Legal Entity Deed/TBN (2 copies legalized by Notary)
   d. Example of brand labels, minimum size 2x2cm, maximum 9x9cm (28 pieces)
   e. The statement letter is accompanied by a stamp of Rp. 6000,-
3. Never received assistance or incentives from any party.
4. The work produced meets the criteria for protecting intellectual property rights and is useful for society
5. Cover Letter originating from the Regional Office of the Ministry of Law and Human Rights, if the application is submitted through the Regional Office of the Ministry of Law and Human Rights.
6. Recommendation letter from the ministry or service if it comes from the ministry or service.

MSME Industry Collective Brand Registration

In Indonesia, MSME actors often buy and sell goods or services with the same characteristics as several other MSME actors. So, the government through Law no. 20 of 2016 concerning Trademarks and Geographical Indications facilitates collective trademark protection. Based on the explanation of Law no. 20 of 2016 concerning Marks and Geographical Indications, a collective mark is a mark used on goods and/or services with the same characteristics regarding the nature, general characteristics and quality of the goods or services as well as their control which will be traded by several people or legal entities together. the same to differentiate it from other similar goods and/or services.

Collective marks are regulated in Article 7 bis of the Paris Convention for the Protection of Industrial Property Rights (1883/1967). Based on Article 7 of the Paris Convention, member countries must accept registration of collective marks owned by associations whose existence does not conflict with the country of origin, even though the association does not have a commercial or industrial establishment in that country. Each country assesses certain requirements under which collective marks are protected or may be denied registration if the collective mark is contrary

to the public interest. In Indonesia, collective marks are regulated in Articles 46 to 51 of Law Number

20 of 2016 concerning Brands and Geographical Indications. The purpose of using collective marks is to simplify the completion of registration requests. For example, if ten entrepreneurs each produce a type of goods or services, then they must submit a registration request to protect each of the goods or services in question. Even though each good or service produced and traded has the same characteristics, in this case it is possible to use only one brand. For all types of goods or services, it is enough to submit one request for trademark registration for them to be used collectively. In this way, entrepreneurs, especially MSMEs, can save costs, time and energy in processing trademark registration requests.

Collective branding is one of the solutions provided by the government for MSME business actors in Indonesia. If we refer to the sound of article 1 number 4, then in principle a collective brand is a brand used by a community of business actors who trade in the same goods or services.

Business actors do not need to register or build a brand individually but rather build it together through several people or several business entities.

CONCLUSION

Based on the description above, it can be concluded that the effort to provide brand protection for the MSME industry is by registering the MSME brand. So, because the criteria for MSME industry business actors have limitations in terms of capital, assets and annual sales results compared to non-MSME business actors, the government makes it easier for MSME industry players to register brands, namely through a policy of lower MSME brand registration fees. cheap compared to non-UMKM brands, collaborating between the Director General of IP, Ministry of Law and Human Rights and the Ministry of Cooperatives and UMKM, providing financing incentives for registering MSME brands, as well as registering collective brands for the MSME industry.

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References **may be** preceded with an acknowledgement when necessary. Please make the acknowledgement as concise as possible.

REFERENCES

Civil Code (BW) *Government Regulation Number 25 of 1999 concerning Revocation of Business Licenses, Dissolution and Liquidation* of Banks.

Derewianka, B., & Jones, P. (2012). *An appropriate model of language: Teaching language in context*. Oxford University Press.

Djumhana, Muhamad, 2003, Banking Law in Filifina, Bandung: Citra Aditya Bakti.

Fuady, Munir, 1999, Bankruptcy Law (1998) in Theory and Practice, Bandung: Citra Aditya Bakti.

Luhut MP Pengaribuan, SHLL.M, *Advocate and Contempt Of Court.* One Process in the Professional Honor Council. Bridge: Jakarta 1996

Sudargo Gautama. Indonesian Trademark Law. Alumni: 1961

Sudrajat, *Business Law A Brief Overview*. Synergy Publishing: 2006