

**LEGAL PROTECTION OF BRAND RIGHTS FOR MICRO, SMALL, MEDIUM
BUSINESS PRODUCT (MSMES) IN MEDAN SELAYANG DISTRICT,
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Abstract

This study aims to determine why registration of brand rights for goods or services is important for MSME actors. The other purpose is to determine the legal consequences for MSME products whose brand rights are not registered and the linkage of brand rights as economic rights for MSME. This study is normative juridical research using the qualitative descriptive analysis method. The study is supported by primary data from the interview and secondary data, which are primary, secondary, and tertiary legal material. The study found that brand right is a differentiating identity that helps MSMEs get loyal consumers. Brand rights can also be an effective marketing method and a form of legal protection from plagiarism. Brand rights can also give economic value because they can be sold or transferred to other individuals or legal entities as a franchise. This study helps to understand MSME actors' Brands so that the interest of MSME actors to register their brands' increases. The increase of interest from MSME actors can be a momentum to guarantee legal protection for more MSME actors and products.

Keywords: Legal protection; brand right; product; MSMEs

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INTRODUCTION

The economic crisis was experienced by many countries, including Indonesia, in 1997. Many business sectors collapsed and caused an economic recession (Anggraini & Nasution, 2013). Moreover, regardless of their potential financial needs, emerging and developing countries have demanded more say in the Fund's decisions (Demiroglu & Karagoz, 2016). Evaluation of that shocking incident made many parties aware that only the Micro, Small, and Medium Enterprises (MSMEs) sector at that time survived and was growing during the economic crisis (Putra, 2016). MSMEs are one type of small business that plays a very important role in improving and growing the community's economy (Kadeni, 2020). The MSME industry is also very helpful to the community by opening up

job opportunities, in which the total throughout Indonesia. According to data from the Ministry of Cooperatives, Small and Medium Enterprises (KUMKM), in 2018, the number of MSME actors was 64.2 million, or 99.99% of the total number of business actors in Indonesia. The absorption capacity of MSME workers is 117 million, or 97% of the labor absorption capacity of the business world. Meanwhile, the contribution of MSMEs to the national economy (GDP) was 61.1%, and the remaining 38.9% was contributed by large business actors, which amounted to only 5.550 or 0.01% of the total number of business actors.

In various times of crisis, such as the 1997 monetary crisis or the current COVID-19 pandemic crisis, MSMEs have an important role in the economy. MSMEs' crucial role is

their flexibility, which can be engineered to adapt to changes in the business environment and market conditions under any circumstances (Suhargon, 2019). The role of MSMEs can also be seen in their goals, namely, growing and developing their business to build a national economy based on just economic democracy.

The growth of MSMEs in Sumatera Utara is very rapid. Based on the economic census conducted in 2016, there are 1,166,918 MSMEs in Sumatera Utara. The development of MSMEs number in 2020 is around 2.8 million business units, which contributes fairly well to North Sumatra's economic growth. The growth and development of MSMEs are also accompanied by obstacles and problems that need to be resolved not only by MSME actors but also by

the Government, both the Central Government and Regional Governments in Indonesia. As the capital city of Sumatera Utara province, Medan is the business center of the Province. One of the Medan City districts with many MSMEs is Medan Selayang District. Medan Selayang District is one of 21 districts located in the city of Medan, Sumatera Utara province, Indonesia. Medan Selayang district is bordered by Deli Serdang Regency in the west, Medan Johor and Medan Polonia in the east, Medan Tuntungan in the south, and Medan Sunggal and Medan Baru in the north. In 2020, the Medan Selayang sub-district will have 103,176 people. Its area is 12.81 km², and the population density is 8,054 people/km². Medan Selayang district has 1,144 MSMEs with the following details:

Table 1
Number and Types of MSMEs in Medan Selayang District

| No. | Business Type | Total Number (Unit) |
|-----|---------------|---------------------|
| 1 | Culinary | 886 |
| 2 | Health | 8 |
| 3 | Service | 200 |
| 4 | Fashion | 22 |
| 5 | Agribusiness | 28 |
| | Total | 1.144 |

The most common types of business in Medan Selayang District are culinary businesses with a total of 886 units, and then in the service sector, as many as 200 units. Generally, these businesses have not received legal protection for their brand rights from the government. The problems faced by MSME actors are very diverse, ranging from capital, permits, legal protection, and brand rights. Related to the legal protection and brand rights registration problems, based the data recorded by The Creative Economy Agency shows the fact that the MSME sector in Indonesia is still very identical to various traditional businesses and there are 96% of MSMEs not yet legally incorporated or legally protected (Betlehn & Samosir, 2018). Based

on these data, it is clear that the number of MSMEs registering their brand rights is minimal and inversely proportional to the total number of existing MSMEs.

A brand is a sign that can be displayed graphically in the form of an image, logo, word name, letter, number, color arrangement in two-dimensional or three-dimensional form, sound, hologram, or a combination of two or more of these elements to distinguish the goods and service produced by a person or legal entity in the activities of trading goods and services. The legal protection of MSME product brands is the same as the legal protection for other brand rights holders as regulated in Law

Number 20 of 2016 about Brands and Geographical Indications (Purnama, 2010).

Legal protection of brand rights for MSME actors adheres to the first to file principle (Hidayah, 2017). Based on this principle, business actors who wish to have rights to a brand must register the brand (Riswandi, 2004). Brands are part of intellectual property rights that are not solely related to legal protection but are closely related to issues of trade, economic, and technology development and become the basis for business actors to advance the socio-cultural of their nation and society in general (Adisumarto, 1990). Although the brand and legal protection of a brand for MSME actors are very important, the current data shows that the desire to register a brand is minimal. Data from the Directorate General of Intellectual Property (IP) shows that from 2016- to April 2018, the registration of MSME brands was only 8.55%.

The lack of interest in MSME actors in registering their brands raises an interesting question: What factors cause the importance of registering brand rights for MSME products. Apart from that, it is also necessary to study what legal consequences will be received by MSME actors whose trademarks are not registered, as well as the relevance of brand rights owned by MSMEs as their economic rights. To answer this question, the research's area or scope will focus on one of the sub-districts in Medan City, namely the Medan Selayang District, to make it easier to identify and examine the existing problems. By the background that has been described, the problems to be discussed can be formulated in the form of legal questions, as follows:

1. What factors make it important to register brand rights for MSME products?
2. What are the legal consequences for MSME products whose brands are not registered, and what is the relevance of brand rights as economic rights for MSMEs?

METHOD

The type of research used in this paper is normative legal research. Normative legal research is legal research conducted by examining library materials or secondary data (Soekanto, 2007). This research has an approach that refers to the applicable law and regulations by using the qualitative descriptive analysis method (Soemitro, 1990). Qualitative descriptive means providing data that describes humans, circumstances, or other symptoms related to the research topic as accurately as possible (Soekanto, 2005).

This study used primary data in the form of interviews and secondary data derived from primary legal materials consisting of Law Number 20 of 2008 about MSME; Law Number 20 of 2016 about Brands and Geographical Indications; Minister of Law and Human Rights Regulation Number 12 of 2021 about Amendments to Minister of Law and Human Rights Regulation about Brand Registration, secondary legal materials, namely journals and other scientific articles as well as other tertiary legal materials.

RESULTS AND DISCUSSION

A. Factors Causing Importance of Brand Right Registration for MSME Products

A brand is a part of Intellectual Property Rights (IPR) which is described as property rights arising from human intellectual abilities (Kesowo, 1995). The conception of IPR is based on the idea that humans have produced intellectual works that require the sacrifice of energy, time, and money. The existence of these sacrifices makes the work that has been produced has economic value because of the benefits that can be enjoyed (Ismail, 1990).

Brands have an important role in avoiding unfair business competition practices because brands can distinguish the origin and quality and guarantee the

originality of an item. Brands can also be classified into the category of immaterial objects because a brand is something that is attached to a product but not the product itself, and what consumers can enjoy is a non-brand product. Brands can only lead to satisfaction for consumers.

The function of a brand is as a differentiator from goods and services made by a person or other legal entity. Goods or services must be identified to distinguish them (Usman, 2003). Consumers also need brands to determine the choice of goods/services to be selected. In short, a brand is a mark of differentiation, identity, quality assurance, and a valuable asset (Permata, Safiranita, & Utama, 2019).

The function of a brand is first as an identity to distinguish one company's products from other products (product identity) (Khoironi, 2013). This function also connects goods or services with their producers as a guarantee of the reputation of their business result when traded. Second, as a means of trade promotion. The promotion is carried out through advertisements of producers or entrepreneurs who trade goods or services. A brand is one way to attract consumers, symbolizing entrepreneurs expanding the market for their products or merchandise. Third, as a guarantee for the quality of goods or services. This benefits the producers who own the brand and protects the quality assurance of consumer goods or services. Fourth, the brand is a designation of the origin of the goods or services produced (source of origin). A brand is an identifier of the origin of goods or services with the region/country of origin.

MSMEs are businesses that are limited in terms of capital and market share, and reach. In order to develop and survive, MSMEs need loyal consumers, so there is a consistent turnover of capital and economic activity. In its development,

branding is one of the keys to success in running MSMEs. Brand image is the perception and belief by consumers of certain products, which is reflected in the associations that occur in consumers' memory (Kotler & Keller, 2009).

The first factor that makes it important for MSMEs to register their brand is because brands can be a differentiating identity that makes it easier for consumers to remember their products. This can help MSME actors get loyal consumers because they continuously remember their products. A brand can also become a lifestyle. Many consumers who have believed in the quality of products from certain brands make these products a continuous lifestyle. This lifestyle will be brought and disseminated to the consumer's social environment. It will help MSMEs to promote their products. A good brand image, a brand helps MSMEs to gain communal trust from society. This is the second urgency why MSMEs have to register the brand rights of their products or services.

Building a brand is not an easy business. It takes much time to build a strong image in the community. It will be unfair if a certain brand is imitated by irresponsible parties and destroy all the brand image which has been built. This is why brand rights registration can be a form of legal protection for the entrepreneur. Brand right is an exclusive right granted by the state to the brand right holder for a certain period. The brand-right holders can use the right for themselves or let other individuals or legal entities use it. By registering the brand, the MSME actors can be protected from irresponsible parties who take advantage of the brand image from the goods or services they produce or want to damage their brand.

The exclusive right can guarantee the MSME actors of legal protection on

their brand. With that exclusive right, the MSME actors can focus on the business development, maintaining the quality and image of their good or service products. Those three factors are related to one another, which can be a key to the MSME to develop and survive in the business world with limited capital, source, and smaller market compared to the macro business.

Through the Directorate General of Intellectual Property in the Minister of Law and Human Rights of Republic Indonesia, the government has provided online brand registration services through dgip.go.id website. The government also provides a special service to the MSME actors. The first thing to do is register an account on the brand rights registration website dgip.go.id, then apply for a new brand right registration. The next step is to fill out all the forms and pay all the bills from the SIMPAKI application. The total registration fee is Rp. 1.800.000- (one million eight hundred thousand rupiahs) for each class in general and Rp. 5.000 (five thousand rupiahs) for MSME actors for each class. After the payment, the registrant must fill out all the forms on that website. The final step is to upload all the needed data and documents.

The brand rights registration number by MSME actors is still low. The result of research in Medan Selayang district shows several factors that make the brand's right registration number still low. First is the lack of certainty and guarantees for MSMEs to obtain the brand-right certificate. The length of the registration process to certification makes MSMEs reluctant to register their brand. In the Medan Selayang district, there are cases of MSME actors having to wait up to 3-4 years from submitting a trademark registration to obtaining a brand-right certificate. There are even MSMEs that have been waiting for the result of applying for brand right registration to

DJHKI for a relatively long period but then received a notification letter that their brand right application was rejected on the ground that there had been an application for brand right registration by other MSME actor (the same as the brand that they apply).

Second, the regional office of the Minister of Law and Human Rights as the responsible actor in processing the brand right registration is still not optimal. The limited socialization budget and human resources are the reasons for the lack of socialization of IPR in the community. Socialization is often carried out by NGOs or universities observing the MSME businesses.

The lack of public awareness of brand registration was also found in the Medan Selayang district. This happened because there is no guarantee of the time needed to register a brand and obtain a brand-right certificate. The other reason is that the fee is relatively expensive for the MSME actors. The other obstacle is that the community is not well informed about IPR. Society does not know the difference between copyrights, brand rights, patents, and industrial designs.

From these data, it can be seen that many MSMEs do not have a brand-right registration certificate. In fact, at the practical level, there are many obstacles for entrepreneurs, especially MSMEs, to obtain protection for their brands, including:

- 1) The MSME actors lack knowledge about the brand and its registration procedures, especially in home industries.
- 2) Lack of socialization from the local government.
- 3) The brand-right registration is too long. The registration period of a brand takes approximately two years to obtain a brand-right certificate.
- 4) Brand right registration fee is relatively expensive for MSME.

The local government lacks the budget and human resources for the IPR sector.

B. Legal Consequences on MSME Products Whose Brands Are Not Registered and The Linkage of Brands as Economic Rights for MSMEs

As explained above, brand right registration in Indonesia adheres first to the file principle, which is adhered to in a constitutive system. This principle and system aim to see who is the first to apply for registration of a certain brand, making it easier for the government to refuse if there is an attempt to obtain the right to a certain brand by parties to plagiarize or have bad intentions. In this system, the right to a new mark will arise when registered, thus registration is necessary (Saidin, 2002).

One of the IPR experts, Emmy Pangaribuan, explained that this constitutive system provides certainty to whom the government grants the rights to the brand. This is also supported by Sudargo Gautama, who believes that the system provides legal certainty for anyone registering rights to certain product brands.

To register a brand for a certain product, registrants must meet the requirements stipulated in Article 20 of Law Number 20 of 2016 about Brand and Geographical Indication. Interestingly, this law also regulated the conditions under which the registration of brand rights on goods/services can be refused, with the following provisions:

- 1) A registered brand belonging to another party or previously requested by another party for similar goods or services;
- 2) Well-known brand belonging to other parties for similar goods or services;
- 3) Well-known brand belonging to other parties for goods or services of a different kind that meet certain

requirements; or registered Geographical indication.

In more detail, through Article 16 paragraph (1) of Minister of Law and Human Rights Regulation Number 12 of 2021 about Amendment to Minister of Law and Human Rights Regulation Number 67 of 2016 about Brand Registration, an application for brand registration cannot be registered if:

- 1) Contrary to state ideology, laws and regulation, morality, religion, or public order;
- 2) Same with, related with, or only mention the name of goods or services for which registration is requested;
- 3) Contains elements that can mislead the public about the origin, quality, type, size, the purpose of use of goods or services for which registration is requested, or is the name of a protected plant variety for similar goods or services;
- 4) Contains information that is not by the quality, benefits, or efficacy of the goods or services produced;
- 5) Has no distinguishing power;
- 6) A common name or symbol of public property; or
- 7) Contain a functional form.

From this provision, it is clear that the legal consequences that can arise if the mark on a product owned by MSMEs is not registered are: (1) The products can be imitated, plagiarized, or modified by irresponsible parties., and (2) The products can be registered by other parties, so that the right to the brand on the products or services is owned by another party which is detrimental to the MSME actors themselves.

Not registering the brand rights on certain products does not only result in the threat of plagiarism or the efforts of certain parties to imitate or copy the goods/services of MSMEs. Not registering a brand also eliminates the opportunity for MSME actors to have exclusive rights to

the goods or services produced by the MSME actors.

The exclusive right on a product or service in the form of a brand is not only a form of legal protection but also has economic value. Economic rights arise because the rights attached to the brand have material properties. Like the material, there are economic rights that can provide benefits in the form of royalties. The economic rights that a person has for their creativity can be transferred to other people (transferable).

Economic rights to the brand can be implemented, especially in the franchise business. This is a very effective distribution channel to bring products closer to consumers through franchise branches (Hayuningrum & Roisah, 2015). In the franchise, the products traded are intellectual property rights on certain products, including Copyrights, Trademarks, Patents, Industrial Designs, Layout Designs of Integrated Circuits, and Trade Secrets (Susilowati & Kurniati, 2018).

The brand contains economic rights for the registrants, including the MSME actors, because they can be traded. This is a legal consequence and also an advantage of economic rights which is very crucial if accepted by MSME actors if they register trademark rights for the goods or services they produce. This, of course, can provide benefits for MSME actors, not only as an alternative income by earning profits by trading brand rights to their products in the form of franchise agreements but also by expanding the business scope of the goods or services they produce of the franchisee. The.

CONCLUSION

Micro, Small, and Medium Enterprises (MSMEs) have a crucial role in the growth and development of the Indonesian economy. In today's circumstances, there are various problems faced by MSMEs to develop, one of which is the lack of interest in registering brand rights for the products they produce, which results in the absence of legal protection for intellectual property contained in the goods and or services they produce.

The factors that lead to the importance of registering brand rights for MSME products include: (1) The brand is an identity that MSME actors can use to get loyal consumers. This is because the brand is a differentiator that can be used to overcome the problem of market reach, (2) Brands are an effective marketing method that MSME actors can use to gain the trust of consumers for the goods or services they produce, and (3) Brand Rights are a form of legal protection provided by the Government for MSME actors in bad faith to imitate, plagiarize or damage the image that has been built on the goods or services they produce.

Suppose MSME actors do not register their brands. In that case, the main legal consequences that may occur are: (1) Brands on the goods or services they produce can be imitated, plagiarized, or their image is damaged by irresponsible parties, (2) Brands for their products can be registered by other parties which results in them losing the opportunity for exclusive rights to the goods/or services they produce. In addition, the brand is also closely related to economic rights because a brand is a right that has material rights that can be traded. This economic right also includes business benefits from expanded market coverage obtained through franchise agreements.

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