

IMPLEMENTATION OF LEGAL PROTECTION OF BRAND RIGHTS FOR MICRO, SMALL, AND MEDIUM ENTERPRISES (MSMEs) ACCORDING TO LAW NUMBER 20 YEAR 2016 CONCERNING MARKS AND GEOGRAPHIC INDICATIONS

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Abstract. The legal protection of MSME product brands is the same as legal protection for other brand rights holders regulated in the 2016 UUM. The aim of this journal is to find out the legal arrangements for trademark rights in Indonesia and to find out the Legal Protection for Micro, Small and Medium Enterprises (MSMEs) according to the Law Number 20 Year 2016 concerning Brands and Geographical Indications. The research method used in this journal is normative juridical research with legal material collection techniques using literature studies and legal material analysis using content analysis. The results of the study show that the legal regulation of trademark rights in Indonesia consists of the International Convention on Marks ratified by Indonesia and Law Number 20 Year 2016 concerning Marks and Geographical Indications. Meanwhile, regarding the application of legal protection for Micro, Small, and Medium Enterprises (MSMEs), the existence of Law Number 20 Year 2016 concerning Marks and Geographical Indications is expected to be one of the government's ways in protecting UMKM businesses through the intellectual property in the form of a brand. With brand recognition given to MSMEs business actors, large industries or business actors who does not have good intentions, cannot automatically take intellectual property belonging to MSME business actors because the ownership of registered marks is recognized and protected by the government.

Keywords: legal protection; trademarks; micro; small; medium enterprises; geographical indications.

I. INTRODUCTION

Indonesia has entered the era of the industrial revolution 4.0. In this era, "speed" is the main key to face the era of revolution. This applies in all sectors, especially businesses that are engaged by Micro, Small, and Medium Enterprises (MSME) actors in Indonesia (Rachmadtullah [1]). MSMEs have an important and strategic role in national economic development. The strength of MSMEs in developing the Indonesian economy is due to their advantages in several factors, such as the ability to focus specifically, national flexibility, low costs, and speed of innovation. Therefore, MSMEs are one of the economic pillars that drive the wheels of the economy in Indonesia (Kurniawan & Yun [2]).

However, several numbers of MSME industry actors have not registered intellectual property, especially their trademarks due to the lack of understanding of the benefits of trademark registration for the MSME industry and limited capital. Thus, those MSME actors do not and have not received legal protection because a trademark will get protection if it has application for registration and until a trademark certificate is issued or granted (Kornita & Mayes, [3]).

In trade world, brands as a form of intellectual property have been used for hundreds of years and have an important role in distinguishing the origin of goods and

services. A brand can be a valuable asset commercially and makes a product expensive, even more valuable than the company (Arifin & Iqbal [4]). Mark rights are explicitly referred to as immaterial objects in the consideration of Law Number 20 Year 2016 concerning Marks and Geographical Indications, section "Considering" point a, which reads (National [5]): "In the era of global trade, in line with international conventions that have been ratified by Indonesia, the role of brands is very important, especially in maintaining healthy, fair business competition, protecting consumers, as well as protecting Micro, Small, and Medium Enterprises and domestic industries."

With a brand, similar goods or services can be distinguished from the origin, quality, and guarantee that the product is original. Sometimes, what makes a product expensive is not because of the product itself but because of the brand (Sari & Nuvriasari [6]). The trademark registration request letter must be signed by the trademark owner or his proxy. However, the signatory must be determined by one person or legal entity, trademark disputes often arise due to several factors, such as the entrepreneurs do not immediately register their trademarks so that other parties use them or disputes caused by parties with bad intentions who intentionally register trademarks with famous or profitable brands for the purpose of boosting popularity or seeking monetary compensation in the future. Actually, entrepreneurs in Indonesia, especially MSME actors, are

increasingly aware of the importance of registering their product brands (Agustina [7]).

The legal protection of MSME product brands is the same as legal protection for other brand rights holders as regulated in the 2016 UUM. In protecting their brands, MSMEs experience several difficulties such as the low awareness of MSMEs to register their brands because they do not know the benefits of trademark registration, MSMEs feel that registering the brand will incur a large cost where on average these MSMEs are small and medium enterprises. MSMEs aim to grow and develop businesses in the context of building a national economy based on just economic democracy (Indrawati & Setiawan [8]).

Therefore, the important role of the government is needed to encourage MSME activities to continue and support access to capital and assistance in registering trademarks. Besides, there are factors that are also important with aspects of capital and assistance such as socialization, education, whitening, special regulations that are made regarding regulations relating to Intellectual Property (KI) policies. Whether or not there is a role for MSME products in creating jobs and equal distribution of opportunity is quite large, MSMEs can absorb employment to alleviate poverty as a contributor to the national economy through tax revenue, user fees, and other forms of revenue.

Trademark owners who have registered will get trademark rights, namely exclusive rights granted by the State to owners of trademarks that are publicly registered trademarks. Based on the trademark rights, trademark owners will get legal protection so that they can develop their business calmly without fear of having their trademark claimed by other parties.

Based on the explanation of the importance of trademark registration for MSMEs, the researchers examine more deeply with regard to the application of legal protection of trademark rights for MSMEs according to Law Number 20 Year 2016 concerning Marks and Geographical Indications. Based on the description above, the researchers raise legal issues, which are in the following. What are the legal arrangements for trademark rights in Indonesia? How is the Legal Protection of Micro, Small, and Medium Enterprises (MSMEs) based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications?

II. RESEARCH METHODS

This research is a normative juridical research using a statutory approach and a conceptual approach. This research is a normative juridical with a literature approach by studying journals, books, legislation and other documents related to this research. Normative law is directly related to legal practice which involves two main aspects, namely the formation and the application of law (Rusli [9]). This approach views law as synonymous with written norms made and promulgated by official institutions or officials (Rideng [10]).

In this study, three legal materials are determined, such as primary, secondary, and tertiary. Primary legal

materials are provisions relating to the application of legal protection of trademark rights MSMEs enterprises according to Law Number 20 Year 2016 concerning Marks and Geographical Indications (Kemendikbud RI [11]). Secondary legal materials are all publications on law that are not official documents (books, journals, articles, and other scientific works), while tertiary legal materials are: internet, encyclopedias, etc. Technique for collecting legal materials used is a literature study model [12][13].

The legal material analysis technique used is content analysis. Content analysis is any systematic procedure encouraged to examine the content of the information obtained. This analysis focuses on all the secondary data obtained. After obtaining the necessary data, this paper analyzes the data logically, systematically and juridically. Logical means that the data collected is analyzed in accordance with the principles of deductive logic, namely drawing conclusions from a general problem to the concrete problems faced. Other than that, systematic means analyzing data by linking data with one another that are interconnected and dependent.

III. RESULTS AND DISCUSSION

a. Legal Arrangements for Trademark Rights in Indonesia

International Convention on Marks Ratified by Indonesia

The trademark convention that regulates trademarks internationally is known as "The Paris Convention" for the Protection of Industrial Property, which in short is commonly referred to as the Paris Convention. The Paris Convention was formed on March 20, 1883 which was then revised repeatedly as in Brussels in 1900, in Washington in 1911, in The Hague in 1925, in London in 1934, in Lisbon in 1958, Stockholm in 1967, and finally in Geneva in 1979 [14]

This convention is based on equal protection for nationals of every member country of the Paris Union if they have met the requirements (nation treatment). In addition to the Paris convention, the Agreements based on the Paris Convention, namely Madrid Agreement of 1891 was formed. The Madrid Agreement was formed on April 14, 1891 and has the aim of facilitating the registration of trademarks in various countries simultaneously which is the participating countries of the Paris Union, avoiding notification of goods origin in counterfeit (Madrid Agreement Concerning the Repression of False Indications of Origin) the international registration of marks at the Bern International Bureau, with the understanding that these marks must first become national marks in the country of origin ("*Relevansi Keikutsertaan Indonesia Dalam International Registration Of Marks Madrid System Melalui Ratifikasi Madrid Protocol Terhadap Potensi Peningkatan Daya Saing Bangsa Indonesia Di Bidang Perdagangan Internasional*," 2008).

In addition to the Madrid Agreement, there is also a follow-up agreement regarding the mark, namely the Hague Agreement which was formed on November 6, 1925 regarding the hague arggement concerning the international deposit of industrial patern and design. This agreement was

renewed in London on June 2, 1934. In addition, there are also other agreements such as the Lisabon Agreement Concerning the Protection and the International Registration of Declaration of Origin on October 31, 1938 [15]

Nice arrangement concerning the international classification of good and service to which trademarks apply (15 June 1957), even though at the time Indonesia was colonized by the Netherlands, was automatically a member of the Paris Union since 1934, but with independence Indonesia did not automatically become Indonesia remains a member of the Paris Convention.

Law Number 20 Year 2016 concerning Marks and Geographical Indications

The need for legal protection of brands is growing rapidly after various people imitate. Moreover, after the trade world is more advanced, better means of transportation and promotions, the area for marketing goods becomes even wider. The circumstances add to the importance of brands to distinguish origin and quality and avoid imitation [16].

In the history of brands in Indonesia, it can be recognized that during the Dutch colonial period, the Reglement Industriële Eigendom (REI) was applied contained in Stb. 1912 No.545 Jo. Stb. 1913 No.214. This REI is a duplicate of the Dutch Trademark Law which consists of 27 articles. The system adopted in this law is a declarative system, which means that the party who gets the main protection is the first user, not the first registrant [17].

In addition to the protection of goods and service marks, Law Number 20 Year 2016 also regulates the protection of geographical indications, namely signs indicating the area of origin of an item due to geographical environmental factors, such as a sign indicating the area of origin of an item due to geographical environmental factors, including environmental factors, natural or human factors, or a combination of these two factors. It gives certain characteristics and qualities to the goods produced. In addition, it also regulates the indication of origin.

A trademark gets legal protection if it is registered at the Directorate General of Intellectual Property Rights because it is stated in the TRIPs agreement and in Article 1 paragraph 5 of the 2016 Trademark Law that registered marks have exclusive rights to prohibit third parties without the permission and knowledge of the owner of the mark to use the same mark for goods and/or services that have been registered beforehand [18].

The meaning of special rights granted by the State to the owner of a registered mark include in the following.

- a. Create a Sole or Single Right
Law gives separate rights to the owner of the mark. The rights are separate and fully independent without interference from other parties.
- b. Realizing Monopoly Rights
Anyone is prohibited from imitating, using, and utilizing in the trade of goods and services without the permission of the owner of the trademark.
- c. Giving Superior Rights

Superior rights are rights given by the doctrine of the most superior rights to the first registrant. Therefore, the holder of special rights or a brand is superior to other brands to be protected.

The need for legal protection given to brand owners includes the use or exploitation of marks according to M. Yahya Harahap in Miladiyanto & Ariyanti[19] include in the following.

- a. Protecting the use of brand exclusive rights, such as:
 - 1) using brand marks as logos, labels, or images in correspondence, on goods or services, on packaging in advertisements or promotions,
 - 2) enjoying exclusively the manifestations born of the brand, including goodwill, or well-known, high reputation, indication of origin/geographical source, cultural attachment, and familiar attachment.
- b. Protecting exclusive rights to use trademarks as a means of exploiting gains in trade, such as:
 - 1) market goods or services in national, regional, global trade,
 - 2) keeping goods protected by trademarks, as long as they do not conflict with the provisions of the monopoly or speculation to increase prices, and
 - 3) supplying goods.
- c. Protecting the right to expand marketing areas and segments, in accordance with the market system or free trade and carried out in accordance with the principles of free, honest, and healthy competition.
- d. Protecting redirects or transfers in the form of:
 - 1) transfer based on common title in accordance with the provisions of inheritance law,
 - 2) transfer in all forms of transactions permitted by law, and
 - 3) in the form of a license and giving permission to another person or legal entity to use it

Thus, the description of the scope of legal protection that must be given and applied to exclusive rights as property rights based on the basis of the nature of property rights to marks that are absolute, the law must guarantee full protection for anyone who interferes with every activity carried out by the owner as long as the action is still within limits. -limits of the scope of special rights and the scope of protection provided by the law.

b. Legal Protection for Micro, Small, and Medium Enterprises (MSMEs) According to Law Number 20 of 2016 concerning Trademarks and Geographical Indications

MSMEs are productive economic businesses that are detached, carried out by individuals or business entities, which are not subsidiaries or branches of companies owned, controlled, or become a part either directly or indirectly of medium-sized businesses or large businesses meeting the business criteria as referred in the Law of the Republic of Indonesia Number 20 Year 2008 concerning Micro, Small, and Medium Enterprises [20].

Indonesia is a country where most of its income funds come from MSMEs. It makes MSMEs one of the factors that have a big role in increasing the country's foreign exchange. Many of the products produced by MSMEs in Indonesia have high economic value and are unique, especially when they have entered foreign markets. Indonesians are not aware that the protection of intellectual property rights brings high economic value when it enters the trade world.

The development of MSMEs in Indonesia is still faced with various problems, causing weak competitiveness against imported products. The main problems faced by MSMEs include limited infrastructure, government access related to licensing and bureaucracy, and the high level of levies. With all the existing problems, the large potential of MSMEs is hampered. Although MSMEs are able to survive the global crisis, in reality the problems they face are more severe. It is because apart from being indirectly affected by the global crisis, MSMEs must also face unresolved domestic problems such as labor wages, employment and illegal levies, corruption, etc. [21].

The term of legal protection in English is known as legal protection while in Dutch it is known as Rechts Bescherming. Etymologically, legal protection consists of two syllables, namely protection and law. In Big Indonesian Dictionary, protection is defined as (1) a place of refuge, (2) things (actions, etc.), (3) the process, method, act of protecting. Law is functioned as the protection of human interests, so that human interests are protected, the law must be implemented professionally. It means that protection is an action or deed carried out in certain ways according to the applicable law or statutory regulations.

Legal protection is the right of every citizen; and on the other hand, legal protection is an obligation for the state so that the state is obliged to provide legal protection to its citizens. In principle, legal protection for the community rests and is based on the concept of recognition and protection of human dignity and dignity so that the recognition and protection of the rights of suspects as part of human rights without discrimination [22].

Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and or victims, which can be realized in forms such as through restitution, compensation, medical services, and legal assistance. According to Betlehn & Samosir [23], legal protection is an act or effort to protect the citizen from arbitrary actions by the authorities that are not in accordance with the rule of law, to create order and peace, and enable humans to enjoy their dignity as human beings.

Meanwhile, Indrawati & Setiawan [21] argued that legal protection is to provide protection for human rights (HAM) harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Because the nature and purpose of law, it aims to provide protection to the citizen, which must be realized in the form of legal certainty.

Legal protection in a narrow sense is something that is given to legal subjects in the form of legal instruments, both preventive and repressive, as well as in written and

unwritten forms. In other words, legal protection can be interpreted as an illustration of the function of law, namely peace for all human interests in society to create harmony and balance in social life. Meanwhile, legal protection in a broad sense is that protection is given to all living creatures and all of God's creations and used together in the framework of a just and peaceful life.[8].

Trademark protection in Indonesia adheres to the constitutive (registration) principle with the first-to-file principle. It means that a trademark only gets protection if it is registered to the government through the Ministry of Law and Human Rights and in this case is in the Directorate of Intellectual Property.

According to Law No. 20 Year 2016 concerning Brands and Geographical Indications, there is not much discussion related to 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 "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 excessively important, especially in maintaining fair and just business competition, consumer protection, protection for MSMEs, and domestic industries (Kemendikbud RI [11]).

The existence of the 2016 Trademark Law is expected to be one way for the government to protect MSME businesses through the protection of their intellectual property in the form of brands. With brand recognition given to MSME business actors, large industries or business actors who have good intentions, cannot automatically take intellectual property belonging to MSME business actors because the ownership of registered marks is recognized and protected by the government. If there is a dispute that arises from a trademark ownership dispute, the government will only refer to the trademark certificate as proof of ownership of the right to the mark, unless there is a cancellation of the right to the mark based on a trademark lawsuit made by one of the parties in the Commercial Court [21].

In the event of a violation of the rights to the registered mark and the holder of the right to the legal mark, it can carry out criminal and civil lawsuits. This lawsuit can be filed as a consequence of the legal protection of trademark rights, as contained in Article 83 paragraph (1), paragraph (2) and paragraph (3) of Law Number 20 Year 2016 concerning marks and geographical indications. Granting rights to trademark holders whose rights have been violated can file a lawsuit against the violator of trademark rights both criminally and civilly [11].

IV. CONCLUSION

Based on the above discussion, there is a conclusion that the legal regulation of trademark rights in Indonesia consists of the international convention on trademarks ratified by Indonesia and Law Number 20 Year 2016 concerning Marks and Geographical Indications. Meanwhile, regarding the application of legal protection for MSMEs, the existence of Law Number 20 Year 2016 concerning Marks and Geographical Indications is expected to be one of the

government's ways in protecting UMKM businesses through the protection of intellectual property in the form of a brand. With brand recognition given to MSME business actors, large industries or business actors who have bad intentions cannot automatically take intellectual property belonging to MSME business actors because the ownership of registered marks recognized and protected by the government.

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