

# **Creating Brand Rights in Micro, Small, and Medium Enterprises (MSMEs) in the Creative Economic Development Sector: The Importance of Trademark Registration as Legal Protection**

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## **Abstract**

*The creative industry is the main vehicle for creating a sustainable and inclusive economy. To be sustainable and inclusive we need to design strategies that encourage innovation, protect creative workers, and address digital concerns in society. Technology has played an important role in community empowerment so recognition of the exploitation of IPR (Intellectual Property Rights) is needed, especially those related to entrepreneurship. The focus of this research is to discuss industrial property rights (brand rights) in MSMEs so that they can protect business actors from trying to imitate or take over the business. The research method used is a field study with a qualitative descriptive approach. Data collection techniques were carried out through interviews with related parties as well as some information from books, scientific articles, journals, and government websites related to research. This research is expected to be a reference for entrepreneurs in developing their businesses.*

**Keywords:** Brand Rights, MSMEs, Legal Protection

## **A. Introduction**

Indonesia is currently entering the era of the fourth industrial revolution or commonly called industry 4.0, the fourth industrial revolution is a condition in the 21st century when massive changes occur in various fields through a combination of technologies that reduce barriers between the physical, digital, and social worlds. and biology. This revolution is marked by technological advances in various fields, especially artificial intelligence, nanotechnology, computers, quantum, robots, biotechnology, 3D printing, and internet things. (Fonna, 2019) . The purpose of holding the 4.0 industrial revolution is to boost the Indonesian economy so that it enters the top 10 best economies in the world by 2030.

In facing these challenges, MSMEs are required to continue to develop in the face of technological challenges In the future, creative and innovative thinking is expected so as not to be left behind by today's large industries in Indonesia. Coupled with the many online platforms in our country it shows clear evidence that we have transformed into a digital system. From this we can see that the digital system plays an important role in the current industrial sector, changes like this seem to have become a necessity for MSME players to survive amid highly competitive business competition.

In addition to the ability to promote businesses online and offline, MSMEs are also required to be able to provide other attractions to consumers, one of

which is by making the best possible brand, for example with unique images, good color combinations, and writing creations, that attracts potential customers.

Brands can also be a sign of the difference between a product and other products so that consumers can easily search for them. In addition, the trust of potential consumers in products sold is increasing with the existence of these brands compared to products that do not have a brand.

And more importantly, the mark that has been created must be registered to obtain property rights and power in the eyes of the law, so that every MSME that has registered its mark will receive legal protection where if someone else tries to take or use the mark then they will not be able to. , because the owner of the mark has received legal protection, this is very important for MSME actors to pay attention to because recently there have been many cases related to trademark misuse. There are also cases of theft of well-known brands so that the actual brand owner can no longer register his mark because someone else has already registered it.

In a journal written by Humaedi Abdurahman entitled " *First To File Principle* in the Case of Famous Benu Brand Rights" his research focuses on the first-to-file principle in cases of famous people's trademark rights, along with the legal consequences if a famous person's name is used as a brand but not yet registered. registered, this research has the same theme as the research that I will examine, but what distinguishes it is that my research focuses more on the urgency of brands for MSME actors, I do not discuss the principles in detail and cases that have occurred regarding Brand Rights. (Abdurahman, 2020)

In this study, a qualitative research method was used where data sources were obtained directly from the field through interviews and supporting data obtained from literature such as books, journals, articles, copies of laws, and government websites that support the research. This study will answer two questions that are a problem for researchers; *First*, what kind of legal protection do MSME players get who have registered their trademarks? *Second*, what is the urgency of the brand for MSME actors.

## **B. Discussion**

### **a. Definition, Types, and Functions of a Brand**

Talking about Brands means that we also talk about Intellectual Property Rights because Brands are part of Intellectual Property Rights (IPR). Intellectual Property Rights are material rights, rights to objects that originate from the work of the brain, the result of the work of ratios. The result of his work is in the form of an intangible object (immaterial object). Objects within the framework of civil law can be classified into two categories, namely tangible objects and intangible objects. (H. Saidin, 2013).

Intellectual property rights are rights protected by law, and whoever violates them is subject to sanctions. To prevent infringement of intellectual property rights by unauthorized persons, it is regulated in the law to provide protection. If there is a violation, it must be legally processed. And if proven guilty, they will be sentenced according to the applicable provisions, both criminal and civil. (Firmansyah, 2013)

According to Article 1 paragraph 1 (one) of Law No. 20 of 2016 Brand is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, or color arrangement, in 2 (two) and 3-dimensional forms, sound, hologram, or a combination of 2 or more of these elements to differentiate goods and/or services produced, by persons or legal entities in trading activities of goods and/or services. (Made Dwipayani and Fazriyah, 2021) .

The brand consists of several types; *a trademark* is a mark used on goods traded by a person or several persons jointly or a legal entity to distinguish it from other similar goods. *Service mark*, which is a brand used for services traded by a person or several persons to differentiate it from other similar services. A *collective mark* is a mark used for goods or services with the same characteristics that will be traded by several people or legal entities together to differentiate goods and/or services of the same type. *Geographical Indication*, namely a sign indicating the area of origin of an item or product which due to the geographical environment including natural factors, human factors, or a combination of both gives reputation, quality, and certain characteristics to the goods and/or products produced. (Copy of Law No.20 of 2016)

The brand has a very important function; *First*, as identification so that it can distinguish the production results jointly produced by a person or several people or a legal entity from the production of other people or legal entities. *Second*, as a promotional tool, it is enough to mention the brand when promoting an item. *Third*, the guarantee of the quality of the goods. *Fourth*, pointers to goods or services are produced.

Is it important for a person or a business entity to register their mark, the answer is of course important, because a mark is a means of proof for the owner of a registered mark, it is the basis for rejection of a mark that is the same in whole or in principle the same as that requested for registration by another person for goods. or similar services can prevent other people from using the same brand in its entirety or the same in principle in the distribution of similar goods or services.

Registering a mark, cannot be arbitrary because many things must be considered in registering the mark, including whether it may not conflict with state ideology, law, morality, religion, decency, public order, the same as other people's marks, contains elements which can mislead the public, imitate or resemble other people's names, and are not a public name or a public institution.

#### **b. Legal Protection for Brand Holders**

Legal protection according to Fitzgerald, the beginning of the emergence of the theory of legal protection as the source of natural law which originates from God and is universal and eternal. between law and morals should not be separated, because law and morals are the reflection and rules of human life. Then John Locke stated that the right to private property comes from the work of humans who can improve this world for the sake of life for both themselves and others. (Nuari Isro Kusuma Dewi, 2018)

Trademarks that have been registered will receive legal protection for 10 years from the date of receipt of trademark registration and can be extended after

this period expires. Legal protection for owners of registered marks is also obtained by business actors if one day a violation is committed by another party, namely by increasing sanctions against trademark violations, especially if the goods threaten human health, and the environment, and can result in death.

As for the criminal provisions contained in Law No. 20 of 2016, everyone who uses another person's registered mark is subject to imprisonment for a maximum of 5 years and/or a maximum fine of Rp. 2,000,000,000 (2 billion rupiah). Anyone who uses a mark that is similar in principle to another person shall be subject to a maximum imprisonment of 4 years and a maximum fine of Rp. 2,000,000,000 (2 billion rupiah). And if the goods/or services being traded can threaten human health, and the environment, and can result in death, a maximum penalty of 10 years and/or a maximum fine of Rp. 5,000,000,000 (five billion rupiahs) shall be imposed. (Copy of Law No. 20 of 2016) .

In registering a mark, Indonesia itself adheres to a *first-to-file* (consumptive) system. *first to file* is a system where the first registrant is given priority in obtaining trademark rights. Where if a mark wants to obtain legal protection and exclusive rights, then the owner of the mark must register his mark at the Office of the Directorate General of Intellectual Property Rights.(Pangestu, 2022)

### **c. The Importance of Brand Rights for Micro, Small and Medium Enterprises**

The brand is very important as identification in the trading system. To introduce an object that is produced, a brand is used so that the product being marketed can be easily recognized by the public.

The brand or mark should be thought of by the patron long before the business starts, not after the business activities. Because there is a risk that a brand that has already been promoted turns out to have been registered on behalf of someone else. So, if that's the case, a business that has been around for a long time is in a dilemma, wanting to change its name because the business is already running, maybe it's even gone viral. And it could be that the real owner is said to have plagiarized a trademark that someone else had registered beforehand.

Micro, Small, and Medium Enterprises (MSMEs) should seriously think about this because one of the essential elements in a product is a brand, so to avoid piracy, imitation, and duplicating, trademark registration is the main capital.

Based on data obtained from the directorate general of intellectual property, the Ministry of Law and Human Rights, the number of registered trademarks from MSMEs in 2017 was 8,262; in 2018 as many as 8,823; in 2019 as many as 10,782; in 2020 there were 10,529, this data experienced a significant increase. However, most of the businesses that have registered the mark are large-scale business actors, while for Micro and Small Enterprises there are still very few. (Directorate General of Intellectual Property, 2021) .

Based on the results of a field search that I conducted on 5 SMEs in the city of Purwokerto, only 1 UMKM had registered its brand, the UMKM that had registered its brand was KOPI BENTO, based on the results of interviews conducted with the Manager of Coffee Bento Purwokerto named Rahmat Aditya, information was obtained that This business has received trademark protection

since April 26, 2021, this business is engaged in goods/services such as coffee shop services, restaurant services, cafes, coffee and snack shop services, and many others. The informants said that there are many benefits to be gained when registering a trademark, including being able to attract investors to invest in the business being pursued, the brand is an inherent identity so it is easily recognized among the public, the brand can be used as a promotional tool for products sold, get strong legal protection if one day someone tries to register the same trademark as us. The resource person is very sorry for MSMEs that have not or have not registered their trademarks, according to him, a brand sometimes does not seem to have a problem even if it is not registered, but don't let it happen that when our business has grown it has even gone viral, we are afraid that another party will pick up the brand and in the end, they will make a product. and similar labels and register the brand that we use first, meaning that other people are deliberately looking to profit from the virality of the brand that we have. And when the brand originally wanted to register the trademark, it turned out that it had already been registered under someone else's name. (Interview result)

Meanwhile, the results of interviews with 4 MSMEs who had not registered their trademarks, they thought that the most important thing was selling and earning money, whether a trademark was registered or not was a problem for them, plus they had to take care of many documents for requirements so that it took days. the costs incurred are not small, not to mention having to pay taxes if the trademark has been registered. These things are a scourge for MSME actors who have not registered their trademarks, especially in the micro business sector.

### **C . Clonclusions**

Answering the formulation of the problem that has been mentioned in the introduction, the following conclusions can be drawn:

1. Brands can attract investors to invest in the business being pursued
2. A brand is an inherent identity so it is easily recognized by the public
3. Brands can be used as a promotional tool for products sold
4. Get strong legal protection if one day someone tries to register the same trademark.

Furthermore, for business actors who do not register their trademarks, the legal power of the naming/trademark tends to be taken over by other companies so that there tends to be no legal force for business actors who do not register the mark when their marks are taken over by other business actors who have registered the mark. There are several reasons for business actors are reluctant to register their business mark:

1. Does not consider that trademark registration is important
2. To avoid taxes
3. The procedure for managing trademark registration is complicated
4. Consideration of trademark registration fees.

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