

The Urgency of Registration of Brand Rights for Micro Small Medium Enterprises to Increase Business Competitiveness: Study in Kebumen Regency, Central Java, Indonesia

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Abstract. Micro, Small and Medium Enterprises (MSMEs), trading businesses managed by business entities or individuals referring to productive economic businesses, are entitled to intellectual property rights (IPR). The MSME brand registration process has several waivers in the form of fee reductions. The Government of Kebumen Regency, through the Department of Industry and Trade and the Department of Manpower, Cooperatives, and Small and Medium Enterprises, has facilitated trademark registration for MSMEs. However, several obstacles occurred both from the facilitator's side and from MSME actors where there was still a lack of interest from MSME actors to register their trademarks, and the registration process was quite long. Some MSME actors do not know that the government has an important role in the process of assisting trademark registration. The approach used in this research is an empirical juridical approach with the specifications used as descriptive-analytical, and the analytical method of this research is qualitative.

Keywords: IPR, Trademark, MSMEs.

1 Introduction

Kebumen Regency is one of Central Java's regencies with 22,794 MSMEs, consisting of 12,578 entrepreneurs and 10,216 units. MSMEs in the Kebumen district are one of the pillars of the community's economy. The reason why the local government of Kebumen district, through the Department of Manpower, Cooperatives, Small and Medium Enterprises and the CIS SMEsCO (Center for Integrated Service of Small Medium Enterprises and Cooperatives) or known as PLUT-KUMKM (*Pusat Layanan Usaha Terpadu Koperasi dan Usaha Mikro, Kecil dan Menengah*), continues to strive to guide MSME actors to develop their businesses. Here, the number of MSMEs that have not registered a trademark is quite large. As for the small business products whose brands have been registered with the DJKI (*Direktorat Jenderal Kekayaan Intelektual*), only six products. One of the MSMEs that is quite well known but has not registered its brand is "Malindo". Malindo is a brand with several food outlets, batik, and other things that are well known in the Kebumen regency. From the examples already mentioned, the lack of awareness of these MSME actors to register their trademarks can lead to reduced business competitiveness for MSME actors.

This problem arises due to several factors. One of the causes of brand problems is competition between businesses [1]. Many business people use unhealthy ways to run their business. One example is the imitation of a well-known brand. This is detrimental to brand owners who have worked hard to build the brand image they have created. Business actors who do not know the legal basis for trademark rights and commit plagiarism of well-known brands can also be a problem if they do not know the sanctions for plagiarism of well-known brands.

Trademark is one of the most important parts of intellectual property in trading activities because by registering a mark on the goods and/or products produced, it can distinguish the source of goods and services. Moreover, brands are an important asset for economic actors, especially for MSMEs, because the brand rights they get are a form of state protection for intellectual property owned by MSME actors [2, 3]. Therefore, legal protection related to trademark rights needs to be done so as not to cause problems related to trademark rights. These problems can arise in imitation of the brand; other parties can even misuse it to the detriment of brand users or business actors [4].

MSMEs need a foundation and protection from the government to run business activities. One manifestation of the government's partisanship in the protection of MSMEs is the existence of Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises (hereinafter abbreviated as UU MSMEs). MSMEs are divided into two business groups: micro, small and medium enterprises (hereinafter referred to as PMKM/*Pengusaha Mikro Kecil Menengah*) and micro, small and medium enterprises (hereinafter referred to as IMKM/*Industri Mikro Kecil Menengah*). PMKM is an MSME owned by an individual or a business entity which does not produce products in its business but only carries out trading activities; it can be in the form of a grocery store, clothing store, household appliance store, and so on. On the other hand, IMKM is an MSME owned by an individual or a business entity in which the business actors produce their own products, such as snack products, handicrafts, processed plants, and so on [5].

The definition of micro, small, and medium enterprises cannot be interpreted narrowly. MSME is a productive economic business born as an activity of human life in meeting the needs of life [6–8].

Facing these problems, business actors need legal protection related to trademark rights to avoid problems. Trademark protection in Indonesia is regulated in Law No. 20 of 2016 concerning Marks and Geographical Indications. Trademarks are economic assets for their owners which, based on the Trademark Law and Geographical Indications, must be registered with the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia to obtain a trademark rights certificate so that they are protected by law [9, 10].

Intellectual property rights (IPR) protection is the protection of every right that arises from the results of human creativity and invention in science and technology, as well as in the fields of trade and industry. Objects regulated in IPR are works that arise or are born due to human intellectual abilities [11]. Generally, economic actors can use their intellectual property rights. This is very necessary because the brand can be an important factor in business activities. Micro, small and medium enterprises are the economic actors who need the protection of their intellectual property.

Intellectual property, as a translation of the English term "intellectual property" by the World Intellectual Property Organization (WIPO), is defined as creations produced through intellectual abilities (creation of the mind), namely inventions, written works and works of an artistic nature, symbols, names, images and designs used in trading activities [12]. Intellectual

Property Rights are a form of implementation of Intellectual Property Rights as regulated in Law No. 7 of 1994 concerning Ratification of the WTO (Agreement Establishing the World Trade Organization).

In general, IPR can be classified into two main categories: Copyright, which applies to the fields of science, art, and literature, including books, computer programs, songs or music with or without text, drama, cinematography, photography, architecture, etc. The second is Industrial Property Rights which include patents, trademarks, geographical indications, industrial designs, integrated circuit layout designs, trade secrets and protection of plant varieties [13, 14].

This raises the question of whether the legal protection related to trademark rights that MSME actors can obtain is useful for increasing the competitiveness of MSME actors themselves. Based on the description above, the author is interested in discussing and analyzing further legal issues with the title, "The Urgency of Registration of Brand Rights for Micro Small Medium Enterprises to Increase Business Competitiveness: Study in Kebumen Regency, Central Java, Indonesia."

Based on the background and reasons for choosing the title of this thesis, the author will propose several formulations of the problem as follows:

1. What is the urgency of trademark registration on Micro, Small and Medium Enterprises products in Kebumen Regency?
2. What are the efforts and obstacles faced by the government of Kebumen Regency in accommodating trademark registration in Micro, Small and Medium Enterprises in Kebumen Regency?

2 Research Methods

The approach used in this research is an empirical juridical approach with descriptive legal research specifications. The data collection used in this study is primary and secondary data. The secondary data used in this study are based on laws and regulations, official documents, scientific works, and articles related to the material of this paper [15].

3 Results and Discussion

3.1 The Urgency of Brand Registration for Micro, Small and Medium Enterprises Products in Kebumen Regency

There are quite a lot of trademark registrations for MSME actors in Kebumen. In 2019 - 2021, the Department of Industry and Trade noted that 58 MSMEs had registered their trademarks.

The process taken to register a trademark assisted by the Regional Government of Kebumen Regency is through data collection. Data collection is carried out to ensure that brands owned by MSME actors have registered or not, and if there are similarities with registered marks, the Kebumen Regency Government proposes to replace the brands of MSMEs. In conditions where MSME actors do not want to change their brand, the process cannot be continued because it can cause problems after the registration process. The local government of Kebumen Regency then helps complete the requirements for the trademark

registration process. Through related agencies, the Regional Government of Kebumen Regency assists until the trademark registration process is complete and MSME actors get a trademark certificate.

The trademark registration process requires trademark registrants to follow several processes. The first thing that MSMEs do is make a submission or application to the relevant agency. Submissions can be directed to the Deputy for Production and Marketing, a Certificate of Domicile for a Provincial Company in charge of Ministry of Cooperatives and SMEs or a Certificate of Domicile for a Regency/City Company in charge of Ministry of Cooperatives and SMEs. After applying, the registration data requirements will be checked immediately.

The basic theory of Intellectual Property Law protection put forward by Robert M. Sherwood [16] states that the effect of trademark registration has five effects that are useful for trademark registrars. The three points of the theory have the same goal. That is to provide protection, recognition, and appreciation to inventors, creators, and designers of intellectual works that have been produced. This protection is necessary to avoid infringement of the use of the mark by other parties and to be able to provide economic benefits to the brand owner.

The basic concept of licensing a brand is that a trademark is an object of intellectual property. The brand is an asset formed by human intellectual capacity through creativity and initiative, with the sacrifice of energy, thought, time and cost to create economic value. The economic value associated with property rights gives rise to the concept of property rights. With the concept of wealth, the State provides legal protection for trademarks. Trademark owners need legal protection against anyone who uses them without permission [17]. Registering trademarks to obtain legal certainty and protect trademark rights legally.

Trademark registration for MSMEs in Kebumen also has the advantage that MSME actors can avoid the risk of infringement of brands that other business actors have registered. However, trademark registration also needs to be done so that MSME actors have a strong legal basis to protect the brand's rights.

The risk of brand infringement that is most prone to be carried out by MSME actors in Kebumen is an imitation of well-known brands. This problem often occurs due to a lack of public knowledge of intellectual property rights, especially brands. MSMEs who commit this violation assume that imitating a well-known brand can increase sales. They do not know that there are sanctions for imitating well-known brands.

Sanctions for trademark infringement can be civil or criminal. These sanctions include:

1. In a civil manner regarding the imitation of a well-known mark, compensation can be demanded using a registered mark that has not received permission and approval from a well-known mark that has been imitated. Article 83 No. (1), Law No. 20 of 2016 concerning Marks and Geographical Indications stipulates that:

“The owner of a registered Mark and/or the recipient of a registered Mark License may file a lawsuit against another party who unlawfully uses a Mark that has similarities in principle or in its entirety for similar goods and/or services in the form of: a). claim for compensation; and/or; b). termination of all actions related to the use of the mark.”

The act of violating the mark is included in an unlawful act following article 1365 of the Criminal Code, which explains that a person who causes harm to another person is obliged to compensate for the loss. This article is the basis for the lawsuit against the perpetrators of trademark infringement because Article 83 paragraph (1) point (a)

gives the registered trademark owner and/or the registered trademark recipient the right to file a compensation claim.

2. Perpetrators of trademark infringement can also obtain criminal sanctions. These criminal sanctions include violations of Law No. 20 of 2016 concerning Marks and Geographical Indications. Articles 100 – 102 of the Mark Law explain that any person who trades goods using the same mark shall be subject to a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah). If the perpetrators of mark infringement have similarities and trade in the said goods, they shall be subject to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah). Any perpetrator of mark infringement who violates the provisions above and the types of goods traded resulting in health problems, environmental disturbances, and/or human death is threatened with imprisonment for a maximum of 10 (ten) years and/or a fine of a maximum of Rp. 5,000,000,000.00 (five billion rupiah).

3.2 Efforts and Constraints Faced by the Government of Kebumen Regency in Accommodating Trademark Registration in Micro, Small and Medium Enterprises in Kebumen Regency

Law No. 11 of 2020 concerning Job Creation changes several provisions of Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises. This change resulted in Government Regulation No. 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises. Article 70 of Government Regulation No. 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises explains that the government provides facilities, assistance, and facilities for the implementation of integrated management of micro, small and medium enterprises.

The Government Regulation above is a form of central government implementation that pays attention to intellectual property rights for MSME actors. MSME actors are given legal guarantees to get adequate facilities for intellectual property rights so that MSME actors get intellectual property rights easily. Local governments must then implement this Government Regulation in their respective regions. In line with the Government Regulation, the Kebumen Regency Government has the duty and authority to coordinate the registration of trademarks on MSMEs.

The agency authorized to carry out this function is the Office of Manpower, Cooperatives, Small and Medium Enterprises and through the Center for Integrated Business Services for Micro, Small and Medium Enterprises (PLUT - KUMKM). PLUT – KUMKM carries out its functions based on the Regulation of the Regent of Kebumen No. 71 of 2016 concerning Position, Organizational Structure, Duties and Functions, and Work Procedures for the Office of Manpower and Cooperatives, Small and Medium Enterprises. Based on the provisions in the Regent's Regulation, the KUMKM Service has the task of carrying out the formulation of plans, coordinating, implementing policies, monitoring, evaluating and reporting covering industrial relations and working conditions, production and marketing, as well as empowerment and facilitation of micro, small and medium enterprises.

The legal basis for the Office of Industry and Trade for assistance in trademark registration is contained in Government Regulation No. 29 of 2018 concerning Industrial Empowerment.

The development of MSMEs in Indonesia encounters several problems or obstacles, both internal and external factors. MSME problems can be an inhibiting factor in carrying out trademark registration. Internal factors are one of the causes of obstacles for MSME actors to register trademarks. Lack of capital that requires MSMEs to turn money for more primary needs. The limited quality of human resources is also an obstacle because MSME actors are not educated about the importance of trademark registration and the flow.

Haris Surya Hidayat as the MSME "HARRS STUDIO" has not registered his trademark. MSME "HARRS STUDIO" only has a Business Identification Number to support the business he is running. Haris has not registered his trademark because the business field he is currently pursuing, namely manufacturing, does not yet have a high level of urgency to register a trademark because these SMEs only provide production services. HARRS STUDIO has not yet registered its trademark because the registration process is quite difficult and takes a long time. Haris Surya Hidayat understands that it is important to own brand rights to avoid problems when the brand he uses has problems. However, he feels that the brand he uses is not yet well known, so trademark registration is not needed in the MSMEs he runs. Haris admitted that he was unaware of the government's program in assisting trademark registration for MSMEs, which led to Haris' lack of understanding of the process he had to do if he wanted to register a mark.

Among some of the obstacles experienced by the Department of Industry and Trade, there are still many SMEs that have many similarities with other registered brands. Therefore, the Department of Industry and Trade of Kebumen Regency has reminded SMEs of the same brand as other registered brands. Still, SMEs are reluctant to change their brand names because they are already comfortable with their brands. In this context, it is clear that SMEs still do not understand the risks of using the same brand.

Another obstacle that occurs in trademark registration is in human resources, especially regarding knowledge of information technology. This lack of understanding causes problems in trademark registration because the trademark registration process requires a personal number and email from SME actors. The Department of Industry and Trade had facilitated cellphone numbers and emails, but their use had certain limitations. On the other hand, many MSME actors do not have insight into making personal emails.

The budget from the Department of Industry and Trade is another obstacle. The Department of Industry and Trade assists in the amount of Rp. 500,000.00 (five hundred thousand rupiahs) for the registration fee. According to Dewi as the Head of Creative and Innovative Industries, the general fee required for trademark registration according to Mrs Dewi as the Head of Creative and Innovative Industries is Rp. 1.000.000.000,00 (one million rupiah). Of the total cost assistance, the Department of Industry and Trade can only assist as many as approximately 20 (twenty) SMIs each year.

Mrs Dewi said that many SMIs want and are ready to be assisted in registering their trademarks. However, the budget is usually quite limited, so the local government cannot help all IKMs register their trademarks (Interview with Mrs Dewi, Head of Creative and Innovative Industry Section, 2021).

The long registration process is another obstacle for the Local Government of Kebumen Regency to speed up SMIs owning trademark rights. According to Mrs Dewi, the trademark registration process can take 2 – 2.5 years. The district government of Kebumen cannot speed things up because they do not have the authority to carry out the trademark registration process. The Kebumen Regency Government can only coordinate with the Ministry of Law and Human Rights, especially DJKI, as the institution that handles trademark registration.

The main obstacle for local governments is the absence of a legal basis at the district level to facilitate trademark registration for MSMEs. The Department of Industry and Trade is still using Law No. 3 of 2014 concerning Industry and Government Regulation No. 29 of 2018 concerning Industrial Empowerment. The absence of regional regulations that explain in detail how the role of the Kebumen Regency Government in assisting MSMEs to register trademarks causes the Kebumen Regency Regional Government not to have maximum assistance and a solid legal basis. Government Regulation No. 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises is also still not optimal in Kebumen Regency. A solid legal basis can overcome some technical obstacles and increase the existing aid budget. The community, in this case, MSME actors, also gets definite clarity through precise local regulatory legal products in facilitating MSME brand registration.

4 Conclusion

Based on this description, the conclusions can be drawn; 1). The primary influence is the existence of legal protection related to brands used by MSME actors in the Kebumen Regency. This protection has preventive measures to avoid legal problems related to brands operated by MSME actors. Trademark registration also affects the level of business competitiveness for MSME actors because the existence of brand rights owned by MSME actors can improve the quality of their business. MSMEs that have brand certificates can indirectly influence other business factors, such as the level of investor confidence to provide capital that can be used to develop the MSME business itself. 2). The excellent relationship between the local government of Kebumen Regency and MSMEs is a form of government awareness about the urgency of the brand. The agency that accompanies trademark registration makes full efforts so that MSME actors can get a trademark certificate and the impact from both a legal and economic perspective. This obstacle is a form of the MSME actors' ignorance regarding the urgency of the trademark registration itself. MSME actors are still unaware of the importance of trademark registration for the sustainability of the business they are running. Trademark registration is considered not to affect profits both materially and non-materially. Therefore, MSME actors assume that the urgency of trademark registration is not a priority

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