

PROSPECTS OF TRADEMARK REGISTRATION TO RECOVER THE ECONOMIC OF MSME ACTORS IN SERVICE SECTOR AFTER THE PANDEMIC

Dedi Jaya¹, Hari Sutra Disemadi²

¹Faculty of Law, Universitas Internasional Batam, Indonesia, 1951015.dedi@uib.edu

²Faculty of Law, Universitas Internasional Batam, Indonesia

ABSTRACT

MSMEs are businesses that can be run by all people who want to start a business with small capital. Q, MSMEs have strategic role in building Indonesian economy. However, the growth of MSMEs is experiencing a slump due to COVID-19. On March 11, 2020, WHO as a legal world health organization declared the COVID-19 as a pandemic. MSMEs have become solution to increase the welfare of Indonesian citizen, since the issue of welfare itself is not an easy to realize. To support MSMEs in increasing the welfare, it is necessary for the government to take action in pushing MSME actors to registrate their trademarks as part of intellectual property which is very important in the economic recovery. Based on these problems, this study uses non-doctrinal research methods to examine trademark regulation in Indonesia, the awareness of MSME actors on the importance of trademark protection, and the relation of trademark registration as an effort to recover the MSME economy after the pandemic. The result of this study indicates that the regulation regarding trademark protection is contained in Indonesian Trademark & Geographical Indication Law. Additionally, the study reveals that there are several MSME actors who aware that a brand must be protected because it is an intellectual property, but there are also MSME actors who do not aware about this issue. In fact, the urgency of trademark registration is considered to be the part of efforts in recovering the economy of MSMEs after the COVID-19 pandemic, this is because after registering the trademark, it automatically has economic value.

ARTICLE INFO

Keywords:

Economic Recovery;
MSMEs; Post Pandemic;
Trademark Protection

Cite this paper:

Jaya, D., & Disemadi, H. S. (2022, Desember). Prospects Of Trademark Registration To Recover The Economic Of MSMEs Actors In Service Sector After The Pandemic. *Widya Yuridika: Jurnal Hukum*, 5(2).

Scope Article

Economic and Business Law

INTRODUCTION

Micro, Small, and Medium Enterprises (MSME) can be run by all people who want to start a business with minimal/small capital. Nowadays, MSMEs have a strategic role in building Indonesian economy, particularly in economic growth and employment.¹ The growth of MSMEs will automatically increase the number of job opportunities and even

¹ Sarfiah, S. N., Atmaja, H. E., & Verawati, D. M. (2019). UMKM sebagai pilar membangun ekonomi bangsa. *Jurnal REP (Riset Ekonomi Pembangunan)*, 4(2), 137-146., p. 147.

create the new ones.² From 2018 to 2019, there were 1,271,528 units (1.98%) of MSMEs recorded. As the details, 1,251,130 units (1.97%) of Micro Enterprises, 15,547 units (1.99%) of Small Enterprises, and 4,763 units (7.85%) of Medium Enterprises.³ This data explains that MSMEs are productive businesses that need to be developed to support macro and micro economic development in Indonesia.⁴ The development of MSME also becomes a solution to poverty alleviation in Indonesia as can be seen from its large contribution in employment, MSMEs hire more than 99.45% of Indonesian labors and contribute around 30% to GDP (Gross Domestic Product). Because of the importance of MSMEs, it is necessary to make efforts to advance and develop them whose the main goal is to reach community welfare.⁵ This goal is in line with Indonesian commitment which is stated in the preamble of the 1945 Constitution of the Republic of Indonesia. Community welfare is not an easy thing to realize,⁶ therefore, it needs cooperation from all parties.

Nowadays, the growth of MSMEs is experiencing a slump due to the Covid-19. On March, 11, 2020, WHO as a legal world health organization declared Covid-19 as pandemic.⁷ This pandemic has been significantly affecting many sectors such as health, economy, social, law and politics in almost all countries including Indonesia.⁸ MSME is one of sectors that experiences the worst effects of Covid-19 and makes the actors have to temporarily close their businesses. This crisis directly causes serious risk where 50% of MSMEs do not survive.⁹ By 17th April 2020, there were 37.000 of MSME actors reported to *Kementerian Koperasi dan Usaha Kecil dan Menengah/KEMENKOPUKM* (Indonesian Ministry of Cooperatives and Small and Medium Enterprises) that they are experiencing Covid-19 effects.¹⁰ 56% of MSMEs actors reported a decrease in sales, 22% reported problems in financing and 15% reported problems in goods distribution.¹¹

Generally, MSMEs are owned by personal or business entities, in which the actors produce their own products, as well as services, and all of these products or services need legal protections,¹² one of them is trademark protection. Therefore, an MSME actor needs to put a brand to goods and/or services as a sign to distinguish them from other similar businesses. Base on this understanding, the usage of brands by MSMEs, especially in the service sector is intended to improve the quality of the services they offer. In this case, the

² Ismoyo, A. G., & Sari, E. D. P. (2021). Galeri UMKM Sebagai Upaya Pemulihan Kondisi Perekonomian Nasional Pasca Pandemi Covid 19. In *Prosiding National Seminar on Accounting, Finance, and Economics (NSAFE)* (Vol. 1, No. 5), p.196.

³ Kementerian Koperasi dan UKM Republik Indonesia. (2021). [Perkembangan Data Usaha Mikro, Kecil, Menengah \(Umk\) Dan Usaha Besar \(Ub\) Tahun 2018 - 2019](https://www.kemenkopukm.go.id/data-umkm). <https://www.kemenkopukm.go.id/data-umkm>. (Accessed on Januari 21, 2022).

⁴ Suci, Y. R. (2017). Perkembangan UMKM (Usaha mikro kecil dan menengah) di Indonesia. *Jurnal Ilmiah Cano Ekonomos*, 6(1), 51-58., p. 2.

⁵ Supriyanto. (2006). Pemberdayaan Usaha Mikro, Kecil, Dan Menengah (UMKM) Sebagai Salah Satu Upaya Penanggulangan Kemiskinan. *Jurnal Ekonomi Pendidikan*, 3(1), 1-6., p. 3.

⁶ Simatupang, T. H. (2017). Sistem Hukum Perlindungan Kekayaan Intelektual dalam rangka Meningkatkan Kesejahteraan Masyarakat. *Jurnal Penelitian Hukum De Jure*, 17(2), 195-208., hlm. 196

⁷ SUTRISNO, E. (2021). Strategi Pemulihan Ekonomi Pasca Pandemi Melalui Sektor UMKM dan Pariwisata. *Jurnal Kajian Lemhannas RI*, 9(1), 641-660., p. 642.

⁸ Susilawati, S., Falefi, R., & Purwoko, A. (2020). Impact of COVID-19's Pandemic on the Economy of Indonesia. *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences*, 3(2), 1147-1156., p. 1148.

⁹ Sugiri, D. (2020). Menyelamatkan usaha mikro, kecil dan menengah dari dampak pandemi Covid-19. *Fokus Bisnis: Media Pengkajian Manajemen dan Akuntansi*, 19(1), 76-86., p. 77.

¹⁰ Setiawan. (2020). Sebanyak 37.000 UMKM Terdampak Virus Corona. <https://money.kompas.com/read/2020/04/17/051200426/sebanyak-37.000-umkm-terdampak-viruscorona>. (Accessed on Januari 20, 2022).

¹¹ Thaha, A. F. (2020). Dampak covid-19 terhadap UMKM di Indonesia. *BRAND Jurnal Ilmiah Manajemen Pemasaran*, 2(1), 147-153., p. 149.

¹² Indrawati, S., & Setiawan, B. (2020). Upaya Peningkatan Kesadaran Hukum Perlindungan Produk UMKM di Kabupaten Kebumen Melalui Pendaftaran Merek. *Surya Abdimas*, 4(2), 37-43., p. 38.

brand is not just a name, it reflects self-esteem, experience and quality assurance of the services offered. The brand also reflects the level of consumer confidence.¹³ This shows how close the relationship between products and brands is in MSME sector. However, public is still not educated enough about the importance of a brand for the products/services they have.¹⁴ In addition to the lack of public education, economic factors in registration also become another factor that influences people's awareness about this issue, it is considered expensive. The intellectual property certificate is not easy to get instantly, it requires a certain amount of capital to get it.¹⁵ All of these factors make people do not aware about the importance of a brand as part of intellectual property.

The importance of brands as intellectual property in developing countries such as Indonesia is still not being taken seriously by the public, there are many problems arise such as imitation, counterfeiting, and even misuse of brands by other parties which lead to losses in business continuity run by business actors.¹⁶ However, the protection of a trademark in Indonesia has been regulated in Indonesian Law Number 20 of 2016 concerning Trademark and Geographical Indications. According to this law, a trademark as an intellectual asset for its owner must be registered to Indonesian Directorate General of Intellectual Property (in Indonesia: *DJKI*) of Indonesian Ministry of Law and Human Rights (in Indonesia: *KEMENKUMHAM*).¹⁷ This is intended to obtain trademark protection and also to minimize the occurrence of brand misuse by other parties that cause losses.¹⁸ The issues regarding the importance of trademark registration previously have been widely studied, including the research conducted by Medisita Nurfauziah Istiqmalia and Iwan Erar Joesoef, where it explains that the principle of 'the first to file system' applied in Indonesian Trademark Law and Geographical Indications is not the legal basis to protect trademarks that are registered first, but a well-known trademark that has been registered in the origin country and already has guaranteed legal protection.¹⁹ This issue was also discussed by Dyah Permata Budi Asri in her research which carried out in *Daerah Istimewa Yogyakarta/DIY* (one of cities in Indonesia). The result of this research shows that MSME actors have registered their brands to *DJKI* by the product names of Jogja Mark, 100% Jogja and Jogja Tradition.²⁰ Another study regarding this issue was conducted by Dyah Ochtorina Susanti, A'an Efendi and Nuzulia Kumala Sari in *Desa Patemon, Kecamatan Krejengan, Kabupaten Probolinggo* of East Java. The study reveals that the brand owners in the area consider trademark registration as something that is not important, the brand owners also do not worry if their trademarks used or even registered by others.²¹ The last research discussing about this issue was the research conducted by Prayoga Tayosa and Lili Naili Hidayah in *Desa Siulak Deras Mudik, Kecamatan Gunung Kerinci, Kabupaten Kerinci*, where the study explains several factors that caused product owners not to register their trademarks, they are: 1). Lack of public knowledge that comes from the lack of public awareness of the importance of trademark

¹³ Iswi, H. (2010). *Prosedur Mengurus HAKI (Hak Atas Kekayaan Intelektual) Yang Benar. Membahas Secara Runtut dan Detail tentang Tata Cara Mengurus Hak Atas Kekayaan Intelektual*. Pustaka Yustisia: Yogyakarta.

¹⁴ Churul, A., D., Natamiharja, R., & Sujadmiko, B. (2021). Edukasi Pendaftaran Merek Kepada Perangkat Desa dan Pelaku UMKM Menuju Pemulihan Ekonomi Pasca Covid-19 di Desa Sawojajar Kabupaten Lampung Utara. *Journal of Technology And Social for Community Service (JTSCS)*, 2(2), 96-101., p. 97.

¹⁵ Asri, D. P. B. (2020). Perlindungan Hukum Hak Kekayaan Intelektual Bagi Produk Kreatif Usaha Kecil Menengah Di Yogyakarta. *Jurnal Hukum Ius Quia Iustum*, 27(1), 130-150., p. 132.

¹⁶ Budi Maulana, I. (2000). *Pelangi HaKI dan anti monopoli. Indonesia: Pusat Studi Hukum, Fakultas Hukum, UII Yogyakarta*.

¹⁷ Indrawati, S., & Setiawan, B. (2020). *Loc. Cit.*, p. 38.

¹⁸ Indrawati, S., & Setiawan, B. (2020). *Ibid.*, p. 39.

¹⁹ Istiqmalia, M. N., & Joesoef, I. E. (2021). Itikad Baik dalam Pendaftaran Merek: Studi Perlindungan Hukum Pemilik Merek Terkenal di Indonesia. *Jurnal Penegakan Hukum Indonesia*, 2(3), 406-426., p. 418.

²⁰ Asri, D. P. B. (2020). *Ibid.*, p. 139.

²¹ Susanti, D. O., & Sari, N. K. (2019). Perlindungan Hukum Produk Makanan dan Minuman Hasil Usaha Mikro Kecil Menengah di Desa Patemon Kecamatan Krejengan Kabupaten Probolinggo dengan Pendaftaran Merek. *QISTIE*, 11(2), p. 247.

registration and not knowing the losses that will appear later; 2). The cost becomes the reason for not registering a trademark, because it is considered quite expensive.²²

Referring to the descriptions and publications of previous research results, there is a similarity in the research themes, namely the importance of brands as intellectual property. However, this research will more focus on post-pandemic economic recovery through trademark registration as intellectual property of MSME particularly in the therapeutic service sector. This research will examine and discuss 3 main things. First, it will discuss the regulation of MSME trademark in Indonesia; Second, examine the knowledge of MSME actors on trademark protection particularly in service sector; and Third, reviewing and analyzing trademark registration as efforts to recover the economy of MSMEs after the pandemic. The results of this study are expected to enrich the legal literature, especially in the field of intellectual property, and also to contribute scientifically for MSME actors to understand more about the importance of trademark registration as part of their economic recovery efforts after the COVID-19 pandemic.

METHODS

This study uses a type of socio legal research that comes from a concept that the law is not only seen as a merely normative rules, but is also seen as part of a process in people's lives.²³ This type of socio legal research is carried out directly based on the analysis of how the law run in community. The data in the study were obtained directly and indirectly. The data obtained directly are primary data in the form of interviews with several informants from MSME actors in Batam, especially those in the field of therapy services, about the importance of the brands they use as the important part of intellectual property. In addition to primary data, this study also uses Indonesian Trademark Law and Geographical Indications as the secondary data. The secondary data was collected by literature study.

RESULTS AND DISCUSSION

Regulation of Trademarks in Indonesian Trademark Law and Geographical Indications

Intellectual property is a product of human thought poured into a form of creation or invention. This creation or invention is attached to a right that comes from thought.²⁴ The right is used or exploited by humans in improving their welfare.²⁵ The intellectual property rights themselves have economic value that comes from intellectual creativity.²⁶ Therefore, it needs a regulation to protect this creativity. In Indonesia, intellectual property is part of positive law as a consequence of the ratification of international conventions, which include the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works.²⁷ Due to these consequences, Indonesia made a provision regarding trademarks after independence, starting from Indonesian Law Number 21 of 1961 concerning Corporate Trademarks and Commercial Trademarks, which was later amended by Indonesian Law Number 19 of 1992 concerning Trademarks. After Indonesia was bound by the Trade Related Aspects of Intellectual Property Rights (TRIPs

²² Tayosa, P., & Hidayah, L. N. (2020). Pendaftaran Merek Dagang Produk Sirup Kayu Manis di Kabupaten Kerinci. *Zaiken: Journal of Civil and Business Law*, 1(2), 219-236., p. 230.

²³ Ali Z. (2009). *Metode Penelitian Hukum*. Jakarta: Sinar Grafika., p. 13.

²⁴ Ayunda, R., & Maneshakerti, B. (2021). Perlindungan Hukum Atas Motif Tradisional Baik Batam Sebagai Kekayaan Intelektual. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 9(3), 822-833., p. 823.

²⁵ Balqis, W. G. (2021). Perlindungan Merek sebagai Hak Kekayaan Intelektual: Studi di Kota Semarang, Indonesia. *Journal of Judicial Review*, 23(1), 41-56., p. 42.

²⁶ Al-Fatih, S. (2021). Analisis Keterhubungan Konsep Merek dengan Nama Domain: Kajian Kekayaan Intelektual di Indonesia. *Journal of Judicial Review*, 23(2), 257-264., p. 259.

²⁷ Handoko D., (2015). *Hukum Positif mengenai Hak Kekayaan Intelektual di Indonesia (Jilid I)*. Pekanbaru: Hawa dan Ahwa.

Agreement), the Law Number 19 of 1992 was changed to Law Number 14 of 1997 to adjust the provisions of the TRIPs agreement, then changed again to Law Number 15 of 2001. Years later, it was changed to Law Number 20 of 2016, and lastly changed to Law Number 11 of 2020 concerning Job Creation.²⁸ Judging from the establishment history of Indonesian trademark regulation, it shows that brands as intellectual property have existed in Indonesian people since long time ago to today.

In accordance with previous explanation, where Indonesia has made several laws and regulations to protect intellectual property, especially regarding brands as a consequence of being bound by the TRIPs Agreement, Indonesia is obliged to adjust the existing law with the provisions that have been regulated in the international agreement.²⁹ Essentially, the brand is one part of intellectual property that must be protected, in addition to copyrights, patents, industrial designs, integrated circuit layout designs, trade secrets, plant varieties, and geographical indications.³⁰ The important purpose of the establishment of these rules can be noticed from the function of the brand itself as a distinguishing sign between goods or services from one another.³¹ By looking at this function, Article 1 paragraph 1 of Indonesian Trademark Law and Geographical Indications explains that a brand is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and/or or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by persons or legal entities in trading activities. Based on this definition, a brand is meant to emphasize the quality of goods or services, it has power as a sign to distinguish similar goods or services produced by other people to guarantee the products based on their quality in the activities of trading goods or services.³²

According to Dermawan, the functions of a brand are divided into three, they are the source indicator function, the quality indicator function and the suggestive function. The source indicator function is intended to indicate that a product is legally sourced from a business unit and therefore also serves to provide an indication that the product is professionally manufactured. The quality indicator function means that the brand serves as a guarantee of quality, especially in relation to prestigious products. The suggestive function is intended to give the impression to become a collector of that product.³³ This brand functions make trademark protection becoming very important. Seeing from the function of a brand as a differentiator, a brand owned by someone is not supposed to be identical with someone else's brand.

Indonesia adheres a constitutive system in terms of obtaining trademark rights through trademark registration which is in accordance with Article 1 paragraph 5 of Indonesian Trademark Law and Geographical Indications. The article stated that a right to a trademark is an exclusive right granted by the state to the owner of a registered trademark for a certain period of time to use the trademark himself or give permission to other parties to use it. This means that the person who registers the trademark gets the legal protection and the right on the trademark. According to Article 1 paragraph 8 of Indonesian Law on Trademark and Geographical Indications, to obtain trademark protection, a brand owner has to submit a registration to Indonesian Minister by attaching several requirements required in Article 4 of Indonesian Law on Trademark and Geographical Indications. A registered

²⁸ Bafadhal, T. (2018). Perlindungan Hukum terhadap Merek Terkenal di Indonesia. *Undang: Jurnal Hukum*, 1(1), 21-41., p. 23.

²⁹ Purwaka T., H., (2017). *Perlindungan Merek*. Jakarta: Yayasan Pustaka Obor Indonesia., hlm. 16.

³⁰ Bafadhal, T. (2018). *Ibid.*, p. 25.

³¹ Marpaung, M. (2019) Prinsip-prinsip Hak Atas Kekayaan Intelektual dalam Ketentuan Hak Merek, *SOL JUSTISIO*, 1(2), 148-156., p. 152.

³² Yessiningrum, W. R. (2015). Perlindungan Hukum Indikasi Geografis Sebagai Bagian Dari Hak Kekayaan Intelektual. *Jurnal IUS Kajian Hukum dan Keadilan*, 3(1), p. 44.

³³ Bafadhal, T. (2018). *Ibid.*, p. 27.

trademark has a protection period of 10 years and can be extended by applying for an extension, this is in accordance with Article 35. A registered trademark has received legal certainty to be protected, so when other parties try to use the same brand on the same kind goods or services, the registration will be rejected by the Trademark Office because the brand does not meet the material and formal requirements.³⁴ If the registered trademark is used by another party without the owner's consent, then the trademark owner can file a lawsuit to Indonesian Commercial Court due to the similarity or imitation of the trademark.

The Awareness of MSME Actors in Batam on the Importance of Trademark Protection

The trademark protection as part of intellectual property has a very important meaning in the business world such as MSMEs.³⁵ In the business world, brands need definite protection for products or services and anything related to the results of their business.³⁶ Brands are very important for MSME actors, because they are the key in business competition as well as the strength in the development of MSMEs themselves. Therefore, the awareness of trademark protection as part of intellectual property for brand owners is useful to maintain and protect the sustainability of MSME actors in running their business. In addition, MSMEs are part of the driving force of the national economy and have a very important role in economic development.³⁷

Referring to the issue regarding the importance of trademark protection as the key to strength over MSMEs, the second discussion in this study is examining the awareness of MSME actors on the importance of protecting their business brands.³⁸ This research, which was conducted in Batam, refers to MSMEs in the sector of therapeutic services. It was found that several MSME actors in the therapy sector realized that the brand used was part of intellectual property and needs to be protected, but there were also several MSME actors in this sector who did not know that the brand used was important for their business. This research was conducted by selecting three informants as perpetrators of MSME in the therapeutic sector. The first informant in this study was Mrs. Jumiatin as a MSME actor in the field of therapy services and the owner of PULSETRON SS 2000 & HAPPY DREAM.

Base on the interview with Mrs. Jumiatin as the owner of PULSETRON SS 2000 & HAPPY DREAM on December 15, 2021, it shows that HAPPY DREAM is a micro scale business according to Government Verdict Number 7 of 2021 concerning the Ease, Protection, and Empowerment of Cooperatives and MSMEs, because the annual sales of this business are at most Rp. 2,000,000,000; (two billion rupiah). The net income of the HAPPY DREAM in each year is around Rp. 180,000,000 (one hundred and eighty million rupiah) up to Rp. 240,000,000 (two hundred and forty million rupiah). Furthermore, Mrs. Jumiatin as the first informant also said that the brand is an important part in the business world because it becomes a differentiator from similar services run by others and also as an identity. Mrs. Jumiatin stated that the brand HAPPY DREAM is the result of her creativity that must be protected. The protection of the brand has been carried out and proven by the registration of the brand HAPPY DREAM used by Mrs. Jumiatin to *DJKI*. This is evidenced by certificate Number D002009024623. The reason for this trademark registration is to prevent other business actors from copying her brand. The brand of HAPPY DREAM can be seen in Picture 1.

³⁴ Bafadhal, T. (2018). *Ibid.*, p. 42.

³⁵ Shaleh, A. I., & Trisnabilah, S. (2020). Perlindungan Hukum Terhadap Persamaan Merek Untuk Barang Atau Jasa Yang Sejenis: Studi Merek Bossini. *Journal of Judicial Review*, 22(2), 291-300., p. 299.

³⁶ Asri, D. P. B. (2020). *Ibid.*, p. 135.

³⁷ Hadiyati, N. (2022). Legal Implications of MSME Regulation on The Conditionally Unconstitutional Job Creation Law. *Jurnal Komunikasi Hukum (JKH)*, 8(1), 291-306., p. 293.

³⁸ Amboro, F. Y. P. (2019). Problematika Pendaftaran Merek Untuk Usaha Mikro, Kecil dan Menengah di Kota Batam. *Journal of Judicial Review*, 21(1), 1-14., p. 2.

Picture 1: One of MSME Brands, HAPPY DREAM

Source: HAPPY DREAM (MSME)

The next informant was Mr. Ahmad Sunaryo, as the owner of Greensyifa Cupping Batam. Base on the interview conducted on December 25, 2021, it is known that Greensyifa Cupping Batam is a therapy service business that not only undergoing cupping therapy, but also treats several complaints including stroke, cholesterol, gout and asthma. For the income, the informant claimed to get Rp. 120,000,000; (one hundred and twenty million rupiah) up to Rp. 190,000,000; (one hundred and ninety million rupiah) per year. By looking at the income, based on Government Verdict Number 7, Greensyifa Cupping Therapy service in Batam is included in the criteria for Micro Business, where the annual sales results are at most Rp. 2,000,000,000; (two billion rupiah).

Mr. Ahmad Sunaryo as the second informant in this study revealed that he did not know what intellectual property is. However, after being traced through interviews, it was found that the informant has his own brand for his business. According to him, brand is something important in a business, because it is the identity and differentiator between similar services in Batam. In spite of that, so far Greensyifa Bekam Batam has not been registered to *DJKI* to obtain legal protection. The informant stated that the reason for not registering the brand was because he believed that the brand would not be imitated by other people to open up a similar service. The informant also did not know the importance or function of trademark registration. The Brand Greensyifa Cupping Batam can be seen in Picture 2.

Picture 2: The brand of Greensyifa Bekam Batam

Source: Greensyifa Cupping Batam

The last informant was Mr. Andriyansah as the owner of a therapy business with the brand THERAPIST THE SECRET OF LIFE. Base on the result of the interview on December 28, 2021, it is known that this business also opens a special training service for therapy. The interview conducted with Mr. Andriyansyah regarding income reveals that he gets Rp. 150,000,000 (one hundred and twenty million rupiah) up to Rp. 200,000,000 (one hundred and eighty million rupiah) per year. Looking at the income, THERAPIST THE SECRET OF LIFE can be categorized as Micro Business, this is based on Government Verdict Number 7 of 2021 which regulates the criteria for MSMEs, where a business is categorized as a Micro Business if its annual sales are maximum of Rp. 2,000,000,000; (two billion rupiah). As the owner of THERAPIST THE SECRET OF LIFE, the informant knows very well what intellectual property is and what a brand is. This knowledge is obtained through training activities or technical guidance for MSMEs organized by the government. The brand THERAPIST THE SECRET OF LIFE has been officially registered to *DJKI*. This is proven by a certificate number DID2019036922. Confirmed by the informant, this registration is to protect his trademark. Furthermore, the owner also stated that the trademark must be registered and becomes the most important part of the service business he undertakes. The brand of THERAPIST THE SECRET OF LIFE can be seen in Picture 3.

Picture 3: The trademark of THERAPIST THE SECRET OF LIFE



Source: THERAPIST THE SECRET OF LIFE

Based on the interviews conducted with several MSME actors in therapeutic service sector, it was found that the owner of Greensyifa Bekam Batam awares that his brand is an identifier or differentiator between similar businesses, but so far, he has not registered the brand yet. The owner does not worry if his brand potentially imitated by others, this is because the owner believes that his customers will not be wrong in making choice. In contrast to the two owners of brand HAPPY DREAM and brand THERAPIST THE SECRET OF LIFE, where the owners are aware of the importance of trademark protection so that they registered them to *DJKI*. This registration is a preventive measure in protecting an intellectual property in this case a trademark. A brand is not only an identifier or differentiator, but also an important part of intellectual property that must be protected.

Prospect of Trademark Registration as an Effort in Recovering the Economy of MSMEs after COVID-19 Pandemic

During the current COVID-19 pandemic, MSMEs are at the forefront in dealing with economic shocks.³⁹ The economic crisis situation at the moment has been slowing the economic growth of MSMEs due to government policies regarding restrictions on movement of the community. To overcome this situation, the government needs to pay attention, since MSME is the largest contributor to GDP and it is capable to create new jobs.⁴⁰ In dealing with situation like this, one solution that must be done is to rely on the intellectual property of the MSME itself, by registering the trademark. The brand needs to be protected because it contains intellectual property that has economic value for the owner of the brand.⁴¹ In addition to have economic value, brands also have function to distinguish the quality of goods or services owned by MSME actors. Therefore, in order to obtain legal protection, the brand must be registered to *DJKI* first.⁴² By registering the brand to *DJKI*, MSME actors can restore their economy and gain legal valuable trademark for the business.

Registered trademark play an important role in improving the economy of MSME actors, with the registration of these trademarks, MSME actors can help the government in improving the country's economy, especially after the COVID-19 pandemic.⁴³ By registering the trademark, it will increase the productivity and income of the MSME itself, this is because the registered trademarks have economic value that can support the economy of MSME owners and become special attractions for the community in Batam. With the existence of Indonesian Law on Trademark and Geographical Indications, it is hoped that the public will be aware that the brands they use are something that need to be protected. By looking at the important purpose of trademark registration, it has become a must for MSME actors to register their trademarks to *DJKI* which is not only to get legal protection, but also to obtain economic value for the trademarks they have.

CONCLUSION

As the result of this study, it can be concluded that MSME is one of the businesses that has excellent strength in growing the national economy, because MSMEs can open new job opportunities which can increase people's income. Running MSMEs itself cannot be separated from brands as part of intellectual property. Matters regarding the importance of brands have been firmly regulated in Indonesian Trademark Law and Geographical Indications. This study also reveals that there are still several MSMEs in the therapeutic service sector who are reluctant to register their brands. In fact, trademarks are very important for MSME actors because registering their trademarks means obtaining legal protection for the trademarks themselves. The level of awareness of MSME actors about the importance of a brand, causes the actors to protect their brands through trademark registration to *DJKI* as preventive efforts. The more the perpetrators understand the importance of a brand, the higher the efforts to protect the brand. The economic recovery of MSME actors after the COVID-19 pandemic can be overcome by registering their brands as part of intellectual property. Trademarks have economic value that can increase the productivity and income of MSMEs themselves.

³⁹ Thaha, A. F. (2020). Dampak covid-19 terhadap UMKM di Indonesia. *BRAND Jurnal Ilmiah Manajemen Pemasaran*, 2(1), 147-153., p. 148.

⁴⁰ Bahtiar, R. A. (2021). Dampak Pandemi Covid-19 Terhadap Sektor Usaha Mikro, Kecil, Dan Menengah Serta Solusinya. *Info Singkat*, 13(10), 19-24., p. 19.

⁴¹ Fajar, M., Nurhayati, Y., & Ifrani, I. (2018). Iktikad Tidak Baik dalam Pendaftaran dan Model Penegakan Hukum Merek di Indonesia. *Jurnal Hukum Ius Quia Iustum*, 25(2), 219-236., p. 220.

⁴² Syafira, V. T. (2021). Perlindungan Hukum Bagi Pemegang Hak Merek Superman Terhadap Pelanggaran Merek. *Jurnal Suara Hukum*, 3(1), 85-114., hlm. 88.

⁴³ Suhargon, R. (2019). Analisa Hukum Terhadap Pentingnya Pendaftaran Hak Merek Dagang Bagi UMKM Dalam Rangka Meningkatkan Perekonomian Rakyat (Berdasarkan Undang-Undang No. 20 Tahun 2016 tentang Hak Merek dan Indikasi Geografis). *Jurnal Ilmiah Muqoddimah: Jurnal Ilmu Sosial, Politik dan Humaniora*, 3(2), 67-73., hlm. 69.

REFERENCES

- Al-Fatih, S. (2021). Analisis Keterhubungan Konsep Merek dengan Nama Domain: Kajian Kekayaan Intelektual di Indonesia. *Journal of Judicial Review*, 23(2), 257-264.
- Ali Z. (2009). *Metode Penelitian Hukum*. Jakarta: Sinar Grafika.
- Amboro, F. Y. P. (2019). Problematika Pendaftaran Merek Untuk Usaha Mikro, Kecil dan Menengah di Kota Batam. *Journal of Judicial Review*, 21(1), 1-14.
- Asri, D. P. B. (2020). Perlindungan Hukum Hak Kekayaan Intelektual Bagi Produk Kreatif Usaha Kecil Menengah Di Yogyakarta. *Jurnal Hukum Ius Quia Iustum*, 27(1), 130-150.
- Ayunda, R., & Maneshakerti, B. (2021). Perlindungan Hukum Atas Motif Tradisional Baik Batam Sebagai Kekayaan Intelektual. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 9(3), 822-833.
- Bafadhal, T. (2018). Perlindungan Hukum terhadap Merek Terkenal di Indonesia. *Undang: Jurnal Hukum*, 1(1), 21-41.
- Bahtiar, R. A. (2021). Dampak pandemi covid-19 terhadap sektor usaha mikro, kecil, dan menengah serta solusinya. *Info Singkat*, 13(10), 19-24.
- Balqis, W. G. (2021). Perlindungan Merek sebagai Hak Kekayaan Intelektual: Studi di Kota Semarang, Indonesia. *Journal of Judicial Review*, 23(1), 41-56.
- Budi Maulana, I. (2000). *Pelangi HaKI dan anti monopoli*. Indonesia: Pusat Studi Hukum, Fakultas Hukum, UII Yogyakarta.
- Churul, A., D., Natamiharja, R., & Sujadmiko, B. (2021). Edukasi Pendaftaran Merek Kepada Perangkat Desa dan Pelaku UMKM Menuju Pemulihan Ekonomi Pasca Covid-19 di Desa Sawojajar Kabupaten Lampung Utara. *Journal of Technology And Social for Community Service (JTSCS)*, 2(2), 96-101.
- Fajar, M., Nurhayati, Y., & Ifrani, I. (2018). Iktikad Tidak Baik dalam Pendaftaran dan Model Penegakan Hukum Merek di Indonesia. *Jurnal Hukum Ius Quia Iustum*, 25(2), 219-236.
- Hadiyati, N. (2022). Legal Implications of MSME Regulation on The Conditionally Unconstitutional Job Creation Law. *Jurnal Komunikasi Hukum (JKH)*, 8(1), 291-306.
- Handoko D., (2015). *Hukum Positif mengenai Hak Kekayaan Intelektual di Indonesia* (Jilid I). Pekanbaru: Hawa dan Ahwa.
- Indrawati, S., & Setiawan, B. (2020). Upaya Peningkatan Kesadaran Hukum Perlindungan Produk UMKM di Kabupaten Kebumen Melalui Pendaftaran Merek. *Surya Abdimas*, 4(2), 37-43.
- Ismoyo, A. G., & Sari, E. D. P. (2021). Galeri UMKM Sebagai Upaya Pemulihan Kondisi Perekonomian Nasional Pasca Pandemi Covid 19. In *Prosiding National Seminar on Accounting, Finance, and Economics (NSAFE)* (Vol. 1, No. 5).
- Istiqmalia, M. N., & Joesoef, I. E. (2021). Itikad Baik dalam Pendaftaran Merek: Studi Perlindungan Hukum Pemilik Merek Terkenal di Indonesia. *Jurnal Penegakan Hukum Indonesia*, 2(3), 406-426.
- Iswi, H. (2010). *Prosedur Mengurus HAKI (Hak Atas Kekayaan Intelektual) Yang Benar. Membahas Secara Runtut dan Detail tentang Tata Cara Mengurus Hak Atas Kekayaan Intelektual*. Pustaka Yustisia: Yogyakarta.

- Kementrian Koperasi dan UKM Republik Indonesia. (2021). Perkembangan Data Usaha Mikro, Kecil, Menengah (Ukm) dan Usaha Besar (Ub) Tahun 2018-2019. <https://www.kemenkopukm.go.id/data-umkm>. (Accessed on Januari 21, 2022).
- Marpaung, M. (2019). Prinsip-prinsip Hak Atas Kekayaan Intelektual dalam Ketentuan Hak Merek, *SOL JUSTISIO*, 1(2), 148-156.
- Purwaka T., H., (2017). *Perlindungan Merek*. Jakarta: Yayasan Pustaka Obor Indonesia.
- Sarfiah, S. N., Atmaja, H. E., & Verawati, D. M. (2019). UMKM sebagai pilar membangun ekonomi bangsa. *Jurnal REP (Riset Ekonomi Pembangunan)*, 4(2), 137-146.
- Setiawan. (2020). Sebanyak 37.00 UMKM Terdampak Virus Corona. <https://money.kompas.com/read/2020/04/17/051200426/sebanyak-37.000-umkm-terdampak-viruscorona>. (Accessed on Januari 20, 2022).
- Shaleh, A. I., & Trisnabilah, S. (2020). Perlindungan Hukum Terhadap Persamaan Merek Untuk Barang Atau Jasa Yang Sejenis: Studi Merek Bossini. *Journal of Judicial Review*, 22(2), 291-300.
- Simatupang, T. H. (2017). Sistem Hukum Perlindungan Kekayaan Intelektual dalam rangka Meningkatkan Kesejahteraan Masyarakat. *Jurnal Penelitian Hukum De Jure*, 17(2), 195-208.
- Suci, Y. R. (2017). Perkembangan UMKM (Usaha mikro kecil dan menengah) di Indonesia. *Jurnal Ilmiah Cano Ekonomos*, 6(1), 51-58.
- Sugiri, D. (2020). Menyelamatkan usaha mikro, kecil dan menengah dari dampak pandemi Covid-19. *Fokus Bisnis: Media Pengkajian Manajemen dan Akuntansi*, 19(1), 76-86.
- Suhargon, R. (2019). Analisa Hukum Terhadap Pentingnya Pendaftaran Hak Merek Dagang Bagi UMKM Dalam Rangka Meningkatkan Perekonomian Rakyat (Berdasarkan Undang-Undang No. 20 Tahun 2016 tentang Hak Merek dan Indikasi Geografis). *Jurnal Ilmiah Muqoddimah: Jurnal Ilmu Sosial, Politik dan Humaniora*, 3(2), 67-73.
- Supriyanto. (2006). Pemberdayaan Usaha Mikro, Kecil, Dan Menengah (UMKM) Sebagai Salah Satu Upaya Penanggulangan Kemiskinan. *Jurnal Ekonomi Pendidikan*, 3(1), 1-16.
- Susanti, D. O., & Sari, N. K. (2019). Perlindungan Hukum Produk Makanan dan Minuman Hasil Usaha Mikro Kecil Menengah di Desa Patemon Kecamatan Krejengan Kabupaten Probolinggo dengan Pendaftaran Merek. *QISTIE*, 11(2), 241-256.
- Susilawati, S., Falefi, R., & Purwoko, A. (2020). Impact of COVID-19's Pandemic on the Economy of Indonesia. *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences*, 3(2), 1147-1156.
- SUTRISNO, E. (2021). Strategi Pemulihan Ekonomi Pasca Pandemi Melalui Sektor UMKM dan Pariwisata. *Jurnal Kajian Lemhannas RI*, 9(1), 641-660.
- Syafira, V. T. (2021). Perlindungan Hukum Bagi Pemegang Hak Merek Superman Terhadap Pelanggaran Merek. *Jurnal Suara Hukum*, 3(1), 85-114.
- Tayosa, P., & Hidayah, L. N. (2020). Pendaftaran Merek Dagang Produk Sirup Kayu Manis di Kabupaten Kerinci. *Zaaken: Journal of Civil and Business Law*, 1(2), 219-236.
- Thaha, A. F. (2020). Dampak covid-19 terhadap UMKM di Indonesia. *BRAND Jurnal Ilmiah Manajemen Pemasaran*, 2(1), 147-153.

Yessiningrum, W. R. (2015). Perlindungan Hukum Indikasi Geografis Sebagai Bagian Dari Hak Kekayaan Intelektual. *Jurnal IUS Kajian Hukum dan Keadilan*, 3(1). 42-53.