

Collective Trademark as an Alternative to Shared Trademark Protection for Micro, Small and Medium Enterprises in Indonesia

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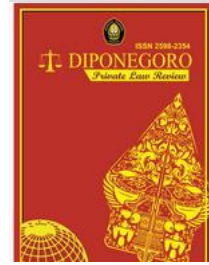
ABSTRACT

Collective trademark regulation and collective trademark registration procedures in Indonesia are an important part of the legal framework that seeks to protect and promote groups of producers or service providers belonging to associations or similar groups. At the regulatory level, Indonesia has issued Trademark Law No. 20 of 2016 which includes provisions regarding Collective Trademarks. The collective trademark registration procedure involves applying to the Directorate General of Intellectual Property (DJHKI) and complying with the requirements set by the regulations. However, there are several disadvantages to this system. The use of Collective Trademarks has been identified as a potential tool to protect and advance Micro, Small and Medium Enterprises (MSMEs) in Indonesia. A collective mark is a type of trademark used by members of a group or association of manufacturers or service providers to identify products or services manufactured or provided by members of that group. Along with rapid economic growth and increased competition in the market, MSMEs in Indonesia face major challenges in protecting their trademarks. This article investigates the legal framework governing Collective Trademarks in Indonesia, and identifies weaknesses.

Keywords: Trademark, Business, Indonesia

INTRODUCTION

Micro enterprises, both small and medium enterprises in Indonesia have provided evidence of how important the role is in terms of supporting

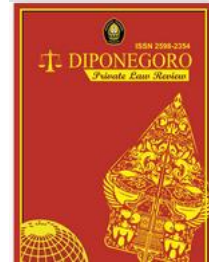
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the country's economy. This is clearly witnessed and felt by the people of Indonesia, during the monetary crisis often occurs many large companies one by one go out of business but only MSMEs are still standing in running their businesses. With this experience, the state continues to make improvements for MSMEs to further develop their potential to compete globally and more broadly and keep up with the times.

In this era of globalization, an economy that can develop rapidly causes the scale of investment in the scope of industry and marketing is no longer limited to the national market, but the unfortunate thing is that there are still few Indonesian MSME players who expand their business reach to foreign levels. This happens and can be seen from the lack of export activities carried out. There are social factors that increasingly require MSMEs to have legal protection for Intellectual Property Rights, one of which is Trademark Rights. Trademark as a vital thing and intellectual work that is very closely related to economic activity.

Business fields that are proven to be able to develop and be consistent in the economy are none other than the MSME sector were based on data obtained by the Ministry of Cooperatives and Small and Medium Enterprises that the number of MSMEs in Indonesia continues to increase. The consistent development of MSMEs cannot be separated from the reality that MSMEs are a place for the creation of productive jobs. On the one hand, workers in MSMEs do not need a lot of capital and certain requirements such as education, special skills or experience because MSMEs are a business that has the nature of work and uses makeshift technology. Therefore, it is necessary to develop MSMEs to strengthen the local economy for the community. MSMEs can make a real contribution to the community's economy because they are able to directly touch small communities.

But in general, people still have a low level of awareness of trademark registration of their products, this is due to the lack of public knowledge of the losses that might come if the products they have are plagiarized by others. Responding to the low level of public awareness regarding the registration of this mark, Natanegara said that "one of the biggest factors resulting in low public interest in IP rights is due to the lack

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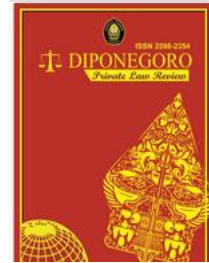
of education about the importance of registering IP rights and complicated and complicated bureaucratic processes.

In 2017 MSME trademark registrants were more than the number registering MSME service marks, but in 2018 trademark registrants decreased while MSME service mark registrants increased compared to the previous year, in 2019 both trademarks and service marks decreased in the number of registrants. Looking at the Collective Trademark since the enactment of law number 20 of 2016, no MSME has registered their business with a Collective Trademark.

In the current era, the wider globalization in the field of trade in goods and services causes business competition not only within the country but also between countries. This requires trademark protection for domestic products and even for MSME products. Here, the role of the trademark is very important, especially in maintaining unhealthy business competition. An alternative to trademark protection is to develop a shared trademark or commonly called a Collective Trademark. The rights to this trademark are still rarely used properly by MSME actors in this country.

This Collective Trademark will help MSME players to remain competitive with the ASEAN economic community, the existence of the ASEAN economic community is also a good opportunity for marketing MSME products because of its expanding market share. Whether or not Indonesian MSMEs are able to compete in the global market is not only determined by product quality but also there must be deep planning, because quality is not only in the content but also lies in the trademark or trademark.

The lack of interest of trademark registrants can also be indicated as weak law enforcement against IPR in Indonesia. MSME problems that are naturally responded to by local governments that have many MSMEs. MSMEs will also compete in the ASEAN economic community. The existence of MSMEs as a support for the nation's economy should be developed. Efforts to develop the economic potential of MSMEs should also receive full support with legal policies that favor MSME actors and are accompanied by compliance with MSME actors to applicable legal instruments.

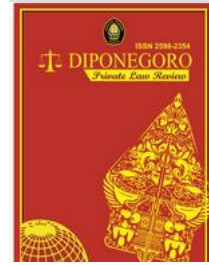
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Judging from the background of the problem, problem identification, and limitation of the problems that have been described, the core problem of this thesis research is that there are still many MSME actors who do not have trademark rights to the products or services they produce, so the researcher emphasizes the research problem with the following research questions: (1) how is the collective trademark regulation and collective trademark registration procedure in Indonesia and what are the weaknesses? (2) what are the factors that hinder the use of Collective Trademarks for MSME actors in Indonesia.

After carrying out analysis and comparison related to previous research, there are several similarities in the context of the discussion with other research, but the differences found are fundamental to the research problem so that it means there are differences in points of view and conclusions. Research from Hafid Zakariya, Nurul Hidayah, examines and discusses the legal instruments that the government is pursuing for micro, small and medium enterprises through collective brand registration in order to prepare micro, small and medium enterprises that have competitiveness. The difference in the research is the specific discussion regarding the urgency of collective brand ownership for MSMEs. Research from Nanda Ferdianti, analyzes regulations related to brands but in general, explains the legal protection of brands and the need for government outreach to business actors. The difference seen in terms of the article the author is writing is that it discusses the collective brand specifically for MSMEs and their role in alleviating poverty in Indonesia. Research from Zhetyo Nyxedanovya further analyzes collective rights regulations based on geographical indications in accordance with law number 20 of 2016. The difference is that it discusses the benefits of legal protection that MSMEs get from collective brands and the benefits of industrial development.

METHOD

This research method uses a normative juridical (doctrinaire) literature method, namely by research through literature studies (Library Research) or can also be said as document studies (Documentary Research).



In this study the main source used by the author is Data, which in this case the data used is Secondary Data (library materials).

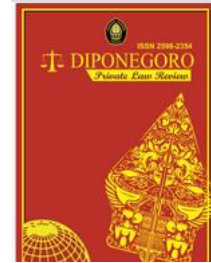
RESULTS AND DISCUSSIONS

Arrangements, Registration Procedures And Weaknesses Of Collective Marks

Collective marks are regulated in the Law of the Republic of Indonesia Number 20 of 2016 concerning Trademarks and Geographical Indications and based on article 1 number 4 collective marks are marks used on goods and services with the same characteristics such as nature, general characteristics, and quality. Collective marks are traded by several people or legal entities together to distinguish them from other similar goods and/or services. Collective trademarks are generally owned by associations, cooperatives or associations whose members can use the mark to market their products. In other words, collective marks emphasize the membership of an association or association as the party entitled to use the mark. The association or association determines a set of criteria for the use of marks by its members such as general characteristics or quality of goods or services (Masnun, 2019).

The use of Collective Trademarks can develop domestic products, as well as develop the potential of certain regions in increasing regional income, especially in increasing the empowerment of MSMEs. However, Collective Trademarks require careful management by paying attention to the quality and quality of the products to be issued to be able to meet predetermined standards simultaneously. This aims to avoid disappointment and lack of product trust from consumers.

Collective use of marks includes written rules of use drawn up and signed by the owner of the mark. For collective trademark registration requests, a completeness check is carried out which is basically almost the same as the requirements for trademark registration requests in general, but this mark is only used together. An application for registration of a trademark or service mark as a collective mark can only be accepted if in the application it is clearly stated that the mark is used as a collective mark.



Collective trademark registration is intended to provide a foundation of effective legal protection to prevent various violations that harm various parties such as plagiarism, piracy, and trademark imitation (Fishman, 2018). Registered trademarks have a Distictive Power, with which the trademark embodies certain characteristics of identity and individuality that distinguish it from the ownership of others.

Registration Procedure

Based on article 46 of Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Geographical Indications, it is stated that applications for registration of Collective Marks can only be accepted if in the Application it is clearly stated that the Mark will be used as a Collective Mark. Furthermore, the Application must be accompanied by a copy of the terms of use of the mark as a collective mark that at least contains: (1) the nature, general characteristics, or quality of goods and/or services to be produced and traded; (2) supervision over the use of the Collective Marks; and (3) sanctions for violation of the terms of use of the Collective Marks.

Figure 1: Collective trademark registration flow



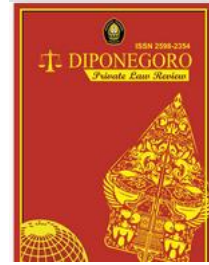
Financing for trademark management starting from registration until the issuance of the trademark certificate is included in Non-Tax State Revenue. This is regulated in Government Regulation Number 45 of 2016 Article 1 paragraph (1), namely the Non-Tax State Revenue Type Tariff Applicable to the Ministry of Law and Human Rights.

Disadvantages of the Collective Trademark

The trademark registration system in Indonesia once adhered to a declarative system which means that the status of the trademark owner is on the first party to register his trademark and can prove it. A person can prove that the mark belongs to him by the presence of a certificate issued

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by the competent authorities. This Collective Trademark can only be submitted if it meets the requirements, namely the products to be registered have the same characteristics and the same quality (Hatmokoningtyas, 2019). Based on the explanation above regarding the rules and regulations for collective trademark registration, collective marks have several shortcomings, namely:

1. Lack of Control: The Collective Trademark owner has limited control over how his or her trademark is used by group members. This can result in a situation where a product or service made by some members of the group does not meet the standards expected by consumers.
2. Risk of Poor Use: If some members of a group use a collective mark in a bad or unethical way, this can damage the reputation of the trademark.
3. Difficult Oversight: Oversight of Collective Trademark use is often difficult, especially if the group is large or spread across multiple locations.
4. Monopoly Tendencies: There is potential for groups that own Collective Trademarks to create monopolies in certain markets, which can be detrimental to competitors and consumers.

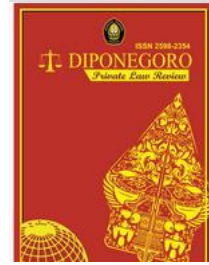
Furthermore, Law Number 20 of 2016 concerning Marks and Geographical Indications, there is a legal loophole in the trademark registration system in Indonesia. The weaknesses of the trademark registration mechanism are:

1. The absence of a philosophical statement of trademark registration

The Trademark Law adds a requirement in the trademark registration process in article 4 paragraph (4) states to attach a trademark label, as for the explanation of the example of the mark attached in the trademark registration application. The attached trademark label fulfills elements in the form of long names and trademark abbreviations. The inclusion of the logo provides information about the meaning of the trademark logo to be registered. While Decision Number 557K / Pdt.Sus-HKI / 2015 Judge stated that "the trademark of a product does not only mean just a name or writing, but in it contains meanings and intentions that are directly related to the product concerned, besides that the trademark or name written on a product can also be a characteristic or differentiator from

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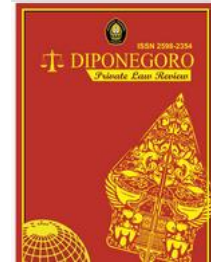
which the product originates. So it is important that there are philosophical inclusion requirements from which the trademark to be registered. This is very necessary when a trademark dispute occurs, and trademark philosophy is a tool of proof in a trademark dispute.

2. Famous Trademark Phrases and Similarities in Essence or Whole Contain Multiple Interpretations

Protection of famous trademarks in Indonesia is only regulated based on the provisions of laws that have not provided adequate legal certainty. The Directorate General must refuse if the mark to be registered contains similarities in principal or in whole with well-known marks belonging to other parties. What benchmark or classification describes a trademark as "well-known and similar in essence or as a whole". The trademark law has not provided a concrete understanding in the interpretation of the word "famous and similar in essence or in whole" The explanation in the law does not provide a definite benchmark for judges to be able to determine the extent to which a person must provide evidence regarding public knowledge, promotion of marks, evidenced by anything and the period or limitation of proof of trademark registration.

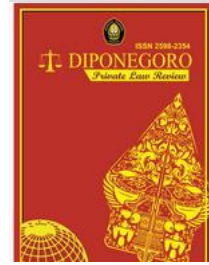
3. Application for Trademark Cancellation or Lawsuit for Trademark Infringement

Based on Article 76, it is explained that interested parties can directly file a trademark registration lawsuit. The explanation of the phrase "interested parties" is explained to be the owner of a registered mark, prosecutors, foundations / institutions in the consumer field, and assemblies / religious institutions. Unlike the owner of an unregistered mark, his party can only file a claim for trademark cancellation after his application is granted by the Minister who organizes government affairs in the field of Law as contained in article 1 paragraph (20) of the trademark Law. Meanwhile, article 83 of the trademark law provides an explanation that the owner of a famous mark, whether registered or not registered in Indonesia, can file a lawsuit for trademark infringement in the form of a claim for compensation or termination of all actions related to the use of the mark.

DIPONEGORO PRIVATE LAW REVIEW<https://ejournal2.undip.ac.id/index.php/dplr>**Inhibiting Factors of Using Collective Trademarks for MSME players in Indonesia**

Collective Trademarks have been introduced in Indonesia since 2001 through the law on trademarks, but until now there have been no MSMEs that register their products using Collective Trademarks. This is due to several things, namely: a. Long and complex registration procedure; b. Expensive registration/registration fees; and c. Weak law enforcement for IPR violations. Further details can be elaborated as follows: First, with regard to the long and complex registration procedure, as in the case of trademark registration, it can be traced in the Academic Paper of the Bill on Trademarks that one of the reasons for the need for simplification of time is because the Trademark application process in force at the time of Law Number 15 of 2001 concerning Marks is considered still ineffective and takes a long time, So it is necessary to simplify the registration process time. However, in practice, the registration process to the issuance of the certificate is relatively longer than the specified time. The length of the specified period also does not guarantee that the request is granted. In addition, in the case of registration points, marks can only be done through the Directorate General of Intellectual Property, Regional Offices of the Ministry of Law and Human Rights located in each Province and Intellectual Property Legal Consultants.

However, not all MSMEs spread across various regions can easily access the registration. Second, based on the provisions of Government Regulation Number 45 of 2016 Second Amendment to Government Regulation Number 45 of 2014 concerning Types and Rates of Non-Tax Types of State Revenue applicable to the Ministry of Law and Human Rights, MSMEs get IPR registration fee relief, but these costs are still considered burdensome, especially for micro and small enterprises, Even if an application is rejected, the registration fee issued by the applicant is not refunded. Intellectual Property Rights in terms of trademarks, especially Collective Trademarks, are still very weak, this can be understood because the public does not understand that all criminal offenses contained in the law governing trademark rights are complaint offenses, so that when there is a trademark infringement, if the trademark

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rights holder does not make a complaint to law enforcement, then the case cannot be processed further. Civil Servant Investigators for Intellectual Property at the Regional Office of the Ministry of Law and Human Rights cannot follow up when they find allegations of trademark infringement that are not complained by the trademark owner. The main consideration of a complaint offense is to give stronger rights to the trademark rights holder when litigation.

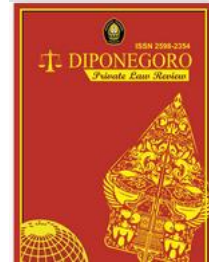
In connection with the very significant role of MSMEs in advancing the national economy, the government and local governments should produce affirmative policies for MSMEs, including in the field of IPR in which there are trademarks. For every citizen to have the same ability to obtain the same protection and fulfillment of constitutional rights, special treatment is needed for certain groups. Only by such special treatment or affirmative action can equality of treatment be achieved in the protection and fulfillment of the constitutional rights of every citizen. This affirmative action is the path that many States choose in response to discriminatory social conditions. MSMEs are community activities that really need special treatment through affirmative policies, especially in the field of IPR, so far MSMEs have difficulty promoting their products because there is a fear if when MSME actors promote their products that have not been registered it turns out to have similarities with previously registered products.

The obstacles that hinder the use of Collective Trademarks for MSMEs are as follows:

a. Low Quality Management and Human Resources

Registered and unregistered MSMEs both compete for the same customers. There are several MSMEs that are registered and comply with the law, and there are MSMEs that provide the same products and services but are not in accordance with the law, and they can enjoy benefits. To ensure compliance with the law and encourage entrepreneurs to formalize their businesses, registration procedures for MSMEs need to be streamlined. In this case, it certainly does not reflect the principle of justice which requires equal treatment and fulfillment of rights for MSME actors.

However, the problem in this case is the different levels of legal awareness between MSME actors. For those who already have a high level

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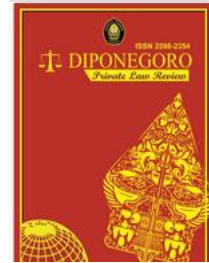
of legal awareness, of course, understand that a work resulting from the creativity of human thinking has a reward value. These rewards can be material or non-material such as a sense of security because they are protected, and recognized for their work. This protection is the duty of the law itself. Legal awareness will provide this protection for the benefit of the owner of the work in the form of power to be able to use his work economically, as well as provide protection for his work if in the future the work is harmed by irresponsible parties.

b. Absence of business planning and business budget

Innovation is an essential element to continue to develop the productivity of MSME actors. The development of small and medium enterprises includes the ability of a small entrepreneur to socialize himself to the needs of market share so that there is an improvement in the standard of living in an entrepreneur. Business development is one aspect that affects the management patterns of a business. The ability of a small business to grow and develop certainly differs from one type of business to another. This is influenced by external conditions and internal capabilities. External factors such as the policy climate, working market structure, access to information and services, and the types of commodities provided will determine how much potential a business must grow and develop. Internal factors such as marketing strategies, production patterns, employment management and entrepreneurship are more influential on the ability of small businesses themselves

c. Lack of MSME investment and funding sources.

Social factors of Indonesian people spread across various islands with uneven access cause a product produced by MSME actors in certain areas to only be known by the surrounding community. The uneven information facilities available in Indonesia also cause MSME players, especially those who still have not gone digital, will find it difficult to get the consumer market. This of course makes it difficult to apply for credit to financial institutions and will be difficult to attract investors. This social principle should be applicable. This principle requires that a policy be able to target all levels of society throughout Indonesia, so that the wider community including entrepreneurs in the MSME sector can benefit from

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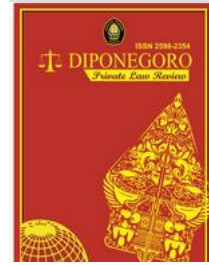
the implementation of the policy. Most MSMEs operate only in the provinces in which they are located. Very few could break into the international market for their products. To ensure that MSMEs can compete in the global market and contribute more to job creation and economic growth, they need access to information, technology and information services that will enable them to expand their customer base, both domestically and globally.

d. Low technology consumption

The use of this low technology can be seen from most of the production processes produced by MSMEs still using simple and manual equipment. Frequent waste in the production process. Because the equipment used still relies on manual equipment, this certainly causes manual processes in production which are still the choice of MSME actors in overcoming their limitations. Of course, when compared to the productivity of large businesses that have used sophisticated machines, manual equipment can be old-fashioned and slow.

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Collective marks are regulated in the Trademark Law of 2016, precisely in articles 46 to 51. The Trademark Law regulates how collective marks are and is complemented by procedures for applying for collective trademark registration. As for more detailed technicalities, the procedure for collective trademark registration refers to Ministerial Regulation Number 67 of 2016 concerning Trademark Registration. There is no noticeable difference between the procedure for registering individual marks and collective marks. Basically, individual marks and Collective Trademarks are an attempt to obtain rights to the mark through a procedure. The difference between individual marks and collective marks is that individual marks are submitted individually and are only owned by the individual, while collective marks are filed and registered jointly and the registered marks become joint property. This Collective Trademark can only be applied for if it meets the requirements that the products to be registered have the same characteristics and the same quality. However, the

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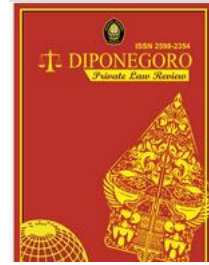
weaknesses in the Trademark and Geographical Indications Law in trademark registration and legal remedies are: (a). The absence of philosophical requirements on trademark registration; (b). Famous trademark phrases and similarities in essence or in whole contain multiple interpretations; (c). Application for trademark cancellation or claim for trademark infringement.

Factors that cause obstacles to collective trademark registration by MSMEs externally include: (a). Long and complex registration procedures; (b) Expensive registration/registration fees; and (c). Weak law enforcement for IPR violations. The obstacles that hinder the use of Collective Trademarks for MSMEs externally are then exacerbated by the internal factors of the MSMEs themselves, which are as follows: (a). Low Quality of Management and Human Resources; (b). Absence of business planning and business budget; (c). Lack of investment and funding sources for MSMEs. d. Low use of technology.

To contribute a little knowledge of researchers about the Indonesian constitutional system, so that its hegemony still upholds proportionality values, researchers want to submit recommendations as a glimmer of researchers' contributions to grow a business climate that supports MSMEs. The author argues, it is necessary to strive to increase the ability and institutional participation of MSMEs in an integrative manner, by providing equal opportunities to MSMEs and even must be given privileges, especially in the field of intellectual property, including trademark rights through affirmative policies. Because with special treatment in affirmative policy, equal treatment can be achieved in the protection and fulfillment of the constitutional rights of every citizen. The affirmative policies that must be realized immediately to support the progress of MSMEs are: (1). To develop MSMEs in Indonesia, especially to protect the products produced, a forum / socialization is needed to disseminate information about the importance of using trademarks as an effort to protect the law for MSMEs, as well as a means of increasing product added value, competitiveness, and selling power. The need for coordination between the Central Government and Regional Governments in the context of developing OVOP, by carrying out socialization and training measures for MSME actors and improving

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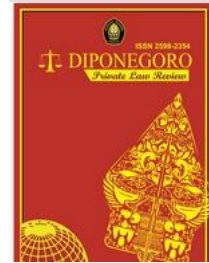
facilities and infrastructure that accommodate. (2). A legal breakthrough is needed by accelerating changes to various laws and regulations related to trademarks, especially Law Number 20 of 2016 concerning Trademarks and Geographical Indications and Government Regulation Number 45 of 2016 Second Amendment to Government Regulation Number 45 of 2014 concerning Types and Rates of Non-Tax Types of State Revenues applicable to the Ministry of Law and Human Rights, especially those related to the determination of PNBPN rates for trademark landing applications.

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