

---

## RECONSTRUCTION OF LEGAL PROTECTION OF TRADEMARK FOR MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES (UMKM) BASED ON JUSTICE VALUE (CASE STUDY: UMKM IN SEMARANG CITY)

Oktavianto Setyo Nugroho  
Prof. Dr. H. Gunarto  
Dr Hj. Sukarmi,

---

### ABSTRACT

*The need of legal protection of trademarks, is growing rapidly after the existence of trademark counterfeiting by impersonation. It proves the importance of trademark that is to differentiate the quality and origin of goods or services. Trademark registration is a mandatory to obtain legal protection because Indonesia uses a constitutive system (first to file principle) which is different from copyrights because it uses declarative system (first to use principle). It is related to the trade of goods and services, which is also carried out a micro, small and medium-sized enterprise (UMKM). In this research, we found that trademark registration has not been effectively enforced in Indonesia, especially by UMKM actors. The ineffectiveness of trademark registration is caused by low public awareness, especially MSME actors, and also due to ineffective government policies to encourage it. This research used empirical judicial or social-legal research method that is a research based on field research to obtain two primers and also conducted library research to obtain secondary data in the law field. Therefore, a new step is needed by promoting collective trademark registration as a convenience provided by law for trademark applicants to jointly-own trademark rights with the registration fee being shared.*

*Keywords:* Trademark, Registration, UMKM, Reconstruction, Legal Protection.

---

### A. INTRODUCTION

As one of the developing countries, Indonesia is trying to improve many fields, for example by carrying out development in the industrial and economic fields. In order to face the era of globalization (free market) which relies on industrial progress and the 4.0 industrial revolution where there is a digitalization process in all areas of human life (H. Prasetyo & Sutopo, 2018), the government has a goal of realizing a balanced economic structure towards a fair and prosperous Indonesian society based on Pancasila and the Constitution of the Republic of Indonesia 1945 (UUD NRI 1945). It can be seen in the past 2 (two) decades where there have been industrial-based development efforts and a creative economy that will generate value-added for Indonesian people. For example, through the Indonesia agreement to realize the idea of ASEAN Free Trade Area (AFTA) and Indonesia's participation as a member of the World Trade Organization (WTO) and the Asia-Pacific Economic Corporation (APEC). This shows the seriousness of the government in supporting an open economic system so that indirectly, it will encourage the public to be more creative and innovative and have high competitiveness to produce various kinds of products that are beneficial to human life.

Production of goods and services is closely related to Intellectual Property. Intellectual Property is a right that arises as a result of human intellectual ability in various fields which results from a process or product that has a benefit. Science, art, literature, or inventions of technology are examples of creative works as the result of human intellectual creativity through their creativity, taste, and work. Therefore, it will raise property rights for the creator or inventor. The main legal basis regarding the protection of the intellectual property is contained in article 28H paragraph (4) of UUD NRI 1945 which states that everyone has the right to own their private property rights and these rights should not be deprived arbitrarily by others.

Intellectual Property is divided into 2 (two) groups, there are Copyright and Industrial Property Rights which include Patent, Trademarks, Industrial Designs, Integrated Circuit, and Trade Secret (Kesowo, 1992). Trademark as a form of intellectual work has an important role to increase trade in goods or services as well as in investment activities. Besides that, the existence of a trademark also to identify and a personal branding the goods or services. In addition, a trademark also shows a guarantee of the quality of a product or service in free trade. Therefore, a trademark is an economic asset for its owner, both individuals, and companies who can get large profits by paying attention to business aspects and good management processes.

In 1994 the Indonesian issued Law Number 7 of 1994 concerning the Ratification of the Agreement Establishing The World Trade Organization, which also attach the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) including Trade in Counterfeit Goods. This ratification then raise a consequences for Indonesia to carry out regulations in the field of Intellectual Property, especially trademarks. Currently, trademark is regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Law 20/2016) where the article 1 number 1 of Law 20/2016 states that a trademark is a sign that can be shown graphically in the form of image, logos, names, words, letters, numbers, color arrangements 2 (two) dimensions and/or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by persons or legal entities in the trade of goods and/or services.

The need of legal protection of trademarks, is growing rapidly after the existence of trademark counterfeiting by impersonation. It proves the importance of trademark that is to differentiate the quality and origin of goods or services. Trademark rights will arise and be protected by law when the mark is registered. Trademark registration is a mandatory to obtain legal protection because Indonesia uses a constitutive system (first to file principle) which is different from copyrights because it uses declarative system (first to use principle). It is related to the trade of goods and services which is also carried out a micro, small and medium-sized enterprises (UMKM).

World Intellectual Property Right (WIPO), argues that UMKM have a lot of potential for growth and development of innovation and creativity for a product (Sardjono et al., 2014). UMKM are economic actors that have the largest number and play an important role in the development of the national economy of Indonesia. This is proven by the fact that the economic activities carried out by UMKM are able to expand employment opportunities and provide economic services to the wider community and are resistant to the economic crisis that hit Indonesia in 1998. For example, in Semarang city, UMKM has become one of the foundations to build the economy of the city. Data obtained from The Office of Cooperative and UMKM of Semarang City shows that the number of UMKM registered in Semarang city in 2019 reached 17,476 units.

UMKM in Semarang city has developed quite rapidly in the last 3 (three) years. However, it has not been followed by the awareness of Semarang residents to register their trademarks. Head of The Office of Cooperative and UMKM of Semarang City, Bambang Suranggono, said that until July 2019 only around 500 to 700 UMKM who had registered their trademarks. Although socialization has been carried out, it does not necessarily lead the UMKM business actors to be aware of the importance of registering trademarks and intellectual property. It potentially become a legal problem when there are other parties, either intentionally or unintentionally registering the UMKM which has not been registered.

## **B. RESEARCH RESULTS: PROBLEMS OF LEGAL PROTECTION OF TRADEMARK FOR UMKM IN SEMARANG CITY**

This result take Semarang as an example because there are many problems regarding UMKM's trademark in Semarang city. From the results of research conducted both to the UMKM actors and The Office of Cooperative and UMKM of Semarang City, it was found several things, why the legal protection of trademark rights for UMKM was not fair and there were still many UMKM actors, especially in the culinary sector who had not registered their trademarks.

### **1. UMKM Actors' point of view**

#### **a. Semarang UMKM actors are still communal.**

The UMKM actor in Semarang mostly still have communal and primitive thoughts that are communal or primitive. They think that trademarks can be used together without needing to be registered. According to an interview with Sukarmi, basically the UMKM actors in Semarang city feel proud if their trademarks are used by others. Apart of that, they also think that fortune has been arranged by God Almighty. For example, in the interview with Lo Dwi Gofur, the owner of Mie Ayam 99, a culinary business in Tlogosari Housing Semarang, he said that the fortune in trading had been arranged by God, so he had no worries at all that his luck. Although his "99" trademark has been widely used by other people to sell a same product and is not registered at the Directorate General of Intellectual Property, he has the belief that his chicken noodles have a distinctive taste that other places don't have.

From this explanation, it could be both advantages and disadvantages for UMKM actors. The advantage is because there is still a communal value so UMKM actors still have a very strong sense of togetherness and local wisdom that exists in the people of Semarang City (Keraf, 2002). But if the trademark is not registered, the first user of the trademark will not have the right if the trademark has been registered by someone else. In this case, the trademark law regime in Indonesia adheres to a constitutive principle (first to file), not a declarative principle (first to use) as the Copyright. The constitutive principle in mark registration has an advantage over the declarative principle because the existence of legal certainty raises a right of the party who first registers the trademark to give permission to others to use the mark. That party also has the right to sue other parties who use its brand without permission. With the constitutive principle (first to file), unfair competition can be prevented, because the legal certainty of a trademark gives the trademark owner the right to sue the party who violates it by impersonating the trademark (Chuzuabi, 2011).

#### **b. Lack of awareness of UMKM actors to register trademarks**

Awareness of UMKM actors in Semarang to register trademarks and is still very low. This is because UMKM actors still think that the use of the trademark is limited to being used for trading. Trademark is only used as an identification who produced that product. It doesn't really matter whether the brand has been registered or not, the most important thing for UMKM is how the product can be sold. From the interviews, it also found that actually UMKM actors still have a dependency on local government. In the interview, Albert Marboen and Suharyanti said that if their trademark had expired, then they would ask the local government to facilitate the trademark registration again. They said that while there is still a free facilitation of trademark registration from the Regional Government, they will ask it more because they do not want to spend more money to register a trademark. In fact, according to Bejo Imam Suroso, the facilitation or assistance for free trademark registration is only temporary and as a stimulus to raise awareness for UMKM in Semarang City.

**c. UMKM actors think that trademark registration fee is expensive**

Registration of trademarks in Semarang City is still less because the UMKM actors still think that the registration fee is expensive. Suharyanti, the owner of wedang rempah business "Sri Katon" said that to register trademark, she needs to prepare IDR 2.000.000, and she considered that it was too expensive. For her, instead of using that money to register a trademark, it would be better if she uses it for daily needs and business development to be more advanced. The income earned from selling wedang rempah is not compatible with the cost of trademark registration. The wedang rempah business was still a micro-business with a net income less than IDR 1.000.000 per month.

The registration fee for a trademark has actually been regulated by the Government, but due to the lack of public knowledge and lack of socialization, public thinks that registration of a trademark is expensive, takes a long time and the procedure is too complicated. The scheme for a trademark registration fee is regulated in Government Regulation Number 28 of 2019 concerning Types and Rates of Non-Tax State Revenues in the Ministry of Law and Human Rights.

No.	Registration fee	Electronic (Online)	Non-Electronic (offline)
1.	UMKM	IDR 500.000	IDR 600.000
2.	Public	IDR 1.800.000	IDR 2.000.000

**d. Trademark does not guarantee that the product sell will increase**

UMKM actors still think that there is no guarantee that after registering a trademark, their products will be sold. Albert Marboen said that in fact there are still a lot of UMKM actors, both those who have or have not registered their trademarks, having a difficulty in selling their food products. Therefore, the most important thing for UMKM at this time is how UMKM products could be sold and UMKM actors could support their daily needs.

**e. UMKM actors choose to register halal certification than trademarks.**

UMKM actors think that the most important and prioritized in business, especially food, is a halal certification. Due to the fact that Semarang residents most are Moslem, the halal label of food products is very important. If UMKM products already has a halal label, consumers will feel safer. For consumers, the halal label guarantees that the products they consume are safe from non-halal elements and are produced correctly in accordance with Islamic law. So the halal label also has a function to build consumer trust and loyalty towards UMKM products. UMKM products that are halal certified is highly competitive compared to those that do not include a halal label on their products.

**2. The Office of Cooperative and UMKM of Semarang City**

**a. Lack of socialization regarding the importance of trademark**

One of the reasons why there are still so many UMKM actors who have not registered their trademarks is because the socialization from The Office of Cooperative and UMKM of Semarang City is still less and not continuous. Ahmadi Amroen said that the socialization is still very rare. Within a year, it was only about 1 or 2 times.

**b. The Government budget for facilitation and socialization is less**

The Government budget to facilitate a registration of trademarks, is very less. In 2018 to 2019 The Office of Cooperative and UMKM of Semarang City only got a budget allocation from the Central Government of IDR 5 billion. The funds then allocated to carry out various kinds of programs, including socialization related to trademark, halal certification, packaging, business development, OSS (Online Single Submission) socialization, Home Industry Products, BPOM socialization, and many more. Apart from that, the budget is also used for providing business assistance. In 2020, due to the Corona Virus (Covid-19) pandemic, the budget allocation for The Office of Cooperative and UMKM of Semarang City decreased from IDR 5 billion to IDR 1 billion.

**c. UMKM actors have difficulty to access and follow up trademark registration**

UMKM actors have difficulty to access and follow up trademark registration because they don't get the trademark registration evidence which is very important to follow up the status of registration. From the research results, it was found that during the facilitation of trademark registration, The Office of Cooperative and UMKM of Semarang City never provided the registration proof to UMKM actors. This situation makes it difficult for UMKM actors to see whether their brand has been registered or not because the trademark search system of the Directorate General of Intellectual Property can only see the status of a brand by using the registration code. For examples, Albert Marboen had registered "silkworm" as his food product trademark since 2011, but yet he did not know how is the progress of his trademark registration until now.

### **C. IDEAL CONSTRUCTION OF LEGAL PROTECTION OF TRADEMARK FOR UMKM BASED ON JUSTICE VALUE**

Trademark have several kinds of functions. The first function of a trademark is as an identifier to distinguish one company's product from other's (product identity) (Khoironi, 2013). Trademark rights is intellectual property protection that provides an exclusive right and a legal protection for a registered trademark owner to use it. Regarding to legal protection, Satjipto Rahardjo argues that one of the characteristics and at the same time is the goal of the law is to provide protection to the community and legal protection for the community must be realized in the form of legal certainty (Rahardjo, 1983). Legal protection itself is an effort to protect someone's interest by allocating power to him to act in his interest. Meanwhile, according to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship of values or principles that are manifested in attitudes and actions in creating order in the social life between fellow humans (Muchsin, 2003).

Although Law 20/2016 states a need of UMKM protection, it does not differentiate registration between UMKM and other business actors due to the principle of non-discrimination in TRIPs. As it is known, the principles that should be applied on trade regulation of all WTO members are Most Favored Nations (MFN) principle that emphasizes an equal treatment for all WTO member countries, and the National Treatment (NT) principle which a different treatment of product from other member countries. Furthermore, the TRIPs provisions require that all agreements made and signed within Intellectual Property must be treated equally (Dharmawan, 2014).

Another fact obtained from the research results is that The Office of Cooperative and UMKM of Semarang City has never made a new policy to facilitate the protection of UMKM trademark. All of the policies only follow the Central Governments' so that the trademark registration policy is not progressive and fair for UMKM actors who have not registered their trademark. Collective trademark is a good solution that can be taken by The Office of Cooperative and UMKM Semarang City to solve this problem. It is because the Collective trademark is cheaper for the UMKM actors, so that the products can be protected and it takes low registration fees.

Collective trademark is regulated by Law 20/2016. Collective trademark is used on goods and/or services with the same characteristics of the goods or services as well as their supervision that will be traded by several people or legal entities together to differentiate from other kind of goods and/or services. There are 2 ways to register a collective trademark. First, the regular registration of collective marks. Second, collective trademark registration using the One Village One Mark (OVOB) system. Local governments and associations can apply for collective trademark registration in both ways. If the registrar of a trademark is local government, then the mark is owned by the local government and UMKM actors are only entitled to use its trademark so that UMKM do not have to pay trademark registration fees. If a trademark is registered by an association, then the owner of the trademark is the member of the association who's their name is stated in the agreement of the trademark. For example, there is a Tempe business who consists of 6 people who want to get a trademark. Instead of tempe entrepreneurs registering their own trademark, it would be better if they unite as an association to get their collective trademarks. And for the registration fee, it will be facilitated collectively.

In the Semarang city itself, there are many areas where a village citizen produces the same product. The first one is "Bustaman", which is known as a producer of lamb curry. The second one is "Bandarharjo", which is known as the center of smoked fish production. These villages are a productive UMKM that recruit a lot of labor and increase the economy of the villager. Unfortunately, until now there has been no initiative either from the villagers and local government to register their trademarks OVOB system. In fact, if a trademark is registered with the OVOB system, the production area will be easily recognized by the public and can become a tourist destination. It can also highlight the characteristics and uniqueness of products from a certain area so that it will increase Regional Original Income (PAD).

Based on these reasons, it is necessary for The Office of Cooperative and UMKM of Semarang City to regulate a progressive policy to carry out legal protection for the UMKM trademarks which have not been registered by using collective trademark either with regular collective trademark or with the OVOB system. So that, the purpose of the law which is to integrate and coordinate various interests in society can be done (Muin, 2015). This is because in a cross-interest, certain interests can be done by limiting the various interests of other parties. Legal interests are holders of human rights and interests so that the law has the highest authority to regulate regulated and protected humans. Legal protection must look at the stages that protect the law from a legal provision and all legal regulations provided by the people interviewed are the community agreement to regulate the relationship between community members and between individuals and the government who represent the interests of the community.

According to the theory of justice, there is a need of special treatment which must be given to a weak party (Chuzabi, 2011). Aristotle also distinguishes between two kinds of justice, namely:

1. Distributive justice (*justitia distributiva*) is the conception of justice that gives to everyone based on services or according to their respective rights.
2. Cumulative justice (*justitia cummulativa*), namely justice received by each member regardless of each other's merits (T. & A. H. Prasetyo, 2012).

The two kinds of justice according to Aristotle are also called legal justice and equality justice. Not all that is just under the law are equal and not all inequality is unjust according to the law. These two are two separate things. The meaning of justice as equality according to Aristotle was further emphasized and developed by Cicero who rejected the positive law of society as the standard of

absolute justice (Huijbers, 1999). For him, justice is one and binds all societies. Justice rests on one source, namely correct reasoning and the exclusion of justice for the sake of legal certainty is an irony.

The concept of justice in Indonesia cannot be separated from Pancasila as the ideology of the Indonesian. The 5th precept of Pancasila states "Social justice for all Indonesian". Justice that is upheld by Indonesia is social justice, not individual justice. The conception that upholds the value of justice in Pancasila then becomes the justification for the development of legal science in Indonesia. Moch Koesnoe considered that in the Preamble of the 1945 Constitution of the Republic of Indonesia contained the basic values of our national legal system which are the *rechtsidee* of law which includes the first basic value that is to protect and not just rule and the second basic value, law aims to realize social justice for all Indonesian people and social justice is not merely a goal but a concrete guide in making legal regulations (Soehino, 1996). Regarding social justice, Soekarno argued that "Social justice is a society or the nature of a justice and prosperous society, a happiness for everyone, no humiliation, no oppression, no oppression, no exploitation (Herawati, 2014). This idea was later reviewed by Notonagoro where he defined justice as the fulfillment of everything that has been a right in human life and as the nature of the relationship between one another. Fair in essence means the fulfillment of obligations which are rights in human life (Herawati, 2014). So it is necessary for the regional government to carry out collective policy.

#### D. CONCLUSION

Trademark registration is mandatory to obtain legal protection because Indonesia uses a constitutive system (first to file principle). It is related to the trade of goods and services, which is also carried out an UMKM. However, trademark registration has not been effectively enforced in Indonesia, especially by UMKM actors in Semarang. The ineffectiveness of trademark registration is caused by low public awareness, especially UMKM actors, and also due to ineffective government policies to encourage it. For this reason, it is necessary for The Office of Cooperative and UMKM of Semarang City to regulate a progressive policy to carry out legal protection for the UMKM trademarks which have not been registered by using collective trademark either with regular collective trademark or with the OVOB system. So that, the purpose of the law which is to integrate and coordinate various interests in society can be done.

#### E. REFERENCES

- Chuzai, A. F. (2011). Sistem Konstitutif Dalam Undang-undang Nomor 15 Tahun 2001 Tentang Merek Bagi UMKM. *Jurnal Syair Hukum, VOL. XIII*.
- Dharmawan, N. K. S. (2014). Keberadaan dan Implikasi Prinsip MFN dan NT dalam Pengaturan Hak Kekayaan Intelektual di Indonesia. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*. <https://doi.org/10.24843/jmhu.2014.v03.i02.p03>
- Herawati, Y. (2014). Konsep Keadilan Sosial dalam Bingkai Sila Kelima Pancasila. *Paradigma*.
- Huijbers, T. (1999). *Filsafat Hukum Dalam Lintasan Sejarah*. Kanisius.
- Keraf, G. (2002). *Lingustik Bandingan Historis*. PT. Rinneka Cipta.
- Kesowo, B. (n.d.). *Kebijakan Di Bidang Hak Milik Intelektual Dalam Hubungannya Dengan Dunia Internasional Khususnya GATT*.
- Khoironi, I. A. (2013). Implementasi Pendaftaran Merek Sebagai Bentuk Perlindungan Hukum Pada Home Industry Eggroll. *Unnes Law Journal, Vol. 2 Nom*.
- Muchsin. (2003). *Perlindungan Hukum Bagi Investor di Indonesia*. Universitas Sebelas Maret.
- Muin, F. (2015). Perlindungan Hukum Terhadap Tenaga Kerja Indonesia (Tinjauan Terhadap UU Nomor 39 Tahun 2004 Tentang Penempatan dan Perlindungan Tenaga Kerja Indonesia). *Jurnal Cita Hukum*. <https://doi.org/10.15408/jch.v2i1.1838>
- Prasetyo, H., & Sutopo, W. (2018). Industri 4.0: Telaah Klasifikasi Aspek dan Arah Perkembangan Riset. *J@ti Undip : Jurnal Teknik Industri*. <https://doi.org/10.14710/jati.13.1.17-26>
- Prasetyo, T. & A. H. (2012). *Filsafat, Teori, dan Ilmu Hukum, : Pemikiran Menuju Masyarakat yang Berkeadilan dan Bermartabat*. Rajawali Pers.
- Rahardjo, S. (1983). *Permasalahan Hukum di Indonesia*. Penerbit Alumni.
- Sardjono, A., Prastyo, B. A., & Larasati, D. G. (2014). Pelaksanaan Perlindungan Hukum Merek untuk Pengusaha UKM Batik di Pekalongan, Solo dan Yogyakarta. *Jurnal Hukum & Pembangunan*. <https://doi.org/10.21143/jhp.vol44.no4.32>
- Soehino. (1996). *Ilmu Negara*. Liberty.

Oktavianto Setyo Nugroho, SH., MH.  
Email: [oktaviantosn@gmail.com](mailto:oktaviantosn@gmail.com)

Prof. Dr. H. Gunarto, SH. SE. Akt. M.Hum.  
Email: [Gunartowr2@yahoo.com](mailto:Gunartowr2@yahoo.com)

Dr Hj. Sukarmi, SH., M.Hum.  
Email: [sukarmi@unissula.ac.id](mailto:sukarmi@unissula.ac.id)