

LEGAL COUNSELING IMPLEMENTATION OF REGISTRATION AND BRAND PERMITS FOR MSME ACTORS

Arief Budiono^{*1}, Rina Arum Prastyanti², Nico Irawan³, Wardah Yuspin¹, Kaka Ismail Saputro¹,
Munadia Rosada¹

¹ Faculty of Law, Universitas Muhammadiyah Surakarta, Indonesia,

² Universitas Duta Bangsa, Surakarta, Indonesia

³ Department of Education and Society, Institute of Science, Innovation and Culture Rajamangala University of Technology
Krungthep Thailand

*e-mail: ab368@ums.ac.id¹, rina_arum@udb.ac.id², nico.i@mail.rmutk.ac.th³, wy204@ums.ac.id⁴, kakaisa34@gmail.com⁵,
munadi_r123@gmail.com⁶

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Abstract: A brand is a sign or characteristic of a product. Giving a brand to goods and or services distinguishes the product from other products. With the brand as a differentiator between the products and other products, producers can easily introduce their goods and or services to consumers. For a brand to exist in the constituent system, trademark ownership must be registered. This is because, without registration, the brand owner cannot claim absolute ownership. In conducting counseling/service, we conducted a literature study on the Implementation of Registration and Brand Permits for MSME Actors. The writers also made preparations by providing facilities and infrastructure for these activities. We also determined the time of the activity implementation cooperatively with the implementing team, and determine and study the material to be delivered in legal counseling activities. The trademark registration process can also currently be carried out online at the website <https://brand.dgip.go.id/>. This website was available since the breakthrough of the Directorate General of Intellectual Property of the Ministry of Law and Human Rights.

Keywords: Brand, MSME, Product, Registration

Abstrak: Merek adalah suatu tanda atau ciri dari suatu produk, dengan memberikan suatu merek pada barang dan atau jasa tentunya dapat menjadi sesuatu yang membedakan produk tersebut dengan produk lainnya. Dengan adanya merek sebagai pembeda antara produk tersebut dengan produk lainnya, produsen dapat dengan mudah memperkenalkan barang dan atau jasanya kepada konsumen. Agar suatu merek dapat eksis dalam sistem konstituen, kepemilikan merek harus didaftarkan. Sebab, tanpa pendaftaran, pemilik merek tidak dapat menuntut kepemilikan mutlak atas merek tersebut. Dalam melakukan penyuluhan/pelayanan, kami melakukan proses melakukan studi literatur tentang Pelaksanaan Pendaftaran dan Izin Merek bagi Pelaku UMKM. Upaya lainnya adalah dengan melakukan persiapan berupa penyediaan sarana dan prasarana untuk kegiatan tersebut. Kami juga menentukan waktu pelaksanaan kegiatan bersama tim pelaksana, menentukan dan mempelajari materi yang akan disampaikan dalam kegiatan penyuluhan hukum. Saat ini proses pendaftaran merek juga dapat dilakukan secara online atau online di website <https://brand.dgip.go.id/> sejak terobosan Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan Hak Asasi Manusia.

Kata kunci: Merek, UMKM, Produk, Registrasi

1. INTRODUCTION

A brand is a sign or characteristic of a product, by giving a brand to goods and or services, can certainly distinguish the product from other products. With the brand as a differentiator between products and other products, producers can easily introduce their goods and or services to consumers.

If we want to buy cat food and mention the brand, for example, Royal Canin, Whiskas, Proplan, or Equilibrio, we will know what we will get. By mentioning the brand name, someone will be able to identify the origin of the item—whether the item is from company A or company B. If we mention the brands of Royal Canin, Whiskas, Proplan, or Equilibrio, we can imagine the quality of the cat food brands and the marketed price range. So, it can be said that the brand plays an important role in determining the quality of an item (Basari, 2019).

This is in line with Aaker's opinion that a brand is a name and/or symbol that differentiates (in the form of logos or symbols, seals or packaging), to identify the goods or services of a seller or a group of sellers (Aaker, 1991). According to Hoyer and Brown (2001), a brand is a frontline of a product, an initial appearance that helps consumers identify that product.

In principle, a brand is a promise of a seller or a producer that continuously brings a series of performance, benefits, and service unity to the buyers. From the perspective of brand communication, Esch, Langner, Schmitt, and Geus (2006) defined a brand as a mark left on the minds and hearts of consumers, which creates a specific sense of meaning and feeling.

Thus, according to Morel as quoted by Ghodeswar, a brand is more than just a logo, a name, a symbol, a marketing brand, or a name that is attached to a product. A brand is a promise. The brand has several functions as follows (Ghodeswar, 2008):

1. As a power that differentiates a product or a service from one producer to another;
2. As a mark to identify the origin of goods and services (an indication of origin) from a company with goods and/or services from other companies;
3. As a connector between the concerning goods and services with the producers;
4. As a mark of the quality of goods and/or services.

During the COVID-19 pandemic, the government continued to strive to create innovations to ease business actors. One of the Government of Indonesia's focuses at this time is changing and adding to the brand registration system (Danuri, 2019). So that brands can exist in the constituent system, trademark ownership must be registered. This is because, without registration, the mark owner cannot claim absolute ownership of the mark. To register a trademark, one must create a unique trademark that is different from other trademarks (Perdana, 2017).

This community service is a follow-up from the application of the *tri dharma* (the three main points) of high education, carried out by some university lecturers. This community service was chosen considering that many Micro, Small to Medium Enterprises (MSMEs) do not understand how to register their brands. Thus, their brands do not obtain protection from the state. This activity introduced society to the importance of protecting the brand by registering it through a determined mechanism. The socialization was carried out by inviting intellectual property (HAKI) experts, guided by a lecturer who has consented to a brand. There was also a simulation of brand registration.

This activity also provided time for MSMEs to undergo direct discussion and question-and-answer with the experts so that there is no misunderstanding on brand registration. Apart from that, society directly saw the process of online brand registration. By having protected and registered brands, it will be easier for MSMEs to market their products. This will indirectly influence the number of sales.

The understanding of the mechanism of brand protection and registration given in this socialization will positively impact the MSMEs as the existence of the brand will give greater value to each MSME business actor. By having brands, they can sell with better prices than selling unbranded items. Thus, this will increase social welfare, especially for the MSME business actors (Miru, 2005).

Micro, Small to Medium Enterprises (MSMEs) are businesses owned by individuals or business agencies wherein their business, the business actors produce their own products. These products require legal protection. But, the protection for the circulating products – especially concerning the brands—is still weak. This may be seen from the data on the low number of MSMEs products whose brands are registered in the General Directory of Intellectual Property, even though brands are immaterial wealth or economic assets of business actors (Indrawati & Setiawan, 2020).

Apart from that, the brands that are not registered to the General Directory of Intellectual Property are prone to be misused by other parties. This will cause losses to the business owners. Because of that, brands need to be registered to the General Directory of Intellectual Property to obtain legal protection. This community service aims to increase legal awareness of the protection of MSME products through brand registration, thus increasing the welfare of MSMEs (Indrawati, 2020).

2. METHODS

This legal counseling is a community service with a normative approach or method with a qualitative descriptive approach. In conducting counseling/service, we conducted a literature study on the Implementation of Registration and Brand Permits for MSME Actors. Another effort was preparing and providing facilities and infrastructure for these activities. We also cooperatively determined the

time of implementation of activities with the implementing team. We determined and studied the material to be delivered in the legal counseling activity.

This socialization aimed to provide a complete procedure for the process of online brand registration as well as the budget needed to do so. This socialization was carried out with the hope that after knowing the importance of brand registration, the procedures, the processes, and the budget needed, the MSMEs' willingness to register their brands will increase.

In terms of the arrangement, this is the scheme of this community service.

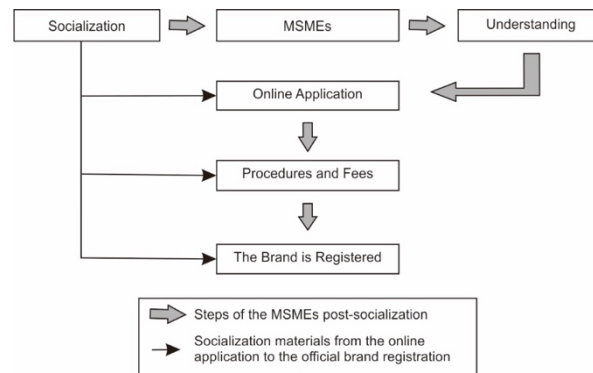


Figure 1. Community Service Scheme

3. RESULTS AND ANALYSIS OF PUBLIC SERVICES

The public services activity took place on Tuesday, March 22th, 2022 from 10.00 WIB to 13.00 WIB which was carried out online via the Zoom Meeting online platform: <https://us02web.zoom.us/j/85015320905?pwd=K3BZN2xyVUc5ZTdNSXA2L2ZjaHZvQT09>.

Around 30 MSMEs joined the activity. In this community service, the committee of public service gave information that brands are part of Intellectual Property. It cannot be separated from the idea that brand rights start from findings in the field of other Intellectual Property Rights, such as copyright. In a brand, there are elements of creation, such as logo design and lettering.

There is copyright in the field of art, but in trademark rights, it is not copyright in the field of art that is protected, but the brand itself and the trademark rights are limited only to the use and use of products that are circulated or sold that contain economic value (Sulastrri & Satino, 2018).

According to Law Number 20 of 201 concerning Mark and Geographical Indication, a mark 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 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 the activities of trading goods and/or services (Pemerintah Republik Indonesia, 2016a).

It can be concluded that the brand is a sign that distinguishes one product from another, and this can make it a characteristic of the product. Shared brands into two types: service marks and trademarks. A trademark is a trademark used by a person, group of people, or legal entity for trading goods to distinguish similar goods (Maulana & Khairandy, 2000).

Trademarks are different from service marks. A service mark is a mark used on services traded by individuals, groups of people, or entities to distinguish similar services being traded. This does not apply to a collective mark if it is not a brand that can be classified as a new mark because it is used together or is a group. Therefore, a collective mark is a mark used by a group of people or legal entities to distinguish the same types of goods or services so that they can distinguish the same types of goods or services (Saidin, 2004).

Brands have a very important function or role, both in trade, business, or other activities such as social organizations. The most important function of a brand is as a distinguishing form of a product or goods and/or services (Semaun, 2016).

If we want to buy cat food and mention the brand, for example, Royal Canin, Whiskas, Proplan, or Equilibrio, then that's what you will get. By mentioning the brand name, someone will be able to identify the origin of the item, whether the item is from company A or company B. If we mention the brands Royal Canin, Whiskas, Proplan, or Equilibrio, we can imagine the quality of the cat food brands and marketed price range. So it can be said that the brand plays an important role in determining the quality of an item (Basari, 2019).

We can know the interpretation of a brand through the pronunciation of the word or its logo, such as logos such as the Apple and Honda brands, words such as evoner, names such as Louis Vuitton, and sounds such as notations and sonograms, and finally the Hologram (IT). Some regulations need to be observed when creating a brand, among others, Law No. 20 of 2016 concerning Brands and Geographical Symptoms, Law No. 11 of 2020 concerning Job Creation, PP No. 23 of 1993 concerning the Method of Application for Brands, PP Number. 24 of 1993 concerning Classes of Goods and Services, the Governmental Decree Number. 29 of 2019 concerning Types and Rates of Non-Tax State Revenue (PNBP) (Dharmawan, 2015).

Trademarks in Indonesia can be registered through the Stelsel legal entity system. This system only applies if the mark becomes the right of the party who first registered the mark. The third parties who play a role here have absolute rights to the mark and must respect the rights of the party registering the mark (Muhammad, 2001). In the Stelsel Incorporation System, the principle of "applies to delivery" has been adopted, allowing the first party to apply for trademark ownership to own and register a trademark. At the same time, if other people have in common with the types of trademarks presented previously for similar goods/services, the state has no right to grant registration rights to others.

When owning a brand, the most important aspect that determines brand ownership, not the use of the mark itself, is registration. The party registering the mark is the party entitled to the mark, and third parties must respect the rights of the trademark registration authority as an absolute right. The composition system is regulated in Law no. 2001 No. 2001 which regulates trademark registration (Sudaryat, 2010).

Next, overrides aspects of protection in brand rights. Brand protection in Indonesia adheres to a constitutive system or initial registrar (first to file principle). An applicant whose application is submitted first and registered first, so that the protection of the rights to the mark comes into effect from the moment it is received. In the world of trade, brands as a form of intellectual property rights have been used hundreds of years ago and have a significant role because brands are used to distinguish the origin of goods and services.

For a brand to exist in the constituent system, trademark ownership must be registered. This is because, without registration, the mark owner cannot claim absolute ownership of the mark. To register a trademark, it must be considered a unique trademark that is unique or different from other trademarks (Perdana, 2017).

The procedure for applying for trademarks are as follows (Pemerintah Republik Indonesia, 2016b):

- a) The application must be submitted by filling in the form in duplicate in Indonesian by the applicant or his/her proxy to the Minister.
- b) The application must at least contain:
 1. Date month Year
 2. Applicant's name, nationality and address
 3. When applying through an authorized representative, the name and address of the authorized representative
 4. In case of filing with priority, first country name and trademark filing date
 5. Trademark
 6. Color (if color element is used in the proposed mark)
 7. type of product and/or service and description of the type of product or service Terms of application for trademark registration must be accompanied by:

- a. Proof of payment application
- b. Brand label 3 sheets with the smallest size 2x2 cm and the largest 9 x 9 cm
- c. Declaration of brand ownership
- d. Power of attorney if the application is by proxy
- e. Priority check when using Indonesian priority
- f. When applying for a 3D mark, a marking label must be attached in the form of an explanation of the claim and an image for the mark.
- g. Trademarks in sound, notation and recording
- h. If the sound cannot be displayed as a notation, install a visual display device from the other side

Currently, technology is increasingly sophisticated, increasing technology that is currently all-digital will certainly make it easier for humans to get information, one of which is trademark registration. Digital technology is an information technology in which when humans want to provide or seek information, activities carried out digitally are preferred over human labor (Danuri, 2019). At this time the trademark registration process can also be done online or online on the website <https://brand.dgip.go.id/> since the breakthrough of the Directorate General of Intellectual Property of the Ministry of Law and Human Rights. After that, the certificate can be downloaded on the website <https://e-certificate.dgip.go.id/>. More details, regarding the procedures for online trademark registration, can be seen in the chart below:

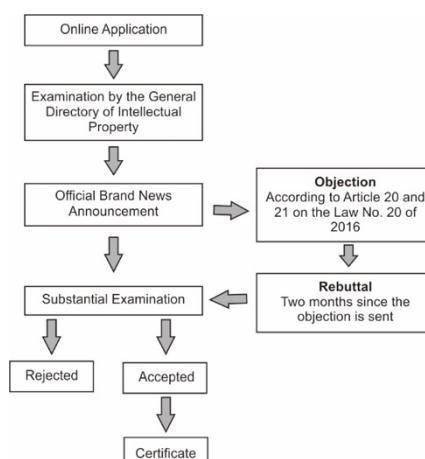


Figure 2. Brand Registration Procedure for Business Actors (Direktorat Jendral Kekayaan Intelektual, n.d.)

As shown in the figure above, with the registration of the mark, the mark will clearly get legal protection. The process starts off with the online application. The application is then examined by the General Directory of Intellectual Property. After that, there is the official brand news announcement. The objection is based on Articles 20 and 21 of Law No. 20 of 2016. Meanwhile, the rebuttal is two months after the objection is sent. Then, it is followed by a substantial examination. If the application is accepted, there will be a certificate of acceptance.

With this legal protection, brand owners no longer need to worry about their brand. This is because it is certain that the owner of the brand or company is protected by the brand, and consumers will not feel disadvantaged due to parties who are not entitled to use it (Maulana & Khairandy, 2000).

After the socialization was presented, there was a questionnaire on whether or not the MSMEs were willing to register their brands. It was shown that all of the MSMEs that participated in the socialization was willing to register their brands. This willingness emerged after they have obtained information on the importance of brand registration as well as an understanding of the process and the mechanisms of online application. There needs to be further guidance to the MSMEs on brand registration after they have prepared their applications.

DOCUMENTATION

1. The committee made preparations for online legal counseling webinar activities by conducting briefings in each committee and distributing the job description.

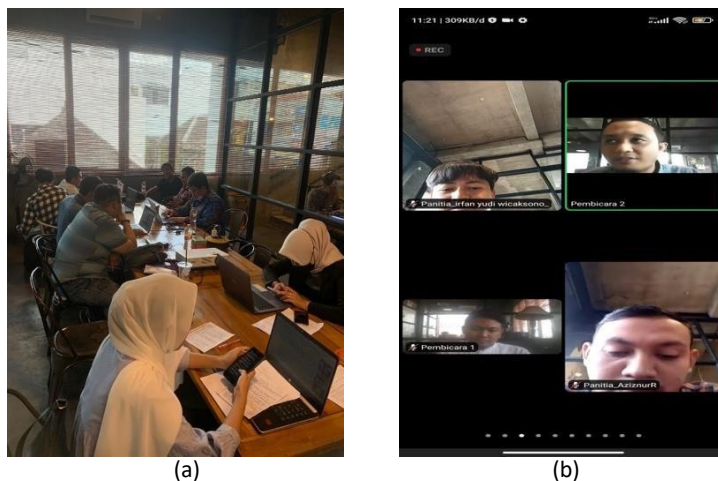


Figure 3. Briefings (a) and job description distribution (b) in preparing for the webinar.

2. The following is an overview of materials from the committee during the webinar activity, the Committee carries out activities according to the agenda that has been designed.

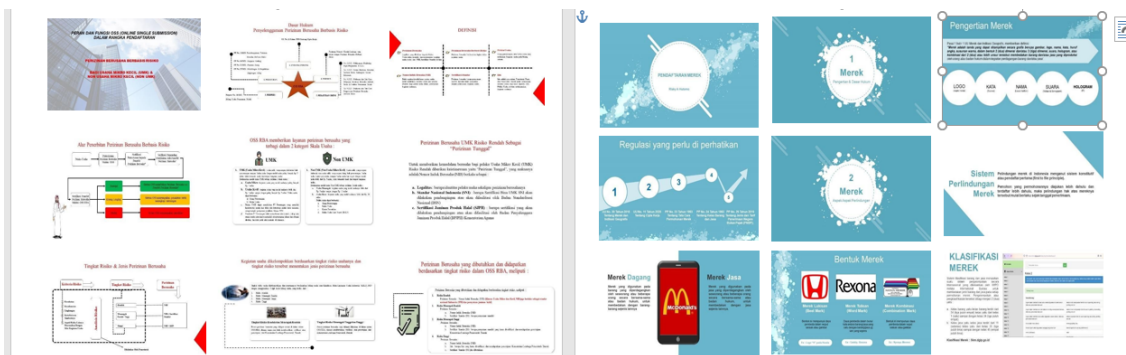


Figure 4. The overview of the webinar materials.

3. Next, the picture below shows the MSMEs who joined this community service.

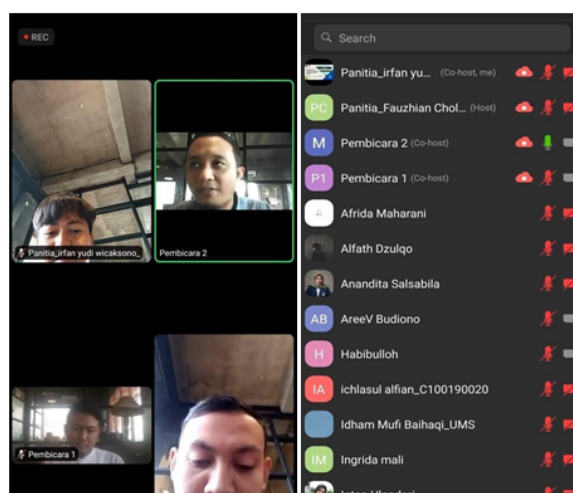


Figure 5. MSMEs as webinar participants.

4. CONCLUSION

Brands have a very important function or role, whether in trade, business, or other activities such as social organizations. The most important function of a brand is as a form of differentiation of a product or goods and/or services. For a brand to exist in the constituent system, trademark ownership must be registered. This is because, without registration, the mark owner cannot claim absolute ownership of the mark. To register a trademark, it must be considered a unique trademark that is unique or distinct from other trademarks. At this time technology is increasingly sophisticated, increasing technology that is currently all-digital will certainly make it easier for humans to get information, one of which is trademark registration. At this time the trademark registration process can also be done online or online at the website <https://brand.dgip.go.id/> since the breakthrough of the Directorate General of Intellectual Property of the Ministry of Law and Human Rights. After that, the certificate can be downloaded on the website <https://e-certificate.dgip.go.id/>.

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