

RELATION BETWEEN THE AWARENEES OF CULINARY MSME ACTORS AND TRADEMARK PROTECTION

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Abstrak

UMKM adalah usaha milik perorangan atau badan usaha dimana dalam usahanya pelaku usaha memproduksi suatu produk sendiri. Produk tersebut perlu mendapat perlindungan hukum. Namun untuk saat ini masih banyak pelaku UMKM yang belum mendaftarkan merek dagangnya. Hal ini dapat dilihat dari data jumlah produk UMKM yang mereknya terdaftar di Direktorat Jenderal Kekayaan Intelektual (DJKI) tergolong masih rendah. Padahal merek adalah kekayaan immateriil atau aset ekonomi bagi pelaku usaha. Selain itu, merek yang tidak didaftarkan juga rentan akan penyalahgunaan oleh pihak lain. Hal tersebut akan mengakibatkan kerugian pada pelaku usaha itu sendiri. Oleh karena itu merek perlu didaftarkan di DJKI supaya mendapat perlindungan hukum. Berdasarkan permasalahan tersebut penelitian ini menggunakan metode penelitian non-doktrinal. Penelitian ini akan mengkaji pengaturan perlindungan Merek atas usaha UMKM di Indonesia dan mengkaji relasi pengetahuan pelaku UMKM sektor kuliner di Kota Batam dengan perlindungan Merek. Penelitian ini menunjukkan bahwa pengaturan perlindungan Merek di Indonesia tertuang dalam UU Merek & Indikasi Geografis. Kemudian ditemukan pula masih terdapat pelaku UMKM yang belum mengetahui perlindungan atas karya intelektualnya sehingga belum mendaftarkannya. Untuk itu, pemerintah maupun seluruh pihak dapat memberikan literasi arti penting perlindungan Merek. Dengan begitu dapat meminimalisir terjadinya pelanggaran maupun sengketa kekayaan intelektual. Selain itu, dengan adanya perlindungan kekayaan intelektual di Indonesia tidak hanya memberikan rasa aman dan kepastian hukum bagi para pemilik Merek.

Kata Kunci: *Pengertahuan; UMKM; Perlindungan Merek*

Abstract

MSME is business owned by individuals or business entities in which business actors produce their own products. These products need legal protection although there are still many MSME actors who have not registered their trademarks. According to the data, the number of MSME actors who have registered their trademark to Indonesian Directorate General of Intellectual Property (in Indonesia says DJKI) are still low, whereas a trademark is an immaterial wealth or economic asset for business actors. In addition, unregistered trademarks are also vulnerable to abuse by other parties. This will result in losses for the business actors themselves. Therefore, the trademark needs to be registered in DJKI in order to get legal protection. Based on these problems, this research uses non-doktrinal research methods to examine the regulation of trademark protection for MSME businesses in Indonesia and examine the relationship between the awareness of culinary MSME actors in Batam City and trademark protection. This research indicates that the regulation of trademark protection in Indonesia is contained in the Trademark & Geographical Indications Law. It was also found that there are still MSME actors who do not aware about the legal protection for their intellectual works so they had not registered them. For this reason, the government and all parties are expected to provide literacy on the importance of trademark protection. This will minimize the occurrence of intellectual property infringement and disputes. In addition, the existence of intellectual property protection in Indonesia provides a sense of security and legal certainty for trademark owners.

Keywords: *Awareness; MSME; Trademark Protection*

INTRODUCTION

Background of Study

Micro, Small and Medium Enterprises (MSME) is a rapidly growing industry in Indonesia today. This industry is also one of the very influential pillars of the economy

movement.¹ The existence of MSME was previously only considered as one of the sources in creating job opportunities, as well as being the main driving force in regional economic development in rural areas.² As time goes by, in the current era of globalization, the role of MSME becomes increasingly important.³ MSME becomes a source of foreign exchange for Indonesia's non-oil and gas exports.⁴ In Indonesia, especially in Batam (one of the City in Indonesia), one of the most growing MSME is the culinary sector.⁵ Although Batam is a small city, but it is located in a strategic location and close to the neighboring countries. This strategic location of Batam makes this city become a stopover place for both local and foreign tourists.⁶ Batam is also known as the Civil World Airport. This is because Batam is a triangular intersection for trading between Indonesia, Malaysia, and Singapore.⁷ Because of its strategic location, the opportunities in developing business for MSME actors in Batam are even greater. Today, MSME has become a supporting part of industries in Batam, one of them is the culinary sector. It is noticed that MSME is making big contribution to the economic growth,⁸ but in spite of all the increasing number of MSME actors in Batam, there are still many problems in it.

The monetary and economic crisis that hit Indonesia in 1997-1998 caused the national economy weaken. The economic crisis has resulted in many large-scale businesses have stagnated and even stopped their activities. However, MSME was more resilient in dealing with the crisis. MSME plays a strategic role in the national economy, in addition to playing a role in the national economy and employment, they also play a role in the distribution of development results. Therefore, MSME is reliable in increasing market competitiveness and stabilizing a good economic system. The role of MSME in the Indonesian economy can be seen from the large amount of actors that it has, as well as their contribution to employment, the formation of gross domestic product (GDP), exports and the creation of fixed capital/investment. MSME basically has such great

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. 140.

² Betlehn, A., & Samosir, P. O. (2018). Upaya Perlindungan Hukum Terhadap Merek Industri UMKM Di Indonesia. *Law and Justice*, 3(1), 1-11., p. 3.

³ Sitorus, A. P. (2018). Politik Hukum Perlindungan Usaha Mikro Kecil Menengah (UMKM) dalam Masyarakat Ekonomi Asean. *Doktrina: Journal of Law*, 1(2), 125-144., p. 127.

⁴ Prasetyo, P. E. (2008). Peran Usaha Mikro Kecil Dan Menengah (Umkm) Dalam Kebijakan Penanggulangan Kemiskinan Dan Pengangguran. *Akmenika Upy*, 2(1), 1-13., p. 9.

⁵ Febriyantoro, M. T., & Arisandi, D. (2018). Pemanfaatan Digital Marketing Bagi Usaha Mikro, Kecil Dan Menengah Pada Era Masyarakat Ekonomi ASEAN. *Jurnal Riset Manajemen dan Bisnis Dewantara (JMD)*, 1(2), 61-76., p. 63.

⁶ Leyn, Y. G. S. (2018). *Kerjasama IMS-GT (Indonesia Malaysia Singapore-Growth Triangle) Dalam Meningkatkan Pertumbuhan Ekonomi*. Universitas Pasundan: Doctoral Dissertation.

⁷ Putra, A. (2021). Keuntungan Tinggal di Batam, Punya Lokasi Strategis dengan Prospek Investasi Tinggi, <https://artikel.rumah123.com/keuntungan-tinggal-di-batam-punya-lokasi-strategis-dengan-prospek-investasi-tinggi-111855>, Accessed on December 8, 2021

⁸ Haris, M. (2018). BI: UMKM Pendukung Utama Pertumbuhan Ekonomi Batam, <https://kepri.antaranews.com/berita/50451/bi-umkm-pendukung-utama-pertumbuhan-ekonomi-batam>, Accessed on December 8, 2021

potential, but in reality it is still experiencing problems and obstacles such as the limited capital and the difficulty of MSME in accessing sources of capital.⁹

Until 2019, 81.486 businesses from various types of businesses (Micro, Small and Medium Enterprises) were recorded in Batam.¹⁰ Of this number, there are still many new micro businesses that have not been recorded,¹¹ which means that most of the business actors do not register their businesses or do not even care about the license. The number of businesses in Batam shows a significant growth of MSME, because in the previous year, mid-2018, there were only approximately 75,000 businesses recorded.¹² Although there is a fairly high growth every year, the development of MSME carried out in Batam is still very minimal. Whereas MSME is reserved as the new hope for Batam economy. Another thing that becomes the concern in this research is related to Trademarks and Service Marks for MSME products.

The business sector can never be separated from intellectual property. Any business that has been run must contain intellectual property in it. Intellectual property can be in the form of trademarks or trade secrets.¹³ It works the same way with MSME, even though it is only small-scale business, in general MSME has trademark and trade secret, whether used in the trade of goods or services. One of the problems oftenly encountered is that many MSME actors in several areas have not registered their trademarks,¹⁴ including in Batam. This happens because of limited capital and lack of public awareness. These MSME actors still do not understand the benefits of trademark registration for the MSME sector itself.¹⁵ Article 3 of *Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis* (Indonesian Trademark & Geographical Indications Law) explains that trademark right is obtained after the trademark is registered. If the trademark is not registered, then the MSME actor does not get legal protection for the trademark itself. Thus, it is very necessary to have a policy that regulates trademark protection.¹⁶ In the

⁹ Hamza, L. M., & Agustien, D. (2019). Pengaruh Perkembangan Usaha Mikro, Kecil, dan Menengah Terhadap Pendapatan Nasional Pada Sektor UMKM di Indonesia. *Jurnal Ekonomi Pembangunan*, 8(2), 127-135., p. 132.

¹⁰ KEMENKOP UKM. (nd.). Data ODS Kementerian Koperasi dan UMKM Republik Indonesia, <http://umkm.depkop.go.id/>, Accessed on December 15, 2021

¹¹ Aris. (2019). Ada 81.486 Usaha Mikro Kecil dan Menengah di Kota Batam, <https://batampos.co.id/2019/06/24/ada-81-486-usaha-mikro-kecil-dan-menengah-di-kota-batam/>, Accessed on December 8, 2021

¹² 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. 4

¹³ Effendi, A. (2021). Perlindungan Hukum Terhadap Franchisor dan Franchisee Pada Usaha Waralaba Dalam Perspektif Hak Kekayaan Intelektual (Studi Aspek Hukum Perjanjian). *Jurnal Inovasi Penelitian*, 2(2), 533-548., p. 539.

¹⁴ Maulana, A. F. (2020). *Perlindungan Hukum Merek Dagang dan Merek Kolektif Tenun Ikat Troso Menurut Undang-Undang Merek dan Indikasi Geografis*. Universitas Negeri Semarang: Doctoral Dissertation.

¹⁵ Meliala, A. S., Matondang, N., & Sari, R. M. (2016). Strategi peningkatan daya saing usaha kecil dan menengah (UKM) berbasis Kaizen. *Jurnal Optimasi Sistem Industri*, 13(2), 641-664., p. 652.

¹⁶ Desmayanti, R. (2018). Tinjauan Umum Perlindungan Merek Terkenal Sebagai Daya Pembeda Menurut Prespektif Hukum di Indonesia. *Jurnal Cahaya Keadilan*, 6(1), 1-21., p. 8.

world of commerce, a trademark is a form of intellectual property that has been used for more than hundreds of years.¹⁷

Trademark has a very important role. Trademark can be used to differ the origin of a product, goods, and services. In addition, the trademark can also be used as an advertising or marketing product,¹⁸ because the public often associates the image, quality and reputation of goods and services with certain brands/trademarks. A trademark can be a very valuable asset for its owner commercially and often makes a product more expensive and more valuable than the company itself.¹⁹ In 2018, Indonesian Creative Economy Agency recorded that 96% of MSME were still not legally incorporated, in other words, they still did not have a legal protection.²⁰ This means that, whether in the form of business or legal entity, the majority of MSME actors do not focus on legal protection or pay attention to business development, but only focus on profits and simple business patterns. MSME actors do not have plan in developing their business in the future. Furthermore, according to the Head of Indonesian Creative Economy Agency, Triawan Munaf, MSME actors do not register their businesses because they want to avoid taxes.²¹ The lack of awareness of the society about the importance of trademark registration is one factor that causes low protection on intellectual property of MSME actors. There are still many people who are labeled as MSME actors, have not registered their trademarks. Based on these problems this research will examine the regulation of MSME trademark protection in Indonesia, then examine the relationship between the awareness of culinary MSME actors and brand protection. The limitation of this research is that the informants in this study are limited due to the lack of human resources, time and budget. The data taken are micro and do not reflect general conditions in Batam.

RESEARCH METHODOLOGY

This paper is non-doctrinal research or better known as empirical juridical research, which is expected to be able to uncover and unravel all problems or the implementation of law in reality²², or those that occur at the empirical level related to MSME trademark registration in Batam. The data used in this study are primary data and secondary data. Primary data was obtained by conducting field studies in the form of observations and in-depth interviews with several MSME actors in Batam as informants. The informants were owners of each Sunday Toast, The Grizzlies, and Lhotse. The secondary data was obtained indirectly, carried out by doing literature study related to the object of this research. The

¹⁷ Hallatu, D. S. (2019). *Perlindungan Hukum Merek Terkenal Terhadap Pelaku Bad Applicant Dalam Pendaftaran Merek di Indonesia*. Universitas Pembangunan Nasional Veteran Jakarta: Doctoral Dissertation.

¹⁸ Kusuma, A. H. P., & et.al. (2020). *Brand Management: Esensi, Posisi dan Strategi*. Yayasan Kita Menulis.

¹⁹ Mamahit, J. (2013). Perlindungan Hukum Atas Merek Dalam Perdagangan Barang Dan Jasa. *Lex Privatum*, 1(3), 90-100., p. 92.

²⁰ Betlehn, A., & Samosir, P. O. (2018). Upaya Perlindungan Hukum Terhadap Merek Industri UMKM Di Indonesia. *Law and Justice*, 3(1), 1-11., p.9.

²¹ *Ibid.*, p. 4.

²² Benuf, K., & Azhar, M. (2020). Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. *Gema Keadilan*, 7(1), 20-33., p. 25.

data that have been obtained then processed with a qualitative approach which is supported by analysis using deductive thinking.²³

DISCUSSION

A. The regulation of MSME Trademark Protection as Intellectual Property in Indonesia

MSME has shown its role in Indonesia economy, but still faces various obstacles and constraints, both internal and external, in terms of production and processing, marketing, human resources, design and technology, capital, and the business climate. MSME is regulated in *Undang-Undang No. 20 Tahun 2008 tentang Usaha Mikro, Kecil, dan Menengah* (Indonesian MSME Law). The MSME Law itself is an institution full of dynamics. The law is strongly influenced by the development of people's lives and must also be able to regulate the needs development of the community, that is why the MSME law must be dynamic and progressive. Law as a progressive institution is not only needed today, but also in the future.

There are several provisions contained in the MSME Law which have been amended with Indonesian Job Creation Law (*Undang-Undang No. 11 Tahun 2020 tentang Cipta Kerja*). The Job Creation Law does not only discuss about manpower, but also the criteria of MSME which is another important aspect to discussed. To support the implementation of the Job Creation Law in the community, the government has also completed *Peraturan Pemerintah Nomor 7 Tahun 2021 tentang Kemudahan, Pelindungan, dan Pemberdayaan Koperasi dan UMKM* (Indonesian Government Regulation concerning Ease, Protection, and Empowerment of Cooperatives and MSME) as one of the implementing regulations of the Job Creation Law. The Government Regulation has regulated the criteria for MSME, considering that in the Job Creation Law, the criteria of MSME have not set in detail regarding the amount of net worth of businesses and the value of sales proceeds.

Chart 1. Comparison of MSME Criteria

MSME Law	Government Regulation Number 7/2021
MSME Classification	MSME Classification
MSME is classified according to net worth and annual sales results. Net worth is the amount of assets after deducting debt or liabilities	MSME is classified according to the criteria of business capital or annual sales results. Business capital is owned capital and loan capital to carry out business activities.
Net Worth/Business Capital	Net Worth/Business Capital
1. Micro Business: Maximum amount of IDR. 50.000.000;	1. Micro Business: Maximum amount of IDR. 1.000.000.000;
2. Small Business: More than IDR. 50.000.000- up to IDR. 500.000.000; and	2. Small Business: More than IDR. 1.000.000.000- up to IDR. 5.000.000.000; and
3. Medium Business: More than IDR. 500.000.000-. Maximum amount of IDR. 10.000.000.000.	3. Medium Business: More than IDR. 5.000.000.000-. Maximum amount of

²³ Tan, D. (2021). Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi dalam Menyelenggarakan Penelitian Hukum. *Nusantara: Jurnal Ilmu Pengetahuan Sosial*, 8(8), 2463-2478., p. 2468.

Annual Sales	Annual Sales
1. Micro Business: Maximum amount of IDR. 300.000.000;	1. Micro Business: Maximum amount of IDR. 2.000.000.000;
2. Small Business: More than IDR. 300.000.000- up to IDR. 2.500.000.000; and	2. Small Business: More than IDR. 2.000.000.000- up to IDR. 15.000.000.000; and
3. Medium Business: More than IDR. 2.500.000.000-. Maximum amount of IDR. 50.000.000.000.	3. Medium Business: More than IDR. 15.000.000.000 -. Maximum amount of IDR. 50.000.000.000.

Source: Processed Based on the Comparison between Indonesian MSME Law and Indonesian Government Regulation No. 7/2021

Based on Indonesian Constitutional Court Verdict Number 91/PUU-XVIII/2020, the establishment of the Job Creation Law is contrary to the 1945 Constitution of the Republic of Indonesia. However, the Job Creation Law will still remain in effect until the formation is corrected within 2 (two) years since this Verdict was pronounced. It works the same way with the regulation of MSME criteria contained in it. MSME regulation has conditionally binding legal force as long as the Job Creation Law is amended within the period determined. If within the period of 2 (two) years the legislators are unable to complete the revision of the Job Creation Law, then the regulations, articles or material content related to MSME that have been revoked or amended by the Job Creation Law are no longer valid, so the previous MSME Law is declared to be applied again.

It was mentioned earlier that every MSME owns intellectual property such as a brand or logo. However, currently, there are many cases of plagiarism. For example, in the case of Ruben Samuel Onsu as the plaintiff, he sued PT Ayam Geprek Benny Sujono (one of Indonesian culinary businesses) because the logo and the brand of PT Ayam Geprek Benny Sujono were the same as his. Ruben Samuel Onsu believes that he owns the trademark rights and was the first registrant (first to file) on the brand "BENSU" with registration number IDM000643598, registered on June 25, 2018. He believes that as the first who registered the brand, he got the exclusive rights according to Article 1 number (5) of Indonesian Law Number 20 of 2016, and emphasized in Article 3 of Indonesian Law Number 20 of 2016 concerning Trademark and Geographical Indications. Ruben Samuel Onsu strongly objected to the registration of the brand by the defendant 1 with registration number IDM00064353. The application was received by Indonesian Directorate General of Intellectual Property in May 3, 2017 and the date of registration was in May 24, 2019 using the name "BENSU", the brand itself essentially has similarities to the brand owned by Ruben Samuel Onsu. The final result was declared in Decision No. 57/Pdt.Sus-HKI/Merek/2019/PNNiagaJkt.Pst, which rejected the lawsuit from Ruben Samuel Onsu and stated that the brand under the name of Ruben Samuel Onsu has similarities in principle or in whole to PT Ayam Geprek Benny Sujono, and declared that it was null

and void with all the legal consequences of registering a trademark under the name of Ruben Samuel Onsu.²⁴

The potential of MSME needs to be optimized. It can be seen from the products produced by MSME which are feasible for high economic value and have the high value of creativity and originality in design, especially when entering the world market.²⁵ One of the guarantees for the existence of MSME is the existence of Intellectual Property Rights. Globally, the potential for Intellectual Property (IP) in MSME activities includes trademark rights. A product protected by IP can only be produced by the owner of the product itself (exclusive).²⁶

In the industrial world, there are many uses of certain brands in society that are carried out without the permission of the trademark rights holder, which is possible to harm the trademark owner and at the same time deceive the public. The system used in Indonesian trademark registration is a constitutive system that aims to give trademark rights to anyone who has registered his/her trademark to Indonesian General Register of the Trademark Office, which guarantees legal protection. The legal protection gives benefits for the registrants (the legal owners of the brand) who have received the registration evidence in the form of a certificate as proof of the trademark rights, as well as being considered as the first user of the brand.²⁷

In the case of brand plagiarism, there are various kinds of protection and efforts that can be done. The legal protection is divided into two, they are preventive legal protection and repressive legal protection. Based on the Theory of Legal Protection, which was stated by Philipus M Hadjon, preventive legal protection is when the owner of business registers the trademark. Meanwhile, repressive legal protection is carried out in the event of a trademark infringement through civil lawsuits or criminal charges.²⁸ In the preventive legal protection, legal subjects are given the opportunity to register their trademark so they can protect themselves in order to prevent dispute. In Indonesia, it is given by the government through legal protection or the regulation of the trademark itself. Meanwhile, the repressive legal protection is used to resolve disputes both litigation and non-litigation. The provision of legal protection by the Commercial Court in Indonesia is part of repressive legal protection on litigation. For non-litigation protection, it is provided by the Indonesian Consumer Protection Agency, Indonesian Non-Governmental Consumer Protection Agency, and Indonesian Consumer Dispute Resolution Agency.²⁹

²⁴ Wijaya, A. (2020). *Penyelesaian Sengketa Dagang Dalam Studi Putusan Geprek Benu Melawan I AM Geprek Benu*. Universitas Sumatera Utara: Medan.

²⁵ Amboro, F. Y. P. (2019). *Op.Cit.*, p. 5.

²⁶ Irsanti, S. W., Ssuanty, E. D., & Masyukari, A. A. (2015). *Mempermudah Aksibilitas Hak Atas Kekayaan Intelektual Melalui Arisanm UMKM*. Fakultas Ekonomi Universitas Negeri Yogyakarta: Paper Competition.

²⁷ Murjiyanto, R. (2016). *Konsep Kepemilikan Hak Atas Merek di Indonesia (Studi Pergeseran Sistem Deklaratif Ke Dalam Sistem Konsitutif)*. Universitas Islam Indonesia: Doctoral Dissertation.

²⁸ Johanes, S., Haryanto, H., & Kusumadewi, Y. (2021). *Perlindungan Hukum terhadap Pemilik Hak Atas Merek*. *Krisna Law*, 3(2), 1-11, p. 2.

²⁹ Rani, A., & Wirasila, A. A. N. (2015). *Perlindungan Hukum terhadap Konsumen Akibat Persaingan Curang*. *Kertha Semaya: Journal Ilmu Hukum*, 4(1), 1-6., p. 2.

Trademarks as intellectual property are often used as signs to identify the origin of goods and services. Trademarks are also the major tools in trading goods and services.³⁰ By creating trademarks, entrepreneurs can guarantee the quality of the goods and services they offer. In addition, the existence of trademarks can prevent unfair competition from other entrepreneurs.³¹ In social life, there is often an assumption that certain brands of goods or services can indicate social status. This has become one of the objects used by irresponsible entrepreneurs, and makes many consumers deceive when buying an item, because the looks of the goods or services are similar to the origin, but have different qualities.³² Therefore, a trademark needs special law to regulate it. Trademark regulation in Indonesia is formulated in *Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis* (Indonesian Trademark & Geographical Indications Law). The main purpose for this regulation is to provide a sense of security and protect the owner of a registered trademark.³³ The role of trademark is seen to be increasingly important in maintaining healthy business competition. In Article 1 paragraph 5 of Indonesian Trademark & Geographical Indications Law, it is understandable that adequate regulation on trademarks is beneficial to provide improved services for the community, including permits registration granted by the government.³⁴ In fact, the government has actually paid attention to the community through the previously trademark regulation, namely *Undang-Undang Nomor 15 Tahun 2001 tentang Merek* (Indonesian Trademark Law) which was later replaced in 2016 with the Trademark & Geographical Indications Law. This change is a refinement of the previous law which only had a few articles regulating Geographical Indications. The previous law is not in accordance with today matter, because at present, Indonesian Ministry of Law and Human Rights is intensively developing Geographical Indications in areas throughout Indonesia.³⁵

Trademarks regulated in Article 1 number 1 of Indonesian Trademark Law & Geographical Indications are signs that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangement, 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 individuals or legal entities in the activities of trading goods and/or services. In this conception, a mark itself

³⁰ Balqis, W. G. (2021). Perlindungan Merek sebagai Hak Kekayaan Intelektual: Studi di Kota Semarang, Indonesia. *Journal of Judicial Review*, 23(1), 41-56., p. 43.

³¹ Jened, R. (2016). Konflik Yurisdiksi Dan Penegakan Hukum Kekayaan Intelektual Dalam Rangka Pasar Tunggal. *Jurnal Mimbar Hukum*, 28(2), 201-214., p. 4.

³² Muhammad, F. (2018). Mendukung Kemudahan Berusaha Bagi Usaha Mikro, Kecil, dan Menengah Berbadan Hukum Dengan Gagasan Pendirian Perseroan Terbatas Oleh Pemegang Saham Tunggal. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 7(3), 445-464., p. 446.

³³ Rifai, T. P. (2016). Kesiapan Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis Dalam Menghadapi Masyarakat Ekonomi Asean. *Fiat Justitia: Jurnal Ilmu Hukum*, 10(4), 733-776., p. 735.

³⁴ Kurniawan, I. G. A. (2013). Pengaturan Penghentian Pemakaian Indikasi Geografis Pada Merek Terdaftar Oleh Pihak Lain Yang Tidak Berhak (Studi Komparatif Beberapa Negara). *Jurnal Magister Hukum Udayana*, 2(2), p. 2.

³⁵ Ukas, I. S., & Jamba, P. (2017). Efektifitas Undang-Undang Nomor 15 Tahun 2001 Tentang Merek Terhadap Daftar Merek Usaha Dagang Industri Kecil dan Menengah. *Jurnal Cahaya Keadilan*, 5(1), 29-47., p. 39.

is divided into trademarks and servicemarks. Article 1 number 2 of the Trademark & Geographical Indication Law defines trademark as a mark used on goods traded by a person or several persons jointly or by a legal entity to distinguish them from other similar goods, while Article 1 number 3 of the Trademark & Geographical Indication Law defines servicemark as a mark used on services traded by a person or several people.

Article 35 of Indonesian Trademarks & Geographical Indications Law states “*merek terdaftar mendapat perlindungan hukum untuk jangka waktu sepuluh (10) tahun sejak tanggal penerimaan dan jangka waktu perlindungan itu dapat diperpanjang*” (Translate: a registered trademark gets legal protection for a period of ten (10) years from the date of receipt and the period of protection can be extended). This regulation explains that the law provides protection for a registered trademark for 10 years from the date of receipt, and the application can be submitted by the owner to get extension for the same period of time. The existence of legal sanctions is part of the effort to provide legal protection for legitimate brand owners. When the trademark has been registered, it gets legal protection, both civil and criminal. If the trademark rights have been held, then according to the Indonesian trademark law system, the trademark holder will get legal protection. Therefore, if there is a violation of trademark rights, the trademark holder can file a lawsuit against other parties who violate the trademark rights. This lawsuit is intended to obtain compensation and the termination of all actions related to the use of the trademark. The lawsuit was filed in the Commercial Court.³⁶

Trademark rights are exclusive rights granted by the government to trademark owners, to use the trademarks themselves or to give permission to other parties to use it.³⁷ To get this right, trademark owners must go through a registration mechanism, or in other words, this registration mechanism is a mandatory (compulsory).³⁸ By registering trademarks to the government, the owners can get legal protection and recognition. When trademark owners do not register their trademarks, then the trademarks can be used freely by everyone.³⁹ Today, the implementation of trademark registration is the government’s concern to empower MSME as their efforts in developing business, so that will make it easier for MSME actors to carry out trademark registration and get legal protection.⁴⁰

Legal protection is only applied to registered trademarks. A registered trademark will provide stronger protection, especially if it is against an identical or similar trademark. Although most business actors are aware of the importance of using brands to differentiate their products from those of their competitors, not all of them are aware of

³⁶ Kowel, F. H. (2017). Perlindungan Hukum Terhadap Penerima Lisensi Merek Di Indonesia. *Lex et Societatis*, 5(3), 53-58., p. 54.

³⁷ 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. 258.

³⁸ 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. 298.

³⁹ Sujatmiko, A. (2011). Tinjauan Filosofis Perlindungan Hak Milik Atas Merek. *Jurnal Media Hukum*, 18(2), 35875., p. 18.

⁴⁰ Sukmadewi, Y. D. (2017). Pendaftaran Merek Asosiasi Sebagai Merek Kolektif (Kajian terhadap Asosiasi Rajut Indonesia Wilayah Jawa Tengah). *Jurnal Ius Constituendum*, 2(1), 109-136., p. 110.

the importance of protecting trademarks through registration.⁴¹ The existence of such protection shows that the government is obliged to enforce the Trademark Law. Therefore, if there is a infringement, the trademark owner can file a lawsuit to the competent Court. With this protection, justice will be realized which is the goal of the Law as has often been stated that one of the goals of law is to realize social justice. With legal protection, the rights of the legitimate trademark owner are protected.⁴² A registered trademark is a valid recognized by law and has a register number, so it obtains protection from the Government through the Court. Meanwhile, unregistered trademarks do not receive legal protection from the Government. Because trademark infringement is a complaint offense, if a party legally owns a trademark complains, the Court will process it.⁴³ The existence of legal protection is a form of legal function that must provide justice, benefit and legal certainty. The implementation of legal protection for registered trademarks will encourage investment and increase investor trust in running their business in Indonesia. If the legal protection of registered trademarks does not work, then the interest of investors in investing and running their business in Indonesia will weaken, and this is not profitable for Indonesian economy.⁴⁴

B. Relation between the Awareness of Culinary MSME Actors and Trademark Protection

The second discussion in this study is to examine the relation between the awareness of culinary MSME actors and trademark protection. Currently, the growth of MSME is increasing in every sub-districts and villages in various regions, including Batam. In various regions, there are several industrial area centers that become potential market sources for MSME actors.⁴⁵ The potential of Batam, apart from being an industrial city, is also known for its strategic location. This is the factor that supports the growth of MSME in Batam. MSMEs in Batam are very diverse, consisting of businesses related to goods and services. Businesses related to goods include food stalls, coffee shops, and canteens. Businesses related to services include workshops, warehousing, information technology services, and technical services.⁴⁶ One of the MSME that is growing rapidly in Batam is culinary business. However, as previously explained, there are still many MSME actors who have not registered their trademarks.

From the research carried out from several MSME actors in the culinary sector in Batam, it was found that there were still some MSME actors who have not registered their trademarks. This is because the MSME actors do not aware about the importance or the urgency of trademark registration as an effort to get law protection. For example, some

⁴¹ Arifin, Z., & Iqbal, M. (2020). Perlindungan Hukum Terhadap Merek Yang Terdaftar. *Jurnal Ius Constituendum*, 5(1), 47-65., p. 59.

⁴² Haryono, H. (2012). Perlindungan Hukum Terhadap Merek Terdaftar. *Civis*, 2(1), p. 246.

⁴³ Mirfa, E. (2016). Perlindungan Hukum Terhadap Merek Terdaftar. *Jurnal Hukum Samudra Keadilan*, 11(1), 65-77., p. 70.

⁴⁴ Indah, V. N., & Indrawati, S. (2021). Perlindungan Hukum Produk Barang dan Jasa melalui Pendaftaran Merek. *Eksaminasi: Jurnal Hukum*, 1(2), 15-24., p. 21.

⁴⁵ Siagian, M., Kurniawan, P. H., & Hikmah, H. (2019). Analisis Faktor Eksternal dan Internal Terhadap Kinerja UMKM di Kota Batam. *Jesya (Jurnal Ekonomi dan Ekonomi Syariah)*, 2(2), 265-271., p. 269.

⁴⁶ Amboro, F. Y. P. (2019). *Op.Cit.*, p. 7.

owners of culinary businesses still do not know that a trademark is an intellectual work of someone whose rights can be protected. However, there are also some MSME actors who are aware about the importance of trademark registration and have registered their trademarks. The first informant in this research was Mrs. Echa Delisa as the owner of 'Sunday Toast' (a culinary business). Based on the results of the interview with Mrs. Echa Delisa on January 1, 2022, it was found that the income of Sunday Toast was IDR. 180,000,000 per year. According to MSME Law, Sunday Toast is classified as Micro Business. As explained before that micro business has maximum net worth/business capital of IDR. 50,000,000, excluding land and buildings for business premises, as well as annual sales of a maximum of IDR. 300,000,000. What is meant by net worth here is the amount of assets after deducting debts or liabilities. Based on the results of interviews regarding the awareness of trademark as intellectual property, it is discovered that MSME-Sunday Toast already has a trademark (See Picture 1).

Picture 1: MSME Trademark-Sunday Toast



Source: MSME-Sunday Toast

From the interview with the owner of Sunday Toast, it can be seen that owner understands that the trademark is her intellectual property. The owner also understands that a brand is the display of a business and a differentiator from other businesses. So it needs to be protected in order to avoid imitation from others. The owner Sunday Toast said that he had registered her trademark to Indonesian Directorate General of Intellectual Property. This registration is an effort to protect the trademark.

Then, the second informant was Ms. Devi Uliyanti as the owner 'The Grizzlies' (a culinary business). Based on the interview on January 1, 2022, it is known that The Grizzlies is a culinary MSME that sells various cookies. The income of this business is 360,000,000 (three hundred and sixty million) per year. According MSME Law, The Grizzlies is classified as small business. As stated, before that small business has net worth/business capital more than IDR. 50,000,000- up to IDR. 500,000,000, excluding land and buildings for business premises. As well as annual sales which is more than IDR. 300,000,000- up to IDR. 2,500,000,000,. In this case, net worth is the amount of assets after deducting debts or liabilities. It is also discovered that The Grizzlies already has a trademark (See picture 2).

Picture 2: MSME Trademark-The Grizzlies



Source: MSME-The Grizzlies

From the interview with Devi Uliyanti who is the owner of UMKM-The Grizzlies, she does not know that the trademark is an intellectual property. The owner of this culinary business still does not aware that a brand is the display of a business and a differentiator from other businesses, so it needs to be protected in order to avoid imitation from others. In addition, the owner of MSME-The Grizzlies also does not know that this registration is an effort to protect her business trademark. Because the lack of awareness, the owner has not registered the trademarks to Indonesian Directorate General of Intellectual Property.

Then third informant was Mrs. Tri Sulastris as the owner of MSME-Lhotse (a culinary business). Based on the interview on January 1, 2022, it is known that the income of Lhotse is IDR. 84,000,000 - IDR. 90,000,000 per year. According MSME Law, Lhotse is classified as Micro Business. As stated in MSME regulation that micro business has net worth/business capital up to IDR. 50,000,000, excluding land and buildings for business premises, as well as maximum annual sales of IDR. 300,000,000. Furthermore, the owner of Lhotse already has a trademark (See Picture 3).

Picture 3: MSME Brand-Lhotse



Source: MSME- Lhotse

'Lhotse' is a culinary business that provides various fast food. From the interview with Ms. Tri Sulastris as the owner of MSME-Lhotse, it can be seen that the owner knows

that the trademark is an intellectual right. However, the owner of this culinary business has not registered her trademark due to the lack of information/knowledge regarding the procedures of trademark registration. In addition, the owner also considers that the registration of trademark is not necessary for her small business. She does not know that this trademark registration is an effort to protect her business trademark. This condition obviously prevents her from getting intellectual property protection.

The analysis results that has been carried out from interviews with MSME owners in Batam shows that the relation between the awareness of culinary MSME actors and trademark protection is still very low. Based on Lawrence M. Friedman's theory, the legal system includes components of Legal Structure, Legal Substantial components, and Legal Culture components. The three components of the legal system are interrelated with each other. By supposing the legal structure as a machine, any substance is produced or done by the machine and the legal culture is anything or anyone who decides to turn on or turn off the machine and decides how the machine is used 40 Related to this theory, the effectiveness of the law is depend on these three components. From this research, it can also be seen that the community as MSME actors have a role or contribution in carrying out the effectiveness of the law, in this case is trademarks protection through registration. So, as part of the Legal Culture, MSME actors need to protect their trademarks by registering them.

CONCLUSION

MSME is a business activity that can act equally, encourage the increase of income and build the economy of community. Most MSMEs in Batam are culinary businesses. The role and huge potential of MSME are expected to be developed as much as possible, as an effort to improve community welfare and economic growth. Therefore, legal protection is needed to protect products, especially trademarks. Because of the less sensitive and the lack of protection on the products that we have, in the end, many Indonesian products, especially products with traditional values, have their ideas and designs 'stolen' by outsiders. Maybe we don't realize that trademark protection brings high economic value when it enters the world of commerce. A product that is protected by trademark rights can only be produced by the owner or holder of the rights (exclusive).

The research reveals that the main factor that causes small businesses do not register their trademarks to Indonesian Directorate General of Intellectual Property, is the lack of public awareness regarding the importance of trademark registration. Even most people do not know how the trademark registration process. Whereas a trademark is an immaterial wealth of a product and an economic asset for business actors. In addition, trademarks that are not registered to Indonesian Directorate General of Intellectual Property are also vulnerable to misuse by other parties which will result in losses for the business actors themselves. For this reason, trademark needs to be registered to get legal protection. This research recommends to all of MSME actors that have not registered their trademarks, to immediately register them. It aims to minimize plagiarism of the trademark and to obtain intellectual rights protection. Furthermore, Batam Cooperatives and Micro Business Office is expected to help realizing the welfare of the Batam community through programs that have been prepared either directly or indirectly. As

contained in the Batam Government's Vision: "the realization of cooperatives and micro-enterprises that are strong, independent, and competitive in strengthening the resilience of the people's economy".

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Indonesian Job Creation Law (*Undang-Undang No. 11 Tahun 2020 tentang Cipta Kerja*)