



# Legal Empowerment for SMEs Regarding Collective Marks: A Legal Analysis

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## ABSTRACT

This study aims to conduct a legal analysis regarding the empowerment of SMEs in obtaining protection for collective trademark rights. This article uses doctrinal research (normative juridical), using primary and secondary legal materials and non-doctrinal using primary data. The results of the research and discussion show that empowering MSMEs through collective brand protection needs to be considered from both normative and empirical aspects. From the normative aspect, there are still inconsistent arrangements and unclear norms. while at the empirical level the provision of collective brand protection for MSMe is relatively difficult to realize.

**Keywords:** *legal analysis, Collective Marks, MSMe*

## 1. INTRODUCTION

Development is one of the manifestations of realizing the goals of the state which is contained in the preamble to the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia). Indonesia as a developing country needs to carry out development in various fields, whether political, economic, socio-cultural or legal. Development in the economic field is normatively regulated in Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that the economy is structured as a joint venture based on the principle of kinship. The article formulated by the founding fathers has the nuances of socialism with a spirit of kinship, group and collective [1]. Economic development as one of the main pillars in the progress of the nation involves various components involved in the economic system. The economic system is built by elements (sub-systems) which then form an overall work unit. The economic system, among others, consists of four main elements, namely: economic actors, resource ownership, mechanisms for implementing economic activities, and goals to be achieved [2].

Economic actors have such a central function in the economic system, because every activity carried out by economic actors is closely related to growth and at the same time income distribution. Sri Redjeki Hartono, added that economic actors have 2 (two) functions at once, namely first, supplying community needs starting

from primary, secondary and tertiary needs, and secondly as absorbing community workforce [3]. Economic actors in Indonesia consist of state economic actors (BUMN), private economic actors, and cooperative economic actors. One economic actor has different characteristics from another. BUMN as a representation of the state as an economic actor, its capital is controlled by the government and its purpose is to serve and improve the welfare of the community. Private economic actors are owned by the private sector and their orientation is efficiency and innovation to seek profit (profit oriented), while cooperatives are economic actors that develop based on Indonesian local wisdom values with the status of belonging to and for its members.

Micro, Small and Medium Enterprises (MSMe) have a vital role in supporting the nation's economy in Indonesia. This was proven when the monetary crisis occurred in 1998, many large companies fell one by one, but only MSMe remained standing strong in running their business. From this experience, the country continues to make improvements to MSMEs in order to develop their potential so they can compete globally and keep abreast of the times.

Indonesia is a country that has enormous potential in developing MSMe [4]. MSMe as one of the economic actors have significant potential and contribution to the national economy. This contribution MSMe whose development has continued to relatively increase both in

terms of the number of business units, employment, and contribution in terms of exports.

MSMe development requires strategic steps to grow the level of national development [5]. MSMEs as one of the economic actors who have strategic value in strengthening the national economy, therefore proper attention should be given to empowering MSMe [6]. Until now, MSMe development still has various problems, for example related to the ease of doing business, low knowledge about marketing strategies, intellectual property rights and halal certificates.

In the free trade era as it is today, the role of trademarks is very vital, especially in maintaining fair business competition, so that legal protection is needed. Trademarks will receive protection from a legal perspective if they are registered with the Directorate General of Intellectual Property. Collective marks also need to get legal protection, especially in this case for MSMe business actors. The policy that can be done is to provide facilitation to form a Collective Mark.

In 2023, the Directorate General of Intellectual Property has also announced 2023 as the year of the national trademark. The theme is to build awareness of love and pride in Indonesian marks. It is hoped that the declaration of the trademark year will stimulate creative economic growth and empower local communities through the utilization of intellectual property. One of the superior programs is one village one trademark. One village has one trademark. The aim is to encourage each region to have a collective trademark. The trademark is a creative and innovative step in order to protect the trademark of a product from a village that has a uniform type of product produced [7].

A trademark is a legal definition that provides remedies if a trade mark is used by a party that does not have the authority to do so. trademark is basically a sign to identify and differentiate a company's products from other companies. A collective mark is a mark that is used for goods or services with the same characteristics regarding the nature, general characteristics, and quality of goods or services and their control which will be traded by several people or legal entities together to differentiate them from other similar goods and/or services. Collective markss for MSMw business actors, whether certified or not halal certified, will be increasingly assisted in introducing their products to consumers with their characteristics.

The research problems is how is the regulation and application of collective trademark legal protection for msme products? And how the future arrangements regarding the protection of collective trademark rights in Indonesia?

## 2. RESEARCH METHODS

The research method used in this study is normative legal research (normative juridical) and also empirical juridical. Normative legal research or what is often referred to as doctrinal research is carried out to conduct in-depth studies related to the vacuum of norms, obscure of norms, and the conflict of norms [8]. In the context of this study, this method is used to answer the obscure of norms related to the legal consequences of regulating collective marks.

Normative legal research focuses only on literature study or document study. The literature and documents in question are sources of legal materials in the form of laws and regulations, court decisions, legal theories, and opinions of scholars. Normative legal research is often also referred to as doctrinal legal research because it is aimed at legal materials, namely written regulations [9] It is also called literature research because this research is mostly carried out on secondary data that has been rolled out. This type of research is descriptive research because it will describe and describe the regulation of religious confession that is fair and legally certain, by examining the values, principles, norms, and legal facts in Indonesia.

empirical juridical to see how the implementation of the law that has been regulated in the provisions of laws and regulations.

## 3. RESULTS AND DISCUSSION

Development in all fields is an inevitability that is necessary for Indonesia as a developing country. The success of development will realize the ideals or goals of the country that have been agreed upon by the founding fathers in the preamble of the 1945 Constitution of the Republic of Indonesia. One of the supports for successful development in the economic field is if an economic system in a country is running well, one of the economic sub-systems is an economic actor. private sector in this case MSMe. Before entering into the discussion of the main issues, it will be explained in relation to the MSMe conception as stipulated in the MSMe Law. Whereas what is meant by Micro Enterprises are productive businesses owned by individuals and/or individual business entities that meet the criteria for micro-enterprises as stipulated in this Law, while the criteria for micro-enterprises are having a maximum net worth of Rp. 50,000,000.- (fifty million rupiah) excluding land and buildings for business premises or having annual sales of a maximum of Rp. 300,000,000.- (three hundred million rupiah).

MSMe as one of the private economic actors that have a real contribution to the country's economy, including in terms of numbers, employment, GDP, export value, and investment should receive support, opportunity, empowerment, and legal protection as a form of partiality to business actors people's economy.

This is in line with the provisions in the preamble letter c of Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises that the empowerment of MSMEs is carried out in a comprehensive manner, one of which is protection so as to increase the position, role and potential of MSME in realizing economic growth, equity and increasing people's income, job creation, and poverty alleviation.

Empowerment related to the legal protection of MSME is a brand attached to products produced by MSME. Trademark is a core part of MSME marketing activities. Starting from the consumer's point of view, they have the view that the best brand is a brand that is able to represent the true character of the product [10]. A trademark is an identification of the origin of goods and services and also has the function of linking the goods and services concerned with the producer. It describes the guarantee and reputation of goods and services traded business results [11].

Trademark as one of the signs attached to a product of goods and/or services has many functions for both business actors and consumers. For business actors, among others, a trademark has a function as a differentiator from other similar products. Meanwhile for consumers, trademark can make it easier to choose which product to use.

The acquisition of trademark protection in Indonesia adheres to a constitutive principle, meaning that a mark can be protected as a trademark if it has been registered with the Directorate General of Intellectual Property (DJKI). The provision of such protection must meet both administrative requirements and substantive requirements. Protection of trademark rights registered in Indonesia is limited to 10 years and can then be extended again. If the rights to the mark are not renewed, then the mark becomes a public domain.

Trademark rights in Indonesia can at least be classified into two, namely trademarks based on their products, level of public knowledge, and ownership. Trademark rights based on the product can be divided into two, namely goods trademarks and service marks. Meanwhile, based on the level of public knowledge, it can be divided into two, namely ordinary trademarks and well-known marks. Trademark rights based on ownership can be categorized as individual owned trademarks and collective trademarks. Collective marks only show that their use is carried out together (communal).

The regulation of collective marks is an important matter to study, on the basis that the granting of rights to collective marks does refer to the applicable laws and regulations, as a consequence of Indonesia being a state of law. Collective trademarks at the international level have existed since the tradition of Scresissima in the 10th century in Venice Italy before the ornate glass-

blowing moved to the island of Murano [12]. The official international agreement with the 1883 Paris Convention already includes the classification of trademarks, service marks and collective marks.

In principle, there are only two classifications, namely trademarks and service marks. Collective marks only show that their use is carried out together (communal). The regulation of collective marks in Indonesia was regulated for the first time in Law Number 19 of 1992 concerning Trademarks (1992 Trademark Law), among other things it regulates what a collective mark is, how to apply for collective mark registration, and compensation for violations of a collective mark. Article 1 point 4 of the 1992 Trademark Law states that a collective mark is a mark used for goods or services with the same characteristics that are traded by several people or legal entities together to differentiate them from other similar goods or services. Referring to these provisions, collective marks can be used for goods or services and are used together with the same characteristics. These provisions are not explained regarding the same characteristics covering anything. Amendments to the 1992 Trademark Law in 1997 did not change the provisions governing collective marks.

With the enactment of Law Number 15 of 2001 (2001 Trademark Law) replacing the 1992 Trademark Law, there was a change in the provisions governing collective marks as stipulated in Article 1 number 4, namely marks used on goods and/or services with the same characteristics traded by several people. and/or legal entities collectively to differentiate goods and/or other similar goods. This change is expanded by the word "and/or" which means that the mark may be a brand used in goods and/or services, it can be all or one of them, it is different if you use the word or, so the meaning is only one. The 2001 Trademark Law still does not provide an explanation regarding the same characteristics.

Based on the Trademark and Geographical Indication Law, provides definitions *collective mark as a mark used for goods and/or services with the same characteristics regarding the nature, general characteristics, and quality of goods or services as well as their supervision which will be traded by several people or legal entities jointly to differentiate goods and/or services other kind*

If look closely, there are several provisions that are potentially difficult to implement because of the asynchronousness between the articles and within the articles themselves. The discrepancy between the articles is in Article 1 number 4 which states that "...for goods and/or services with the same characteristics regarding the nature, general characteristics, and quality of goods or services and their supervision...". Based on this definition,

collective marks must have the same characteristics regarding the nature, general characteristics, and quality of goods or services. The word "and" in the sound of the article implies that the same characteristics include the nature, general characteristics, and quality of goods which are cumulative requirements that must be met by all, so that it cannot be just one of the three, but the whole.

The provisions of Article 1 number 4 are not in sync with the provisions of Article 46 paragraph 3 that "...Collective Marks as referred to in paragraph (2) contain at least provisions concerning:

- a. nature, general characteristics, or quality of goods and/or services to be produced and traded;
- b. supervision over the use of Collective Marks; And
- c. sanctions for violating the terms of use of the Collective Mark.

The requirements for obtaining rights to a collective mark are regulated to contain at least three things, the focus of the article is on the letter "a" which states the nature, general characteristics, or quality of the goods. The word "or" as in this provision contains an alternative meaning, the meaning of which of the three things does not have to be fulfilled all of them, but can be just one. These provisions are not in sync with the provisions in Article 1 number 4 where these three things are cumulative or all of them are fulfilled. At the implementation level, of course there will be an obstacle when there is an unsynchronized provision between articles. These provisions are exacerbated by the characteristics of collective marks, namely the nature, general characteristics and quality of the goods. There is no definite explanation for each of them. It is not impossible that problems will arise due to ambiguity in the rules.

Another problem is related to the asynchronism in the article itself, namely the provisions of Article 1 number 4 of the MIG Law which states that, "Collective marks are marks used on goods and/or services with the same characteristics regarding the nature, general characteristics, and quality of goods or services and control which will be traded by several persons or legal entities together to differentiate it from other similar goods and/or services". A mark used for goods and/or services means that the mark can be used for goods and/or services (can be both or one of them, but the characteristics regarding the nature, general characteristics and quality of the goods or services are not as stated in the previous provisions. The word "or" has an alternative meaning or may be either, whereas in the previous provisions it is possible cumulative.

In the aspect of implementation, that researcher has conducted research at Lontong UMKM in the city of Surabaya. The reason for choosing Lontong SMEs is

because of the similar characteristics regarding the nature, general characteristics, and quality of goods or services. On the other hand, Lontong SMEs have produced on a relatively large scale and are well known in the wider community. Based on this, it is to photograph the level of awareness and legal protection for Lontong MSMEs for their trademark.

Based on the results of interviews conducted with the Chairperson of the Paguyuban and the MSME owners, it shows that the existence of Lontong UMKM in the area has existed since 1989 until it exists today. Regarding how to distinguish lontong products from one another there is usually a special sign, although in this case the intended sign is not the same as the trademark concept. Regarding the opportunity to provide signs that are used together, explained by Mr. Pele, although they have characteristics regarding the nature, general characteristics, in terms of the quality of the goods, these are different from one another and it will be difficult to provide protection through collective marks later. With regard to these conditions, it is clear that the cumulative requirements as stipulated in the Law on Trademarks and Geographical Indications will not be fulfilled. More than that, how to control the quality of rice cake products is also relatively difficult.

In the future, collective trademarking will be divided into two aspects, namely the characteristic aspect and the monitoring aspect. The characteristic aspect becomes important when the provisions as stipulated in the MIG Law are still inconsistent as to whether these characteristic requirements are cumulative requirements or alternative conditions. For future arrangements, these provisions need to be synchronized whether to use cumulative or alternative conditions. Alternative terms are the best choice, because these relatively provide convenience for collective mark applicants. Another thing from the aspect of characteristics, there is still confusion or unclear how and what is meant by the nature, general characteristics, and quality of goods or services. These three things should be given clear definitional limits, so that later it does not become a polemic about how these rules can be applied.

The aspect of supervision is one of the provisions that have been required in these provisions. However, this aspect of supervision has not been given a more in-depth explanation regarding who supervises, how the supervision is carried out, what aspects are supervised, how long the supervision period is, whether there are legal implications if the results of the supervision obtain bad results on the protection status of collective trademark rights.

#### 4. CONCLUSION

Legal empowerment of MSMEs through collective brand protection needs to be reviewed because there are several weaknesses. First, the arrangements relating to collective marks are still inconsistent between articles or within the articles themselves. Regulatory provisions

also contain a blurring of norms regarding the government that will register a collective mark which may hinder the implementation of the provisions of the article. Second, the substantive requirements for obtaining collective trademark rights related to the characteristics of MSMEs cannot be absolutely applicable to all, but only small and medium-sized businesses, for small businesses they cannot absolutely apply to all, while for medium-sized businesses, although they have the potential to obtain trademark rights collective, in fact, prefer protection through ordinary trademarks and/or services rather than through collective marks.

### AUTHORS' CONTRIBUTIONS

The author was made up of four persons who also contributed to the article. An article is written in several stages over the course of 2 (two) months, including research and writing. The author of the article grounds his opinions on verifiable legal product.

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