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# INCREASING LEGAL AWARENESS OF MSME ENTREPRENEURS FOR TRADEMARK REGISTRATION AT DJKI

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#### **Abstract**

This study aims to analyze the legal implications for micro, small, and medium enterprises (MSMEs) that do not register their trademarks, as well as the legal steps that can be taken in the event of trademark infringement by another party. The method used is normative legal research, which focuses on a study of the legal norms governing trademark registration through the Directorate General of Intellectual Property (DJKI). This study was conducted by examining laws and regulations, court decisions, and academic literature to identify challenges and opportunities in the trademark registration process for MSMEs. The results showed that failure to register a trademark can lead to various legal, economic, and strategic risks, such as potential trademark infringement, loss of control over the market, and a weak legal position in dispute resolution. International legal frameworks, such as the Paris Convention and the TRIPS Agreement, emphasize that trademark registration is a key requirement for strong legal protection. In Indonesia, various protection mechanisms are available for MSMEs that experience trademark infringement, including civil lawsuits, criminal sanctions, and administrative complaints. Therefore, MSME actors are advised to immediately register their brands, obtain legal assistance, and encourage the simplification of law enforcement procedures to ensure the continuous protection of trademarks and increase competitiveness in the market.

**Keywords**: MSMEs, Brands, Legal Awareness

#### Abstrak

Penelitian ini bertujuan untuk menganalisis dampak hukum yang dihadapi oleh pelaku Usaha Mikro, Kecil, dan Menengah (UMKM) yang tidak mendaftarkan merek dagangnya serta langkah-langkah hukum yang dapat ditempuh jika terjadi pelanggaran merek oleh pihak lain. Metode yang digunakan adalah penelitian hukum normatif, yang berfokus pada kajian terhadap norma-norma hukum yang mengatur pendaftaran merek dagang melalui Direktorat Jenderal Kekayaan Intelektual (DJKI). Studi ini dilakukan dengan menelaah peraturan perundang-undangan, putusan pengadilan, serta literatur akademik guna mengidentifikasi tantangan dan peluang dalam proses pendaftaran merek bagi UMKM. Hasil penelitian menunjukkan bahwa kegagalan dalam mendaftarkan merek dagang dapat menyebabkan berbagai risiko hukum, ekonomi, dan strategis, seperti potensi pelanggaran merek, kehilangan kendali atas pasar, serta lemahnya posisi hukum dalam penyelesaian sengketa. Kerangka hukum internasional, seperti Konvensi Paris dan Perjanjian TRIPS, menegaskan bahwa pendaftaran merek merupakan syarat utama

untuk memperoleh perlindungan hukum yang kuat. Di Indonesia, tersedia berbagai mekanisme perlindungan bagi UMKM yang mengalami pelanggaran merek, termasuk gugatan perdata, sanksi pidana, serta pengaduan administratif. Oleh karena itu, pelaku UMKM disarankan untuk segera mendaftarkan mereknya, mendapatkan pendampingan hukum, serta mendorong penyederhanaan prosedur penegakan hukum guna memastikan perlindungan merek dagang secara berkelanjutan dan meningkatkan daya saing di pasar.

Kata kunci: UMKM, Merek, Kesadaran Hukum

#### INTRODUCTION

Indonesia is home to many Micro, Small and Medium Enterprises (MSMEs). In today's digital age, technology offers significant opportunities for businesses to increase the visibility of their products, expand market access, and obtain important information for business development more efficiently. According Indrawati & Setiawan, (2020) As a result, many people are entering the world of entrepreneurship as a means of improving their economic conditions. People in Medan City actively participate in various MSME sectors, especially in the field of trade, producing various kinds of products such as clothing and food. However, with the advancement of information technology, competition in product marketing is getting tougher. This competitive landscape often causes producers to use trademarks or product labels that may be similar to others, whether intentionally or unintentionally. To differentiate their products, business owners must help consumers recognize the unique attributes of the products they offer.

Trademarks are a fundamental aspect of Intellectual Property Rights, which are protected by Intellectual Property Law, including copyright. Intellectual Property Rights grant exclusive rights to registered owners, enabling them to enjoy the moral and economic benefits of their creations. This includes works with distinctive features that set them apart from other products, such as logo designs, shapes, numbers, or combinations of unique elements. In this context, copyright protects specific creative works, while trademark protection focuses on the identity of the brand itself (Maulana dkk., 2021). Trademarkrelated rights are limited to their use and application to marketed products, which have economic value. As competition in the marketing of goods and services continues to increase, business strategies must go beyond solving existing problems and improving product quality. Businesses must also ensure that their products are not only recognized but also legally protected from competitors. An important aspect of business development is strengthening consumer trust and loyalty, in addition to building distinctive brand features. A well-recognized trademark serves as a valuable asset for businesses, especially those aiming to compete in the global market. A trademark, or brand, is a combination of elements such as a name, term, symbol, design, color, shape, or product attribute that gives an identity and distinguishes a product from its competitors (Waspiah dkk., 2020).

The city of Medan has a variety of MSMEs, but many of these companies struggle to develop their products or build unique brands to protect their businesses. The main problem is that even though many MSMEs create their own brands, they fail to register them with the Directorate General of Intellectual Property (DJKI) under the Ministry of Law and Human Rights. Legal awareness regarding trademarks is very important for

MSMEs, as it plays a fundamental role in ensuring business continuity and maintaining a competitive advantage. A trademark not only distinguishes a business's products or services from those of competitors but also provides legal protection against unauthorized use or infringement, safeguarding brand identity and market reputation. Without trademark registration, MSMEs risk experiencing brand imitation, which causes financial losses and reduced consumer confidence. A strong understanding of trademark law allows MSME owners to utilize their brand as an intangible asset, which can increase business valuation and create opportunities for market expansion. In addition, compliance with trademark regulations fosters a culture of legal certainty, reducing the possibility of disputes that can disrupt business operations. Given the important role that MSMEs play in economic growth, increasing legal literacy regarding trademarks is essential to promote fair competition, innovation, and long-term business success in domestic and international markets.

Trademark registration is an important step for MSMEs because it offers significant legal protection. In addition, registered trademarks signify quality and trust to consumers, who tend to buy products from businesses with official labels. This sense of security fosters consumer loyalty, which leads to predictable demand and creates barriers for competitors trying to enter the market. In addition, trademark registration helps prevent legal conflicts with other businesses that may use similar names or logos. Over time, registered trademarks can become valuable assets, increasing their value and attracting potential investors. Purwaningsih, (2020) Explain without registration, trademarks have no legal protection, making them vulnerable to unauthorized use by other parties, which can have legal consequences. In addition, unregistered trademarks are at risk of being counterfeited, potentially damaging the reputation of the original brand. As a result, businesses that fail to register their trademarks can lose commercial value and miss out on valuable opportunities for business growth.

Many small-scale MSMEs consider intellectual property protection unnecessary. In addition, the cost of registering a trademark is often considered too high for MSME players, especially those in the low-economic category. Due to financial constraints, many MSMEs have not obtained legal protection. This omission can cause significant problems in the future, especially as the business environment continues to evolve. With the growth of MSMEs, various challenges arise, requiring government intervention and collaboration with business owners to ensure adequate legal protection. Data from the Ministry of Law and Human Rights in North Sumatra reveals the number of trademark registrations in the region. In 2022, there were 1,997 trademark registrations, increasing to 2,830 in 2023, but slightly decreasing to 2,403 in 2024. Although the number of registrations has increased over the years, it is still relatively low compared to the total number of MSMEs operating in the region. This shows the need for greater government efforts to encourage trademark registration among MSMEs. The increase in the number of registrations in Medan City shows that business owners are becoming more aware of the importance of trademark protection to protect their companies and facilitate entry into global markets.

Given the importance of trademark registration, the government must actively encourage

MSMEs to understand and recognize its significance. Providing adequate services and supervision is vital to ensure that registered businesses develop strong trademarks that increase their market competitiveness. Through these efforts, MSME products will have a better chance of competing both domestically and abroad. Trademark registration must be done in good faith. A trademark cannot be registered if the applicant has bad faith or contains elements that contradict applicable laws and regulations, religious ethics, decency, public order, or has no distinctive power. In addition, trademarks that are already in the public domain or that only provide information content without aligning with the applicant's goods or services cannot be registered.

Indonesian trademark law is regulated by Law No. 20 of 2016 concerning Trademarks and Geographical Indications. According to Article 1, Paragraph (1), a trademark is a sign in the form of a picture, name, word, numbers, color arrangement, or a combination of these elements used in the trading of goods or services. The trademark protection system in Indonesia follows the 'First to File' principle, which means that exclusive rights are granted to the first applicant to officially register a trademark. Despite the widespread perception that trademark registration is only relevant for large businesses, trademark registration plays an important role in protecting intellectual property for MSMEs. As a business identity, a trademark not only helps consumers recognize and distinguish products but also protects companies from infringement and unfair competition. Registering a trademark promotes innovation and creativity, as MSMEs are encouraged to develop new products, improve marketing strategies, and increase customer engagement. In addition, strong trademarks help prevent unfair business practices, ensuring that MSMEs can compete on a level playing field. Therefore, all MSME players must realize the importance of trademark registration as part of building a strong and sustainable business (Purwaningsih dkk., 2023).

Although awareness of trademark protection is increasing, there are still many MSMEs operating without registering their business trademarks. Several cases illustrate this problem. One example is Jelsifa Bakery & Cakes in Tarutung City, which has not registered its business brand with the Ministry of Law and Human Rights. Another case is Ellsa Snack, a banana chip business in Medan, which has not registered its trademark due to cost constraints. In such cases, business owners often lack knowledge of the trademark registration process and its legal implications. Many entrepreneurs fail to consider the potential legal consequences of using an unregistered trademark, as outlined in Law No. 20 of 2016 concerning Trademarks and Geographical Indications. Based on these concerns, this study aims to explore the legal consequences faced by MSME actors who do not register their business trademarks (Gunawan & Putra, 2023). The absence of trademark registration exposes business owners to risks such as trademark infringement, financial loss, and reduced consumer confidence. Without legal protection, MSMEs may find it difficult to assert ownership of their brands, making them vulnerable to competitors using similar or identical trademarks.

In addition, this study seeks to analyze the legal remedies available to MSMEs if their trademarks are copied. Business owners facing trademark infringement can take legal action such as filing complaints, seeking financial compensation, or initiating legal

proceedings to protect their rights. Raising legal awareness among MSME actors is essential to ensure compliance with intellectual property laws, protect business sustainability, and strengthen market competitiveness.

#### **METHOD**

This study on increasing legal awareness among MSME entrepreneurs to register trademarks with the Directorate General of Intellectual Property (DJKI) uses a normative juridical method. This approach is used to analyze the legal principles, norms, and regulations relevant to trademark registration, especially in the context of micro, small, and medium enterprises (MSMEs) (Iswadi dkk., 2023). This study focuses on understanding the legal framework governing trademarks, the obligations of business owners, and the consequences of non-compliance. The data collection technique used in this study is a literature review, which involves examining relevant legal sources such as laws, government regulations, ministerial decrees, court decisions, and scientific works. In addition to primary legal sources, secondary sources such as books, journals, and articles relating to intellectual property law and MSME development were also analyzed to gain a broader understanding of the issues. This research also considers previous studies that address the trademark issues faced by MSME entrepreneurs, to provide a comparative perspective on challenges and best practices.

The research sample consists of documented cases and statistical data related to trademark registration among MSMEs, particularly in Medan City. Data from the North Sumatra Regional Office of the Ministry of Law and Human Rights was examined to assess the level of awareness and compliance among MSME actors. The analysis includes a review of trademark registration trends and the factors that influence business owners' decisions to register or not register their trademarks. The data analysis technique used in this study is qualitative analysis, which involves systematically interpreting legal material and identifying the main themes related to MSME trademark registration. Through this approach, this study aims to provide a comprehensive legal analysis of the challenges and opportunities faced by MSME entrepreneurs, as well as propose legal solutions to increase their awareness of and compliance with intellectual property regulations.

## **RESULT AND DISCUSSION**

#### The legal consequences of failing to register a trademark for MSMEs

The legal consequences of failing to register a trademark for Micro, Small, and Medium Enterprises (MSMEs) are significant and can have a significant impact on sustainability, market competitiveness, and legal protection of their brand identity. In many jurisdictions, trademark registration is governed by intellectual property law, which grants exclusive rights to the trademark owner and offers legal recourse against unauthorized use. The absence of registration exposes MSMEs to various risks, including brand dilution, loss of exclusive rights, potential legal disputes, and economic losses. This discussion will comprehensively analyze the legal consequences of the failure to register a trademark for MSMEs by referring to the relevant statutory provisions, judicial precedents, and legal doctrines supporting intellectual property law.

First, the main legal implication of failing to register a trademark is the absence of exclusive rights to the brand name, logo, or other distinguishing mark. According to the Paris Convention for the Protection of Industrial Property (1883) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994), trademark rights are usually granted at the time of registration in most jurisdictions following the first-tofile principle, as seen in Article 3 of the Indonesian Trademark Law (Law No. 20 of 2016 concerning Trademarks and Geographical Indications). This principle gives exclusive ownership and use rights to the party who first registers the trademark with the relevant intellectual property office. Conversely, failure to register means that MSMEs have no legal standing to prevent others from using similar or identical brands, thus losing control over their brand identity. Secondly, the lack of trademark registration exposes MSMEs to the risk of trademark infringement and cancellation. Under Article 21 of the Indonesian Trademark Law, a trademark application can be rejected if it is similar to a previously registered trademark. This means that a third party who registers a similar or identical trademark first can claim exclusive rights, potentially preventing the original MSME from using its trademark. The doctrine of passing off, which comes from common law jurisdictions, protects unregistered trademarks to a certain extent by allowing businesses to sue for misrepresentation if they can prove good faith, misrepresentation, and damage (as set out in Reckitt & Colman Ltd v Borden Inc [1990] 1 WLR 491) (Gea & Disemadi, 2022). However, the transfer of a brand requires extensive proof and is not as simple as a claim of trademark infringement under registered rights, making it a weaker form of legal protection for MSMEs. Third, failure to register a trademark can lead to legal liability if an MSME accidentally infringes on an already registered brand. In many legal systems, such as under Article 100 of the Indonesian Trademark Law, the unauthorized use of a registered trademark can result in civil and criminal penalties, including fines and potential imprisonment. This is in line with the broader legal framework found in Article 61 of the TRIPS Agreement, which mandates effective enforcement mechanisms against trademark infringement, including criminal procedures and remedies. Practically, MSMEs that unknowingly adopt a brand similar to a registered brand can be subject to cease and desist orders, forced brand replacement, and financial compensation, which can be detrimental to business operations (Cahyaningrum dkk., 2023).

Fourth, economic and business implications arise due to the lack of legal protection for unregistered trademarks. MSMEs that fail to register their brands may face difficulties in obtaining investment or business partnerships, as intellectual property assets are often critical to valuations in mergers, acquisitions, and franchise agreements. Economic Theory of Property Rights, as proposed by Harold Demsetz, argues that legally guaranteed property rights, including trademarks, are essential for market efficiency and investment confidence. Without registration, MSME brand equity remains legally vulnerable, reducing its competitiveness and market value. Fifth, the challenge of law enforcement arises when MSMEs seek to protect their brands without registering them. Under Article 83 of the Indonesian Trademark Law, the owner of a registered trademark can initiate legal proceedings against an infringer. However, MSMEs without a registered trademark must rely on alternative legal doctrines such as claims of unfair competition,

as recognized in Article 10bis of the Paris Convention. These claims need to show that the actions of competitors have caused consumer confusion or unfair commercial advantage, which is often a complex and onerous legal process. In addition, lack of registration precludes international protection, as trademark rights are territorial, meaning that a trademark that is not registered in one country does not automatically protect another (Purwaningsih dkk., 2022).

Finally, from a theoretical perspective, the failure to register trademarks contradicts the Utilitarian Theory of Intellectual Property, which states that intellectual property laws encourage innovation and economic growth by granting exclusive rights to creators. By not registering their brands, MSMEs lose the economic benefits and security provided by intellectual property laws, leading to potential financial losses and reduced business sustainability (Maulida dkk., 2023). Furthermore, from the point of view of Legal Positivism, as advocated by John Austin, legal rights only exist if they are formally recognized by law. Since trademark rights are registration-based in many jurisdictions, the absence of registration means that MSMEs have no formal legal protection, regardless of actual market use. In conclusion, failure to register a trademark has profound legal, economic, and strategic consequences for MSMEs. This results in the loss of exclusive rights, exposure to the risk of infringement, potential legal liability, enforcement difficulties, and economic losses. Given these risks, MSMEs must prioritize trademark registration as part of their business strategy to ensure brand protection, legal certainty and long-term market competitiveness (Asri & Sriyono, 2020). By understanding the relevant legal provisions, legal doctrines and international agreements governing trademark law, MSMEs can make informed decisions that protect their intellectual property and enhance their business growth.

### Legal remedies available to MSMEs if their trademarks are copied

In Indonesia, Micro, Small and Medium Enterprises (MSMEs) that experience trademark imitation have several legal remedies available under applicable intellectual property law, specifically Law No. 20 of 2016 concerning Trademarks and Geographical Indications ('Trademark Law'). The protection and enforcement of trademark rights is very important for MSMEs because trademarks serve as a distinguishing feature that differentiates their products and services from competitors in the market. If an MSME finds that its registered trademark has been imitated, it can seek compensation through civil and criminal legal channels, as well as administrative remedies, depending on the severity of the violation (Kurniawaty dkk., 2024). Under Article 83 of the Trademark Law, legitimate trademark owners such as MSMEs that have legally registered their trademarks can file a civil lawsuit against infringers. These lawsuits can seek various

remedies, including claims for damages for the economic harm suffered as a result of the imitation, as well as injunctions to prevent the use of the infringing mark. Civil suits are usually filed with the Commercial Court, which has exclusive jurisdiction over intellectual property disputes in Indonesia. The burden of proof in such cases rests with the plaintiff, who must demonstrate ownership of the registered trademark and provide

evidence of unauthorized use by the defendant that is likely to confuse consumers (Sharma dkk., 2021).

In addition, Article 100 of the Trademark Law provides for criminal sanctions against those who deliberately and unlawfully use the same trademark in whole or in part as a registered trademark belonging to another party for similar goods or services. The criminal sanction is a maximum imprisonment of five years and a maximum fine of IDR 2 billion. These criminal sanctions serve as a deterrent for potential offenders and provide MSMEs with legal assistance if their trademarks are exploited without permission. However, criminal proceedings usually require the involvement of law enforcement agencies and prosecutors, and thus, MSMEs must file a complaint with the police or the Directorate General of Intellectual Property (DJKI) for further investigation. In addition to civil and criminal remedies, Article 93 of the Trademark Law gives MSMEs the ability to file an administrative complaint with the Directorate General of Intellectual Property (DGIP), requesting the cancellation of an infringing trademark that was improperly registered. This administrative route is particularly useful in cases where imitation has led to the registration of a conflicting trademark with an existing registered trademark, creating confusion in the market. The DJKI can initiate an examination and, if necessary, revoke the registration of the infringing trademark.

In addition, Indonesian jurisprudence has reinforced the importance of trademark protection for MSMEs. In the case of PT. Top Kopi vs. PT. Torabika Eka Semesta (Decision No. 44/Pdt.Sus-Merek/2020/PN.Niaga.Jkt.Pst), the Commercial Court ruled in favor of the plaintiff, which is an MSME, after finding that the defendant had unlawfully copied the registered trademark belonging to the MSME, causing consumer confusion. The court emphasized that trademark rights must be respected and that SMEs, as rightful owners, are entitled to compensation and legal protection. In addition, Supreme Court Decision No. 139 PK/Pdt.Sus-HKI/2019 in a dispute between a local MSME and a large company reaffirmed the principle that registered trademark owners, including MSMEs, have exclusive rights to their brands, and that imitation is an offense that has legal consequences. The decision highlights the need for fair competition and underlines the legal channels available to MSMEs in cases of trademark infringement (Ilas-Panganiban & Mitra-Ventanilla, 2020).

To improve their legal position, MSMEs are advised to ensure proper and timely trademark registration with the DJKI, as registration provides the strongest legal basis for enforcement actions. In cases of dispute, MSMEs should consider mediation or alternative dispute resolution (ADR) mechanisms before resorting to the court process, as regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. ADR can provide a faster and cheaper way to resolve trademark conflicts compared to lengthy court proceedings. In conclusion, MSMEs in Indonesia have several legal remedies to address trademark infringement, including civil suits for damages and injunctions, criminal prosecutions against violators, and administrative complaints for the cancellation of improperly registered trademarks. The jurisprudence of Indonesian courts has consistently upheld the rights of MSMEs in such disputes, reinforcing the need for legal protection against unfair competition. By utilizing this legal channel, MSMEs can

protect their brand identity, maintain market competitiveness, and ensure that their intellectual property rights are upheld following the law.

#### **CONCLUSIONS**

Failure to register a trademark poses significant legal, economic, and strategic risks for Micro, Small, and Medium Enterprises (MSMEs). Without registration, MSMEs do not have exclusive rights to their brand identity, making them vulnerable to infringement, brand dilution, and market loss. Legal frameworks such as the Paris Convention and the TRIPS Agreement emphasise the first-to-file principle, which reinforces the need for formal registration. Without it, MSMEs will find it difficult to prevent third-party infringement, as filing a claim in a common law jurisdiction requires extensive evidence of good faith and damage. Economically, failure to register a trademark reduces market competitiveness, makes securing investment more difficult, and limits legal standing in business transactions. Law enforcement challenges also arise because unregistered brands do not receive legal protection. This situation contradicts the Utilitarian Theory of Intellectual Property, which promotes economic incentives through legal protection, and Legal Positivism, which recognizes rights only if formally granted by law. To mitigate this risk, MSMEs should prioritize trademark registration as a fundamental business strategy. The government should increase awareness campaigns and provide efficient and cost-effective registration procedures to encourage participation. MSMEs should also seek legal guidance to ensure compliance and proactively protect their brand identity.

MSMEs affected by trademark infringement have several legal remedies under Indonesian law. Civil lawsuits allow businesses to seek damages and court orders, while criminal penalties can prevent intentional violations. Administrative complaints to the Directorate General of Intellectual Property (DJKI) can challenge improperly registered trademarks. Indonesian jurisprudence has strengthened the rights of MSMEs in trademark disputes, highlighting the importance of legal protection for small businesses. Mediation and alternative dispute resolution mechanisms offer cost-effective solutions. To strengthen their position, MSMEs must register trademarks early and monitor potential infringements. Legal reforms that simplify enforcement procedures and reduce litigation costs will further support MSMEs. By taking proactive legal steps, MSMEs can protect their brand identity, maintain competitiveness, and contribute to a fair market.

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