LEGAL PROTECTION OF BRANDS AND RISK OF FORGING PRODUCTS THAT ARE FACED BY SMALL AND MEDIUM ENTERPRISES (UKM)

[1] Hafied Noor Bagja, [2] Mohd Haizam Saudi, [3] Muhammad Ali

Abstract
Small and Medium Enterprises (SMEs) are very vulnerable to the threat of counterfeiting and unlicensed use of Trademarks as is the case with other large companies. Generally the obstacles that occur especially for SMEs are limited understanding of the function of the brand and its impact in the event of counterfeiting. Brand violations generally occur when business competition is felt so high in the Product sector. This study aims to determine what legal efforts can be given to be able to protect against the brand and how to strengthen the brand itself. The method in this research is normative juridical and interviews with four SME business people. The results show that legal protection can be done by (1) Providing an understanding of the UKM itself, (2) Managing and fostering the UKM, (3) Registering either independently or collectively.

Keywords: *Legal Protection, UKM, Trademark*

INTRODUCTION

Small and medium businesses (SMEs) are very vulnerable to threats that arise, especially in terms of counterfeiting (Kennedy, 2016). In developing countries, where trademark laws are still loose, this threat arises for established brands of similar fake products (Khan, 2012). The brand is a strategic asset for a business continuity, and is built on a meaningful network that is positioned in the minds of consumers (Kotler, 2017). Currently, the issue of brand counterfeiting has become a study that has received national and international attention (Asti Wulan, Hendro, 2016). According to (Asri, 2018) protection of trademarks is one of the efforts that can be given by law enforcement officials to provide a sense of security, especially for brand owners themselves against the threat of various parties.

In the world of commerce, a brand is one of the identities of a product or service (Centeno and Marinova, 2013), or is used as a means of marketing, quality, and reputation (Geiger, 2013). A brand is also a tool that can be a very valuable wealth so that it can make a valuable product. For some consumers it may be assumed that a brand is a means in terms of improving social status and becoming a lifestyle (Odoom, Narteh and Boateng, 2017). Using products or services, especially well-known brands, is a matter of pride for consumers, especially if the product or service is genuine which not everyone can afford to buy it. Intellectual Property Rights (IPR) in the era of developing information technology becomes very important in protecting a brand from things that come in the form of brand impersonation and piracy (Sulastri, Satino, 2018).

According to Gautama (1994) Intellectual Property Rights or also known as Intellectual Property Rights are divided into two; (1) copy right and, (2) industrial property right. Brand rights are part of the property rights of a product and service. A brand can also be a differentiator of the product and a guide to quality as well as identity. Small and

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[1] Hafied.noor@widyatama.ac.id

medium businesses and large companies are very vulnerable to threats in the form of counterfeiting. Various methods and strategies have emerged to overcome counterfeiting (Heunonen and Spink, 2014; Fenof and Wilson, 2015). Sullivan et al. (2014) suggest giving public knowledge and notice of the dangers of counterfeit products, Wilson and Kinghorn (2014) recommend that each product use a barcode. However, these suggestions exclusively apply only to large-scale companies and very few study specifically on the role of Small and Medium Enterprises (SMEs).

To fill this gap, this research discusses the legal protection of brands and the risks of counterfeiting of products faced by Small and Medium Enterprises (SMEs) as well as any efforts that can be done so that businesses, especially SMEs, have the desire to register their trademarks. For people in developed countries, especially in Indonesia, a work is very high and appreciated. The government has long passed a law on intellectual property rights in an effort to protect a work (Asri, 2018). Even though the violation of product counterfeiting, especially in cities, is still not felt to be too big, but it does not rule out the possibility that in the future this will increase and become more widespread. Therefore, based on the above explanation, the formulation of the problem is as follows:

1. What is the concept of legal protection for counterfeiting brands and products faced by SMEs in Bandung?
2. How are the efforts that can be done in legal protection for SMEs in Bandung so far?

RESEARCH METHODOLOGY

Types of research

This type of research is normative juridical research, which is carried out by means of an approach to examine and interpret matters that are theoretical. Soekanto (2015) states that normative juridical research can be done by examining literature material or secondary data as a basis for conducting research on a problem under study.

Data source

Sources of data in this study are data obtained from field results directly through interviews, observations, or data obtained from reliable sources (documents, journals, and books) or referred to as primary data. Observations and interviews obtained through sources with criteria; (1) Running a business, (2) Having a workforce of more than four people, and (3) Operating for at least five years. The technique in this study was carried out through structured and unstructured interviews. Structured means referring to the guidance that has been arranged against the speakers, namely:

1. SME Manager
2. SME Employee Staff

In addition to primary data, secondary data is also used in this study as a complement in the form of reference library materials, namely; the text of primary, secondary and tertiary legal material.

Data analysis

To obtain data and information, this study uses qualitative analysis, which is an approach that does not use calculations. This analysis describes the data that is processed and then analyzed and translated into sentences (descriptive). This analysis is guided by empirical analysis in which the deepening is accompanied by normative analysis. Based on the results, a conclusion can be deductively drawn in a way that is based on general facts and then a specific conclusion is drawn.

RESULTS AND DISCUSSION

Protection of brands and the risk of counterfeiting of brands of products of small and medium enterprises (SMEs) Before talking about brand protection and the risk of counterfeiting of products, it will first be presented a theoretical concept of what brand protection is in general by referring to the opinions of experts and previous research journals.

According to Satjipto (1993) legal protection is a gift, protection, and rights to people who are disadvantaged and provide protection so that they get and enjoy their rights. In other words, protection is one of the efforts that law enforcement officials can provide to provide protection in the form of a sense of security both physically and physically from threats from various parties (Asri, 2018). Philiphus (1987) states that legal protection for the community is a preventive and repressive action. Setiono (2004) states this as an action to protect from arbitrary behavior.

While the protection of trademarks is the granting of protection provided by the Government to the trademark owners who have been registered for a certain period of time in terms of use or granting permission to other parties (Bethlehn and Samosir, 2018). As an identity and differentiator of a product or service, in its qualification a brand must not have a good similarity between one product or service. Branded goods are often referred to as trademarks, generally this can be found on traded goods.

Legal protection for a brand serves as a tool to protect the owner and also for consumers against acts of fraud on product quality (Wilson, 2014). When this happens, the consumer will feel disadvantaged if the brand that he considers quality turns out to be produced by another party with a low quality. Therefore protection of the brand becomes very important so that it is not misused by other parties, such as counterfeiting or imitation which can be detrimental. Thus, a trademark must be registered to strengthen and prevent other parties from misusing.

The importance of trademark registration for business people in Indonesia is not yet comprehensive, especially among micro and small business class players, which is evidenced by the percentage of the Directorate General of Information Technology during the 2017-2019 period of 91.47% while for brands 8.53%. This is due to the fact that SMEs are very different from non-SME businesses, which is seen in terms of capital. If seen from the scale of the criteria for SMEs according to Law No. 20/2008 are:

Table 1. Criteria of SMEs

Category	Capital	Revenue
Micro business	maximum 50 million	max 300 million
Small Business	50 million-500 million	300 million-2.5 billion
Medium Enterprises	500 million-10 billion	2.5 billion-50 billion

Source: Connection (2011)

Micro businesses are productive businesses owned by individuals or business entities that meet the criteria for micro businesses, and have a maximum capital of Rp. 50,000,000 (fifty million) and have a maximum income of Rp. 300,000,000 (three hundred million rupiah). Small business is a productive economic business that is independently carried out by individuals or business entities that are not subsidiaries. Small Business Criteria that is having a capital of between Rp 50,000,000.00 (fifty million rupiah) up to a maximum of Rp500,000,000.00 (five hundred million rupiah), and has an income of Rp300,000,000.00 (three hundred million rupiah) up to with a maximum of Rp2,500,000,000.00 (two billion five hundred million rupiah).

Thus, remembering that SMEs have the potential to be able to contribute to the development of a country, their protection is also very important. Therefore it is necessary to make efforts that can maintain business continuity and avoid counterfeiting practices that are rife so as to cause harm to both the business itself or consumers. The trademark law No.20 of 2016 discusses a lot of brands contained in the preamble to letter a of the 2016 MEREK Law which states: "In the era of global trade, international conventions that have been ratified in Indonesia, the role of brands becomes very important especially in maintaining business competition with justice and domestic protection. "

Efforts to protect SME products

Based on the consideration of Law No. 20 of 2016 above, it can be seen that the focus is on providing legal certainty to business actors especially SMEs and protecting consumers so that fraud and losses do not occur. The efforts that can be made to keep from counterfeiting include:

1. The Role of SMEs

Research conducted in the field of several SMEs, especially in the city of Bandung. SMEs will be able to develop if the brand is seen as a business group like other business people. They grow and develop due to creativity and innovation that can produce products. Actually, the SMEs themselves have an effort to protect the results of the creation of their own products, but with the lack of knowledge of IPR makes them less enthusiastic to register their trademarks. In general, natural obstacles include:

a. Ignorance of the conditions in registering

b. Registration fee

c. There is no training that equips IPR knowledge

2. Role of the Government

In this case, the government must be present to provide protection, facilities and protection for SMEs. As this is stated in Law No. 20 of 2008 which is the basis for a process that can facilitate SMEs, especially in terms of brands. To provide this protection, in practice it needs a place or container called a means of legal protection. Muchsin (2003) says that these facilities are divided into two types that can be understood, as follows: (1) Preventive Protection, and (2) Repressive Protection. In addition to these two safeguards, the provision of knowledge, especially to SMEs, about the requirements of the recommendations is very important, bearing in mind that not all SME businesses understand the procedures for how to register trademarks. As for the requirements contained in the decision of the Director General of Intellectual Property Rights of the Republic of Indonesia in 2013 are:

1. Bring a statement stating that you are a UKM by bringing a stamp.

2. Application for submission in the form of:
   a. Filling in form
   b. Photocopy of KTP (3 sheets)
   c. 2 copies of the legal deed legalized by a notary
   d. Brand logo / image size 2x2 and maximum 9x9 (28 strands)
   e. Declaration accompanied by a stamp duty of Rp. 6000

3. Never received help from another party.

4. The work produced meets the criteria established by the protection of intellectual property rights and is useful for the community.

5. Attach a letter of introduction from the Regional Office of the Ministry of Law and Human Rights, if the submission is through Human Rights.

6. Attach a recommendation letter from the Ministry of Service if it is from the Ministry of Service.

3. Collective registration

Basically, the Government through Law No. 20 of 2016 provides protection facilities for business people, especially in relation to brands either individually or collectively. Collective brand registration is a mark that is used on a product with the same character that will be traded by several people or legal entities together. In Indonesia as quoted from Bethlehn and Samosir (2018) registration of a trademark is collectively regulated in article 46 to article 51 of Law No. 20 of 2016 concerning Trademarks. For example, for example if there are five entrepreneurs each of whom has their own production, then he submits a registration request to protect his product, even though the others have the same product characteristics then he may register collectively. This will benefit business owners in terms of saving time, money, and manpower in the registration process. Examples include traders of paintings, batik, and other homogeneous businesses.

4. Role of Non-Government

The non-governmental institution referred to here is the Science and Technology institution, where this institution has a very large role to improve the competitiveness of the business sector. The relation with IPR is to provide product protection to SMEs in terms of maintaining the development of product sustainability both creatively and innovatively

CONCLUSION

Legal protection for a product, especially SMEs, is one form of protection that can prevent fraud and fraud. Nowadays, there are many SMEs with products that are produced and valuable and have their own uniqueness. Based on the description above, the efforts that can be done to protect SMEs are by registering Trademarks, the role of the government to provide an understanding of the importance of trademark patenting and the dangers of fraud and fraud. Due to limitations in terms of understanding, capital and energy, efforts can be made to collectively register businesses that share the same product or service characteristics. The limitation in this case is that this research was carried out in Bandung by selecting a number of SMEs to be interviewed especially in East Bandung.

SUGGESTION

The suggestions that can be input, especially for SMEs, Government, and Non-Government Institutions are:
1. For UKM that have not registered the Trademark, it is endeavored to strengthen the brand in order to anticipate the threats made by other persons. And also each product is labeled barcode to guard against counterfeiting.
2. For the government, it is necessary to make regulations in the form of regional regulations in order to manage data on brands that have been registered as documentation so that they are expected to provide protection and prevention.
3. For non-governmental organizations, they should give direction, understanding and guidance to SMEs, especially those who are still young, in order to understand what a brand is and what are the benefits and disadvantages if a brand is not registered.

BIBLIOGRAPHY

1. Asri, D. (2018). Perlindungan Hukum Terhadap Kebudayaan Melalui World Heritage Centre Unesco. *Jurnal Hukum Ius Quia Iustum*, 25(2), Pp. 256–276.
2. Asti Wulan dan Hendro. K. (2016). Perlindungan Produk Usaha Mikro Kecil dan Menengah Terkait Hak Kekayaan Intelektual Dalam Menghadapi Masyarakat Ekonomi ASEAN. Diponegoro Law Journal', 5, Pp. 1–11.
3. Betlehn. A, dan Samosir, P. O. (2018). Upaya Perlindungan Hukum Terhadap Merek Industri Umkm Di Indonesia', *Law And Justice*, 3(1), Pp. 1–11.
4. Centeno. E, Hart, S, and Dinnie, K. (2013). *The Five Phases Of SME Brand Building.* Journal Of Brandmanagement, 20(6), 445–457.
5. Fenoff. R, and Wilson, J. (2015). *Routine Activities And Product Counter- Feiting: A Research Note*. International Journal Ofcomparative And Applied Criminal Justice, 39(3), 257–272.
6. Geiger, and Gelb. (2013). *Buying Status" By Choosing Or Rejecting Luxury Brands And Their Counterfeits*. Journal Ofthe Academy Ofmarketing Science, 41(3), 357–372.
7. Gautama. S. (1999). Hak Milik Intelektual Indonesia & Perjanjian Internasional TRIPS, GATT, Putaran Uruguay, Bandung: Citra Aditya Bakti.
8. Heinonen, J. A, Spink, and Wilson, J. M. (2014). *When Crime Events Defy Classification: The Case Ofproduct Counterfeiting As White-Collar Crim*e. Security Journal, 1–19.
9. Kennedy, J. (2016). *Proposed Solutions To The Brand Protection Challenges And Counterfeiting Risks Faced By Small And Medium Enterprises (Smes). Journal Of Applied Security Research*. Taylor & Francis, 11(4), Pp. 450–468..
10. Khan, T. R. (2012) . *Family Businesses That Produce Counterfeits: What Is Stopping Them From Creating Their Own Brand?', Procedia Economics And Finance*. Elsevier B.V., 4(Icsmed), Pp. 304–311. Doi: 10.1016/S2212-5671(12)00345-0.
11. Muchsin. (2003). Perlindungan Dan Kepastian Hukum Bagi Investor Di Indonesia, Surakarta. Tesis Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret.
12. Odoom, R., Narteh, B. And Boateng, R. (2017). *Branding In Small- And Medium-Sized Enterprises (Smes): Current Issues and Research Avenues'. Qualitative Market Research*, 20(1), Pp. 68–89.
13. Sulastri dan Satino. (2018). Perlindungan Hukum Terhadap Merek (Tinjauan Terhadap Merek Dagang Tupperware Versus Tulipware) Sulastri', *Jurnal Yuridis Vol.*, 5(4), Pp. 160–172.

14. Sullivan, and Freilich, J. D. (2014). *The Nexus Between Terror Ism And Product Counterfeiting In The United States*. Global Crime, 15(3–4), 357–378.

15. Soekanto, Soerjono. 2015. Sosiologi Suatu Pengantar. Jakarta: PT Rajawali Pers

16. Setiono, (2004). Rule Of Law. Surakarta: Disertasi S2 Fakultas Hukum, Universitas Sebelas Maret.

17. Tambunan, T. T. H. (2011). Development of micro, small and medium enterprises and their constraints: A story from Indonesia. *Gadjah Mada International Journal of Business*, 13(1), pp. 21–43.

18. Wilson. M, and Kinghorn, R. (2014). *Brand Protection As A Total Business Solution Eastlansing*. MI: Michigan State University, Center For Anti Counterfeiting And Product Protection.