

The Protections of Geographical Indicators and Trademark in The Development of Micro, Small, And Medium Enterprises (Msmes) In Increasing Regional Tax Revenue

Hafied Noor Bagja¹

Widyatama University

Hafied.noor@widyatama.ac.id

Mohd Haizam Saudi²

Widyatama University

Obsatar Sinaga³

Padjadjaran University

Abstract

Micro, Small and Medium Enterprises (MSMEs) do not care about and are less responsive to the protection of brands and electronic chips (geographical indicator), they ignore the problems of brands and electronic chips because they think that trademark registration and electronic chips are not very important, they also always think that brand protection and electronic chips do not have a significant impact on the development of their business. Therefore, protection of a Mark and electronic chips must be strictly regulated in order to protect consumers from counterfeiting goods or services using a Mark illegally. Another benefit that is no less important than the existence of legal protection in the field of Marks is the effort to open up the export market. Therefore, the purpose of this research is to know the importance of protections of geographical indicators and trademark in the development of Micro, Small, and Medium Enterprises (MSMEs) and in increasing regional tax revenue. This study uses normative juridical research and focuses on the source of data on literature studies based on secondary data associated with aspects of social justice (social justice) and socio economy. The results of this research are that the role and potential are so great, it is very reasonable to develop this Micro, Small and Medium Enterprises (MSMEs) as much as possible in order to improve people's welfare while supporting economic growth and by providing protection for these types of brands and electronic chips, the scope and definition of brands, which is regulated in Law No. 15 of 2001 concerning Trademarks should be expanded to follow the development of Trademark protection. This will indirectly have an impact on the regional economy, through increasing production and sales with the utilization of the trademark law.

Keywords

Brands, MSMEs, geographical indicators, local taxes.

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Introduction

The development of MSMEs in Indonesia is very rapid. In the Indonesian economy, Micro, Small and Medium Enterprises (MSMEs) are the business groups that have the largest number. maybe not many people know that SMEs and MSMEs withstand the shocks of the economic crisis. It is the strength of this business group that must be maintained and is necessary under the umbrella of law and legislation. The existence of Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises (MSMEs), there are several criteria used to define the definition and criteria of MSMEs. The increase of UMKM every year is almost 100%. From ten years ago 2009 to 2016 more than 59,000,000 units. Imagine why the president of the Republic of Indonesia said that UMKM could sustain our country's economy, even when the global crisis did not affect it. As the vanguard, MSMEs have a role in Indonesia and even ASEAN. The labor absorption is quite large. Therefore, cooperation for the development and resilience of MSMEs needs to be prioritized.

In 2015, credit increased by 60% -70% according to Bank Indonesia data, Bank Indonesia has issued a regulation requiring banks to allocate credit / financing to MSMEs starting in 2015 by 5%, 2016 by 10%, 2017 by 15%, and at the end in 2018, 20%. In this era of globalization, everyone must compete to run MSMEs and seize existing business opportunities. For this reason, good business financial arrangements are needed to support its sustainability. The Indonesian Ministry of Cooperatives and SMEs reports that in terms of number of units, MSMEs have a share of around 99.99% (62.9 million units) of the total business actors in Indonesia (Betlehn & Samosir, 2018; Block et al., 2014; Castaldi, 2018; Dlodlo & Mahao, 2020; Echols, 2003; Flikkema et al., 2019; Flikkema et al., 2019), while large businesses are only 0.01% or around 5400 units. Micro Enterprises absorb around 107.2 million workers (89.2%), Small Enterprises 5.7 million (4.74%), and Medium Enterprises 3.73 million (3.11%); while Big Enterprises absorbs around 3.58 million people. This means that collectively, MSMEs absorb around 97% of the national workforce, while large enterprises only absorb about 3% of the total national workforce.

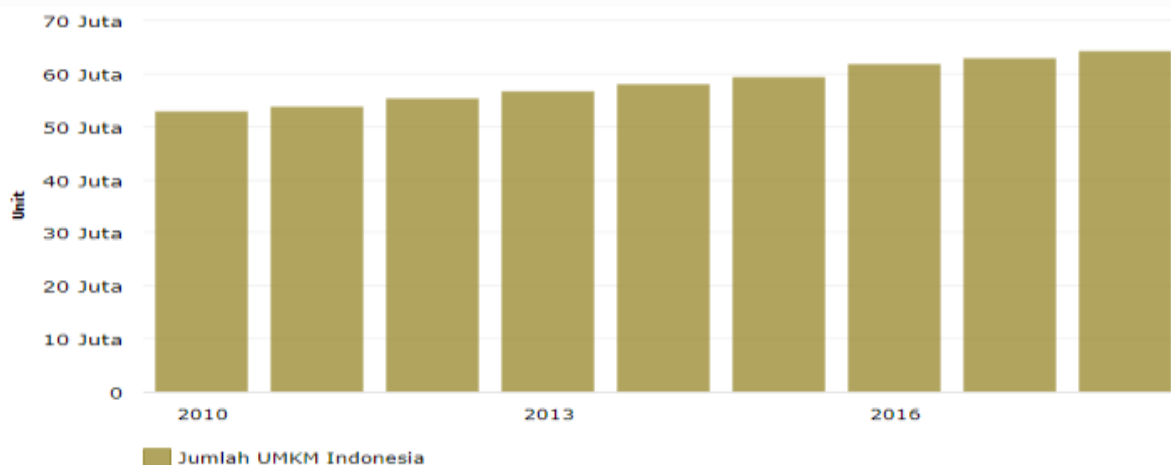


Figure 1. Number of Micro, Small and Medium Enterprises Units

Source: Central Statistics Agency (BPS), 2020

Micro, Small and Medium Enterprises (MSMEs) need to obtain opportunities, support, legal protection and business development to the widest extent as a form of firm siding with the people's economic business groups. With the shift that occurs in the world economic order that leads to free competition for Micro, Small and Medium Enterprises (MSMEs) there is a concern, namely the situation that comes from the internal (domestic) side, it can be said that Micro, Small and Medium Enterprises (MSMEs) face the situation that comes from within the country in the form of counterfeiting products produced, lagging behind in productivity, efficiency and innovation. The situation that comes from the external side is facing intense competition with similar businesses.

Protection of trademarks in Indonesia adheres to a constitutive principle (registration) with the first to file principle. This means that a Mark only gets protection if the Mark is registered with the government through the Ministry of Law and Human Rights and in this case, there is a Directorate of Intellectual Property. If MSMEs have products in the form of goods or services using a brand but are not registered, then the MSME business actor loses the legal protection of the brand. Brand as

a form of intellectual work has an important role for the smooth running and increasing trade in goods or services. This is inseparable because a Mark is used to distinguish certain goods from other goods of the same type. Various counterfeit Trademarks for a similar item of lower quality than the goods using the counterfeited Mark. To get profits quickly and with certainty so that it is detrimental to entrepreneurs such as Micro, Small and Medium Enterprises (MSMEs) that produce original goods. With regard to the foregoing, it is necessary to protect the brands of goods produced by Micro, Small and Medium Enterprises (MSMEs) based on Law No. 15 of 2001 concerning Brand.

The problem that always occurs is that Micro, Small and Medium Enterprises (MSMEs) do not care and are less responsive to the protection of marks, they ignore the problems of marks because they think that trademark registration is not very important, they also always think that trademark protection does not have a significant impact on development their business. And the main thing is that trademark registration is very costly and the registration process is very convoluted.

Therefore, protection of a Mark must be strictly regulated in order to protect consumers from counterfeiting goods or services using a Mark illegally. Another benefit that is no less important than the existence of legal protection in the field of Marks is the effort to open up the export market. Provided protection for Micro, Small and Medium Enterprises (MSME) product brands in accordance with the provisions of Law Number 15 Year 2001, further motivates work and has positive implications in increasing competitiveness thereby increasing income. Based on the background of the problem, the problem formulations in this study are:

1. How is the trademark protection of MSME products?
2. What are the prospects for the regulation of micro-enterprise product brand legal protection small impact on local tax revenue?

Research Methods

This type of research is a normative juridical research that raises legal issues in the form of brand legal treatment of MSME products. This research focuses on the source of data on literature study based on secondary data related to aspects of social justice (social justice) and socio economy. The normative juridical approach is legal research which is carried out by examining library materials or secondary data as the basic material for research by conducting a search of the regulations and literatures related to the problems under study (Gangjee, 2007; Giovannucci et al., 2010; Hassaqa & Meyer, 2020). Normative legal research or normative juridical research, consisting of:

- a. Research on legal principles.
- b. Research on legal systematics.
- c. Research on the level of legal synchronization.
- d. Legal history research.
- e. Comparative law research.

The approach used in this research is the statute approach, which refers to the Law of the Republic of Indonesia Number 20 of 2008 concerning Micro, Small and Medium Enterprises, Government Regulation of the Republic of Indonesia Number 23 of 2018.

Results And Discussion

Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises (MSMEs) defines Micro, Small and Medium Enterprises (MSMEs) based on certain criteria, including the following:

- a. A micro business is a productive business owned by an individual and / or an individual business entity that meets the criteria for a Micro business as regulated in this Law.
- b. Small business is an independent productive economic business carried out by an individual or a business entity that is not a subsidiary or branch of a company that is owned, controlled or is a part, either directly or indirectly, of a medium or large business that meets the criteria of a small business in This Act.
- c. Medium-sized enterprises are productive economic enterprises that are independent, carried out by individuals or business entities that are not subsidiaries or branches of companies

that are owned, controlled or become part of either directly or indirectly with small or large businesses with the amount of net assets or sales proceeds. annual basis as regulated in this Law. Criteria for Micro, Small and Medium Enterprises (MSMEs) according to the number of assets and turnover owned in accordance with Law No. 20 of 2008. As described in the Table below.

Table 1.

Criteria for Micro, Small and Medium Enterprises (MSMEs)

Criteria		
Description	of Asset	Turnover
Micro Enterprises	Maximum 50 million	Maximum 300 million
Small Business	More than 50 million-500 million	More than 300 million-2.5 billion
Medium Enterprises	More than 500 million-10 billion	More than 2.5 billion-50 billion

Micro, Small and Medium Enterprises (MSMEs) have a very strategic function both socio-economic and socio-political as follows:

1. Socio-economic function, this sector, among others, provides goods and services to consumers with low to moderate purchasing power, contributes more than a portion of economic growth and contributes to the acquisition of foreign exchange.
2. The socio-political function of this sector is also very important, especially in the absorption of labor and efforts to alleviate poverty, because the nature of its distribution and its close relationship with the agricultural sector has great potential to promote rural economic progress.

Trademark And Geographical Indicators Protection for MSME Products

Seeing the role and potential that is so great, it is very reasonable to develop this Micro, Small and Medium Enterprises (MSMEs) as much as possible in order to improve the welfare of the community while at the same time supporting economic growth. The government considers it necessary to help meet the needs and facilities they need in order to face quite tough challenges in the era of technological development and business competition today. With the entry of foreign products into Indonesia will have an impact on the business world that threatens the trade of local products, the government needs to prepare people to continue to love and use local products, prepare Micro, Small and Medium Enterprises (MSMEs) to increase competitiveness products and provide trademark protection for Micro, Small and Medium Enterprises (MSMEs) through Intellectual Property Rights (HKI).

Trademark Law No. 20 of 2016 concerning Brands and Geographical Indications does not discuss much related to MSME Trademarks in Indonesia. The mention related to the MSME Mark is contained in the preamble of letter a of the 2016 Trademark Law which states "that in the era of global trade, in line with international conventions that have been ratified by Indonesia, the role of Marks and Geographical Indications is very important, especially in maintaining fair, just business competition, consumer protection, as well as protection for Micro, Small and Medium Enterprises, and domestic industries. Based on these considerations, it can be seen that the focus of the 2016 Trademark Law is to provide legal certainty and protection, especially for domestic consumers and business actors, and to maintain a healthy business competition. It's just that healthy business competition can only occur if large industries do not take advantage of their dominant position to suppress the UMKM industry but they must be able to work together in running an economy together without monopolizing. The existence of the 2016 Trademark Law is expected to be one of them. the government's way of protecting MSME businesses through the protection of their intellectual property in the form of Marks. With the recognition of Trademarks given to MSME business actors, large industries or business actors who have bad intentions cannot necessarily take intellectual property belonging to MSME business actors because registered trademark ownership is recognized and protected by the government. If there is a dispute that arises as a result of a dispute over Mark ownership, the government will only refer to the Mark certificate as proof of ownership of the right to a Mark, (Article 1 number 5 in conjunction with Article 3 of Law No. 20 of 2016 concerning Marks and Geographical Indications). unless there is a cancellation of the right to a trademark based on a trademark lawsuit by one of the parties in the

Commercial court. Then as a legal protection effort for the trademark of the UMKM industry in Indonesia, this is done by increasing the UMKM industry to register trademarks by MSME players. This is because the MSME industry will only get trademark legal protection if it has registered the trademark.

Efforts that have been made include UMKM Trademark Registration Costs are Cheaper Compared to Non-UMKM Trademarks the small number of MSME trademark registrants does not make the government remain silent. The government, through the Director General of KI, continues to push to increase trademark registration from the UMKM industry by charging a much cheaper fee compared to registrants for non-UMKM marks (Jalelani et al., 2020; Mnini & Ramoroka, 2020). This shows the government's concern for improving the development of MSME business by safeguarding the intellectual property of MSME business players. A registered trademark is protected so that other people cannot use it and will get protection for ten (10) years from the date of receipt of registration as regulated in Article 35 of the Law. No. 20 of 2016 concerning Brands and Geographical Indications. This period can be extended for an indefinite period of ten (10) years with payment of a fee. The owner, however, must apply for an extension of 12 months before the mark expires. The validity period of the mark will be extended only if the owner still uses the mark in trading goods and / or services. The Director General of KI provides special treatment for the UMKM industry in supporting the UMKM industry to register trademarks, namely by providing a registration price differentiation which is cheaper compared to general business actors. The following is a comparison of the registration price for a trademark application between MSME and general brands.

Prospects For the Regulation of Legal Protection for Micro and Small Business Brand Products That Have an Impact on Regional Revenues.

The prospect of regulating legal protection for Micro, Small and Medium Enterprises (MSME) products through Trademark rights in Indonesia must be adjusted to the development of Intellectual Property Rights in the field of Trademarks. Protection for new types of Brands known as Non-Traditional Brands, including three-dimensional shapes, sounds, aromas, holograms, and so on. With the protection for these types of Marks, the scope and definition of Marks are regulated in Law No. 15 of 2001 concerning Trademarks should be expanded to follow the development of Trademark protection. This will indirectly have an impact on the regional economy, through increasing production and sales with the utilization of brand law, MSMEs will automatically form an increase in product sales which will directly increase their respective regional income through local taxes, in addition to local taxes, sources of income the original region which plays a large enough role in contributing to the formation of the original regional income is the regional levy. According to (Muller De, 2020; Najda & Kopera, 2014; Ozdemir, 2020; Ozkaral & Bozyigit, 2020; Ozturk, 2020; Sandner Block, 2011; Santagata, 2006; Sey et al., 2010), local retribution is a kind of market mechanism in the public sector, where a transaction between the government and citizens is closely related between the amount of money paid and the benefits received.

Conclusion

Based on the results and discussion, it can be concluded:

1. Its role and potential are so great, it is very reasonable to develop the Micro, Small and Medium Enterprises (MSMEs) as much as possible in order to improve the welfare of society while supporting economic growth. The government considers it necessary to help meet the needs and facilities they need in order to face quite tough challenges in the era of technological development and business competition today. With the entry of foreign products into Indonesia will have an impact on the business world that threatens the trade of local products, the government needs to prepare people to continue to love and use local products, prepare Micro, Small and Medium Enterprises (MSMEs) to increase competitiveness products and provide trademark protection for Micro, Small and Medium Enterprises (MSMEs) through Intellectual Property Rights (HKI).
2. Given the protection for these types of Marks, the scope and definition of Marks as regulated in Law No. 15 of 2001 concerning Trademarks should be expanded to follow the development of Trademark protection. This will indirectly have an impact on the regional economy, through increasing production and sales with the utilization of brand law, MSMEs will

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