



Legal Protection Of MSME Trademarks As A Pillar Of Local Economic Justice

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Abstract:

The legal protection of trademarks for Micro, Small, and Medium Enterprises (MSMEs) in Pohuwato is an increasingly urgent issue in light of the sector's rapid growth and contribution to the local economy. Despite the existence of Law No. 20 of 2016 on Trademarks and Geographical Indications, which provides a clear legal framework for trademark registration and protection, a large number of MSME actors in the region have not registered their trademarks. This is largely due to a lack of legal awareness, the perception that registration costs are too high, and the belief that the process is too complex or unnecessary for small businesses. The objective of this research is to analyze how trademark protection for MSMEs is implemented in Pohuwato, to understand the legal consequences of unregistered trademarks, and to evaluate the role of government institutions in facilitating registration. The research employs an empirical legal method with a qualitative approach, using data gathered through interviews, field observations, and questionnaires distributed to 100 MSME respondents. The findings reveal that although the local government and the Regional Office of the Ministry of Law and Human Rights in Gorontalo have made substantial efforts such as door-to-door socialization campaigns and registration facilitation the overall rate of trademark registration remains low. The legal consequence of not registering a trademark is the absence of exclusive rights and the inability to take legal action against infringement, which may result in financial loss and reputational damage. This research concludes that consistent legal education and expanded outreach programs across all districts in Pohuwato are essential to enhance MSMEs' legal awareness and strengthen their legal protection.

Keywords: legal awareness, MSMEs, trademark protection.

Abstrak :

Perlindungan hukum merek dagang bagi Usaha Mikro, Kecil, dan Menengah (UMKM) di Pohuwato menjadi isu yang semakin mendesak mengingat sektor ini tumbuh pesat dan berkontribusi terhadap perekonomian daerah. Meskipun Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis telah memberikan kerangka hukum yang jelas untuk pendaftaran dan perlindungan merek dagang, masih banyak pelaku UMKM di daerah ini yang belum mendaftarkan merek dagangnya. Hal ini sebagian besar disebabkan oleh kurangnya kesadaran hukum, persepsi bahwa biaya pendaftaran terlalu tinggi, dan keyakinan bahwa prosesnya terlalu rumit atau tidak perlu bagi usaha kecil. Tujuan dari penelitian ini adalah untuk menganalisis bagaimana perlindungan merek dagang bagi UMKM di Pohuwato dilaksanakan, untuk memahami konsekuensi hukum dari merek dagang yang tidak terdaftar, dan untuk mengevaluasi peran lembaga pemerintah dalam memfasilitasi pendaftaran. Penelitian ini menggunakan metode hukum empiris dengan pendekatan kualitatif, dengan menggunakan data yang dikumpulkan melalui wawancara, observasi lapangan, dan kuesioner yang disebarkan kepada 100 responden UMKM. Hasil penelitian menunjukkan bahwa meskipun pemerintah daerah dan Kantor Wilayah Kementerian Hukum dan Hak Asasi Manusia di Gorontalo telah melakukan upaya substansial seperti kampanye sosialisasi dari pintu ke pintu dan fasilitasi pendaftaran, namun secara keseluruhan tingkat pendaftaran merek dagang masih rendah. Konsekuensi hukum dari tidak mendaftarkan merek dagang adalah tidak adanya hak eksklusif dan ketidakmampuan untuk mengambil tindakan hukum terhadap pelanggaran, yang dapat mengakibatkan kerugian finansial dan kerusakan reputasi. Penelitian ini menyimpulkan bahwa pendidikan hukum yang konsisten dan program penjangkauan yang diperluas di semua kabupaten di Pohuwato sangat penting untuk meningkatkan kesadaran hukum UMKM dan memperkuat perlindungan hukum mereka.

Kata Kunci: kesadaran hukum, perlindungan merek dagang, UMKM.

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INTRODUCTION

Micro, Small, and Medium Enterprises (MSMEs) are one of the fastest-growing and most vital sectors in Indonesia's economic landscape. They serve as a foundational pillar that drives the national economy by contributing significantly to employment and gross domestic product (GDP). According to a study by the Ministry of Industry in 2016, MSMEs contributed approximately 60.34% to Indonesia's GDP and absorbed 97.22% of the national workforce. (United Nations Development Programme, 2020) These figures clearly reflect the magnitude of the sector's role in supporting both the macro and microeconomic structures of the country. However, despite their prominent role in the economy, MSMEs in Indonesia are still predominantly associated with traditional business models that lack legal formality and long-term strategic planning. (Susila) Based on records by the Creative Economy Agency (Badan Ekonomi Kreatif) in 2018, 96% of MSMEs had not yet obtained a legal business status or operated under a formal legal framework. This suggests a critical gap in the legal awareness of business actors within this sector, as most entrepreneurs tend to prioritize immediate profits and adopt simple business practices over establishing legal protection or planning for future development.

One major reflection of this lack of legal awareness is the insufficient attention given to the protection of Intellectual Property Rights (IPR), particularly trademarks. In the context of business development, every enterprise inevitably possesses elements of intellectual property, especially trademarks, which serve as a distinguishing feature for products or services in the market. Article 1 point 1 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications defines a trademark as a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color compositions, in two or three-dimensional forms, sounds, holograms, or combinations thereof, which are used to distinguish the goods or services produced by an individual or a legal entity in the course of trade. In today's modern economy, trademarks have become inseparable from business operations, functioning as a key tool not only for product differentiation but also as a strategic medium for brand promotion and marketing. (Susila, 2020)

Trademarks play a crucial role in helping consumers identify and select products that meet their expectations and needs. A trademark can become a valuable commercial asset and, in many cases, its economic value can even surpass that of the company's tangible assets. The recognition and reputation of a brand can influence consumer behavior and market positioning, ultimately determining the success of a business in a competitive environment. (Pakaya et al, 2024) Additionally, trademarks also serve as a protective mechanism against unfair business competition. The use of a registered trademark can deter counterfeiting and brand imitation practices that often mislead consumers and damage the reputation of the original brand owner. Unfortunately, many businesses in Indonesia still engage in unhealthy competition by adopting names or logos similar to established brands, leading to trademark infringements that not only confuse consumers but also cause financial and reputational harm to the rightful owners. This highlights the vulnerability of businesses that operate without legal protection over their trademarks.

The Indonesian legal system has long recognized the importance of protecting trademarks and has undergone several regulatory reforms in this area. Trademark protection was first regulated under Law No. 21 of 1961 concerning Trade and Commerce Marks, which adopted the "first to use" principle or declarative system, whereby rights were obtained through initial use in commerce. This law was later replaced by Law No. 19 of 1992, which introduced a shift to the "first to file" principle or constitutive system, where rights are granted upon registration. Further refinement occurred with Law No. 14 of 1997, in response to Indonesia's obligations under the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement. Eventually, a more practical single-text regulation was enacted through

Law No. 15 of 2001, which was later replaced by the current Law No. 20 of 2016 on Trademarks and Geographical Indications. These legislative developments underscore Indonesia's ongoing efforts to strengthen its intellectual property framework and align with international standards. However, the effectiveness of these legal instruments is still limited by the low level of legal awareness among MSME entrepreneurs, many of whom are unaware that trademark rights are exclusive and can only be exercised upon successful registration with the Directorate General of Intellectual Property (DGIP). (Naue et al, 2024)

The legal concept of exclusive rights is articulated in Article 3 of Law No. 15 of 2001, which states that trademark rights are exclusive rights granted by the state to a registered trademark owner for a certain period, enabling the owner to use the mark independently or to license it to others. Gatot Supramono defines such exclusive rights as private entitlements that cannot be used by any other party without the consent of the owner. In order to acquire these rights, individuals or legal entities must file an application and meet the criteria established under Articles 20 to 22 of Law No. 20 of 2016. If these criteria are not fulfilled, the DGIP has the authority to reject the trademark application. This emphasizes the importance of legal knowledge and proactive registration of trademarks among MSME actors to safeguard their business identity and prevent unauthorized use by third parties. The lack of such awareness continues to pose serious risks, particularly for businesses that rely heavily on brand identity and reputation as key drivers of consumer trust.

This issue is especially evident in various regions, including Marisa District, which is one of the administrative districts in Pohuwato Regency, Gorontalo Province. A large portion of the population in Marisa engages in MSME activities across diverse sectors such as retail, agriculture-based industries, and non-agricultural manufacturing. Based on data from the Provincial Cooperative and MSME Office of Gorontalo in 2021, the number of MSMEs in Pohuwato reached 11,028 units, many of which are concentrated in the Marisa area. The abundance of businesses in this district naturally gives rise to a multitude of brand identities used in commerce. While this presents a dynamic economic environment, it also increases the likelihood of trademark-related issues, particularly when the marks used are not formally registered. Without legal protection, MSMEs are at risk of losing their rights to their business names and trademarks in the event of disputes or infringement cases.

Despite the relatively affordable cost of trademark registration for MSMEs (approximately IDR 1.8 million), many entrepreneurs in Marisa are reluctant to proceed with the registration process. Several reasons contribute to this reluctance, including the perception of cost as an additional financial burden, particularly for small businesses that are still in the early stages of growth. Additionally, the registration process is considered time-consuming and complex, often taking six to twelve months, which further discourages entrepreneurs from initiating it. Most MSME actors prioritize production and marketing activities to boost income and thus perceive trademark registration as a non-essential task. There is also a prevalent belief among local and small-scale entrepreneurs that their brands are not yet significant enough to warrant registration, and a general lack of understanding about the potential legal consequences of operating without trademark protection.

Given these circumstances, the researcher is particularly interested in examining the use of trademarks by MSMEs in Marisa District. This region serves as a microcosm of broader national trends, where a large number of MSMEs operate under unique brand names yet fail to undertake legal registration. Such practices expose these enterprises to future legal vulnerabilities and economic losses, especially if another party seeks to claim or register the same or a similar trademark. This study aims to explore the reasons behind the low rate of trademark registration among MSMEs in Marisa and to highlight the importance of strengthening legal awareness and trademark protection as part of sustainable business development.

Formulation of the problem

1. How is Law No. 20 of 2016 on Trademarks and Geographical Indications implemented in the registration of MSME product trademarks in Pohuwato Regency?
2. What are the impacts of unregistered MSME product trademarks based on Law No. 20 of 2016?

Research Purposes

1. To find out the implementation of Law Number 20 of 2016 concerning Trademarks and Geographical Indications in the registration of MSME product brands in Pohuwato Regency
2. To find out the impacts caused by the failure to register MSME product brands based on Law Number 20 of 2016

RESEARCH METHODS

The term “method” in research encompasses several meanings, including the logic behind scientific inquiry, the study of research procedures and techniques, and a systematic framework of those procedures and techniques. From these definitions, it can be concluded that research methodology essentially serves as a guideline for how scholars examine, analyze, and understand the realities they encounter. (Syarif et al, 2024) Research, therefore, is an intellectual activity linked to analytical and constructive processes conducted in a methodical, systematic, and consistent manner. (Chami et al, 2024) This study employs an empirical legal research method, which relies on observable, factual data derived from human behavior—either through verbal responses in interviews or physical actions noted through direct observation. Empirical legal research is used to study real-life conditions in society in order to identify and understand the relevant facts and data. Once these are collected, the process moves toward identifying problems and, ultimately, offering problem-solving insights. This approach is appropriate for the study because it does not merely analyze the legal norms contained in Law No. 20 of 2016 concerning Trademarks and Geographical Indications but also examines how this regulation is implemented in practice by micro, small, and medium enterprises (MSMEs). It provides deeper insights into the law's effectiveness and the barriers encountered during the trademark registration process, making the findings more applicable to real-world conditions.

The study adopts a qualitative research approach, which is designed to yield descriptive data in the form of verbal or written responses, as well as observable behaviors. This approach is chosen because it produces descriptive-analytical data gathered from participants through spoken or written statements or through the observation of actual behaviors. It is particularly suitable for exploring the understanding, experiences, and challenges faced by MSME actors in registering trademarks under the provisions of Law No. 20 of 2016. The research is descriptive in nature, aiming to provide detailed and accurate data regarding individuals, circumstances, or phenomena. The purpose is to support or challenge hypotheses and contribute to strengthening existing theories or developing new ones.

The data used in this research comes from both primary and secondary sources. Primary data is obtained directly from the field through empirical research involving direct interactions with society, such as interviews with relevant stakeholders who can provide insights related to the issue under study. Secondary data serves as a complement to the primary data and includes official documents, scholarly books, and research reports. According to Soerjono Soekanto, secondary data consists of supporting materials like official records, academic literature, and previously conducted studies. In addition to these, legal research relies on legal materials, which are categorized into three types: primary, secondary, and tertiary legal materials. Primary legal materials are authoritative sources created by institutions with the legal authority to do so and include the 1945 Constitution of the Republic of Indonesia, Law No. 20 of 2016 on Trademarks and Geographical Indications, Law No. 20 of 2008 on Micro, Small, and Medium Enterprises, and

Government Regulation No. 7 of 2021 on MSMEs. Secondary legal materials offer interpretations and explanations of primary sources, such as academic books, legal journals, research findings, papers, articles, and relevant internet resources. Tertiary legal materials include reference aids like legal dictionaries and general language dictionaries that assist in interpreting both primary and secondary materials.

The research object focuses on the impact of unregistered trademarks used by MSME actors in Marisa District, Pohuwato Regency. The study is conducted in Marisa and at the Office of Trade and MSMEs in Gorontalo Province. This location was chosen because it aligns directly with the research objectives and provides the necessary access to obtain relevant data. The population in this study includes employees of the Office of Industry, Trade, Cooperatives, and MSMEs, as well as MSME actors operating in Pohuwato Regency. Population, as defined by Sugiyono, refers to a group of individuals or units with similar characteristics from which data is collected to derive conclusions. According to Ronny Soemitro, a population may consist not only of individuals but also other elements such as policies, practices, and administrative systems. Since the number of MSMEs in Pohuwato is large—approximately 13,566 units—the study uses the entire population to derive a representative sample. The Slovin formula is used with a 10% margin of error, resulting in a sample size of 100 respondents, comprising both government officials and MSME actors.

Data collection techniques in this empirical legal research include interviews, observation, and questionnaires. Interviews involve direct dialogue between the researcher and respondents or informants to gather detailed information. This method is commonly used in empirical legal studies, as it uncovers information that cannot be obtained through other means. The interviews involve local government officials, particularly from the Office of Industry, Trade, Cooperatives, and MSMEs, as well as business actors. Observation involves systematically recording behaviors or situations directly observed in the field. According to Nana Sudjana and Sutrisno Hadi, observation is the systematic monitoring and recording of phenomena being studied, either directly or indirectly. It allows researchers to collect data through firsthand experiences in the natural setting. Questionnaires are also used to gather written responses from MSME actors regarding their interest in registering trademarks, reasons for not registering, and their level of knowledge about trademark registration. The questionnaires use checklists to simplify the response process.

Data processing follows the framework proposed by Mukti Fajar and Yulianto Achmad and involves several stages. First is data verification, where the researcher checks whether the collected data is complete and relevant to the research problem. Second is editing, which involves re-examining the information gathered from literature sources to ensure its alignment with the study's objectives. This step includes reviewing the content of legal documents and agreements to ensure that only relevant data is used. The final stage is data systematization, where all verified data is organized in a coherent and logical sequence for further analysis. The data analysis in this study is descriptive in nature, aimed at providing a clear and thorough depiction of the subject matter based on empirical findings. It also uses a qualitative approach, which allows the researcher to interpret the data in an analytical and holistic manner. The results are intended to offer insights into the actual conditions experienced by MSMEs in relation to trademark registration, drawing on both the respondents' statements and observed behaviors.

DISCUSSION

1. Application Of Law No. 20 year 2016 on trademark and Geographical Indication of MSME product trademark registration in Pohuwato District

Currently, Micro, Small, and Medium Enterprises (MSMEs) in Pohuwato are experiencing rapid development and demonstrate considerable potential for continued growth, particularly because Pohuwato is home to a popular tourist destination Pantai Pohon Cinta which attracts numerous visitors daily. This tourism potential provides a significant opportunity for MSMEs to

serve as the economic spearhead of the region, supported by local human resources. The increasing number of MSMEs has also led to the proliferation of various trade names and brand identities. According to data from the Office of Industry, Trade, Cooperatives, and MSMEs of Pohuwato Regency, the number of MSMEs has increased annually, as shown in statistical records.

Despite this positive growth, issues remain concerning trademark registration. The relevant government agency plays a crucial role in fostering brand awareness and provides recommendations to MSMEs through two schemes: by offering both recommendations and financial support for trademark registration funded by local or provincial budgets, or by only providing recommendations, requiring the MSME to bear the full registration cost, which is IDR 1.8 million if self-funded or IDR 500,000 if subsidized. Nevertheless, many MSMEs have yet to register their trademarks. (Rahman et al, 2024)

According to the Ministry of Law and Human Rights, a large number of MSMEs in Pohuwato remain unregistered due to several barriers. (Diharjo et al, 2024) These include a lack of knowledge regarding trademarks and their benefits, unfamiliarity with the registration process, lack of necessary documentation, and high costs, especially for those not included in the official development database. Additionally, the benefits of trademark registration are not immediately tangible, causing many micro and small business owners to deprioritize it. To address these issues, the Regional Office of the Ministry of Law and Human Rights in Gorontalo conducted a public campaign to promote collective trademarks, inviting 50 participants including government agencies and MSME representatives. The event included the official certification of “Khila Beauty Care” and highlighted a significant increase in trademark applications—52 in 2022 and a 56% increase in 2023 with 119 applicants. The campaign emphasized accessible trademark registration services and included a door-to-door initiative, where legal officers directly visited MSME sites, offering assistance to those producing items such as brooches, keychains, packaged snacks, and chips.

During these visits, challenges were identified, such as incomplete identity documentation (e.g., unregistered national ID numbers) and conflicts with pre-existing registered trademarks. The intellectual property team noted that such direct services are more effective than previous methods, allowing officers to understand firsthand the difficulties faced by entrepreneurs. Many MSME actors expressed their gratitude and noted that these initiatives helped them better understand trademark registration procedures. This initiative also serves as a vital step in raising awareness among MSMEs about the legal definition of a trademark as provided under Article 1(1) of Law No. 20 of 2016, which recognizes trademarks as graphical indicators such as names, images, logos, colors, sounds, holograms, or their combinations used to distinguish goods or services in commercial transactions. Article 1(2) further defines a trademark as one used on traded goods to differentiate them from those of others.

The TRIPs Agreement, harmonized through Indonesia’s trademark legislation, affirms the exclusive rights granted to registered trademark holders, who are legally empowered to prevent unauthorized use of identical or similar trademarks on comparable goods or services. Article 3 of the Trademark Law clearly states that trademark rights are acquired only through registration, marking registration as a legal prerequisite to protection. (World Trade Organization, 1994) In Indonesia, the process includes submitting an application either online or in person to the Directorate General of Intellectual Property (DGIP), accompanied by information such as applicant identity, type of goods/services, trademark image, and class descriptions. An international registration pathway also exists through the Madrid Protocol, provided the applicant has first registered domestically. Priority rights apply if the application is made within six months of the first registration in another member country.

Collective trademarks are also recognized, referring to trademarks used by multiple parties for goods/services sharing common characteristics and oversight. Certain types of trademarks, as stated in Article 20 of the law, cannot be registered, such as those that are misleading, immoral, generic, or lack distinctiveness. Article 21 provides that applications can be rejected if the proposed

mark bears substantial similarity to existing registered trademarks. Substantive examination is required following publication and objection periods, and can take up to 150 days, with results reviewed and finalized by the Minister. In practice, trademark registration in Pohuwato involves first securing a recommendation from the Office of Industry and Trade. Applicants may receive financial assistance if deemed eligible; otherwise, they are advised to proceed with self-funded registration. The Directorate General of Intellectual Property in Gorontalo handles the final administrative and substantive checks.

Despite these procedures being fairly structured and accessible, many MSME actors in Pohuwato are still deterred by perceived complexity, cost, and lack of urgency. From interviews conducted with MSME owners such as Irawati Moputi of “Bakul Jajan,” Annisa Nurdin of “Pisang Comel,” and Randy of “Kedai Duren,” it was revealed that the delay in registration is mostly due to personal constraints, prioritization of sales, and unfamiliarity with the registration process. They acknowledged that many fellow entrepreneurs remain unaware of the importance of registering their brand names and encouraged further government outreach. A survey conducted with 100 MSME respondents in Pohuwato showed that 90% knew about trademark registration, while 10% were unaware. The main reasons for not registering included lack of knowledge (40%), high cost (30%), perceived complexity (20%), and the belief that registration is unnecessary (10%). However, 70% indicated interest in registering if support was provided, revealing an opportunity for mass trademark facilitation programs.

The importance of intellectual property for MSMEs lies in its ability to safeguard brand identity, distinguish products, and ensure consumer trust. Law No. 20 of 2016 reinforces the principle that registered trademarks enjoy legal protection for ten years from the filing date, as outlined in Article 35. The objective of trademark law is to guarantee that consumers can trust the origin and quality of goods, and that legitimate brand owners are protected from imitators. Unauthorized use of famous or similar marks can constitute “passing off,” a violation rooted in unfair competition practices. Although “passing off” is a term used primarily in common law systems, its essence is acknowledged in Indonesian law under Articles 21 and 100 of the Trademark Law.

Minister of Law and Human Rights Yasonna H. Laoly has emphasized that intellectual property protection is key to the survival and growth of Indonesia’s creative economy. (Wahyudi, 2018) However, between 2019 and 2021, only 76,294 intellectual property applications were filed, despite Indonesia having over 65 million MSMEs. To address this gap, the government is working to simplify the registration process through digitalization and proactive outreach. Despite the advancements of Law No. 20 of 2016 over its predecessor—Law No. 15 of 2001—some weaknesses remain, particularly regarding ambiguous definitions of “famous brands” and the lack of a requirement to explain the philosophy or origin of a trademark. These gaps can lead to confusion and legal uncertainty in resolving brand disputes.

Nonetheless, the newer law offers substantial improvements, including shorter processing times (eight months), online application options, clearer regulations on geographical indications, the inclusion of non-traditional trademarks (like sound and holograms), and stricter enforcement mechanisms. It also introduces automatic renewal options for trademark protection, as long as the fee is paid, thereby simplifying the renewal process for businesses. Overall, Law No. 20 of 2016 represents a significant step toward enhancing legal certainty and providing robust protection for trademarks and geographical indications, thereby supporting MSMEs in building sustainable and competitive businesses within the Indonesian economy.

2. The impact of unregistered Micro, Small and Medium Enterprises product brands is reviewed from Law No. 20 year 2016

A trademark that is not registered does not benefit from legal protection, which significantly weakens the position of a business in the marketplace. Legal protection plays a vital role in safeguarding a brand from unauthorized use, imitation, or other forms of infringement that

may cause financial or reputational damage to the rightful owner. In the commercial world, brand imitation is a widespread risk, and if a brand becomes well-known but remains unregistered, competitors or opportunists may exploit its popularity for personal gain. This exploitation can lead to reduced sales and consumer confusion, as customers might unknowingly purchase counterfeit or unauthorized goods under the mistaken belief that they are associated with the original brand. When a brand is not registered, the owner is left without a legal basis to file a complaint or pursue remedies such as compensation or an injunction. By contrast, registration provides a legal framework for asserting exclusive rights and initiating enforcement actions. (Indrawati, 2018)

Trademark protection functions as a legal guarantee that supports the rights of brand owners in a growing and increasingly competitive global marketplace. For business owners who have not registered their trademarks, even obvious cases of imitation or infringement cannot be pursued through legal channels. The aim of trademark enforcement is to prevent the continued use of deceptively similar marks and, if necessary, halt the production or distribution of infringing goods. In Indonesia, the trademark system follows a constitutive model (first-to-file), which contrasts with the declarative system (first-to-use). This means that legal ownership and protection of a trademark are granted to the party that files the application first, regardless of whether others have used the mark in commerce previously. The adoption of this system necessitates that businesses prioritize the formal registration of their trademarks to secure their rights under Indonesian law.

One of the immediate consequences of not registering a trademark is the difficulty in establishing a strong and legally protected brand identity. Branding is a fundamental component in building consumer trust and differentiating products or services in the marketplace. Without legal protection, businesses risk having their branding efforts undermined by others using similar names or logos. This creates confusion among consumers and diminishes the value of the brand. In more severe cases, the business may be forced to rebrand entirely, losing the brand equity that has been built over time. A registered trademark provides the legal foundation for brand consistency, allowing businesses to enforce their rights and prevent counterfeiting or dilution of their brand image. It is a strategic tool not only for marketing and promotion but also for ensuring long-term commercial success.

Moreover, the absence of trademark registration exposes businesses to potential legal claims or disputes. If another party registers the same or a similar trademark first, they may gain legal rights over the brand, even if they were not the original user. This could force the actual brand originator into expensive and time-consuming legal battles to reclaim their rights. A widely known case involves a local business that had used a particular brand name for several years but had not registered it. Another party, recognizing the brand's market potential, registered the mark and legally acquired the rights to it, leaving the original business at a disadvantage. According to Law No. 20 of 2016 on Trademarks and Geographical Indications, only registered trademark holders are entitled to exclusive use of the mark. Consequently, an unregistered mark carries no enforceable rights, regardless of its prior use or public recognition.

Another major consequence of failing to register a trademark is the loss of exclusive rights. Without registration, a business cannot claim exclusive ownership of its brand name, logo, or other identifying features. This means that other parties may legally use or register similar marks, leading to market saturation and weakened brand distinction. By registering a trademark, the owner obtains exclusive rights across the entire Indonesian territory, as stipulated in Article 35 of Law No. 20 of 2016. These rights empower the owner to challenge unauthorized use and pursue legal action, such as injunctions or damage claims. Businesses that forgo registration often find themselves vulnerable to brand theft, and even if they have built significant recognition, they may lose it all if another party registers the brand first. The financial and reputational losses from such scenarios can be devastating and may include reduced consumer trust, declining sales, and missed business opportunities. (Samosir & Mustafa, 2019)

Furthermore, one of the principal advantages of having a registered trademark is the ability to take legal action against infringers. This includes both civil and criminal remedies. Without a registered mark, a business owner has no legal standing to demand that others stop using their brand. Even years of consistent and public use do not suffice as legal proof of ownership under the constitutive system in Indonesia. In a competitive market, it is not uncommon for unscrupulous businesses to copy successful brands for their own gain. However, only registered owners can seek legal redress through litigation or regulatory enforcement. Article 100(2) of Law No. 20 of 2016 provides that any unauthorized use of a trademark that is substantially similar to a registered mark for similar goods or services may result in criminal sanctions, including imprisonment of up to four years and fines of up to IDR 2 billion. This provision serves to reinforce the importance of registration as a means of securing full legal rights and deterring infringers.

In terms of justice and fairness in trademark and geographical indication registration for MSMEs, Adi Sulistiyono's theory of "pull-up and pull-down" explains that Indonesia's legal system must fairly harmonize the top-down pressure of global legal integration with the bottom-up force of constitutional norms. In this context, the legal protection of trademarks for MSMEs is essential for ensuring equitable participation in the modern economy. According to Riswandi, trademarks serve several vital functions: they act as product identifiers linking goods to producers, serve as promotional tools to attract consumers, offer guarantees of quality and consistency, and indicate the geographic origin of goods. The protection of these elements is crucial for MSMEs, which often rely on local uniqueness and community-based identity as part of their value proposition. (Suratman, 2023)

Law No. 20 of 2016 not only regulates trademarks for goods and services but also introduces collective marks—used by groups or legal entities sharing similar characteristics and product standards. These are especially relevant for MSMEs operating in clusters or cooperatives. Modern definitions of trademarks include visual and non-traditional forms such as sound marks, holograms, and three-dimensional shapes, reflecting the evolution from previous legal frameworks under Law No. 15 of 2001. The exclusive rights over such trademarks only materialize upon successful registration with the Directorate General of Intellectual Property. Without registration, the mark may be used by others freely, and the original user cannot claim infringement or protection. The party that registers the mark first is legally recognized as its rightful owner, and any subsequent use by others constitutes a violation. This ensures that the registration system under Indonesian law promotes legal certainty and protects the commercial interests of registered businesses.

The constitutive system holds a clear advantage over the declarative model in terms of legal certainty. Under the constitutive system, the first to register a trademark gains absolute rights to it, including the authority to license or enforce it. Unlike the declarative system—where ownership is presumed until challenged the constitutive system removes ambiguity and secures intellectual property rights through formal procedures. This prevents unfair competition and protects brand integrity by allowing registered owners to pursue legal action against unauthorized users. Article 10(1) of the Paris Convention mandates effective protection against unfair competition for member states, while Article 10(2) defines such acts as those contrary to honest commercial practices. The constitutive model aligns with these international obligations and serves as a defense mechanism against dishonest competitors who seek to exploit established brands.

There is also a direct relationship between Law No. 20 of 2016 and Government Regulation No. 7 of 2021 on the Ease, Protection, and Empowerment of Cooperatives and MSMEs. This regulation emphasizes simplifying legal procedures and strengthening the legal position of MSMEs, including through the registration of intellectual property such as trademarks and geographical indications. Registered trademarks enhance business identity, boost competitiveness, and protect against counterfeiting. These objectives align with the broader mandate of MSME empowerment. The regulation also promotes easier licensing, and trademark registration is an integral part of this

process. A thorough analysis of the effectiveness of these policies can identify barriers and help refine government programs to better support MSMEs.

Legal protection is also a core component of Government Regulation No. 7 of 2021, and this study analyzes how well Law No. 20 of 2016 functions in providing such protection for MSMEs in Pohuwato. Effective enforcement is critical for ensuring that legal provisions translate into real-world benefits. Through the registration of trademarks and geographical indications, MSMEs gain legal recognition, consumer trust, and enhanced market access. These benefits are essential for increasing product value and brand credibility. In turn, this leads to higher sales, stronger customer loyalty, and greater business sustainability. Thus, the synergy between the two regulations underscores the importance of an integrated legal framework that supports MSMEs not only in growth and innovation but also in securing their long-term legal and economic interests.

CONCLUSION

Legal protection for MSME product trademarks in Pohuwato can only be granted to trademarks that have been officially registered. However, many business owners have yet to register their marks due to a lack of understanding, perceptions of high costs, and the belief that the process is too complicated. The government, through regional authorities such as the Pohuwato Regency Government and the Regional Office of the Ministry of Law and Human Rights in Gorontalo, has made commendable efforts in implementing Law No. 20 of 2016 on Trademarks and Geographical Indications by conducting outreach programs such as door-to-door socialization. Nonetheless, these initiatives need to be expanded more frequently and evenly across all districts in Pohuwato, not just in Marisa, so that MSME actors throughout the region become increasingly aware of the importance of trademark registration. Failure to register a trademark means that it lacks any legal protection, exposing the owner to the risk of having the mark used or even registered by someone else. If another party registers the mark first, they gain the legal right to it, and the original creator cannot seek legal recourse due to the absence of official registration. Only registered trademark owners are legally recognized and have exclusive rights to use and license their marks. Therefore, it is essential for business actors to develop legal awareness and take the initiative to register their product trademarks to prevent future harm caused by unscrupulous parties and to secure their rights within the competitive market landscape.

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