The Benefits of Registered Trademark for MSME Actors in Surakarta City: A Case Study of IPR Protection

Manfaat Merek Dagang Terdaftar Bagi Pelaku UMKM di Kota Surakarta: Studi Kasus Perlindungan HKI

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ABSTRACT

This research aims to examine and analyze the benefits obtained by MSME actors in Surakarta after registering their trademarks. This research uses the empirical research method. The primary data were collected using direct interviews. The data obtained in this research were then analyzed qualitatively to analyze problems and answer study purposes. The results show that the IPR has provided legal certainty and protection for the Owner. Apart from getting legal protection, the rights Owner of the trademark also gets material and immaterial benefits. In this case, the rights Owner of the Mal Mel trademark feels the immaterial benefits. Furthermore, the rights Owner of the Mal Mel trademark prefers to give a direct warning if she finds a social media account plagiarizing his trademark rather than through positive legal procedures. At the same time, the rights Owner of the Mal Mel trademark does not think of making a profit by earning and receiving compensation from plagiarists. Therefore, it is recommended for every business actor, especially those with large and developing scales, to register their trademarks. In addition, MSME actors can also register the trademark to DGIP using the collective system. On the other hand, it is also recommended for the Government increase public understanding and trust in solving problems through positive legal procedures, even though the crime of IPR plagiarism is included in the category of constituted complaint delict.

Keyword: IPR; Legal Benefit; Legal Protection; MSME Actors; Registered Trademark.

INTRODUCTION

Indonesia’s economy is becoming increasingly rapid in the era of increasing modern technological advances. This development is marked by the participation of software, networks, protocols, and specifications, which gave birth to a new term called electronic commerce (e-commerce). E-commerce in the broader scope of the economy is called e-business. E-business not only serves the needs of consumers but also accommodates and becomes a space for collaboration between business people. Lou Gerstner in Park (2007) argues that:

“E-business is about time cycle, speed, globalization, enhanced productivity, reaching new customers, and sharing knowledge across institutions for competitive advantage.”

At the same time, the economy is one of the most important dimensions of life that Indonesia needs to develop. These developments gave birth to
various industrial economic sectors that contributed to economic growth and job opportunities for the community. In addition, the industrial sector became a savior in the process of national economic recovery after Indonesia experienced the monetary crisis in 1998 (Nugroho & Hermawan, 2020). Furthermore, the sector also saved the national economy in the 2008-2009 period due to the impact of the crisis in Europe and the United States (Pavlínek, 2012). Therefore, the Government presents many laws and regulations that lead to the growth of business and industrial activities (Rodhiyah, 2015).

The development of this industrial sector encourages people to be more active and productive (Yusri et al., 2022). In addition to employment, the existence of the industrial sector also contributes to reducing urbanization and increasing every business actor’s creativity. Due to the competitive nature of industrial development, business actors must have rights to their trademarks for the sake of the sustainability and existence of their business. In this case, the products of large, medium, small, and home industries are domiciled in an area. Trademarks have an important role in the development of the business world. Marks at this time have become a prestige in the community, and a person's prestige lies in the products or services used. Marks have developed into a lifestyle because they can increase self-confidence or determine a person's social stratification (Lumopa et al., 2018).

Marks are part of the scope of Intellectual Property Rights, often abbreviated as IPR. IPR are rights to property that arise or are born from human intellectual abilities. IPRs are categorized into Copyright and Corporate Property Rights (Mafulah, 2020). In addition, IPR consists of Right on Mark, Patent, Industrial Design, Copyright, Geographical Indication, Layout Design of Integrated Circuit (LDIC), Trade Secret, and Communal Intellectual Property (DGIP, 2022a).

In providing certainty of trademark protection to business actors, the Government first affirms the limits on marks and trademarks. In this case, based on Article 1 point 1 of Law of the Republic of Indonesia Number 20 of 2016 on Marks and Geographical Indications (hereinafter referred to as Law No. 20 of 2016) explains that:

“Mark means any sign capable of being represented graphically in the form of drawings, logos, names, words, letters, numerals, colors arrangement, in 2 (two) and/or 3 (three) dimensional shape, sounds, holograms, or combination of 2 (two) or more of those elements to distinguish goods and/or services produced by a person or legal entity in trading goods and/or services.”

Article 1 point 2 of Law No. 20 of 2016 explains that:

melahirkan berbagai sektor ekonomi industri yang berkontribusi terhadap pertumbuhan ekonomi dan kesempatan kerja bagi masyarakat. Selain itu, sektor industri menjadi penyelamat dalam proses pemulihan ekonomi nasional setelah Indonesia mengalami krisis moneter pada tahun 1998. Lebih lanjut, sektor tersebut juga menyelamatkan perekonomian nasional pada periode 2008-2009 akibat dampak krisis di Eropa dan Amerika Serikat. Oleh karena itu, Pemerintah banyak menghadirkan peraturan perundang-undangan yang mengarah pada tumbuhnya kegiatan usaha dan industri. Perkembangan sektor industri ini mendorong masyarakat untuk lebih aktif dan produktif. Selain penyerapan tenaga kerja, keberadaan sektor industri juga berkontribusi dalam mengurangi urbanisasi dan meningkatkan kreativitas setiap pelaku usaha. Karena perkembangan industri yang kompetitif, pelaku usaha harus memiliki hak atas dema yang berfungsi demi keberlangsungan dan eksistensi usahanya. Dalam hal ini, produk industri besar, menengah, kecil, hingga rumah tangga berdomisili di suatu daerah. Merek dagang memiliki peranan penting dalam perkembangan dunia usaha. Merek pada saat ini sudah menjadi gengsi di masyarakat, dan pamor seseorang terletak pada produk atau jasa yang digunakan. Merek telah berkembang menjadi gaya hidup karena dapat meningkatkan rasa percaya diri atau menentukan stratifikasi sosial seseorang.

Merek adalah bagian dari ruang lingkup Hak Kekayaan Intelektual, sering disingkat HKI. HKI adalah hak milik yang timbul atau lahir dari kemampuan intelektual manusia. HKI dikategorikan menjadi Hak Cipta dan Hak Kekayaan Perusahaan. Selain itu, HKI terdiri dari Hak atas Merek, Paten, Desain Industri, Hak Cipta, Indikasi Geografis, Desain Tata Letak Sirkuit Terpadu (DTLST), Rahasia Dagang, dan Kekayaan Intelektual Komunal.

Dalam memberikan kepastian perlindungan merek dagang kepada pelaku usaha, Pemerintah terlebih dahulu menegaskan batasan merek dan merek dagang. Dalam hal ini, berdasarkan Pasal 1 angka 1 Undang-Undang Republik Indonesia Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis (selanjutnya disebut UU No. 20 Tahun 2016) menjelaskan bahwa:

“Merek adalah tanda yang dapat ditampilkan secara grafis berupa gambar, logo, nama, kata, huruf, angka, susunan warna, dalam bentuk 2 (dua) dimensi dan/atau 3 (tiga) dimensi, suara, hologram, atau kombinasi dari 2 (dua) atau lebih unsur tersebut untuk membedakan barang dan/atau jasa yang diproduksi oleh orang atau badan hukum dalam kegiatan perdagangan barang dan/atau jasa.”

Pasal 1 angka 2 UU No. 20 Tahun 2016 menjelaskan bahwa:
Trademark means any Mark used for goods traded collectively by a person or several persons or a legal entity to distinguish other similar goods.

Flashback to the provision of mark protection in Indonesia began with applying the declarative principle (first to use). In this case, whoever uses the mark for the first time will automatically get legal protection without carrying out the rights registration procedure (Budiman, 2019). Applying the declarative principle is regulated in Article 2 section (1) of Law of the Republic of Indonesia Number 21 of 1961 on Corporate Mark and Trademark.

The application of the declarative principle was then replaced with a constitutive principle (first to file). Legal protection is only given to the owner who first registered the mark in this case (Buchan, 2014). The Government first applied the constitutive principle based on Article 3 of Law of the Republic of Indonesia Number 19 of 1992 on Marks (hereinafter referred to as Law No. 19 of 1992). Although Law No. 19 of 1992 has been repealed, the constitutive principle is still regulated in several Laws on Mark and is applied to this day. The following is a historical sequence of Law formation related to the protection of the Right on Mark in Indonesia, namely:

1. Law No. 21 of 1961 on Corporate Mark and Trademark;
2. Law No. 19 of 1992 on Marks;
3. Law No. 14 of 1997 on Amendment to Law No. 19 of 1992 on Marks;
4. Law No. 15 of 2001 on Marks;
5. Law No. 20 of 2016 on Marks and Geographical Indications.

On the other hand, Kartohadiprodjo (2010) explained that the essence of the purpose of the law is to realize justice for everyone. In this case, business actors get protection after obtaining their certificate of trademark right. In contrast, we can see that many business actors still need to carry out trademark registration (Betlehn & Samosir, 2018). In addition, several business actors own IPR but whose trademarks are still plagiarized by irresponsible parties (Tusikov, 2019). Mal Mel is one of the trademarks that has been registered but is still plagiarized by other parties.

Previous studies have also discussed legal protection and certainty related to trademark rights. Hafizah and Apriani (2022) concluded that the corporate trademark dispute between Hardwood Private Limited vs. PT Unilever Indonesia Tbk was resolved using the litigation method to achieve legal certainty. Sugianto and Marpaung (2022) concluded that dispute resolution handled explicitly by the Intellectual Property Arbitration and Mediation Agency would guarantee the effectiveness and efficiency of

Merek Dagang adalah Merek yang digunakan pada barang yang diperdagangkan oleh seseorang atau beberapa orang secara bersama-sama atau badan hukum untuk membedakan dengan barang sejenis lainnya.

Kilas balik pemberian perlindungan merek di Indonesia dimulai dengan penerapan prinsip deklaratif (first to use). Dalam hal ini, barang siapa yang pertama kali menggunakan merek tersebut secara otomatis mendapatkan perlindungan hukum tanpa melalui prosedur pendaftaran hak. Penerapan prinsip deklaratif diatur dalam Pasal 2 ayat (1) Undang-Undang Republik Indonesia Nomor 21 Tahun 1961 tentang Merek Perusahaan dan Merek Perusahaan. Penerapan prinsip deklaratif kemudian diganti dengan prinsip konstitutif (first to file). Dalam hal ini, perlindungan hukum hanya diberikan kepada pemilik yang pertama kali mendaftarkan merek tersebut. Pemerintah pertama kali menerapkan prinsip konstitutif berdasarkan Pasal 3 Undang-Undang Republik Indonesia Nomor 19 Tahun 1992 tentang Merek (selanjutnya disebut UU No. 19 Tahun 1992). Meskipun UU No. 19 Tahun 1992 telah dicabut, namun prinsip konstitutif tersebut masih diatur dalam beberapa undang-undang tentang merek dan berlaku hingga saat ini. Berikut adalah urutan sejarah terbentuknya Undang-Undang terkait perlindungan Hak atas Merek di Indonesia, yaitu:

1. UU No. 21 Tahun 1961 tentang Merek Perusahaan dan Merek Perusahaan;
2. UU No. 19 Tahun 1992 tentang Merek;
3. UU No. 14 Tahun 1997 tentang Perubahan Atas UU No. 19 Tahun 1992 tentang Merek;
4. UU No. 15 Tahun 2001 tentang Merek;
5. UU No. 20 Tahun 2016 tentang Merek dan Indikasi Geografis.

Di sisi lain, Kartohadiprodjo menjelaskan bahwa hakikat tujuan hukum adalah mewujudkan keadilan bagi setiap orang. Dalam hal ini, pelakuusaha mendapat perlindungan setelah memperoleh sertifikat hak mereknya. Sebaliknya, dapat kita lihat bahwa masih banyak pelaku usaha yang perlu melakukan pendaftaran hak. Selain itu, beberapa pelaku usaha memiliki HKI namun merek dagangnya masih dijilipak oleh pihak yang tidak bertanggung jawab. Mal Mel merupakan salah satu merek dagang yang telah didaftarkan namun masih dijilipak oleh pihak lain. Penelitian sebelumnya juga telah membahas tentang perlindungan dan kepastian hukum terkait hak atas merek dagang. Hafizah dan Apriani menyimpulkan bahwa sengketa merek dagang perusahaan antara Hardwood Private Limited vs PT Unilever Indonesia Tbk diselesaikan melalui jalur litigasi untuk mencapai kepastian hukum. Sugianto dan Marpaung menyimpulkan bahwa penyelesaian sengketa yang ditangani secara eksplisit oleh Badan Arbitrase dan Mediasi Kekayaan Intelektual akan menjamin efektifitas dan efisiensi biaya,
costs, time, effort, and accuracy of decisions because experts in the field of intellectual property law handled them. Yanti and Marpaung (2022) concluded that MS Glow corporate would accept dispute resolution if it received compensation of 60 billion rupiah from PS Glow corporate.

From the description above, it can be understood that previous studies discussed legal protection and certainty through litigation and non-litigation processes. In this case, through the Commercial Court and the Intellectual Property Arbitration and Mediation Agency. In contrast, this study discusses MSME actors who give warnings directly to trademark plagiarists rather than through positive legal procedures. In addition, previous studies discussed the benefits of compensation obtained by trademark rights owners. In contrast, this study discusses trademark rights owners who avoid getting benefits by suing and receiving compensation from plagiarists.

Based on the description above, this research aims to examine and analyze the benefits obtained by MSME actors in Surakarta after registering their trademarks.

**METHOD**

This research uses the empirical research method. In this case, research whose object of study includes the provisions of laws and regulations (in abstraco) and their application to legal events (in concreto) (Qamar & Rezah, 2020). Furthermore, this type of empirical legal research focuses on legal practice as a social phenomenon in terms of the reciprocal relationships caused by social phenomena, including economic, political, social, psychological, and anthropological aspects (Irwansyah, 2021). This research was carried out during September 2022 in Surakarta City. The key informant in this research consisted of one MSME actor selected by purposive sampling technique. The types and sources of data used in this research are as follows:

1. Primary Data is data obtained directly from key informant;
2. Secondary Data is data obtained from searching legal literature, including laws and regulations, references, legal scientific journals, legal encyclopedias, and texts or official publications.

The primary data were collected using direct interviews with Wahyu Tiarni, familiarly called Ayu as the rights Owner of the Mal Mel trademark. While the secondary data was collected using literature study techniques on primary, secondary, and tertiary legal materials. The data obtained in this research were then analyzed qualitatively to analyzing problems and answer study purposes.

waktu, tenaga, dan ketepatan putusan karena ditangani oleh para ahli di bidang hukum kekayaan intelektual. Yanti dan Marpaung menyimpulkan bahwa perusahaan MS Glow akan menerima penyelesaian sengketa jika menerima kompensasi sebesar 60 miliar rupiah dari perusahaan PS Glow.

Dari uraian di atas, dapat dipahami bahwa penelitian sebelumnya membahas tentang perlindungan dan kepastian hukum melalui proses litigasi dan non litigasi. Dalam hal ini, melalui Pengadilan Niaga dan Badan Arbitrase dan Mediasi Kekayaan Intelektual. Sebaliknya, penelitian ini membahas pelaku UMKM yang memberikan teguran langsung kepada pelaku penjiplak mereka dagang ketimbang melalui prosedur hukum positif. Selain itu, penelitian sebelumnya juga membahas manfaat ganti rugi yang diperoleh pemilik hak mereka dagang. Sebaliknya, penelitian ini membahas pemilik hak mereka dagang yang menghindari manfaat dengan menggugat dan menerima ganti kerugian dari pelaku penjiplak.

Berdasarkan uraian di atas, penelitian ini bertujuan untuk mengkaji dan menganalisis manfaat yang diperoleh pelaku UMKM di Surakarta setelah mendaftarkan merek dagangnya.

**METODE**

Penelitian ini menggunakan metode penelitian empiris. Dalam hal ini, penelitian yang objek kajinya meliputi ketentuan peraturan perundang-undangan (in abstraco) dan penerapannya pada peristiwa hukum (in concreto). Lebih lanjut, jenis penelitian hukum empiris ini memfokuskan pada praktik hukum sebagai fenomena sosial dalam hal hubungan timbal balik yang disebabkan oleh fenomena sosial, termasuk aspek ekonomi, politik, sosial, psikologis, dan antropologis. Penelitian ini dilaksanakan selama bulan September 2022 di Kota Surakarta. Informan kunci dalam penelitian ini terdiri dari satu pelaku UMKM yang dipilih dengan teknik purposive sampling. Jenis dan sumber data yang digunakan dalam penelitian ini adalah sebagai berikut:

1. Data Primer, adalah data yang diperoleh langsung dari informan kunci;
2. Data Sekunder, adalah data yang diperoleh dari penelusuran bahan hukum keputusan, berupa peraturan perundang-undangan, referensi-referensi, jurnal ilmiah hukum, ensiklopedia hukum, maupun dari teks atau terbitan resmi.

Pengumpulan data primer dilakukan dengan wawancara langsung dengan Wahyu Tiarni yang akrab disapa Ayu sebagai Pemilik hak merek dagang Mal Mel. Sedangkan data sekunder dikumpulkan dengan teknik studi keputusan terhadap bahan hukum primer, sekunder, dan tersier. Data yang diperoleh dalam penelitian ini kemudian dianalisis secara kualitatif untuk menganalisis masalah dan menjawab tujuan penelitian.
RESULTS AND DISCUSSION

Legal Protection and Certainty Trademark Rights based on Law No. 20 of 2016

Mark registration with the principle of being first to file in this era of rapid development of digital technology is very likely to cause IPR problems. In this case, some parties publish their trademarks but must register the mark with the Directorate General Intellectual Property (DGIP). At the same time, other parties are not inventors but register the mark with DGIP. So that the party that registers has the right to mark, and the inventor who uses the mark for the first time cannot claim the mark (Arif & Rosni, 2018).

In essence, IPR provides economic benefits to every rights owner. In this case, payment for a license from a party who wants to get economic benefits from the registered product (Sulastri et al., 2018). Article 1 point 18 of Law No. 20 of 2016 explains that:

“License means any permit granted by the owner of a registered Mark to another party based on written agreement in accordance with laws and regulations to use the registered Mark.”

Furthermore, the licensing agreement must be forwarded to DGIP, as based on Article 42 section (3) and section (4) of Law No. 20 of 2016, which regulates that:

“The Licensing agreement must be requested for recording to the Minister subject to fee. The Licensing agreement as referred to in section (3) is recorded by the Minister and published in the Mark Gazette.”

From the provisions above, it can be understood that trademark rights protection applies to parties who make license agreements. However, the party who enters into a license agreement with the rights owner will only receive legal protection from the Government if the agreement is recorded and published in the Mark Gazette. In this case, Article 42 section (5) of Law No. 20 of 2016 regulates that:

“The Licensing agreement that is not recorded does not bring legal effect to the third party.”

In contrast, any party using a registered mark will be subject to criminal sanctions. In this case, the party uses the mark without permission from the owner and holder of the right on the mark. Article 100 section (1) of Law No. 20 of 2016 regulates that:

“Every person unlawfully uses any Mark which is identical to registered Mark of other parties for similarly produced, and/or traded goods and/or services, shall be sentenced to imprisonment of up to 5 (five) years and/or fines up to IDR 2,000,000,000.00 (two billion rupiahs).”

HASIL DAN PEMBAHASAN

Perlindungan dan Kepastian Hukum Hak Merek Dagang berdasarkan UU No. 20 Tahun 2016

Pendaftaran merek dengan prinsip first to file di era perkembangan teknologi digital yang pesat ini sangat mungkin menimbulkan permasalahan HKI. Dalam hal ini, beberapa pihak mempublikasikan mereknya tetapi tidak mendaftarkan merek tersebut ke Direktorat Jenderal Kekayaan Intelektual (DJKI). Pada saat yang sama, pihak lain bukan penemu tetapi mendaftarkan merek tersebut ke DJKI. Sehingga pihak yang mendaftar berhak atas merek tersebut dan penemu yang menggunakan merek tersebut untuk pertama kali tidak dapat mengklaim merek tersebut.

Pada hakekatnya, HKI memberikan manfaat ekonomi bagi setiap pemilik hak. Dalam hal ini, pembayaran lisensi dari pihak yang ingin mendapatkan manfaat ekonomi dari produk yang didaftarkan. Pasal 1 angka 18 UU No. 20 Tahun 2016 menjelaskan bahwa:

“Setiap Orang yang dengan tanpa hak menggunakan Merek yang sama pada keseluruhannya dengan Merek terdaftar milik pihak lain untuk barang dagang berakibat hukum pada pihak ketiga.”

Selanjutnya, perjanjian lisensi harus diteruskan ke DJKI, sebagaimana berdasarkan Pasal 42 ayat (3) dan ayat (4) UU No. 20 Tahun 2016 yang mengatur bahwa:

“Perjanjian Lisensi yang tidak dicatatkan tidak berakibat hukum pada pihak ketiga.”

Dari ketentuan di atas, dapat dipahami bahwa perliandungan hak merek berlaku bagi pihak yang membuat perjanjian lisensi. Namun pihak yang mengadakan perjanjian lisensi dengan pemilik hak hanya mendapatkan perliandungan hukum dari Pemerintah apabila perjanjian tersebut dicatat dan diumumkan dalam Berita Resmi Merek. Dalam hal ini, Pasal 42 ayat (5) UU No. 20 Tahun 2016 mengatur bahwa:

“Perjanjian Lisensi yang tidak dicatatkan tidak berakibat hukum pada pihak ketiga.”

Sebaliknya, setiap pihak yang menggunakan merek terdaftar akan dikenakan sanksi pidana. Dalam hal ini, pihak tersebut menggunakan merek tersebut tanpa izin dari pemilik dan pemegang hak atas merek tersebut. Pasal 100 ayat (1) UU No. 20 Tahun 2016 mengatur bahwa:

“Setiap Orang yang dengan tanpa hak menggunakan Merek yang sama pada keseluruhannya dengan Merek terdaftar milik pihak lain untuk barang dan/atau jasa sejenis yang diproduksi dan/atau diperdagangkan, dipidana dengan pidana penjara paling lama 5 (lima) tahun dan/atau pidana denda paling banyak Rp. 2.000.000.000,00 (dua miliar rupiahs).”
In addition to the sanctions above, there are also criminal sanctions for those who use certain marks similar to those registered in DGIP. In this case, Article 100 section (2) of Law No. 20 of 2016 regulates that:

“Every person unlawfully uses any Mark which is substantially similar to registered Mark of another party for similarly produced and/or traded goods and/or services, shall be sentenced to imprisonment for up to 4 (four) years and/or fines up to IDR 2,000,000,000.00 (two billion rupiahs).”

From the provisions above, it can be understood that every right within the scope of IPR has received legal protection and certainty from the Government if it has been recorded and published in the Mark Gazette. Although mark registration is carried out with the principle of first filing, the Government still considers the good faith of the applicant. The applicant who registers their trademark must be properly and honestly assessed without any intention to piggyback, imitate or plagiarize the reputation of another party’s trademark. In this case, it is indicated that an applicant’s interest results in loss to other parties or creates conditions of fraudulent competition, deceiving, or misleading consumers (Anugraha, 2020). Furthermore, the objectives of implementing IPR protection include the following (Sardana et al., 2020):

1. Anticipating other parties in claiming the intellectual work of the party who created it for the first time;
2. Increasing competitiveness and market share in the commercialization of intellectual property goods/services;
3. As a material consideration in determining the strategy of research, business, and industry in Indonesia.

Benefits of Registered Trademark for MSME actors in Surakarta City

One of the objectives of implementing IPR protection is to increase competitiveness and market share in commercializing intellectual property goods/services (Singh, 2015). As previously explained, the Government has provided legal protection and certainty for those who register their trademarks in DGIP Article 1 point 5 of Law No. 20 of 2016 explains that:

“Right on Mark means the exclusive right granted by the State to a registered Mark owner for a definite period to use his/her Mark or authorize others to do otherwise.”

Every MSME actor expects this condition to survive in the current era of industrialization. On the other hand, every MSME actor must use a mark as an identity

Selain sanksi di atas, terdapat juga sanksi pidana bagi pengguna merek tertentu yang mirip dengan yang terdaftar di DJKI. Dalam hal ini, Pasal 100 ayat (2) UU No. 20 Tahun 2016 mengatur bahwa:

“Setiap Orang yang tanpa hak menggunakan Merek yang mempunyai persamaan pada pokoknya dengan Merek terdaftar milik pihak lain untuk barang dan/atau jasa sejenis yang diproduksi dan/atau diperdagangkan, dipidana dengan pidana penjara paling lama 4 (empat) tahun dan/atau denda paling banyak Rp. 2.000.000.000,00 (dua miliar rupiah).”

Dari ketentuan di atas dapat dipahami bahwa setiap hak dalam lingkup HKI telah mendapat perlindungan dan kepastian hukum dari Pemerintah apabila telah dicatat dan diumumkan dalam Berita Resmi Merek. Di sisi lain, meskipun pendaftaran merek dilakukan dengan prinsip first to file, Pemerintah tetap memperhatikan itikad baik dari pemohon. Pemohon yang mendaftarkan merek dagangnya harus dinilai dengan benar dan jujur tanpa ada maksud untuk membonceng, meniru atau mengambil reputasi merek dagang pihak lain. Dalam hal ini, diindikasikan bahwa kepentingan pemohon mengakibatkan kerugian bagi pihak lain atau menciptakan kondisi persaingan curang, menipu, atau menyesatkan konsumen. Selanjutnya, tujuan pelaksanaan perlindungan HKI antara lain sebagai berikut:

1. Mengantisipasi pihak lain dalam mengklaim karya intelektual dari pihak yang pertama kali menciptakannya;
2. Meningkatkan daya saing dan pangsa pasar dalam komersialisasi barang/jasa kekayaan intelektual;
3. Sebagai bahan pertimbangan dalam menentukan strategi penelitian, bisnis, dan industri di Indonesia.

Manfaat Merek Dagang Terdaftar bagi Pelaku UMKM di Kota Surakarta

Salah satu tujuan penerapan perlindungan HKI adalah untuk meningkatkan daya saing dan pangsa pasar dalam mengkomersialkan barang/jasa kekayaan intelektual. Sebagaimana telah dijelaskan sebelumnya, Pemerintah telah memberikan perlindungan dan kepastian hukum bagi mereka yang mendaftarkan mereka dagangnya di DJKI. Pasal 1 angka 5 UU No. 20 Tahun 2016 menjelaskan bahwa:

“Hak atas Merek adalah hak eksklusif yang diberikan oleh negara kepada pemilik Merek yang terdaftar untuk jangka waktu tertentu dengan menggunakan sendiri Merek tersebut atau memberikan izin kepada pihak lain untuk menggunakankannya.”

Kondisi ini diharapkan oleh setiap pelaku UMKM agar dapat bertahan di era industrialisasi saat ini. Di sisi lain, setiap pelaku UMKM wajib menggunakan merek
for the goods he produces or the services provided to his consumers. As explained in Article 1 point 1 of Law No. 20 of 2016, a mark is also an identifying identity, simultaneously a differentiator between the marks of one particular business actor and the marks of other business actors.

Wahyu Tiarni, familiarly called Ayu as an MSME actor with the Mal Mel trademark, also expects this condition. As an MSME actor in Surakarta City, Ayu has obtained the Right on Mark. Mal Mel trademark has been recorded and published in the Mark Gazette. In addition, Mal Mel trademark can also be seen on the DGIP (2018) website. Ayu said that:

“Mal Mel’s Homecraft itself is quite developed in Surakarta City. So by registering Mal Mel to DGIP, no other business actor can claim the Mal Mel trademark.”

Ayu further said:

“Before I did mark registration, there were several problems that I experienced. For example, there are other social media accounts that use the name and logo design of Mal Mel. In addition, the account also promotes items similar to the handicraft products we sell.”

It is well known that violations against well-known marks often occur in the trading world. Violations occur because an irresponsible party wants to benefit from using the mark (Mirfa, 2016). Ayu said:

“Mal Mel’s Homecraft has a social media account for promotion. At the same time, we also monitor other home craft products. It was from that activity that we found other social media accounts that use the name and logo design of Mal Mel.”

Ayu further said:

“Sebelum saya melakukan pendaftaran merek, ada beberapa kendala yang saya alami. Misalnya, terdapat akun media sosial lainnya yang menggunakan nama dan desain logo Mal Mel. Selain itu, akun tersebut juga mempromosikan barang-barang yang mirip dengan produk kerajinan yang kami jual.”

Ayu lebih lanjut mengatakan:

“Rumah Craft Mal Mel memiliki akun media sosial untuk promosi. Pada saat yang sama, kami juga memantau produk kerajinan rumahan lainnya. Dari kegiatan ituah kami menemukan akun media sosial lain yang menggunakan nama dan desain logo Mal Mel.”

Figure 1. Mal Mel Trademark
Gambar 1. Merek Dagang Mal Mel

1Interview Results with the Rights Owner of the Mal Mel Trademark. Wahyu Tiarni, S.Pd., on September 15, 2022.
2Interview Results with the Rights Owner of the Mal Mel Trademark. Wahyu Tiarni, S.Pd., on September 3, 2022.
3Interview Results with the Rights Owner of the Mal Mel Trademark. Wahyu Tiarni, S.Pd., on September 3, 2022.
4Interview Results with the Rights Owner of the Mal Mel Trademark. Wahyu Tiarni, S.Pd., on September 5, 2022.
"We have made products using quality materials and good motives. However, our customers buy the crafts offered by other social media accounts that use the name and logo design of Mal Mel. So that our consumers no longer order because they judge that our handicraft products are of poor quality."

From the description above, it can be understood that plagiarism by irresponsible parties also has an impact on the reputation of the trademark of Mal Mel’s Homecraft. In this case, consumers buy craft products that Mal Mel’s Homecraft does not produce. Therefore, consumers will be disadvantaged because they get poor-quality handicraft products. At the same time, Mal Mel’s Homecraft will suffer material losses due to the loss of trust from its consumers.

On the other hand, Mal Mel’s Homecraft has collaborated with many parties or agencies and is united in one organization with several other MSMEs in Surakarta City. Ayu said:

"Several other MSMEs and I registered the trademark to DGIP using the collective system. We are facilitated and assisted with registration fees by Sebelas Maret University, BeCraft, and the Office of Cooperatives. So we do not have to pay any registration fees."

Registration of Marks with a collective system based on Article 46 section (4) of Law No. 20 of 2016, which regulates that:

“For the purpose of empowering Micro, Small, and Medium Enterprises, the Government may register Collective Mark dedicated for developing the business and/or public services.”

From the description above, it can be understood that every business actor, especially those with large and developing scales, is strongly advised to register their trademarks. On the other hand, registration of trademark rights can be done by a person, a legal entity, or collectively. Furthermore, business actors must ensure that there are special characteristics in their trademarks when applying for registration. In addition, trademark registration in Indonesia does not require a philosophical explanation of the mark. In contrast, the marks applied for registration must be substantially different or not identical to the registered marks or well-known marks of other corporations (Perdana & Pujiyono, 2017). In this case, Ayu said:

"Produk yang kami buat menggunakan bahan yang berkualitas dan motif yang bagus. Namun, pelanggan kami membeli kerajinan yang ditawarkan oleh akun media sosial lain yang menggunakan nama dan desain logo Mal Mel. Sehingga konsumen kami tidak lagi memesan karena menilai produk kerajinan kami kurang bagus kualitasnya."

Dari uraian di atas dapat dipahami bahwa penjilpakan oleh pihak yang tidak bertanggung jawab juga berdampak pada reputasi merek Rumah Craft Mal Mel. Dalam hal ini, konsumen membeli produk kerajinan yang tidak diproduksi oleh Rumah Craft Mal Mel. Oleh karena itu, konsumen akan dirugikan karena mendapatkan produk kerajinan dengan kualitas yang buruk. Di saat yang sama, Rumah Craft Mal Mel akan mengalami kerugian immaterial akibat hilangnya kepercayaan dari konsumennya.

Di sisi lain, Rumah Craft Mal Mel telah bekerjasama dengan banyak pihak atau instansi dan tergabung dalam satu organisasi dengan beberapa UMKM lainnya di Kota Surakarta. Ayu mengatakan:

"Saya dan beberapa UMKM lainnya mendaftarkan merek dagang ke DJKI dengan sistem kolektif. Kami difasilitasi dan dibantu biaya pendaftaran oleh Universitas Sebelas Maret, BeCraft, dan Dinas Koperasi. Jadi kita tidak perlu membayarnya biaya pendaftaran sepeserpun."

Pendaftaran Merek dengan sistem kolektif berdasarkan Pasal 46 ayat (4) UU No. 20 Tahun 2016, yang mengatur bahwa:

“Untuk pemberdayaan Usaha Mikro, Kecil, dan Menengah, Pemerintah dapat mendaftarkan Merek Kolektif yang dipertunjukkan bagi pengembangan usaha dimaksud dan/atau pelayanan publik.”

Dari uraian di atas, dapat dipahami bahwa setiap pelaku usaha, terutama yang berskala besar dan sedang berkembang, sangat disarankan untuk mendaftarkan merek dagangnya. Di sisi lain, pendaftaran hak atas merek dagang dapat dilakukan oleh seseorang, badan hukum, atau secara kolektif. Selanjutnya, pelaku usaha harus memastikan adanya ciri khusus pada merek dagangnya saat mengajukan pendaftaran. Selain itu, pendaftaran merek di Indonesia tidak memerlukan penjelasan filosofis tentang merek tersebut. Sebaliknya, merek yang diajukan untuk pendaftaran harus berbeda secara substansial atau tidak identik dengan merek terdaftar atau merek terkenal dari perusahaan lain. Dalam hal ini, Ayu mengatakan:

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1. Interview Results with the Rights Owner of the Mal Mel Trademark. Wahyu Tiarni, S.Pd., on September 25, 2022.
2. Interview Results with the Rights Owner of the Mal Mel Trademark. Wahyu Tiarni, S.Pd., on September 25, 2022.
3. Hasil Wawancara dengan Pemilik Hak atas Merek Dagang Mal Mel. Wahyu Tiarni, S.Pd., pada 25 September 2022.
4. Hasil Wawancara dengan Pemilik Hak atas Merek Dagang Mal Mel. Wahyu Tiarni, S.Pd., pada 25 September 2022.
The registration process until the Mark Certificate is issued by the Minister takes little time because the mark name is unique and has never existed. Mal Mel is taken from the names of Malik and Melati.

The following are the stages for applying for registration until the issuance of a registered mark right certificate:
1. Application for registration of the mark;
2. Mark registration formality examination;
3. Filing date dan publication application;
4. Substantive examination of the mark;
5. Record and publication of registered marks;
6. Certificate issuance of the right on the registered mark.

The provisions for the stages above are regulated in Article 4 to Article 24 of Law No. 20 of 2016. At the same time, the flowchart, time, and payment of the stages above can be seen on the DGIP (2022b) website.

Figure 2. Researcher with the Rights Owner of the Mal Mel Trademark
Gambar 2. Peneliti bersama Pemilik Hak atas Merek Dagang Mal Mel
Ayu further said:

"After receiving guidance from the facilitator, I could access and download the Mal Mel trademark certificate file attached on the DGIP website."

Mal Mel trademark is protected until September 26, 2028, as published on the DGIP (2018) website. While obtaining the rights to the trademark, Mal Mel's Homecraft has developed and obtained several benefits that were not obtained significantly before. Ayu said that:

"Since obtaining the trademark certificate, Mal Mel's Homecraft consumers have rapidly increased. If we post new craft products via social media, many customers respond quickly to the product."

From the description above, it can be understood that the benefits obtained are not only limited to material benefits but also to obtain immaterial benefits. Other immaterial benefits can be in the form of increasing the confidence of business actors, positioning business actors to be more visionary, and increasing consumer confidence in the quality of business actors' products.

In general, products that do not have a mark or identity are usually less trusted by potential consumers (Firdausy & Mahanani, 2021). So that after business actors register marks, many consumers are interested in making transactions because they feel safer and more secure. Therefore, it is not surprising that the mark is a very important part of the implementation of the marketing of a goods/service (Julvirta et al., 2022). The role of marks in marketing is very important because the public often associates the quality or reputation of goods and services with a certain mark. In addition, the mark must also have significant differentiating power from other marks. In this case, each particular trademark represents the quality of goods based on the raw materials used in producing the product. This condition is what distinguishes goods or services from one corporate to another.

On the other hand, there are still acts of trademark plagiarism even though Mal Mel's Homecraft has obtained a certificate of the right on the mark. However, Ayu easily solved the problem. In contrast, Ayu had difficulty resolving the problem when she had yet to obtain The Mal Mel trademark rights. In addition, Ayu has never filed criminal or civil prosecutions against those who plagiarized Mal Mel trademark. Ayu said:

"I could access and download the Mal Mel trademark certificate file attached on the DGIP website."

Ayu lebih lanjut mengatakan:

"Setelah mendapat pengarahan dari fasilitator, saya dapat mengakses dan mengunduh file sertifikat merek dagang Mal Mel yang terlampir di situs DJKI."

Merek dagang Mal Mel dilindungi hingga 26 September 2028, sebagaimana dipublikasikan di situs DJKI. Selama memperoleh hak merek dagang, Rumah Craft Mal Mel telah berkembang dan memperoleh beberapa manfaat yang sebelumnya tidak didapatkan secara signifikan. Ayu mengatakan bahwa:

"Sejak mendapatkan sertifikat merek dagang, konsumen Rumah Craft Mal Mel meningkat pesat. Jika kami memposting produk kerajinan baru melalui media sosial, banyak pelanggan yang merespons produk dengan cepat."

Dari uraian di atas, dapat dipahami bahwa manfaat yang diperoleh tidak hanya terbatas pada keuntungan materi tetapi juga untuk memperoleh manfaat immateriil. Manfaat immateriil lainnya dapat berupa meningkatkan kepercayaan pelaku usaha, memposisikan pelaku usaha lebih visioner, dan meningkatkan kepercayaan konsumen terhadap kualitas produk pelaku usaha.

Pada umumnya produk yang tidak memiliki merek atau identitas biasanya kurang dipercaya oleh calon konsumen. Sehingga setelah pelaku usaha melakukan pendaftaran merek, banyak konsumen yang tertarik untuk melakukan transaksi karena merasa lebih aman dan terjamin. Oleh karena itu, tidak heran jika merek merupakan bagian yang sangat penting dalam pelaksanaan pemasaran suatu barang/jasa. Peran merek dalam pemasaran sangat penting karena masyarakat seringkali mengaitkan kualitas atau reputasi barang dan jasa dengan merek tertentu. Selain itu, merek tersebut juga harus memiliki daya pembeda yang nyata dengan merek lainnya. Dalam hal ini, setiap merek dagang tertentu mewakili kualitas barang berdasarkan bahan baku yang digunakan dalam memproduksi produk tersebut. Kondisi inilah yang membuat merek atau jasa antara satu perusahaan dengan perusahaan lainnya.

Di sisi lain, masih terdapat tindakan penjilpahtan merek dagang meskipun Rumah Craft Mal Mel telah mendapatkan sertifikat hak atas merek tersebut. Namun, Ayu dengan mudah menyelesaikan masalah tersebut. Sebaliknya, Ayu kesulitan menyelesaikan masalah tersebut ketika dia belum mendaftakan hak merek dagang Mal Mel. Selain itu, Ayu tidak pernah mengajukan tuntutan pidana maupun perdata terhadap pihak yang menjilplak merek dagang Mal Mel. Ayu mengatakan:

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1Interview Results with the Rights Owner of the Mal Mel Trademark. Wahyu Tiarni, S.Pd., on September 25, 2022.
2Interview Results with the Rights Owner of the Mal Mel Trademark. Wahyu Tiarni, S.Pd., on September 10, 2022.
3Interview Results with the Rights Owner of the Mal Mel Trademark. Wahyu Tiarni, S.Pd., on September 27, 2022.
4Hasil Wawancara dengan Pemilik Hak atas Merek Dagang Mal Mel. Wahyu Tiarni, S.Pd., pada 25 September 2022.
5Hasil Wawancara dengan Pemilik Hak atas Merek Dagang Mal Mel. Wahyu Tiarni, S.Pd., pada 10 September 2022.
6Hasil Wawancara dengan Pemilik Hak atas Merek Dagang Mal Mel. Wahyu Tiarni, S.Pd., pada 27 September 2022.
“We only deliver direct warnings via social media to those who plagiarize the Mal Mel trademark. We also found that the perpetrator carried out business activities and was domiciled in Surakarta City. Most importantly because the costs incurred are not small if resolving the problem through legal procedures.”

Ayu further said:10

“The Mal Mel trademark plagiarists always heed the warnings we give them. In this case, the Mal Mel trademark has been registered as an IPR and published on the DGIP website. We have never experienced a situation where plagiarists still use the Mal Mel trademark on their social media accounts after we warned them. Therefore, we consider that plagiarists also know the legal consequences they will get if they continue to use the Mal Mel trademark on their social media accounts.”

From the description above, it can be understood that although the IPR has provided legal certainty and protection for the owner, the owner of the right on the mark prefers to give a direct warning rather than through positive legal procedures. In this case, positive legal procedures require a long time to complete, difficult administrative processes, and costs to handle cases are costly. On the other hand, most MSME actors, as IPR owners, do not think of making a profit by suing and receiving compensation from plagiarists. Therefore, public understanding and trust still need to be improved in solving problems through positive legal procedures even though the crime of plagiarism is included in the category of constituted complaint delict.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion above, it can be concluded that the IPR has provided legal certainty and protection for the Owner. Apart from getting legal protection, the rights Owner of the trademark also gets material and immaterial benefits. The immaterial benefits can be in the form of increasing the confidence of business actors, positioning business actors to be more visionary, and increasing consumer confidence in the quality of business actors’ products. In this case, the rights Owner of the Mal Mel trademark feels the immaterial benefits. Furthermore, the rights Owner of the Mal Mel trademark prefers to give a direct warning if she finds a social media account plagiarizing his trademark rather than through positive legal procedures. At the same time, the rights Owner of the Mal Mel trademark does not think of making a profit by

10“Interview Results with the Rights Owner of the Mal Mel Trademark. Wahyu Tiarni, S.Pd., on September 27, 2022.

“Kami hanya menyampaikan peringatan langsung melalui media sosial kepada pihak yang menjilap merek dagang Mal Mel. Kami juga menemukan bahwa pelaku melakukan kegiatan usaha dan berdomisili di Kota Surakarta. Yang terpenting karena biaya yang dikeluarkan tidak sedikit jika menyelesaikan masalah melalui prosedur hukum.”

Ayu lebih lanjut mengatakan:10

“Penjiplak merek dagang Mal Mel selalu mengindahkan peringatan yang kami berikan kepada mereka. Dalam hal ini, merek dagang Mal Mel telah terdaftar sebagai HKI dan dipublikasikan di situs DJKI. Kami juga tidak pernah mengalami situasi di mana penjiplak masih menggunakan merek dagang Mal Mel di akun media sosial mereka setelah kami memperingatkan mereka. Oleh karena itu, kami menganggap bahwa penjiplak juga mengetahui akibat hukum yang akan mereka dapatkan jika tetap menggunakan merek dagang Mal Mel di akun media sosialnya.”

Dari uraian di atas, dapat dipahami bahwa meskipun HKI telah memberikan kepastian dan perlindungan hukum bagi pemiliknya, namun pemilik hak atas merek lebih memilih untuk memberikan peringatan secara langsung daripada melalui prosedur hukum positif. Dalam hal ini, prosedur hukum positif membutuhkan waktu penyelesaian yang lama, proses administrasi yang rumit, serta biaya penanganan perkara yang mahal. Di sisi lain, sebagian besar pelaku UMKM sebagai pemilik HKI tidak berpikir untuk mencari keuntungan dengan menggugat dan menerima ganti rugi dari penjiplak. Oleh karena itu, pemahaman dan kepercayaan masyarakat masih perlu ditingkatkan dalam penyelesaian masalah melalui prosedur hukum positif meskipun tindak pidana penjiplakan termasuk dalam kategori delik aduan.

KESIMPULAN DAN SARAN

Berdasarkan hasil dan pembahasan di atas, dapat disimpulkan bahwa HKI telah memberikan kepastian dan perlindungan hukum bagi Pemiliknya. Selain mendapat perlindungan hukum, Pemilik hak merek dagang juga mendapat manfaat materiil dan immateriil. Manfaat immateriil dapat berupa meningkatkan kepercayaan pelaku usaha, memposisikan pelaku usaha lebih visioner, dan meningkatkan kepercayaan konsumen terhadap kualitas produk pelaku usaha. Dalam hal ini, Pemilik hak merek dagang Mal Mel merasakan keuntungan immateriil. Selanjutnya, Pemilik hak merek dagang Mal Mel lebih memilih untuk memberikan teguran langsung jika menemukan akun media sosial yang menjilap merek dagangnya daripada melalui prosedur hukum positif. Pada saat yang sama, Pemilik hak merek dagang Mal Mel tidak berpikir

10Hasil Wawancara dengan Pemilik Hak atas Merek Dagang Mal Mel. Wahyu Tiarni, S.Pd., pada 27 September 2022.
earning and receiving compensation from plagiarists. Based on the description of these conclusions, it is recommended for every business actor, especially those with large and developing scales, to register their trademarks. In addition, MSME actors can also register the trademark to DGIP using the collective system. On the other hand, it is also recommended for the Government increase public understanding and trust in solving problems through positive legal procedures, even though the crime of IPR plagiarism is included in the category of constituted complaint delict.

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