

Trademark Legal Protection against SMEs in Enhancing Global Competitiveness Based on the values of Pancasila

Anis Mashdurohaturun

Faculty of Law, UNISSULA, Semarang, Indonesia
Email: anism@unissula.ac.id

Gunarto

Faculty of Law, UNISSULA, Semarang, Indonesia
Email: gunarto@unissula.ac.id

Abstract— The brand, or in the other name of condition, is a name or symbol that distinguishes (either in the form of a logo, stamp / packaging) to identify the goods / services from a seller / group specific seller. And Trademarks is a tools which will be used on goods traded by a person, or persons jointly or a legal entity to distinguish from other similar items. This brand is very commonly used at present by SMEs as a differentiator in the trading of goods and or services in Indonesia. The purpose of this research is to examine and analyze at this time, and also to identification based on analyze process about the factors that affect its protection as well as find the trademark and law protection of SMEs in enhancing the global competitiveness based on the values of justice Pancasila. The method used format by the social law research. The data used are primary and secondary data. Data collection through library studies and field studies (interviews, observation and FGD). The study found that the legal protection of the trademark SMEs is still very weak, due to many trademark unregistered SMEs both nationally and globally perspective. Violation of Trademark done by installing Trademarks, logos and materials exactly like the original, use of Trademarks is similar to other registered brands. Use of Trademarks that are identical or similar to other brands lead to misperceptions in the public mind. Passing their requirements between SMEs. Legal protection of trademarks MSMEs in improving the global competitiveness based on the values of Pancasila shall empowerment all principle of honesty and good faith of the SMEs and the community in general. Changing the mindset of the global national SMEs, clustering SMEs and challenge the government's role in assisting the SMEs for online trademark registration in national territory and globally. It provides completely access of financial funding as well as access to its market.

Keywords— *Trademarks; SMEs; Competitiveness; Pancasila*

I. OVERVIEW OF *HAK PENGELOLAAN* (HPL)

The concept In Indonesia, the brand regulated first time which based in Law Number 21 Year 1961 About Trademarks and Brands Commerce.¹The main principles to set out in this law are trademarks obtained through the first time using that names (firs to use the system or *stelsel* declarative). First time which used the system or *stelsel* declarative means the legal presumption arises that the first user is the person entitled to be proven otherwise.²TRIPs which gives legislative choice. The legislative choice give us meaning as an opportunity for developing countries and the less developed countries to bring legislation in the field of IPR in accordance with their needs.³ TRIPs opportunity given in accordance with the schedule of the 1995 commitment for high countries and year 2000 for developing countries including Indonesia which implemented on January 1, 2000.

Set by time, the Act No. 2 of 2016 has changed and grow the concept of Marks and Geographical Indications, has

set First to the file system or *stelsel* Constitutive Act. That means first sending a file / registration.

First to use system shifts into First to file often cause a negative impact on the practice of bad faith trademark registration of the SMEs and the public in general. Like the case of the salt sea ship stamp, stamp rice curry etc. On the other hand the emergence of a registered trademark infringement and passing off.

Brand is a name or symbol that distinguishes (either in the form of a logo, stamp / packaging) to identify the goods / services from a seller / group specific seller. And Trademarks is a trademark used on goods traded by a person or persons jointly or a legal entity to distinguish from other similar items. This brand is very commonly used by SMEs as a differentiator in the trading of goods and or services in Indonesia.⁴

Based on these descriptions is interesting to examine in depth with respect to legal protection against trademark MSMEs in improving the global competitiveness based on the values of Pancasila.

¹ Rahmi Jened, *Trademark Law (Trademark Law) in the Era of Global Economic Integration*, Pranamedia Group, Jakarta, 2015, p15.

² *Ibid*, p. 15.

³ Rahmi Jened, *Interface Intellectual Property Law and Competition Law*, RajaGrafindo Press, Jakarta, 2013, p. 60.

⁴ Act No. 20 of 2016 on Marks and Geographical Indications.

II. RESEARCH METHOD

This research using social law research as based methods⁵, with using data specification are primary and secondary data.⁶ Data collection through library studies and field studies (interviews, observation and FGD).

III. RESULT AND DISCUSSION

A. TRADEMARK LEGAL PROTECTION AGAINST SMES

As principle, a registration request for a particular good or service may be filed for one class of goods or services. But in terms of registration is required for more than one class, then to each class dlinginkan requests must be submitted separately. In addition, in any registration requests should mention the type or types of desired goods or services in the relevant class. A list of classes of goods based on PP 24 Th.1993 explanation about Class List of Goods or Services.

Act No. 20 of 2016 on Marks and Geographical Indications not confirm and explain the position of a registered mark which has expired legal protection is for 20 (twenty years) that causes a registered mark which expired legal protection but the brand is still circulating in the market to be not no standing in law or regulation in the sense that there is no legal certainty to the brand.

The registered owner has the exclusive right constitute legal certainty and justice seekers should be provided by the State through regulation that the mark be registered after the expiration of the protection is not positioned in a vacuum without the protection and certainty that can lead to acts of arbitrariness of the registered mark. M.Yahya Harahap explained the meaning of exclusive rights covering the range:¹²

1. Creating a single right (or single sole right).
For this right, State gives its own right to brand owners, where such rights separate and stand alone in their entirety without interference and intervention of other parties.
2. Realizing the monopolistic rights (Monopoly right).
Actually monopoly rights means that forbids anyone to imitate, wear and use a trademark in trade of goods or services without the owner's permission. Monopoly in the field of intellectual property rights is allowed under Law No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition.
3. Give the right superiority (superior right).
Actually by holding special rights over the brand will outperform others to be protected brands.
4. Create a single right (or single sole right).
State gives its own right to brand owners, where such rights separate and stand alone in their entirety without interference and other intervention.

5. Become monopolistic rights (Monopoly right).
Actually monopoly rights means that forbids anyone to imitate, wear and use a trademark in trade of goods or services without the owner's permission. Monopoly in the field of intellectual property rights is allowed under Law No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition.
6. Give the right superior (superior right).
Actually provided by holding special rights over the brand will outperform others to be protected brands.

Protection of intellectual property rights is more dominant on the protection of individuals but to balance the individual interests with the public interest, then the intellectual property rights bases itself on the following principles:⁷

1. The principle of fairness, The Principle of Natural Justice law provides protection to the creator of a work in the form of rewards both material or immaterial as their safety which is protected and recognized for their work or the so-called rights;
2. The Economy Argument, or economic principles of intellectual property rights are the basic rights that come from the creative activity of a power of human thought expressed to the public that is both economical for-profit providers;
3. The Cultural Argument Principle, in recognition of the human creation, work, human creativity standardized in the system of Intellectual Property Rights is an effort that cannot be released as the embodiment of an condition that give expectation for enthusiasm and good interest for making a new creation;
4. The Social Argument, or social principle with law does not regulate the benefit of man as an individual who stands alone, apart from any other human being but the law need for regulates human interests as it position as a citizens.

In general, the brand will not be registered on the basis of a petition filed by the applicant whom had a bad faith. Applicant whom had a good faith is the applicant who register its brand in a dignified and honest, without intention to hitchhike, imitate, or plagiarized fame brands of others for the sake of his efforts that resulted in a loss on the other hand or resulted inflict conditions of unfair competition, deceptive, or misleading the consumer.⁸

Besides the registration of a trademark must also be rejected by the Directorate General of IPR if the brand to be listed have good equations entirely or principally with:⁹

1. A registered trademark of another party for goods / services are similar. When A person have making name *geulis* own registered brand for this type of goods apparel, *geulis* registration, *GEULEES*, or *GAULIES* by B on the type of apparel will be rejected;
5. Famous brand owned by other parties. Actual famous brand which standard criteria has not been set officially in

⁵ Soetandyo Wignjosoebroto, *Law: Paradigms, Methods and Dynamics of the Problem. HuMa Society* and ELSAM, Jakarta, 2002, p. 121.

⁶ Sukardi, *Research methodology; Competence and Practice*, Sinar Grafika Offset, Jakarta, 2012, p.157

⁷ Pipin Syarifin, *Regulation of Intellectual Property Rights in Indonesia*, Pustaka Bani Quraysh, Bandung, 2004, p. 11-12.

⁸ Ahmadi Miru .. , *Principles of Legal Protection For Consumers In Indonesia*, Molds to two, RajaGrafindo Persada, Jakrta, 2013, p.14.

⁹ accessed through <http://www.hki.co.id/merek.html> on Wednesday September 20 2018, 14:44 o'clock am.

government regulation. Usually the determination of whether a brand can be considered well-known or seen of their enrollment in a number of countries; or

6. Geographical indications are already known. Kintamani for example, cannot be registered as a trademark for coffee, because there is a geographical indication when using name Kintamani coffee. Similarly, Parmigiana Reggiano for cheese and dairy, or Champagne for alcoholic beverages;
7. In addition, the registration must also be rejected if the brand: is or resembles a famous person's name, photograph, or the name of the legal entity owned by others except by consent;
8. An imitation or resembles the name or abbreviation of the name, flag, emblem, symbol, or state emblem, national institutions, international agencies unless specifically agreed; or imitate or resemble the sign, seal or stamp on the country's official or government agency, unless specifically agreed in writing.

The registered brand infringement case with a brief description, in which the defendant Kurnian Gunardi been producing goods with the kind of sheets with the brand of "Love" in which that goods is type of bedspreads were registered by Rony Ridwan under the brand "My Love". Trademark infringement case between "ax" with the brand "King ax" actual impersonation of a brand that is widely known in Indonesia, just add to the word "king" and similar products, of course this can create confusion in consumers buying goods and services. The interests of consumers have long been a concern, which clearly have been put forward in 1962 by the United States President John F. Kennedy who delivered a message before Congress about the importance of the position of consumers in the community.¹⁰ In other words, the real consumer protection are clearly identical to the protection afforded by the law on consumer rights.¹¹

The movement of SMEs concept in Indonesia. In year 2013 amounted to 57,895,721 Units Number of SMEs. and in the 2014s / d in 2016 the number of SMEs 57.9 million units. In the year 2017 at an estimated growing to more than 59 million units. SMEs have become the backbone of the Indonesian economy and ASEAN, approximately 88.9 to 99.9% establishment in ASEAN are SMEs concept with employment reaching 51.7 to 97.2% of the total businesses in Indonesia.¹²

Which abovementioned number of SMEs amounted to 57.9 million based on a survey from *KOMPAS*, dated 19 November 2017 by 60% yet have a formal and complete license, are identified as micro enterprises. Even the formal standards such as TIN legality of the SMEs are not having completely. 98% of SMEs are micro and small enterprises and only 5% who had registered the brand in Directorate Generals IPR, however since 2015 according to the information of the Directorate generals Intellectual Property Rights, under supervision from the Ministry of Justice and Human Rights

¹⁰ Adrian Sutedi, *Product Responsibility In the Consumer Protection Law*, Ghalia Indonesia, Bogor, 2008, p. 2.

¹¹ Celina Tri Siwi Kristiyanti, *Consumer Protection Law*, Sinar Grafika, Jakarta, 2014, p. 30.

¹² According to interviews with department of cooperatives and SMEs in Central Java

has noted the brand registration by SMEs as much as 6 -7% per year. Every day there are 500-600 trademark registration file entry Directorate generals Intellectual Property Rights from the Ministry of Law and Human Rights.

SMEs are able to absorb 90.12% of the total national workforce. And SMEs gave Contribution of Gross Domestic Product (GDP) amounted to 3.74% of micro-enterprises. SME sector that proved able to survive in times of economic crisis in the year 1998.2008 and 2014.

Law protection about trademark on SMEs is still very weak, due to many trademark unregistered SMEs both nationally and globally.

Registered mark protection under Article 35 of Law No. 20 of 2016 on Marks and Geographical Indications clarified regarding the extension of time and the brand protection filing period as set out in Article 35 as follows:¹³

1. The registered brand gets legal protection for a period of 10 (ten) years from the filing date.
2. The term of protection referred to in paragraph (1) may be extended for the same period.
3. Request an extension referred to in paragraph (2) shall be submitted electronically or non-electronically in Indonesian by the owner or his Proxy within a period of 6 (six) months before the expiration of the protection of the registered Trademark by the charge.
4. Request an extension referred to in paragraph (2) can still be filed within a period of 6 (six) months after the expiry of the term of protection of the registered brands with a charge and a fine of the renewal fee.

Request for extension of time period of registered mark protection shall be filed in writing by the owner or their proxies within a period of not more than twelve months and at least six months before the expiration of the time range for the protection of the registered mark. Demand for it to be submitted to the Directorate General of IPR and for it to be charged the amount of which will be determined by the decision of the Minister whose scope of duties and responsibilities include the supervision of the brand.¹⁴

Rejection for registered brand extension notified in writing to the owner of the brand or its attorney by mentioning the reason. Applicant or their proxies may appeal against the decision of rejection of the extension of a registered trademark to the Commercial Court. Against the approved application for renewal of a request by the Directorate generals IPR notified in writing to the applicant or the attorney and extension of the range of time is recorded in the General Register of Marks.

Brands that are protected for use in business, so the use of the brand must be in accordance with the registration, as stated in the certificate. Brand only exists for the trade of goods and / services, so that if the goods or services is not produced anymore then acknowledge brand has no meaning.¹⁵

From the point of the rule of law (law enforcement) the provisions of the TRIPS Agreement has strengths and advantages compared to other international conventions that already exists. This is due to the TRIPS Agreement have the

¹³ Editors Graphic rays, *the Law of Patents and Mreke and Geographical Indications (Law No. 13 of 2016 and Law No. 20 of 2016)*, Sinar Grafika, Jakarta, 2017, p. 157.

¹⁴ H. OK. Saidin., *Op.*, Cit, p. 486.

¹⁵ Rahmi Jened., *Op.*, Cit, p. 189.

legal tools to force. Forcing power tool embodied in the provisions of Article 70 of the TRIPS Agreement are set on all forms of intellectual property infringement which can be completed through all the world Trade Organization has not dealt with separately by the State members.¹⁶

Criminal sanctions in civil law process can be an alternative way to criminal proceedings, according to the intellectual riches of TRIPS issues are private rights, but Indonesian law enforcement through police action with mostly regard intellectual property as public rights.¹⁷

Act No. 20 of 2016 on Marks and Geographical Indications in providing brand protection registered against the owner of trademark rights also weigh on criminal sanctions for violations of the brand which can be categorized as a crime. Regarding the criminal law, criminal law experts (Simons) gives the sense of criminal law as follows:¹⁸

1. The criminal law is all the commands and prohibitions which are delivered by the State and threatened with a criminal (sorrow) for anyone who does not obey them;
2. All the rules that determine the terms of the legal consequences and all the rules for wearing or fell over and run that offense.

Different but one direction, the Indonesian criminal law expert Moeljatno also provide information about criminal law as follows:¹⁹

1. Determine which actions are not done prohibited, with the threat or sanctions in the form of a specific criminal for anyone who violates the ban;
2. Determining when and in what way to those who have violated the restrictions that may be imposed or sentenced as it has been specified;
3. Determine in what way the imposition of criminal can be implemented if there are people who have violated the ban.

Second opinion expert of the criminal law that we can give analysis deeds how that can be sanctioned in running brand protection registered under Act No. 20 of 2016 on Marks and Geographical Indications are as follows:

1. Every person without the right to use the same brand on the whole with the other party registered trademark for similar goods or services.
2. Every person without the right to use brands that have similarity in principle with the other party's registered trademark for similar goods or services being traded.
3. every brand merchandise or services are bought and sold that cause health problems, disorders of the environment, and or death to humans.
4. Any person who without the right to use a sign that has a similarity in principle of geographical indications of other parties for the same goods or services similar to goods or services listed.
5. Any person with no right to use a sign that has a similarity in principle of geographical indications of other parties

for goods or services of the same products as the products or goods listed.

Any person who violates the act which, as has been described above, it will be subject to criminal sanctions that aim to protect the brand registered under Act No. 20 of 2016 on Marks and Geographical Indications.

B. AFFECTING FACTORS OF LEGAL PROTECTION FOR TRADEMARKS AGAINST SMES

Intellectual Property (KI) is the legal rights related to the problems of the invention and creativity of a person as an individual or with others which related on protection of reputation issues in the field of commercial (commercial reputation) and action/services in the commercial field (goodwill). Trademark is a brand used on goods traded by a person or persons collectively equal or legal entity to differentiate with other similar items. Right to Trademark obtained after the registered Trademark²⁰,

Rights of Trademark has obtained through two (2) the system: declarative and constitutive system. Indonesia never embraced Mark rights system based on declarative systems.²¹ By utilizing the declarative system which adopted by the Trademark Act 1961 has still a lot going on enrollment without rights and also a lot of forgery and imitation brand, especially for well-known brands are mostly done by local entrepreneurs. As a result, the Government at the time was considered by other countries provide protection to pirates²². Then when the Trademark Law in 1992 which declared effectively April 1, 1993, the system was changed from declarative to constitutive with define system administration rights to the brand which based on first to file principle²³. Where lies the difference that exists is the system adopted in Law No. 19 of 1992 on brands that is based on the registration of the mark which is the basis of the emergence of the right of

²⁰ Act No. 20 of 2016 on Marks and Geographical Indications

²¹ According to this declarative system that creates a user first rights to the brand. This is in accordance with the principle of first to use the principle adopted in this system of "prior user has a better right" (the first user has the right to the best), that is, the first user of the mark is entitled to the brand. In addition, this declarative system means there is no requirement to register the brand. Trademark registration does not mean that the owner or holder of a registered trademark has had exclusive rights to the brand. Applications will only provide presumption as consumers first and not prove as beneficial owners of such marks

²² Insan Budi Maulana Protection Famous Brand in Indonesia From Time To Time, Citra Aditya Bakti, Bandung, 1999, pp. 89-90.

²³ Ko system nst ITUT adopted if it was adopted from Stockholm Act 1967 which is a revision of the Paris Convention. Protection brand through constitutive system has a specific purpose, such as protection of the entrepreneur owner of the brand, reduce the incidence of disputes between merek registered with the wearer brands that are not registered, the protection of consumers, protection of society through prevention and penanggulan all forms of unfair competition, justice, public order and legal certainty The change from system to system declarative constitutive ensure legal certainty. Declarative system basing on legal protection for those who use the mark first, in addition to lack of legal certainty can also create problems and obstacles in the business world. See General Explanation letter b Trademark Act of 1992. Sanusi Stars and Dahlan, Principles of Economic Law and Business, Citra Aditya, Bandung: 2000, p. 94.

¹⁶ Elyta Ras Ginting, Copyright Law (Analysis Theory and Practice), Citra Aditya Bakti, Bandung, 2012, p.21.

¹⁷ Emmy Marni Mustafa., Op., Cit, p.147.

¹⁸ Soeharo, Criminal Law Petition (Elements of Objective For Primary Indictment), Sinar Grafika, Jakarta, 1991, p.4.

¹⁹ *Ibid*, p. 5.

brand (constitutive system)²⁴. This system is maintained up to the Trademark Act 2001. The Constitutive system shared by Trademark Act 2001 set out in Article 3, which reads: "The right of brand is an exclusive right which granted by the state to brand owners registered in the public register for a certain period with ability use your own brand or give permission to others to use it. "Furthermore Trademark Act 2001 of brand has been canceled through Act No. 20 of 2016 on Marks and Geographical Indications, Article 1 paragraph 5 reads: Brand is the right which give an exclusive rights granted by the state to registered Trademark owner for a specified period by using the brand owners or giving license others to use it.

This implies constitutive system²⁵ : 1) Only the registered trademark have rights to give a special or exclusive rights (exclusive rights) on the mark; 2) Using marks is does not means give exclusive rights and has not obtained legal protection; 3) the constitutive system is founded on the principle of "prior in tempora, Mellor in jure". Who first sign he is entitled to get legal protection. Constitutive principle is also called the 'first to file principle "; 4). Thus, the constitutive system containa compulsion to register (compulsory to registered).

Registration of Trademark will give the strong rights to strengthen the protection of the use of his brand. World Intellectual Property Rights (WIPO) explains, Small and Medium Enterprises (SMEs) have a lot of potential for growth and development of innovation and creativity on the product. However, unfortunately the awareness of SMEs on the importance of the use of intellectual property rights / trademark to support their business activities are still lower in effectiveness.²⁶

Internal and external factors that influence the legal protection of trademarks against SMEs, such as where internally, the SMEs have not enrolled Brand trade, caused by several things, the SMEs have less initiative and creativity to create a brand name and register they was afraid for registration process includes expensive fee for brand insight among the SMEs as well as the registration procedure, the length of time for the trademark registration, until two years have not been out certificates. While externally, due to lack of socialization, workshop, counseling and legal aid and of the Government and privates, limited or lack of budget funds and expertise as a chaperone field of IP at the level of central government, provincial, district / city.²⁷

Forms of trademark infringement, generally can be identified as follows:²⁸ Trademark Piracy, Counterfeiting and imitations of Labels and Packaging. In Indonesia, the famous brand counterfeiting often occurs mainly on garment products

are mostly foreign brands such as Polo, Osella, Country Fiesta Hammer, Ralph Laurent, Billabong, Levi's, Wrangler.²⁹ On the other hand also brand shoes, handbags, watches, and the types of food and beverages and cosmetics etc.

Brand counterfeiting can be regarded as economic crime, because the brand counterfeiters not only defraud and harm consumers with counterfeit product, but also damage the reputation of the original employer. Violations brand similar to the counterfeiting of brand is the imitation of labels and packaging. The difference is, the brand counterfeiting label or packaging the product used is a clone of the original, while the copies, the label used was his own by using his own name. Perpetrators of this imitation is not a criminal, but rather to a competitor who did the cheating.³⁰

Performers impersonation tried to take advantage in imitate products by competitors or the use of brand products are so similar (similar) to cause confusion in the community. In the case of using of the mark is so similar to others which registered trademark offender the impersonation violation brand. Words are used as brand by the perpetrators of impersonation can be similar or even different brands other businesses, but as color or element in the packaging used is identical (same technique) or similar (similar) with its competitors then it causes confusion (confusion). While the color or element in the packaging is still rarely registered as a trademark.

On Black's Law Dictionary, providing a definition Passing off is:³¹"The act or an instance of falsely representing one's own product as that of another in an attempt to deceive potential buyers. Passing off is actionable in tort under the law of unfair competition. Also it may be actionable as trademark infringement ".

Passing off is a form of action which is classified as cheating in business. This is also confirmed by Mollengraaf who says that competition of this kind is tangible use of effort, endeavor contrary to morality and honesty in association of law for the purpose of deceiving the eyes of the general public and harming competitors, to attract subscriptions or increase circulation belongings.³²

Behalf on the provisions of Law No. 20 of 2016 on Marks and Geographical Indications. In case of violation,

²⁴ Budi Agus Riswandi & Siti Sumartiah, *Contemporary Issues of intellectual property rights*, Gita Nagari, Jakarta: 2006, p. 64

²⁵ M. Yahya Harahap, *Brand Overview General and Trademark Law in Indonesia Based on Law No.19 of 1992*, PT Citra Aditya Bakti, Bandung, 1996, p. 69

²⁶ Agus Sardjono, Brian Amy Prastyo, and Desrezka Gunti Larasati, *Implementation of the Trademark Law Protection For Entrepreneurs On Sme Batik Pekalongan, Solo and Yogyakarta*, Journal of Law and Development Year 4 October to December 44, 2013, hlm.497

²⁷ FGD, *KI As Object Fiduciary on Banking*, FH, Unissula, Semarang, 2019

²⁸ WIPO *Intellectual Property Handbook: Policy, Law and Use*, Chapter 2- Fields of Intellectual Property Protection., pp.522-524

²⁹ *Bisnis Indonesia*, Brand Piracy Hard Discontinued Garments, Monday, March 20, 2000.

³⁰ WIPO *Intellectual Property Handbook.Policy, Law and Use*, Chapter 2- Fields of Intellectual Property Protection., p. 524

³¹ Bryan A. Garner, *Black's Law Dictionary*, Eighth Edition, West Publishing Co., St. Paul, Minn, 2004, p. 1115. sense of passing off is: "Actions are trying to make a profit through a shortcut by all means and pretext to violate business ethics, moral norms and law. This action can occur with mendompleng by mimicking or mirip-miripkan to belong to someone else who has had a good reputation. How mendompleng reputation (goodwill) can occur in the field of brand patents, industrial designs and copyright. See Mohammed Djumhana & R. Djubaedilah, *History of Intellectual Property Rights Theory and Practice in Indonesia*, PT Citra Aditya Bakti, Bandung :, 2003, p. 265. Compare the opinion, Suyud Margono *Passing off settings prevent others from doing present goods or services as if the goods / services belong to someone else and run a product or service as if it has a relationship with the goods / services of others*. Check in Suyud Margono, *Legal Aspects of Intellectual Property Commercialization*, CV nuasa Aulia, Bandung, 2010, p.119.

³² Soekardono, *Indonesian Trade Law Volume I Bagim First*, the UI Press, Jakarta, 1983, p. 24

namely abuse of using from brand reputation (passing off) it has violated trademark law, which has similarity in principle or in whole with the brand of others. This indicates that the perpetrators of passing off is not a good faith belief in registering its brand. The author takes the case is an example of the trademark "Sea Ray" decision 196 / K / PDT.SUS / 2011, "BMW" decision # 29 PK / Pdt.Sus-IPR / 2016 and "Charisma and Confirmation" No.031 / K / N / IPR / 2005 where these brands is closely related to passing off. The result of the discussion that the first, passing off is against the law. Elements which identified breaking the law is violated on Law No. 20 of 2016 on Marks and Geographical Indications, error element that is intentional to realize that his actions harm others in order to benefit themselves, elements of a causal link between the act and the losses from the work of actors which passing off against the owner of the original brand, could be the loss of all material and immaterial, and elements of the loss from the owner of original brand in turnover decreased, customer disappointment because the brand is still considered in same production, quality of goods can be decreased and reputations can be tainted. Secondly, the perpetrators act for abusing Related reputation (passing off) is based on fault liability (responsibility principle based on the element of error). It is associated with elements *onrechmatigdaad* (tort). Accountability can be carried out deletion and cancellation of trademark (Article 72 up to Article 79 of Law No.³³

Thus, the factors that affect the legal protection of trademarks SMEs is still low awareness of SMEs on the importance of the use of intellectual property rights / trademark to support the business / trade, there are many trademarks of SMEs that have not been registered both nationally and globally. Violation of Trademark done by installing Trademarks, logos and materials exactly like the original, use of Trademarks is similar to other registered brands. By Using of Trademarks that are identical or similar to other brands lead to misperceptions in the public mind and harm the business actors who have a registered trademark, Passing off to trademarked.

C. TRADEMARK LEGAL PROTECTION AGAINST SMES IN ENHANCING GLOBAL COMPETITIVENESS BASED ON THE VALUES OF PANCASILA

The cornerstone philosophy of Intellectual protection of property rights (IPR) started from the first showing speech with appreciation for the idea from creators or inventors or their intellectual creations that are useful for people in politics (Aristotle 4th century BC).³⁴

Intellectual property protection or the birth of a person's intellectual and useful for the general public will be given the award. This award is certainly of the ruling (king) of the period, an award which given by the king, in the intellectual work that has been generated will certainly give a

provision that the goods or tool created is the result of someone else's work, to simplify from here concept we can see the system of protection against intellectual property rights was already in effect.

BEKRAF has a vision to build Indonesia into one of the world's economic powers in a creative economy by 2030. To achieve this vision BEKRAF designing six major missions namely:

1. Uniting all of the assets and the creative potential of Indonesia to achieve an independent creative economy.
2. Creating a climate conducive to the development of creative industries.
3. Encourage innovation in the creative fields that have added value and competitiveness in the international world.
4. Unlock insights and public appreciation of all aspects related to the creative economy.
5. Build awareness and appreciation of intellectual property rights, including protection against copyright law.
6. Designing and implementing specific strategies to put Indonesia in the creative world economic map.

Formal legality that should be owned by SMEs, including the Building Permit (IMB), Business License (SIUP) and Company Registration (TDP).

In improving global competitiveness, in addition to already have a formal legal basis, the SMEs should also prepare some things, as follows:

1. Trade and Investment Incentive Scheme
2. Employment and HR
3. Infrastructure(taxation)
4. R & D, innovation and IPR
5. Efficiency Technical and Business Services
6. access of funding
7. Market access

In improving the global competitiveness based on the values of Pancasila to accommodate Sila 1, II and V of Pancasila is belief in one God, just and civilized humanity, and social justice for all Indonesian people.

Legal protection of trademarks MSMEs in improving the global competitiveness based on the values of Pancasila shall improve principle of honesty and good faith of the SMEs and the community in general. Changing the mindset of the global national SMEs, clustering SMEs and exercise government's role in assisting the SMEs for online trademark registration in national territory and global access. As well as in financial access as well as same opportunity and assessment access to its market.

IV. CONCLUSION

The Legal protection of trademarks SMEs is still very weak, due to many trademark which unregistered SMEs both nationally and globally. Violation of Trademark done by installing Trademarks, logos and materials exactly like the original, use of Trademarks is similar to other registered brands. Use of Trademarks that are identical or similar to other brands lead to misperceptions in the public mind. Passing their requirements between SMEs. Legal protection of trademarks SMEs in improving the global competitiveness based on the

³³ Septian Nur Fahmi, Deeds Pembongcengan Reputation (Passing Off) Against Trademark Toward Action of Passing off Trademark, Thesis, University of Jember, 2018.

³⁴ Rahmi Jened, Copyright Law (Copyright's Law), Adytia Citra Bakti, Bandung, 2014, p. 1.

values of Pancasila shall important principle of honesty and good faith of the SMEs and the community in general. Changing the mindset of the global national SMEs, empowering and clustering SMEs and government's role in assisting the SMEs for online trademark registration in national territory and global linkage. As well as in access of financial funding as well as access to its market.

V. ACKNOWLEDGMENT

The grateful and thanks goes to Ministry of Research Technology and Higher Education of the Republic of Indonesia in particular Prof. Dr. Karna Ocky Rajasa, M.Sc. Director of Research and public/community Services, the expert who has Provided research grants, as well as Chief LPPM UNISSULA, Dr. Heru Sulisty, SE, MSi on whom has facilitated the realization of this study.

VI. REFERENCE

- [1] Adrian Sutedi, Product Responsibility In the Consumer Protection Law, Ghalia Indonesia, Bogor, 2008.
- [2] Agus Sardjono, Brian Amy Prastyo, and Desrezka Gunti Larasati, Implementation of the Trademark Law Protection For Entrepreneurs On Sme Batik Pekalongan, Solo and Yogyakarta, Journal of Law and Development Year 4 October to December 44, 2013.
- [3] Ahmadi Miru, Principles of Legal Protection For Consumers In Indonesia, Molds to two, RajaGrafindo Persada, Jakarta, 2013,
- [4] Bisnis Indonesia, Brand Piracy Hard Discontinued Garments, Monday, March 20, 2000, article.
- [5] Bryan A. Garner, Black's Law Dictionary, Eighth Edition, West Publishing Co., St. Paul, Minn, 2004.
- [6] Budi Agus Riswandi & Siti Sumartiah, Contemporary Issues of Intellectual Property Rights, Gita Nagari, Jakarta: 2006.
- [7] Celina Tri Siwi Kristiyanti, Consumer Protection Law, Sinar Grafika, Jakarta, 2014,
- [8] Editors Graphic rays, the Law of Patents and Mreke and Geographical Indications (Law No. 13 of 2016 and Law No. 20 of 2016), Sinar Grafika, Jakarta, 2017
- [9] Elyta Ras Ginting, Copyright Law (Analysis Theory and Practice), Citra Aditya Bakti, Bandung, 2012.
- [10] FGD, KI As Object Fiduciary on Banking, FH, Unissula, Semarang, 2019.
- [11] Insan Budi Maulana Protection Famous Brand in Indonesia From Time To Time, Citra Aditya Bakti, Bandung, 1999.
- [12] M. Yahya Harahap, Brand Overview General and Trademark Law in Indonesia Based on Law No.19 of 1992, PT Citra Aditya Bakti, Bandung, 1996.
- [13] Mohammed Djumhana & R. Djubaedilah, History of Intellectual Property Rights Theory and Practice in Indonesia, PT Citra Aditya Bakti, Bandung :, 2003
- [14] Pipin Syarifin, Regulation of Intellectual Property Rights in Indonesia, Pustaka Bani Quraysh, Bandung, 2004
- [15] Rahmi Jened, Copyright Law (Copyright's Law), Adytia Citra Bakti, Bandung, 2014
- [16] Rahmi Jened, Interface Intellectual Property Law and Competition Law, RajaGrafindo Press, Jakarta, 2013
- [17] Rahmi Jened, Trademark Law (Trademark Law) in the Era of Global Economic Integration, Pranamedia Group, Jakarta, 2015
- [18] Sanusi Stars and Dahlan, Principles of Economic Law and Business, Citra Aditya, Bandung: 2000.
- [19] Septian Nur Fahmi, Deeds Pemboncengan Reputation (Passing Off) Against Trademark Toward Action of Passing off Trademark, Thesis, University of Jember, 2018
- [20] Soeharo, Criminal Law Petition (Elements of Objective For Primary Indictment), Sinar Grafika, Jakarta, 1991
- [21] Soekardono, Indonesian Trade Law Volume I Bagim First, the UI Press, Jakarta, 1983.
- [22] Soetandyo Wignjosoebroto, Law: Paradigms, Methods and Dynamics of the Problem. HuMa Society and ELSAM, Jakarta, 2002.
- [23] Sukardi, Research methodology; Competence and Practice, Sinar Grafika Offset, Jakarta, 2012.
- [24] Suyud Margono, Legal Aspects of Intellectual Property Commercialization, CV nuasa Aulia, Bandung, 2010.
- [25] WIPO Intellectual Property Handbook: Policy, Law and Use, Chapter 2- Fields of Intellectual Property Protection. 2004.
- [26] Act No. 20 of 2016 on Marks and Geographical Indications
- [27] interviews with department of cooperatives and SMEs in Central Java
- [28] accessed through <http://www.hki.co.id/merek.html> on Wednesday September 20 2018, 14:44 o'clock am.