TRADEMARK REGISTRATION: FOR THE STRENGTHENING OF SMALL AND MEDIUM INDUSTRIES IN NORTH ACEH REGENCY

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ABSTRACT

Purpose: The purpose of this research is to examine the constraints of trademark registration in North Aceh Regency and how the influence of the brand on consumer interest.

Theoretical reference framework: Trademark is an identifier for a product, goods, or services that has specific value or characteristics protected by law and may not be imitated by others. Legal protection for a product's trademark is granted after the trademark registration process, as emphasized in Article 3 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, stating that the rights to a trademark are obtained after it is registered.

Method: This research is an empirical legal study using primary and secondary data sources. Primary data is obtained through interview techniques, while secondary data is gathered through literature review. The data is then analyzed to draw conclusions.

Result and Conclusion: The research findings indicate that the registration of trademarks for small and medium-sized industries in North Aceh Regency is still low. Consequently, small and medium-sized industries in North Aceh Regency lack legal protection and are vulnerable to product counterfeiting, leading to a lack of promotional opportunities.

Research implication: This research has an impact on trademark registration services and the understanding of small and medium-sized industry players in trademark registration in North Aceh Regency.

Originalitas/value: This research is a new endeavor in analyzing trademark registration models that can be utilized to strengthen small and medium-sized industries in North Aceh Regency. There has been no prior research related to trademark registration in North Aceh Regency.

Keywords: trademark, small and medium industries, product, north aceh.

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REGISTRO DE MARCA: PARA O FORTALECIMENTO DAS PEQUENAS E MÉDIAS INDÚSTRIAS NA REGÊNCIA DO ACEH DO NORTE

RESUMO

Objetivo: O objetivo desta pesquisa é examinar as restrições do registro de marcas na Regência de Aceh do Norte e como a influência da marca no interesse do consumidor.

Marco teórico de referencia: A marca comercial é um identificador para um produto, bens ou serviços que tem um valor específico ou características protegidas por lei e não pode ser imitado por outros. A proteção legal da marca de um produto é concedida após o processo de registro da marca, conforme enfatizado no artigo 3 da Lei n.o 20 de 2016 relativa às marcas e indicações geográficas, declarando que os direitos a uma marca são obtidos após o seu registro.

Método: Esta pesquisa é um estudo legal empírico usando fontes de dados primários e secundários. Os dados primários são obtidos por meio de técnicas de entrevista, enquanto os dados secundários são coletados por meio de revisão da literatura. Os dados são então analisados para tirar conclusões.

Resultado e Conclusão: Os resultados da pesquisa indicam que o registro de marcas para pequenas e médias indústrias na Regência de Aceh do Norte ainda é baixo. Consequentemente, as pequenas e médias indústrias da região do Aceh do Norte carecem de proteção jurídica e são vulneráveis à contrafação de produtos, o que leva à falta de oportunidades de promoção.

Implicação da investigação: Esta investigação tem um impacto nos serviços de registro de marcas e na compreensão dos pequenos e médios operadores industriais no registro de marcas na Regência de Aceh do Norte.

Originalitas/valor: Esta pesquisa é um novo esforço na análise de modelos de registro de marcas que podem ser utilizados para fortalecer pequenas e médias indústrias na Regência de Aceh do Norte. Não houve pesquisa prévia relacionada ao registro de marcas na Regência de Aceh do Norte.

Palavras-chave: marca registada, pequenas e médias indústrias, produto, norte aceh.

REGISTRO DE MARCAS: PARA EL FORTALECIMIENTO DE LAS PEQUEÑAS Y MÉDIAS INDUSTRIAS EN LA REGENCIA DE ACEH DEL NORTE

RESUMEN

Finalidad: El propósito de esta investigación es examinar las limitaciones del registro de marcas en North Aceh Regency y cómo la influencia de la marca en el interés del consumidor.

Marco teórico de referencia: La marca es un identificador de un producto, bienes o servicios que tiene un valor o características específicas protegidas por la ley y no puede ser imitado por otros. La protección legal de la marca de un producto se concede después del proceso de registro de marca, como se subraya en el artículo 3 de la Ley Número 20 de 2016 sobre Marcas e Indicaciones Geográficas, que establece que los derechos de una marca se obtienen después de su registro.

Método: Esta investigación es un estudio jurídico empírico utilizando fuentes de datos primarias y secundarias. Los datos primarios se obtienen a través de técnicas de entrevista, mientras que los datos secundarios se recogen a través de la revisión de la literatura. Los datos se analizan a continuación para extraer conclusiones.
Resultado y Conclusión: Los resultados de la investigación indican que el registro de marcas para pequeñas y medianas industrias en la Regencia de Aceh del Norte sigue siendo bajo. En consecuencia, las pequeñas y medianas industrias de la Regencia de Aceh del Norte carecen de protección jurídica y son vulnerables a la falsificación de productos, lo que conduce a la falta de oportunidades de promoción.

Implicación de la investigación: Esta investigación tiene un impacto en los servicios de registro de marcas y en la comprensión de los pequeños y medianos actores de la industria en el registro de marcas en North Aceh Regency.

Originalitas/value: Esta investigación es un nuevo esfuerzo en el análisis de los modelos de registro de marcas que se pueden utilizar para fortalecer las pequeñas y medianas industrias en la Regencia de Aceh del Norte. No ha habido ninguna investigación previa relacionada con el registro de marcas en North Aceh Regency.

Palabras clave: marca comercial, pequeñas y medianas industrias, producto, aceh norte.

1 INTRODUCTION

Small and medium industries constitute a business sector that significantly contributes to economic development. Small and medium industries represent an economic sector encompassing enterprises with smaller scales of capital, income, employees, and a focus on specific production or service provision (Siti Malikhatun Badriyah, 2023). These industries play a role in providing alternative and productive economic activities. The products of small and medium-sized industries vary depending on the type of industry and the specialization of each company. Promoting the products of small and medium-sized industries to the public as consumers is crucial.

One way to promote a product is through trademark, serving as an identifier and differentiator for a product from others (Ambroso, 2019). Trademark is one of Intellectual Property Rights (Zulkifli, et al, 2023). The use of a trademark becomes a driving factor for a product to achieve significant sales in the market (Richard Adam, 2023). A trademark serves as the identity for a product or business entity, allowing consumers to easily locate the product. Furthermore, the presence of a brand can enhance consumer trust in the quality of the product compared to unlabeled products (Disemadi, 2021). A trademark plays a crucial role in both the trade of goods and services to avoid unhealthy business competition (P. Johnson, 2018). This is because a trademark can be used as a mark for a product to distinguish its origin, quality, and even guarantee the authenticity of a commodity.

The international regulation of trademarks in the Paris Convention, Article 16, paragraph (1), stipulates that: “The owner of a registered trademark shall have the
exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which trademark is registered where such use would result in a likelihood of confusion.” In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of members making rights available on the basis of use.

In the regulation of the TRIPS Agreement, Article 15 paragraph (1) stated, “Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colors as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registered depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.”

Subsequently, in Article 16, paragraph (1), it asserts that: “The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use”.

And in paragraph (2), it is stated that: “Article 6bis of the Paris Convention (1967) shall apply, mutatis mutandis, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark”.

The regulation of trademarks in Indonesia, as stated in Article 1 number 1 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, emphasizes that a trademark is a sign that can be presented graphically in the form of an image, logo, name, word, letter, number, color arrangement, in 2-dimensional and/or 3-dimensional
forms, sound, hologram, or a combination of two or more of these elements to distinguish goods and/or services produced by individuals or legal entities in the trade of goods and/or services.

In the Indonesian Law on Trademarks and Geographical Indications, there are two types of trademarks: trademarks and service marks. A trade mark is a mark used on goods traded by an individual or several individuals collectively or a legal entity to distinguish it from similar goods. A service mark is a mark used on services traded by an individual or several individuals collectively or a legal entity to distinguish it from similar services.

Subsequently, in Article 1 number 5 of the Indonesian Law on Trademarks and Geographical Indications, it is stated that “The right to a trademark is an exclusive right granted by the state to the registered trademark owner for a specific period by using the trademark personally or granting permission to others to use it.” Essentially, the trademark right is an exclusive right that authorizes the trademark holder to prohibit others from using, reproducing, and selling without permission from the trademark holder.

Trademark registration using the first to file system means that the party who first submits the registration application is given priority to obtain trademark registration and is recognized as the legitimate trademark owner (Ranti Fauza Mayana, 2017). This first to file system can be seen in the provisions of Article 3 of the Indonesian Law on Trademarks and Geographical Indications, which states, “The right to a Trademark is an exclusive right granted by the State to the owner of a Trademark registered in the General Trademark Register for a certain period by using the Trademark personally or granting permission to others to use it.” With this system, trademark protection is granted to the party that registers first.

The application for trademark registration is submitted by the Applicant or their Proxy to the Minister electronically or non-electronically in the Indonesian language (Zaenal Arifin, 2020). In trademark registration, the required documents for the application are as mentioned in Article 4, paragraph (2) of the Indonesian Law on Trademarks and Geographical Indications, which include:

1. the date, month, and year of the application;
2. full name, nationality, and address of the applicant;
3. full name and address of the proxy if the application is submitted through a proxy;
4. color if the requested trademark registration involves color elements;
5. the name of the country and the date of the first request for the trademark, in case the application is made with priority rights;
6. the class of goods and/or services and a description of the types of goods and/or services.

Article 20 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications in Indonesia emphasizes things that cannot be applied for as trademarks, namely if they contain elements:

1. conflicting with the state ideology, regulations, morality, religion, decency, or public order;
2. identical to, related to, or only describing the goods and/or services for which registration is sought;
3. containing elements that could mislead the public about the origin, quality, type, size, kind, or purpose of use of the goods and/or services for which registration is sought, or being the name of a protected plant variety for similar goods and/or services;
4. containing information that does not correspond to the quality, benefits, or properties of the goods and/or services produced;
5. lacking distinctive features; and/or
6. being a common name and/or public symbol.

The examination of trademark registration is carried out in two stages: administrative examination and substantive examination. Administrative examination involves reviewing the completeness of the required documents for trademark registration (Enggrol Iffan, et al, 2013). Substantive examination of the application is completed within a maximum period of nine months. The substantive examination is conducted by trademark examiners who possess expertise and qualifications as trademark examiners (this substantive examination is carried out based on the provisions of Articles 4-6 of the Indonesian Law on Trademarks and Geographical Indications). The result of the examination of the trademark registration can be either approved or rejected. The substantive examination includes:

1. Examination regarding whether the requested trademark can be registered or not.
2. Examination of the application for trademark registration based on similarity, either in substance or in its entirety, with other trademarks that have been registered earlier for similar goods and services.

3. Examination of the application for trademark registration based on similarity, either in substance or in its entirety, with well-known trademarks owned by others for similar goods and/or services.

4. Having similarity, either in substance or in its entirety, with known geographical indications.

Then, in Article 28 of the Indonesian Law on Trademarks and Geographical Indications, it is stated, “Registered trademarks receive legal protection for a period of 10 years from the date of acceptance, and this protection period can be extended.” This provision provides legal protection for registered trademarks for duration of 10 years, which can be extended.

In the current world business competition, trademark infringements are evident, such as in the cases of Ayam Geprek Bensu, Gudang Baru brand, Larutan Badak and Kaki Tiga brands, and Kecap Singa brand. Trademark registration offers legal protection for products, quality assurance, consumer trust, business development through franchising, and product promotion, including products from small and medium-sized industries (Ali Ismail, 2020). Therefore, trademark registration is crucial for business competition, especially for players in small and medium-sized industries. Registration provides legal protection for small and medium-sized industry players to prevent the unauthorized use of their trademarks by others.

North Aceh Regency is one of the regions with a significant presence of small and medium-sized industries producing various high-quality products. The formulated problems that can be addressed are: (1) how is the strengthening of small and medium-sized industries through trademark registration in North Aceh Regency? (2) what is the influence of trademarks on consumer interest?

2 METHOD

This research is qualitative with an empirical legal approach, utilizing both primary and secondary data. The research informants include the government of North Aceh Regency and the Head of the Department of Industry and Trade. Respondents in the study are small and medium-sized industrial entrepreneurs. The research
specifications use descriptive analysis, a research method aimed at providing a systematic, factual, and accurate overview of field facts.

Primary data collection involves structured interviews with informants and respondents, as well as focus group discussions. The selection of informants and respondents is done through purposive sampling to represent the needs of the research issues. Secondary data collection involves various literature searches as the basis for analyzing the strengthening of small and medium-sized industries through trademark registration.

Verification and categorization of secondary and empirical data are conducted in a simple taxonomy process involving several important issues and topics. The researcher then undergoes the reduction stage and checks the validity of the collected data. Comparisons are made with legal documents and previous research findings from researchers in the same field. Data analysis involves studying the processed data with the assistance of previously obtained theories. The results of data analysis are presented in a narrative format included in the research report.

3 RESEARCH AND DISCUSSION

3.1 STRENGTHENING SMALL AND MEDIUM INDUSTRIES THROUGH TRADEMARK REGISTRATION IN NORTH ACEH REGENCY

In North Aceh Regency, small and medium industries operate in various sectors, including brick manufacturing, wooden furniture, wrought iron workshops, clothing manufacturing, embroidery, dry cakes, and various other businesses. The concentration of these small businesses is more prominent in the districts of Lhoksukon, Samudera, Tanah Jambo Aye, and Syamtalira Bayu. Despite the multitude of industrial products in North Aceh Regency, the registration of trademarks for these products is not significantly prioritized.

The results of the interview with the Aceh embroidery maker indicate that they have already registered their trademark with the assistance of the Department of Industry and Trade of North Aceh Regency (Interview with Ida in the Samudera Sub-district). On the other hand, the interview with Mrs. Umi, the maker of snacks in Tanah Luas, reveals that they have not registered their trademark due to difficulties with documentation and a lack of funds for registration, considering their small-scale business. However, their production is already known to the customers who place orders.
The significant potential of small and medium-sized industries in North Aceh Regency is expected to develop to its fullest extent as an effort to enhance community welfare and economic growth. Business players may not be aware that the protection of trademarks for small and medium industries brings high economic value when they enter the world of commerce. A product protected by a trademark right can only be produced by the owner or holder of the rights to that product.

The registration of trademarks for small and medium industrial products in North Aceh Regency often faces the following challenges:

3.1.1 The actors of awareness of Small and Medium Industries

Traditional thinking among small and medium industrial players holds that the brand displayed on their products has been passed down through generations. Small and medium industry players may resist registering their trademarks, even if there are similarities with other brands, as they wish to maintain the familiarity of their products in the market. Many of them are reluctant to register trademarks due to a lack of information and knowledge about the benefits and procedures involved. Based on interviews and research, the factors leading to this reluctance include a lack of awareness and misconceptions about the complexity, cost, and time-consuming nature of the trademark registration process. In reality, the registration process has been simplified with online registration options provided by the Directorate General of Intellectual Property, making it more accessible.

Many small and medium industrial players register brands that are almost identical or similar, leading to difficulties in processing certificates. This issue hinders the issuance of certificates, although the application and protection of trademarks for small and medium industrial products significantly impact a more conducive business environment. Moreover, intellectual property protection can stimulate creativity and innovation in these industries.

Incomplete information distribution to the target audience reduces awareness about the importance of trademark registration. Despite clear legal provisions for programs, services, education, and guidance for small and medium industries, the implementation of these programs often fails to reach the entire sector. Small and medium industries need to understanding the significance of trademarks in building consumer trust, distinguishing themselves from competitors, and creating added value.
3.1.2 Lack of Government Budget Availability to Support Small and Medium Industry Brands

The socialization and education on trademark registration conducted by the Department of Trade and Industry of North Aceh Regency are closely tied to the budget availability provided by the government. Considering that small and medium industrial players still need socialization and assistance in trademark registration, the limited budget availability hampers the Department of Industry and Trade of North Aceh Regency from fully supporting the trademark registration of small and medium industries.

The success of small and medium industries significantly depends on the response of the North Aceh Regency Government in allocating budgets and activating activities related to the grassroots economy, including support for trademark registration. The Department of Industry and Trade, as the mentor for small and medium industrial products, approaches industry players through socialization, emphasizing the importance of creating good quality trademarks for small and medium industries that meet standards. The department can also provide guidance by equipping small and medium industry players with various skills and knowledge about global issues that affect them, making them more aware of their actions. However, this is not fully achievable due to budget limitations.

The North Aceh Regency Government must have a commitment to supporting the trademark registration of small and medium industries to make a significant contribution to product marketing and support economic growth. Improving economic conditions can be achieved by granting trademark licenses, such as registering their business types in the franchise sector.

The low awareness among small and medium industries regarding the priority of registering trademarks with the Ministry of Law and Human Rights is one of the reasons for the low number of registered trademarks in North Aceh Regency. However, economic potential in the future can be managed by starting the process of obtaining a trademark certificate.

3.2 THE INFLUENCE OF TRADEMARK ON CONSUMER INTEREST

In this era of creative economy, developing a business requires an appealing presentation and good product quality to gain trust and attract public interest. Consumers are attracted by observing well-designed and distinctive product packaging (Prameswari,
Entrepreneurs nowadays are required to think creatively to create attractive, good, and distinctive packaging.

Trademark influence the selling value of a product. Packaging can be considered a primary factor in how a product is perceived. Packaging also represents the elements and values conveyed by a product. Therefore, a mature concept in product branding is needed (Syahriah Semaun, 2016). Everything must be carefully considered to attract consumers.

Building the name of a product involves communicating and exposing the industrial brand that has been produced. The maximum effort made to create the best quality for consumers is to provide satisfaction with the purchased product, creating a unique experience with the purchase. Hence, the importance of packaging, where is entrepreneurs have striven to design their products as attractively as possible (Septi Indrawati, et al., 2019).

As a result, the sold products differ from others in terms of design, shape, typography, and color gradients. In addition to packaging design, product branding is also essential. The trademark process provides tangible benefits in shaping product differentiation. This is beneficial for helping buyers identify products, facilitating the buying decision-making process, assisting buyers in evaluating product quality, encouraging repeat purchases, facilitating promotional efforts, and fostering customer loyalty.

1. Having similarity in essence or entirety with a brand owned by others that has been registered earlier for similar goods and/or services.
2. Having similarity in essence or entirety with a well-known brand owned by others for similar goods and/or services.
3. Having similarity in essence or entirety with a well-known brand owned by others for dissimilar goods and/or services, as long as it meets certain specified requirements set by the government regulations.
4. Having similarity in essence or entirety with known geographical indications.
5. Resembling or imitating the name of a famous person, photo, or the name of a legal entity owned by others, except with written consent from the rightful owner.
6. Imitating or resembling the name or abbreviation of the name, flag, symbol, or emblem of a country or national and international institution, except with written consent from the authorized party.

Trademarks hold strategic and crucial value for both sellers and buyers. In legal terms, a trademark is a symbol that can take the form of a picture or words, distinguishing and being attached to a product, goods, or services (Grynberg, Micheal, 2023). Simply put, a trademark is an identifier for similar goods or services. Trademark rights provide protection for the registered trademark owner under the Directorate General of Intellectual Property. By having this form of intellectual property protection, the owner can use the trademark exclusively for their business.

Ownership of a trademark is one way to enhance competitiveness in the business world (Stefano Denicolai, et al., 2019). This is because a trademark serves as the identity of a business, distinguishing the products of one party from those of others. Everyone has an equal opportunity to engage in business by marketing products or processes they have produced. It is crucial to ensure that this economically valuable product is not claimed by someone else as their own due to legal registration that was realized too late.

So, the benefits of trademark registration for small and medium-sized enterprises are as follows:

1. Capable of increasing the economic value of goods whose trademarks have been registered;
2. Serving as a differentiator from other trademarks.
3. Enhancing the credibility and trust of consumers in a product.
4. Serving as a promotional tool for a product.

4 CONCLUSION

The trademark of products or services is an important aspect for both large and small-scale businesses. Registered trademarks by small and medium-sized enterprises provide various benefits for income and the image of these industries. Owners of trademarks who want their trademarks used in trade to be recognized and protected must register their trademarks. Trademark registration provides protection for goods or services, allowing small and medium-sized enterprises to make claims in case of violations and create fair business competition. This also helps small and medium-sized enterprises promote their trademarks through effective marketing campaigns.
Trademark protection for small and medium-sized enterprises is not only a form of state protection for registered trademark owners but also a form of protection for consumers as members of the public, ensuring that they receive goods as originally intended and desired, providing legal certainty for purchased goods in society. Forms of trademark protection include trademark registration. Due to the limited knowledge regarding the importance of trademark registration, legal education and business awareness campaigns for entrepreneurs are hoped to increase. In this context, small and medium-sized enterprises, as business players, gain legal protection.
REFERENCES


