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Trademark Rights as Credit Collateral to Strengthen the Self-Reliance of MSMEs

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ABSTRACT

Micro, Small and Medium Enterprises (MSMEs) have an important role in the Indonesian economy, and contribute significantly to Gross Domestic Product (GDP) and employment. However, MSMEs often struggle to access adequate financing to support the growth and sustainability of their businesses. One of the main issues is the limited assets that can be used as collateral to obtain credit. The objective of this research is to analyze the availability of trademark rights as credit collateral which can be a solution for MSME businesses that have difficulties in obtaining access to bank funding due to the inability to provide property collateral. This research is a normative research that uses a statutory and conceptual approach. The primary legal materials analyzed are the Trademark and Geographical Indications Law, the Law on Financial Sector Development and Strengthening (PPSK Law), the Copyright Law, the Patent Law and their respective supporting regulations. The result of this research is that the trademark rights of MSME businesses that have been registered at the Directorate General of Intellectual Property and issued a trademark certificate, in addition to obtaining legal protection, can also be used as collateral for bank loans so as to obtain funding from banks, where such funding can help increase the independence of MSME businesses.

Keywords: *Credit Collateral, Self-Reliance of MSMEs, Trademark Rights*

INTRODUCTION

Banks have an obligation to lend to Micro, Small, and Medium Enterprises (MSMEs). MSMEs are very important for the economy and employment, so they need easy access to their funding through banks. Article 249 of Law No. 4/2023 on Financial Sector Development and Strengthening (UUPPSK) confirms that to improve national economic resilience, it is necessary to facilitate access to MSME financing. This convenience can be provided by banks and non-bank financial institutions while implementing the principles of prudence and risk management. Meanwhile, Article 21 of Law No. 6/2023 on Stipulating Government Regulation in Lieu of Law No. 2/2022 on Job Creation into Law also states that the central and local governments provide financing for micro and small enterprises. In addition, State-Owned Enterprises (SOEs) provide financing from the share of annual profits allocated to micro and small enterprises in the form of loans, guarantees, grants, and other financing. Then, in Article 10 of Government Regulation of the Republic of Indonesia No. 24/2022 on the Implementation Regulation of Law No. 24/2019 on Creative Economy, it is stated that Intellectual Property can be used as debt collateral if it has been recorded or registered at the relevant ministry, and managed independently or transferred its rights to other parties.

One of the issues faced by MSMEs is their inability to provide collateral. In addition, MSMEs also have other problems such as limited capital, lack of good financial statements, familial management, technology, raw materials, and marketing. Mia Lasmi emphasized that the main issue for MSMEs in Indonesia is the lack of access to capital. The main cause is the limited collateral owned by MSMEs, while banks generally require collateral for lending (Wardiyah, 2020).

Registered trademark rights can basically be used as collateral in the bank. According to Article 41 Paragraph (1) of Law No. 20/2016 on Trademarks and Geographical Indications, rights to registered trademarks can be transferred through inheritance, wills, waqf, grants, agreements, or other lawful causes. One of the causes is an agreement, including a credit agreement with a bank. Thus, the rights to a registered trademark can be used as collateral for bank loans.

However, based on the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights monitoring, there are still many MSME businesses that have not registered their trademarks. During the 2023 National MSME Day event in Surakarta, from 100 MSME participants, there was no one who had a registered brand. In fact, if the brand has been registered in a country, this can prevent claims from other parties and protect the brand from being used without permission (AMH, 2023). The problems in the banking world have revealed that in 2016-2017, conventional banks and Islamic banks generally do not accept brands as collateral for various reasons. However, PT Bank Muamalat Indonesia Jakarta is one of the Islamic banks that accepts brands as collateral by

using a pawn guarantee institution (Usanti, 2018). In addition, intellectual property (IP) has not been recognized as collateral that is calculated to reduce the Allowance for Asset Quality Assessment (PPKA) in accordance with Article 45 of the Financial Services Authority Regulation Number 40/POJK.03/2019. Collateral that is calculated in PPKA consists of various assets such as securities, land, buildings, vehicles, and so on, but does not include IP. Therefore, regulatory alignment is needed so that product brands owned by MSME businesses can be used as collateral when they obtain bank funding. Based on these issues, this research will examine the characteristics of brand rights as collateral in the funding of MSMEs by banks.

RESEARCH METHODOLOGY

This research is a normative research that focuses on legal analysis using statutory and conceptual approaches. Statutory and conceptual approaches are fundamental methods in legal research and interpretation (Widiyanto & Rijadi, 2023). The statutory approach involves analyzing laws and regulations to understand their implications and applications (Novita & Razak, 2022). The objective of this research is to examine the application of trademarks as credit collateral can help MSMEs to be more independent, due to the importance of the contribution of MSMEs in the national economy. This research used primary legal sources such as *Burgerlijk Wetboek (BW)*, Law No. 4/2023 on Financial Sector Development and Strengthening, Law No. 20/2016 on Trademarks and Geographical Indications, and relevant government regulations. In addition, this research also refers to legal literature such as books, journals, and research reports to support its research analysis.

RESULT AND DISCUSSION

Trademarks Right are Part of Intellectual Property

According to Article 1 Number 1 of the Trademark and Geographical Indications Law, trademarks are marks that can be presented as images, logos, names, words, letters, numbers, color arrangements, sounds, holograms, or a combination of these elements. Its purpose is to distinguish goods or services produced by a person or legal entity when trading (Indonesia, 2016). There are two types of marks: trademarks to distinguish goods traded by individuals, groups, or companies from similar goods; and service marks to distinguish services traded by individuals, groups, or companies from similar services.

Trademarks are used to distinguish the products of one product from another, promote the product by simply mentioning its brand, guarantee the quality of the product, and indicate the origin of the goods or services. Registration of a trademark is important because it provides proof of legal ownership of the mark and can be used to refuse registration of a similar mark by

others. In addition, trademark registration can also be used to prevent others from using the same mark in their selling of similar goods or services (Republik Indonesia, 2024).

A registered trademark receives legal protection for 10 years after the application for registration is approved, and the protection period can be extended. Trademark registration is not just a license, but a right, so it should be subjected to a thorough examination to ensure that there is no infringement of other people's rights. The trademark registration process includes several stages, from announcement to issuance of the certificate by the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights, which usually takes about nine months (Republik Indonesia, 2023).

Trademark applicants are required to be aware of the criteria for trademarks that cannot be registered or even rejected, as stipulated in Articles 20 and 21 of the Trademark and Geographical Indications Law. Trademarks that cannot be registered when:

1. contradicts state ideology, regulations, morality, religion, decency, or public order. Contrary to public order means that it is not in accordance with the rules that apply in society, such as it offends certain people or groups;
2. similar to, related to, or merely mentioning the goods and/or services for which registration is requested;
3. contains elements that may mislead the public about the origin, quality, type, size, variety, or intended use of the registered goods and services, or uses the name of a protected plant variety for similar goods and services. For example, the mark "Syrup No. 1" cannot be registered because it may mislead the public about the quality of the goods, or the mark "Weight 200 grams" cannot be registered because it misleads the public about the size of the goods;
4. contains information that is not in accordance with the quality, benefits, or efficacy of the goods and/or services produced. For example, containing information that drugs can cure every disease or that cigarettes are safe for health;
5. has no distinguishing characteristics, and/or;
6. represents a common name and/or symbol of public property. For example, a food stall brand for a restaurant.

A trademark application may be refused if it is significantly similar or entirely similar to:

1. Registered trademark owned by other parties or applied for in advance by other parties for similar goods and/or services;
2. A well-known trademark owned by other parties for similar goods and/or services;

3. A well-known trademark owned by another party for non-similar goods and/or services that fulfill certain requirements; or
4. Registered Geographical Indications.

The application is refused if the trademark:

1. constitutes or resembles the name or abbreviation of any famous person's name, photograph, or the name of any legal entity owned by another person, except with the written consent of the rightful party; or
2. imitates or resembles the name or abbreviation of the name, flag, emblem or symbol or emblem of a state, or national or international institution, except with the written consent of the authorized party; or
3. imitates or resembles a sign or stamp or official seal used by the state or a government institution, except with the written consent of the authorized party.

The application will be rejected if it is filed by the applicant in bad faith, i.e. when the applicant is suspected of registering a trademark with the intention of imitating, plagiarizing, or copying another party's trademark for the benefit of its own business, which may cause unfair competition and confuse or mislead consumers.

Trademark rights are exclusive rights that can actually be considered as objects according to Article 499 BW, because trademark rights can be removed and transferred to others. This displacement is in the form of economic rights, so that these trademark rights become intangible movable objects, and the form is a certificate of ownership of trademark rights that have been registered at the Directorate General of Intellectual Property Rights (Dirjen HKI) (Hakim & Kholidah, 2020). There are many difficulties in financing intangible financial assets (such as brand rights). Some of the contributing factors mentioned are:

1. Valuing intangible assets is difficult. Difficulties include large differences between accounting and market values, lack of available information, and the lack of a common valuation framework, complicating the determination of these assets' value.
2. Many people who lend money or invest may not really understand intangible assets. Such assets are difficult to understand because they are complicated. Figuring out which intangible assets are important, carefully examining them, and making agreements about their ownership are all time-consuming.
3. Regulators do not encourage the use of intangible assets as collateral. It allows financiers to be more concerned about the true value of the assets being used.

4. Transaction costs make intangible asset financing less interesting. It is because the valuation, inspection, and administrative processes to register the security rights add to the transaction costs.
5. Intangible assets can be difficult to sell. Before agreeing to a deal, investors need to be sure that they can get back the money they invested. They assess the value of the intangible asset to determine how much money they can lend or invest. Since there is no active market for selling intangible assets, in the event of a payment default, the amount paid will usually be much less than the appraised value of the intangible asset (WIPO, 2022).

Technological advancements can mitigate some of the problems in financing intangible assets. For example, the availability of more high-quality data can make valuing, predicting, and buying and selling intellectual property easier. It includes easier access to information on inventions, brands, creative works, and rights. In addition, clearer and more detailed data on the use and benefits of intangible assets can also be very helpful (WIPO, 2022).

Trademarks Right as Collateral for MSME Businesses

MSMEs are very important to the Indonesian economy as about 99% of all businesses come from this sector. Through 2023, the MSMEs will total 66 million, providing jobs for around 117 million people, or about 97% of total employment (Kamar Dagang dan Industri Indonesia, 2022). The number of MSMEs continues to increase from 2018 to 2023, as indicated in the following table:

Table 1. The Data of MSME during 2018-2023

Years	2018	2019	2020	2021	2023
Numbers of MSME (Million)	64.19	65.47	64	65.46	66
Growth (%)		1.98 %	-2.24 %	2.28 %	1.52 %

Source: Processed Data by KADIN Indonesia

In 2020, data from the Indonesian Joint Funding Fintech Association (AFPI) showed that around 46.6 million out of a total of 64 million MSMEs in Indonesia have not gotten money from banks or non-bank financial institutions. However, the government has provided financial assistance through programs such as PKBL, Mekar PNM, Micro Waqf Bank, Ultra Micro Financing, and Small Business Credit (Kamar Dagang dan Industri Indonesia, 2022). Based on research conducted by Hakim & Kholidah (2020), the technical barriers faced by businesses in obtaining funding from banks were found to be the inability to fulfill the collateral requested by financial institutions (40%) and high loan interest rates (37%) which are the main obstacles for businesses to access external financing.

The background indicates that many MSME businesses have not registered their brands to the DJKI of the Indonesian Ministry of Law and Human Rights. They have brands for their products but have not registered them. Registering a brand is important because the state will protect it. If it is not registered, it will not be legally protected. In addition, MSME businesses that have registered their brands can use them as collateral to get loans from banks.

Products from MSMEs need to be named or branded. A brand allows the product to be better recognized by consumers and stronger in the competition. According to research by Chen et al (2016), loyalty to the brand makes consumers willing to promote the brand to others, recommend purchases, and help rebuild the brand when launching new products. Businesses that make goods with a certain brand use the brand as a sign that the goods come from their company and the brand itself is part of Intellectual Property. Brands are very important in making products competitive, unique, and have advantages that distinguish them from other products. Combining supportive elements, they create a strong brand image for consumers (Makka & Roisah, 2023).

Trademarks are part of Intellectual Property Rights that are important in the world of commerce. Brands not only distinguish similar goods or services, but also help win the competition to attract consumers. In addition, a well-known brand is also a valuable asset and enhances the company's reputation (Sujatmiko & Silvia RR, 2020). Trademark certificates are very important because they serve as strong evidence to maintain ownership rights in disputes in court. The Trademark and Geographical Indications Law follows the principle of first to file registration. It is expected that small and medium businesses will be more orderly in registering their trademarks. However, this obligation is still rarely fulfilled by MSME businesses. It is caused by various obstacles, both technical and legal. The technical obstacle is the ignorance of how to register a trademark, while the legal obstacle is the lack of awareness of the importance of legal protection for trademarks through registration (Sujatmiko & Silvia RR, 2020).

Trademark Law was created to protect the meaning of a mark, so as not to confuse consumers with similar marks, as stated by Dogan in Beebe (2019). With the registration of marks, trademark law aims to prevent use of marks that may confuse consumers or, for well-known marks, use that may interfere with consumers' mental associations between the mark and the product. This objective is also a valid reason for the right of publicity. If people are misled by the use of a celebrity's name or likeness, both they and the celebrity are harmed. Considering that only those who profit through deception, such use almost certainly creates a net social harm.

Trademarks are very important in business because they represent the reputation and quality of the products or services produced by the company. Trademark as a distinguishing mark is very important to compete fairly in trading the same or similar products or services. According to Kotler & Keller (2015), a

brand is an important attribute of a product. According to W.R. Cornish, trademarks are part of intellectual property that protects owners of ideas and information that have commercial value (Balik et al., 2023). Intellectual property is a form of compensation for entrepreneurs who implement their ideas or notions into product designs, protect their work, so that it has commercial value.

In several other countries, according to Ida Ayu Ratna Kumala, Intellectual Property (IP) ownership can be used as bankable collateral. In Singapore, Malaysia, and Thailand, intangible asset-based credit has been developed. Patents and trademarks can be used as collateral for bank loans in Singapore. According to Tan Weizhen, data from Singapore Brand Finance in 2014 indicated that 42% of the value of companies in Singapore is intangible assets. IPOS in Singapore has appointed three banks, which are DBS, OCBC, and UOB, to provide credit under the developed financing scheme (Ida Ayu Ratna Kumala & Ida Ayu Putu Sri Astiti Padmawati, 2024). In Malaysia, the Intellectual Property Financing Scheme (IPFS) allows MSMEs to use Intellectual Property as credit collateral (Marditia & Candini, 2023). This IPFS scheme focuses on three aspects: intellectual property valuation, intellectual property financing, and intellectual property market.

Valuation to determine and measure the financial value of intangible assets requires specialized expertise. According to Anis Mashdurohatun and WIPO, valuation is the process of determining and measuring the financial benefits of the asset (Mashdurohatun et al., 2023). Valuation of intellectual property, as an intangible asset, is the process of determining the monetary value of such property. Typically, these valuations aim to assist in strategy development, resource allocation, and measuring the level of investment to fit the need. These valuations are often used in businesses such as acquisitions, mergers, investment guarantees, royalty determinations, tax reports, purchase or sale of intellectual property, licenses, and franchises. The value of intellectual property has grown considerably. For example, a famous beverage brand can be worth more than IDR 1 trillion. Some brand disputes show the enormous value of brands. Likewise, musical works and songs have great economic value that can be obtained through distribution by the Collective Management Institution (LMK) or direct income. Therefore, a common understanding between all relevant parties is required.

Trademark rights can be used as collateral because they can be valued. However, banks in Indonesia have not accepted much collateral in the form of Intellectual Property. Mostly because Indonesia does not have a clear concept of valuation of Intellectual Property assets, institutions that value Intellectual Property, and the concept of due diligence of Intellectual Property. Hence, there is no clarity of protection, especially for banks (Kurniawan, 2020). In risky banking activities, such as credit risk, banks usually require collateral. This collateral is important to ensure the certainty and smooth repayment of the debtor's debt to the bank (Mashdurohatun et al., 2023).

Trademark rights are part of intellectual property, along with copyrights and patents. Intellectual property can be used as collateral to obtain loans from banks because it has economic value and can be transferred. However, only the Copyright Act and Patent Act specifically mention fiduciary guarantee as an institution that can assign such intellectual property rights. On the other hand, the Trademark and Geographical Indication Laws do not have the same provision, so it is possible that the rights to a trademark can be secured by a pledge or fiduciary guarantee. This results in differences in the way rights to brands, copyrights and patents are pledged as collateral for bank loans.

Table 2. Comparison between Rights to Trademark, Copyright and Patent as Collateral

No.	Description	Trademark Rights	Copyright	Patents
1.	Legal Basis	Law No. 20/2016 on Trademarks and Geographical Indications	Law No. 28/2014 on Copyright	Law No. 13/2016 on Patents
2.	Definition	Trademark is a sign that can be presented in a graphical form such as image, logo, name, word, letter, number, color arrangement, in 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more elements to distinguish goods and/or services produced by a person or legal entity in the trading activities of goods and/or services.	Copyright is the exclusive right of the creator that occurs automatically based on the declarative principle after the creation is realized in a tangible form without reducing the restrictions in accordance with the provisions of laws and regulations.	A patent is an exclusive right granted by the state to an inventor for his/her invention in technology for a certain period of time to implement their own invention or give approval to other parties to implement it.
3.	Object Classification	Intangible movable objects are not	Intangible movable objects are	Intangible movable objects are

		confirmed in the Trademark and Geographical Indications Law.	stipulated in Article 16 Paragraph (1) of the Copyright Law.	stipulated in Article 59 Paragraph (3) of the Patent Law.
4.	Proof of Ownership	Trademark certificates are issued by the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights.	Letter of copyright registration by the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights.	Patent certificate issued by the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights as proof of rights to the patent.
5.	Terms of Collateral	Eligible as collateral objects because they have economic value and can be transferred as mentioned in Article 41 Paragraph (1) of the Trademark and Geographical Indications Law.	Eligible as collateral objects because they have economic value and can be transferred as mentioned in Article 16 Paragraph (2) of the Copyright Law.	Eligible as collateral because it has economic value and can be transferred as mentioned in Article 74 Paragraph (1) of the Patent Law.
6.	Guarantee Institution	There is no single article in the Trademark and Geographical Indications Law that mentions the security institution that burdens the rights to the trademark. Because the right to trademark is an intangible	In Article 16 Paragraph (3) of the Copyright Law, it is emphasized that Copyright can be used as an object of fiduciary guarantee.	Article 108 Paragraph (1) of the Patent Law affirms that the right to a patent can be used as an object of fiduciary security.

		movable object, it is possible for the right to trademark to be covered by a pawn or fiduciary guarantee.		
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CONCLUSION

Trademark rights have economic value that can benefit businesses, especially MSMEs, one of them is using trademark rights as collateral for bank loans. In addition, it can be one of the solutions for MSME businesses that have difficulty in accessing funding in banks due to the inability to provide material collateral. Therefore, the right to a trademark that has been registered and issued a trademark certificate, in addition to getting legal protection can also be used as collateral for bank loans. The existence of funding from banks for MSME businesses can contribute to increasing the independence of MSME businesses.

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