

Legal Framework for Trademark Manifestation as Collateral Financing to Enhance the Capacity of MSMEs in Indonesia

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ABSTRACT

This article examines the manifestation of trademarks as collateral to enhance the capacity of Micro, Small, and Medium-sized Enterprises (MSMEs) in Indonesia. The study employs a normative research approach, drawing upon legal sources derived from legislation, relevant legal theories, and concepts. Data is analyzed using a qualitative juridical method and deductive reasoning. The research findings suggest that trademarks should be eligible as collateral since they meet the criteria of intangible movable property that can contribute to the growth and development of SMEs in Indonesia. However, the practical application of trademarks as collateral is hindered by existing regulations and the absence of a specialized intellectual property asset appraisal institution. Such measures are crucial in fostering MSMEs and, ultimately, improving the welfare of the Indonesian society.

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PRELIMINARY

Micro, Small, and Medium Enterprises (MSMEs) make a significant contribution to the dynamic stimulation of the national economy. The growth of MSMEs in the business landscape has undergone rapid changes in response to human needs¹. In fact, following the economic crisis in 1997-1998, MSMEs managed to survive amidst mass bankruptcies and

¹ Nizam Zakka Arrizal and Sofyantoro, "Pemberdayaan Ekonomi Kreatif Dan UMKM Di Masa Pandemi Melalui Digitalisasi," *Birokrasi Pancasila: Jurnal Pemerintahan, Pembangunan Dan Inovasi Daerah* 2, no. 1 (2020): 49-48.

successfully reduced unemployment by employing 85 million to 107 million workers². On the other hand, MSMEs are expected to enhance business productivity and competitiveness through technological innovation³. These efforts are aimed at supporting the excellence and realization of innovation and creativity in MSMEs, enabling them to grow significantly⁴. However, beneath these advantages, MSMEs are vulnerable to harm from irresponsible parties and have limited legal protection⁵. This is because MSMEs tend to be rooted in traditional, simple business models that prioritize short-term profit without future development planning⁶. One of the challenges faced by MSMEs is the misuse of Trademarks as part of Intellectual Property Rights. The lack of knowledge among business owners about trademark registration and the constitutive principles (first to use) often leads to rebranding of other parties' trademarks without permission in the business industry.

The business ecosystem is closely tied to the existence of intellectual property, including Trademarks, Copyrights, Patents, Industrial Designs, Trade Secrets, Integrated Circuit Layout Designs, and Geographical Indications⁷. Furthermore, the exclusive rights to Trademarks are granted by the state to registered Trademark owners in the Trademark registry. Relevant regulations in this context include Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark and GI Law) and Law Number 28 of 2014 concerning Copyrights (Copyright Law). The low awareness of the importance of trademark registration is evident from the numerous trademark disputes in Indonesia, especially involving well-known brands. According to the statement by the Minister of Law and Human Rights, Yassona H. Laoly, the number of MSMEs applying for trademark registration is still relatively low, with only 10,632 out of 64.1 million MSME players having applied for trademark registration⁸. In addition, various well-known trademark dispute cases have arisen due to businesses failing to register them from the outset. One notable case is the trademark dispute over "Bodyguard" involving a small to medium-sized enterprise, stemming from negligence in registering the mark. The lawsuit, dated September 21, 2020, was received for registration at the Clerk's Office of the Commercial Court at the Central Jakarta District Court on September 21, 2020, under Register Number 52/Pdt.Sus-Merek/2020/PN.Niaga. JKT.Pst, between Jefri Yunus (Plaintiff) and Luasan Ferdinant (Defendant I), and Defendant 2. The Republic of Indonesia through the Ministry of Law and Human Rights through the Directorate General of Intellectual Property (Defendant II). Subsequently, the Plaintiff filed for cassation to the Supreme Court against the decision of

² Ake Lintang Samudra and Agus Suman, "Analisis Faktor-Faktor Yang Mempengaruhi Kredit UMKM Serta Dampaknya Terhadap Kemiskinan Di Indonesia," *JURNAL ILMIAH* 8 (2019): 14.

³ Sudati Sarfiah, Hanung Atmaja, and Dian Verawati, "UMKM Sebagai Pilar Membangun Ekonomi Bangsa," *Jurnal REP (Riset Ekonomi Pembangunan)* 4, no. 2 (October 2019): 137-46, <https://doi.org/10.31002/rep.v4i2.1952>.

⁴ Hari Sutra Disemadi and Merizqa Ariani, "Arti Penting Perlindungan Kekayaan Intelektual Pencipta Logo Coffe Shop Di Kota Batam, Indonesia," *Jurnal Ilmu Hukum* 10 (2021): 11, <https://doi.org/10.32503/mizan.v10i1.1459>.

⁵ Lu Sudirman and Hari Sutra Disemadi, "Rahasia Dagang Sebagai Perlindungan Kekayaan Intelektual Usaha Mikro Kecil Dan Menengah Di Era Digitalisasi Dan Globalisasi," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 12, no. 1 (2023): 80-98, <https://doi.org/10.24843/JMHU.2023.v12.i01.p07>.

⁶ Rahmat Suhargon, "Analisa Hukum Terhadap Pentingnya Pendaftaran Hak Merek Dagang Bagi UMKM Dalam Rangka Meningkatkan Perekonomian Rakyat (Berdasarkan Undang-Undang No 20 Tahun 2016 Tentang Hak Merek Dan Indikasi Geografis)," *Jurnal Ilmiah Muqoddimah: Jurnal Ilmu Sosial, Politik Dan Humaniora* 3, no. 2 (2019).

⁷ Kristina Sedyastuti, "Analisis Pemberdayaan UMKM Dan Peningkatan Daya Saing Dalam Kancan Pasar Global" 2 (2018), <https://doi.org/doi.org/10.31842/jurnal-inobis.v2i1.65>.

⁸ Zulfikri Toguan, "Problematisasi Hak Kekayaan Intelektual Di Bidang Merek Bagi Pelaku Usaha Mikro Kecil Menengah" 5, no. 2 (2021): 15, [https://doi.org/doi.org/10.25299/uirlrev.2021.vol5\(2\).7168](https://doi.org/doi.org/10.25299/uirlrev.2021.vol5(2).7168).

the Commercial Court, and on June 7, 2021, the Supreme Court Judge ruled with Decision Number 646 K/Pst.Sus-HKI/2021⁹.

One of the tangible added values of trademark rights as intellectual property lies in their potential to serve as collateral for credit. Trademark rights can be used as collateral to support business development in credit applications with banks, as trademarks are considered intellectual property assets with economic value that can be pledged¹⁰. The provision of collateral is often carried out by individuals or corporations as debtors to banks as creditors in the granting of credit. Banking Law Number 10 of 1998 defines credit as the provision of money or claims that can be equated with it, based on an agreement or loan agreement between a bank and another party that obliges the borrower to repay the debt after a certain period with interest¹¹. The effectiveness of using trademarks as collateral for credit financing can be enhanced when accompanied by legal provisions that offer protection and legal certainty for both creditors and debtors¹².

Research related to the realization of brand added value in financing has been previously conducted, such as research on intellectual property as collateral for banking credit¹³, research on the legal status of trademark rights as credit collateral in Indonesian banking¹⁴, analysis of pledging certificates of trademark in Sharia banks¹⁵, trademarks as collateral for financing MSMEs in the creative batik industry¹⁶, trademarks as objects of credit collateral in Indonesian banking¹⁷, analysis of trademark rights as security in bank credit issuance¹⁸, the implementation of trademark rights as security in banking credit¹⁹, and the juridical purpose of trademark rights as fiduciary collateral in the credit application process in banking²⁰. In contrast to previous research, the focus of this study lies in the legal framework of brand realization as financing collateral to enhance the capacity of MSMEs in Indonesia, along with an analysis of the benefits and challenges of brand-based financing. Theoretically, this research serves as a valuable reference source concerning the regulation of trademarks in Indonesia and the effectiveness of brand added value as an object of

⁹ T. Fairuz Jasmine, "Analisis Hukum Terhadap Urgensi Pendaftaran Merek Bagi Pelaku Usaha Mikro, Kecil, Dan Menengah (UMKM) (STUDI PUTUSAN NOMOR 646 K/Pst.Sus-HKI/2021)," *Iuris Studia: Jurnal Kajian Hukum* 2, no. 3 (2021): 644–52.

¹⁰ Abdul Aziz and Eko Wicaksono, "ANALISIS SKEMA ALTERNATIF KREDIT PROGRAM UNTUK USAHA MIKRO, KECIL, DAN MENENGAH," *Jurnal Ekonomi & Kebijakan Publik* 7 (2016).

¹¹ Enggar Pradipta Widyaresti and Achma Hendra Setiawan, "Analisis Peran Bri Unit Ketandan Dalam Pemberian Kredit Usaha Rakyat Bagi Pengusaha Mikro Dan Kecil Di Kecamatan Ngawen Kabupaten Klaten," *DIPONEGORO JOURNAL OF ECONOMICS* 1 (2012): 11.

¹² Soewardiman Al Afghani and Satria Sukananda, "PERLINDUNGAN HUKUM UMKM MELALUI PENDAFTARAN MEREK DAGANG DI DAERAH ISTIMEWA YOGYAKARTA," *JUSTITIA JURNAL HUKUM* 3 (2019).

¹³ Trias Palupi Kurnianingrum, "Hak Kekayaan Intelektual Sebagai Jaminan Kredit Perbankan (Intellectual Property As Banking Credit Guarantee)," *Jurnal Negara Hukum* 8, no. 1 (2017): 31–54.

¹⁴ Shella Latifa Alami, "Kedudukan Hukum Hak Atas Merek Sebagai Jaminan Kredit Di Perbankan Indonesia" 10 (2022), <https://doi.org/doi.org/10.20961/privat.v10i1.60478>.

¹⁵ Trisadini Prasastinah Usanti, "Analisis Pembebanan Gadai Atas Sertifikat Merek Di Bank Syariah," *Jurnal Mimbar Hukum* 29, no. 3 (2017).

¹⁶ Miftahur Rahman Hakim and Nur Kholidah, "Hak Merek Sebagai Jaminan Gadai Untuk Permodalan Umkm Industri Kreatif Kerajinan Batik," *Pena Justisia* 18, no. 2 (2019).

¹⁷ Nurul Fitriani, "Merek Sebagai Objek Jaminan Kredit Pada Perbankan Indonesia" (Universitas Maritim Raja Ali Haji, 2022).

¹⁸ Raymond Kusuma, "Analisis Hak Atas Merek Sebagai Agunan Dalam Pemberian Kredit Bank," *Hukum Adigama* 3, no. 2 (2020).

¹⁹ Muhammad Rizki Asmar Fauzan and Ambar Budhisulistawati, "Implementasi Hak Atas Merek Sebagai Agunan Dalam Kredit Di Perbankan," *Privat Law* 10 (2022).

²⁰ Tinjuan Yuridis Hak Merek Sebagai Jaminan Fidusia dalam Proses Pengajuan Kredit di Perbankan, "Tinjauan Yuridis Hak Merek Sebagai Jaminan Fidusia Dalam Proses Pengajuan Kredit Di Perbankan" (Universitas Sebelas Maret, 2020).

financing collateral in banks. Practically, this research can enhance public understanding of trademark regulation in Indonesia.

METHOD

This research is a literature-based study employing the normative legal research method with a legislative and conceptual approach. This approach delves into the law as norms that govern societal behavior²¹. The research data sources encompass legislative regulations, relevant legal theories, and legal concepts. Data analysis is conducted through a qualitative juridical method, aimed at elucidating the norms within a specific legal system²². This legal research involves the analysis of bibliographic materials or secondary data. Secondary data is obtained through a literature review, including but not limited to the Trademark and GI Law and previous research findings. The outcomes will be narrated in an explanatory form, utilizing legal interpretations and deductive reasoning, with the presentation of data related to the Realization of Collateral Trademarks for Financing to Enhance the Capacity of SMEs in Indonesia.

RESULT AND DISCUSSION

Regulation on Trademark Protection in Indonesia

In contemporary times, nearly every product and service we encounter is inexorably linked to its trademark. As a manifestation of intellectual property, trademarks play a pivotal role in facilitating and enhancing the trade of goods and services in Indonesia²³. They serve as instruments for distinguishing products and services produced by a particular company, indicating their characteristics and origin (indication of origin) while concurrently setting them apart from other goods and services. Furthermore, the attribution of a trademark can signify the quality of these products and services²⁴. The evolution of trademark law in Indonesia has seen a long and winding journey from colonial times to the present day. During Dutch colonial rule, the Reglement Industrieële Eigendom of 1912 was in effect in the Dutch East Indies. After Indonesia's declaration of independence, several legislations were introduced concerning trademarks, including Law Number 21 of 1961 regarding Company Trademarks and Trade Trademarks, Law Number 19 of 1992 on Trademarks, and Law Number 14 of 1997 amending Law Number 19 of 1992 on Trademarks²⁵. Subsequently, in the realm of international trade, significant changes were witnessed with the establishment of the World Trade Organization (WTO) in 1995. The WTO formulated provisions related to intellectual property rights, known as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs agreement). This development had implications for countries, including Indonesia, that ratified the WTO formation agreement. In 2001, Indonesia enacted Law Number 15 of 2001 on Trademarks to align with the WTO agreement. This legislation was later replaced by Law Number 20 of 2016 on Trademarks and Geographical Indications (Trademark and GI Law)²⁶.

In Article 1, paragraph (1) of Trademark and GI Law, it is defined that a trademark is a graphical representation that can be presented in the form of an image, logo, name, word,

²¹ Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (November 30, 2022): 289–304, <https://doi.org/10.37253/jjr.v24i2.7280>.

²² David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulasi Metodologi Dalam Menyelenggarakan Penelitian Hukum," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–78.

²³ Hari Sutra Disemadi, *Mengenai Perlindungan Kekayaan Intelektual Di Indonesia* (Depok: Rajawali Pres, 2023).

²⁴ Meli Hertati Gultom, "Perlindungan Hukum Bagi Pemegang Hak Merek Terdaftar Terhadap Pelanggaran Merek," *Warta Dharmawangsa* 56 (2018).

²⁵ Enny Mirfa, "Perlindungan Hukum Terhadap Merek Terdaftar," *Jurnal Hukum Samudra Keadilan* 11, no. 1 (2016).

²⁶ Laina Rafianti, "Perkembangan Hukum Merek Di Indonesia," *Fiat Justitia Jurnal Ilmu Hukum* 7 (2013).

letter, number, color arrangement, in 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by individuals or legal entities in the course of trade in goods and/or services. In Trademark and GI Law, Article 3 explicitly states that the rights to a trademark are acquired after the Trademark is registered. The registration of a trademark aims to obtain legal certainty and legal protection for the rights to the trademark. This means that the rights to a trademark are only established once it has been registered by its owner with the trademark office, in this case, the Directorate General of Intellectual Property Rights (DJKI). Thus, the registration of trademark rights is an obligation that must be fulfilled by the owner, as these rights will not arise without registration since they are fundamentally granted by the state based on registration²⁷.

The system adopted in Trademark and GI Law, which is the current trademark law in Indonesia, follows a constitutive trademark registration system²⁸. This can be seen from Article 21 of the law, which states that an application will be rejected if the Trademark in question is substantially or entirely similar to a registered trademark owned by another party or applied for by another party for similar goods and/or services²⁹. This means that legal protection for trademark rights is only granted to the owners of registered trademarks³⁰. Trademark protection is provided when there is an infringement of a trademark committed by a party who does not have rights to a particular trademark. In the world of trade, trademarks play a crucial role because a well-known trademark can influence the success of a business, particularly in marketing³¹. In the world of trade, violations of well-known trademarks often occur. These violations happen because there are parties who do not have the right to use a registered trademark for their own purposes. Based on Article 35, paragraph (1) of Trademark and GI Law, it is determined that a registered trademark is legally protected for a period of 10 (ten) years from the date of acceptance. Therefore, trademark protection begins on the "date of acceptance" (filing date) of the registration. The primary purpose of trademark protection in cases of action for passing off is to ensure to consumers that the purchased goods originate from the legitimate trademark owner, to guarantee the quality of the goods, provide a name and symbol, and offer protection to the legitimate trademark owner whose products are imitated by others for illegitimate, low-quality goods³².

The regulation of trademarks in Indonesia has evolved significantly over the years, and the current legal framework, as outlined in Trademark and GI Law, has played a crucial role in providing legal certainty and protection for trademark owners³³. Trademarks are indispensable in the contemporary business landscape, serving as powerful tools to distinguish products and services, indicate their origin, and assure quality. The history of

²⁷ Jasmine, "Analisis Hukum Terhadap Urgensi Pendaftaran Merek Bagi Pelaku Usaha Mikro, Kecil, Dan Menengah (UMKM) (STUDI PUTUSAN NOMOR 646 K/Pst.Sus-HKI/2021)."

²⁸ Dedi Jaya and Hari Sutra Disemadi, "Prospects of Trademark Registration To Recover The Economic of MSMEs Actors in Service Sector after The Pandemic," *Widya Yuridika* 5, no. 2 (September 2022): 265-76, <https://doi.org/10.31328/wy.v5i2.3504>.

²⁹ Andrew Betlehn and Prisca Oktaviani Samosir, "Upaya Perlindungan Hukum Terhadap Merek Industri UMKM Di Indonesia," *Law and Justice* 3, no. 1 (2018): 1-11.

³⁰ Khelvin Risandi and Hari Sutra Disemadi, "Pemalsuan Merek Sepatu Di Indonesia: Pengaturan Dan Sanksi?," *Jurnal Komunikasi Hukum (JKH)* 8, no. 2 (2022): 315-26.

³¹ Putri Mei Dianti, Siti Ngaisah, and M.Hum Dr. Karim, S. H., "Penegakan Hukum Terhadap Persamaan Merek Restoran (Studi Kasus Putusan Negeri Nomor 46/Pdt.Sus-Merek/2018/PN Niaga.Jkt.Pst)," *Jurnal Judiciary* 9 (2020).

³² Suhargon, "Analisa Hukum Terhadap Pentingnya Pendaftaran Hak Merek Dagang Bagi UMKM Dalam Rangka Meningkatkan Perekonomian Rakyat (Berdasarkan Undang-Undang No 20 Tahun 2016 Tentang Hak Merek Dan Indikasi Geografis)."

³³ Lidia Kando Br Gea and Hari Sutra Disemadi, "Relation Between The Awarenees of Culinary Msme Actors and Trademark Protection," *Jurnal Supremasi*, September 1, 2022, 1-16, <https://doi.org/10.35457/supremasi.v12i2.1999>.

trademark law in Indonesia has seen a progression from colonial rule to international influences, with the World Trade Organization's TRIPs agreement driving legislative changes. The adoption of a constitutive trademark registration system has further solidified the importance of trademark registration, ensuring that only registered trademarks enjoy legal protection. This legal framework not only safeguards the rights of trademark owners but also contributes to the integrity of trade by preventing unauthorized use of trademarks. It underscores the significance of trademark protection in the business world and reinforces the role of trademark law in Indonesia's legal landscape.

Role of Trademarks in the Development of MSMEs

MSMEs play a crucial role in the economic development of Indonesia, not only in developing countries but also in advanced nations³⁴. The Indonesian Chamber of Commerce and Industry (Kadin) argues that in developing countries, MSMEs have a significant role from the perspective of employment opportunities and income sources for low-income groups, income distribution, poverty reduction, and rural economic development. In Indonesia, there are approximately 56.2 million MSMEs, which can absorb as much as 97.2% of the labor force from the total workforce available. MSMEs play a vital role in economic growth, reducing unemployment and poverty rates, and contribute to foreign exchange earnings³⁵. In the United States, MSMEs serve as the foundation for large, global corporations. Many of the world's leading companies today, such as Microsoft, Philips, Nike, and others, had their beginnings as MSMEs. Their success is attributed to the founders and company owners who paid special attention to creating a strong trademark³⁶.

Trademarks are a crucial element in determining marketing strategies. They are also a factor that can influence consumers' perspectives when making purchase decisions by shaping their perception of the brand. A well-crafted trademark can contribute to product strength. Furthermore, a brand can be used as an element to create a positive image for the product³⁷. Moreover, a trademark can simplify promotional efforts. Effective branding can make promotions more manageable. Good promotions through branding and packaging strategies can lead a product to success in sales³⁸. Therefore, establishing a trademark is one of the essential aspects in the global market competition, whether it is a large-scale enterprise or a small-scale business³⁹.

The development of a trademark has become a matter of utmost importance, yet it remains largely unappreciated by MSMEs. Despite the ample evidence demonstrating the effectiveness of a trademark in business development, there are still many business practitioners who choose to disregard the benefits of trademark development⁴⁰. An exemplary Indonesian product trademark that has gained significant recognition is the

³⁴ Hera Febria Mavilinda et al., "Penguatan Ekonomi Digital Melalui Pengembangan 'Digital Entrepreneurship' Bagi Pelaku Umkm Di Desa Kerinjing Ogan Ilir Sumatera Selatan," *SELAPARANG Jurnal Pengabdian Masyarakat Berkemajuan* 5, no. 1 (December 2021): 627, <https://doi.org/10.31764/jpmb.v5i1.6156>.

³⁵ Samudra and Suman, "Analisis Faktor-Faktor Yang Mempengaruhi Kredit UMKM Serta Dampaknya Terhadap Kemiskinan Di Indonesia."

³⁶ Rahab, "Penerapan Manajemen Merek Pada Usaha Kecil Dan Menengah (UKM).," *Jurnal Bisnis Dan Ekonomi (JBE)* 16, no. 1 (2009): 18-25.

³⁷ Lilis Sirejeki Aruan, Corry Yohana, and Muhammad Yusuf, "Peran Merek Dalam Bahasa Asing Dan Citra Merek Terhadap Keputusan Pembelian," *Jurnal Bisnis, Manajemen, Dan Keuangan* 2, no. 2 (2021).

³⁸ Dyah Permata Budi Asri, "Pengembangan Industri Kreatif UMKM Asal Yogyakarta Melalui Pendaftaran 'Jogja Co Branding,'" *Jurnal Nasional: Kosmik Hukum* 18, no. 2 (2018), <https://doi.org/10.30595/kosmikhukum.v18i2.3448>.

³⁹ Riris Roisah, Lumanul Hakim, and Amirul Mukminin, "Strategi Membangun Brand Awareness Pada Usaha Mikro Kecil Menengah (Studi UKM Baju Bayi Inda Collection)," *Jurnal Pengabdian Kepada Masyarakat* 1, no. 2 (2018): 340-47, <https://doi.org/https://doi.org/10.31294/jabdinas.v1i2.3972>.

⁴⁰ Yuni Sudarwati and Venti Eka Satya, "Strategi Pengembangan Merek Usaha Mikro, Kecil, Dan Menengah," *Jurnal Ekonomi & Kebijakan Publik* 4, no. 1 (2013), <https://doi.org/https://doi.org/10.22212/jekp.v4i1.70>.

"Cimory" brand. Cimory, a fresh milk trademark, is one of the MSME trademarks that has gained considerable prominence. With an initial capital of IDR 150 million from a MSMEs loan, the owner of Cimory Group was required to offer collateral in the form of a property at the time. This entrepreneur ventured into the fresh milk and yogurt business, leading Bambang Sutantio to become one of Indonesia's billionaires, amassing a wealth of USD 1.5 billion or approximately IDR 21.45 trillion (at an exchange rate of IDR 14,300 per USD). The owner of the Cimory Group's dairy and yogurt factory transitioned from an industrial equipment business to a yogurt business, and their current activities primarily revolve around milk processing⁴¹.

In a study conducted by Afreal Syahruliyanto and Prihartono in 2022, it is stated that the influence of the brand image on the purchase of Cimory products, based on research data, indicates that when a product has a positive brand image and is well-received in the market, it not only increases customer frequency but also continues to impact the company's sales and profits⁴². The influence of trademarks on the development of MSMEs in Indonesia is undeniably significant. A robust trademark can yield numerous benefits for MSMEs, including enhancing customer trust, setting them apart from competitors, and aiding in the cultivation of a positive image. In addition to boosting public confidence in their products, trademarks have a profound impact on MSMEs in several ways. Firstly, a strong trademark adds value to their products. Secondly, with a strong trademark, MSMEs can more easily expand their market reach, ensuring that their products or services gain wider recognition among the public. Thirdly, MSMEs with strong trademarks are more likely to secure financing or investment from third parties such as investors or financial institutions because their trademarks signal growth potential and success. Finally, a strong trademark can facilitate international expansion for MSMEs, as a globally recognized trademark can open up market opportunities beyond Indonesia. The influence of trademarks on the growth of MSMEs in Indonesia is multifaceted and indispensable. A strong trademark enhances product value, widens market reach, attracts investment, and paves the way for international expansion. It is evident that the strategic management of trademarks is crucial for the sustainable development of MSMEs in the Indonesian business landscape.

Regulations Concerning the Utilization of Trademarks as Collateral for MSME Financing

Trademarks are a form of Intellectual Property (IP) that plays a vital role in facilitating and enhancing the trade of goods and services within business activities, particularly for MSMEs⁴³. In essence, MSME entrepreneurs require legal certainty to secure their investments and obtain capital for their businesses. Entrepreneurs who have registered their brands with the Directorate General of IP Rights have a legal claim to their trademarks. The function of trademark rights is significant because it allows trademark owners to protect their brand for a period of ten years, extendable for the same duration, as per Article 35 of Trademarks and GI Law. This protection is crucial in preventing others from copying the brand⁴⁴. Trademark rights are not only seen in terms of their moral value as an aspect of Intellectual Property; they are also viewed for their economic value. Ownership of trademark rights can be transferred in various ways, such as through inheritance, gifting, or agreements in accordance with Article 41 of Trademark and GI Law. This allows trademarks to be used

⁴¹ Shifa Nurhaliza, "Dulu Jualan Susu Segar Di Puncak, Kini Founder Cimory Bambang Sutantio Berharta Rp21 T," 2022.

⁴² Afreal Syahruliyanto and Prihartono, "Pengaruh Citra Merek Terhadap Keputusan Pembelian (Studi Produk Cimory Yoghurt Di Alfamart Mekar Wangi)," *Ekonomis: Journal of Economics and Business* 6 (2022), <https://doi.org/http://dx.doi.org/10.33087/ekonomis.v6i2.669>.

⁴³ Meli Hertati Gultom, "Perlindungan Hukum Bagi Pemegang Hak Merek Terdaftar Terhadap Pelanggaran Merek," *Jurnal Warta Edisi* 56 (2018), <https://doi.org/https://doi.org/10.46576/wdw.v0i56.14>.

⁴⁴ Kadek Yoni Vemberia Wijaya and I Gusti Ngurah Wairocana, "Upaya Perlindungan Hukum Terhadap Pelanggaran Hak Merek," *Kertha Semaya : Journal Ilmu Hukum* 6, no. 3 (2018).

as collateral provided they are registered and have a trademark certificate recorded with the Directorate General of Intellectual Property Rights (DJKI) under the Ministry of Law and Human Rights⁴⁵.

Based on research conducted by Sri Mulyani in 2014, trademark rights are accepted as objects of fiduciary collateral in credit agreements, although they are considered secondary collateral, not the primary one. Bank BNI extends credit with trademarks as collateral, guided by internal BNI regulations and the recognition that trademarks fall under the category of intangible movable property, supported by trademark certificates⁴⁶. Meanwhile, according to research conducted by Trisadini Prasastinan Usanti in 2017 at Bank Muamalat, trademark rights are accepted as objects of credit collateral through collateral-based financing mechanisms, such as *Muharabah* and *Musyarakah*, provided by the bank to its debtors⁴⁷. Based on these two studies, fundamentally, trademarks can be used as collateral because trademarks are considered intangible movable assets. Trademarks as collateral objects can potentially be encumbered by fiduciary financing and pledges. Conceptually, fiduciary collateral is a tangible form of collateral, after the fiduciary-encumbered assets are registered with the Fiduciary Registration Office⁴⁸. So, if assets encumbered by fiduciary are not registered, the rights of the fiduciary receiver arising from the fiduciary encumbrance agreement are not considered property rights but rather personal rights⁴⁹.

Fiduciary collateral represents a security interest in both tangible and intangible movable assets, including immovable property, especially buildings that cannot be encumbered by fixed mortgage rights, which remain under the control of the fiduciary giver as security for specific debt repayment, granting a preferred position to the fiduciary receiver over other creditors (Article 1, Paragraph 2 of Law Number 42 of 1999 regarding Fiduciary Collateral). Based on interpretation, it is possible for intellectual property rights (trademarks) to be objects of fiduciary collateral, as stipulated in Article 1, Number 2 of the Fiduciary Collateral Law, because trademark rights are considered part of movable intangible property (rights) as regulated in Article 499 of the Civil Code, with a transferable value due to agreements⁵⁰.

In 2022, the Government enacted Government Regulation Number 24 of 2022, strengthening the provisions for intellectual property as collateral. This collateral is implemented in the form of fiduciary collateral. This regulation allows SMEs to pledge their intellectual property assets to secure alternative sources of funding for business development. In Article 12, Paragraph 7 of Regulation 24 of 2022, new provisions regarding the assessment mechanism for intellectual property are added. However, its implementation remains challenging as there are no technical assessment guidelines to determine the economic value of intangible assets, and the existence of an institution to manage the

⁴⁵ Usanti, "Analisis Pembebanan Gadai Atas Sertifikat Merek Di Bank Syariah."

⁴⁶ Sri Mulyani, "Realitas Pengakuan Hukum Terhadap Hak Atas Merek Sebagai Jaminan Fidusia Pada Praktik Perbankan Di Indonesia," *Hukum Dan Dinamika Masyarakat* 11, no. 2 (2014), <https://doi.org/http://dx.doi.org/10.56444/hdm.v11i2.347>.

⁴⁷ Usanti, "Analisis Pembebanan Gadai Atas Sertifikat Merek Di Bank Syariah."

⁴⁸ Yunita Hikmia, "Hak Merek Sebagai Jaminan Tambahan Pada Perbankan," *Jurist-Diction* 2, no. 4 (2019), <https://doi.org/https://doi.org/10.20473/jd.v2i4.14505>.

⁴⁹ Betty Dina Lambok, "Akibat Hukum Persetujuan Tertulis Dari Penerima Fidusia Kepada Pemberi Fidusia Untuk Menyewakan Obyek Jaminan Fidusia Kepada Pihak Ketiga," *Jurnal Hukum Pro Justitia* 26, no. 3 (2008).

⁵⁰ Mulyani, "Realitas Pengakuan Hukum Terhadap Hak Atas Merek Sebagai Jaminan Fidusia Pada Praktik Perbankan Di Indonesia."

valuation of intangible assets that can guarantee the value of the rights used as fiduciary collateral is not yet evident⁵¹.

Benefits and Challenges of Trademark-Based Financing for MSMEs: A Literature Review

The utilization of intellectual property rights can have a significant impact on the development of the business world and the stimulation of the national economy⁵². Trademark-based financing is a form of financing in which trademark owners use their trademark as collateral to gain access to financial resources, such as loans or financing. This approach can yield specific benefits and challenges, depending on the circumstances and business strategies employed. Regarding the benefits of trademark-based financing for MSMEs, it can enhance the exchange of goods and services, activate and improve the existing economic benefits, increase the utility of capital/money, and serve as a bridge for national income enhancement⁵³. Furthermore, when disbursing credit or financing, banks must make various considerations, not only legal but also business concerns, meaning that the provision of credit should be profitable for the bank, as well as risk concerns, including non-performing loan risks and their resolution. Although trademark rights can be used as collateral in a trust arrangement, the mechanisms provided by government regulations still pose some challenges that may hinder their implementation.

The first issue pertains to the valuation of intellectual property assets. Valuation is crucial as it is needed to determine the maximum amount of credit that can be extended to the debtor. In practice, financial institutions adhere to the 5C Principle as a guide in providing credit, one of which is collateral. Debtor guarantees serve as a form of security in case the debtor defaults on their repayment. These guarantees must be analyzed from both a legal and economic perspective to assess their suitability. Guarantees exist as a legal certainty for creditors that debtors will fulfill their repayment obligations⁵⁴. The determination of the valuation of an asset before it is encumbered with trust collateral is carried out using the services of a public appraiser at the request of financial institutions. The profession of public appraisers is regulated by the Ministry of Finance of the Republic of Indonesia under Regulation No. 101/PMK.01/2014. Public appraisers are third parties who can provide professional opinions on the economic value of an asset, which will then be encumbered with a trust by the financial institution⁵⁵.

In addition to using the services of professional appraisers, financial institutions require the services of intellectual property appraisers to determine the valuation of intellectual property. Valuation can be conducted by having appraisers assess intellectual property that is not assessed by intellectual property appraisers, or by having both types of appraisers jointly conduct the valuation. Nevertheless, its implementation remains challenging due to the lack of standardized technical valuation guidelines to determine the economic value of intangible assets and the absence of an institution that manages the valuation system for intangible assets to guarantee the value of the rights used as trust

⁵¹ Tengku Habib Ihza Husny, "Tantangan Dalam Implementasi Kekayaan Intelektual Sebagai Jaminan Pembiayaan Berdasarkan Peraturan Pemerintah Nomor 24 Tahun 2022," *Jurnal Ilmu Sosial Dan Pendidikan (JISIP)* 7, no. 3 (2023), <https://doi.org/http://dx.doi.org/10.58258/jisip.v7i3.5339>.

⁵² Husny.

⁵³ Ridwansyah, Okta Supriyaningsih, and Dania Hellin Amrina, "PERAN PEMBIAYAAN TERHADAP USAHA KECILMIKRO DAN MENENGAH (UMKM) PADA ERA COVID -19 DI PROVINSI LAMPUNG," *Jurnal Akuntansi Dan Pajak* 22, no. 2 (2022), <https://doi.org/http://dx.doi.org/10.29040/jap.v22i2.3695>.

⁵⁴ I Made Adi Guntara and Ni Made Ari Yulianti Griadhi, "Penerapan Prinsip 5C Sebagai Upaya Perlindungan Terhadap Bank Di Dalam Menyalurkan Kredit," *Kertha Semaya* 7, no. 8 (2019).

⁵⁵ Reni Budi Setianingrum, "Mekanisme Penentuan Nilai Ekonomis Dan Pengikatan Hak Cipta Sebagai Objek Jaminan Fidusia," *Jurnal Media Hukum* 23, no. 2 (2016), <https://doi.org/10.18196/jmh.2016.0083.229-238>.

collateral. The role of the trustor is also not clearly defined in these regulations, making it difficult to determine who has the right to act as the trustor.

The second issue concerns the existence of a secondary market to absorb intellectual property assets in case of default by debtors or creative economic actors. In relation to financial system stability, intellectual property is often perceived as an asset with low productivity, minimal yields, and high value. As a result, banks must set aside larger reserves when providing financing based on intellectual property⁵⁶. The third issue pertains to the rampant piracy of intellectual property. In addition to this, weak law enforcement in addressing piracy issues leads to a decline in the value of intellectual property. Products resulting from piracy that circulate in the market are favored by the public due to their ease of access and affordability. Consequently, financial institutions may reject intellectual property as collateral because the value of the intellectual property used as collateral will decrease in the event of piracy.

Despite the recent introduction of rules allowing intellectual property as collateral, the emerging challenges must be promptly addressed. Given the importance of harnessing intellectual property to enhance its commercial value and encourage SMEs to continue producing new works through alternative sources of financing, the government must expeditiously establish technical regulations regarding the pledging of intellectual property as collateral to eliminate uncertainty and provide legal certainty to both banks and non-bank financial institutions. Further technical elaboration is needed concerning guidelines for the valuation of intellectual property, the existence of an entity managing the valuation of intangible assets, or the presence of a secondary market for trading intangible assets. In crafting these regulations, the government should engage with all relevant stakeholders to ensure that all parties are willing and able to implement the rules on intellectual property as collateral⁵⁷.

CLOSING

Based on the discussion in this article, it can be concluded that trademark rights, as one of the intellectual property assets that can be accepted as collateral in a credit agreement, are transferable through various means such as inheritance, grant, and agreements in accordance with Article 41 of the Trademark and GI Law. This law allows trademarks to be used as collateral, provided that the trademark has been registered and possesses a trademark certificate recorded with the Directorate General of Intellectual Property Rights at the Ministry of Law and Human Rights. Financing based on trademarks is a form of financing where the trademark owner uses their trademark as collateral to access financial resources, such as loans or financing. Financing based on trademarks, as a form of collateral for MSMEs, can undoubtedly enhance the utility (usefulness) of capital. MSME entrepreneurs can access financing from banks to expand their businesses, whether for increasing production, trade, or comprehensive rehabilitation and productivity improvements. Although the government has enacted Government Regulation Number 24 of 2022, which strengthens the provisions regarding intellectual property as collateral, the implementation remains challenging due to the absence of standardized technical assessment guidelines to determine the economic value of intangible assets and the absence of an institution managing the valuation system for intangible assets to ensure the value of the intellectual property used as collateral. As a result, up to this point, MSMEs find it exceedingly difficult to access financing through trademark collateral.

⁵⁶ Ujang Badru Jaman, "Prospek Hak Kekayaan Intelektual (HKI) Sebagai Jaminan Utang," *Jurnal Hukum Dan HAM West Science* 1, no. 1 (2022), <https://doi.org/https://doi.org/10.58812/jhhws.v1i01>.

⁵⁷ Husny, "Tantangan Dalam Implementasi Kekayaan Intelektual Sebagai Jaminan Pembiayaan Berdasarkan Peraturan Pemerintah Nomor 24 Tahun 2022."

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