

## ISSUES AND CHALLENGES OF TRADEMARK LAW REGISTRATION FOR SMALL ENTREPRENEURS IN STRENGTHENING CREATIVE ECONOMIC COMMUNITIES IN INDONESIA

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### ABSTRACT

*This study aims to find out the challenges and implications of utilizing trademark law for small entrepreneurs in strengthening creative economic community in Indonesia. It is an empirical legal research undertaken in the Directorate General of Intellectual Property of the Ministry of Law and Human Rights, Creative Economy Agency and the Office of Cooperatives and Micro, Small and Medium Enterprises of Surakarta City. Data collection technique was based on surveys and interviews and supported by literature reviews with the socio-legal research approach. The results show that the low value of commercialization or the valuation of utilization of intellectual property and high trademark disputes pose challenges in the utilization of trademark law in Indonesia. Moreover, various problems are still prevalent from the substance factors of legislation, infrastructure, government, and the condition of small-scale entrepreneurs as well as the community culture that cause the utilization of trademark law for small entrepreneurs less optimal in strengthening the development of creative economy in Indonesia.*

**Keywords:** utilization, trademark law, creative economy

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### I. Background

The utilization of Intellectual Property Rights (IPR) law in Indonesia as a developing country, has various important benefits for economic growth and technology transfer or science and technology. According to the World Intellectual Property Rights (WIPO) the importance of utilizing IPR law is as follows:

*There are several compelling reasons why promote and protect intellectual property. First, the progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture. Second, the legal protection of new creations encourages the commitment of additional resources for further innovation. Third, the promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life.*

This can be interpreted that effective and equitable IPR law utilization system can help a country realize the potential of intellectual property as a tool for economic development and social and cultural welfare. The IPR legal system helps balance the interests of innovators and public interest, by providing an environment in where creativity and discovery might thrive for the benefit of everyone.

As far as developing countries are concerned, the utilization of trademark law as part of IPR possesses various necessary benefits. World Bank conducted a research stating that strengthening IPR protection in developing countries is important since there are abundant benefits and positive impacts which include: (1) Research and Domestic Development; (2) Disclosure of New Knowledge; (3) Global Technological Dynamism; (4) Technology Transfer and (5) Capital Formation.

Such results confirm that the utilization of trademark law provides strategic benefits for developing countries. Indonesia for instance, trademark utilization has many benefits meant to boost international trade, research and development in technology and expertise, and the environment. Besides, it provides competitive effects both in the trade sector and existing technology, discovery increase, local culture and consumer protection. These benefits are potential stimuli and innovations for developing countries to reform IPR utilization policies, especially trademarks.

Trademarks as one form of intellectual property play an important role for the smooth and increasing trade flows of goods or services. According to the European Union, trademark functions as follows:

*"The trade mark is essential for a system of undistorted competition, allowing customers to distinguish the products and services of undertakings. Trade marks provide highly effective means of communication. On the one hand, they serve as a medium for information and advertising, and on the other hand, as a symbol to create and represent the entrepreneurial capacity and the image of undertaking. Without competing imitations, the producer can increase his market share, enhance profit margins and develop customer loyalty."*

According to the European Union, trademarks are very important to prevent unfair business competition, allowing consumers to distinguish and identify their products. Also, trademarks are effective means of communication bridging consumers and producers. On the one hand, trademark functions as means for information and ads, and on the other hand, as a symbol for

creating and representing the identity of business actors. For producers, trademarks can increase their market share, increase profit margins and increase consumer loyalty. Other than its impacts on trade flows of goods and services, trademark protection and its legal utilization also have an impact on a country's economic well-being.

## II. Theoretical Review

### A. Legal Effectiveness

Anthony Allot asserted that effective law enforcement in one country cannot be interpreted as community obligation regulated by the law, but by legislators. That is, law makers often put the blame on ordinary people regarding the rejection of the law once they breach it.

Anthony Allot added that there are three factors that cause the ineffectiveness of the law which include:

1. The substance and formulation of laws is not relevant and the delivery of its purpose remains unsuccessful. Usually, the legal form is in the form of standard language regulations that are difficult for ordinary people to understand as well as lacking a supervisory body from legal the acceptance and application.
2. There is a conflict between the objectives intended by the legislator and the basic nature of the community.
3. There is a less support of law instruments such as regulations implementation, institutions or processes related to law implementation.

Another view of the effectiveness of the law was also expressed by Soerjono Soekanto. The factors that influence the effectiveness of the law according to Soerjono Soekanto are: (1)

Legal Factors; (2) Law Enforcement Factors; (3) Legal Facilities Factors; (4) Community Factors; and (5) Cultural Factors.

### B. Rights to Trademarks as part of Intellectual Property Rights

Deborah E. Bouchoux defines trademark as a word, name, *symbol, or device used to indicate the source, quality, and ownership of a product or service*. Article 1 point 1 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications defines trademarks as signs that can be displayed graphically in the form of images, logos, names, words, letters, numbers, arrangement of colors, in the form of 2 (two) dimensions and / or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and / or services produced by a person or legal entity in the activity of trading goods and / or services .

According to the definitions above, it can be concluded trademarks include: First, trademark trade substance has a positive sign in the form of letters, numbers, images, logos, names, words, color combinations, or a combination of these elements. Second, the function of the trademark must be different from one business actor to another. This is inseparable from the function of the trademark itself meaning that trademark is designed to meet the public interest, especially consumer protection. Third, legally speaking, trademark is viewed as an IPR. Trademark protection gives the owner an exclusive right to use signs in order to identify goods or services or to license others to use them.

Trademark Law divides trademark into three types, namely:

- 1) Trademarks used on goods jointly traded by a person or several people or a legal entity to differentiate from other similar goods. Examples: Aqua, SONY, NOKIA, LG, Sosro, and so on.
- 2) Service trademarks are trademarks used for services jointly traded by a person or several people or a legal entity to differentiate from other similar services. Examples: KFC Restaurants, Mc Donalds, Aston Hotels, Hyatt Hotels, Matahari Dept. Store, Ramayana Dept. Store, Carrefour and so on.
- 3) Collective Trademark is a trademark used on goods and / or services with the same characteristics regarding its nature, general characteristics, and the quality of goods or services and their supervision to be jointly traded by several people or legal entities to distinguish between goods and / or other similar services. Examples: PETER SAYS DENIM products with DENIM KICK products, SPECS shoe products with SPEED shoe products.

In his book entitled "*The Economics of Trademark Law*", William M. Landes and Richard A. Posner said that trademarks have two main functions in macroeconomics. William M. Landes and Richard A. Posner stated as follows:

*Trademarks serve two primary macro-economic functions:*

- a. *They facilitate consumers' decision-making about their choice of products in the market; and*
- b. *They provide incentives for an enterprise to invest in development and delivery of goods and services with the qualities of consumers' desire.*

Trademarks have two main functions in macroeconomics, namely: (a) trademarks facilitate consumers' decision in determining the choice of various products on the market; and (b) it provides incentives for companies to invest in the development and delivery of goods and services in accordance with the quality of goods desired by consumers.

Based on the trademark function proposed by William M. Landes and Richard A. Posner we understand that trademarks help consumers make difficult decisions to choose the source or quality of product services quickly and cheaply. For example, when buying food, cars, computers, mobile phones consumers must be able to rely on trademarks as a symbol that distinguishes the goods or services provided by different companies and shows the features and quality of products.

In addition, trademarks encourage investment in improving quality. Business actors recognize that trademark equity is built on consumer experience when post-purchase. Consumer satisfaction after buying a product greatly determines the long-term trademark reputation. In other words, both trademark functions complement each other and strengthen each other. When

consumers choose a product because of the quality suggested by the trademark, and when businesses invest in quality to continue to build trademark reputation, it will have an impact on improving the quality and customer loyalty of the trademark.

### C. Creative Economy

*The United Nations Conference on Trade and Development (UNCTAD)*, provides the definition of creative economy as an evolving concept based on creative assets, potentially generating economic growth and development:

- a) *It can boost income generation, job creation and export earnings for social inclusion, cultural diversity and human development;*
- b) *It embraces economic, cultural and social aspects of interacting with technology, intellectual property and tourism objectives;*
- c) *Knowledge-based economic activities with a development dimension and crosscutting linkages at macro and micro levels to the overall economy; and*
- d) *It is a feasible development option for innovation, multidisciplinary policy responses and inter-ministerial action.*

In the Recommendation of Policy Strategy for the Development of Creative Product Publication, the Indonesian Creative Economy Agency (BEKRAF) provides the definition of Creative Economy as an embodiment of added value from ideas that contain originality, derived from human intellectual creativity, based on science, skills and cultural heritage and technology which is considered as an intellectual property.

According to such definition, it is undeniable that the main resource in creative economy is creativity. *BEKRAF* defines creativity as a capacity to produce or create something unique, a solution to a problem, or something different from thinking (*thinking outside the box*). In other words, creativity is a key element in the creative economy. In creative economy, human creative resource is very necessary. Without creativity, creative economy cannot happen.

*BEKRAF* classifies creative economy products into 16 sub-sectors from Central Statistics Agency (BPS) and then broken down into 206 5-digit Indonesian Standard Business Classifications (KBLI). The details of the sixteen creative economy subsectors according to the KBLI sequence are as follows: (1) Architecture; (2) Interior Design; (3) Visual Communication Design; (4) Product Design; (5) Film, Animation and Video; (6) Photography; (7) Craft; (8) Culinary; (9) Music; (10) Fashion; (11) Application and Game Developer; (12) Issuance; (13) Advertising; (14) Television and Radio; (15) Performing Arts; and (16) Fine Arts.

### III. Problems

The utilization of trademark law greatly impacts the trade flows of goods or services and the economic growth of a country. The International Trademark Association (Inta) released a study that many industries that intensively use trademarks contribute significantly to economic conditions in a country. The analysis produced from five major ASEAN countries (Philippines, Thailand, Indonesia, Malaysia, Singapore) shows that the intensive application of trademarks boost job availability in various sectors, and contribute positively to international trade.

As far as Indonesia is concerned, data taken from 2012 - 2015 shows that industries that intensively use trademarks have contributed 21% to Gross Domestic Product (GDP) and 51% indirect contribution to GDP. Industries that use a lot of trademarks in Indonesia contribute 27% of the country's export share, including food and beverage sector which accounts for 19% of manufacturing value added. In terms of employment, industrial workers who intensively use trademarks represent 26% of total employment. The data seems to confirm that industries that use trademarks are proven to have a positive impact on Indonesia's national economy. That is, the protection of trademarks as part of intellectual property also has a positive impact on economic growth. Intellectual property greatly contributes to GDP and has a significant effect on a country's gross income.

On the one hand, the Indonesian Government considers to bring creative economy into a new hope and strengths for its economy based on IPR values which shows huge potential to increase its GDP. In the 2015-2019 Creative Economy Agency Strategic Plan, it was stated that the department of creative economy development policy would build public awareness and appreciation of intellectual property rights and optimize economic benefits for holders of intellectual property rights.

In the concept of the creative economy, it is undeniable that IPR protection, especially trademarks and the use of its Law, is a necessary prerequisite.

Ahmad Mujahid asserts that intellectual property is the basis of a creative economy. This means that intellectual property and creative economy are relevant. The use of law embedded in intellectual property is important to strengthen the creative economy for it is an important part of national economic development.

Various problems though remain in the field of IPR as an indication of the need of trademark law utilization in Indonesia. These problems affect the low number of creative MSMEs with IPR. In 2016, the percentage of creative MSMEs that already had IPR was only 11.5%, while 88.95% without IPR. This condition seems to illustrate that not all creative economic actors have understood the importance of IPR protection. Thus, creative economic actors do not often realize when there is a violation of their IPR or not. This also makes creative economic actors unable to obtain optimal economic benefits from their intellectual property.

This article seeks to describe the implementation of trademark law for small entrepreneurs and identify various issues and challenges in order to strengthen community-based creative economy in Indonesia.

#### IV. Research Method

This research is an empirical or sociological legal research conducted at the Ministry of Law and Human Rights, Ministry of Cooperatives and Small and Medium Enterprises, Creative Economy Agency, Office of Cooperatives and Small and Medium Enterprises, Labor and Industry Services. Data collection techniques were carried out by depth interviews, focus group discussions, literature reviews and document observation. The nature of this research is an evaluative research. The analysis used is qualitative juridical analysis based on legal interpretation, legal reasoning, and legal argumentation.

#### V. Discussion

##### 1. Issues and Challenges in Utilizing Trademark Laws in Indonesia

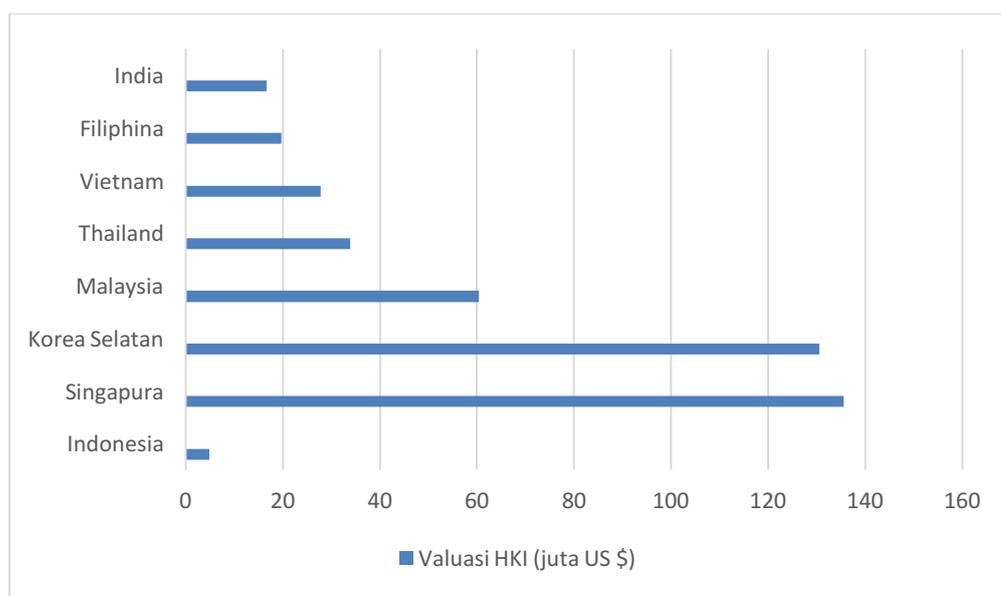
Historically speaking, trademark law in Indonesia dates back to the Dutch colonial era. In the Dutch Indian era, *Reglement Industriële Eigendom* (Industrial Property Regulations) was promulgated, with the 1912 *Staatblaad* Number 545. Such regulation consisted of 27 Articles and was a duplicate of the Dutch Trademark Law (*Merkenwet*) which adhered to a "declarative" system.

The development of trademark law in Indonesia is very dynamic following the implementation of business world and free market development. As mentioned in *Industriële Eigendom Reglement* 1912 to Law No. 20 of 2016 concerning Trademarks and Geographical Indications currently in force, the Indonesian Government has changed the Trademark Law five times. These efforts prove the Government's desire to implement trademark law for its economy.

The role of trademarks in the national economy is seen in the contribution of trademarks to GDP, exports and labor. Data taken from 2012 to 2015 shows that industries that intensively use trademarks have contributed 21% to Gross Domestic Product (GDP) and 51% indirect contribution to GDP. Industries that use a lot of trademarks in Indonesia contribute 27% of the country's export share, including food and beverage sector which accounts for 19% of manufacturing value added. In terms of employment, industrial workers who intensively use trademarks represent 26% of total employment. In fact, in the context of ASEAN, the intensive use of trademarks in five ASEAN countries proves that trademarks expand employment in various sectors and contribute positively to international trade. Cumulatively, in five ASEAN countries (Indonesia, Malaysia, Philippines, Thailand and Singapore) accounted for 90% of the gross domestic product of ASEAN people.

However, there are various issues and challenges in the field of IPR which is an indication of the inefficiency of trademark law utilization in Indonesia. Some of these challenges include: First, the low level of creative micro, small and medium enterprises (MSMEs) that have IPR. In 2016, the percentage of creative MSMEs that already had IPR was only 11.5%, while 88.95% without IPR. This means that not all creative economic actors have understood the importance of IPR protection. As a result, creative economic actors do not often realize whether there is a violation of IPR or not. This also makes creative economic actors unable to obtain optimal economic benefits from their intellectual property.

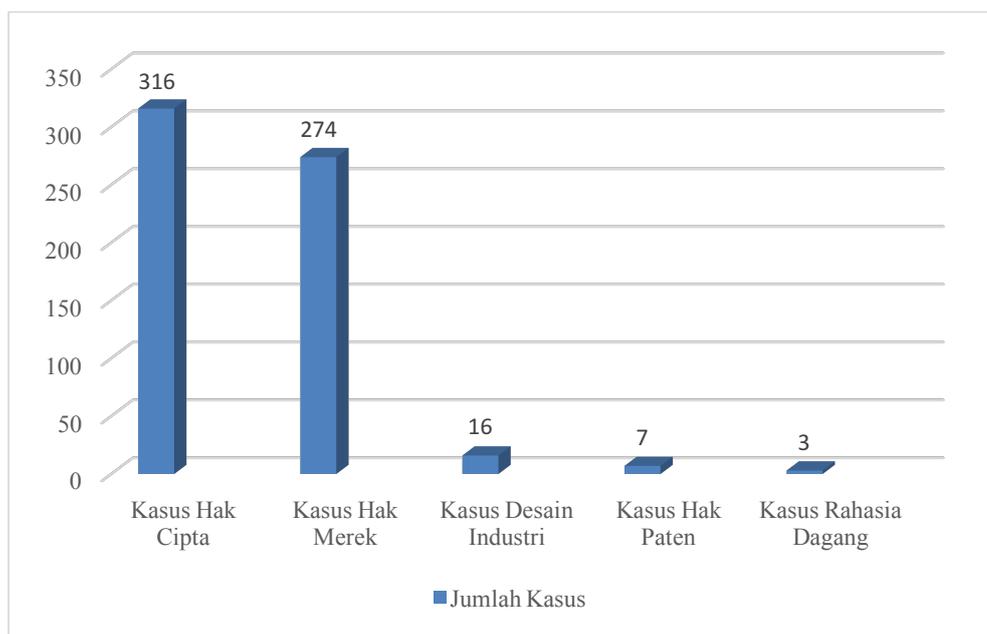
Secondly, in terms of commercialization, Indonesia is lagging behind Asian countries that have implemented similar strategies to encourage the use of intellectual property. WIPO data shows that the value of Indonesian intellectual property in 2015 only reached US \$ 4.82 million, lagging behind Singapore (US \$ 135.6 million), South Korea (US \$ 130.46 million), Malaysia (US \$ 60.37 million), Thailand (US \$ 33.9 million), Vietnam (US \$ 27.82 million), Philippines (US \$ 19.65 million), and India (US \$ 16.69 million). As shown in the graph as follows:



Graph 1: Intellectual Property Valuation in Asian Countries (Processed Data)

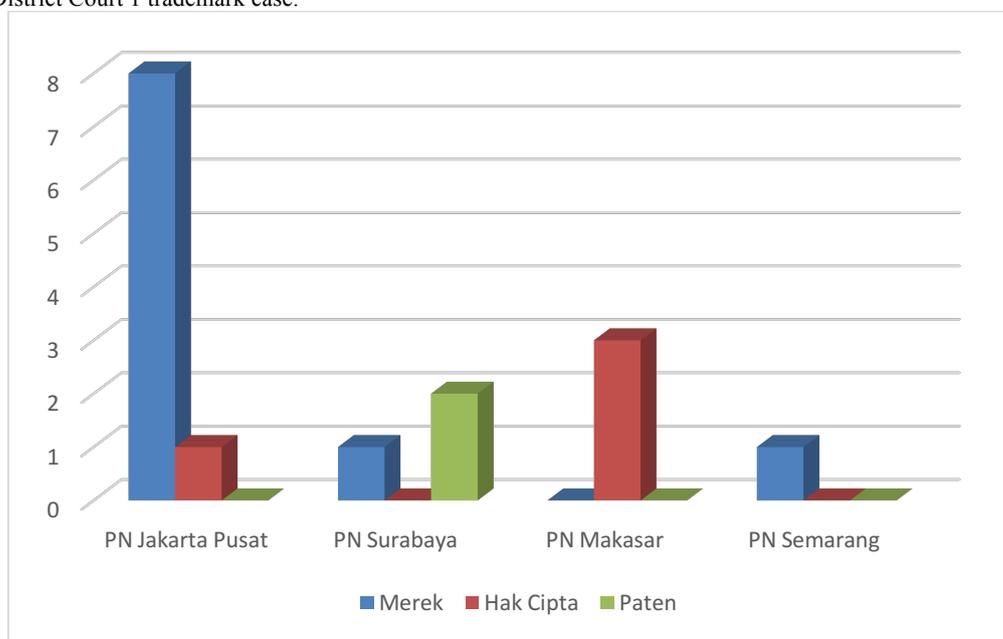
Third, the challenges of trademark law in Indonesia can also be seen in the high trademark disputes. In the period of 2011-2016, law enforcement in the field of intellectual property rights was still dominated by copyright cases and trademark rights cases.

During this period there were 616 cases, 316 copyright cases, 274 cases of trademarks, 16 industrial design cases, 7 case patents and 3 case trade secrets. As shown in the graph as follows:



**Graph 2: IPR Enforcement 2011-2016 (Processed Data)**

Unlike the previous year, at the end of the first quarter of 2018, trademark disputes were the most dominant dispute in civil court proceedings compared to other IPR disputes. The District Courts in Central Jakarta, Makassar, Surabaya and Semarang recorded 10 of the most dominant trademark cases in civil trials. Based on the Case Search Information System (SIPP) from each of the district courts, Central Jakarta holds the most IPR trial in 2018 with 8 cases of trademarks and copyright 1 case. The Surabaya District Court followed 1 trademark case and 2 patents on civil IPR, then the Makassar PN with 3 copyright cases and Semarang PN with 1 trademark case. Meanwhile, trademark cases are also the most common cases in IPR civil rights during 2017, namely 63 cases out of a total of 94 cases which include trademarks, patents and copyrights. The Central Jakarta District Court held the highest number of trademark cases with a total of 57 trials. Followed by, Surabaya District Court with 5 trademark cases, Semarang District Court 1 trademark case.



**Graph 3 Number of IPR Cases in the Central Jakarta District Court, Surabaya District Court, Makassar District Court, and Semarang District Court in 2018 (Processed Data)**

Fourth, the issues and challenges of trademark law in Indonesia were also seen in the research results of the *Global Intellectual Property Center US Chamber of Commerce*, which was released in February 2017, in a report entitled "The Roots of Innovation", an index of Indonesian International intellectual property that was previously ranked 33 of the 38 countries in 2015, dropped to

39 from 45 countries in 2016. Besides, Indonesia's score dropped from 28.6% (value 8.59 from 30 points) in 2015 to 27.5% (score 9, 64 out of 35 points in 2016). Also, the number of trademark disputes and its mal protection is nothing but an indication of the decline of Indonesia's score.

These challenges need to be examined further so that problem can addressed in hope to strengthen the utilization of trademark law in Indonesia. This is because the utilization of trademark law is a necessary pre-requisite in the development of a creative economy. Intellectual property owned by business actors is a major asset in creative economy. The utilization of trademark law is a means of legal protection for a creative economic product produced by small business actors. With the utilization of trademark law, the creativity of economic actors can be protected by their intellectual property optimizing the economic benefits of their creative economic products in order to boost national economy.

## 2. Problems in Utilizing Trademark Laws for Small Entrepreneurs in Indonesia

With regard to those issues related to trademark law utilization for small entrepreneurs in Indonesia, researchers used the theory of law effectiveness proposed by Anthony Allot as an analysis tool.

Anthony Allot mentions three factors that make the law to be ineffective, namely:

1) The substance and formulation are not yet complete and the delivery of the intentions and objectives of the law are not successful.

As stated in Regulation No. 20 of 2016 concerning Trademarks and Geographical Indications, there are several important things that have not been regulated. Some of the most important things include:

a) The absence of a Decree that Regulates the Empowerment of Small Entrepreneurs or Creative Industry Actors in Trademark Registration;

The regulation regarding community empowerment, especially for small entrepreneurs in trademark registration is very important to be regulated in the Trademark Law. This is due to the very low level of awareness of small-scale entrepreneurs to register their trademarks. Therefore, various empowerment efforts which include guidance, socialization, facilitation, monitoring, evaluation and supervision are important to be regulated in the Trademark Law. The existence of these arrangements can serve as a reference or guideline for the government to empower the community to register their trademarks, especially for creative industries that are still developing and have great potential to be developed.

b) There Are No Regulations Regarding the Role of Regional Governments (Provinces and Districts / Cities) in Trademark Registration and Trademark Empowerment of Small-scale Entrepreneurs in Their Development Areas;

Law No. 23 of 2014 concerning Regional Government as last amended by Law No. 9 of 2015 concerning Amendments to Law No. 23 of 2014 affirms that the Regional Government (Province and Regency / City) has a strategic role in the empowerment and development of MSMEs and the development of creative economy through the use and protection of Intellectual Property Rights. But unfortunately, this is also not regulated in the Trademark Law. This condition seems to make the Regional Government lose its role to utilize trademark law. The role that can be carried out by the Regional Government is the empowerment of small entrepreneurs to build a trademark image, register trademarks, protect trademarks, and facilitate the registration of trademarks that have not been carried out.

c) Lack of provisions of governing strategic partnerships between business actors, MSMEs, Cooperatives, Government, *Bekraf*, *Kadin*, Business Actors Association, Creative Communities, Universities / Academics and various related sectors to utilize trademark law;

For small entrepreneurs, the use of trademark law requires an involvement of various parties, between business actors, MSMEs, Cooperatives, Government, *Bekraf*, *Kadin*, Business Actors Association, and Creative Communities, Universities / Academics, large companies and various related sectors. This strategic partnership is important to considering that there are still small entrepreneurs who have trademark certificates.

The low awareness of trademark registration, the high cost of trademark management, the ignorance of business people and other problems intensify the need to develop cross-sectorial strategic partnerships. Therefore, it is important to build a network of partnerships to overcome these problems. However, the strategic partnership network has not been regulated at all in Law No. 20 of 2016 concerning Trademarks and Geographical Indications.

2) There is a conflict between the objectives of the legislator and the nature of the community. Law No. 20 of 2016 concerning Trademarks and Geographical Indications which in full compliance were ratified from the TRIPS Agreement, WTO Agreement and Madrid Protocol did not conform to the values and nature of the Indonesian people which prioritized communal interests over individualistic ones. In substance, the construction of Trademark Law currently contradicts the nature of Indonesian society. Individualist Trademark Laws are contrary to the culture of collectivism owned by the community (social interest).

Trademark Laws should be in conformity with the social values and nature of the Indonesian people that prioritizes local interests as contained in the Fifth *Sila Pancasila* which reads: Social justice for all Indonesian people. The fifth precept is further elaborated in Article 28 H paragraph (2) and Article 33 of the 1945 Constitution of the Republic of Indonesia.

Anthony Allot asserts that laws contrary to social values and the nature of the society greatly influence the functioning of the law. If disputes arise between the objectives of the legislator and the nature of the community, they will not get support from the community. Mahfud MD supports such idea indicating that law must be carried out with due regard to various aspects that affect,

both nationally and internationally. However, the process of formation and regulated substance must be directed and in accordance with the *Pancasila* and the 1945 Constitution of the Republic of Indonesia, in order to produce legal products based on the values derived from the Indonesian society and the needs of the community.

3) Lack of Instruments Supporting Legislative Regulations such as Implementing Regulations, Institutions or Processes Related to the Implementation and Implementation of Trademark Laws.

In Law Number 20 of 2016 concerning Trademarks and Geographical Indications, there are still a number of articles that have no implementing regulations or technical provisions. This has an impact on the underutilization of trademark law.

Some of the Articles in the Trademark Law that have no implementing regulations, including: Article 23 paragraph (8) concerning Trademark Examining experts, Article 32 concerning procedures for requesting, examining and resolving appeals on the Trademark Appeal Commission, Article 45 concerning conditions and procedure for recording License, Article 55 paragraph (2) concerning registration of Geographical Indications, Article 60 concerning the terms and procedures for registering Geographical Indications and appointment of members, organizational structure, duties and functions of the Geographical Indication Expert Team, Article 65 concerning Indication of Origin, Article 71 paragraph (5) concerning the supervision of geographical indications, and Article 91 paragraph (2) concerning the implementation of the cancellation of the commercial court's decision on trademark disputes.

In addition to the absence of implementing regulations, the inefficiency of trademark law is also caused by the absence of supporting infrastructure for trademark laws such as institutions or the ease of processes relating to the implementation and implementation of the law.

Central government admits having no facilities from the Directorate General of Intellectual Property at the Regency / City level to facilitate, to submit applications and process trademark registrations. The trademark registration process that must be submitted to the Directorate General of Intellectual Property in Jakarta is the sole reason proving the lack of trademark law.

Besides, less optimal information technology system in the field of IPR meant to facilitate, submit applications and process trademark registration also poses a threat in utilizing trademark laws. Although in the Minister of Law and Human Rights Regulation Number 67 of 2016 concerning Trademark Registration, it is stated that trademark registration can be done electronically but in reality the submission process cannot be applied widely (online), it is only available through IPR centers.

At the district / city government level, supporting facilities and infrastructure in trademark law utilization also become major obstacles in its usage. Local governments are faced with limited budget problems to empower small-scale business actors. In addition, at the regional government level there is also no center or service unit for IPR empowerment. The availability of state civil servants (ASNs) in regions that understand trademark law is also a serious concern given that its existence is very important needed for consultation and / or help serve the registration of trademarks of small business actors. These various conditions unceasingly make the trademark legal institutions less effective.

In addition, Soerjono Soekamto also highlighted community and cultural factors that influenced the empowerment of law. Factors from the aspect of small business actors also influence the empowerment of trademark law. For small-scale entrepreneurs, their major problems are:

a) Many business actors have difficulty in making or developing their trademark image;

The ability to make and develop a trademark image that is meant here is the technical ability, including graphics to design trademark logos and product profile video, as well as non-technical, such as message design (content) to be conveyed to consumers.

For small entrepreneurs, making and developing a trademark image is a challenge. For big entrepreneurs though, making and developing a trademark image is easy and common thing to do since other than having a modern mindset, large entrepreneurs already have adequate resources, for example with the Strategic Trademark Management (SBM) approach, the existence of a professional marketing and public relations division, and IT-based human resources (HR).

On the other hand, for small business actors, making and developing a trademark image is not something that is usually done or set as an important agenda. Although there are a small number of small entrepreneurs who pay attention to making trademarks and developing their trademark image, these development activities are not carried out strategically and in integrated way like large companies. Limited human resources, costs and time are the main factors inhibiting trademark creation.

b) Sub Contract Pattern in Business Activities;

In carrying out their business activities, the majority of small-scale entrepreneurs use the so-called sub-contract pattern. Sub-contract pattern means when small-scale businesses produce an indirect product sold to other small entrepreneurs or other medium-sized entrepreneurs to be resold to consumers in the market. In this pattern, small entrepreneurs only produce goods but do not make trademarks, instead second entrepreneurs make them and who in turn takes the goods and sells them to consumers. In practice, this pattern is known as the sub-contract pattern that is mostly applied by micro and small entrepreneurs.

c) Business Stability;

The stability of the business or the inconsistency of the business encourages small entrepreneurs to register their trademarks. Many small business people have run their businesses for less than five years and seem less reluctant to register their trademarks. Sometimes a businessman relies on market survey; if his business is not successful, he will not consider to register a trademark.

#### d) High Cost of Trademark Registration Fees

The Government Regulation Number 45 of 2016 concerning the Second Amendment to Government Regulation Number 45 of 2014 concerning Types and Rates of Types of Non-Tax State Revenues Applicable to the Ministry of Law and Human Rights is a guideline for imposing tariffs for registration of Marks. From the PP attachment, trademark registration for micro and small businesses is IDR 500,000 when registering electronically and IDR 600,000 when registering manually.

However, other than the mandatory registration fee, other costs that must be incurred by small entrepreneurs. In PP No. 45 of 2016 there is a general listing fee in the register of trademarks amounting to Rp. 300,000, - the application fee for official excise of trademark registration is Rp. 200,000, the cost of a written statement regarding the classification of goods and or services is Rp. the cost of a written statement regarding goods and or services amounting to Rp 200,000. That is, for new applicants to register the trademark, the total cost they have to spend is Rp1, 500, 000. If there is an appeal in the process of submission, then small entrepreneurs are charged Rp. 3,000,000 - without seeing it as UKM or public. In addition, for trademark applications that have been approved before the validity period expires, small entrepreneurs apply for a trademark extension. Trademark extension costs for micro and small businesses if done electronically amounting to Rp1,500,000 and manually amounting to Rp1,800,000, - the cost of public extension of the trademark if carried out electronically which costs Rp3,000,000 and for manual process costs Rp4. 000,000, -.

Sometimes, in practice businessmen also allocate non-compulsory expenses, such as the costs of IPR consultants that must be issued by a trademark registrar. Unlike mandatory fees, there is no exact amount for the fee because it depends on the circumstances of each trademark registrar.

However, sometimes these non-compulsory fees exceed the mandatory fees stipulated in PP No. 45 of 2016. For example, the normal fees for consulting and making registration applications imposed by an IPR consultant range from Rp. 4,000,000 to Rp. 10,000,000. . Although there is no obligation to use the services of an IPR consultant, a trademark registrar who is not experienced and lacks information will experience difficulties. In addition, the use of IPR consultant services prevents further legal problems.

Soejono Seokanto also added that cultural factors also influence the efficiency of the law. There are still some business actors who mistakenly perceive existing cultural philosophical values. This condition certainly can inhibit the utilization of trademark law. Some of them are "*Legowo*", "*Ngeten Mawon also Urip*", "*Urip Urup*", "*Narimo Ing Pandum*" and so on.

For instance, "*Nrimo Ing Pandum*" mindset is found within the philosophy of Javanese cultural values. Referring to various references, "*Nrimo Ing Pandum*" means to accept by giving. In a broader study it means sincerity for what we receive in life or "*Legowo*" in dealing with every twist in life, to be always grateful. Do not expect what is not his right. Sincere and generous based on his ability.

However, in today's society's development the principle of "*Nrimo Ing Pandum*" is often interpreted practically by the community as surrendering to problems that occur in life, not making any effort to produce the best solution to a problem and having a tendency not to develop business that has been done. If this perception continues to exist, other than the capacity to inhibit innovation, it can also avoid the use of law in the community.

In the context of utilizing trademark law, a business actor who mistakenly perceives the principle of "*Nrimo Ing Pandum*" assumes trademark registration is not important. This is because without registering a trademark they have already received the expected benefits and are grateful for what they have obtained without considering to register their trademark. For "*ngeten mawon also urip*" (this is how it should be) small business actors are reluctant to register their trademark.

Besides, Indonesian consumer culture also tends to prioritize cheap and quality prices and good service compared to goods trademarks. Consumer culture in traditional markets tends to consider 5 important things, namely (1) low prices, (2) quality goods, (3) good services, (4) recommendations from trustees, (5) colors and models. As long as it is done in such way, consumers will be loyal and continue to be so. Among those five things, the most dominant one is low price. Many consumers run somewhere due price problems caused by touc compete. These various conditions make small business players incentive to provide competitive prices to attract consumers' attention rather than having to manage and register their trademarks.

## VI. Conclusions

Based on the results of the discussion above, conclusions can be drawn as follows:

1) Trademark law in Indonesia faces various challenges indicating that there are still various problems in utilizing trademark law for small entrepreneurs. These challenges appear in various aspects including: (a) low creative MSMEs that have IPRs; (b) low value of commercialization or valuation of utilization of Indonesian intellectual property; (c) too many disputes over trademarks in Indonesia; (d) decline in the Indonesian International intellectual property index score.

2) Lots problems cause trademark law utilization for small entrepreneurs to be less optimal. These problems can be seen from different aspects, namely: (a) the substance of Law No. 20 of 2016 concerning Trademarks and Geographical Indications; (b) conflict between the Trademark Law and the local communal values of the Indonesian people; (c) supporting infrastructure; (d) the condition of small entrepreneurs; and (e) less supportive culture of the community.

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