



Micro, small, and medium enterprises trademarks and legal certainty in Indonesia: A law and development approach

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Abstract

Micro, Small, and Medium Enterprises (MSMEs) represent a significant driver of Indonesia's economic development. However, many MSMEs face legal uncertainty in protecting their intellectual property rights, particularly in the field of trademarks. This article examines the Indonesian government's role in providing legal certainty for MSME trademarks through the lens of the Law and Development theory. It analyses the existing legal frameworks, institutional mechanisms, and policy implementations aimed at facilitating trademark registration and protection for MSMEs. Employing a normative-juridical approach supported by empirical observations, the study reveals a persistent gap between regulatory intentions and practical outcomes, largely due to limited legal literacy, bureaucratic barriers, and lack of access to legal assistance. The findings suggest that a more inclusive and development-oriented legal infrastructure is essential to ensure equitable access to trademark protection. By integrating legal reform with capacity-building initiatives, the state can enhance legal certainty and foster innovation and competitiveness among Indonesian MSMEs.

Keywords: MSMEs, trademarks, law, and development

Introduction

MSMEs contribute to over 60% of Indonesia's Gross Domestic Product (GDP) and absorb a significant portion of the labor force. In the context of global competition and digitalization, trademark protection is increasingly vital as part of branding strategies, product differentiation, and defense against infringement. Unfortunately, most MSMEs still lack awareness of the importance of trademark registration, and those who do register often face legal and administrative obstacles. This article discusses the legal certainty issues of MSME trademarks and their relevance to the Law and Development theory, which emphasizes the role of law as a driver of development.

In contemporary society, brands have evolved into lifestyle symbols, often influencing personal identity and social perception. The use of well-known brands is not merely functional but is increasingly associated with enhanced self-confidence and perceived social status. This phenomenon contributes to the emergence of a consumer culture in which brand preference reflects one's position within the social hierarchy. However, for lower-income groups with limited purchasing power, access to premium or high-end branded goods remains out of reach. This disparity has created a market opportunity for counterfeit goods producers, who exploit consumer demand by offering imitation products at more affordable prices. As a result, individuals with constrained economic means often resort to purchasing counterfeit branded items as a substitute for the original.

MSMEs, as the backbone of economic growth, contribute 60.5% to Indonesia's Gross Domestic Product (GDP) and account for 96.9% of total employment absorption. However, only 33.74% of Creative Economy Enterprises, including MSMEs have registered trademarks. A brand supported by advertising media enables entrepreneurs to stimulate consumer demand while also fostering customer loyalty toward their goods and/or services. This makes a trademark a source of competitive advantage and proprietary strength in competing within the global market.

Trademark registration for Micro, Small, and Medium Enterprises (MSMEs) is essential to provide legal certainty over the products they produce. With such legal certainty, MSME products are better protected from unfair business practices and unhealthy competition.

Methodology

This study adopts a normative legal research design, employing a qualitative approach as its principal strategy. The research aims to collect and analyse all relevant information related to the core legal issues in order to construct a systematic, factual, and accurate understanding of the legal facts, characteristics, and interrelationships between observed phenomena. This method allows for an in-depth exploration of the legal norms, doctrines, and principles that govern trademark protection for MSMEs in Indonesia, particularly through the lens of the Law and Development framework.

Material

1. Micro, Small, and Medium Enterprises

Micro, Small, and Medium Enterprises (MSMEs) are the backbone of Indonesia's economy, playing a crucial role in job creation, income generation, and equitable development across regions. According to data from the Ministry of Cooperatives and Small and Medium Enterprises (Kementerian Koperasi dan UKM), Indonesia had approximately 64.2 million MSMEs as of 2023, accounting for 99.9% of all business actors and contributing to over 60% of the national Gross Domestic Product (GDP). MSMEs in Indonesia are legally defined under Law No. 20 of 2008 on Micro, Small, and Medium Enterprises, which classifies enterprises based on their annual turnover and assets, as follows

Table 1: Micro, Small, and Medium Enterprises, which classifies enterprises

Category	Annual Sales Turnover	Assets
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Micro	Up to IDR 300 million	Up to IDR 50 million
Small	IDR 300 million – 2.5 billion	IDR 50 million – 500 million
Medium	IDR 2.5 billion – 50 billion	IDR 500 million – 10 billion

Note: These figures are subject to revision based on government regulations.

MSMEs absorb approximately 97% of the national workforce, especially in rural and semi-urban areas. Many MSMEs operate in the creative economy, agriculture, culinary, and digital sectors, contributing to innovation and local identity. MSMEs have shown resilience during economic crises, including the COVID-19 pandemic, by maintaining local supply chains and informal employment. Despite their significant role, MSMEs face several constraints, many MSMEs lack collateral and credit history, limiting their access to formal loans, few MSMEs register their intellectual property (e.g., trademarks), leaving them vulnerable to unfair competition, many MSMEs have not embraced digital platforms, affecting their competitiveness, and bureaucratic procedures, especially in licensing and registration, can be complex and costly.

To support MSME growth, the Indonesian government has implemented various policies about simplifying trademark registration through fee subsidies and legal assistance., initiatives like *UMKM Go Digital* encourage MSMEs to enter e-commerce platforms, gives Programs like KUR (Kredit Usaha Rakyat) offer low-interest loans for MSMEs, also Laws such as Law No. 20/2008 and Law No. 11/2020 on Job Creation aim to reduce legal and administrative burdens for MSMEs.

2. Law and Development

Law and Development is a theoretical and practical framework that views law not only as a mechanism of control or order, but also as a tool for promoting economic growth, social justice, and institutional reform. In the Indonesian context, this concept has become increasingly relevant as the nation seeks to strengthen legal institutions while achieving inclusive and sustainable development. The Law and Development movement originated in the 1960s and 1970s, particularly in post-colonial and developing countries. Scholars such as David Trubek, Roberto Unger, and Robert M. Sherwood argued that for development to be effective, it must be accompanied by the creation and reform of legal frameworks that support economic modernization, investment, entrepreneurship, and social equity. In Indonesia, Law and Development reflects the idea that a responsive, accessible, and just legal system is essential for addressing structural poverty, inequality, and governance challenges.

After independence, Indonesia's legal development was largely influenced by the Dutch colonial legal system, which was less oriented toward inclusivity or equity. However, during the New Order era (1966-1998) under President Soeharto, law began to be instrumentalized to support state-led economic growth, although it often lacked transparency and participatory accountability. With the Reformasi (Reform Era) starting in 1998, a new chapter began, focusing on

- a. Strengthening rule of law
- b. Promoting human rights
- c. Encouraging decentralization and access to justice.

Law began to be seen not only as a top-down control mechanism, but also as a means of empowering marginalized groups, including Micro, Small, and Medium Enterprises (MSMEs), indigenous communities, and women. Key Principles of Law and Development in Indonesia

- a. **Legal Reform for Economic Inclusion:** Reforms aim to reduce regulatory barriers that prevent MSMEs from formalizing, accessing finance, and protecting their intellectual property.
- b. **Access to Justice:** Through legal aid programs (e.g., *Bantuan Hukum Gratis*), the government provides legal services to low-income citizens and small businesses.
- c. **Good Governance and Anti-Corruption:** The establishment of institutions like the Corruption Eradication Commission (KPK) is a major pillar of legal development.
- d. **Decentralization of Law:** After the enactment of the Regional Autonomy Law (UU No. 22/1999), subnational governments gained more authority in legal and administrative matters, allowing localized legal development.

The Indonesian government's support for MSMEs through legal instruments reflects Law and Development principles:

- a. Trademark registration programs facilitated by the Ministry of Law and Human Rights aim to legally empower MSMEs to protect their brands and compete in the global market.
- b. Legal simplification through Law No. 11 of 2020 on Job Creation (Omnibus Law) seeks to reduce red tape for small businesses.
- c. Collaborations with international agencies (e.g., UNDP, World Bank) promote capacity-building for legal infrastructure in marginalized regions.

Challenges in Implementing Law and Development are the coexistence of national law, adat (customary law), and religious norms can create conflict and uncertainty in legal implementation, rural and low-income populations still face barriers in accessing legal institutions and protections, and institutional inertia and corruption can hinder reform.

In Indonesia, Law and Development is not merely a theoretical aspiration but a practical necessity. A well-functioning legal system that is fair, inclusive, and development-oriented is key to addressing economic disparity, empowering MSMEs, and strengthening democratic governance. While progress has been made particularly in expanding access to justice and legal reform for small enterprises continued efforts are needed to ensure that the law genuinely serves as an engine for national development. The concept of Law and Development in Indonesia emphasizes that law is not merely a tool of state control, but a strategic instrument for advancing economic growth, social justice, and institutional reform, particularly through inclusive legal access and regulatory support for marginalized groups such as Micro, Small, and Medium Enterprises (MSMEs)^[1].

Theory sees law as a primary tool to promote social and economic development. In the MSME context, legal

certainty over trademarks is not only about protecting intellectual property rights, but also about facilitating market access, financing, and long-term business development. Responsive and inclusive legal frameworks are essential to ensure sustainability of MSMEs as key development actors ^[1].

3. Legal Framework of Trademark Protection in Indonesia

The protection of trademarks in Indonesia is primarily governed by Law No. 20 of 2016 on Trademarks and Geographical Indications (hereinafter "Trademark Law"). This law provides the legal basis for the registration, protection, enforcement, and dispute resolution concerning trademarks and geographical indications. It replaced the previous Law No. 15 of 2001, aiming to modernize Indonesia's intellectual property regime in line with global standards such as the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) under the WTO framework ^[2].

According to Article 1 paragraph (1) of Law No. 20/2016, a trademark is defined as "a sign capable of being represented graphically in the form of a picture, logo, name, word, letter, number, color composition, in two or three-dimensional form, sound, hologram, or a combination of two or more of these elements, to distinguish goods and/or services produced by a person or legal entity in the trading of goods and/or services ^[3]. The Directorate General of Intellectual Property (DGIP) under the Ministry of Law and Human Rights is the central authority responsible for handling trademark applications, examinations, publications, oppositions, and issuance of certificates.

Key provisions include:

- a. Article 3-20:** Registration procedures, examination, publication, and objection mechanisms.
- b. Article 35:** Duration of protection (10 years, renewable).
- c. Article 83:** Legal remedies for trademark infringement, including civil and criminal sanctions.

Indonesia is also a signatory to the Madrid Protocol (since 2018), which allows Indonesian trademark holders to register their marks internationally through a single application process managed by WIPO (World Intellectual Property Organization).

Despite this legal infrastructure, many MSMEs in Indonesia still do not register their trademarks due to low awareness, financial constraints, and bureaucratic complexity, highlighting the need for policy reform and greater accessibility to legal services.

Trademark protection in Indonesia is governed by Law No. 20 of 2016 on Trademarks and Geographical Indications. While the normative framework accommodates protection for all businesses, its implementation often does not favor MSMEs due to complicated procedures and relatively high costs, limited access to information and legal services; legal literacy gaps between large enterprises and MSMEs ^[4].

Analysis and Result

Trademark registration for MSME products in Indonesia is governed by Law No. 20 of 2016 on Trademarks and Geographical Indications (Trademark Law). Under this law,

any party wishing to protect a trademark must follow the registration procedures established by the Directorate General of Intellectual Property (DGIP) under the Ministry of Law and Human Rights. The position of a trademark certificate for MSMEs is considered crucial, as it serves as the only official and legal proof of registered trademark ownership. This aligns with Robert M. Sherwood's Risk Theory, which states that intellectual property is inherently vulnerable to risk, particularly when others use it before it is legally protected. Therefore, legal protection becomes essential once a trademark is registered, ensuring that MSMEs have a clear legal basis for ownership and enforcement of their rights ^[5]. The trademark certificate subsequently issued serves as concrete evidence that the trademark is under legal protection.

In the context of legal protection, Satjipto Rahardjo, explains that the law functions to safeguard individual interests by granting human rights as legal power exercised on behalf of those interests ^[6]. Accordingly, MSMEs with registered trademarks hold the right to authorize or prohibit third-party use of their mark. This is further strengthened by the provision of exclusive rights as stipulated in Article 1 paragraph (5) of Law No. 20 of 2016 on Trademarks and Geographical Indications, which grants such rights solely to the registered trademark holder ^[7].

Thus, trademark registration provides essential legal protection, and the trademark certificate becomes vital evidence of ownership for MSMEs operating in both domestic and global markets. The large number of MSME actors in Indonesia, based on existing data, has undoubtedly made a significant contribution to the national economy. Therefore, it is highly appropriate that MSME actors be facilitated with legal protection, particularly concerning intellectual property in the form of trademarks. In accordance with Satjipto Rahardjo's theory of legal protection, such protection is intended to safeguard human rights and ensure that the rights granted by law are felt and experienced by society.

As of the latest data, only 38,395 MSMEs have registered their trademarks far below half of the total 64.2 million MSME actors nationwide. This gap is largely due to poor trademark management, despite the fact that MSME products have strong potential to expand both in the domestic and international markets. Limited business capital and low awareness of the importance of trademarks have created the need for relevant institutions to provide support mechanisms for protecting MSME trademarks. Legal protection for trademarks is increasingly urgent given the intensifying competition, especially as MSMEs begin to target international markets and as foreign products enter the Indonesian market. Therefore, upgrading trademark protection for MSMEs is essential to ensure their products are better safeguarded and more competitive in an increasingly tight marketplace.

Implementation Challenges and Government's Role Key challenges in trademark protection for MSMEs include lack of education and outreach on trademark importance, low MSME participation in facilitation programs offered by the Ministry of Law and Human Rights, weak synergy between central and local government institutions. The government's role should extend beyond regulation to include:

1. Simplifying registration procedures and lowering costs;
2. Providing affordable or free legal consultation services;
3. Strengthening the capacity of legal officers and MSME facilitators at the local level ^[3].

Reform Strategies, a Law and Development Approach Based on the Law and Development approach, trademark protection reforms for MSMEs should focus on harmonizing national regulations with local policies, developing adaptive legal infrastructure based on MSME needs, ensuring participatory approaches in legal policy formulation and implementation, integrating legal protection programs into the national MSME development roadmap ^[4].

The implementation of trademark registration regulations for MSMEs (Micro, Small, and Medium Enterprises) in Indonesia aims to provide legal protection for trademarks owned by MSME actors. By registering their trademarks, MSMEs can protect their business identity and prevent the use of similar or imitated trademarks by other parties. Trademark registration can also increase consumer trust, strengthen business image, and open opportunities for further business development. Legal protection of trademarks is essentially aimed at preventing unfair competition by prohibiting others from infringing on trademarks, such as through the unauthorized use or imitation of someone else's trademark. Given the characteristics of MSMEs, which face various limitations, they are particularly vulnerable to acts of unfair competition from larger businesses with greater financial resources and better understanding of intellectual property rights. In the context of trademark registration, the implementation of a constitutive system equally applied to all business actors—both weaker ones (MSMEs) and stronger ones is considered unfair, as it imposes the same requirements, procedures, and registration fees across the board. Complex requirements and procedures, along with high registration costs, pose significant barriers for MSMEs in registering their trademarks. The economically and informationally disadvantaged position of MSMEs regarding trademarks puts them at a disadvantage compared to business actors who possess both financial power and intellectual property knowledge.

In Plato's view, the ideal state is one that maintains a balance between individual and collective interests. The state is responsible for creating a just economic structure in which everyone has an equal opportunity to grow. Through the regulation of trademark registration, the state assists MSMEs in developing by providing legal protection for their identity. With this protection, MSMEs can be more confident in innovating and competing in the market. Plato's ideal economic order is not one that merely prioritizes a free market without control, but rather a market governed by principles of justice. Trademark registration for MSMEs helps create a more transparent and fair market, where products produced by small and medium enterprises can compete in a healthy manner. Plato's legal theory also emphasizes the importance of law as an instrument of education. Law does not only function as a tool of control but also serves to teach moral and ethical values to society. In the context of trademark registration, MSME entrepreneurs are taught to respect intellectual property and uphold the integrity of their products. Trademark registration also fosters awareness among business actors about the importance of complying with existing regulations.

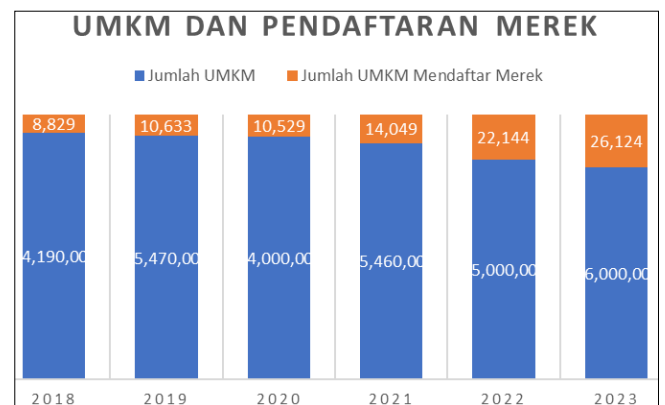
Based on data tracking, it is known that in 2018, the number of MSMEs reached 64.19 million business actors. This figure then grew by 1.98% to 65.47 million in 2019. In 2020, the number declined by 2.24% to 64 million, but then

rebounded with resilient growth of 2.28% in 2021, reaching 65.46 million. However, in 2022 the number decreased again by 0.7% to 65 million, and by the end of 2023 it recorded 66 million, or an increase of 0.7%. The large number of MSMEs in Indonesia contrasts sharply with the number of MSMEs that have registered their trademarks. Based on data obtained by the author from the Directorate General of Intellectual Property, Ministry of Law and Human Rights, it is noted that since 2018, the number of MSME trademark applicants has continued to increase. However, this growth is not proportional to the total number of existing MSMEs.

Table 2: Comparison Between the Number of MSMEs and Trademark Registrations

Year	Number of MSMEs	Number of MSMEs Registering Trademarks
2018	64.190.000	8.829
2019	65.470.000	10.633
2020	64.000.000	10.529
2021	65.460.000	14.049
2022	65.000.000	22.144
2023	66.000.000	26.124

Source: Data processed from databoks.katadata.co.id and data from the Directorate General of Intellectual Property (DGIP), Ministry of Law and Human Rights, dated December 20, 2024.



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Conclusion and Recommendations

Legal certainty over trademarks is crucial in strengthening MSMEs' market position. The government should develop progressive and justice-oriented policies, positioning MSMEs as active agents in legal development processes. Policy recommendations include simplifying legal bureaucracy, digitalizing trademark registration systems, enhancing institutional coordination, and expanding legal assistance services to remote areas. Besides that, the reconstruction of trademark regulations for Micro, Small, and Medium Enterprises (MSMEs) to enhance economic growth is an effort to improve and strengthen the trademark management system owned by MSMEs, making it more effective, efficient, and impactful on their business development. This is particularly crucial, as a strong brand can serve as an effective tool for differentiation in a competitive market. Several aspects must be considered in reconstructing trademark regulations for MSMEs. These include simplifying the trademark registration process, improving access to information and education, ensuring government support for trademark protection, enhancing

product quality and brand consistency, encouraging collaboration and the use of technology, and enforcing regulations that promote local brand presence in global markets.

Reconstructing trademark regulations for MSMEs is a vital step toward fostering economic growth. By providing support through streamlined registration procedures, education on the importance of branding, stronger legal protection, and the integration of technology, MSMEs will have greater opportunities to grow and compete in both domestic and global markets.

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