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TRADEMARK LEGAL PROTECTION IN THE HALAL CERTIFICATION PROGRAM FOR MSMES

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Abstract

The halal certification program has become important for Micro, Small, and Medium Enterprises (MSMEs) who want to market their halal products widely. However, in the context of trademark legal protection, MSMEs often face challenges in ensuring that their trademarks are properly protected in halal certification programs. This study aims to analyze the mechanism of trademark legal protection for MSMEs involved in halal certification programs. The research method used is literature study and policy analysis related to trademark legal protection and the implementation of halal certification programs for MSMEs. The results of the study show that cooperation between halal certification bodies and trademark protection agencies is very important to ensure that the trademark rights of MSMEs are effectively protected. The conclusion of this study is the importance of a better understanding of trademark legal protection for MSMEs involved in halal certification programs. Recommendations for relevant parties include increased cooperation between halal certification bodies and trademark protection agencies, as well as increased legal awareness for MSMEs on the importance of protecting their trademarks in the context of halal certification programs.

Keywords: Legal Protection, MSMEs, Halal Certification

INTRODUCTION

Background

The legality aspect as a form of business protection, such as Intellectual Property Rights (IPR) as stipulated in Law Number 7 of 1994 which ratified the World Trade Organization, shows the government's commitment to supporting a free, competitive, and open economy. It also encourages Micro, Small and Medium Enterprises (MSMEs) in Indonesia to increase their competitiveness. The implementation of IPR can stimulate economic growth, especially in the MSME sector. In addition to IPR, the government also supports the development of MSMEs through Government Regulation Number 7 of 2021 which focuses on fostering, protecting, and empowering MSME cooperatives. However, to protect their intellectual property rights, MSME stakeholders need to understand the protections available in order to avoid losses if their intellectual property rights are misused by other parties.

Government support is also reflected in the ease of managing business legality through Halal certification which is simplified with the Self Declare process. RI Law Number 33 of 2014 emphasizes that halal products are products that meet the requirements in accordance with Islamic law, and halal certification is required for all business actors in Indonesia. However, many MSMEs have not realized the importance of implementing IPR in their business or have not obtained halal certification. This certification obligation is sometimes a burden for MSMEs because of the cost, although Article 44 of the UUJPH provides leeway that the cost of halal certification can be facilitated by the local government or other legitimate parties. However, the implementation of this facilitation still requires clearer legal certainty. In this context, local government support is very important because it is related to their authority in empowering MSMEs, in accordance with the provisions of Law Number 23 of 2014 concerning Regional Government.

Based on this background, this study will examine two main problems. First, an analysis of the legal protection of trademarks in the context of the halal certification program for MSMEs. Second, exploring the role of local governments in providing legal protection to MSMEs through the facilitation of halal certification for food products.

RESEARCH OBJECTIVES

The purpose of this study is to explore two main things. First, to understand how legal protection for trademarks is applied in the halal certification program for MSMEs. Second, to analyze the implementation of the facilitation of halal certification of food products for MSMEs, as well as to describe the role of local governments in providing legal protection to MSMEs through this facilitation.

METHODS

The research method used in this study is a literature study. Literature study research involves collecting data from various literature sources, reading, recording, and managing data objectively, systematically, analytically, and critically. The main focus of the research is to analyze policies related to trademark legal protection and the implementation of halal certification programs for MSMEs.

RESULTS AND DISCUSSION

Content of Results and Discussion

The 1945 Constitution in paragraph IV states that the State of Indonesia is responsible for protecting the entire nation of Indonesia and all of Indonesia's bloodshed. Therefore, the existence of the Halal Product Guarantee Law represents the state's commitment, especially to Muslims, to ensure protection and provide a sense of calm and security in consuming or using food products in accordance with Islamic law, namely halal and thoyib. The Halal Certificate issued by the Indonesia Ulema Council (MUI) for every food and beverage product sold to the public has become a guarantee that gives confidence to the public without causing suspicion or doubt about its content. Halal certification is very important to eliminate public doubts about the possibility of non-halal raw materials, additives, or auxiliary ingredients in the products marketed.

A halal certificate is a document issued by the Indonesia Ulema Council (MUI), both central and provincial, which states that a food, beverage, medicine, or cosmetic product is produced in accordance with halal principles after going through research and assessment by the Institute for the Assessment of Food, Drugs, and Cosmetics (LPPOM) MUI. For Muslim consumers, halal certificates have several important functions. First, protect them from consuming non-halal products. Second, it provides peace of mind and mind. Third, maintaining spiritual honor from the consequences of consuming haram products. Fourth, providing legal certainty and protection. For producers, halal certificates also have a strategic role. First, as a moral responsibility to Muslim consumers because halal principles are an integral part of their lives. Second, increasing consumer trust and satisfaction. Third, improve the company's image and increase competitiveness. Fourth, it is used as a marketing tool and to expand the distribution network. Fifth, increase competitiveness and sales, as well as be economically profitable by increasing production turnover.

At first, there was a dualism between the MUI Halal Certificate and the Halal Label issued by the Directorate General of Drug and Food Control of the Ministry of Health. This problem was successfully resolved by the signing of a Cooperation Charter between the Ministry of Health, the Ministry of Religious Affairs, and the Indonesia Ulema Council on June 21, 1996. Although halal certificates and halal labeling are two different activities, they are interrelated. A halal certificate is issued after the product qualifies as a halal product, and the certification process is carried out by an institution that has the authority to implement it. The main purpose of halal certification is to provide legal recognition that the product meets halal standards. Meanwhile, halal labeling refers to the writing or statement of "halal" on the packaging of a product to indicate its halal status to consumers.

In 2014, Law Number 33 of 2014 concerning Halal Product Assurance was issued by the government, which stipulates that the Ministry of Religion has the authority to issue halal certificates. However, this law is not intended to interfere in religious affairs. The halal fatwa remains the authority of the Indonesia Ulema Council (MUI). The administration of the issuance of halal certificates was then transferred to the Halal Product Assurance Agency (BPJPH). Even though BPJPH operates, the role of MUI is still strategic because it provides a fatwa on the halalness of products which is the basis for BPJPH to issue halal certificates. The halal certificate issued by the MUI is valid until the validity period expires. The synergy and cooperation between BPJPH and MUI include Sharia Auditor Certification, Halal Product Determination, and Halal Inspection Agency (LPH) Accreditation.

Halal labels issued by the Halal Product Assurance Agency for food products are protected by Intellectual Property Rights, especially based on Law Number 28 of 2014 concerning Copyright and Law Number 20 of 2016 concerning Trademarks and Geographical Indications. This protection aims to prevent unauthorized use or imitation of halal labels, thereby maintaining the authenticity and integrity of product halal information. The law on trademarks makes it clear that trademarks can be in various graphic forms such as images, logos, words, letters, numbers, color arrangements, sounds, holograms, or a combination of these elements. Trademarks serve as a tool to differentiate goods and/or services from different manufacturers or service providers in trading activities.

Brand certification is important to protect brand ownership rights from piracy practices or unauthorized claims by other parties. Trademark registration is regulated by the Ministry of Law and Human Rights, which is responsible for the protection of intellectual property in Indonesia. The functions of trademark certification include as proof of validity for the brand owner, a basis for refusing the registration of similar trademarks, and a basis for prohibiting

the use of the same trademark in the trade of similar goods/services. This protection not only has an impact on brand safety and authenticity, but also contributes significantly to maintaining the country's economic stability by preventing losses from piracy activities that can harm producers, reducing state revenue from taxes, as well as affecting capital flows and unemployment rates.

Halal labels issued by the Halal Product Assurance Agency for food products are protected by Intellectual Property Rights, which are regulated by Law Number 28 of 2014 concerning Copyright and Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Although copyright protection usually applies to works that have distinctive characteristics in the fields of science, literature, or art, this indicates that this protection can also be applied to halal labels as a special mark that signifies the authenticity of the product in a commercial context. Trademark laws define a trademark as a sign that can be displayed graphically, such as an image, logo, name, word, letter, number, color arrangement, sound, hologram, or a combination of those elements. Trademarks are used to distinguish goods and/or services produced by individuals or legal entities in trading activities.

The trademark certification process is an important step to protect brand ownership from piracy practices or unauthorized claims by other parties. The Government of Indonesia, through the Ministry of Law and Human Rights, provides trademark registration and legalization facilities under the supervision of the Directorate General of Intellectual Property. Trademark certification serves as proof of validity for the owner of the brand that registered it, a basis for rejecting the registration of a similar trademark by another party, as well as a basis for prohibiting the use of the same mark in the trade of similar goods and/or services. This protection is not only important to safeguard the intellectual property rights of individuals or legal entities, but also to avoid consumer confusion as well as protect manufacturers from misleading associations regarding the source of products. Brand protection provided by the government has a very important role in maintaining economic stability, especially for industries and MSMEs. Products from industries or MSMEs are susceptible to piracy practices, where irresponsible parties can produce products that are similar or even identical to the original product but at a lower price. The impact of this brand piracy includes the elimination of potential state revenue from taxes as well as capital flight abroad, which can ultimately have an impact on the unemployment rate at home.

With Intellectual Property Rights (IPR), MSMEs are motivated to innovate and improve the quality of their products. Brand protection not only serves as a tool to differentiate products from competitors, but also as a guarantor of product and business reputation, as well as an effective promotional medium. The Government of Indonesia provides facilities for MSMEs to register their brands at an affordable cost, which is IDR 500,000. The halal certification program is also important for MSMEs in the culinary sector, as it guarantees that their products are halal and acceptable to Muslim consumers. The government supports this program through self-declaration and Halal Product Companions (PPH) initiatives spread throughout Indonesia, with a target of reaching 10,000,000 halal certifications by 2024.

However, the limitations in the capacity of MSME human resources in accessing various government facilities are often an obstacle. Therefore, systematic business assistance from the Regional Government is urgently needed to help MSMEs in taking advantage of various government support, including in terms of IPR and product legality. Local governments have an important role in the implementation of halal products, which is regulated in Law Number 33 of 2014. Although the Halal Product Assurance Agency (BPJPH) is present at the regional level, its implementation has not been entirely optimal and requires further

attention. The role and responsibility of local governments includes supervising halal food products in the community, which is carried out through the local BPJPH.

CONCLUSION

From the text, several main points related to halal certification and brand protection in Indonesia can be concluded:

1. **The Importance of Halal Certification:** Halal certification is the commitment of the Indonesia state to protect Muslim consumers from non-halal products, as well as provide confidence and peace of mind in consuming products in accordance with Islamic law.
2. **The Role of the Indonesia Ulema Council (MUI):** MUI has a strategic role in providing halal product fatwas, which is the basis for BPJPH to issue halal certificates.
3. **Protection of Intellectual Property Rights (IPR):** Halal labels issued are also protected by IPR, including in the context of trademarks. This is important to prevent copycat or piracy practices that can harm producers and confuse consumers.
4. **Regulation and Implementation:** Laws governing halal products and IPR have been created to ensure better compliance and protection. However, its implementation at the regional level still requires further attention to ensure its effectiveness.
5. **Economic Impact:** Brand protection and halal certification are not only about religious compliance, but also have an impact on the country's economic stability by promoting consumer trust, increasing product competitiveness, and supporting MSMEs.

Thus, the efforts of the government and related institutions in regulating halal certification and brand protection not only have an impact on the religious aspect, but also make a significant contribution to the economic aspect and consumer trust in Indonesia.

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