

## The Protection Of Brand Rights For The Knitting Manufacturer Industry In The Pandemic Era Of Covid-19 Case Study In Kampung Rajut Binong Jati Bandung Raya

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**Abstract:** The Protection of Brand Rights has a strategic role in increasing healthy business competitiveness, as well as in the era of the Covid-19 pandemic. Now, Protection of Mark rights is carried out through registration and recording in accordance with the mandate of Law No.16 of 2016 concerning Marks and Geographical Indications. However, this regulation is still not optimal in encouraging the knitting craftsmen of Kampung Rajut Binong Jati Bandung Raya to register their trademark rights for their knitting products. This study aims to determine how the implementation of brand protection for the knitting craftsmen industry in the Covid-19 pandemic era in the Binong Jati village of Bandung Raya. This study uses a normative juridical method. The descriptive research specification of quantitative analysis, by using purposive sampling technique, obtained 12 knitting craftsmen of the knitting village of Binong Jati, Bandung Raya. Data collection techniques using literature study and questionnaires. The results showed that the implementation of Mark protection has not been optimal, it is evident that there are still craftsmen who do not have a Trademark Rights certificate and are registered. There are obstacles to carrying out the registration of trademark rights, including the incomplete understanding of knitting craftsmen in addition to high costs and complicated procedures. This resulted in the low utilization of the Brand License as a potential craftsman through a partnership agreement in the Covid-19 Pandemic era. It is necessary to optimize the socialization related to the meaning and benefits of registration and registration of Mark rights.

**Keywords:** Protection of Brand Rights, Knitting Craft Industry, Covid-19 Pandemic Era.

### 1. Introduction

The knitted fabric center in Kampung Binong Jati Bandung contributes to the growth center of Indonesian fashion and the fashion industry in the City of Flowers. Almost all residents of the village work as knitters. Kampung Rajut is one of the tourist villages that has been widely known by the community since the 1960s (Rian Andriani, 2018). The knitting industry in Binong teak was founded in the mid-1960s, starting with 5 craftsmen who started a business with a maklun system from a large factory. In the 70's the knitting industry started using the flat knitting machine which was developed by about 10 craftsmen. During the monetary crisis there was a huge increase in the growth of craftsmen, reaching 250 craftsmen. At this time, the craftsman industry has grown with a total of 400 craftsmen who work in the knitting sector capable of producing approximately 4,500 dozen per month various types of knitwear employing more than 9,000 people (Rian Andriani, 2018)

Since many years ago, this knitting industry has become a source of income for the people around Binong Jati, so this business has become a business and culture that is passed down from generation to generation, with conventional machine technology (Saraswati, 2017). Currently this knitting center is able to absorb workers who come from outside Bandung, namely from Sumedang, Tasikmalaya and Garut (Ryan, 2018).

Kampoeng Radjoet is a community or association of UMKM - UMKM knitting craftsmen. The products produced include handmade knitting products. The craftsmen in Kampung Radjut, Binong Jati, use more machines than hand-knitting, therefore these craftsmen need more creative development for craftsmen and their handmade products.

As a pioneer in the production sector in Binong Jati Bandung, the owner of Kampoeng Radjoet, Pak Eka tries to be creative by presenting innovative new designs. Knit fashion has an attractive appearance, in addition to its elegant design imitating fashion styles.

Knitted fashion production is a mainstay of business that is equipped with raw materials for yarn, haken, buttons, and flat knitting machines. The manufacture of this knitting fashion was originally without paying attention to the Brand on the product which was the product of its creativity. Even though Brand is a means of promotion to encourage competitiveness especially during the Covid-19 pandemic. Without having the right to a Brand has the potential to cause unfair business competition because through a product brand, similar goods or

services can be distinguished from the origin of the product, its quality and the assurance that a product is original (Dewi Murdiany, 2017), because in addition to being used by a Brand on knitted products, the Brand is also necessary. registration needs to be done and it needs to be registered at the Directorate General of Intellectual Property Rights (“DJHKI”).

The meaning of trademark registration is to provide protection and guarantee legal certainty related to moral rights (moral right), namely the right that can defend against anyone who impersonates another party without the permission of the owner of the right besides economic rights (economic right), namely the right to obtain economic benefits from their creative products. among others, through the use of a license agreement in accordance with Government Regulation Number 36 of 2018 concerning Registration of Intellectual Property License Agreements.

A mark is a sign that can be displayed graphically to distinguish goods and / or services produced or provided by a person or legal entity in trading activities of goods and / or services (Article 1 Number 1 of Law Number 20 Year 2016 Concerning Marks). A brand has the ability as a sign that can distinguish the results of one company from another company in the market, for both similar and dissimilar goods or services. The function of a brand is not only to distinguish a product from other products, but also functions as an invaluable company asset, especially if the brand is well-known marks (OK. Sadikin, 2004 in Dewi Murdiany, 2017)

In line with the dynamics of competitiveness, there are more and more Brand violations, especially those that have been recognized by the public, where the brand has earned a reputation (good will) from consumers. The motivation is to get profits easily by faking, imitating, resembling a brand that is already known to the public, thus causing losses to the brand owner and the public as consumers. This crucial problem of violating the rights of the Brand can lead to demotivation for knitting craftsmen to further develop their knitting innovation and creativity.

Thus, the protection of Mark rights has an important meaning to protect the owner from the actions of others that could harm. This requires the role of the state / central and regional government as well as institutions and related parties that are increasingly important for siding with inventors or creators (Sulasi Rongiyati 2018). Based on the background description above, the problem that will be examined in this study is how to protect the rights of the Knitting Craft Industry Brand in the Covid-19 Pandemic Era in the village of Rajut Binong Jati, Bandung Raya.

## **2. Literature Review**

Black's Law Dictionary defines Brand as "A word, phrase, logo or other graphic symbol used by a manufacturer or seller to distinguish its product from those of others". Meanwhile, according to the World Intellectual Property Organization (WIPO) Intellectual Property Handbook, a brand is defined as "... any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors". In the WIPO definition, it is stated that a Brand must have distinctive power (it must be distinctive) and must not have the potential to deceive (it should not be deceptive). Meanwhile, in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), Trademarks are regulated in Article 15.1 which states that "A trademark is any sign or combination of signs capable of distinguishing goods or services from one entity to another. The sign includes words, including individual names, letters, numbers, figurative elements and color combinations, as well as a combination of signs"(Article 15 TRIPs, in Agus, 2014). Meanwhile, according to Law no. 20 of 2016 concerning Marks and Geographical Indications, Trademarks are signs that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in 2 (two) dimensions and / or 3 (three) dimensions, sound, a hologram, 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 trading activities of goods and / or services. (Article 1 paragraph 1 of Law No. 20 of 2016 concerning Marks and Geographical Indications)

In this case, Marks can be divided into two types, namely Trademarks used on traded goods and Service Marks used in traded services. Registering a mark with the Directorate General of Intellectual Property Rights (“DJHKI”) by knitting craftsmen has a juridical effect on the acquisition of Mark rights. The Mark Right is an exclusive right with a certain period of time for the Mark right holder to be able to use the Mark himself or give permission to other parties to use it through a partnership agreement using a Brand License in accordance with Government Regulation Number 36 of 2018 concerning Registration of Intellectual Property License Agreement.

Law Number 20 of 2016 concerning Trademarks and Geographical Indications adheres to a constitutive system, where protection of Mark rights is given to the party who first registered. In this case, the exclusive right to use a Mark is granted due to registration (required by registration). The Trademark Law stipulates that such registration

must also be based on good faith. This regulation is intended to protect the trademark owner who is not registered, if there is another party who registers a mark which is similar to or the same as the mark of the first owner.

Based on the provisions of the Trademark Law, registration can give exclusive rights to the owner of the mark in order to prevent other parties from marketing products that are identical or similar to knitted products of the craftsman concerned by using the same Mark as the entrepreneur, or which can confuse consumers because a similarity or similarity to the Mark. Jeremi Philips and Allison Firth put the philosophical basis for the exclusive rights of monopoly, in the theory of "The Absolute Monopoly of The Market" (stating that creative industry owners have the right to prevent everyone from exercising property rights in the market without rights, which is played by knitting craftsmen.

The period of legal protection or the period for protection of rights is 10 years, and can be extended. Basically, a Mark is not obliged to be registered. However, if the owner of a mark wishes to receive protection for the "mark" used in his trading activities, the mark as a mark must be registered. As previously stated, a registered Mark has exclusive rights to prevent the use of a Mark by other unauthorized parties (Agus, 2014).

According to Lawrent Friedman, law enforcement for the protection of knitting craft brand rights is influenced by legal substance, legal structure and legal culture (Lawrence M. Friedman, 2001 in Nina, 2014) which includes legal system components, the effectiveness of legal protection for trademark rights needs to be supported by three elements.

(Yunus, 2012: 6). First is the substance component; in the form of legal system output, including norms and regulations born from the legal system; the two structural components; namely agencies or institutions created by the legal system with various functions in order to support their functions as well as the three components of culture; is a legal culture in the form of a set and values that will determine when, where, why people obey the law.

Based on previous research, there are several studies that have opened up the writer's insight as an enrichment of research material, namely as follows: (1) Nina Nurani, 2012 "Intellectual Property Right) Protection Over The Merchandise Works Of Creative Industry To Improve Indonesia Economics Development", (2) Nina Nurani et al, 2020, "Competence of Human Resource of Small and Medium Enterprises (MSMES) of West Java Through Intellectual Property Rights (IPR) Protection in The Covid-19 Pandemic Era" (3) Agus Sardjono et al., 2014, "Implementation Legal Protection of Trademarks for Batik SME Entrepreneurs in Pekalongan, Solo and Yogyakarta "(4) Dewi Murdiany, 2017, "Legal Protection for Leather Craft Brands in Magetan "(5) Rian Andriani, et al, 2018, " MSME Promotion Strategies in Kampung Rajut Binong Jati As a Shopping Tourism Area ". The difference between this study and previous research is that this study focuses on Brands by using a juridical approach with specific objects, situations and conditions during the Covid-19 pandemic era.

### **3. Methodology**

This research used the method of historical legal interpretation and legal construction. The specification of descriptive research is quantitative and normative juridical qualitative analysis. For descriptive quantitative analysis of the population in this study were the knitting craftsmen of the knitting village of Binong Jati Bandung Raya with a sample of 11 craftsmen using purposive sampling, namely a non-probability selection method that selected a sample from a population of knitting craftsmen in the knitting village of Binong Jati Bandung Raya. Data collection techniques to support quantitative descriptive analysis were carried out by field studies in the form of data collection through questionnaires and literature studies, while to support qualitative normative juridical analysis was carried out by literature studies to collect and compile data related to the problem under study referring to secondary and tertiary data sources as primary data to support it. This research is expected to examine the implementation of the protection of knitting handicraft brand rights and what are the obstacles in the implementation of the protection of the knitting industry brand rights as well as efforts to overcome them according to the regulations of Law Number 20 of 2016 concerning Trademarks and Geographical Indications as Alignment of laws and regulations in the field. IPR based on the TRIPs agreement. Repressive legal measures are found in the regulation of criminal acts in the provisions of legislation as an effort to protect the work of knitting craftsmen in the Covid-19 Pandemic era. Normative juridical, namely tracing, researching, and studying these objects through their legal principles through national and international legislation to be harmonized so as to carry out harmonization to support the acceleration of creative economic growth. The descriptive research specification of quantitative and juridical normative analysis with methods, historical legal interpretation, sociological, and legal construction refers to the principles, national and international legal norms, as secondary primary data and reviewing library data. Primary data clarifies the study of secondary data.

#### 4. Results and Discussion

Protection of the Knitting Craft Industry Brand Rights during the Covid-19 Pandemic Era in the village of Rajut Binong Jati, Bandung Raya.

Mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 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 persons or legal entities in trading activities of goods and / or services. (Article 1 paragraph 1 of Law No.20 of 2016 concerning Brands and Geographical Indications). The brand is a marker of a product that shows the origin of the producer, so that it can choose certain products from that particular producer, among other similar products. Selection of products based on these brands can be done because of the successful marketing of the product, the reputation of the producer (good will) (Agus, 2014), the quality assurance of the product, or even on the basis of the consideration that the product meets consumer tastes. So, it can be attached to a certain image from consumers to a brand for a particular product. The image is related to the reputation of the product or the manufacturer, and consumers can be loyal to continue buying or using products with that brand because of the reputation or image that is built.

Faced with the Covid-19 pandemic era, in the city of Bandung, there are various potential works of knitting industry that have the potential for a large market, which is a business opportunity today. The knitted craft is one of the fashion industry products, namely a conventional product from the Binong Jati Knitting Craft Industry center. The knitting industry is a hereditary business and started in the 1960s by some Binong Jati residents as a home industry for Binong residents to develop until now and has had an impact on the community's economy, which initially only depended on the agricultural sector (Darusman, 2015). in Ryan, 2018). Almost all knitted products have been ordered by consumers which are then resold in all local markets in Indonesia, including the Tanah Abang market in Jakarta, the Haur Kuning market in Bukit Tinggi, traditional markets in Lombok including Pasar Baru in Bandung and other traditional markets.

The knitted industrial work is an ownership because it comes from human reason (Budi Asri, 2020: 134) as the right to enjoy economically the results of an intellectual creativity which is the work of intellectual property as the key to competition and the development of a business. If this is supported by online sales and e-commerce, goods are delivered in an unusual way, "(Tita, 2020) has the potential to develop rapidly as well as the potential for plagiarism, piracy and imitation by other parties. Therefore, it is necessary to provide protection through registration and recording of Mark Rights in accordance with Law no. 20 of 2016 concerning Brands related to article 4 which contains the Terms and Procedures for Application for registration.

By registering a Mark with the Directorate General of Intellectual Property Rights ("DJHKI"), the knitting craftsman entrepreneur can obtain the Mark rights. Mark rights are exclusive rights with a certain period of time for Mark rights holders to be able to use the Mark themselves or give permission to other parties to use them. Law Number 20 of 2016 concerning Trademarks and Geographical Indications adheres to a constitutive system, where protection of Mark rights is given to the party who first registered. In this case, the exclusive right to use a Mark is granted due to registration (required by registration). The Trademark Law stipulates that such registration must also be based on good faith. This regulation is intended to protect the trademark owner who is not registered, if there is another party who registers a mark which is similar to or the same as the mark of the first owner. Thus, the basis for the consideration of the issuance of the Trademark Law is to create fair business competition, as well as provide good services to the public in the form of adequate Mark protection, through registration of Mark rights. This is in line with the philosophical basis of the exclusive rights of monopoly as stated by Jeremi Phillips and Allison Firth, in the theory of "The Absolute Monopoly of The Market" (Jeremi Phillips and Allison Firth, 1999 in Nina, 2012) states that knitting craftsmen have the right to prevent everyone from using property rights in the market without rights, played by knitting craftsmen.

Related to the objective of the Trademark Law is to encourage entrepreneurs to voluntarily register their trademarks through the Directorate General of Intellectual Property Rights ("DJHKI") and so that entrepreneurs can expand their product market through fair business competition, namely through partnership agreements including franchising, profit sharing and nucleus plasma (Agus Sardjono, 2014) then the effectiveness of the implementation of the utilization and protection of the rights of the Mark according to the mandate of the Trademark Law in the Binong Jati Knitting craft industry is that knitting craftsmen are interested in using and registering their trademark rights.

The implementation of the protection of the rights of knitting craftsmen's trademarks during the Covid-19

Pandemic Era in the Rajut Binong Jati village, Bandung Raya, from the results of research using a questionnaire to 12 respondents in the knitting industry center of the Knitting Craft Industry at Binong Bandung Raya, the data shows that 67% of those who have registered the mark have been registered. 12% use government funding facilities and 88% use independent fees.

Thus, there are several obstacles faced by the knitting craftsmen at Binong Jati Bandung Raya, namely that 33% are reluctant to take care of trademark registration. These can be categorized as several constraints, including the following: First: internal constraints, namely obstacles that come from knitting craftsmen in the village of Rajut Binong Jati, Bandung Raya, among others, there are knitting craftsmen who do not have a comprehensive understanding of the meaning and benefits of registration according to the law. Trademark 2016. Although these knitting craftsmen have generally understood the importance of ownership of a trademark certificate by registering, namely that it can provide legal protection for products resulting from unfair business competition by 92%, the understanding of the benefits and technicalities of registration is not comprehensive. Research shows that up to the era of the Covid-19 pandemic, only 50% of the media used to register Trademark Rights online was still using manuals.

Another understanding is faced in the era of the Covid-19 pandemic, related to the licensing of brand rights. The license in question is a license based on Government Regulation Number 36 of 2018 concerning the Registration of Intellectual Property License Agreements, namely, among others, brands and geographical indications. Brand rights holders have the right to grant licenses to other parties to exercise their exclusive rights given based on the agreement (article 3 PP No.36 of 2018). In Article 7 paragraph 1 of the PP it is stated that the license agreement must be registered at the Directorate General of Intellectual Property Rights at the Ministry of Law and Human Rights of the Republic of Indonesia, and if it is not recorded, the license agreement will not have legal consequences for third parties. The trademark rights license is a benefit from obtaining a brand rights certificate through registration and registration so that knitting craftsmen can expand their product market through fair business competition through partnership agreements including franchises, profit sharing and plasma nuclei.

The results showed that the ownership of registered and registered trademark rights was still minimal. Of the 12 respondents, knitting craftsmen in the village of Rajut Binong Jati, Bandung Raya, who believed that the brand rights license agreement was very important to increase creativity in the development of knitting products, as many as 91.7% of respondents. Meanwhile, belief in licensing is very helpful in developing a business in the form of partnerships with other organizations / individuals by 81.7%. However, only 42% of the knitting craftsmen already own and carry out the license agreement for the brand rights. Among respondents who already have a license agreement, as many as 40% of respondents own and operate a license with a franchise / franchising partnership agreement and 60% of the other respondents own and operate with a profit sharing partnership agreement. Of the respondents who had a license agreement, as many as 60% of respondents had a license agreement between the kampoeng radjoet knitting actors who were of the same class, and 40% of the other respondents had a license agreement between the different classes of Kampoeng radjoet knitting craftsmen. Rajut Binong Jati Bandung Raya owns and operates a partnership agreement as a result of both external and internal constraints in an effort to register trademark rights.

Second, external constraints, namely constraints originating from outside the entrepreneurs, knitting craftsmen in the village of Rajut Binong Jati, Bandung Raya, among others, the inadequate availability of facilities and infrastructure or facilities that are sufficient to support the enforcement of the law on trademark rights against knitting craftsmen. Among other things, facility constraints related to the brand registration process, namely high costs, complicated procedures and time that is not short. The results showed that of a number of knitting entrepreneurs who have an interest in registering, namely 67%, have external constraints of 68%, namely 50% cost constraints and 25% complicated procedural constraints and 25% long time. This cost constraint is due to the fact that most of the knitting craftsmen are micro and small entrepreneurs.

As a solution to these various obstacles, in line with the theory put forward by Laurance M Friedman in the legal system component, the effectiveness of legal protection for trademark rights needs to be supported by three elements (Yunus, 2012: 6), namely as follows:

First is the substance component; in the form of legal system outputs, including norms and regulations that are born from the legal system in the form of legal protection measures for the right to qualify for prevention and prosecution in accordance with the regulations contained in Law Number 15 of 2001 concerning marks which was later amended to Law Number 20 of 2016 about Trademarks and Geographical Indications. (Kusumastuti, 2010) which requires a comprehensive understanding of the knitting craftsmen.

Second, structure; namely agencies or institutions created by the legal system with various functions in order to support its functions, namely agencies or institutions created by the legal system with various functions in order to support its functions, namely the Bandung City Service, West Java Province seeks to establish a Regional and City Creative Economy agency. with the supervision of the Central Creative Economy Agency in drafting regulations for the protection of Mark rights as one of the creative industry IPR regimes according to mutual agreement.

Third, culture; is a legal culture in the form of a set and values in the form of behavior related to the legal system to increase awareness of the benefits and meaning of registration, such recording through socialization of both substance and technical registration by the Bandung City Ministry of Industry UMKM, RKB and other related institutions, need to be optimized . The results showed that of the 12 respondents of knitting craftsmen in Kampung Rajut Binong Jati Bandung Raya, only 50% had participated in socialization related to Brand Rights and another 50% had not followed it, even though the Covid-19 pandemic period, national-level registration applications experienced a significant increase in 2019 applications. registered trademarks amounted to 33,543 applications, while in 2020 it was 35,980.

## 5. Conclusion

The implementation of the protection of the trademark rights of the knitting handicraft industry during the Covid-19 pandemic era in the village of Rajut Binong Jati Bandung Raya was not optimal, it was proven that there were still craftsmen who did not have a Trademark Rights certificate and were registered. There are obstacles to carrying out the registration of trademark rights, including the incomplete understanding of the knitting craftsmen regarding the substance of the meaning and benefits as well as the technicality of registration in addition to the high costs and complicated procedures and the long registration process. This has an impact on the low utilization of the Brand License as a superior potential for the craftsmen of the Binong Jati Bandung Raya knitting industry, which is a strategic vehicle for "fair" competitiveness through partnership agreements, both franchises, profit sharing and plasma nuclei in the Covid-19 Pandemic era.

## 6. Suggestion

It is necessary to optimize a comprehensive understanding of the knitting craftsmen of Binong Jati Bandung Raya through effective socialization regarding the meaning and benefits as well as the technical implementation of registration and registration of trademark rights as legal protection efforts for trademark rights for creative work of the knitting industry from unfair business competition, especially in the Pandemic era. Covid-19. This needs to be supported by agencies or institutions, namely the Bandung City Office in collaboration with West Java Province, the Regional and City Creative Economy Agency with the supervision of the Central Creative Economy Agency in the preparation / improvement of regulations and socialization related to the protection of Trademark rights as one of the HAKI regimes according to the agreement. together.

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