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The Effects of Trademark Registration for MSMEs

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Abstract

Introduction: Trademark rights are exclusive rights granted by the state to trademark owners who are registered for a certain period by using the brand themselves or by giving permission to other parties to use it. Based on Article 3 of Act No. 20 of 2016 Regarding Trademarks and Geographical Indications, it states that trademark rights are obtained after the Brand is registered. Thus, registration is a requirement to obtain legal protection in the field of Trademarks in the field of IPR. The presence of MSMEs in improving the national trade must be supported by the application of laws that function to protect and provide investment guarantees as wide as possible.

Purposes of the Research: In the Maluku province, based on data owned by the Maluku Province Cooperatives and MSME Office, many MSMEs have used brands on their business products, but only a few have registered their brands. Factors that influence MSMEs not to register their trademarks are the lack of knowledge and information about the importance of trademark registration. Even though seen from the prospects for MSME businesses in the Maluku province, it is very promising to be able to compete in national and international trade markets.

Methods of the Research: The research method used in this study is normative juridical with the nature of the research, namely analytical descriptive. The problem approach used is a statutory and conceptual approach. The analysis of legal materials used is a literature analysis supported by additional data obtained in the field.

Results of the Research: Efforts to create IPR-based development strategies is a new challenge for the government to make as a reality. The government's role is very important in spurring and activating MSMEs business actors in managing and implementing marketing strategies that can increase selling power and healthy competitiveness. Registration of trademarks in order to obtain intellectual property rights protection must be a top priority in creating intellectual property-based development. Counseling and outreach regarding the importance of legal registration of marks must be carried out from now on. Not only that, but the process of assisting MSMEs in the registration process must also be carried out, so that the counseling and legal outreach that has been carried out produces results. The advantage that can be obtained by MSMEs if their trademark is registered is the legal protection provided by the state to them, so that there will be no open gaps for other business actors to take advantage of said trademarks.

Keywords: Intellectual Property; Brand; MSMEs.

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INTRODUCTION

Every country has certain goals. What is the goal for a country or in which direction a state organization is directed to is an important issue, because with this goal in mind is why the guideline for why the state is structured and controlled and how the lives of its people are regulated in accordance with said goal. The purpose of the state in this case can also be interpreted as the vision of the state, which is generally aimed at creating welfare,



prosperity, and happiness for its people (bonum publicum, common good, common wealth).¹ The goals of the Indonesian state as stated in the 1945 Constitution of the Republic of Indonesia (1945 Constitution) are realized by a state government.

The fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia states that protecting the entire Indonesian nation and all of Indonesia's bloodshed, promoting public welfare, educating the nation's life, and participating in carrying out world order based on freedom, eternal peace, and social justice.² To achieve people's welfare, the community's economy is absolutely empowered and advanced. One of the instruments that can be utilized by the government to empower and advance the community's economy is by empowering small and medium enterprises. Micro, Small and Medium Enterprises (MSMEs) are an important part of the economy of a country or region, and Indonesia is no exception. Based on Article 1 No. 1, 2 and 3 and Article 6 paragraph (1), (2) and (3) of Act No. 20 of 2008 Regarding Micro, Small and Medium Enterprises, illustrates that micro, small and medium enterprises (MSMEs) play an important role for the national economy. This is because MSMEs provide access to job opportunities from various business sectors. The MSME business sectors are very varied, starting from industry, services, the informal sector, and the agricultural and plantation business sector.

Micro, Small and Medium Enterprises are productive business opportunities owned by individuals or groups and meet all kinds of micro-business criteria as stipulated by law. Small and medium enterprises in Indonesia are the main factor contributing to economic growth. Micro-enterprises are business activities that can expand employment and provide economic services to the wider community and can play a role in the process of equity and increasing people's income, stimulate economic growth, and play a role in realizing national stability.3 Intellectual Property Rights or abbreviated IPR are objects of wealth that can be transacted in the process of exchanging human economic needs.⁴ The abbreviation of IPR comes from the translation of Intellectual Property Right which is then translated as "hak kekayaan intelektual" in Indonesian, but later in Act No. 25 of 2004 Regarding the National Development Program 2000-2004 it is translated as "Hak atas Kekayaan Intelektual". In general, IPR is divided into two categories, namely copyright and industrial property rights. Industrial property rights are further divided into: patents, brands, industrial designs, integrated circuit layout designs, trade secrets, and geographical indications.

Historically, the birth of IPR is a new form of developing conventional property rights or intangible movable property. IPR material arises as a form of reward for intellectual activity which is human thought (mental labor) in realizing something new or original, whether in the field of technology, literature and science, as well as the industrial sector. In terms of its nature and shape, IPR is classified as an intangible movable object. Due to this trait, IPR legal protection is not shown in tangible objects but to an abstract and contained in the tangible object. Besides that, the difference with material rights in general is that there are similarities between material rights and IPR, that is, these material rights can be transferred to other people in various ways or legal events, such as inheritance, sale and purchase

⁴ Ok. Saidin, Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights) (Jakarta: Rajawali, n.d.), 18.



¹ Astawa I Gede Pantja dan Na'a Suprin, Memahami Ilmu Negara Dan Teori Negara (Bandung: Refika Aditama, 2009), 51.

² Suhardin Yohanis, "Peranan Negara Dan Hukum Dalam Memberantas Kemiskinan Dengan Mewujudkan Kesejahteraan Umum," Jurnal Hukum & Pembangunan 42, no. 3 (2012): 2, https://doi.org/http://dx.doi.org/10.21143/jhp.vol42.no3.274.

³ Rahmat Taufiq Dwi Jatmika, "Masalah Yang Dihadapi Usaha Kecil Menengah Di Indonesia," Studi Ekonomi Syariah 2, no. 6 (2016):

agreements, grants and so on as long as they do not conflict with statutory provisions that are applicable and propriety in society. Economically, the exclusive rights contained in IPRs function to legalize the owner's monopoly on its use or to legalize the owner. From an economic perspective, ownership of intellectual property is more of an industrial nature than as personal property. Therefore, exclusive rights to an intellectual property can also be exercised by other people with a license agreement where the licensee pays royalties to the trademark holder.

The definition of a brand in various countries today basically contains a lot of similarities because it refers to the provisions of the Paris Convention.⁵ In Indonesian, a brand means a sign used on goods traded by a company.6 Meanwhile, based on Act No. 20 of 2016 Regarding Trademarks and Geographical Indications, a brand is defined as "tanda yang dapat ditampilkan secara grafis berupa gambar, logo, nama, kata, huruf, angka, susunan warna, dalam bentuk 2 (dua) dimensi dan/atau 3 (tiga) dimensi, suara, hologram, atau kombinasi dari 2 (dua) atau lebih unsur tersebut untuk membedakan barang dan/atau jasa yang diproduksi oleh orang atau badan hukum dalam kegiatan perdagangan barang dan/atau jasa". This means that a brand is defined by a mark that can be displayed graphically through images, logos, names, words, numbers, a color arrangement, in twodimensional form and/or three-dimensional, voice, hologram, or a combination of two or more of said elements to distinguish a certain good and/or services provided by a certain party or corporate in a trading activity of goods and/or services. Based on the understanding of what a brand is in the paragraph above, it can be concluded that a brand is a sign to distinguish between one product and another. In trade in goods and services, a brand is one of the important intellectual works for the smooth running and improvement of goods and services. This is because brands have strategic and important values for producers and consumers. For producers, apart from being a brand to differentiate it from other similar products, it is also intended to build an image for the company in marketing. For consumers, a brand apart from facilitating identification, is also a symbol of self-esteem. For the public, the choice of goods for certain brands is familiar due to various reasons, including consistent reliable quality the products have been known for a in long time and others, so that the function of the brand as a guarantee of quality is increasingly evident.⁷ This paper will discuss the effects of trademark registration for MSMEs.

METHOD

The research method used in this study is normative juridical with the nature of the research, namely analytical descriptive. The problem approach used is a statutory and conceptual approach. The analysis of legal materials used is a literature analysis supported by additional data obtained in the field.

RESULTS AND DISCUSSION

A. Brand as Intellectual Property

⁷ Haris Munandar & Sally Sitanggang, 2008, Mengenai Hak Kekayaan Intelektual Hak Cipta, Paten, Merk dan Seluk-beluknya, Jakarta:



⁵ Rachmadi Usman, Hukum Hak Atas Kekayaan Intelektual: Perlindungan dan Dimensi Hukumnya di Indonesia, Bandung: Alumni, 2003,

⁶ Pipin Syarifin dan Dedah Jubaedah, Peraturan Hak Kekayaan Intelektual di Indonesia, Pustaka Bani Quraisy, Bandung, 2004, pg. 166

"Hak Kekayaan Intelektual" are the official translation of Intellectual Property Rights (IPR) in Indonesian and are referred to in Dutch as Intellectual Eigendom.8 Intellectual property rights are material rights, rights to objects originating from the work of the brain, and the work of ratios. Thus, intellectual property is included in intangible objects because it originates from the creative thinking power of a person so that a material right is created called intellectual property.

Intellectual work as a company asset in the realm and scope of intellectual property rights highly upholds the existence of ideas, but ideas that have received recognition and legal protection. For this reason, the idea must be realized and expressed concretely to produce intellectual works.¹⁰ In general, intellectual property rights consist of two things, namely industrial property and copyright. Industrial property rights consist of Patents, Trademarks, Plant Varieties, Trade Secrets, Industrial Designs and Layout Designs of Integrated Circuits. Copyright consists of Science, Art, and Literature. One of the intellectual properties is a brand.

Trademark is an exclusive right guaranteed by the government. Based on Act No. 20 of 2016 Regarding Trademarks and Geographical Indications in Article 1 Paragraph 1 it explains that: "Merek adalah tanda yang dapat ditampilkan secara grafis berupa gambar, logo, nama, kata, huruf, angka, susunan warna, dalam bentuk 2 (dua) dimensi dan/atau 3 (tiga) dimensi, suara, hologram, atau kombinasi dari 2 (dua) atau lebih unsur tersebut untuk membedakan barang dan/atau jasa yang diproduksi oleh orang atau badan hukum dalam kegiatan perdagangan barang dan/atau jasa". This means that a brand can be displayed graphically through images, logos, names, words, numbers, a color arrangement, in twodimensional form and/or three-dimensional, voice, hologram, or a combination of two or more of said elements to distinguish a certain good and/or services provided by a certain party or corporate in a trading activity of goods and/or services. Then the experts also define brand, among others, Harsono Adisumarto who explained that a brand is an identification mark that distinguishes one's property from the property of another.¹¹ According to H.M.N Purwo Sutjipto in Muhammad Djumhana and R. Djubaidullah, a brand can be interpreted as a sign by which a certain object is personalized so that it can be distinguished from other similar objects. 12 With those definitions, it can be concluded that a brand is a sign that is used as an identifier and differentiator for a product or service.

Apart from functioning as an identification mark, a mark also has other functions in the trading of goods and services, namely:13 a) Identification or identity of a product, in other words, a brand serves as a distinguishing mark (Distinctive Function); b) Source indicator. The brand is a link between producers and the products they produce; c) Quality indicators, in other words, the brand serves as a guarantee of quality (Quality Product Function). Trademarks of goods purchased by consumers, will gradually form an impression in the memory of the consumers concerned that the brand is a symbol of the quality of goods or services; d) Promotional function. A brand also functions as a giver of attraction to goods

¹³ Hery Firmansyah, Perlindungan Hukum Terhadap Merek (Yogyakarta: Medpres Digital, 2013), 29.



⁸ Sophar Maru Hutagalung, Hak Cipta Kedudukan Dan Peranannya Di Dalam Pembangunan (Jakarta: Sinar Grafika, 1956), 87.

⁹ Ok. Saidin, Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights), 9.

¹⁰ Febri Noor Hediati, "Optimalisasi Pengawasan Pada Penerimaan Pendaftaran Merek Dalam Rangka Perlindungan Merek," Jurnal Suara Hukum 2, no. 2 (2020): 234, https://doi.org/10.26740/jsh.v2n2.p234-257.

¹¹ Adisumarto Harsono, Hak Milik Intelektual Khususnya Paten Dan Merek (Jakarta: Akademika Presindo, 1989), 44.

¹² Muhammad Djumhana and M Djubaidillah, Hak Milik Intelektual (Bandung: Citra Aditya Bakti, 1993), 121.

and services, and at the same time is also an advertisement or advertisement for goods or services marked with the mark.

Based on Rachmadi Usman's opinion, a brand has 3 functions, namely:14 a) Source Indicator Function: A brand serves to show that a product is legally sourced from a business unit and therefore also serves to provide an indication that the product is made in a professional manne; b) Quality Indicator Function: A brand serves as a guarantee of quality, especially in relation to prestigious products; d)Suggestive Function: A brand gives the impression of being a collector of the product.

For manufacturers, the function of a brand is not only to differentiate it from other similar products, it is also intended to build an image for the company in marketing. Meanwhile, for consumers, apart from facilitating identification, a brand is also a symbol of self-esteem. For the public, the choice of goods for certain brands is familiar due to various reasons, including consistent reliable quality the products have been known for a in long time and others, so that the function of the brand as a guarantee of quality is increasingly evident. 15 Thus, a brand serves as a tool for advertising which will ultimately boost sales.

B. Brand Protection in Indonesia

Protection in general means protecting something from things that are harmful or more negative in nature, something that can be in the form of interests or objects or goods. In addition, protection also contains the meaning of protection given by someone to someone who is weaker. ¹⁶ Thus, legal protection means with all the government's efforts to guarantee legal certainty in the context of providing protection to citizens so that their rights as citizens are not violated, and sanctions for those who violate. The definition of legal protection is a protection given to legal subjects in the form of legal instruments both preventive and repressive in nature, some written or unwritten. In other words, legal protection is an illustration of the function of the law itself, namely the concept where the law can provide justice, order, certainty, benefit, and peace.

The opinions quoted from several experts regarding legal protection are as follows: 1) According to Philipus Hardjo there are two legal protections for the people, namely: 17 a) Preventive legal protection means that people are given the opportunity to submit their opinions before a government decision gets a definitive form that aims to prevent disputes from occurring; b) Repressive legal protection aimed at resolving disputes. Legal protection is a guarantee given by the State to all parties to be able to exercise their legal rights and interests in their capacity as legal subjects.; 2) According to Satjito Rahardjo legal protection is an effort to protect someone's interests by allocating a Human Right of power to him to act in the context of his interests; 18 3) M. Isnaeni argues that the basics of the problem "perlindungan hukum itu ditinjau dari sumbernya dapat dibedakan menjadi dua (2) macam yakni perlindungan hukum eksternal dan perlindungan hukum internal". 19 This

¹⁹ Moch Isnaeni, Pengantar Hukum Jaminan Kebendaan (Surabaya: Revka Petra Media, 2016), 159.



¹⁴ Rachmadi Usman, Hukum Hak Atas Kekayaan Intelektual (Bandung: Alumni, 2003), p 322.

¹⁵ Haris Munandar and Sally Sitanggang, Mengenai Hak Kekayaan Intelektual Hak Cipta, Paten, Merk Dan Seluk-Beluknya (Jakarta: Erlangga, 2008), p 52.

¹⁶ Ronald Fadly Sopamena, Adonia Ivonne Laturette, and Marselo Valentino Geovani Pariela, "Legal Protection For MSMES In West Seram Regency During The Pandemic Period," Unram Law Review 6, no. 2 (2022), https://doi.org/10.29303/ulrev.v6i2.249.

¹⁷ Philipus.M. Hadjon, "Perlindungan Hukum Bagi Rakyat Indonesia" (Surabaya: Bina Ilmu, 1988), p.5.

¹⁸ Satjipro Rahardjo, Sisi-Sisi Lain Dari Hukum Di Indonesia (Jakarta: Kompas, 2003), p.121.

means that legal protection in terms of its source can be divided into two (2) types, namely external legal protection and internal legal protection.

Brands get legal protection after it has been registered. The trademark registration system that applies in Indonesia according to Act No. 20 of 2016 Regarding Trademarks and Geographical Indications adheres to a constitutive system. The principle adhered to by the constitutive system is the "first to file" principle which means that someone who first registers a brand then that party will own or recognize the existence of the brand, and for a brand that has similarities to the brand that has been registered first, the state may not accept the registration of said brand.²⁰ Therefore, other parties wishing to register the same brand cannot be accepted for registration.

Trademark rights holders who feel aggrieved as a result of another party due to the use of their mark by another party without permission can file a lawsuit against that party, who unlawfully uses a trademark that is similar in principle or in its entirety for similar goods and services, namely;²¹ a) Compensation lawsuit, and or; c) Cessation of all actions related to the brand.

The Act on Trademarks and Geographical Indications also regulates criminal provisions for infringement of trademarks in Chapter XVIII Regarding Criminal Provisions regulated in Article 100 to Article 103. The crimes that occurred in relation to these trademarks constitute a complaint offense. Trademarks that have been registered have an expiration date. This is based on Article 35 of Act No. 20 of 2016 Regarding Trademarks and Geographical Indications. Trademarks that have been registered are valid for a period of 10 (ten) years which can be renewed each time for the same period.

C. Trademark Registration for MSMEs in Indonesia

Registration of brands is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 67 of 2016 Regarding Registration of Trademarks in conjunction with the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 12 of 2021 Regarding Amendments to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 67 of 2016 Regarding Trademark Registration. The application requirements for their registration are: a) The application is submitted by filling out a duplicate form in Indonesian by the applicant or their attorney to the Minister; b) The application needs to consist at least: 1) Date, month, and year of application; 2) Full name, nationality, and address of the applicant; 3) Full name and address of the attorney if the application is filed through one; 4) The name of the country and the date of the first application for the brand if the application is filed with priority rights; 5) Brand labels; 6) Color if the brand being applied for registration uses color elements; 7) Class of goods and or services and description of the type of goods or services.

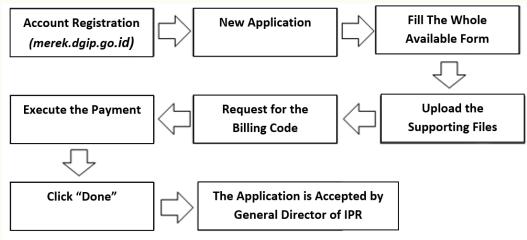
Documents required for application for trademark registration: a) Proof of payment of the application fee; b) 3 pieces of brand label with a minimum size of 2 x 2 cm (two by two centimeters) and a maximum of 9 x 9 cm; c) Brand ownership statement; d) Power of attorney, if the application is filed through an attorney; e) Proof of priority, if using priority rights in Indonesian; f) If the brand is 3 dimensional, the brand label is attached in the form

²⁰ Djumhana and Djubaidillah, Hak Milik Intelektual, 256.

²¹ Adrian Sutedi, Hak Atas Kekayaan Intelektual (Jakarta: Sinar Grafika, 2009), 95.

of characteristics of the brand in the form of a visual and description of the claim; g) Voice, brand labels in the form of notations and sound recordings; h) If the sound cannot be displayed in the form of a notation, then what is attached is a visual display from various sides.

The process of registering a brand is made easier by the existence of a web-based registration facility so that it can be easily accessed by business actors via https://merek.dgip.go.id/. Business actors who wish to register a brand for both goods and/or services can create an account online and follow the instructions provided. The tariff charged for the general public is IDR.1.800.000,- and IDR.500.000,- for Small and Medium Enterprises. For clarity, the trademark registration procedure can be seen in the image below:



Gambar 1. New Trademark Registration Process²²

Not all brands can be registered. Only brands that meet the requirements can be registered. Article 20 of the Law on Trademarks and Geographical Indications states: Brands cannot be registered if: a) Contrary to state ideology, laws and regulations, morality, religion, decency, or public order; b) the same as, related to, or only mentions the goods and/or services being applied for registration; c) contains elements that can mislead the public about the origin, quality, type, size, type, purpose of using the goods and/or services being applied for registration or are names of protected plant varieties for similar goods and/or services; d) contains information that is inconsistent with the quality, benefits, or efficacy of the goods and/or services produced; e) has no distinguishing aspects; and/or; f) is a public name and/or symbol of public property. Applications that will be submitted by MSME actors must not conflict with Article 20 of the Law on Trademarks and Geographical Indications above, so that they are not rejected by the Director General of IPR.

D. The Effects of Trademark Registration for MSMEs

Trademark registration actually plays an important role in marketing their products more widely and is known to the public.²³ Trademark registration can increase public knowledge of the product and or service so that it will increase sales.

²² "Prosedur Pendaftaran Merek Baru," n.d., https://dgip.go.id/menu-utama/merek/syarat-prosedur.

²³ Iffan Alif Khoironi, "Implementasi Pendaftaran Merek Sebagai Bentuk Perlindungan Hukum Pada Home Industry Eggroll," UNNES Law Journal 2, no. 2 (2013): 129-136, http://journal.unnes.ac.id/sju/index.php/ulj.

Table 1. MSME data in Maluku Province in 11 Regencies/Cities per 2022

No	Regency/City	Micro Enterprises	Small Enterprises	Middle Enterprises	Total
1	Ambon	25.079	14	8	25.101
2	Central Maluku	28.262	9	1	28.272
3	Buru	2.305	7	-	2,312
4	South Buru	782	4	-	786
5	West Seram	6.648	12	-	6,660
6	East Seram	1.343	20	-	1,363
7	Southeast Maluku	7.397	28	-	7,425
8	Tual	7.065	7	-	7,072
9	Tanimbar Archipelago	2.770	6	1	2,777
10	Southwest Maluku	4.303	-	-	4,303
11	Aru Archipelago	8.093	-	-	8,093
	Total	94,047	107	10	94.264

Maluku Province is recorded as having 94.164 micro, small and medium enterprises spread across 11 regencies/cities. With this large number, unfortunately the Maluku Province Cooperatives and MSMEs Office noted that only 21 MSMEs during 2022 had taken care of and registered certificates for applications for registration of intellectual property. This shows that MSMEs in Maluku are not yet based on intellectual property rights. MSME development must be carried out in Indonesia, especially in the Maluku province in order to improve economic conditions, especially in the post-pandemic period. One strategy that can be implemented is the development of intellectual property-based MSMEs. The government must step in and encourage MSME actors to have trademarks so that they can increase product competitiveness and be easily recognized by the public and can reach a wider market.

Article 1 of Act No. 20 of 2016 Regarding Trademarks and Geographical Indications explains trademark rights, which are exclusive rights granted by the state to registered trademark owners for a certain period of time by using the brand themselves or giving permission to other parties to use it. This will make MSME actors who have registered their trademarks hold full rights to their brands without being contested by other parties.

According to the Great Indonesian Lexicon, influence is a power that exists or arises from something (people, objects) that contributes to shaping one's character, beliefs, or actions.²⁴ Registration of trademarks for MSMEs can have a big influence, namely the existence of legal certainty for their exclusive rights. MSME products that have registered their trademarks will be more easily recognized by the public than products that do not have a brand. For example, packaged banana chip products with a brand will certainly be easier to recognize than the same product without a brand. Then, after MSME products are recognized by the public, it will be easier for MSMEs to build an image for these products, for example these products are tastier, more hygienic and of better quality.

Protection of a brand has been guaranteed in the law so that other parties may not imitate the brand. This of course only applies to brands that have been registered. An equally important part of trademark registration for MSMEs is that there are greater opportunities to reach a larger market. This can be achieved if the brand is recognized by consumers and has a good reputation so that it is easily marketed outside the region and it is not impossible to reach the international market. Thus, trademark registration for MSMEs will have a positive influence that will advance the MSMEs themselves.

CONCLUSION

State-protected brands are registered trademarks. Thus MSME actors can submit applications for trademark registration of the products they sell so that they can be protected by law. The government is obliged to conduct outreach and training for MSME actors so that MSME actors understand the importance of trademark registration and are able to produce quality products to compete in a larger market. Thus, MSMEs that are built based on intellectual property can continue to develop in the face of free competition in trade.

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²⁴ Pius Abdillah and Danu Prasetya, Kamus Lengkap Bahasa Indonesia (Surabaya: Arloka, n.d.), 256.



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Thesis, Online/World Wide Web and Others

"Prosedur Pendaftaran Merek Baru," n.d. https://dgip.go.id/menu-utama/merek/syaratprosedur.

> Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest,

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