

TRADEMARK PROTECTION FOR SMALL-MEDIUM ENTERPRISES IN BALI: STRENGTHENING COMMUNITY-BASED TOURISM IN THE ERA OF FOURTH INDUSTRIAL REVOLUTION

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ABSTRACT

Trademark protection plays an important role in the fourth industrial revolution, including to strengthen Micro-Small and Medium Enterprises (SMEs) in Bali tourism destinations. However, only a few of them had registered their brands based on Article 1 (5) of the new Indonesian Trademark Law Number 20 of 2016 in conjunction to Article 16 TRIPs Agreement to get appropriate protection. The aim of this study was to analyze the mechanism to protect SMEs from trademark contexts. By using empirical legal studies, the study found that protecting SMEs related to strengthen the community-based tourism in Bali become very important through trademark registration that not only domestically but also in different countries in order getting secure legal protection. In registering their brands, SMEs can rely on the right of priority as it is stipulated under the Paris Convention and Madrid Agreement including Madrid Protocol that provides more chance for the owner in registering their trademark by using international registration mechanism for many countries. To increase the registered trademark on SMEs, registration trademark incentive needs to be developed not only as a responsibility of the government but also by other parties such as the corporation by referring the model of Penta Helix.

Keywords: Trademark Protection, SMEs, Community-Based Tourism, The Fourth Industrial Revolution.

INTRODUCTION

Trademark as part of intellectual property regime is comprehensively regulated under the Trade-Related Aspects of Intellectual Property Rights (TRIPs) from Article 15 to Article 21, known as an Annex 1C of the World Trade Organization (the WTO) Agreement. In its preamble is also emphasize recognition to the need for a multilateral framework of principles, rules, and discipline with international trade in counterfeit goods. One of the crucial issues in trademarks is related to counterfeit goods. Hence, a comprehensive international agreement as stipulated under the TRIPs Agreement is needed to combat counterfeit goods. Therefore, the members should

comply with the minimum standards of protection as required by TRIPs, the country should provide procedure and remedies and ensure effective enforcement. In the contexts of trademark, any sign including for trademark. As stipulated under Article 15 of TRIPs, any sign or combination of sign that capable of distinguishing the goods or services of one undertaking from of other undertakings shall be capable of constituting a trademark, including particular words such as personal names, can be registered for a trademark, then the owner of a registered trademark shall have the exclusive right to prevent all third parties without consent of the trademark owner using the trademark registered for trade identical or similar belong the third party (Kieff & Nack, 2010). Under the TRIPs Agreement, the protection of a trademark based on registration. A trademark has several functions, one of them is as the identity of the source of the commercial good or services, the others are as an indication of quality, a mean of advertising as well an investment vehicle. Accordingly, protecting trademark for the business sector including the Micro-Small, and Medium Enterprises (SMEs) in Bali Province of Indonesia become necessary. Intellectual property regimes have viewed as an essential means to reward creative investments based on standard economic theory (Pager, 2017), similarly through the utilitarian approach, it can be understood that the protection of intellectual creative works provides a balance the individual rights of the inventors in one side and the consequential benefit to the public on the other side. The protection of the intellectual works, actually become an incentive for further creative works, encouraging more innovation and development of new works, then the wider society will also benefit from those innovative works (Ansong, 2018), by narrowing the scope, trademark for creative productions as one of the substantial part of the intellectual property regime in this context needs to be protected

As a member, the compliance of Indonesia to the TRIPs can be noticed through several revisions of trademark law that had been done in the last decade until the enactment of the new Indonesian Trademark namely the Law No. 20 of 2016 concerning Trademark and Geographical Indication. In this law, trademark protection through registration-based is re-emphasized through Article 1 (5). In order to provide more protection, as it is justice for all, not only big companies have to register their brands, but also the SMEs have to register their brands in order to get protection. In this context, ownership rights, then justice for all will hopefully occur. However, as it is understood that SMEs is actually part of the important pillars on the current development of the economy, including to support the Bali tourism destination, it seems in the Bali contexts, the awareness of SMEs concerning the importance and the advantages of registering a trademark is still lack, only a few of them have registered their trademark. It is actually a big risk for the small company moreover in the digitalization era everything on the internet including the product of SMEs is also offered through the internet of things (IoT). Indeed, the advance of IoT era as known as one of characterizing the fourth revolution era, on the one hand, can bring the creative economic entrepreneurs including the SMEs easily reach the consumers with fewer costs such as the trimming labor costs, but on the other hand, this era also undoubtedly can bring a big risk for the original owners of brand if they do not protect it adequately. It seems quite easy for the third-party to get benefit by using the brands of SMEs without permission from the registered trademark owner, a free-riding dimension.

Thinking about brand protection for SMEs particularly in Bali tourism destination that known as one of the best destinations in the world, it is not enough just thinking about protection for the SMEs themselves, but it must comprehensively also in the context of SMEs existence to

support community-based tourism because the SMEs is actually as representative of the local community. Therefore, by protecting the ownership of the brand SMES actually also protects the economy of the local community. The crucial problem is although Bali as the icon of tourism both internationally and domestically, moreover also the SMEs as one of important milestone community-based tourism in Bali, in reality, the awareness of protecting their business through trademark registration is still weak only few of them have done the registration. Based on that phenomena, this study will discuss the possible mechanism to protect trademark for SMEs both domestically and internationally in the context of strengthening the community-based tourism as well as to avoid a claim from the third-party with bad faith who declares him/herself as the owner of the trademark also is known as trademark squatters. In addition, this study also focuses on the effort of enhancing trademark registered on SMEs since understood that one of causing factor is lack of financial support. The purpose of this study is to analyze the possible mechanism both employing the right of priority based on Paris Convention and Madrid Agreement-Madrid Protocol in internationally registering a trademark for SMEs as well as to avoid trademark squatting. Furthermore, this study also aims to explore the role of the corporation in providing an incentive for a registered trademark of the SMEs by referring the model of Penta Helix, is the synergy among the government, corporation, community, academic and media.

RESEARCH METHOD

By using the so-called socio-legal approach, this study comprehensively explores and compares the registration-based on protecting trademark under TRIPs Agreement, Madrid Protocol, the Paris Convention related to priority-based rights as well as the new Indonesian Trademark Law. Empirically, this study is conducted at the some regencies of Bali Province Indonesia, by questioning the SMEs representative, the Corporation, the Government Office of Cooperative and SMEs at the Regency level, the Local Court in Bali, as well as public societies. Questionnaire and literature study were used to collect relevant data, then an analyzes qualitative used for analyzing the process.

RESULTS AND DISCUSSION

The Existence of SMEs in the Area of Bali Tourism Destinations in the Trademark Legal Context

Bali tourism destinations are undoubted as one of the top ten tourism destinations in the world. According to TripAdvisor, Bali in 2018 was even awarded as the best tourism destination. The beauty of natural panorama and Balinese religious-cultural are considered as a strong asset to support tourism in Bali. As other tourism destinations, currently, products of the SMEs produced by the creative industries of SMEs based on local culture are assets that cannot be ignored in the development of Bali tourism. Especially in the digital era, for example in the culinary field, there is a lot of TV media that show innovative culinary products from various traditional cultural heritages. The Asian Food Channel (the AFC) as one example of TV media that inspires young entrepreneurs to develop culinary business with various local culinary, including Indonesian traditional culinary. In addition to being one of the supporting sectors of Bali's tourism destinations, SMEs actually become a driving force for the economy of the

surrounding communities. The business continuity of SMEs is not only driven by persistence and continuous creative innovation from business people but for the security of sustainable business, several model business regulations are needed, one of them is trademark legal contexts. The existence of trademark registered can guarantee legal certainty and protection of the products they produce. In this context, the SMEs may fruit benefits for them self, improve the regional economy, and avoid being sued by other parties for the claim of counterfeit good. Through the brand protection policy, future SMEs also have the potential to become franchising companies (Chain Corporation) that are ready to compete in the global market

TRIPs Agreement, particularly through Article 15 of the TRIPs is considered to bring the notion of registration system for the modern trademark law, although currently, some scholars criticize this registration based, as point out by Rebecca Tushnet, she emphasizes that the registration system offers some of the most challenging puzzles in trademark law (Tushnet, 2016), Irimescu GM offers the notion of stronger protection of use-based brand for the future at the EU level, although current provisions follow the registration procedure (Irimescu, 2018). However, Indonesia as a member of TRIPs from a developing country still continually carrying the notion of registration based on trademark protection through Article 1 (5) of the Indonesian Trademark and Geographical Indication Act No. 20 of 2016. In order to improve the intellectual property rights protection in Indonesia including in Bali, actually, several measures have been done by Government such as under Ministry of Cooperatives and SMEs of the Republic of Indonesia, as well as campuses, provide budget registration trademark for SMEs. However, in reality, particularly in Bali, empirical study shows that only a few SMEs have registered their brands. In 2018, SMEs in Denpasar City of Bali Province only 67 out from 30.840 registering their trademark (Sudarsana, 2018). The similar situation also occurred in other Regencies. The various sector of business operated and managed by SMEs actually have emerged that very potential supporting Balinese tourism destination. Related to that phenomena, it seems more actions from other parties needed to work together with government to encourage SMEs in registering their business caused the efforts carried out by government alone are not sufficient enough. The evidence of brand ownership has an important role is not only for brand image and representing the owner business itself but also to avoid Trademarks Squatting. The questions then, how to enchant the trademark registration of Balinese SMEs? Whether the model of Penta Helix appropriate to enhance the trademark registration of Balinese SMEs in order to protect their business and accordingly who has the responsibility to carry out that task in the context of legal, social and moral?

Complying the TRIPs Agreement and Its Notion in National Level in order to Protect Creative Product of Balinese SMEs

In the United Nation World Tourism Organization (the UN WTO) Highlights 2017 Edition, it was stated that tourism is the key to development, and prosperity, namely an activity that drives social-economic progress through the creation of jobs and company development, exports and infrastructure development. Tourism has become one of the largest and fastest-growing economic sectors in the world in the last six decades. Related to international tourist visits experienced a very significant increase, such as 278 million in 1980, to 674 million in 2000 and 1,235 million in 2016. The visit was certainly affiliated with income, namely the receipt of

international tourism obtained from destinations around the world from the US \$ 2 billion in 1950 to the US \$ 104 billion in 1980, US \$ 495 billion in 2000, and the US \$ 1,220 billion in 2016. Tourism has grown faster than other world trade over the past five years. As a world export category, tourism ranks third after chemicals and fuel and above automotive and food products. In many developing countries, tourism is the top export category. The development of tourism as highlighted by the UNWTO 2017, is undoubtedly supported by the creative industry sector, including in Bali's tourism areas. SMEs as one of the important players and contributors of foreign exchange in improving the economy of the people around tourism destinations, it is also important to help themselves through strengthening brand ownership that represents the products of goods and creative services that they produce, so avoiding various intentions is not good for others. In this context, legal protection through brand registration should be taken into consideration not only to build a business reputation but also to avoid trademark squatting which can be a nightmare for business people who have carried out their business activities in good faith.

Indonesia has been a member of TRIPs since 1995. Following the status as a state party to that agreement, Indonesia has made several revisions to the Trademark Law as a form of harmonization with the most comprehensive International Agreement in the field of intellectual property, although the existence of TRIPs is also inseparable from pros and cons, including at the beginning in Indonesia, the existence of TRIPs is often debated, by arguing that the intellectual property legal regime driven by TRIPs with its registration system is seen as not always in line with Indonesian communal culture. However, along with the development of globalization and the development of legal practices in Indonesia, it appears that registered system-based brand protection guarantees legal certainty when compared to the declarative system or the first usage system. In the beginning, Indonesia adopted a use-based system through Law Number 21 of 1961 concerning Trademarks. Use-based systems do not provide adequate protection so that they switch to a registered system through the replacement of the Brand Law in 1961 with the enactment of Law No. 19 of 1992 concerning Trademarks. Furthermore, the 1992 Trademark Law was revised through Law No. 14 of 1997, then replaced with Law No. 15 of 2001 concerning Trademarks. Since the Law from 1992 to 2001 Indonesia has embraced the first to file system, namely the protection of trademark rights granted to registered trademark owners. Registered mechanisms are reaffirmed in Law No. 20 of 2016 concerning Trademark and Geographical Indications that replaced the 2001 Trademark Law. In the new Preamble the Trademark Law affirms that in the era of global trade, in line with international conventions that ratified by Indonesia, the role of Trademarks and Geographical Indications is very important especially in maintaining fair business competition, fairness, consumer protection, and protection of Micro, Small and Medium Enterprises and domestic industries. One of the important international conventions that Indonesia ratified in the field of intellectual property is the TRIPs Agreement.

Other developing countries, such as India undoubtedly has taken strong effort to comply with the TRIPs that providing protection and provide rewards to creative endeavors. Such protection encourages the existing knowledge and the new creative works that can bring prosperity. In addition, Raizada & Dhillon, (2017) suggested that more rigorous protection related to Intellectual Property Law including Trademark Law is needed to bring a positive impact on the Indian economy and encourage foreign direct investment for India (Raizada &

Dhillon, 2017; Sudarsana, 2018). The important of the IPR protection in India context also point out by Jajpura et al. (2017) that the IPR is basic need supporting both local and global competitive trade (Jajpura et al., 2017). Protecting intellectual property such as through a registered trademark is increasingly become more important due to it can be as collateral to increase business capital. Khanna, N. (2018) reveals that currently Kingfisher Airline brand is accepted as collateral to raise Rs. 2000 crores in debt at the State Bank of India (Khanna, 2018). Study Gotsch & Hipp (2014) shows that the role of a trademark as an adequate indicator to measures new services as well as to protect innovation and intellectual property for the knowledge-intensive business services (Gotsch & Hipp, 2014). Kumar (2016) emphasizes that the basic consideration of trademark registration is related to the economic values attached to the marks (Kumar, 2016). In the modern context, can be argued that registered trademark has a various function and benefiting the owner right. Under the title of Rights Conferred , TRIPs stipulates that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use. In this context, it can be stated that the trademark owner has a strong weapon through the exclusive right to battle third parties who have bad faith uses trademark registered without permission from the owner right. Therefore, the register-based is really necessary.

China is one of the developing countries that very often criticized as a country which intellectual property infringement. As an example, around 800 shops offer counterfeit goods including clothing and films to attract tourists at Xinyang Market in downtown Shanghai (Su, 2018), even, today china as the world's largest economy is criticized its lack of IPR enforcement become a significant problem compared than other similar countries (Brander et al., 2017). Although previously China is viewed as the world's largest source of counterfeit goods, since 2001, China has become member of TRIPs Agreement, it should comply to that most comprehensive international IPR Agreement that followed by many developed and developing countries including Indonesia. Both China as well as Indonesia as a member of TRIPs although have amended their Trademark law in order to comply with the TRIPs but still have faced a significant challenge to enforce Trademark protection. In Indonesia contexts, for example in Bali as it is known as the best world tourism destination, strong effort must be done to encourage the Balinese SMEs registering their trademark in order to comply to the trademark law to get protection on their creative product in one side, and more importantly in other side to prevent them from trademark squatting that currently tend to raise. In registering trademark, it is needed capable of distinguishing sign-on products goods and services for trademark protection, as it is stipulated under Article 15(1) of TRIPs Agreement that regulates *“any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark.”* (Liu, 2017)

In Indonesia context, in order to comply to the TRIPs Agreement, registration-based as requirement for trademark protection explicitly stipulated in the new Indonesia trademark law, particularly under Article 1 (5) of the Law Number 20 of 2016 Concerning Trademark and

Geographical indication. Through the registration mechanism, the owner of the trademark will have an exclusive right. In detail, the provision Article 1(5) of Trademark Act stipulates that “*Right on Mark means the exclusive right granted by the State to a registered Mark owner for a definite period to use his/her Mark or authorize others to do otherwise.*” Therefore, to get protection promptly, the owner of the trademark including SMEs should register their marks. The essential trademark protection is referring to the function of the trademark. It can be considered at least there are four functions of the trademark. First, to prevent the third-party used of trademark unauthorizedly. This function exists under Article 16 of the TRIPs that stipulates the owner of a registered trademark shall have the exclusive right to prevent all third parties who not having the owner’s consent from using similar signs for good or services from the registered trademark where such use would result in a likelihood of confusion. In Indonesia, such a trademark function can be elaborated through Article 1 (5) of the new Indonesian Trademark Law. Second, to distinguish goods and services, branding reputation. Trademark is as mean to promote productions (Parchomovsky & Stein, 2013). and even to promote to be a business chain. The function of the trademark that is manifested in the definition provides protection as well as enforcement mechanisms if a trademark is used by another party that does not have the authority to do so (Jened, 2015). Third, to be collateral. In the modern era, trademark eligible as collateral, although it is considered as an intangible asset it can be assessed through trademark valuation. Of course, as collateral, this type of intangible assets similar to tangible ones should provide secured and marketable elements (Ibrahim, 2004). Several methods used for trademark valuation such as; cost method, physical depreciation, functional obsolescence, as well as economic obsolescence (Smith & Richey, 2013). Fourth, to prevent trademark squatting. By examining the benefits and functions of brands, there is really no reason for SMEs not to register a trademark. Moreover, SMEs in world tourism destination, as in Bali-Indonesia. They may have a big opportunity to be a trademark with a world reputation. For example, such trademark is spread through trademark licensing, and even franchising mechanism. We argue, the big ones start from the small ones. Multinational Corporation may start from the SMEs.

In order to register a trademark, Article 15 (1) TRIPs Agreement stipulates that Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colors as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible. In the new Indonesia Trademark, the capable sign to distinguishing good as well services as trademark exists under Article 1(1). Indeed, any sign is acceptable as a trademark but not all. Because of a trademark must perform a distinguishing function, therefore only words that capable performing adequate distinction can be as a brand. The higher power of distinguishing, the more they are eligible to get legal protection as a trademark. The sign eligible for trademark fulfill several categories as follows: fanciful marks, arbitrary marks, as well as suggestive marks. Furthermore, from the aspect of substance, the signs that are used as trademarks should comply with morally, not immoral or scandalous matter. *In re Brunetti*, the Federal Circuit held that Section 2 (a) of

the Lanham Act prohibiting scandalous matter for registration of a trademark. The word FUCT for clothing brand was considered as a variation of the word fucked (Polott & Fertig, 2018).

Trademark registration also prohibited on the ground of trade identical or similar signs for good and services which are identical to previous registered trademark that it would result in a likelihood confusion as it is stipulated under Article 16 (1) TRIPs in conjunction to Article 21 (1) of the Indonesian Trademark Law No. 20 of 2016. In Indonesia, an example of trademark case related to the use of a sign that causes the consumer to face such condition is a likelihood of confusion is in NEWLOIS that contains similarities in principle with the Well-Known Trademark LOIS in the case of PT Intigarmindo vs Agus Salim. In this case the Supreme Court decided to submit a cassation request from the applicant for the appeal of PT Intigarmindo Persada, stating that the NEWLOIS Brand List No. IDM000043020 and REDLOIS list No.IDM000043021 have similarity to the claimant's LOIS Well Known Trademark List IDM 00002083 as the licensee and power of attorney from LOIS TRADE MAK CONDSULTORES E SERVICOS SA, and declares REDLOIS registration based on bad faith and intention to infringe LOIS. In accordance with the permanent Jurisprudence of the Supreme Court of the Republic of Indonesia in its Decision Number 279 PK/Pdt/1992 the brand that is used equally as a whole or has similarities in principle has in common consist of similarity of form; similarity of composition; similarity of combination; similarity of elements; similarity of sound; phonetic similarity and similarity of appearance. in this case, NEWLOIS and REDLOIS Brands according to the Supreme Court have the similarity of elements: LOIS. It is also having a similarity composition, namely the similarity of the letter composition where the word NEWLOIS consist of composition word LOIS. Moreover, the similarity of sound or similarity phonetic, the similarity of speech. The sound of NEWLOIS similar to the sound of LOIS. The REDLOIS registered is also considered has ignored the Jurisprudence of case "*Dunhill*" and jurisprudence in the case of the "*Nike*" brand. The Supreme Court also emphasizes that LOIS Trademark is Well-Known Trademark in the ground of LOIS has invests and conducts massive promotion in several countries to be well-known, in this context, that facts fulfill Article 6 bis Paris convention as well as provision Article 16 Paragraph (2)of the TRIPs that stipulates the criteria of brand fame by considering factor of brand knowledge among certain people in society, including the knowledge of member countries are obtained from the results of promotions on the brand. By referring that provision, therefore in the case of LOIS applies the legal principles of "*manifesta non eget probatione*", that is, "*the well-known fact does not require proof.*" The judge should know the applicable law or "*ius curia novit.*" The Supreme Court clarifies that the NEWLOIS and the REDLOIS trademarks have similarities in whole and similarities in identical to the LOIS well-known mark, and their registration is based on bad faith. Finally, the Supreme Court of the Republic of Indonesia in 2016 decided that registrants who register the brand in bad faith do not receive legal protection.

Lesson learned that can be taken from this case is although it is very important to register a trademark but not with bad faith. It should be in good faith. By registering a trademark with good faith, the registrant will have exclusive rights and legal protection. Therefore, to enhance registered trademark particularly for SMEs in tourism destination in Bali, several efforts must be done it is not only related to the exclusive right ownership but more importantly to ensure that the registration of the mark must be done in good faith then the legal protection will be existing.

Anticipating Trademark Squatting Through Madrid Protocol and the Paris Convention

Registering a trademark to have the exclusive right upon registered trademark, becoming more important, particularly not only registering in own country but also in different countries to anticipate what so-called trademark squatting. In the beginning, it was only an internationally well-known mark was vulnerable from the bad faith of squatters who registering it in his own country. However, in a recent development, trademark squatting rampant to seek the SMEs' trademark. In brief, trademark squatting is an identical trademark, usually, well-known marks are registered with bad faith in a different country by different people with the specific purpose to sell the registered trademark to the real owner (Sangsuvan, 2013). The famous example of Trademark Squatting case is the Starbucks Corporation vs Starbucks LLC in Russia. In this case, the Starbucks Corporation is the real owner. In contrary, the Starbucks LLC was the squatter who offer selling registered trademark right and squatter offers was refused by the real owner as well as brought action canceling the bad faith trademark registration. Another example from China is “*Shanyin*” vs. Zhongjun, in this case, the Supreme People’s Court (“*SPC*”) of China reproach trademark squatter, confirming that hoarding trademarks are unlawful, the grounds are hoarding and registering trademarks without the intention to commercial use may lead to the invalidation (Guo & Meuwissen, 2018). Although in several cases the bad faith of squatters can be resolved, it is not easy, especially to the country which applies the registration system as in Indonesia where the protection granted on the ground first to file registration. In this context, squatter may have more opportunity to register firstly in his or her own country the trademark of someone else before the real owner does so. Moreover, they may rely on the basis of the principle of territoriality as recognized under Article 6(3) of the Paris Convention, as a result, they not be considered as trademark infringement, except proven otherwise it is conducted in bad faith, even go beyond trademark squatting. In these contexts, it can rely on the WIPO Joint Recommendation to prohibit trademark squatting on well-known mark conducted by unauthorized parties in a bad manner (Ghosh, 2016). In order to anticipate trademark squatting, the trademark owner including SMEs in Bali, who potential enter the export market is important to register their brands not only domestically but also in different countries to get secure on legal protection.

Both the owner of the well-known mark and worldwide SMEs, including SMEs newcomer from Bali in Indonesia context, can rely on the right of priority as it is stipulated under the Paris Convention and Madrid Agreement including Madrid Protocol that provides more chance for the owner in registering their trademark by using the international registration mechanism for many countries. In order accessing to the Madrid Agreement-Madrid Protocol, that offers an international registration system for trademarks, Indonesia has participated various international agreements at the ASEAN level, namely: Indonesia-Japan Economic Partnership Agreement 2007, ASEAN Framework Agreement on Intellectual Property Cooperation, as well as ASEAN (Hidayati, 2017) Economic Community Blueprint. The Accession to the Madrid Protocol for Indonesia contexts has been stipulated in Presidential Instruction Number 11 the Year 2011. Furthermore, the commitment of Indonesia to adopt the Madrid Protocol relating the application for international brand registration is stipulated under Article 52 of the Law Number 20 of 2016 concerning Trademark and Geographical Indication. Requests for international trademark registration can be in the form of applications originating from Indonesia are

addressed to international bureau through the Minister or requests addressed to Indonesia as one of destination country received by the Minister of the bureau international. The Indonesian new trademark law emphasizes that in the context of requests for international registration from Indonesia, it only possible if applicants who have Indonesian citizenship; applicants who have a domicile or place legal position in the territory of the Republic of Indonesia; or applicants who have industrial business activities or real commercial in the territory of the Republic of Indonesia. However, previously the applicant should have submitted an application or have a trademark registration in Indonesia as the basis for the Application for international trademark registration.

Implementing the Model of Penta Helix Related to Responsibility Enhancing SMEs Registered Trademark

The OECD pointed out that SMEs play an important role in supporting economic development in the current digitalization era. However, they still faced various obstacle such as: marketing, financing, as well as technology innovation related to production. Therefore, through OECD Strategy several efforts have been formulated to minimize the obstacles

Therefore, through OECD Strategy several initiatives have been formulated to decrease the obstacles. In this contexts, comprehensive framework for member and non-members, the strong foundation of policy analysis developed across OECD Committees, in areas such as SME finance, innovation, taxation, regulation, digitalization, employment, skills, trade, internationalization and GVCs, environment, and others, and provide an effective impetus for reform, including extensive networks, including with stakeholders from the private sector and financial institutions. By supporting the development and implementation of effective policies for SMEs, the OECD can help to level the playing field and enable SMEs to increase their contribution. In the context of SMEs in the area of Bali tourism destinations, besides the obstacles that have been stated, they also do not fully understand the intellectual property, especially from the side of trademark protection as one of important pillars in supporting business development to be successful not only local, national but also have secure legal protection entering the global market.

The development of SMEs in Bali is actually appropriate enough supporting tourism activities, their business fields also vary, such as wood carving, sculpture, art motifs, silver jewelry, Balinese traditional weaving so-called "*tenun ikat endek*", kebaya, carving, coffee, Balinese culinary, kites, and more others Balinese SMEs product merchandise. Based on empirical data the amount of SMEs in Bali is quite a lot but the number of registering a trademark is still limited, as presented in the Table 1 below.

By comparing the number of SMEs and the number of registered trademarks, it seems very petty when viewed from the aspect of their benefits for business development. In those regencies, the empirical study found that only a few, even they have not yet registered their trademark caused by several factors such as considering their business is still in the micro-scale, the lack of awareness concerning the importance of the brand for their business, and the lack of knowledge related to the benefit of owning the trademark for the success of their business. The other factor is caused by the assumption that registering a trademark is difficult, tough requirements, as well as high cost. Although in two regencies namely Buleleng and Bangli

regencies it seems the number of registered trademarks is 0, it does not mean that there is no effort at all but at those regencies, the government have already facilitated registering 12 trademarks, but it is still in an ongoing process, to get registered trademark to take a time. According to the Indonesian Trademark Law, the duration in registering a trademark is approximately 1.5-2 years.

Table 1
THE SMES IN BALI AND THE EXISTENCE OF REGISTERED TRADEMARK

No.	Regency in Bali Province	The Number of SMEs until 2018	Trademark Registered
1	Denpasar City	30.840	67
2	Badung Regency	18.720	23
3	Gianyar Regency	75.314	100
4	Bangli Regency	44.108	0
5	Tabanan Regency	45.551	10
6	Buleleng Regency	34.552	0

Actually, the reasons why SMEs products need to be registered with IPR, especially trademark registration is by considering that SMEs as the activator of the creative economy, with their creative products that are different from other similar products, it is important to obtain trademark protection through the registration process based on the first to file system. The first registrant to receive protection. Through the registration trademark, SMEs will have exclusive rights, meaning that legally to be a trademark owner. If SMEs do not register the trademark for their products from the beginning, it is very risky will be taken as well as registered by bad faith other parties, especially when the product becomes famous. Another risky is what so-called trademark squatting, which is an act of registering a trademark belonging to another person who has not been registered, thus making the real trademark owner cannot use and cannot register their trademark. As consequence, whatever the efforts made by SMEs in developing their products, both through the government and corporation's supports, will be in vain if their unregistered trademarks are taken by other parties and even threatened to be sued by registrants with bad faiths. In this regard, it is important for SMEs to register their trademarks as early as possible in order to ensure legal certainty of ownership of exclusive rights for their trademark products. SMEs with their creative products have the potentiality to become global franchising businesses that require the registered trademark. For this reason, it is important for SMEs to register trademarks for their creative products as early as possible in order to enter the global market and develop into an international business chain. Furthermore, by having registered trademarks for SMEs products, will provide more benefits and more protection, there is legal certainty over ownership of trademark rights so that they become more flexible in developing their business, including licensing their trademarks to other parties so that SMEs can benefit through receiving royalty fees, and even develop to be franchising business.

Considering the number of existing registered trademark of SMEs, the government has taken important steps such as providing the incentive for trademark registrations. It seems other

parties' contributions needed to work together with government, this action finally not only to support SMEs but also will bring necessary impact to strengthen community-based tourism.

Excellent support from parties such as corporations in helping brand registration incentives for SMEs is actually very much in line with the philosophy of Indonesia, the Pancasila, especially the 3rd Sila of Pancasila, which underlies human behavior to help each other or work together, the philosophy is not only a guideline but also described in the implementation of Pancasila democracy towards a just and prosperous society. In Bali, the philosophy that also enlightens the people to live in harmony, helping or mutual cooperation each other is known as the Tri Hita Karana that implies a balanced relationship between human and God, human and fellow humans, as well as human and nature (Peters, 2013). Accordingly, to help SMEs get brand ownership is not only the responsibility of the government but also the company. Related to the discussion concerning who has a responsibility, in the context of human rights, the Guiding Principles on Business and Human Rights with 3 main pillars governing corporate responsibility specifically related to violations of Human Rights. In the context of corporate responsibility, it also includes Corporate Social Responsibility (CSR) (Dharmawan et al., 2018).

At the beginning CSR was more viewed from the voluntary basis, as Philip Kotler and Nancy Lee emphasize that an important element of CSR is its “*discretionary*” character, meaning that is, not prescribed by law, moral or ethical in nature. In this context, CSR is rather a voluntary commitment by a business implemented in business activities as the corporation's contribution to its stakeholders (Faure et al., 2014). Furthermore, the concept of CSR also develops gradually, it is seen not only as a voluntary basis of the corporation but also as an obligation. CSR should be morally and legally responsible. John Elkington defines CSR through the concept of Triple Bottom Line, to carry a business the corporation must consider the 3Ps: Profit, People, and Planet. Accordingly, the company's responsibility is no longer based on the economic aspect of the profit-only model, but the company also must show social responsibility by paying attention to the fulfillment of prosperity and the quality of surrounding communities (People) and actively contribute protection to the environment (Planet). Elkington argues that business is sustainable when it lives up to the triple bottom line of economic prosperity, environmental quality and, social justice. Archie B. Carroll, then emphasizes that legal as part of the CSR by defining that CSR as a pyramid made up of four layers, namely: economic, legal, ethical and philanthropic (Carroll, 1991). In addition, CSR related to SMEs, particularly study in Africa contexts shows that CSR practices in SMEs are not only as philanthropic activities that as it was previously presented, but much more nuanced go beyond philanthropic and in some instances involve institutional works: the workplace, marketplace, community and, the ecological environment (Amaeshi et al., 2016).

The development of studies concerning CSR has shown that law can play an important role in the development of business including a business operating by SMEs. as discussed previously, through defining CSR as part of the legal context, then CSR legally becomes part of the obligation of the corporation and not merely as a philanthropic project that the corporation may ignore. This is a solution in involving wider stakeholders, such as corporation to contribute to developing the SMEs business, including SMEs in Bali that aims to contribute to prosperity for Community-Based tourism (SBT). Meaning that by connecting law with development, it can be constructed the local government policy as well as the national development policies. By

understanding the law as an instrument of social change, Stephanie De-Moerloose reveals that law and development as part of the field of study has an important role as the source of knowledge for the adoption of national development policies, moreover to implementing the international development projects (De-Moerloose, 2017). In Indonesia contexts, the role of legal study connecting law and development particularly in order to achieve the necessary need of society including the development of SMEs related to CSR from voluntary to the mandatory basis, the obligation of the corporation to do CSR has enacted through several regulations both nationally and locally. CSR as an obligation for companies is regulated through Article 74 of Law No. 40 of 2007 concerning Limited Liability Companies and Article 15 of the Law Number 25 of 2007 concerning Investment Law. In Bali, CSR is regulated through regional regulation such as the Regional Regulation of Badung Regency Number 6 of 2013 concerning CSR, the Regional Regulation of Tabanan Regency Number 6 of 2017 concerning CSR, as well as the Regional Regulation of Buleleng Regency Number 7 of 2017 concerning CSR.

In the modern era, in order to connect the development of business SMEs with the legal context, particularly in helping them to register their Trademark, developing the responsibility of corporation through CSR model it seems relevant and the legal basis of that strategy can rely on by connecting law and development, such as by defining the wider concept of CSR and construct it on the policy regulation to cover the development of innovation and economic need of SMEs. Innovation is a major pillar in a knowledge economic. The responsibility to strengthen the SMEs also become part of wider parties, if we connecting it to the Model of Penta Helix. This model gives more rooms for wider stakeholders to participate in developing a community project, such as developing the business of SMEs to be more successful for economic contexts as well as legal contexts. meaning that besides the SMEs having economic prosperity they also have legal protection on their business. The Penta Helix emphasizes cooperation. The synergy in helping each other is also explained in a humanistic manner in what so-called as the Penta Helix. The collaboration of Penta Helix, which is a collaborative activity between Academic, Business, Community, Government, and Media, is known to accelerate the development of potential including for small business The Penta Helix element was originally Triple Helix with elements of Academics, Business Sector, Government, which were then added with one element, the Civil Society became a Quadruple Helix, to accommodate people's perspectives, then to become Penta Helix by added media. The Penta Helix is a socio-economic development model that aims to support the knowledge of the economy to pursue innovation and entrepreneurship through collaboration and beneficial partnership among the academe, government, industry, NGOs and civic sectors of the society, and the social entrepreneurs. In this synergy, the whole key players combine to take advantage of the innovative research projects that are cultured within educational (Halibas et al., 2017). By understanding the model of Penta Helix that basically emphasizes the importance of collaborating, partnership, synergy among the key players to achieve the goals in developing the socio-economic project, it seems this Penta Helix model relevant to be implemented in order to strengthen the SMEs within context developing the community-based tourism in Bali. Moreover, this model apparently harmony with the philosophy of Pancasila as well as the Balinese philosophy of Tri Hita Karana that also emphasizes the importance of working together as a human being to propose prosperous communities.

The notion of working together, collaborating as well as a partnership that is known as an essential point of Penta Helix model in harmony to the philosophy of Pancasila dan Indonesia Constitutional Law can be observed in several regulations in Indonesia such as in national level at the Part of the consideration and Article 3 of the Law Number 25 of 1992 concerning Cooperatives, Articles 4, Article 17 and Article 19 of Law No. 10 of 2009 concerning Tourism, Consideration of letters a,b,c, the Law No. 20 Of 2008 concerning MSMEs, and the Consideration of letters a and b of the Law No. 20 of 2016 concerning Trademark and Geographical Indication. In addition, in Bali local level related to partnerships are regulated in Bali Provincial Regional Regulation No, 3 of 2017 concerning Village Credit Institutions, Bali Provincial Regional Regulation No, 2 of 2012 concerning Tourism, Bali Provincial Regional Regulation No. 4 of 2019 regarding Indigenous Villages. Those regulations, as well as the regulation concerning CSR and the Penta Helix model, can be employed as a legal basis to drive the responsibility of more key players including corporation and academic in order to strengthen SMEs by supporting them an incentive to register a trademark. This strategy plan may be enforced if it exists in the form of regulation, as an example by regulating CSR in the Regional Regency of Badung, CSR can be enforced as an obligation of the corporation. Therefore, this model is also relevant created to regulate the responsibility of more players in supporting an incentive to register a trademark for SMEs. By owning trademark registered, the SMEs will have trademark legal protection, then they can involve in global marketplace securely, hopefully, far from counterfeit product claims as well as trademark squatting. Moreover, they may develop as chain-business with creative innovation in the era of the fourth industrial revolution that everything goes beyond the internet of thing and finally also can develop the socio-economic of the surrounding community and bring prosperity

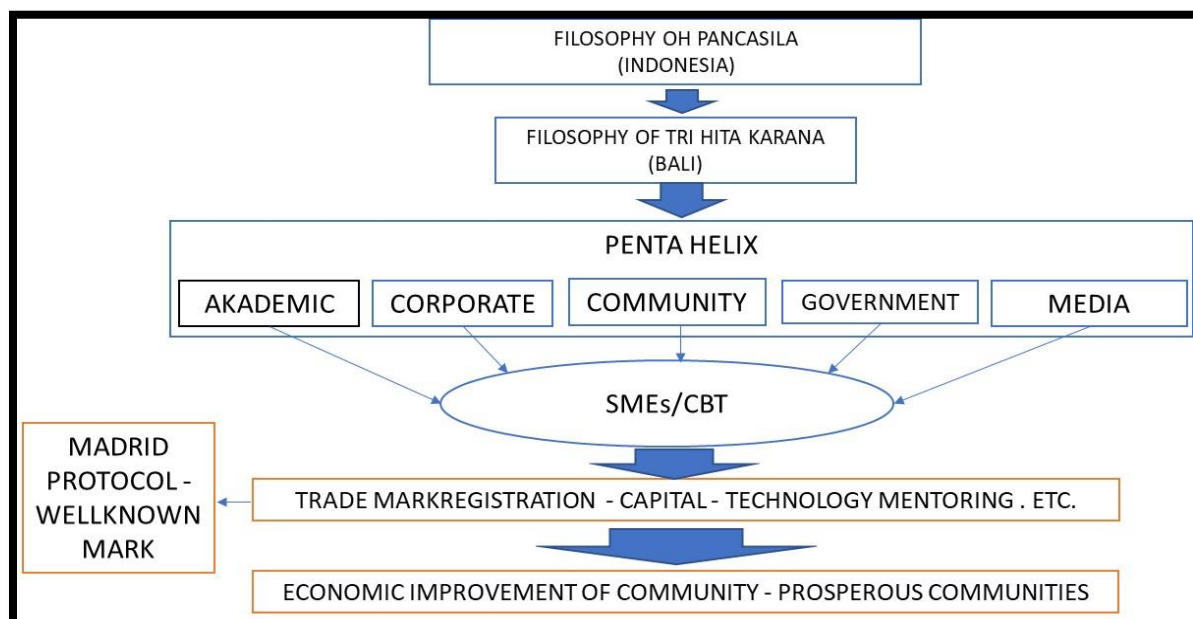


FIGURE 1
THE PENTA HELIX MODEL FOR TRADEMARK PROTECTION OF SMES IN BALI

In strengthening SMEs by using the Penta Helix model as pointed-out in Figure 1, it is important to describe the roles and functions of each key player so that collaboration and synergy between them can produce alternative solutions specifically related to trademark protection through supporting financial incentive for trademark registration of SMEs (Table 2).

Table 2 IMPLEMENTING PENTA HELIX MODEL FOR TRADE MARK REGISTRATION INCENTIVE OF THE SMES			
No.	Scope of Project	Party Involve	Activities Model
1	Developing Policy	Academic Government	Research Development Drafting Local Regulatory Model Training & Development
2	Fulfillment Requirement on Registration Trademark	Academic Government Community	
3	Trademark Registration	Government Corporate Academic Community Media	Registering Trademark National Registration, Comply TRIPs Agreement, The Law No. 20 of 2016 International Registration through Madrid Protocol
4	Branding & Sustainability	Government Corporate Academic Community Media	Training, Monitoring, Evaluating

Policies for innovation, that a word can be used to show how important the collaboration among key players working together with the government in strengthening the contribution related to innovation makes to economic performance and social welfare for the SMEs in Bali starting from the innovation of product of the Bali SMEs branding. To construct policies for innovation, the strategic plan should be composed clearly, such as who did what. In the context of developing Bali regional policy in order to strengthen SMEs to own their registered trademark, several collaboration steps can be done. Firstly, research and development (R&D) are needed it may carry out through the collaboration between universities and government to draft the local regulatory model. Secondly, using training and development strategy to fulfill the requirement of registering a trademark, in this step academic, government and community-relevant are needed to work in collaboration. Thirdly, for trademark registration step, especially register trademark nationally and internationally based on the Indonesian Law and Madrid Protocol, various key players: government, academic, community, corporate, and media may take the important role, including to facilitate financial support as an incentive for trademark registration of SMEs. Branding and sustainability as a further crucial point that should be paid attention by all of the key players as in the Penta Helix model to sustainably bringing the trademark legal protection on SMEs as well as a prosperous community.

CONCLUSION

Trademark protection plays an important role in the fourth industrial revolution, including to strengthen SMEs in Bali tourism destinations. Protecting SMEs related to strengthening the community-based tourism in Bali become very important through trademark registration that not only domestically but also in different countries in order getting secure legal protection, particularly in the advanced of the internet of thing (IoT) that known as characterizing the fourth industrial revolution. In getting trademark protection, nationally based on the Indonesian Trademark Law, SMEs should register their trademark, the protection of trademark in Indonesia based on registration or first-to file-system as comprehensively also regulated under the TRIPs Agreement. To get protection globally, SMEs can rely on the right of priority as it is stipulated under the Paris Convention and Madrid Agreement including Madrid Protocol that provides more chance for the owner in registering their trademark by using international registration mechanism for many countries. However, empirical study found that only a few of SMEs in Bali, even they have not yet registered their trademark caused by several factors such as the understanding that trademark only for the well-established business while the SMEs business is still in the micro-scale, the lack of awareness concerning the importance of the brand for their business, and the lack of knowledge related to the benefit of owning the trademark for the success of their business. Actually, the government has already taken an important step to facilitate SMEs in registering a trademark but it is still facing a challenge with a limited source of financial budget comparing to the number of SMEs in Bali that really a lot. Meanwhile, trademark registration is very important to guarantee brand protection, avoid counterfeit-good claims and trademarks squatting.

In supporting and increasing the registered trademark on SMEs in Bali in order to strengthen community-based tourism is not only as a responsibility of the government alone, but also the responsibility of wider key players, et least as part of Social Responsibility. Related to the human rights dimension, particularly by understanding the meaning of corporate responsibility based on the Guiding Principles on Business and Human Rights, it can be considered that CSR can be part of the corporate responsibility. In addition, other parties also are needed working in collaboration with government to strengthen the business of SMEs through supporting incentive budget for trademark registration of SMEs as well as to strengthens community-based tourism and prosperous community in large. By employing the Penta Helix Model in the era of the fourth industrial revolution, the key players in this context are government, academic, corporation, community, and media, they may work in collaboration as well as a synergy to achieve innovation strategy in helping the Bali SMEs. The Penta Helix Model relevant to be used its harmony with the philosophy of Indonesia, the Pancasila as well as the philosophy of Balinese Tri Hita Karana that emphasized the importance of supporting each other and collaborating.

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This article was originally published in Special Issue, entitled: "[Law, Politics, Economics and Human Rights: Global and National Perspectives](#)", Edited by [Dr. Ashgar Ali Bin Ali Mohamed](#)