

## The Proper Regulation of Collective Trademarks for MSMEs Based on Legal Certainty: A Comparative Study with Brazil

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### **Abstract**

Collective trademarks can be an alternative for trademark protection for Micro, Small, and Medium Enterprises (MSMEs) considering the greater benefits compared to regular trademarks. In 2024, there was an increase in the number of collective trademark applications, indicating that the public, especially MSMEs, are becoming more aware of the importance of trademark protection. However, issues have been found in the legislation regarding collective trademarks. This article aims to formulate the appropriate arrangements of collective trademark legislation that align with the MSME climate in Indonesia to achieve legal certainty. The research method used is normative juridical with a statutory approach, a conceptual approach, and a comparative approach. The regulation of collective trademarks in Indonesia will be compared with Brazil based on Law No. 9.279 of May 14, 1996, as amended by Law No. 14.200 of September 2, 2021. This research found that Law Number 20 of 2016 still contains several issues, namely the ambiguity of norms and articles that lead to multiple interpretations among the public. The provisions on collective trademarks in the Regulation of the Minister of Law and Human Rights Number 67 of 2016 (MIG Law) regulate substance similar to that stated in the MIG Law, whereas it should provide a more detailed and technical explanation. On the other hand, Law Number 15 of 2001, which was the previous regulation before the enactment of the MIG Law, provides a more comprehensive regulation on collective trademarks compared to the MIG Law. Thus, the legislation regarding collective trademarks does not yet provide legal certainty. The comparison with Brazil provides recommendations for appropriate arrangements, indicating the need for revisions and improvements to the legislation on collective trademarks to meet the need for more adequate regulations.

## **I. Introduction**

Micro, Small, and Medium Enterprises (MSMEs) play a role in economic growth (Salsabillah dkk., 2023). Although the scale of their businesses is small, there are a large number of MSMEs, and collectively they make an important contribution to the national economy. MSMEs account for a large portion of Indonesia's gross domestic product (GDP) and create significant employment opportunities. Strong MSME growth contributes to increased national income and drives other economic sectors. The business world, including MSMEs, cannot be separated from intellectual property rights (IPR), such as trademarks. A trademark is the identity of a product in its domestic and international marketing, making it an important asset in the business world (Mayana & Santika, 2021). Many MSME players are not yet aware of and understand the importance of trademark protection. They assume that trademark protection does not have a significant impact on business sustainability in the long term. Another obstacle is the lengthy and complicated trademark registration process, which is also costly (Prawreti & Indrawati, 2022). Collective trademarks offer many advantages when registered jointly by MSME players by forming a cooperative to manage their products. The advantages for MSME players include lower registration costs because they are shared, joint marketing of products to reduce individual promotion costs, and profits that can be distributed evenly among members (Megatri, 2019).

In the European Union market, collective trademarks have proven to be a useful instrument for promoting goods or services with specific qualities and characteristics (Calboli, 2023). Consumers can understand that the goods or services covered originate from a particular association, and thus can distinguish those goods or services from goods or services originating from other associations. Ultimately, collective trademarks will gain a good reputation and build consumer trust in the products or services offered. Problems arise when the use of the trademark does not comply with the established Rules of Use (RoU), resulting in low-quality goods or services that do not meet the specified characteristics. To prevent this, the European Union has established regulations for the cancellation of collective trademark rights if the use of the trademark does not comply with the established Rules of Use and the trademark owner fails to take action to prevent it.

This issue highlights the importance of implementing appropriate collective trademark Rules of Use to ensure the uniformity of the nature, general characteristics, or quality of goods or services produced and purchased by consumers. However, the MIG Law does not guarantee the consequences that will be faced if MSMEs or associations are no longer able to produce goods or services in accordance with collective trademark Rules of Use. Furthermore, based on the collective trademark registration applications submitted in 2023 to the Directorate General of Intellectual Property (DJKI) database, many applicants have incorrectly filled out the applicant's identity, listing multiple individual names instead. The applicant's name column should be filled with the name of the MSME or its association, as this is the key distinguishing feature from regular

trademarks, and also to emphasize that the trademark being applied for is a collective trademark. However, the provisions regarding the association's declaration as the owner of the collective trademarks are not yet regulated in the MIG Law. Additionally, the provisions for the transfer of collective trademark rights are also not yet regulated. Similar to the implementation of collective trademarks for MSMEs in Indonesia, Brazil also regulates the protection of collective trademarks and applies them as a strategic step for local associations to compete with large companies and even compete in the international market. Brazil is known as a country with rich biodiversity and is also a producer of wine (Bruch dkk., 2015). The quality and characteristics of wine products produced by wine-making associations are important factors in maintaining trademark sustainability and meeting consumer preferences. For that reason, the quality and characteristics of wine must comply with the Rules of Use of collective trademarks. This is guaranteed by the Brazilian government through stricter and clearer regulations on the application of collective marks, particularly for MSMEs and local associations. During the 2023–2024 period, the Intellectual Property Directorate General's Data Center (PDKI) recorded a surge in the number of applications exceeding 100%, including both pending applications and those that have already been registered (*Pangkalan Data Kekayaan Intelektual*, t.t.). As time goes by, there is always a demand for more adequate regulations in order to create certainty and strong legal protection. Legal certainty regarding collective trademark rights provides direction and boundaries in developing and creating their products, including confirmation of prohibitions in their development. These directions and boundaries regulate and encourage the commercial activities of economic actors (Hermawan & Habibi, 2020). If collective trademark regulations are not immediately improved, there are concerns that there will be uncertainty regarding the regulations and a legal vacuum regarding their implementation in the future. Therefore, collective trademark regulations that are appropriate and in line with the MSME climate in Indonesia are urgently needed in order to provide legal certainty for the community. These regulations can be modeled on and adopted from the more detailed and clear collective trademark regulations in Brazil.

Based on a review of previous research examining collective trademark regulations in Indonesia, several literature sources were identified. First, a study by Muh. Ali Masnun focused on re-examining the protection of collective trademarks for the legal empowerment of MSMEs due to several weaknesses (Masnun, 2019). Weaknesses in collective trademark regulations include inconsistencies between articles or within articles themselves, as well as unclear norms. Furthermore, the substantive requirements related to the acquisition of rights to collective trademarks that are tailored to the characteristics of MSMEs cannot be applied comprehensively. Second, research conducted by Ni Made Trisna Dewi et al. examines legal regulations on the use of trademarks that do not match registered trademarks and legal certainty in Article 79 of the MIG Law (Dewi dkk., 2024). Article 79 of the MIG Law contains a norm that does not explicitly and specifically explain the application of the *mutatis mutandis*

principle. This norm relates to the grounds for a lawsuit to cancel a collective trademark whose use is not in accordance with the registered trademark. Third, the research conducted by Suryansyah discusses the optimalization strategy for collective trademarks between Indonesia and Malaysia in the region of neighboring countries. Article 79 of the MIG Law contains a provision that does not explicitly and specifically explain the application of the *mutatis mutandis* principle. This provision relates to the grounds for an action for cancellation of a collective trademark whose use does not comply with the registered trademark. Third, the research conducted by Suryansyah discusses strategies for optimizing collective trademarks between Indonesia and Malaysia within the region of neighboring countries (Suryansyah, 2024). Harmonization of administrative provisions for collective trademark registration between Indonesia and Malaysia is necessary to create a more innovative region. Referring to the discussion above, this study will analyze and evaluate the laws and regulations on collective trademarks from the perspective of legal certainty theory, and formulate appropriate collective trademark regulations that are in line with the MSME climate in Indonesia, which is urgently needed to achieve legal certainty for the community. These regulations will be compared with the more detailed and clear collective trademark regulations in Brazil to produce recommendations that are in line with the needs of the community, especially MSMEs. The difference with previous studies is that previous studies only examined several articles on collective trademarks in the MIG Law, while other studies focused on the objects of collective trademarks based on field studies and an analysis of the benefits obtained from collective trademark protection. This study, however, analyzes the entire collective trademark regulation in Indonesia and provides recommendations regarding appropriate regulations.

## **2. Research Method**

The method used in this study is a normative legal research method with a legislative approach, a conceptual approach, and a comparative approach. The primary legal materials examined include Law No. 20 of 2016 concerning Trademarks and Geographical Indications, Law No. 15 of 2001 concerning Trademarks, and Regulation of the Minister of Law and Human Rights No. 67 of 2016 concerning Trademark Registration. These legal materials were researched and studied to identify gaps in positive law or vague regulatory norms in positive law. The research was also supported by field studies through interviews with sources, namely Agung Indriyanto and Irnie Mela Yusnita as the Trademark Examination Team at the Directorate General of Intellectual Property (DJKI). The primary data generated serves as supporting data in the legal review. The conceptual approach examines positive legal materials based on the theory of legal certainty. Furthermore, a comparative approach is used to enrich and sharpen legal considerations in analyzing collective trademark issues. The regulation of collective trademarks in Indonesia will be compared with that of Brazil based on Law No. 9.279 of May 14, 1996, as amended by Law No. 14.200 of September 2, 2021. The aim is to produce recommendations on these normative issues. This research uses a data collection method through comprehensive

literature study to obtain secondary data. The data obtained is processed using a descriptive-analytical method by examining various legal materials, which are then analyzed and organized systematically. The process of drawing conclusions is carried out deductively, that is, by drawing conclusions from general premises to specific matters.

### **3. Results and Discussion**

#### **Legislation on Collective Trademarks in Indonesia based on Legal Certainty**

There are two positive legal instruments that regulate collective trademarks in Indonesia, namely Law No. 20 of 2016 concerning Trademarks and Geographical Indications, and Regulation of the Minister of Law and Human Rights No. 67 of 2016 concerning Trademark Registration. Meanwhile, Law No. 15 of 2001 on Trademarks was analyzed to trace the provisions regarding collective trademarks that had been established prior to the enactment of the MIG Law. The regulation of collective trademarks is an important aspect to examine, considering that the granting of rights to collective trademarks is based on applicable laws and regulations, in line with the principle of Indonesia as a country governed by the rule of law. The regulation of collective trademarks is primarily governed by Law No. 20 of 2016 on Trademarks and Geographical Indications, from Article 46 to 51. Collective trademarks are certainly distinguished from regular trademarks. Therefore, an application for a collective trademark will be accepted if it meets the requirements, namely that the trademark is clearly stated to be used as a collective trademark and there is a copy of the Rules of Use (RoU) for the collective trademarks. The Rules of Use include the nature, general characteristics, or quality of the goods and/or services to be produced and traded; supervision of the use of the collective trademarks; and penalties for violations of the Rules of Use of the collective trademarks. These Rules of Use contain requirements that must be complied with and fulfilled by the parties using the collective trademark. Collective trademarks management must be carried out carefully to ensure that the products marketed meet the established quality standards. Therefore, collective trademarks owners must also be able to supervise the use of the trademark by their members in business activities, not merely establish and confirm its use or purpose (Sukmadewi, 2017).

Other provisions related to collective trademarks in the MIG Law include Articles 47 and 48 of the MIG Law, which state that the procedures for examining the completeness of administrative requirements and substantive examination of collective trademark applications shall be carried out in accordance with the examination conducted for regular trademark applications. The obligation to register the transfer of collective trademark rights is regulated in Article 49 of the MIG Law and is subject to a fee. Furthermore, Article 50 of the MIG Law stipulates that collective trademarks cannot be licensed to other parties but can be combined with a collective trademark association. Further provisions regarding the implementation of collective trademark regulations as stated in Article 51 of the MIG Law are stipulated through a Ministerial Regulation, namely Minister of Law and Human Rights Regulation No. 67 of 2016 concerning Trademark Registration.

The provisions on collective trademarks in Indonesia actually add to the complexity of collective trademark protection at the national level. However, in the main rule that serves as a reference, namely Article 7 bis of the Paris Convention for the Protection of Industrial Property, the difference between collective trademarks and regular trademarks lies only in their collective

ownership. There are no international legal provisions, particularly those ratified by Indonesia, that require the registration of collective trademarks to be accompanied by Rules of Use, mechanisms for monitoring compliance with Rules of Use, and the imposition of sanctions if Rules of Use are violated (Ramli dkk., 2021).

On the other hand, there are several issues in the regulation of collective trademarks in the MIG Law that will be discussed further. First, the issue of the subject of the collective trademark applicant. The definition of a collective trademark in Article 1 Paragraph (4) states that the subject of a collective trademark applicant is several individuals or legal entities jointly. The Paris Convention states that a collective trademark is owned by an association or organization used by its members to identify themselves with a level of quality set by the association and to distinguish themselves from other associations. However, the definition of a collective trademark in Article 1 Paragraph (4) and the Explanatory Notes do not clearly state that the subject of ownership must be in the form of an association, a community, or another form of collective entity. The reference in that article only uses the phrase “jointly.”

The ambiguity in this phrase will confuse applicants. According to Agung Indriyanto, Head of the Trademark Examination Team at DJKI, who was interviewed in person on March 4, 2025, in Jakarta, many errors were made in entering the identity of applicants for collective trademark registrations submitted up to 2023. Applicants submitted several individual names instead of the association's name. The phrase “several individuals or legal entities jointly” should be replaced with “association,” “community,” or another form of collective entity to ensure uniform understanding among the public. Irnie Mela Yusnita, Senior Trademark Examiner at DJKI, interviewed in person on March 4, 2025, in Jakarta, also stated that collective trademark practices in other countries confirm that collective trademark ownership must take the form of an association. Ownership of collective trademarks by associations, communities, or other forms of collective entities is considered important and must be clearly stated in the name of the applicant for collective trademark registration. Upon further review, the primary purpose of collective trademark protection is to indicate that someone is using a collective trademark that is part of a collective entity or association with a certain reputation and is already known to the public (Riswandi, 2020). Second, the provision regarding attachments containing the deed of establishment of an association or community. It is advisable that this regulation not be mandatory, considering that many collective trademarks associations originate from small-scale or home-based businesses, so that the preparation of a deed of establishment by the competent authority is considered too complex and burdensome for associations. Another reason is that the composition of the organization/association's management will be fully disclosed in the collective trademark usage regulations document.

Third, the issue of requirements for the transfer of collective trademark rights. The MIG Law states that the transfer of collective trademark rights is permitted. However, the MIG Law does not regulate the requirements or conditions that allow collective trademarks to be transferred, given the differences between collective trademarks and regular trademarks in terms of ownership and Rules of Use. Collective trademarks should only be transferable to other associations and similar entities because they are related to the ownership of collective trademarks, which are collective entities. More detailed regulations on this matter need to be added to the collective trademark regulations. Regarding other requirements for the transfer of collective trademarks, such as the transferee must be able to conduct effective supervision in

accordance with the Rules of Use of the collective trademarks, this depends on the agreement between the collective trademark owner and the transferee, taking into account the approval of its members. The same applies to the addition or reduction of clauses in the Rules of Use of the collective trademark to be transferred. It should be noted that the transfer is made to a fellow association so that its status remains as a collective trademark.

Fourth, the issue of collective trademark owners who are no longer able to produce goods and/or services in accordance with the nature and quality specified in the Rules of Use. The association is obligated to conduct supervision from the selection of materials, processing, to the characteristic and quality of the product. If there is a discrepancy, the association will impose strict sanctions on its members who can no longer produce goods or services in accordance with the Rules of Use, such as fines and expulsion from the collective trademark membership. Fifth, issues regarding the recording of changes to the Rules of Use of collective trademarks. The recording of changes to the Rules of Use is not yet regulated in the MIG Law, even though all changes to registered trademark data must be recorded at the DJKI. Changes to registered trademark data include the recording of changes to the name and/or address of the trademark owner, the recording of the transfer of trademark rights, and the recording of licensing agreements. Similarly, changes to the Rules of Use should be recorded at the DJKI. Additionally, when the Rules of Use data is not updated, the data becomes irrelevant to the reality within the association. This can cause problems, especially when internal conflicts arise that lead to legal proceedings.

Sixth, issues related to the status of collective trademark protection if the collective association has dissolved or is no longer operating. In such circumstances, if the association no longer produces goods or services, this may be considered similar to a non-use registered trademark. If a third party wishes to use the trademark and it is proven that the trademark has not been used for three consecutive years as stipulated in the MIG Law, that party may file a lawsuit for trademark cancellation accompanied by evidence. However, if no lawsuit is filed, the trademark will remain registered until its protection period expires. Issues related to the protection status of collective trademarks if the collective association has dissolved need to be regulated in the MIG Law. Regulations regarding collective trademarks in Indonesia are still not fully developed. As a result, there are several issues that have not been clearly regulated, as well as several provisions that give rise to various interpretations among the public, particularly MSMEs.

Minister of Law and Human Rights Regulation No. 67 of 2016 concerning Trademark Registration (Permenkumham 67/2016) is an implementing legislation from the MIG Law. Implementing legislation is a regulation made based on the delegation of authority from a higher law or regulation and aims to implement the provisions of the law. This regulation is necessary to implement provisions in the law that are still general in nature, and is issued when the subject matter being regulated is considered too technical and specific to a particular sector (Natalia & Ayuni, 2023). Minister of Law and Human Rights Regulation No. 67/2016 regulates the registration of collective trademarks in Articles 47 to 49, while the definition of collective trademarks is contained in Article 1 Paragraph (2). All provisions regarding collective trademarks regulated in Permenkumham 67/2016 are similar to the provisions in the MIG Law, without any substantial differences. However, implementing regulations should contain more detailed and concrete provisions than the regulations that delegate them. Nevertheless, this is

not included in Ministerial Regulation No. 67/2016. In fact, Ministerial Regulation No. 67/2016 plays an important role as a technical guide for the implementation of the MIG Law and provides legal certainty.

Law No. 15 of 2001 on Trademarks (Law 15/2001) was previously the main legal basis governing trademarks in Indonesia, including collective trademarks, before being replaced by Law No. 20 of 2016 on Trademarks and Geographical Indications (MIG Law). In comparison, Law 15/2001 was considered to have more detailed and comprehensive provisions on collective trademarks than the MIG Law. Unfortunately, several important provisions on collective trademarks were removed in the MIG Law, creating a legal vacuum that could impact legal certainty. Some of the important provisions missing in the MIG Law include: changes to the Rules of Use of collective trademarks previously regulated in Article 53 of Law No. 15 of 2001, which required registration with the DJKI and inclusion in the Trademark Gazette to bind third parties; provisions on the transfer of collective trademarks in Article 54, which only allowed transfer to recipients capable of conducting effective supervision; additional provisions in Article 66 regarding the cancellation of collective trademarks if they are not used in accordance with the Rules of Use; and the cancellation of collective trademark registrations as regulated in Article 72 if the trademark is not used as a collective trademark in accordance with Article 50(1). The removal of these provisions from the MIG Law may cause confusion in practice, particularly for businesses or organizations that use collective trademarks as part of their communal or business association strategies.

### **Appropriate Arrangements in the Formulation of Legislation on Collective Trademarks in Indonesia**

Law plays an important role in creating legal certainty because its purpose is to maintain public order. The element of certainty in law requires the positivization of rules made by the authorities so that these rules contain legal values that ensure that the law functions as a regulation that must be obeyed and implemented by the community. Therefore, legal certainty is the main principle that is put forward in formulating legal rules clearly and logically. In the context of collective trademarks, legal certainty provides guidance and boundaries in developing and creating products together, including clarifications regarding prohibitions in commercial activities. These guidelines and boundaries regulate, facilitate, and encourage commercial activities among economic actors, particularly MSMEs (Mertokusumo, 2007).

Various laws and regulations that are part of government policy still have many shortcomings. However, these policies are always directed towards achieving better goals. Legal comparison can be viewed macro (legal system perspective) or micro (rule of law perspective). In this research, the comparison is conducted on a micro level, comparing the laws on collective trademarks in Brazil and Indonesia. The technique used is to identify similarities and differences on the issues of regulation and implementation between the two laws. The comparison will produce recommendations in the form of appropriate arrangements in the establishment of implementing regulations for collective trademarks in Indonesia (Lukito, 2022).

This research finds that the existence of similarities between Brazil and Indonesia is a strategic step to ensure that the collective trademark regulation applicable in Brazil can be applied relevantly in the Indonesian national legal context. Understanding these similarities plays an

important role in minimizing barriers to regulatory adaptation and ensuring harmony between legal provisions and the needs of business actors and the legal community in Indonesia. From a legal aspect, the two countries both adhere to the Continental European legal system (Civil Law), which prioritizes the codification of written law as the main source of law, thus creating legal certainty and comfort for the community. Both have also ratified the 1883 Paris Convention and the 1994 TRIPs Agreement, demonstrating a shared commitment to intellectual property protection. In terms of trademark registration, both Brazil and Indonesia use the first-to-file system, where exclusive rights to a trademark are granted to the party who first registers it, without taking into account parties who may have used the trademark before. In addition, both Brazil and Indonesia provide protection to geographical indications through a *sui generis* system that distinguishes them from collective trademark protection. While they may seem similar, geographical indications have strict requirements regarding natural and human factors that affect the reputation and characteristics of the product, while collective trademarks do not. In Brazil, the provisions regarding geographical indications are regulated in Chapter 4 Articles 176 to 182 of Law No. 9,279 of 1996, while in Indonesia they are regulated in Articles 53 to 98 of the Trademark and Geographical Indications Law (MIG Law).

Brazil regulates collective trademarks through Law No. 9,279 of May 14, 1996 (Brazil Industrial Property Law) which has been amended by Law No. 14,200 of September 2, 2021. Under Article 123 item III, a collective trademark is defined as a mark used to identify products or services provided by members of a collective entity, such as an association, cooperative, union, federation, or consortium, with the purpose of distinguishing their goods or services from others despite being in a similar category. Article 128 paragraph (2) confirms that registration of a collective trademark can only be applied for by an organization that represents such collectivity and which need not carry on commercial activities as its members. The right to a trademark is acquired through registration with the National Institute of Industrial Property of Brazil (INPI) according to the first-to-file system, as affirmed in Article 129, and guarantees its exclusive use throughout the country. Although the registration of a trademark is transferable (Article 134), this provision does not apply to collective trademarks as ownership is only valid when held by a collective organization that meets the legal requirements, and transfer would break the indicative relationship between the trademark and its community.

Article 147 stipulates that collective trademark applications must be accompanied by Rules of Use that regulate the conditions and restrictions on the use of the trademark by members, and Article 148 stipulates that for certification trademarks, the characteristics of the product or service must be described as well as the control mechanism and sanctions in case of violation. Any changes to the Rules of Use must be registered with INPI (Article 149), and the use of the trademark does not require a license, simply based on the permission in the terms (Article 150). Cancellation of registration can occur if the collective organization is dissolved or the use of the trademark deviates from the Rules of Use (Article 151), and can only be filed in accordance with the articles of association or applicable provisions (Article 152). Article 153 sanctions cancellation of registration if the collective trademark is not used by more than one member, given that its collective nature requires joint participation. In practical terms, the utilization of collective trademarks in Brazil has boosted the agribusiness sector, for example the CPEG trademark used since 2013 to market sparkling wines from the Garibaldi region, which is known to have accounted for more than 90% of sparkling wine production in Brazil since the early 20th

century. In this case, standards in the Rules of Use are fundamental to maintaining the quality and consistency of Garibaldi wine grape products. Consumers who see the trademarks can have confidence that the product meets high quality standards and is manufactured according to collectively agreed guidelines, making the Rules of Use an important component for manufacturers and the protection of consumer interests.

In connection with that, to realize legal certainty in the regulation of collective trademarks in Indonesia, it is necessary to conduct a comparative analysis of the law between the collective trademark arrangements in the Trademark and Geographical Indications Act (MIG Law) and Permenkumham No. 67 of 2016, with the previous provisions in Law No. 15 of 2001 and international provisions such as Brazil Industrial Property Law (Law No. 9.279/1996 amended by Law No. 14.200/2021). This analysis aims to formulate an arrangement that is more appropriate and relevant to the legal conditions in Indonesia through a normative approach. One important aspect in this comparison is regarding the legal subject of collective trademark owners. Article 1 Paragraph (4) of the MIG Law states that the collective trademark applicant is “several persons or legal entities jointly”, but this phrase is considered less specific and needs to be clarified into “entities representing collectivities (such as associations, communities, cooperatives, and the like)”, as stipulated in Article 123 point III and Article 128 paragraph (2) of the Brazilian trademark law which confirms that the collective trademark owner is a certain community or collective entity. In addition, in the context of administrative documents, the provision that requires an attachment in the form of a deed of association or community should not be made an absolute requirement in an application for collective trademark registration, considering that the organizational structure and membership are usually already covered in the documents on the provisions of collective trademarks use that are required to be attached.

Meanwhile, regarding the transfer of rights to collective trademarks, Indonesian law allows it as stated in Article 49 of the MIG Law. From the perspective of civil law, collective trademarks are intangible property rights included in the intellectual property rights regime, and therefore can be transferred as other objects regulated in Article 584 of the Civil Code, as long as it is done in a lawful manner, either through agreements, legal events, or judge's determination. This is also in line with the view of Sri Soedewi Masjchoen Sofwan which states that property rights are absolute and can be defended against anyone, including rights to intangible objects such as collective trademarks. Thus, the regulation of collective trademarks in Indonesia needs to be reorganized with reference to international practice and the principles of civil law in order to reflect the principle of legal certainty and more optimal benefits (Prasetyo, 2022). In addition, the philosophy of collective trademarks is basically that each member in an association of collective trademark owners has one fundamental similarity, namely the similarity in producing certain goods or services. It should be emphasized that the association of collective trademark owners is not limited to business actors located in one geographical area, but can also consist of business actors spread across various regions, as long as they have a mutual agreement in building and running similar business activities. Therefore, a collective trademark does not necessarily have to be directly related to a particular region. Thus, the indicative relationship between the trademark and its owner is not solely based on geographical location, but rather on the similarity of product characteristics, quality, and values carried collectively by its members (Ranti Fauza Mayana and Tisni Santika, 108., t.t.).

However, the regulation of collective trademarks in Brazil as stipulated in Article 134 of Law

No. 9,279, of May 14, 1996, does not allow the transfer of collective trademark rights because the transfer will break the indicative relationship between the collective trademark and its collective owner. As a reflection of the Brazilian legal system, in Indonesia, the transfer of collective trademark rights is still allowed on the condition that the transferee is an association or collective entity, in order to maintain the collective nature inherent in the trademark. In the local context, the transfer of collective trademark rights to the local government is important because most of the MSMEs assisted by the local government produce distinctive products that reflect the cultural identity and image of the region. Therefore, the transfer of collective trademarks to the local government needs to be regulated under the condition that the owner of the collective trademarks is an MSME assisted by the local government, and the trademark must have a close relationship with regional distinctiveness, both in terms of culture, local raw materials, and traditional production processes.

In addition, it is necessary to formulate special arrangements regarding the reasons for the revocation of collective trademarks due to their characteristics that are different from regular trademarks. The reasons for the revocation include the non-conformity of the Rules of Use of the trademarks with the stipulated provisions, for example when the owner of the trademark is no longer able to produce goods or services according to the quality and properties as stated in the Rules of Use, or fails to carry out effective supervision over the use of the trademark. This provision is similar to the arrangement in Articles 54 and 66 of Law No. 15 of 2001 as well as Article 151 of Brazilian Law No. 9,279. Another reason worth considering is if the owner of the trademark which is a collective entity has dissolved or no longer exists, so that the collective trademark is no longer used. To prevent potential misuse by unauthorized parties and protect consumers, then this reason should be the basis for the revocation of collective trademarks as it applies also in the provisions of non-use registered trademarks. Nonetheless, if there is no revocation suit, then the trademark remains registered until its protection period expires.

The cancellation of a trademark has a conceptual difference from the revocation of a trademark. In civil law, the cancellation of a trademark means that from the beginning of its existence the trademark is considered invalid or as if it never existed, whereas the revocation of a trademark states that the trademark was validly registered but later removed from the register. This difference has particular relevance in the context of collective trademarks, which require joint use within a collective entity. If the collective trademark is no longer used collectively, then the main condition has been violated, and this can be a reason for cancellation. Therefore, it needs to be emphasized that a collective trademark can be applied for cancellation if it is proven not to be used by more than one authorized person, as stipulated in Article 46 Paragraph (1) of the MIG Law and supported by the provisions of Article 72 of Law 15/2001 and Article 153 of the Brazilian Trademark Law (Law No. 9,279/1996). In addition, the obligation to record changes in the Rules of Use of the collective trademark is also an important aspect to maintain the legal validity of the trademark. Any changes related to trademark data, including changes in the Rules of Use, must be registered with the Directorate General of Intellectual Property (DJKI) so as not to cause disputes in the future, as stipulated in Article 53 of Law 15/2001 and Article 149 of Law No. 9,279/1996 in Brazil.

Furthermore, the details regarding the contents of the collective trademarks Rules of Use need to be explained in more depth because in practice, small and medium enterprises (MSMEs) often experience difficulties in compiling these documents in full. In line with Brazilian practice, the

content of the provisions of use should ideally include the name of the organization/association, management structure and list of members, product list, mechanism and membership criteria, organizational governance, product and service quality standards, production process, product labeling and traceability mechanism, quality testing and supervision system, sanctions for violations, as well as dispute resolution mechanism and trademark removal (Ranti Fauza Mayana and Tisni Santika, 108., t.t.). Nonetheless, such provisions should not be mandatory to prevent excessive administrative burden for MSME players, but can serve as guidelines that assist them in drafting effective and legally compliant collective trademarks use provisions.

The appropriate arrangement can be used as an evaluation of the legislation on collective trademarks because of the demands for more adequate arrangements in order to create a strong legal certainty and protection of the empowerment of MSMEs. The empowerment of MSMEs becomes very crucial considering its strategic role in supporting the improvement of the Indonesian economy. Its contributions include economic growth, job creation, reducing socio-economic disparities, increasing innovation, strengthening the local economy, and preserving cultural and environmental heritage. With these multidimensional contributions, MSMEs are the backbone of a resilient and sustainable Indonesian economy. In this context, legal protection of collective trademarks has an important role in strengthening the competitiveness and competitive advantage of MSMEs. Legally protected collective trademarks not only help maintain business sustainability, but also increase the ability of MSMEs to adapt in the era of economic disruption and digital economic development (Salsabillah dkk., 2023).

#### **4. Conclusion**

The legislation on collective trademarks has not fulfilled the legal certainty theory. As a result, there are several issues that have not been clearly regulated, as well as several articles that cause multiple interpretations among the public, especially MSMEs. In addition, the collective trademark provisions in Permenkumham 67/2016 regulate substances similar to those listed in the MIG Law, whereas hierarchically, Permenkumham 67/2016 should function as an implementing legislation that provides a more detailed and technical description than the delegated regulations. On the other hand, Law 15/2001, which is the previous regulation before the enactment of the MIG Law, provides a more comprehensive and clear collective trademark regulation than the MIG Law itself. Brazil's collective trademark regulation is relatively more complete compared to Indonesia so it is worthy of comparison. The comparison will result in recommendations in the form of appropriate arrangements in the evaluation of collective trademark regulations in Indonesia. The appropriate arrangements include: 1) the legal subject of the collective trademark owner must be emphasized to be "the entity representing the collectivity"; 2) the attachment of the deed of establishment of the association is not made a condition of collective trademark registration; 3) the transfer of collective trademark rights is allowed on the condition that the subject of the assignee of the rights is also an association or collective entity; 4) the transfer of collective trademark rights to the local government on the condition that the collective trademark owner is an MSME fostered by the local government, and the collective trademark must be closely related to regional distinctiveness; 5) the addition

of reasons for the revocation of collective trademarks, namely the collective trademark is not used in accordance with the Rules of Use that has been set, and the owner of the collective trademark no longer exists; 6) the addition of reasons for the cancellation of collective trademarks, namely the use of collective trademarks is not used by more than one authorized person so that it is no longer in accordance with Article 46 Paragraph (1) of the MIG Law; 7) changes in the provisions of the use of collective trademarks must be recorded; and 8) the addition of the contents of the Rules of Use of collective trademarks. Therefore, there is a need for revision and improvement of the statutory arrangements regarding collective trademarks that aim for more adequate regulatory needs in order to create a strong legal certainty and protection of the empowerment of MSMEs.

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