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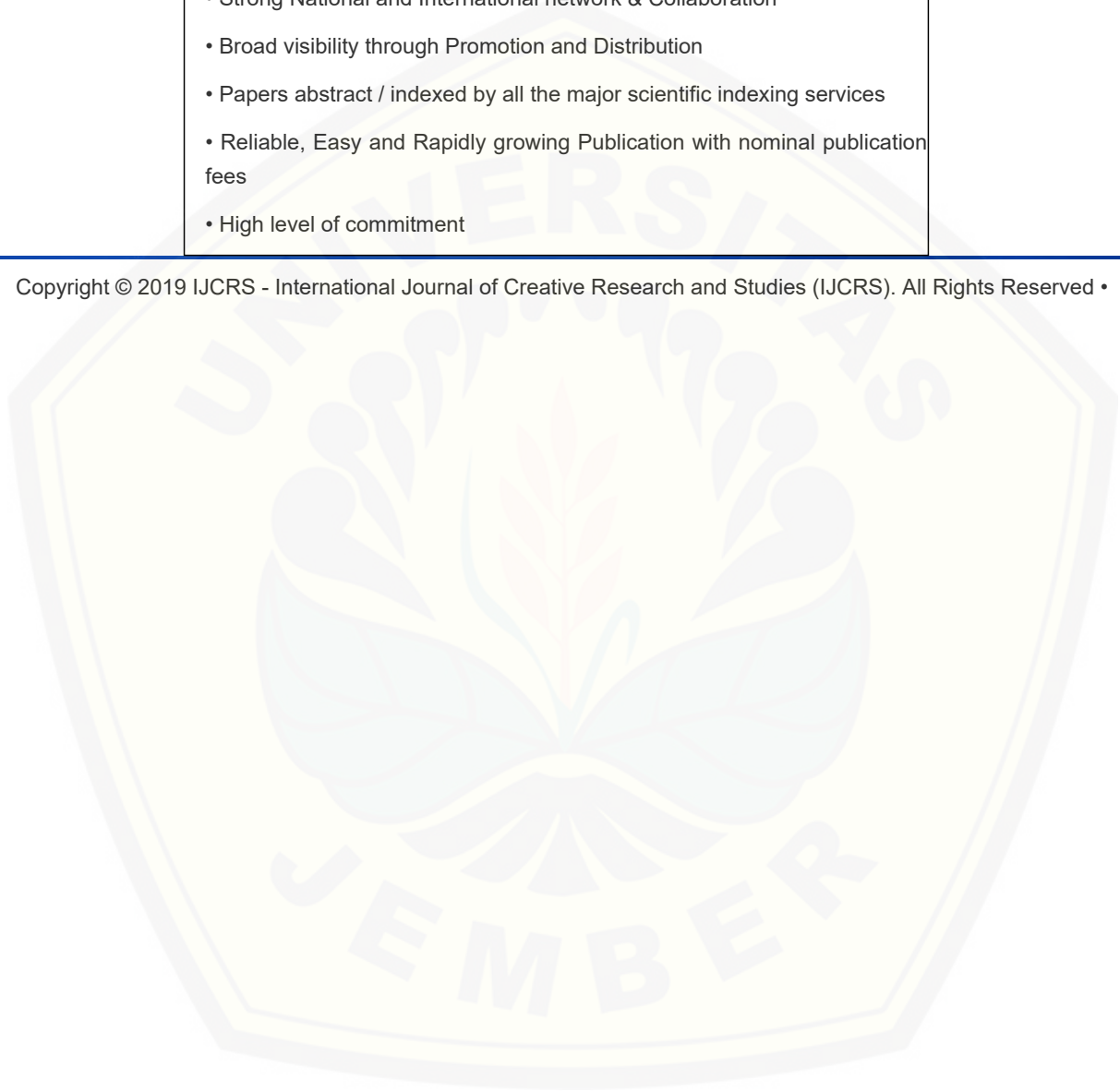
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This research is motivated by the unregistered trade secret and brand of Desa Jangkar salted fish, which allows these trade secrets and brands to be stolen, imitated, and claimed by others. This will undoubtedly be detrimental to business actors in the salted fish product in Jangkar Village, Jangkar District, Situbondo Regency. Legal protection is needed for holders of trade secrets and salted fish brand products in Jangkar Village. Research that uses a normative method with a statutory approach and a conceptual approach results in findings, namely a form of legal protection for holders of trade secrets and brands of salted fish products, including internal legal protection in the form of making agreements/contracts between trade secret and trademark holders and workers, and legal protection. External in the form of registration of trade secrets and brands of the Jangkar Village salted fish.

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**Legal Protection Towards Trade Secret Ownership and
Brands of Salted Fish Production**

Dyah Ochtorina Susanti, A'an Efendi & Nuzulia Kumala Sari
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Abstract

This research is motivated by the unregistered trade secret and brand of Desa Jangkar salted fish, which allows these trade secrets and brands to be stolen, imitated, and claimed by others. This will undoubtedly be detrimental to business actors in the salted fish product in Jangkar Village, Jangkar District, Situbondo Regency. Legal protection is needed for holders of trade secrets and salted fish brand products in Jangkar Village. Research that uses a normative method with a statutory approach and a conceptual approach results in findings, namely a form of legal protection for holders of trade secrets and brands of salted fish products, including internal legal protection in the form of making agreements/contracts between trade secret and trademark holders and workers, and legal protection. External in the form of registration of trade secrets and brands of the Jangkar Village salted fish.

Keywords: *Legal Protection, Trade, and Brand Secret Holders, Salted Fish Products.*

Background

Indonesia is the largest archipelagic country globally, which has 17,499 islands with a total area of approximately 7.81 million km², with the division of 3.25 million km² being oceans and 2.55 million km² is the Exclusive Economic Zone (EEZ). Around 2 01 million km² is land.¹ This data shows that Indonesia's sea area is extensive, so that the potential for marine and fisheries is also huge. In this regard, even fisheries are one of the sectors that are reliable and strategic in national development.² This is proven, wherein 2019, Indonesian fishery products' export value reached IDR 73,681,883,000, where this value increased by 10.1%

¹ <https://kkp.go.id/djprl/artikel/21045-konservasi-perairan-sebagai-upaya-menjaga-potensi-kelautan-dan-perikanan-indonesia>, diakses pada tanggal 28 Oktober 2020.

² Imam Triarso. *Potensi dan Peluang Pengembangan Usaha Perikanan Tangkap di Pantura Jawa Tengah*. Saintek Perikanan Journal Vol. 8. No. 1, 2012, p. 66.

from exports in 2018.³ In this regard, even the fisheries sector also absorbs a lot of labor, starting from fishing activities, cultivation, processing, distribution, and trade, so that the Indonesian government cannot ignore the fisheries sector.⁴

In connection with the above, in Indonesia, there is one area that has relatively good fishery potential, namely Jangkar Village, Jangkar District, Situbondo Regency. Jangkar Village is one of the villages in Jangkar Subdistrict, located in the eastern part of the Situbondo Regency with a 7o 43 " South Latitude and 114o09 " East Longitude, and has an area of 67 km2.⁵ Jangkar Village is some one of the regions of Situbondo Regency which is very close to the sea/beach, where the majority of the people work as fishermen so that fishermen produce many kinds of fresh fish, even fish caught by fishermen to become superior products Jangkar Village, Situbondo Regency, namely salted fish products (from now on referred to as Jangkar Village salted fish products).

Jangkar Village Salted Fish Products have a different taste from salted fish in other areas; apart from being made from fresh fish, they are also savory and crunchy. They use herbs or recipes passed down from generation to generation from the Jangkar Village salted fish business. In this regard, given the delicious taste, the salted fish in Desa Jangkar is even distributed outside Java, such as Bali. Simultaneously, for the marketing method, it is still done manually, namely selling the product to markets in the Situbondo Regency area.⁶ This shows that the salted fish in Jangkar Village has enormous potential to be developed.

In connection with the above, the immense potential for the salted fish business in Jangkar Village as intended, the fact is that it is not matched by the awareness of business actors regarding the importance of registering Intellectual Property Rights (HKI), because until now, the salted fish business products in Jangkar Village are still not registered rights to trade secrets and trademarks. The trade secret or brand of the Desa Jangkar salted fish is a significant business asset, which must be safeguarded at any time because other parties know the trade secret and trademark; whether it has similar or non-similar trades, it will cause losses to the inventor, or owner of the trade secret and mark because it is no longer a profitable attraction for the owner.⁷ This is the case regarding disputes over trade secrets and trademarks, namely: first, a trade secret case committed by a former company coffee employee. Bintang Harapan named Hi Pin was sentenced to 1 (one) year in prison for stealing company's coffee concoction (trade secret). The trade secret was then used by Hi Pin in managing his coffee business called Tiga Berlian, Ltd.⁸ The second case continued, namely the dispute over the "Bensu" chicken geprek trademark, which began with a lawsuit against Benny Sujono (owner of I Am Geprek Bensu) filed by Ruben Onsu (owner of the Geprek Bensu chicken brand) to the Central Jakarta Commercial Court in September 2019, in the ownership of the name Bensu, where the name Bensu itself has never been registered with IPR related to trademark rights. Regarding this, however, the lawsuit up to the appeal to the Supreme Court filed by Ruben was rejected. Benny Sujono won it because Benny was the party that first set up a business under the name Bensu.⁹

³ *Ibid.*

⁴ BPS data, which records the number of fishing company workers by province and status in 2018, both on land and at sea, as many as 24,853 people. See Subdirector of Fisheries Statistics. 2018 Fisheries Company Statistics. Central Bureau of Statistics of the Republic of Indonesia, ISSN: 0216-6623, Catalog: 5401003, p. 8.

⁵ Statistical Processing and Dissemination Integration Section. *Kecamatan Jangkar dalam Angka 2018*. Badan Pusat Statistik Kabupaten Situbondo, Katalag 1102001.3512.150, p. 3.

⁶ Results of an interview with Mrs. Husniyah as the owner of the Salted Fish Business on March 17, 2020

⁷ Kadek Dinda Agustina dan Made Nurmawati. *Perlindungan Hukum Terhadap Rahasia Dagang Dalam Usaha Franchise di Bidang Makanan dan Minuma*. Kertha Semaya Journal, Vol. 6 No.11, 2018, p. 3.

⁸ <https://news.detik.com/berita/d-4289403/bocorkan-rahasia-dagang-racikan-kopi-hi-pin-dibui>, accessed at p. 28th October 2020.

⁹ <https://www.cnbcindonesia.com/lifestyle/20201018141201-33-195203/babak-baru-sengketa-merek-geprek-bensu-siapa-yang-menang>, accessed at p. 28th October 2020.

The two cases above show that trade secrets and trademarks are essential to prevent trade business disputes. Given the importance of both types of IPR, it is necessary to provide legal protection so that business actors do not suffer material or immaterial losses. Based on this explanation, there are interesting legal issues discussed in this scientific article: what is the form of legal protection for holders of trade secrets and brands of salted fish products?

Research Method

This scientific paper's type of research is normative or doctrinal legal research (doctrinal research), which is library-based research to provide systematic information or explanation regarding the standard rules that govern specific areas of law, analyzing legal authorities, and predicting the development of regulations.¹⁰ Law. In this connection, this method is used to analyze and study the rules, norms, or legal rules relating to trade secrets and trademarks of salted fish products. In its implementation, there are 2 (two) approaches used, namely: first, the statutory approach used to review statutory regulations and regulations related to the contents of the law presented,¹¹ in this case, the positive rules or laws in Indonesia that regulate trade secrets. And the brand name for salted fish products. Second, the conceptual approach is the approach used to find legal scholars' views and doctrines developing in legal science,¹² which uses journals or regular books that discuss forms of legal protection. Later records of the legal guardian can be found, following the legal protection of the holders of trade secrets and brands of salted fish products.

Discussion

The salted fish product in Jangkar Village is one of the special effects of Jangkar Village, Jangkar Subdistrict, Situbondo Regency, because it has a distinctive taste, especially in terms of flavor or spices used, where apart from being made from selected and fresh fish, it is also delicious and crunchy the herbs used are a hereditary recipe from the Jangkar Village salted fish business actor.¹³ This is what then distinguishes Jangkar Village salted fish from other salted fish, so, naturally, this product is the superiority of Jangkar Village, even the demand for these products is not only in the Situbondo area but also distributed in various regions in Indonesia, one of which is Bali, so that the economy of the community increase too.¹⁴ In this regard, apart from having advantages, the Jangkar Village salted fish product also has a weakness, namely that business actors do not yet have trade secret rights and brand rights for the salted fish products. Both trade secrets and trademarks are forms of creativity and innovation of business actors that are the key to the success or success of the trade business, so they need to be maintained and protected so that they are not stolen or claimed by other people, which will undoubtedly harm the inventor or holder of trade secrets or product brands—salted fish itself. Protection is intended to provide legal certainty, namely through standard protection measures.

Legal protection itself consists of 2 (two) words that need to be described, namely "protection" and "law." In connection with the definition of protection, Indonesian Thesaurus protection means fortress, shield, defense, guard, safety,¹⁵ protection, security. At the same time, the word law is defined as a set of regulations that must be obeyed by the community.¹⁶ Law is also defined as a rule that becomes a system of rules about human

¹⁰ Dyah Ochtorina Susanti dan A'an Efendi. *Penelitian Hukum (Legal Research)*. (Jakarta: Sinar Grafika, 2018), p. 11.

¹¹ *Ibid.*, hlm. 10.

¹² *Ibid.*, hlm. 15.

¹³ Results of an interview with Mrs. Husniyah as the owner of the Salted Fish Business on March 17, 2020.

¹⁴ Results of an interview with Mrs. Husniyah as the owner of the Salted Fish Business on March 17, 2020.

¹⁵ Indonesian Thesaurus Editorial Team. *Tesaurus Bahasa Indonesia Pusat Bahasa*. (Jakarta: National Education Ministry Language Center, 2008), p. 295.

¹⁶ Satjipto Raharjo. *Ilmu Hukum*. (Bandung: Citra Adhya Bakti, 2005), p. 38

behavior.¹⁷ In this case, the law does not accumulate in a single direction (management) but a set of rules with one unit to be understood. As a system, and to understand the law, one must also understand the various governments. In line with this definition, Sudikno Mertokusumo provides a legal description, namely a collection of rules or rules in everyday life, the fundamental laws of behavior that apply in life together, which can be enforced with a sanction.¹⁸

In connection with the explanation above, according to Fitzgerald's opinion in Dyah Ochtorina Susanti, the law aims to integrate and coordinate various interests in society, namely by limiting these multiple interests, because, in traffic of parts, protection of particular interests can only be done by restricting interests on the other.¹⁹ In other words, this is that the law aims to take care of human rights and interests so that the law has the highest authority to determine social parts that need to be protected and regulated.²⁰ Furthermore, Paton in Dyah Ochtorina also argues that in addition to preserving a person's interests, the law also protects the will of that person, where both the part and the choice are rights that must be fulfilled,²¹ including the wishes of salted fish business actors to obtain their rights concerning rights. on trade secrets and trademark rights. Discussing rights, there are 5 (five) characteristics inherent in righteousness according to law, namely:²² first, the request is attached to a person known as the owner of the right or title to the object, which is the object of the right. Concerning Jangkar Village salted fish products, ownership, in this case, is in the form of ownership to trade secrets and rights to brands which are attached to the owners or holders of trade secrets and brands of Jangkar Village salted fish products; second, the request is assigned to another person, namely the holder of the obligation, where between rights and responsibilities there is a correlative relationship. Regarding salted fish products, trade secret rights and rights to trademarks are obligations that must be fulfilled by the government through the Director-General of Intellectual Property of the Ministry of Law and Human Rights as the party who gives rights to the owner of the salted fish product at Desa Jangkar after the trade secret and trademark is registered; third, the request that belongs to a person obliges the other party to do (commission) or not to do (omission) an act. Concerning Jangkar Village salted fish products, the commission, in this case, is in the form of a government obligation to safeguard and protect both trade secrets and registered trademarks. In contrast, the omission is the government's obligation not to leak or disseminate any information related to trading secrets and brands to others. So as not to be stolen, imitated, and claimed to be the trade secret and trademark of the Jangkar Village salted fish; fourth, commission or omission as referred to, which is related to something that can be called an object of rights, which is associated with the salted fish product of the Anchor Village, the object of the right as meant is trade secrets and marks; Fifth, each right has a title, which is a specific event on which the right is attached to its owner. In this regard, what is meant by the title, in this case, is the right to trade secrets and the right to the brand of the salted fish product in Desa Jangkar, which is attached to the owner of the salted fish product.

Based on the explanation above, what is meant by legal protection is an act or effort to protect the community from arbitrary actions by the authorities who are not following the rule of law, to create order and peace to enable humans to enjoy their dignity as humans.²³ Legal protection also means protection by using lawful

¹⁷ Jimly Asshidiqie dan Ali Safa'at. *Teori Hans Kelsen tentang Hukum*. (Jakarta: Sekjen dan Kepaniteraan MK-RI, 2006), p. 13.

¹⁸ Erwin Syahputra. *Thesis: Pengentasan Kemiskinan Melalui Hukum Sebagai Sarana Pemberdayaan CSR (Corporate Social Responsibility) Dalam Kegiatan Pertambangan Emas Di Tapanuli Selatan*. (Semarang: Master Program in Law, Faculty of Law, Diponegoro University, 2017), p. 59.

¹⁹ Dyah Ochtorina Susanti. *Bahan Ajar Mata Kuliah Teori Hukum*. Delivered on Postgraduate Program in Law, Kadiiri Islamic University (UNISKA). Kediri, 3rd December 2011, p. 1.

²⁰ *Ibid.*, p. 2.

²¹ *Ibid.*

²² *Ibid.*

²³ Setiono. *Disertasi: Rule of Law (Supremasi Hukum)*. (Surakarta: Master of Law Science, Postgraduate Program, Sebelas Maret University, 2004), p. 3.

means or protection provided by law to protect individual interests, namely by making the interests that need to be covered in a legal right.²⁴ Regarding legal protection for trade secret and trademark holders, what is meant by an appeal, in this case, is the interests of salted fish business actors in protecting their trade secrets and trademarks so that the two components of IPR are not stolen, imitated, or claimed by other parties. In this regard, to overcome this, according to Moch Isnaeni's theory of legal protection, there are 2 (two) forms of legal protection that can be used, namely internal legal protection and external legal protection.²⁵

Concerning internal legal protection, it is a legal protection that is carried out by making and determining their wishes or rules that need to be determined by the parties in the form, which is poured into an agreement with the aim that the interests of the parties are accommodated based on the said agreement.²⁶ This includes all types of risks and outlined in the contract based on the word agreement, so that with the agreement, the parties, especially the holders of trade secrets and marks, will receive balanced legal protection upon mutual consent. Referring to the form of internal security, if you see the parties in the Jangkar Village salted fish product business, this form of protection can be applied through the making of an agreement/contract between the business actor and the salted fish business worker or employee, which in the agreement may contain things -such as the obligation of workers to maintain trade secrets and trademarks of Desa Jangkar salted fish by not divulging or notifying recipes, processing methods from start to finish, marketing management, and other matters related to the production process of Desa Jangkar salted fish. The parties can also include clauses on sanctions if the worker violates these obligations (default), such as sanctions in the form of compensation and other provisions aimed at protecting trade secrets and brands of the Desa Jangkar salted fish product. In this regard, it is also necessary to know and understand that internal legal protection as described can only be realized when the legal position of the parties is relatively equal in the sense that the parties have relatively balanced bargaining power so that based on the principle of freedom of contract, each party has discretion. To state the will according to their respective interest.²⁷

In connection with the form of external legal protection, namely protection from the authorities through regulations made to protect the interests of weak parties, following the essence of laws and regulations should not be partial and impartial, and proportionally must also be given balanced legal protection as early as possible to the other parties.²⁸ This form of legal protection is also called a security that comes from statutory regulations.²⁹ This means that an action or action is carried out as a form of legal protection, where the act or act has been regulated by law, where the legal guardian of a mark has been handled in the Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Geographical Indication (from now on referred to as the Trademark and Geographical Indication Law), while legal protection against trade secrets is regulated in Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secrets (from now on referred to as the Trade Secret Law). Referring to this form of legal protection, the implementation of legal protection for holders of trade secrets and brands of salted fish products in Jangkar Village is in the form of registration of trade secrets and brands of salted fish products to the Directorate General of Intellectual Property of the Ministry of Law and Human Rights (from now on referred to as the Directorate General of Law and Human Rights.). This needs to be done so that the salted fish business actors get their rights, namely the right to trademark and the right to trade secrets.

²⁴ Harjono. *Konstitusi sebagai Rumah Bangsa*. (Jakarta: Sekretariat General and Registrar of the Constitutional Court, 2008), p. 357.

²⁵ Moch Isnaeni. *Pengantar Hukum Jaminan Kebendaan*. (Surabaya: Revka Petra Media, 2016), p. 159. (hereinafter referred to as Moch. Isnaeni I).

²⁶ *Ibid.*

²⁷ *Ibid.*, p. 160.

²⁸ *Ibid.*, p. 163.

²⁹ Moch. Isnaeni. *Seberkas Diaroma Hukum Kontrak*. (Surabaya: Revka Petra Media, Surabaya, 2017), p. 179-180. (hereinafter referred to as Moch. Isnaeni II)

Concerning trademark rights, the Trademark and Geographical Indication Law state that the right to a mark is an exclusive right granted by the government to the owner of a registered mark for a certain period by using the character himself or giving permission to other parties to use it.³⁰ Based on these provisions, 3 (three) essential things can be found in the legal protection of a mark, namely: First, the right to a pattern is exclusive, namely the right to be able to use the effect, allowing others to use the character with the permission of the owner, free from interference from others. In using the mark, and can retain ownership of the pattern in a dispute in the future. Concerning salted fish products, the brand holder can use the brand for commercial activities and allow other people to use the salted fish brand because it is subject to the owner's approval. Second, the state's right to a mark is granted, meaning that the right to a new character exists if the state gives it, and there are no rights before the government determines it. This shows that the country will grant the rights to the salted fish brand in Desa Jangkar through trademark registration with the Director-General of Intellectual Property, Ministry of Law and Human Rights. Third, the right to a mark is given to the registered trademark owner. If the Jangkar Village salted fish product business actor does not register the trademark, then the business actor will not get the right to the brand in the form of an exclusive right as explained in point one. The three provisions indicate that the salted fish product business actors are obliged to register their trademarks.³¹ The business actors or trademark rights holders obtain legal protection through the Jangkar Village salted fish product brand's rights.³²

In connection with the explanation above, the Law on Trademarks and Geographical Indications even stipulates provisions related to applications for trademark registration, where the application can be submitted to the Minister in this case, the Ministry of Law and Human Rights through the Directorate General of Intellectual Property, Ministry of Law and Human Rights, either electronically or non-electronically using Indonesian.³³ About terms, registration procedures, and other provisions relating to filing applications for registration of a mark, it is also further regulated starting from Article 4 to Article 15 of the Law on Trademarks and Geographical Indications. In this regard, if the application for registration of a mark is accepted, the Minister will issue a mark certificate as proof of ownership of the registered trademark or business.³⁴

The next object of protection is legal protection for secret trade holders, where trade secrets themselves are information that is not known to the public in the technology and/or business fields, have economic value because they are useful in business activities, and are kept secret by the owners of trade secrets.³⁵ Confidential information as referred to is regulated in Article 2 of the Trade Secret Law, which includes production methods, processing methods, sales methods, or other information in the field of technology and / or business that has economic value and is not known to the general public, including recipes or formulas. Business products. Based on this scope, the trade secret components of salted fish products that can be submitted as objects of registration include processing methods and recipes or formulas for salted fish products, where

³⁰ See Article 1 number 5 Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Geographical Indications.

³¹ Dyah Ochtorina Susanti, *et.all. Perlindungan Hukum Produk Makanan dan Minuman Hasil Usaha Mikro Kecil Menengah di Desa Patemon Kecamatan Krejengan Kabupaten Probolinggo Dengan Pendaftaran Merek*. QISTIE Law Jpurnal Vol. 11 No. 2 Nov 2018, p. 249.

³² The obligation of business actors to register their business marks is also emphasized in Article 3 of Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Indications.

³³ See Article 4 paragraph (1) of Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Indications.

³⁴ See Article 25 of Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Indications.

³⁵ Article 1 number 1 Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secret. Also look at Etty Susilowaty's opinion which says that trade secrets are information or information closed to other parties which is private to the owner. This means that the information is not information that may be known by other parties, unless the party is an officer or official who is authorized to carry out and store the trade secret information. Etty Susilowaty. *Hak Kekayaan Intelektual dan Lisensi Pada HKI*. (Semarang: Undip Press Publishers Agency, 2013), p. 136.

these components are information that cannot be disclosed to other parties because both the processing method and the fish recipe salted fish, especially the Desa Jangkar salted fish product, has its procedure and formula for processing it, so that is what distinguishes the taste of the Jangkar Village salted fish product from other salted fish products. In this regard, in the Trade Secret Law itself, no provisions are regulating the obligations of business actors to register trade secrets of their business products; however, automatically, this protection is obtained on the following conditions:³⁶ first, the information is confidential and is not known by the general public. With regard to the Jangkar Village salted fish product, the information referred to is in the form of information ranging from recipes, processing / production methods, sales methods, to other information that cannot be known by others; second, it has economic value, meaning that the confidential nature of the data is used to carry out commercial activities or businesses to increase financial profits. Concerning the Jangkar Village salted fish product, in this case, the recipe and method of processing salted fish have economic value, so it must be kept secret because these two components are the key to the success of the Jangkar Village pickled fish product business. Considering that the recipe and processing are different from other salted fish in other regions so that it produces a delicious taste and is liked by many people, it can even increase the opinion of the Jangkar Village salted fish businessman; third, the owner or the parties who control it maintain the confidentiality through appropriate and proper efforts or steps. This means that in the event of a trade secret dispute, the owner or parties who control the trade secret can take legal action following the laws and regulations, both in litigation and non-litigation (ADR).

The explanation above becomes a problem when a trade secret dispute arises for salted fish products, where it will be challenging to determine who is the owner of this salted fish product trade secret because there is no written evidence showing ownership of the salted fish product trade secret.³⁷ Based on this, although the obligation to register trade secrets is not regulated in the Trade Secret Law, to obtain legal certainty, recognition, and proof regarding the ownership of trade secrets of salted fish products, according to the author's opinion, the owner of a trade secret for salted fish products must register the trade secret.³⁸ To the Directorate General of Legal Intellectual Property and Human Rights. This needs to be done so that in addition to legal protection, the owner or holder of a trade secret also gets written proof of ownership to be used as strong evidence in the event of a trade secret dispute. Business actors who have registered trade secrets of salted fish products will also obtain rights to trade secrets, including being able to use their trade secrets, be able to grant licenses to other designated persons, and prohibit other parties from using trade secrets of salted fish products or disclosing trade secrets. It to third parties for commercial purposes.³⁹

Concerning the explanation above, to keep trade secrets protected at any time even without being limited by time, the Trade Secret Law also provides rules that rights obtained by the owner or holder of trade secrets as referred to can also be transferred or transferred through various means including inheritance, grants, wills,

³⁶ See Article 3 of Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secrets.

³⁷ Basically, trade secrets as part of intellectual property, there are 2 (two) principles adopted in determining the ownership of trade secrets, namely first to file system and first to use system. The first to file system is a registration system based on the first registration, meaning, if there are two people who register a trade secret on the same day with the same object, the party who registers first is determined to be the owner of the trade secret, while first to use The system is based on the first user, that is, the owner of the trade secret is the first to use the trade secret. Andry Setiawan, et.all. Existence of Trade Secret Registration and Implementation of Protection (Study at the Regional Office of the Ministry of Law and Human Rights, Central Java). Journal of Law and Justice, Vol. 3 No. 2, October 2018, p. 76. Based on these two principles, if it is related to the first to file system principle, the protection of trade secret law according to the Trade Secret Law is not included in this principle, because the Trade Secret Law itself does not regulate the obligation of the trade secret owner to register his trade secret. . Likewise with the principle of the first to use system, if it is based on the first user, it will be difficult to prove who is the first user of a trade secret, because there is no written evidence showing ownership of the trade secret.

³⁸ *Ibid.*

³⁹ See Article 4 of Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secrets.

written agreements, or other means justified by law. This indicates that the salted fish product business actor can transfer the rights to his trade secret to another person appointed as a substitute following the law's provisions.⁴⁰ In this regard, in its implementation, it is necessary to understand that the transfer of trade secrets must be registered at the Director-General of Intellectual Property of the Ministry of Law and Human Rights and announced in the general trade secret news.⁴¹ Likewise, with the granting of private trade licenses, the parties must enter into a license agreement and register the contract with the Director-General of Intellectual Property, Ministry of Law and Human Rights.⁴²

In connection with the above explanation, if we look closely, it can be found that there is confusion in trade secret registration arrangements, wherein the Trade Secret Law, there are no provisions requiring business actors as the primary owner of business products to register their trade secrets, but about transfer Trade secret rights and trade private agreement licenses are precisely regulated and required to be registered with the Director General of Intellectual Property, Ministry of Law and Human Rights. Whereas the most compulsory registration of trade secrets is the registration carried out by the business actor as the owner and the discoverer of the first trade secret to prevent trade secret disputes that arise in the future. In this regard, it is clear that legal protection of the trade secrets and brands of the Desa Jangkar salted fish product in the form of external legal protection through registration is an essential and mandatory thing to do because if the trade secret and brand of the Desa Jangkar salted fish product has not been registered, then the maker or user of the Desa Jangkar salted fish brand does not have the right to trade secrets and rights to the trademark, but only as of the de facto brand owner (judging by the fact, the salted fish product business actors use the Desa Jangkar salted fish brand), however, de jure (according to the law), the salted fish product business actor does not have the rights to the mark, and at any time, both the trade secret and the brand of the salted fish product can be stolen, imitated, or claimed by others. This shows that the registration of trade secrets and trademarks makes the de facto owner and de jure the exclusive rights of trade secrets and marks.⁴³

Closing

A. Conclusion

Based on the discussion as described above, it can be concluded that the form of legal protection against trade secrets and brands of salted fish products consists of 2 (two), namely:

1. Internal legal protection that can be carried out through the making of an agreement/contract between a salted fish product business actor and their workers, which includes: 1) The obligation of workers not to divulge and disseminate any known information starting from recipes, processing methods from start to finish marketing management, brand design and other matters related to the production process of the Jangkar Village salted fish. This needs to be done to prevent the leakage of trade secret and brand information that may be done by workers from the salted fish product business in Jangkar Village; 2) Includes a clause regarding sanctions against parties who violate the provisions as referred to in point 1), such as compensation.
2. External legal protection, where legal protection for trade secrets of salted fish products has been regulated in Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secrets, while legal protection for salted fish product brands is regulated in Law of the Republic of Indonesia Number 20 of 2016 concerning Brands and Geographical Indications. In this regard, the implementation of legal protection, both trade secrets and brands of salted fish products, is the obligation of business actors or business owners of salted fish products (in this case salted fish products in Term Village) to register trade secrets and

⁴⁰ See Article 5 paragraph (1) of Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secret.

⁴¹ See Article 5 paragraph (3) of Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secret.

⁴² See Article 8 paragraph (1) of Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secret.

⁴³ Dyah Ochtorina Susanti, *et.all. Op. Cit.*, p. 250.

trademarks, so that trade secrets and the brand is protected. The salted fish product business actors get exclusive rights from the rights to trade secrets and rights to the trademarks.

B. Suggestions

1. To the Government

- a. In this case (the President and DPR) or the parties authorized in making laws should include a clause in the form of trade secret registration obligations and the procedure for submitting applications for registration in the Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secrets. This needs to be done to guarantee legal certainty, recognition, and proof for business actors, especially the salted fish product business in Jangkar Village.
 - b. Providing free trade secret and trademark registration fee assistance to the Jangkar Village salted fish business product, considering that this product is one of the superior products and regional characteristics (in this case, the Situbondo Regency) and part of the culture of the Indonesian people.
- ### 2. To business actors of salted fish products to register their trade secrets and trademarks or business immediately, to obtain legal protection, recognition, and proof from the state.

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