

Trademark Registration Incentive Regulation for Small Businesses in Tourism: Human Rights and Protection Systems Comparison

Putu Aras Samsithawrati¹, Ni Ketut Supasti Dharmawan², Made Aditya Pramana Putra³, Dewa Ayu Dian Sawitri⁴, Tan Jian Hong⁵

¹²³⁴Faculty of Law, Universitas Udayana, Bali, Indonesia

⁵NBS Intellectual, Malaysia,

✉ Corresponding author: samsithawrati@unud.ac.id

Abstract

This study aims to compare trademark protection systems adopted in Indonesia and Malaysia on exclusive rights to trademarks, especially in the human rights context, and to analyze regulations in both countries in supporting small business in the tourism sector through trademark registration incentives. The normative legal research method is used in this study by using statutory, conceptual, and comparative approaches with descriptive qualitative analysis. The study reveals that trademarks as intangible property rights and the right to own property can be considered human rights refer to Arts. 27(2) and 17 UDHR. To strengthen trademark protection in human rights and Intellectual Property Rights contexts, Indonesia adopts a first-to-file system where trademark registration is an obligation, because it protects those who file it first, as stipulated in Law No. 20 of 2016. Gianyar as tourism area in Bali-Indonesia has Regent Regulation Number 86 of 2021 that supports small businesses in tourism through trademark registration incentives. Meanwhile, Malaysia adopts a first-to-use trademark protection system stipulated in the Trademark Act 2019. However, trademark registration is an essential step to ensure business continuity. Both Indonesia and Malaysia governments have at least attempted to play a positive role in supporting the growth of their economies.

Keywords: Registration Incentive, Trademark, Small Companies, Human Rights, Protection System Comparison.

INTRODUCTION

Trademarks play a vital role in supporting the growth of small businesses, including those in the tourism sector, particularly in today's digital age with

technological advancements. A trademark serves as a powerful sign used by businesses to distinguish their goods or services from others in the marketplace (Zakiya 2025). The study of Purwaningsih reveals that a trademark holds the investment stimulation function, meaning that it supports industrial growth (Purwaningsih 2020). In business practice, competition may result in innovation, but sometimes may also encourage business actors to engage in unhealthy business competition, one of which is through illegal use of trademarks (Muh. Ali Masnun 2020). The use of trademarks is related to the profit-making aspect because trademarks not only function as a differentiating power but also function to characterize the quality of traded goods or services (Ossai 2025). Trademarks may attract consumer attention and preference as well as consumers' loyalty. Entirely possible that unauthorized third parties may exploit trademark owners' trademarks for economic benefit by taking advantage of consumer confusion.

Trademark law in Indonesia and Malaysia shares similarities, as both countries are members of the Paris Convention and Madrid Protocol, and follow Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPs Agreement)-compliant systems. However, there are key differences in practice, requirements, and procedures between the two jurisdictions. Considering that trademark issues in the digital era are crucial, therefore, a comparison study between Indonesia and its neighboring country-Malaysia is interesting.

Trademarks are not only important for well-established businesses but also small businesses. Trademark squatting is the reason. It is now affecting small-growing businesses. It is particularly common in countries that follow a first-to-file system, like Indonesia, where registration is essential for trademark protection. The squatters

take advantage of the gap created when the actual owner has not yet registered their trademark, allowing the squatter to file for it first and gain legal rights over the trademark. A case occurred in Jakarta, Indonesia, against the trademark of a street steak stall (Putri 2025). In addition to the first-to-file system, there is another protection system called the first-to-use system, where the first user of a trademark holds legal protection over the trademark (Samosir and Mustafa 2020). Nevertheless, trademark squatting occurs globally, regardless of the type of legal protection system a country follows, like the “Jordan” case in China (Xiaotian 2024), and "Starbucks" as a brand of Starbucks Corporation of the United States whose brand was used by trademark squatters in Russia (Krasnikov and Jayachandran 2022).

A trademark is part of the industrial rights under the Intellectual Property Rights (IPR) regime (Samsithawrati et al. 2024). Internationally, the recognition of trademarks along with other objects, for example patents, utility models, industrial designs, indication of source, service marks, trade names and the repression of unfair competition, as industrial property can be traced through Art. 1(2) of the Paris Convention for the Protection of Industrial Property (Paris Convention). A trademark is a sign that can differentiate one’s goods or services from another party’s goods or services that are created due to human intellect. Given the trademark owner’s intellectual effort along with the time, money, and energy invested in creating the trademark, the law grants exclusive rights to the trademark owners. This corresponds to Reward Theory by Robert Sherwood in which IPR is necessary to be protected, in this case “awarded” with exclusive rights, given the efforts already undertaken (Mariana, Sofilda, and Harris 2025). As stipulated under Art. 16(1) of the TRIPs

Agreement, trademark owner's exclusive right is to prevent all third parties, without authorization from trademark owner, from using identical or similar signs in commerce for goods or services that are also identical or similar to those covered by the registered trademark, if such use could potentially lead to confusion.

IPR is fundamental for business in today's era because it encourages innovation, maintains competitive advantages, and provides economic benefits to IPR's owners (Samsithawrati, Kurniawan, and Dharmawan 2024). Small businesses in the tourism sector are the focus of this study. Ernawati (2019) argues that the economic growth in various countries is driven by the tourism sector (Ernawati 2019). In this context, small businesses are understood to encompass Micro, Small and Medium Enterprises (MSMEs). In general, due to the utilization of creativity, cultural heritage and surroundings, the SMEs serve as a strategic role in economic distribution (Nugraheni 2020). MSMEs in Indonesia are one of the pillars in Indonesia's economy due to its specialty, flexibility, low cost, and innovation, unfortunately, many of MSMEs' trademarks are not registered (Mundzir et al. 2023). Legal frameworks of MSMEs in Indonesia can be found under Indonesian Law No. 20 of 2008 on MSMEs (Indonesian Law 20/2008), which is lastly amended through Indonesian Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Laws No. 2 of 2022 on Job Creation (Indonesian Law 6/2023). Similar to Indonesia, Malaysia also acknowledges its Small and Medium-sized Enterprises (SMEs) as the pillar of Malaysia's economic development and the place where its entrepreneurial talent is developed (Sakti and Ramadhani 2023).

Discussing the importance of trademark for small businesses growth cannot be separated from the IPR concept and additionally, the human rights concept. Although

the topic of whether or not trademark is part of human rights is debatable, still, it is exciting to examine more closely whether trademarks can be considered human rights. A trademark is a distinguishing “sign”. A sign that is created through a human’s intellectual process that relates to a human’s freedom of expression in expressing his/her goods or services in trade. Not only that, trademark is also a sign, which, among its many forms, can be names, letters, figurative elements, or a combination of them, may constitute an artistic and literary work. Moreover, in its development, a non-conventional trademark has emerged in the form of a sound which, in terms of its melody, may be considered an artistic work and its lyrics as an artistic work. In this case, Art. 27(2) of the Universal Declaration on Human Rights (UDHR) may seem relevant. Nevertheless, trademark as a property right in the form of an intangible property right itself, may seem relevant to human rights in the context of everyone’s right to own property (Art. 17 UDHR).

Based on the above mentioned background, legal issues raised in this study are: (1) how trademark protection systems adopted in Indonesia and Malaysia on exclusive rights to trademarks, especially in the human rights context?; and (2) how regulations in Indonesia and Malaysia support small business growth in the tourism sector through trademark registration incentives?. Thus, this study aims to compare trademark protection systems adopted in Indonesia and Malaysia on exclusive rights to trademarks, especially in the human rights context, and to analyze regulations in both countries in supporting small business growth in the tourism sector through trademark registration incentives.

Similar studies have been conducted by several scholars in the past. Pandey and Mishra’s (2025) study on IPR elaborated the connection between IPR in general and

human rights, which developed independently, but somehow looked like the two rights might have a connection due to provisions UDHR and International Covenant on Economic, Social, and Cultural Rights (ICESCR) (Pandey and Mishra 2025). Ncube (2024) explored the relation between enhancement of science, innovation, technology and IPR commitments as well as human rights obligation (Ncube 2024). Furthermore, another study of human rights by Sugirman et al's (2025) focused on the comparative perspective between Indonesia and South Africa related to the integration of human rights and constitutional law (Sugirman et al. 2025). Meanwhile, this study focuses on the comparative perspective of IPR, especially trademark, in Indonesia and Malaysia, those two are neighboring countries, but follows a different path for their country's trademark protection system, and discussing trademark registration incentive regulation for small businesses in tourism by relating it to human rights context as well.

This study uses normative legal research. Wiradipradja in Rohman et al (2024) explained it as legal research with positive law as the main object of the study (Rohman et al. 2024). This is related to the position of law itself, which contains rules and norms that require responsiveness in solving existing problems. Statutory, conceptual, and comparative approaches are adopted in this study. Laws and Regulations used in this study are those related to IPR, human rights, and MSMEs from Indonesian and Malaysian local and national levels, as well as those at the international level such as TRIPs Agreement, Paris Convention and UDHR. Further, this study is analyzed by using descriptive qualitative analysis.

RESULT AND DISCUSSION

1. Trademark Protection Based on First-to-File and First-to-Use System to Determine the Exclusive Rights of Trademark Owner Related to Human Rights Context

A trademark law is one of the various legal regimes under IPR law. Before moving to the realm of trademark law, it is essential to first define the concept of IPR. David I. Bainbridge defines Intellectual Property law as law that protects creative works, inventions, trade secrets, confidential information, trade marks and business goodwill in the form of intangible rights (Bainbridge 2010). He further classified IPR into two, namely formal and informal IPR. Formal IPRs are types of Intellectual Property (IP) that are subject to a formal registration system, such as a patent. Meanwhile, informal IPRs are types of IP that begin to exist when the content is produced or captured in a physical or concrete form, in this case, the example is copyright (Bainbridge 2010).

To register or not to register the IP lies down on the protection system adopted by each country following the international instruments they are members. Multiple legal frameworks related to IP exist at the international fora. For examples, the World Trade Organization Agreement (WTO Agreement) with Annex 1C on TRIPs Agreement, Berne Convention 1886 on the protection of arts and literary works, World Intellectual Property Organization (WIPO) Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (GRATK), and Paris Convention. From such, at least two world organizations deal with IP. First is the WTO, an international organization dealing with the rules of trade between nations (WTO 2025). Meanwhile, WIPO is an international intellectual property organization founded in 1967 with the aim of encouraging creativity and introducing IP protection

throughout the world (Wendur 2024). As this study focuses on the comparative perspective of Indonesia and Malaysia, it is noted that as of 1 January 1995 both Indonesia and Malaysia became members of the WTO (WTO 2024). Furthermore, Indonesia became a member of WIPO in 1979 and remains a member to this day (WIPO 2025), while later in 1989 Malaysia became a member to WIPO as well.

In addition to the above-mentioned formal-informal classification of IPRs, there is another famous classification, namely, copyright and industrial property rights (Gunawan, Kuspraningrum, and Hediati 2023). Copyright specifically protects human intellectual creations in the form of science, art, and culture, with exclusive rights granted to the creator of such works. Meanwhile, industrial rights are IP related to rights to inventions, trademarks, designs, and patents that provide the owner with exclusive rights to the exploitation of such works (Kurniawan et al. 2025). Thus, the trademark in this case is part of the industrial rights. Besides that, equally important is the knowledge that IP exists not only in the personal realm but also in the communal realm, known as Communal IP (CIP). CIP consists of various types, but when speaking specifically about tourism, those closely related to it are Traditional Cultural Expressions (TCE), Traditional Knowledge (TK), and Indication of Origin (IO). The main difference between personal IP and CIP lies in ownership. Personal IP is owned by individuals (either individually or collectively in the form of individuals or legal entities), meanwhile CIP is owned by the state, with the Community of Origin as the community that carries it. Therefore, in terms of responsibility, they are also different. For example, trademarks, as one of the works of personal IP, registration in Indonesia is the obligation of each trademark owner (Art. 3 of Indonesian Law No. 20 of 2016 on Trademarks and Geographical

Indication (Law 20/2016). Meanwhile, IO in Indonesia, which is one part of CIP, inventory and recording it is the responsibility of the state. It is also important to emphasize that personal IP and CIP often overlap. In Indonesia, CIP such as IO for example, not only regulated under the Indonesian Government Regulation 56 of 2022 on CIP (Government Regulation 56/2022) but also found to be regulated in Art. 63-65 of Law 20/2016.

For IP, there are several legal protection systems. Those are the automatic protection system, first-to-file and first-to-use system. Automatic protection system is a legal protection system for the copyright regime where the protection of copyrighted works is granted automatically upon the creation of such works without any formalities (Alsamara, Iriqat, and Zamouna 2025). Berne Convention, as an international legal framework, determines this legal protection system. Moving forward to the next legal protection system, Indonesia for example, its Law 20/2016 follows the first-to-file system for trademark protection. This is called a constitutive system, where the state can provide appropriate legal rights and protection only to those who are truly entitled. Trademark owners in good faith are those who act honestly and have no intention of imitating another person's trademark (Mardianto and Rahaditya 2024). In registering the trademarks in Indonesia, the owner must look at the trademark class according to the goods and/or services sold in the Trademark Classification System with the NICE Classification in the Directorate General of Intellectual Property of Indonesia (DGIP) under the Ministry of Law of the Republic of Indonesia (MoL of Indonesia) website (Samsithawrati 2024).

Trademarks in Indonesia are regulated under Law 20/2016, which was last amended through Law 6/2023 (Art. 108). Art. 1(1) of Law 20/2016 defines Mark as

any sign capable of being represented graphically in the form of drawings, logos, names, words, letters, numerals, colors arrangement, in 2 (two) and/or 3 (three) dimensional shape, sounds, holograms, or combination of 2 (two) or more of those elements to distinguish goods and/or services produced by a person or legal entity in trading goods and/or services. From this new definition, instead of the old definition provided by Indonesian Law No. 15 of 2001 on Trademark, it appears that Indonesia has regulated trademarks in the traditional realm, such as 2-dimensional trademarks, and also trademarks in the non-traditional realm, such as 3-dimensional trademarks, sound and hologram trademarks. The development of non-traditional trademarks in Indonesia seems to follow the WIPO-Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications' classification of non-traditional trademark, namely: (1) visual non-traditional trademarks such as 3-dimensional trademarks, color, hologram, slogans, film and book titles, multimedia signs, positions, and gestures; and (2) Non-visual non-traditional trademarks, such as sound, aroma, taste and texture (Mayana 2017).

The most important provision to be highlighted in terms of this study is that the right to a trademark in Indonesia is obtained after the trademark is registered (Art. 3 of Law 20/2016). Meaning that, the exclusive right of the trademark owner from the State to use his/her trademark or authorize others to do so for 10 years as of the filing date (can be extended for the same period) will be established once the trademark owner registers his/her trademark. Indonesian Law 20/2016 does not directly define what exclusive rights are (Muh. Ali Masnun, Dicky Eko Prasetyo, Mohd Badrol Awang 2024). However, through the definition of Right on Mark provided under Art. 1(5), it can be understood that exclusive right is a right granted by the State to a

registered mark owner to use his/her mark or authorize others to do otherwise for a definite period to use the said mark. The proof of trademark ownership is in the form of a trademark certificate (Arts. 1(5), 3, 35 of Law 20/2016 jo. Art. 108(3) of Law 6/2023). First-to-file protection system adopted by Indonesia, by putting it simply, means that the granting of trademark exclusive rights is rewarded to the first applicant who registers it, and the registration certificate acts as key evidence of that right (Murjiyanto 2018).

Shifting focus to Malaysian trademark law, trademark is regulated under Laws of Malaysia Act 815 Trademarks Act 2019 (Malaysia Trademarks Act 2019). Article 3(1) of the Malaysia Trademarks Act 2019 defines a trademark as “any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings.” Similar to Indonesia, Malaysia Trademarks Act 2019 section 2 also defines a sign to include the traditional signs (name, letter, word, etc.) and non-traditional signs (like color, sound, scent, hologram). Unlike Indonesia, which recognises a first-to-file system for trademarks, Malaysia recognises the right of the first user of a mark, or a first-to-use system for trademarks. The term “first-to-use” is not explicitly mentioned in the Trademarks Act 2019 (Act 815). However, Section 17 (1) of the Act explicitly states that “*Any person who claims to be the bona fide proprietor of a trademark may apply for the registration of the trademark if (a) the person is using or intends to use the trademark in the course of trade;*”. It is safe to interpret the Act such that any person who claims to be the first user of a mark or intends to use the trademark may make an application to the Registrar for the registration of that mark. Hence, Section 17 (1) of the Act path the way for the first user of a mark to register first. For countries that

follow the first-to-use system in trademark, the right to a trademark belongs not to the one who registers it first but to the entity that first uses it legitimately in commerce (TrademarkPatent.net n.d.).

From a generally accepted perspective, the reason the Malaysian trademark act follows the first-to-use principle is due to the common law tort of passing off. This is an interesting perspective, as the common law was first introduced by the English court in 1842 for the English case of "Perry's Medicated Mexican Balm" versus "Truefitt's Medicated Mexican Balm" (*Perry v. Truefitt*, 1842). The judge, Lord Longdale, denied Perry the right to the name, but also stated that "*a man is not to sell his own goods under the pretence that they are the goods of another man*" (*Perry v. Truefitt*, 1842). The common law tort of passing off predates even the United Kingdom's trademark law, which was the Trade Marks Registration Act 1875. As Malaysia is a former British colony, the English common law has been inherited, including the tort of passing off. Not to mention, Malaysia's first trademark act is Trade Marks Act 1976, which comes later than the common law tort of passing off. Since passing off protects the goodwill of the party who used the mark first, Malaysia recognises first use as a valid basis for protection, even if the mark is not registered. This emphasises actual use and goodwill in commerce rather than just the act of filing for registration.

In another perspective, Section 47 (6) of the Act inherently reflects Malaysia's adherence to the first-to-use principle by allowing a trademark registration to be invalidated if it was obtained fraudulently or by misrepresentation. This provision is significant in cases where the first user of a mark did not file for registration promptly, and a subsequent party opportunistically registers the mark. While Section

17 of the Act empowers the first user by allowing them to initiate a legitimate registration, Section 47 serves as an important safeguard which offers recourse to aggrieved parties when the system is misused by registrants acting in bad faith. This legal mechanism reinforces the underlying property interest of the first user in goodwill and reputation associated with their mark. It upholds the principle of Article 17 of the UDHR which states that “no one shall be arbitrarily deprived of his property”. In this context, the goodwill accrued through actual use of the mark in the course of unregistered trade is recognized as an intangible asset and a form of proprietary right. The ability to challenge a misleading registration protects rightful owners from being unjustly deprived of their commercial identity and consumer association.

The affirmation of the first-to-use principle in Malaysia is further established by the case concerning Tiger Stripes Design (*Mesuma Sports Sdn Bhd v. Majlis Sukan Negara Malaysia*, 2015). This is a case where the court had to determine whether Majlis Sukan Negara (MSN) was a person aggrieved and thereby had locus standi to file a suit claiming that MSN was the lawful owner of the mark and that Mesuma’s registered mark should be removed from the Register because it was passing off MSN’s products. This case established the legal position of the first-to-use principle in Malaysia as it is currently the standing binding decision for the definition of ‘in the course of trade’.

While Malaysia protects the owner of an unregistered mark under the first-to-use principle, it is still highly recommended to register a trademark at the earliest opportunity. A registered mark provides a legal presumption of ownership, making enforcement more straightforward in the event of a dispute. In contrast, enforcing rights over an unregistered mark requires an action under the common law tort of

passing off, which involves a higher evidentiary burden. To succeed in a passing off claim, the claimant must satisfy a three-part test established in *Reckitt & Colman Products Ltd v Borden Inc* [1990], namely: (i) the existence of goodwill or reputation, (ii) a misrepresentation by the defendant, and (iii) resulting damage to the claimant's goodwill. This test has been adopted by Malaysian courts, as demonstrated in *Yong Sze Fun & Anor v Syarikat Zamani Hj Tamin Sdn Bhd & Anor* [2012] 2 MLRA 404. In that case, the High Court ruled in favour of the plaintiffs, finding that the defendants had infringed the plaintiffs' registered trademark and committed passing off by using a similar mark. The plaintiffs successfully established all three elements of the passing off claim. The case underscores both the strength of protection available through registration and the continued relevance of the common law doctrine of passing off in Malaysia. However, if the first user of the mark has registered it, unnecessary complications can be avoided. Hence, even though Malaysia protects first user of the mark, it is still recommended to register the trademark to avoid unnecessary complications.

Discussing the first-to-file system as a legal system adopted by Indonesia through the provision of Art. 3 Law 20/2016 and the first-to use adopted by Malaysia is inherently connected to the international legal framework it draws from. As previously mentioned, both are members of the WTO; thus, the TRIPS Agreement applied to them. Art. 15(1) TRIPS Agreement 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....Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be

visually perceptible.” From such provisions, it can be seen that member countries, including Indonesia and Malaysia, must establish a trademark registration system. However, member countries may require prior use (acquired distinctiveness) as a condition for registration in certain cases. Therefore, member countries appear to be free to adopt either a first-to-file or first-to-use system. Further through the provision of Art. 16(1) TRIPs Agreement, “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....” It appears that exclusive rights to a trademark are granted to the owner of the registered trademark. Once again, it appears that the TRIPs Agreement does not regulate who has the right to register a trademark first, whether the first registrant as adopted by the first-to-file system or the first user of the trademark as adopted by the first-to-use system.

The Paris Convention also seems not to impose the obligation to follow a specific first-to-file or first-to-use system for protecting a trademark. This can be seen through the provision of Art. 6(1) Paris Convention that stipulates “The conditions for the filing and registration of trademarks shall be determined in each country of the Union by its domestic legislation.” Further, Art. 6quinquies A(1) Paris Convention regulates “) Every trademark duly registered in the country of origin shall be accepted for filing and protected as is in the other countries of the Union, subject to the reservations indicated in this Article.....”. Therefore, from such provisions, both Indonesia and Malaysia, as member countries to Paris Convention, may choose the first-to-file or the first-to-use system in line with their national legislations and this convention also acknowledges a trademark already registered in the country of origin but does not interfering with who has the right to register first

(first-to-file) or who uses first (first-to-use).

As a right, a trademark must be protected. The same protection must be applied to a trademark as protection to other assets. Hence, a trademark is considered property, and the law functions to safeguard it. A discussion on trademark, especially on the granting of exclusive rights to trademark owners, from the perspective of human rights, becomes very interesting to be analyzed. Human rights are a set of fundamental rights inherent in every individual from birth. They are natural, inalienable, and independent of recognition by the state or society. These rights are a gift from God Almighty to humans as His creatures, so their existence is not relative or granted by any power (Kuswara 2025). Dharmawan (2014) argues that there are three possibility schemes to view the relationship between IPR and human rights, namely: (1) IPR is not human right, hence, purely is a right related to law; (2) IPR in some of its aspects may have potential conflict with human rights; and (3) IPR is human rights by referring it to the property rights and individual rights (Supasti 2014)(Li 2023).

As a foundational international legal instrument, the UDHR is a fitting place to discuss it. It is a milestone human rights document since it universally protects, for the first time, fundamental human rights and has been translated into over 500 languages (Nations 2025). Trademarks as mentioned earlier is an intangible property right. Art. 17 UDHR states that “(1) Everyone has the right to own property alone as well as in association with others; (2) No one shall be arbitrarily deprived of his property.” Concerning the right to own property referred to in Art. 17 UDHR, hence, trademarks may seem to be considered human rights.

Through the development of non-traditional trademarks, for example, sound, the

consideration of trademarks as human rights may refer to the provision of Art. 27 UDHR. Art. 27(2) UDHR stipulates that “Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.” Thus, in this case, the provision as such should not only be understood as human rights related to copyright that protect works in the field of scientific, literary, or artistic production, but also for trademark, particularly the word “artistic productions” can be referred for distinguishing sign in trademark such as a “symbol or drawing” for sign for trademark, as well as to include non-traditional trademarks like sound, which also indeed and artistic production. Artistic production in that sense may be interpreted broadly to cover creative works from one’s intellectual work, such as music, films, and paintings. The creation of the sound in trademark sound requires creative work from someone like a sound designer. The reflection of artistic authorship could be drawn if the work is original and produced. Thus, sound is not only to be protected under copyright, but also under trademark. Registering a sound trademark requires a notation and a sound recording. However, if notation cannot be presented, it must be presented in sonogram form (IPIndo 2025). This sequence of tones is what creates the artistic element of the trademark. The sound creation itself is artistic, so it may be considered a human right.

2. The Importance of Incentive Regulations to Support the Growth of Small Businesses in the Tourism Sector

One of the many sectors that exist in a country, tourism has great potential to boost the national economy. Tourism is a fast-growing and highly dynamic sector.

Various parts of the world are experiencing the economic benefits of a thriving tourism sector. The study of Hasudungan et al argued that tourism in Indonesia contributes to a positive effect on government retribution (Hasudungan et al. 2021). Furthermore, Puah et al.'s study in 2018 showed that the tourism industry had a great contribution to Malaysia's national account (Puah et al. 2018). Thus, tourism is benefiting not only Indonesia and Malaysia, but also other countries. Punchihewa's study in 2020, for example, revealed that tourism is a valuable source of income in Sri Lanka. It offers rich cultural heritage and natural beauty, and the country's economy is developed, in part, through foreign exchange resulting from tourism. Most importantly, his study mentioned that in the tourism sector, IP serves as a powerful tool in strengthening the business's competitiveness (Punchihewa 2020).

Antara and Sumarniasih's study (2017) revealed that Bali's role in Indonesian tourism is essential, with 36% of foreign visitors heading straight to Bali when they arrive in the country (Antara and Sumarniasih 2017). Bali is one of the world's popular tourism destinations since it has unique traditional arts and culture, and obviously, is home to various CIP (Samsithawrati et al. 2024). Despite this, local wisdom, which has received various protections in the field of CIP, also has the potential to receive protection in the realm of personal IP. For example, *loloh Cemcem Penglipuran*, a traditional Balinese herbal drink made from *cemcem* leaves preserved by the customary community in Panglipuran village, has obtained CIP in the field of Traditional Knowledge and is registered in the DGIP under the MoL (Indonesia n.d.). However, in addition to this, MSMEs selling *loloh cemcem* drinks in tourism areas certainly want to demonstrate the quality and superiority of their products compared to similar businesses through their trademarks. Therefore,

trademarks in the realm of personal IP also play a crucial role in the sales of these MSMEs products.

As mentioned earlier, personal IP, such as copyright, is indeed automatically protected; thus, no registration is required initially to protect the author's exclusive right. However, other industrial rights, such as trademarks, require registration as an essential step to secure the exclusive rights of the trademark owner. Moreover, if a country is following a first-to-file system like Indonesia does. Trademark registration is a must for a trademark owner to be conducted, otherwise he/she may lose his/her exclusive rights towards the said trademark. Exclusive rights in this context are in the form of using the trademark by him/herself as well as authorizing other persons to use the said trademark. Unfortunately, registration of trademark rights is not free, but requires a registration fee.

Discussing of developing countries like Indonesia, the significant cost of trademark registration is a significant issue. The provincial minimum fee for 2025 in Bali, one of Indonesia's tourism hubs, is still relatively modest at IDR 2,996,560 per month (Seek 2025) (equivalent to 183 USD; 1 USD equals IDR 16,233 as of July 13, 2025). Meanwhile, Indonesia's Gross Domestic Product per capita, or the average income of Indonesians, currently, although it has increased from the previous year, is also only IDR 78,620,000 per year in 2024 (equals to USD 4,843; 1 USD equals IDR 16,233 as of July 13, 2025) or IDR 6,551,666/month (equals to USD 404; 1 USD equals IDR 16,233 as of July 13, 2025) (Indonesia.Go.Id 2025). Meanwhile, the cost of a trademark registration for the public is IDR 1,800,000 (equals to USD 111; 1 USD equals IDR 16,233 as of July 13, 2025) per trademark per class of goods/services while IDR 500,000 (equals to USD 31; 1 USD equals IDR 16,233 as

of July 13, 2025) per trademark per class of goods/services for MSMEs (DJKI 2025). Another issue related to trademark registration fees is that they are paid upfront when submitting an application. The trademark registration process takes quite a long time (several months) due to prior administrative and substantive examinations at the Ministry of Law and Human Rights. After these examinations, a trademark may be granted rights to its trademark as a registered trademark, or may be rejected if it does not meet the criteria. If a trademark application is rejected, the initial trademark registration fee is non-refundable to the trademark applicant. Therefore, considering these figures, the registration fees that must be paid and the risk of not being refunded if the trademark is rejected, have become a crucial issue in Indonesia and have the potential to reduce the interest of MSMEs in registering trademarks.

The main focus of this study is small businesses, specifically referred to as MSMEs, operating in the tourism area. e MSMEs are often businesses that are still in the pioneering stage of business activities, but there are also business actors who have been operating for a long time but their businesses have not been able to develop properly (Machfuzhoh and Widyaningsih 2020). Therefore, if an MSME, especially a micro-scale one—even to keep its business afloat with one or even no employees at all—is faced with the obligation of registration fees to register its trademark, of course, the micro business owner will potentially feel burdened and shift their focus to other things that they believe will have a more real impact on the continuity of their business, such as managing legal permits. Current Indonesian laws that deal with MSMEs criteria, Government Regulation No. 7 of 2021 on Ease of Operation, Protection, and Empowerment of Cooperatives and MSMEs (Government Regulation 7/2021) defines Micro Enterprises have business capital of up to one

billion rupiah, excluding land and buildings for their business premises; Small Enterprises have business capital of more than one billion rupiah, up to five billion rupiah, excluding land and buildings for their business premises; and Medium Enterprises have business capital of more than five billion rupiah, up to ten billion rupiah, excluding land and buildings for their business premises. Meanwhile, in Malaysia, a new definition for MSMEs was issued by SME Corp. Malaysia as the central coordinating agency under the Ministry of Entrepreneur and Cooperatives Development, and endorsed at the 14th National SME Development Council Meeting in July 2013. Micro category is for businesses with a sales turnover less than RM 300,000 or less than 5 employee; Small category is for businesses with a sales turnover RM 300,000 to less than RM 15 million or with employees from 5 to less than 75; and Medium category is for businesses with a sales turnover RM 15 million or less than/equal to RM 50 million or employees from 75 to less than or equal to 200 (Malaysia n.d.).

Erviana's study in 2025 showed that to boost IP protection in the tourism sector, there should be policies that provide IP registration incentives; therefore, people of all levels will easily access the protection (Erviana 2025). To facilitate incentives for trademark registration, especially for small companies, the role of state is very important, the state must be presence. From a human rights approaches, the state's obligation to respect, protect, and fulfill. The Gianyar Regency Government, a regency in Bali Province, appears to have played this role. This is reflected in the provisions of Arts. 45-47 of Gianyar Regent Regulation Number 86 of 2021 on the Protection of Regional Culture and Intellectual Property (Gianyar Regent Regulation 86/2021), as follows:

Art. 45 “(1) The Regional Government provides incentives to every person, group or institution that provides services in:

a. carry out innovation and produce IP, and

b. undertake efforts to protect and facilitate IPR, related rights, CIP and regional culture.

(2) The incentives provided by the Regional Government as referred to in paragraph (1) are provided in the form of registration facilitation, programs, awards and/or assistance, the implementation of which is adjusted to the financial capabilities of the Region.

Art. 46, “The conditions and procedures for providing incentives as referred to in Article 43 are regulated by or based on the Regent's Decree in accordance with the authority and provisions of the Statutory Regulations.”

Art. 47, “Large business actors who innovate, produce Intellectual Property, and undertake efforts to protect and facilitate IPR, Related Rights, and Regional Culture, are not given incentives”.

Thus, the provisions of Arts. 45-47 of Gianyar Regent Regulation 86/2021 constitute a strong normative foundation capable of providing legal certainty for the community, especially Gianyar MSMEs, including MSMEs operating in the tourism sector, to be able to obtain incentives in the form of registration facilitation, programs, awards and/or assistance. Regarding the obligation to register trademarks, MSMEs in Gianyar Regency can at least feel more relieved because the local government is paying attention to this issue and confirming its concern in the form of Government Regulation. Thus, MSMEs in Gianyar, including those operating in the tourism sector, can receive assistance in registering trademarks from the Gianyar Regional Government, in this case from the Gianyar Regency Regional Research and Innovation Agency, and can receive funding for their trademark registration if the applicant's trademark meets the legal criteria for trademark registration. For example, the trademark has never been registered before, and is not a trademark that falls under a category that cannot be registered or a trademark for which registration will be rejected due to similarity in essence or in its entirety to other registered trademark,

well-known trademark, registered geographical indication (Art. I(3) of MoLHR Regulation of Indonesia No. 12 of 2021 on the Amendment of MoLHR Regulation No. 67 of 2016 on Trademark Registration). It is important to highlight, through the provision of Art. 47 of Gianyar Regent Regulation 86/2021, large business actors are excluded from this incentive to provide more room for the MSMEs.

At present, Malaysia offers tax incentives primarily for activities related to the development of customised software and research and development. However, expenses incurred to develop intellectual property such as patents, trademarks and copyrights are not tax deductible as they are treated as capital expenditures. While Budget 2020 introduced a 100% income tax exemption for revenue generated from the development of patents and copyright, no similar provision was extended to income derived from trademarks. According to the Malaysian Investment Development Authority (MIDA), the incentive is intended to “encourage researchers to exploit intellectual property through the licensing of patented knowledge,” a policy objective that aligns with the Twelfth Malaysia Plan and the National Science, Technology and Innovation Policy 2021–2030. These initiatives aim to promote job creation and the development of new products and services for the economy (MIDA, 2020). Accordingly, emphasis has been placed on R&D-related intellectual property, particularly patents and copyrighted software, while trademark-related income has not been similarly prioritised for fiscal incentives.

Based on the explanation above, the governments of both Indonesia and Malaysia have at least attempted to play a positive role in supporting the growth of their economies. In terms of human rights, the governments appear to have made efforts to fulfill their state's obligation to respect, to protect, and to fulfill.

CONCLUSION

The comparison between Indonesia and Malaysia related to existence of exclusive rights for trademark, especially in the perspective of Human Rights, shows that Indonesia adheres to the first-to-file System. In this context, trademark rights in Indonesia are obtained after the trademark is registered (Art. 3 of Law 20/2016). This means that the exclusive rights of the trademark owner to use the brand or authorize another party to do so for 10 years from the date of receipt (can be extended for the same period) will be formed after the trademark owner registers the trademark, with proof of trademark ownership in the form of a trademark certificate (Art. 1(5), 3, 35 of Law 20/2016 jo. Art. 108(3) of Law 6/2023). The first-to-file protection system adopted by Indonesia, in simple terms, means that exclusive rights to the trademark are granted to the first applicant. Meanwhile, Malaysia follows the first-to-use system. However, both Indonesia's first-to-file system and Malaysia's first-to-use system are inherently connected to the international legal framework, namely the WTO-TRIPS Agreement, as both are WTO members. Therefore, Art. 15(1) of the TRIPS Agreement applies to both Indonesia and Malaysia. Furthermore, Article 16(1) of TRIPS implies that exclusive rights over a trademark are granted to the owner of the registered trademark. Essentially, registration is mandatory to obtain exclusive rights over a trademark.

The TRIPS Agreement does not regulate who has the right to register a trademark first: the first registrant, as adopted by the first-to-file system, or the first user of a trademark, as adopted by the first-to-use system. In relation to the existence

of exclusive rights to trademarks, particularly in relation to property rights as regulated in Art. 17(1) of the UDHR related to the right to own property, as well as under Article 27(2) UDHR related to the right to protection of artistic productions, beside for copyrights, it also relevant for trademark, particularly the word “artistic productions” can be referred for trademark such as a “symbol or drawing” as distinguish sign for trademark. Therefore, a trademark can be considered as human rights. The regulation of trademark registration incentives, especially to support the growth of Small Businesses in the tourism sector, is crucially needed in Indonesia and also other countries that follow a trademark registered protection system, considering that trademarks are one of the pillars in supporting the development of tourism. Trademarks are not only protection for trademark owners, but also for the protection of consumers related to the quality and reputation of a product in the tourism market. It is desired that the government in Indonesia, especially at the local government level, regulate policies regarding trademark registration incentives, especially for small companies so that they are protected and have legal certainty regarding their trademarks ownership which start from small companies will continue to develop into medium-sized companies, even large companies that are able to penetrate the global market with registered brand protection.

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