

Implementation of Intellectual Property Right to Strengthen Small and Medium-Sized Enterprise Business Capacity in Global Competition

by Suparji .

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Research Article

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Implementation of Intellectual Property Right to Strengthen Small and Medium-Sized Enterprise Business Capacity in Global Competition

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Abstract

This study aims to analyze the role of MSMEs in the Indonesian economy and the implementation of Intellectual Property Rights (IPR) in protecting Micro, Small and Medium Enterprises (MSMEs). Qualitative analysis is done by interpreting the data collected from library studies with the aim of solving research problems. The result showed that the protection of IPR in MSMEs can increase its business capacity and be able to compete in global competition, because goods and services have exclusive rights and economic rights. With the protection of IPR, stakeholders will strengthen MSMEs and participate in developing the MSME capacity. The banks can provide credit loans with collateral for IPR assets owned by MSMEs.

Keywords: Intellectual Property Rights, medium small and medium-sized enterprises, knowledge-driven economy, legal protection, developing countries

1. Introduction

Micro, Small and Medium Enterprises (MSMEs) is one of the business sectors with criteria of having employees between 4 to 99 people, total assets of 50 million rupiah to 10 billion and sales turnover ranges from 300 million to 50 billion per year. According to Act Number 20 of 2008 concerning Micro, Small and Medium Enterprises, they can be distinguished from the number assets and total sales turnover for one year. Meanwhile, according to the Central Statistics Agency, the number of employees is also a determining variable for MSME criteria. In Indonesia, there are four MSME criteria. The four criteria are Big Business, Medium Business, Small Business, and Micro Business. Each country has different provisions regarding MSMEs. According to Jennifer Brant and Sebastian Lohse, the size of MSMEs, among others, has less than 250 employees and a turnover of less than 43 million Euros (Brant & Lohse, 2013).

MSME is the backbone of developing countries in economic growth and a significant labor absorption. SMEs are considered a supporting sector of the national economy, with its ability to complement large industrial products in local and national markets. For instance, In 2011, large companies reached the growth of 41.95%, and decrease to 40.92% in the following year. Conversely, the medium enterprises were 13.46 percent of growth, and increased to 13.59 per cent in following year. As for small businesses, there was a slight decrease from 2011 with 9.94 percent of growth and 9.68 percent in 2012, meaning it decreased by around 0.26%. A significant increase occurred in micro businesses, where in 2011 experienced the growth of 34.64 percent and 38.81 percent in in 2012 (Faiz, 2015).

Table 1. Number of MSMEs and MSME Contributions to GDP in 2013

No	Indicator	Unit	2013*
1	Number of MSMEs	Unit	57,895,721
2	Growth in the number of MSMEs	Percent	2.41
3	Number of MSME Workers	Person	134,244,081
4	Growth in the Number of MSME Workers	Percent	6.03
5	MSME GDP contribution (constant prices)	IDR Billion	1,536,908.80
6	Growth in contribution of MSME GDP	Percent	5.89
7	SME Export Value	IDR Billion	82,112.70
8	Growth in MSME Export Value	Percent	9.29

* in IDR

Source: Central Bureau of Statistics (2013); Susminingsih & Kanafi, 2019.

Table 1 shows the contribution of small and medium scale businesses in various fields with vital roles, several studies in developing countries show that SMEs have a crucial role in the absorption of informal labor (Majumdar, 2008; Laforet, 2013), entrepreneurship and start-up business (Lucky & Olusegun, 2012; Lesakova, 2012), large contributions to the national economy and sufficient resilience in the economic crisis (Pal et al., 2014; Régnier, 2005). However, some also point out the lack of legal protection and financial and managerial assistance for SMEs to increase business capacity and legal protection. Hence, the study aims to analyze the role of MSMEs in the Indonesian economy and the implementation of Intellectual Property Rights (IPR) in protecting Micro, Small and Medium Enterprises (MSMEs). Qualitative analysis is done by interpreting the data collected from library studies with the aim of solving research problems.

2. Critical Role of MSMEs in Economic Conjunction

In 2014, there were around 77.8 million SMEs in Indonesia with the economic contribution to GDP being about 60 percent (Iambunan, 2007). The magnitude of the role of MSMEs can be seen from the ability of these businesses to provide employment in various formal and informal economic sectors in Indonesia. In addition, the distribution of MSMEs is evenly distributed in all regions, so their role is very helpful in equity and economic development at the local level. In addition, the level of diversification of products produced is very diverse, according to market segments at the local and regional level. In addition, SMEs have a fairly high level of innovation in developing products made from local products. In some cases, MSMEs have been able to penetrate the export market with product innovation and product standards improvement in accordance with the export destination country. With these contributions, SMEs can help accelerate the pace of economic growth of a country because this sector will absorb a lot of labor. This is in line with what was stated by Joseph Alois Schumpeter, an American economist that a country's economic growth is strongly influenced by entrepreneurship (Faiz, 2015). However, in terms of legal entities, there are still many MSMEs that are not incorporated, as shown in table 2.

Table 2. Comparison of Non-Legal Entity MSME Business Sector in 1998 and 2004

Business Sector	Amount		Distribution	
	2004	1998	2004	1998
Mining and excavation; Electricity, Gas and Water Supply; Construction	580,864	695,311	1.93	2.52
Processing industry	6,347,893	3,287,418	21.11	20.32
Wholesale and retail trade, restaurants and accommodation	17,797,199	15,620,299	58.26	60.06
Transportation, Warehousing and Communication	2,811,456	1,593,332	9.20	7.66
Financial Intermediary; Real Estate, Rental Business and Other Services	2,800,753	2,457,806	9.17	9.45
All Sectors except the Agriculture Sector	30,547,132	26,020,176	100	100

Source: Central Bureau of Statistics (2012)

However, the increase in MSMEs capacity is hampered, because most MSMEs are not yet bankable. This can be seen from table 3.

Table 3. Micro, Small and Medium Enterprises (MSMEs) Credit Position 1 at Commercial Banks (IDR billion), 2016-2017

Detail	2016	2017
MSMEs	75,744	89,199
Business Sector	5,264	6,034
Agriculture, Forestry and Fisheries	86,775	95,998
Mining and excavation	2,899	3,789
Processing industry	1,134	1,156
Electricity and Gas Procurement	53,993	65,594
Water Supply, Waste, Waste and Recycling Management	451,725	482,615
Construction	25,262	28,854
Wholesale and retail trade, car and motorcycle repair	32,388	34,708
Transportation and Warehousing	25,244	89,199
Provision of Accommodation and Food and Drink	5,264	6,034
Information and Communication	6,091	6,439
Financial and Communication Services		
Real estate	14,404	15,744
Company Services	27,987	31,213
Government Administration, Defense, and Mandatory Social Security	227	180
Educational Services		
Health Services and Other Activities	7,650	8,664
Other Services	40,405	47,601
Not identified	14	1
Usage Type		
Working capital	523,481	697,388
Investment	253,476	244,999
Not identified	0	0
Scale enterprises		
Micro	195,621	221,409
Small	155,504	182,774
Intermediate	405,832	478,205
Credit with Certain Guarantees		
Micro	6,364	67,230
Small	23,366	45,613
Intermediate	2,188	9,727

Source: Bank Indonesia, 2018

Wijayanto et al. (2019) stated that MSMEs have also been proven not to be affected by the crisis. When the crisis hit in the period 1997-1998, only MSMEs were able to remain strong. Data from the Central Statistics Agency shows that after the economic crisis of 1997-1998 the number of MSMEs did not decrease, instead it continued to increase, even being able to absorb 85 million to 107 million workers until 2012, with the number of employers in Indonesia totaling 56,539,560 units and MSMEs totaling 99.99% while the remaining 0.01% or 4,968 units are large businesses (Wijayanto et al., 2019). The role of MSME is very crucial, this can be seen from the resilience of MSMEs during the monetary crisis in 1998, MSMEs are able to survive and can absorb labor that is (Putra, 2016).

3. Methodology

This article aims to analyze how the role of legislation in Indonesia in increasing the capacity of MSMEs related to IPR protection for MSMEs. This research is analytical descriptive, which is revealing and analyzing data obtained in the form of secondary MSME data. This type of research is a normative juridical method. Normative juridical research is legal research carried out by examining library materials, which include legal principles, legal norms. In accordance with the type of research that is a normative study, to obtain data carried out by library research, which is researching or identifying literature that is related to the problem under study, such as books, legislation and others. The method of analysis of this study uses normative qualitative methods, that is, interpreting and constructing the statements contained in the statutory documents.

The theory used is the theory of ownership, where John Locke (1632-1704) first thought of the construction of individual ownership of matter. Locke is very famous especially in the academic discourse of law in Indonesia as the initiator of the constitutional monarchy system and other important ideas surrounding the political system and state administration. Locke's enormous emphasis on individual rights to objects escapes people's attention, the concept of human rights. Locke views human rights to his life, freedom, and ownership of property as the essence of achieving peace and prosperity. Locke's interests extend from moral issues to economic or human well-being. The emphasis is placed on Locke's ideas which then influences human efforts to realize their well-being (Harris & Hernowo, n.d.).

4. Knowledge-Driven Economy as a Driver of MSME Sustainable Growth

In India, MSMEs are considered the backbone of the country, because they generate far more job opportunities than the large corporations as a whole. According to estimates, the number of registered and unregistered SMEs operating in India is around 42 million. Collectively, MSMEs provide employment to around 100 million people, which is approximately 40% of the total workforce. For this reason, it is important for companies to invest for sustainability and growth (Aggarwal, 2019).

Creativity and innovation can occur at any time, as a result of the era of knowledge-based economy-knowledge base economy (knowledge-driven economy), so that the existence of IPR becomes a key decision in business, not least in MSME businesses. Factually, MSMEs are less aware of the IPR system and are less protective of their inventions, inventions, trademarks and designs, so that they lose their economic potential and exclusive rights because they cannot compete with larger competitors and are better positioned to commercialize products and services with more valuable. These competitors leave their original creator or inventor without economic rights or rewards, in addition to the limitations of access to credit to increase business capacity because it is not affordable by the banking world.

Many new goods and services are integrated into their IPR, so almost all companies devote their time and resources to protecting IPR in their business competition. IPR protection in various forms can help companies, as mentioned by Starrein (2001) as a means of preventing competitors from copying or closely imitating a company's products or services and increasing the market value of the company. In addition to IPR issues, at present the MSMEs face internal and external problems. Internally, MSMEs generally still face low quality human resources such as lack of skilled human resources and a lack of entrepreneurial spirit, low mastery of technology and management and market information. This HR problem will have an impact on the low level of productivity and the quality of management. The ability of developing MSMEs is currently not evenly distributed to all MSMEs, especially because of the limited number and quality of business development institutions. The external problems of MSMEs that will still be addressed are in some aspects. They have incomplete handling of legal aspects of business entities and the smoothness of licensing procedures, the implementation of fair business competition, structuring of business locations and implementation of regional autonomy, specifically regional progress in implementing empowerment of cooperatives and

MSMEs. The speed of recovery in macro-economic conditions is due to the increase in fuel and other energy which is very influential to the MSME production activities. They also face the limited supply of products of financial institution services, particularly investment loans, limited availability and quality of business development services for SMEs and limited financial resources for micro businesses. These problems, empowering MSMEs will also face challenges to play a role in overcoming socio-economic problems, such as providing employment and poverty alleviation. In this context, it is necessary to encourage the growth of MSMEs through the distribution of investment credit schemes to increase production capacity, increase added value and grow new entrepreneurs based on superior resources.

The government as an authority holder, must be able to create a climate businesses that support business actors. Conditions that are conducive will help MSMEs to develop their business towards a better direction. A safe and peaceful situation coupled with tangible support from the Government and elements of society is a very important capital for the development of the business climate in Indonesia. Monetary policy, sudden and uncontrolled fuel price can increase the sustainable of small and medium enterprises as well as their efforts in acquiring raw materials. The aspects that create the business climate are funding, infrastructure, business information, partnerships, business legalization, business opportunities, trade promotion, institutions and sanitation. The government is expected to expand the sources and access of funding and provide convenience in funding to MSMEs. So that SMEs can get the opportunity to enjoy these facilities to develop their business. The provision of public infrastructure will enable MSMEs to access capital, markets, raw materials, technology and get certain incentives and tariffs. Creating a business information network as wide as possible both at home and abroad. Supported with trade promotions or trade delegations abroad. Realizing partnerships among MSMEs will prevent adverse transactions and increase MSMEs bargaining position. Providing one-stop services in providing licenses and freeing costs and ease of procedures. Provide a decent place of business and supervise the implementation of the place of business so that MSMEs can develop properly.

5. Intellectual Property Rights for MSMEs

Vulnerable conditions will hamper the development of MSMEs, both domestic and external economic conditions of a state. One of the concerns of the business world today is IPR, as well as MSMEs IPR is becoming a global concern - especially with the enactment of an economic cooperation agreement in Asia Pacific and the world, MEA, APTA, WIPO. Protection of Intellectual Rights for MSMEs by the Division of SMEs The World Intellectual Property Organization (WIPO) is a world organization that embraces intellectual property rights for MSMEs (Salvati, 2006). Areas handled by WIPO regarding SMEs include:

1. Intellectual property for finance (venture capital, securitization);
2. Assessment and Accounting of Intellectual Rights over assets and audits;
3. Fiscal policies - tax and other incentives (tax incentives for R&D activities, patenting, licensing etc.);
4. Services on intellectual property rights relating to incubators and technology parks (SMEs by incubators, technology parks);
5. Institutional (chambers of commerce and SME associations);
6. Intellectual property rights to agricultural products and biotechnology, crafts and software (IP needs of SMEs in biotechnology, agriculture, handicrafts, software); and
7. Intellectual property insurance (IP insurance).

MSMEs need protection from intellectual property rights for the products and services they produce through the socialization of the provisions of intellectual property rights, where intellectual property rights are of two kinds. First, intellectual rights that need to be registered and those that do not need to be registered, while those that must be registered are trademark rights such as industrial design, patent, and domain names

Second, rights that do not need to be registered, namely Copyright, consists of circuit Boards

(PCB - Printed Circuit Layouts), confidential information, and trade Secrets (Wulff, 2006). It consists of technical or operational information that is confidential or should not be known by the public, has economic value and the company is trying to keep that secret. Technical information includes patenting, skills or know-how, processes, techniques, formulas, programs, systems etc, while operational information includes customer lists and distributor relations, marketing strategies and competitor analysis, and others.

Moreover, it is a geographical Indicators (GIs) (Loeffler-White, 2006) as a brand is more than a trademark but also includes a slogan, tag line, jingle, packaging, color, uniform of staff (staff uniforms). Geographical indications that is Origin, Industrial design would be to increasing brand value by first appearing on the market. Increase brand value can be conducted by being first in the field. Increasing brand value can also be through narrowing focus - Increase brand value by narrowing the focus.

IPR as a powerful tool for economic development, in maintaining competitive advantage for companies. IPR can help protect innovative ideas and concepts from theft by competitors and help increase the overall value or value of the company in the eyes of investors and financial institutions, and the legal concept serves to regulate the rules and protect the interests of its citizens. Adequate protection of IPR entities is a very important step from the potential for misuse and expropriation of ideas in business assets with real market value. Taking full advantage of the IPI system enables the company to take advantage of the capacity of inventions and creativity in the form of funds that can be used for further creation (continuous innovation) (Starein, 2001).

The intellectual property protection strategy for MSMEs is very important because they must know what the value of their trademark is and they must protect it from being stolen by other parties. Based on 1998 data, it was estimated that more than 45 million dollars were lost from deviations of classified information in America within 17 months, if this survey was conducted now it might be far greater value of losses. For SMEs, the theft of value from trade secrets in extreme cases results in business bankruptcy. For this reason, the government should protect the trade secret, while the effort is through:

1. Application of Article 39 of the WTO TRIPS Agreement on protecting confidential information.
2. Enact the Sarbanes-Oxley Act - which is very influential internationally - where public companies have internal controls and operational procedures and identify, protect, assess and report assets on trade secrets quarterly or annually.

Because of that, legal compliance and SOP, for that they must address partners, investors, shareholders, market analysts as well as the government and competent authorities that they have sufficient efforts to protect and manage their intellectual rights including trade secrets (Loeffler-White, 2006).

6. Implementation of Intellectual Property Right to Strengthen Small And Medium-Sized Enterprise Business Capacity in Global Competition

In Indonesia, based on data from the Ministry of Law and in 2016 there were 1,174 registered creative industry businesses and in 2018 there were targeted to be around 2,000 registered creative industries. An increase in the number of registered creator industries is still possible considering that there are still many industries that have not registered copyright and trademarks from the culinary and fashion fields. That is, there are still other creative industries that have not been worked out optimally (Office of Cooperatives, Micro, Small and Medium Enterprises Prov. West Java, 2018).

For MSMEs, there needs to be more efforts from the Government, cooperative institutions and MSMEs to socialize IPR protection - brands, copyrights, patents, and provide marketing assistance in the form of free internet connections for MSMEs and assistance provided in the form of wireless internet procurement costs, so that the MSMEs can market their products through an online system. However, this assistance is only given to MSME actors who are already in the form of legal entities, while in BPS data there are still many MSMEs that are not legal entities (Office of Cooperatives, Micro, Small and

Medium Enterprises of West Java, 2008). These conditions are coupled with limited financial access, in order to increase capacity through bank credit, the position of MSMEs is increasingly isolated.

MSMEs constitute the largest portion of absorbing labor and are the backbone of improving the economy, this can be seen from the contribution of MSMEs in the country's GDP, but if not managed and considered, these MSME developments will become a boomerang for the Indonesian state when the free market trade takes effect, especially Indonesia participated in the WTO, Trip, AFTA and MEA.

The main obstacle for MSMEs in financing is answered by the existence of Law Number 28 of 2014 concerning Copyright and Law Number 13 of 2016 concerning Patents. Under these provisions, the protection of MSME copyrights and patents can be used as fiduciary guarantees to obtain bank credit. Article 16 paragraph 1.2 and 3 of Law No. 28 of 2014 and Article 108 paragraph 1 of Law No. 13 of 2016 concerning Patents stated that copyright is an intangible movable object, and copyright can be transferred or transferred, either in whole or in part because of inheritance, grant, charitable action, will, written agreement or other reasons justified in accordance with statutory provisions. It among others consists of transfers caused by court decisions that have obtained permanent legal force, mergers, acquisitions, or dissolution of the company or legal entity in which the merger or separation of company assets occurs.

Copyright can be used as an object of fiduciary security. It can be transferred or transferred only economic rights, while moral rights remain inherent in the creator (Santoso, 2016). Transfer of copyright must be made clearly and in writing both with or without a notarial deed. MSMEs that were initially not bankable with the protection of intellectual property rights can get credit. The entry of IPR material as an object of banking collateral for business people, especially MSMEs through IPR protection can access bank credit in order to develop their business in several countries, ownership of IPR protection can be bankable, which means it can be used as collateral for bank guarantees in Singapore, Malaysia and Thailand for example, have developed intangible assets based loans (Kurnianingrum, 2017).

In addition to assistance in terms of socialization regarding IPR awareness to MSMEs, the government also provides support from the government, this is due to the special tax incentives for MSMEs through Government Regulation No. 46 of 2013. Based on these provisions, the Final Income Tax for SME taxes is tax on income (turnover) from businesses received or obtained by taxpayers. Special final income tax is imposed on taxpayers who have a gross circulation or turnover of under Rp. 4.8 billion in a year.

On July 1, 2018 the government issued Government Regulation No. 23 of 2018 concerning new tariffs for MSME Final income tax. The final income tax rate, which was initially levied at 1%, was reduced to only 0.5%, with the provision that the Individual Taxpayer rate can enjoy a final income tax rate of 0.5% within a period of 7 years, and Firms can only enjoy a 0.5% Final Income Tax rate within 4 years and for Limited Liability Companies (PT), can only enjoy a Final Income Tax rate of 0.5% within a period of 3 years - Income Tax Article 4 Paragraph 2 or Final income tax (for building or office rental, sales turnover, etc.).

As a consequence because Indonesia has been incorporated in free trade cooperation through WTO, Trip, AFTA and MEA, the government has the responsibility to protect MSMEs to compete and compete globally. The concept of legal protection through the granting of exclusive rights to IPR holders not only functions as evidence of protection only when legal disputes occur, but along with the development of an increasingly global market, IPR can also be used as collateral to obtain bank credit. This was supported in the 13th session of the United Nations Commission on International Trade Law (UNCITRAL) in 2008 with material on security rights in intellectual property, which stated that IPR would be used as collateral to obtain bank credit internationally (Kurnianingrum, 2017).

MSME is the backbone of the economy of developing countries because it can absorb quite a lot of labor, this is evidenced in the historical trajectory of Indonesia's development, but with the era of free trade and the era of knowledge base that prioritizes innovation and increased knowledge in the economic development of a country, however still many MSMEs are not aware of how to protect their IPR into company assets that can be of economic value to their brand or other intellectual rights, the

state should provide protection for the results of MSME innovations related to IPR, lest the role of MSMEs become extinct because of the takeover of MSME works by irresponsible parties.

8 Because if the MSMEs are protected by its IPR, the MSMEs can increase its business capacity and be able to compete in the global competition, because goods and services have exclusive rights and economic rights. With the protection of IPR, stakeholders can see the MSME and participate in developing the capacity of MSME. From the banks can provide credit loans with the assets of the MSME Intellectual Property Rights.

The steps that must be taken by the government - in this case the Cooperative and Small Business institutions - in supporting IPR protection related to MSMEs are by continuing to improve the socialization of IPR, and assisting in the process of registering trademarks and other types of IPR for MSMEs and providing assistance in management IPI management in order to increase the capacity of MSMEs, also provide free IPR registration assistance to MSMEs must be intensified in order to improve the capabilities and capacity of MSMEs, so that MSMEs can be even stronger in supporting the nation's economy.

7. Conclusion

9 This study aims to analyze the role of MSMEs in the Indonesian economy and the implementation of Intellectual Property Rights (IPR) in protecting Micro, Small and Medium Enterprises (MSMEs). In every economy, the role of MSMEs can be seen from various contributions. Especially in developing countries, such as Indonesia, the magnitude of the role of MSMEs can be seen from the ability of these businesses to provide employment in various formal and informal economic sectors. In addition, the distribution of MSMEs is evenly distributed in all regions, so their role is very helpful in equity and economic development at the local level. In addition, the level of diversification of products produced is very diverse, according to market segments at the local and regional level. In addition, SMEs have a fairly high level of innovation in developing products made from local products. In some cases, MSMEs have been able to penetrate the export market with product innovation and product standards improvement in accordance with the export destination country. With these contributions, SMEs can help accelerate the pace of economic growth of a country because this sector will absorb a lot of labor. Data also showed its contribution in 1998 Asian economic crisis with labor absorption in non-agricultural sector more than 26 million worker.

Hence, the government as an authority holder must be able to create a climate businesses that support business actors. Conditions that are conducive will help MSMEs to develop their business towards a better direction. A safe and peaceful situation coupled with tangible support from the government and elements of society is a very important capital for the development of the business climate in Indonesia. In this context, in order to increase SME economic and managerial capacity, the government can introduce some important notions of intellectual property rights (IPR) to both protect and strengthen SMEs' bankability. It is based on that MSMEs that were initially not bankable with the protection of intellectual property rights can get credit. The entry of IPR material as an object of banking collateral for business people, especially MSMEs through IPR protection can access bank credit in order to develop their business in several countries ownership of IPR protection can be bankable, which means it can be used as collateral for bank guarantees in Singapore, Malaysia and Thailand for example, have developed intangible assets based loans. Indonesia actually adheres to a welfare economic system, but with interactions with international legal products through the ratification of the TRIPs agreement relating to intellectual property rights that are more individualistic, as a consequence Indonesian legal products also issue legislation relating to IPR. Namely Law No. 28 of 2014 concerning Copyright and Law 8 No. 13 of 2016 concerning patents. The protection of IPR in MSMEs can increase its business capacity and be able to compete in global competition, because goods and services have exclusive rights and economic rights. With the protection of IPR, stakeholders will strengthen MSMEs and participate in developing the MSME capacity. The banks can provide credit loans with collateral for IPR assets owned by MSMEs.

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