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### THE ROLE OF IPR AS PROTECTOR OF CREATIVE INDUSTRIES AND MSMES AMID THE COVID-19 PANDEMIC IN INDONESIA

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#### **ABSTRACT**

Legal protection of IPR in Indonesia has not become a serious concern. This is based on the low number of IPR application submissions and the rampant disputes against IPR. The creative industry is one of the economic sectors most affected by the Covid-19 pandemic, especially with restrictions on the mobility of people and goods, this sector is considered to still have opportunities that can be captured by the banking industry. So that the purpose of this research is how the role of IPR as a protector of the creative industry and SMEs in the middle of the Covid-19 pandemic. The research method used is sociological law using secondary data and literature. Literatures relating to research variables and legislation. The results of protection research related to IPR, include copyright protection to protect ideas and ideas from copyright, industrial design protection that protects the physical form of a work, then there is trade secret protection that protects how the MSME system works, mixing formulas and certain technical techniques whose confidentiality must be guaranteed as well as brand protection.

#### **INTRODUCTION**

Creative industry players must be able to take advantage of opportunities amid the Covid-19 pandemic. Even though the economy is sluggish, the creativity of business people in the creative field must be sharpened to target new markets. Almost all sectors, including the print media industry, online media, and event promoters have felt the impact of the Covid-19 pandemic. Minister of Tourism and Creative Economy / Head of the Tourism and Creative Economy Agency Wishnutama Kusubandio in his press statement stated that the Covid-19 pandemic made the digital era accelerate faster than it should be. Pandemic conditions force almost everyone to transform all their activities into digital

platforms. Hoping that creative industry players, especially micro, small, and medium scale enterprises (MSMEs) carry out innovation and transformation by reaching a wider market.

The government, together with business actors and society, must synergistically strive to find new breakthroughs to further enhance and empower creative industries as one of the pillars in economic development, Miftakul Fauzannah that; "The creative economy in Indonesia has grown and developed into an economic sector that has a strategic role for the economy, despite the slowdown in economic growth since the beginning of the year. creativity and innovation. Most of the micro, small and medium enterprises (MSMEs) in the creative industry sector, reaching 98%, were affected by the Covid-19 pandemic. As many as 70% experienced project or work delays, 67% experienced decreased sales and income, 59% experienced project cancellations, and 21% experienced raw material difficulties. research on 425 MSMEs, which are dominated by fashion and culinary. As a result, most of them were negatively affected (Dina Dellyana, 2020). There are creative industry players who change products and add services, such as fashion MSMEs turning to making masks. There are also digital startups that sell coffee, to keep cash flow running. Despite avoiding layoffs, according to him, postponement of salaries, especially at the top level, cannot be avoided. They are also more active and creative in finding new sources of income and making new products according to the needs of the pandemic. For creative industry players who want to survive in the midst of a pandemic, he suggests developing short, medium, and long term strategies. Some of them are by building collaboration with other subsectors, changing the method of payment, and reducing unnecessary posts. adaptation to the new normal, budgeting flexibility, improve skills, supply chain stability, be more adaptive in responding, and others, MSMEs need technology that is easy to use. This pandemic shows the unpreparedness of Indonesia in almost all sectors, including the economy,

Even though the creative industry is one of the economic sectors most affected by the Covid-19 pandemic, especially with restrictions on the mobility of people and goods, this sector is considered to still have an opportunity to be captured by the banking industry. This condition then made banks selective in channeling financing for the creative economy sector, especially in the tourism sector and its derivatives.

The reason is, the turnover of the creative industry of MSMEs in the midst of a pandemic has greatly decreased which then affects the smooth running of bank credit in this sector or industry. "Generally, creative economy has a lot to do with tourism, including the souvenir industry and handicrafts. We understand that all tourism derivative industries have been hit hard by the outbreak.

Indonesia as a rule of law has regulated various protections for ideas, ideas in the form of creativity and innovation that have economic value through various laws and regulations relating to IPR. Protection of IPR is very important. This is necessary because Indonesia has great potential in the creative industry and abundant natural resources, so support for IPR protection needs to be optimized.

The rapid development of the creative industry in Indonesia is able to contribute to national economic growth (kominfo.go.id). Legal protection of IPR in Indonesia has not become a serious concern. This is based on the low number of IPR application submissions and the rampant disputes against IPR. In addition, the community's low understanding of the importance of IPR in the creative industry. IPR is not only fixated on technical legal issues, but also concerns economic interests. Intellectual property violations cause losses to the state, inventors, society, also have an impact on economic, socio-cultural, legal relations and can even trigger political tensions between countries (Ministry of Industry).

Based on the above background, the formulation of the problem in this study is how the role of IPR can be a protector of the creative industry and MSMEs during Covid 19?

## **LITERATURE REVIEW**

### ***Intellectual Property Rights***

Intellectual Property Rights (IPR) or the English term Intellectual Property Rights is one of the rights that arise or are born due to human intellectual abilities. Intellectual property rights are material rights, the right to something that comes from the work of the brain, the work of the ratio. The result of the work of the rational human ratio. The result of his work is in the form of an immaterial object. Intangible objects (Saidin, 1995).

Intellectual Property Rights are exclusive rights that are within the scope of technological, scientific, or artistic and literary life. Ownership is not for the goods but on the results of human intellectual abilities and creativity, namely in the form of ideas or ideas. The most important thing about each part of this intellectual property right is the existence of a certain creation. This work may be in the arts, but it may also be in the field of industry or science. It may also be a combination in the three fields, each of which has a specific term (Kholis Roisah, 2015).

### ***Intellectual Property Rights Management***

#### ***International Settings***

Law regarding Intellectual Property Rights is generally territorial, although recently an international legal network has developed to enforce it. The state, through its legal system, is the protector of intellectual property rights, so that the state will take action against violators. Because international trade has become so widespread, products are not only enjoyed by the countries of origin, but also throughout the world. Legal provisions regarding Intellectual Property Rights were carried out for the first time in Venice, namely the Patent rule which came into force in 1470. Efforts to harmonize (harmonize international rules) regarding Intellectual Property Rights first occurred in 1883 with the birth of the Paris Convention (Haris Munandar & Sally Sitanggang, 2008).

#### ***National Arrangements***

In 1953, there began to be a renewal of laws and regulations in the field of Intellectual Property Rights through a preparation of the Draft Patent Law. Then the government issued an announcement of the Minister of Justice of the Republic of Indonesia Number: J.S.5 / 41 stairs 2 August 1954 and Number J.G. 1/2/17 dated 29 October 1953 concerning Temporary Patent Registration pending the existence of a law on patents which was finally ratified by Law Number 6 of 1989 concerning Patents, which was then renewed by Law Number 13 of 1997. related to Intellectual Property Rights.

### ***Definition of Brand***

Every person or company organization that exists will be very concerned about the importance of symbols and names used in conducting business and marketing of goods and services. In terms of market share, the names and symbols that are recognized as trademarks, business names and company names. Trademarks as Intellectual Property Rights are basically things to identify the origin of goods or services.

### **RESEARCH METHODS**

The research method used in this research is sociological legal research (socio legal research / empirical legal research). This method was chosen because the object of research is about empirical facts (reality) of the interaction between law and society (Elizabeth Chambliss, 2008). The reality that is the observation of this research is the effect of implementing regulations on community behavior and / or community behavior that affects the formation of laws. Secondary data in this research will be obtained through literature study. The use of secondary data or literature is intended for; (1) inform readers about the results of other research related to the research being carried out, (2) link a research that is carried out on an ongoing basis to fill gaps and expand other research, (3) provide a frame and reference for comparing a study with findings others (John W Cresswell, 2014).

### **RESULTS AND DISCUSSION**

#### ***IPR Protection Against MSME Products***

The principle of protection in law, especially regarding MSME activities (Komaridin, 2014), is as follows:

1. Economic principles in the 1945 Constitution. This principle was formulated by the founding father or the founder of the 1945 Constitution who had thought carefully about the economic structure of the Indonesian nation through economic principles in order to achieve national goals, namely a just and prosperous society". This means that the people's prosperity can be obtained through truly healthy economic activities and away from unfair business competition practices. If we pay close attention, there are 7 economic principles contained in Article 33 of the 1945,32 Constitution, namely: principles of balance, harmony and harmony; principle of equality; the principle of joint

effort; principle of kinship; the principle of deliberation for consensus (economic democracy); principle of benefit; as well as the principle of protection and fostering of the weak.

2. The principle of protecting national interests. The provisions in Article 33 paragraph (2) and (3) of the 1945 Constitution stipulate state control over production branches that fulfill the interests of the public or the public as a form of national interest. State control over these production branches is based on efforts to protect the interests of the people at large in order to meet the primary needs of the behavior of bad entrepreneurs who control resources in the form of monopoly.

3. Principles of protection in international law and civil law. The aspect of national law that seeks to improve the competitiveness of domestic goods and services, the national economy must also pay attention to the principles of international legal protection. This protection will affect the economic reputation and treatment of other countries towards the marketing activities of Indonesian products, both at home and abroad. Protection of international law and international civil law in the framework of trade between countries through various means of transportation and communication with mutual respect based on international agreements and the principle of the *pacta sunt servanda*, namely agreements that have been agreed upon to apply as law for the parties who enter into the agreement.

4. Principle of Protection for the Economically Weak Group. Various provisions governing the development of MSMEs so far show the government's attention to small entrepreneurs. Among these provisions is Law no. 9 of 1995 as a protection effort for small entrepreneurs, so that market development for small businesses must be an integrated system, because its development depends on the interaction of organizational elements of small entrepreneurs and supporting components of government economic policies, medium enterprises and large businesses that can help each other and influence.

### ***IPR protection efforts for creative industries and MSMEs during Covid 19***

#### ***Role of Government***

In connection with the approach taken by the government to foster MSEs includes many aspects related to the business environment, aspects of innovation related to product development, as well as aspects of information and knowledge that will determine the sustainability of the business and the products it produces. Product innovation is very important for MSMEs so that they can compete with large international companies that have strong capital, extensive networks and mass production volumes. Therefore, the government can provide broad incentives and support for product innovation and marketing systems for these very specific small business actors.

For example, that support could take the form of patent protection or standardization. As an effort to protect MSME products in the face of COVID

19, the government has a fairly strong intervention to support the protection of MSME products, namely by implementing Law No. 23 of 2014 on Regional Government. In this Regional Government Law, there is a chapter that specifically regulates Regional Innovation. Regional innovation is one of the factors that facilitate social change, which is the core of community development. The increased innovation and creativity during the Covid-19 period in a product that has economic value has implications for legal protection for the work that is made. The law that regulates IPR is an instrument of protection for every product / service creativity and innovation. The following examples below are items produced during a pandemic to meet the needs of preventing Covid-19.

There are two government agencies that deal with MSMEs, namely the Ministry of Cooperatives and SMEs (KemkopUKM) and the Ministry of Industry (Kemenperin), which have designed strategies to help MSMEs. KemkopUKM has provided at least three stimuli for MSMEs during the pandemic to maintain the sustainability of MSME activities, namely: leniency in loan payments, six months of MSMEs tax relief, and cash transfers for micro-scale businesses (thejakartapost.com). The Ministry of Industry designs to provide loans with low interest rates (lower than the interest rate for micro-businesses) to SMEs, connecting businesses with online technology store marketplaces to help market product sales in the marketplace (Tokopedia, Shopee, Blibli), collaborating with local industry providers. raw materials for the needs of SMEs, and collaborating with the Ministry of Foreign Affairs and industrial attaches abroad to continue to conduct trade negotiations to continue the export activities of products produced by Indonesian SMEs (Tempo.co).

### ***Role of Non-Government***

The science and technology institution has a very big role in supplying the results of research and development (R & D), to increase the competitiveness of the industrial sector as an effort to improve the level of the national economy. For example, in the industrial and trade sectors, the role of science and technology institutions is also directed at addressing several fundamental obstacles. The Research and Development Agency in relation to IPR has a main program as the development of science and technology and regional innovation. In accordance with Permendagri No. 20 of 2011, the forms of research and development activities include research, development, implementation, engineering, assessment and operation.

Educational institutions as an effort to protect UMKM products are another support for the implementation of the Balitbang system. Administration of educational institutions as referred to in Article 15 paragraph (1) letter d, is carried out by increasing the ability to develop in educational institutions according to regional needs. The competence of agility can be improved through deepening knowledge, conducting socialization, and training of human resources in the agitation system. In this case the quality of human resources greatly affects the ability of Balitbang itself. Examples of educational

institutions that support efforts to protect MSME products in the face of COVID 19 include the role of universities and the role of training institutions.

## CONCLUSION

In accordance with Indonesia's flagship product, there are several protections related to IPR, including copyright protection to protect ideas and ideas from copyright, industrial design protection that protects the physical form of a work, then there is trade secret protection that protects how the system works. the work of the UMKM, the mixing of formulas and certain technical techniques whose confidentiality must be guaranteed. Then the existence of brand rights which is useful as a differentiator so that consumers are not confused about choosing, they can also distinguish products with different quality levels.

## SUGGESTIONS

1. Socialization and guidance as a flow of information to be brought closer to the MSME actors, so that the importance of IPR protection for UMKM products can be thoroughly understood. MSME creative industry players must also have high awareness in terms of improving product quality. The regulations that have been created should be followed and followed in accordance with good procedures by MSME actors.
2. The strategy for developing and protecting MSME and MSME products in Indonesia is inseparable from government support. In addition, strengthening MSME companion institutions can be done through easy access and quality improvement in the form of training and research activities that support MSMEs.

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