

# Intellectual Property Rights as an indicator of business success during a pandemic

**Hafied Noor Bagja**

Widyatama University

[Hafied.noor@widyatama.ac.id](mailto:Hafied.noor@widyatama.ac.id)

**Fitra Zuanda**

Widyatama University

[Fitra.zuanda@widyatama.ac.id](mailto:Fitra.zuanda@widyatama.ac.id)

**Tejo Reno Indratno**

Widyatama University

[Tejo.reno@widyatama.ac.id](mailto:Tejo.reno@widyatama.ac.id)

**Obsatar Sinaga**

Padjadjaran University

[Obsatar.sinaga@unpad.ac.id](mailto:Obsatar.sinaga@unpad.ac.id)

## Abstract

Legal protection of Intellectual Property Rights (IPR) is an important thing to be implemented in Indonesia today. The purpose of this study is to find out the legal protection of Intellectual Property Rights is important for Small and Medium Enterprises as creative industries in Indonesia, and to know the role of the Government in providing legal protection of Intellectual Property Rights to Small Businesses. The research method uses normative juridical. This study focuses on the source of data to literature studies based on secondary data related to aspects of social justice and socio economy. The results of the research are that the potential of the creative industry work market has a tendency to continue to grow, so that the protection of IPR on creative economy products in order to guarantee the economic rights of the originators is an important thing.

## Keyword

IPR, Pandemic, MSME

**To cite this article:** Bagja, H., N., Zuanda, F., Indratno, T., R., Sinaga, O. (2021) Intellectual Property Rights as an indicator of business success during a pandemic. *Review of International Geographical Education (RIGEO)*, 11(7), 3482-3488. Doi: 10.48047/rigeo.11.07.318

**Submitted:** 09-10-2020 • **Revised:** 11-12-2020 • **Accepted:** 13-02-2021

## Introduction

The digital economy has allowed Indonesia to survive the crisis caused by the pandemic. The crisis that occurred in a number of countries was caused by the nature of their economy which depended on export/import and distribution activities. Legal protection of Intellectual Property Rights (IPR) is an important thing to be implemented in Indonesia today. This is based on the reason that Indonesia has great potential in the creative industry as well as abundant natural wealth, so it needs to be supported by optimal efforts in providing IPR protection. Currently in Indonesia the development of the creative industry is quite rapid and is able to contribute to national economic growth.

Given the current conditions that Indonesia is experiencing in fighting the COVID-19 outbreak, everyone must keep their distance and limit activities that could potentially spread COVID-19. Although this needs to be done, the Indonesian people should not stop being creative and innovating. The current condition of business actors based on the results of a Katadata Insight Center (KIC) survey conducted on 206 MSME actors in Greater Jakarta, the majority of MSMEs, 82.9% felt the negative impact of this pandemic and only 5.9% experienced positive growth. This pandemic condition has even caused 63.9% of the affected MSMEs to experience a decline in turnover of more than 30%. Only 3.8% of MSMEs experienced an increase in turnover. The KIC survey also shows that MSMEs have made a number of efforts to maintain their business conditions. They take a number of efficiency measures such as: reducing the production of goods/services, reducing working hours and the number of employees and sales/marketing channels. Even so, there are also MSMEs who take the opposite step, namely adding marketing channels as part of their survival strategy (Maryanti, Netrawati, & Nuada, 2020).

Meanwhile, survey results from several institutions such as BPS, Bappenas, and the World Bank show that this pandemic has caused many MSMEs to have difficulty paying off loans and paying electricity, gas and employee salaries. Some of them even had to do layoffs. Other obstacles experienced by MSMEs include difficulty in obtaining raw materials, capital, declining customers, distribution and production being hampered. In addition, changes in Consumer Behavior and the Business Competition Map also need to be anticipated by business actors due to activity restrictions. Consumers do more activities at home by utilizing digital technology. Meanwhile, changes in the industrial landscape and the new competition map are marked by four business characteristics, namely Hygiene, Low-Touch, Less Crowd, and Low-Mobility (CNBC, 2021).

From these conditions, it can be seen that the MSME sector, the majority of which are the lower middle class, has been heavily affected by the Covid-19 pandemic. Companies that are successful in the pandemic era are companies that can adapt to these four characteristics. Business actors including MSMEs need to innovate in producing goods and services in accordance with market needs. These business actors can also develop various new business ideas and ideas that can also contribute to solving the socio-economic problems of the community due to the impact of the pandemic.

With this, products that appear in a pandemic condition are expected to be able to register IPR on these products. IPR legal protection in developing countries such as Indonesia has not become a serious concern, this is based on the low number of IPR application submissions and the prevalence of legal violations against IPR. Another factor is the lack of understanding and importance of Intellectual Property Rights for creative industries such as Small and Medium Enterprises (SMEs). Economic factors in IPR also affect, because they cannot be obtained instantly like business activities in general. In addition, the low understanding of IPR is also influenced by the development of a country's industry, technology and economy (Lall, 2003). A good or service that is produced today in one country, can be presented in another country in a relatively short time. The presence of goods and services in the production process that have used IPR, by itself requires protection of IPR (Atmadja, 2015).

### Formulation of the problem

Based on the description of the background above, the legal issues that are the focus of the study in this research are: first, why is the legal protection of Intellectual Property Rights important for Small and Medium Enterprises as a creative industry in Indonesia? Second, what is the role of the Government in providing legal protection for Intellectual Property Rights to Small Businesses?

## Literature Review

### Intellectual property rights

Intellectual property rights are basically creativity that results from human thought in order to meet human needs and welfare. A person's creativity appears as an intellectual asset that has long had a significant influence on human civilization, including inventions and results in the field of copyright and art. The more a person's creativity develops, the more human civilization develops (Aswandi & Roisah, 2019).

### Intellectual Property Theory

Before discussing the regulations related to protecting Intellectual Property Rights in Indonesia. It's good for us to pay attention to the birth of the theory of Intellectual Property (intellectual property right) first, (Locke, 2003) says that the rights possessed by a human being, whether tangible or not, but are the result of his intellectuality, will automatically become his, for example in a right. create.

### Scope of Intellectual Property Rights

Intellectual Property Rights have various terms including, intellectual property rights are a direct translation of "Intellectual Property Right" in addition to the word Intellectual Property Right, also known as "Intangible Property", "Creative property", and "Incorporeal Property". Whereas in France people say they are "Propriete Intellectuelle" and "Propriete Industrielle". And in the Netherlands it is usually called Intellectual Property and Industrial Property (Abdulkadir et al., 2001). The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations which was formed to encourage creativity and promote the protection of Intellectual Property throughout the world. In 1883 in Paris, the draft convention was changed to an exchange convention for ratification and in 1884 it became the International Union for the Protection of Industrial Property. Officially formed by 11 countries and agreed on the protection of Intellectual Property Rights that are international in nature, namely with the ratification of the Paris Convention which regulates the protection of Industrial Property Rights (Industrial Property) which in a broad sense includes Patents, Trademarks, Industrial Designs, Utility Models, Trade Names, Geographical Indications, and prevention of fraudulent competition (Ong, Ahmad, Zein, & Tan, 2010). A few years later in 1886, copyright protection was followed, namely by the ratification of the Berne Convention for the Protection of Literary and Artistic Works (Ahmad Zein Umar Purba: 2011). It includes cinematography, architecture, and certain artistic works (Ong et al., 2010).

### Definition of Micro, Small, and Medium Enterprises (MSMEs)

The definition of MSMEs according to Article 1 of Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises is:

- a) Micro-enterprises are productive businesses owned by individuals and/or individual business entities that meet the criteria for micro-enterprises.
- b) Small business is a productive business that stands alone, which is carried out by individuals or business entities that are not subsidiaries of companies that are owned, controlled, or become part either directly or indirectly of a medium or large business that meets the criteria of a small business.
- c) Medium-sized business is a productive economic business that stands alone, which is carried out by individuals or business entities that are not subsidiaries or branches of companies that are owned, controlled, or become a part either directly or indirectly with small businesses or large businesses with total net assets or annual sales results.

In Indonesia, MSMEs are regulated in Law Number 20 of 2008 concerning Micro, Small and

Medium Enterprises (UMKM, 1998) The MSME Law mandates the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVI/MPR-RI/1998 concerning Economic Politics in the context of Economic Democracy, Micro, Small and Medium Enterprises need to be empowered as an integral part of the people's economy that has a position, role, and strategic potential to realize a more balanced, developing, and just national economic structure (Tamara, 2013). Before the MSME Law was enacted, MSMEs in Indonesia were not specifically regulated. There is only Law Number 9 of 1995 concerning Small Business which only regulates Small Business. So it needs to be replaced with a more comprehensive one so that MSMEs in Indonesia can obtain guarantees of business certainty and justice in connection with the development of an increasingly dynamic global economic environment (Satya, 2018). In general, the structure and material of the MSME Law contains:

1. General Provisions (Article 1), consisting of 15 points.
2. Principles and Objectives (Article 2-3).

MSMEs are based on the principles of kinship, economic democracy, togetherness, efficiency with justice, sustainability, environmental insight, independence, balance of progress, and national economic unity.

3. Principles and Objectives of Empowerment (Article 4-5)

The principle of MSMEs is the growth of independence, togetherness, and entrepreneurship of MSMEs to work on their own initiative; the realization of transparent, accountable, and fair public policies; regional potential-based and market-oriented business development in accordance with the competence of MSMEs; increasing the competitiveness of MSMEs; and implementation of integrated planning, implementation, and control. The purpose of empowering MSMEs is to realize a balanced, developing, and just national economic structure; grow and develop the ability of MSMEs to become strong and independent businesses; and increasing the role of MSMEs in regional development, job creation, income distribution, economic growth, and alleviating people from poverty.

4. Criteria (Article 6), divides micro, small, and medium enterprises based on the amount of net worth and annual sales results.

5. Development of Business Climate (Articles 7-15), which stipulates that the government and local governments foster a business climate by establishing laws and regulations and policies covering aspects of funding, facilities and infrastructure, business information, partnerships, business licensing, business opportunities, trade promotion, and institutional support

## Research Methods

This type of research is a normative juridical research and focuses on data sources on literature studies based on secondary data related to social justice and socio-economy aspects. The normative juridical approach is legal research carried out by examining library materials or secondary data as the basis for research by conducting searches on regulations and literature related to the problems studied (Soekanto & Mamudji, 2001).

The approach used in this research is the statutory approach, which refers to the Law of the Republic of Indonesia Number 20 of 2008 concerning Micro, Small and Medium Enterprises, Government Regulation of the Republic of Indonesia Number 23 of 2018. Law No. 12 of 1997 concerning Amendments to Law No. 6 of 1982 concerning Copyright as amended by Law no. 7 of 1987 (Copyright Law); In the near future, this Law will be revised to accommodate the latest developments in the field of copyright.

After that, the data obtained were analyzed using qualitative methods, namely describing the facts based on the results of the study. From the analysis of the data, followed by drawing conclusions from the inductive method, which is a special way of thinking and then general conclusions are drawn to answer the problems posed.



## Discussion

### Legal protection of Intellectual Property Rights is important for Small and Medium Enterprises as a creative industry in Indonesia

Since the official announcement of the presence of Coronavirus Disease 2019 (Covid19) in Indonesia in early March 2020, various forms of efforts to handle the spread of Covid-19 have been made, various government policies and regulations have been implemented during the Covid-19 pandemic. The government's efforts in Large-Scale Social Restrictions (PSBB), health protocols, and the new normal have become the government's scenario in preventing and tackling the spread of Covid-19. However, these various policies and regulations have created new problems in the social, cultural, and economic fields of the community. One of the sectors affected by government policies and regulations during the Covid-19 pandemic is the business sector, from micro, small and medium enterprises (MSMEs), to large businesses that lead to export and import.

The Covid-19 pandemic and various government policies and regulations in handling it have been shown in various research results that describe the impact of the Covid-19 pandemic on the MSME economy. According to (Rahayu & Asiati, 2020), since the beginning of the Covid19 pandemic, the Indonesian government has imposed PSBB and social distancing movements with the issuance of PP No. 21 of 2020 is an effort by the government to stop the spread of Covid-19, but this policy also has an impact on the business world, starting from sluggish production activities, declining sales, scarcity of raw material supply, and so on. Furthermore, the survey results from the Indonesian Institute of Sciences (LIPI) have shown that the Covid-19 pandemic has caused various impacts in business activities, ranging from a decline to the cessation of production activities that occurred in various economic sectors. So that some businesses are only able to survive for a certain time or even those businesses stop during the Covid-19 pandemic.

Legal protection is an effort to organize various interests in society so that there are no clashes between interests and can enjoy all the rights granted by law (Satjipto, 2006). Legal protection here will be related to legal protection of IPR for SME creative industry products in accordance with the provisions of IPR legislation in Indonesia. If SMEs already have legal protection for their products, it will certainly provide legal certainty for efforts to fight for their rights as parties who have rights to these products.

Based on a Bank Indonesia survey, as many as 87.5 percent of MSMEs were affected by the pandemic. Of that amount, 93.2 percent were negatively affected and experienced a decrease in turnover, while the other 12.5 percent were not affected because they were already selling online. This does not rule out the possibility for them as many as 93.2 percent of these start building and making innovative products with the support of technology. So there is a need for legal protection for these creative and innovative products.

The fact that the potential of the creative work market at home and abroad is very large and has a tendency to continue to grow. This further strengthens the reason for the importance of protecting intellectual property rights (IPR) for creative economic products with the aim that the originators of creative ideas and innovations get economic benefits for their intellectual works. In some IPRs such as Marks, Patents, Industrial Designs, Geographical Indications, the application for registration is an absolute requirement for IPR protection. Although several other IPRs, such as Copyright and Trade Secrets, the legal protection system is through declarative principles. Currently, the application for trademark registration for SMEs still dominates. According to Article 3 of Law Number 20 of 2016 concerning Marks and Geographical Indications, it is determined that the protection of a mark is granted after registration. So that trademark registration is an important thing in the context of trademark protection.

(Permata, 2019) in his research revealed that the Special Region of Yogyakarta currently has a policy of implementing co-branding for SME products originating from DIY. The policy is contained in Governor Regulation Number 21 of 2017 concerning the Use of the Jogja Mark, 100% Jogja and Jogja Tradition Brands as Co-Branding of Regional Products.<sup>27</sup> The three co-branding logos have different specifications. The Jogja Mark logo is for products or services that are made from outside, but the production process is in DIY. The 100% Jogja logo is specifically for products and services whose materials and processing are from DIY, such as batik. Meanwhile, Jogja

Tradition is for cultural creations that are tangible or intangible, such as dances, kris, and blankons.

Meanwhile, with the growth of online business in Indonesia, of course, it is accompanied by the increasing number of registered domain names. Not a few conflicts occur considering that the registration of a domain name does not yet require ownership of the trademark rights to the name used as the domain name. Domain as a pointer to a certain page becomes very significant in representing a product or company, so it is vulnerable to misuse. Some well-known brands such as Netflix and Daniel Wellington have stumbled upon brand and domain name conflicts. "If there is a similarity between a party's registered mark and a domain name owned by another party and one of the parties wishes to cancel or abolish the registered mark or domain name of another party, then a settlement can be made from a trademark legal perspective based on the Trademark Law and the domain name perspective refers to Law on information and electronic transactions" (Al-Nofli, 2021)

Today, there is the term Cyber-squatters for people who register a well-known brand, name or business that has nothing to do with the registrar, then sell the domain name directly to the company or related party at a higher price. On the other hand, there are also Cyber-parasites, namely parties who take advantage of the fame of a particular brand or name, by registering or using a domain name that has connotations with the famous brand or name. What is no less important is that many superior products made by Indonesian SMEs were stolen by other countries.

Many SMEs do not understand the importance of protecting local product brands/products from the region, so understanding and implementation of these policies is still very minimal. This is where the role of the Government is needed, in understanding the SME community about the importance of joint trademark registration for the regional superior products of SMEs.

## **The role of the Government in providing legal protection for Intellectual Property Rights to Small Businesses**

Intellectual Property Rights are rights relating to property arising from human intellectual abilities. These abilities can be in the form of works in the fields of technology, science, art and literature.<sup>36</sup> Broadly speaking, the scope of intellectual property rights is divided into two, namely copyright and industrial property rights. Copyright consists of science, art, and literature. Industrial property rights consist of patents, brands, industrial designs, integrated circuit layout designs, trade secrets, and protection of plant varieties (Much, 2012)

The Ministry of Industry has set four strategic steps in facing Industry 4.0. The steps that will be implemented are:

First, encourage the workforce in Indonesia to continue to improve their abilities and skills, especially in using internet of things technology or integrating internet capabilities with industrial production lines;

Second, the use of digital technology to spur productivity and competitiveness for small and medium-sized industries (IKM) to be able to penetrate the export market through the E-smart IKM program. Third, more optimal use of digital technology in national industries such as Big Data, Autonomous Robots, Cybersecurity, Cloud, and Augmented Reality. Fourth, encouraging technological innovation through the development of start-ups by facilitating business incubation so that there are more technology-based entrepreneurs in the territory of Indonesia (Satya, 2018)

IPR services for SMEs should also take advantage of internet connectivity to make it easier for SMEs to access and not limit the area and time, in the sense that they can access at any time. It is necessary to build a system so that SMEs can easily and immediately access applications for IPR registration without reducing business activities carried out in different places. The IPR service facilities are based on a website or online system. Besides being useful for facilitating access to IPR registration for SMEs, IPR registration through the online system will also be a means of storing SME data that is easy and accurate. This is often referred to as cloud computing. However, apart from having advantages to the process of submitting an online IPR registration, the obstacle that may be experienced is that this system is very dependent on the internet network, so if there is any interference with the internet network will be constrained by this registration process.

The first step for the presence of the IP Services website is of course to carry out socialization,

assistance and training for SMEs in utilizing access to IP Services. Future challenges need to be developed to facilitate this access through an IPR registration system based on the Android/IOS system. IPR registration online through the Website does not reduce the legal provisions for IPR registration, because this online registration still applies the conditions for IPR registration in accordance with the provisions of the law, only done online, making it easier for SMEs.

## Conclusion

Based on the things described in the research and discussion, it can be concluded: first, the potential of the creative industry work market has a tendency to continue to grow, so that the protection of intellectual property rights on creative economy products in order to guarantee the economic rights of the originators is an important matter. One of the ways to protect IPR for SMEs is through an online system, as the entry point for legal protection has been facilitated and is expected to make it easier for SMEs to access IPR registration applications.

## References

- Abdulkadir, S. A., Qu, Z., Garabedian, E., Song, S.-K., Peters, T. J., Svaren, J., . . . Ackerman, J. J. H. (2001). Impaired prostate tumorigenesis in Egr1-deficient mice. *Nature medicine*, 7(1), 101-107. doi:<https://doi.org/10.1038/83231>
- Al-Nofli, M. A. (2021). Omani Undergraduate Students' Awareness and Experiences of the Research-Teaching Nexus. *International Journal of Higher Education*, 10(4), 207-219. doi:<https://doi.org/10.5430/ijhe.v10n4p207>
- Aswandi, B., & Roisah, K. (2019). Negara Hukum Dan Demokrasi Pancasila Dalam Kaitannya Dengan Hak Asasi Manusia (HAM). *Jurnal Pembangunan Hukum Indonesia*, 1(1), 128-145. doi:<https://doi.org/10.14710/jphi.v1i1.128-145>
- Atmadja, H. T. (2015). Urgensi perlindungan hak kekayaan intelektual dalam era perdagangan bebas. *Lex Journalica*, 12(3), 147546.
- CNBC. (2021). CNBC Indonesia, 28 April. , 21(1) doi:<https://doi.org/10.52508/zi.v28i2.4101>
- Lall, S. (2003). Indicators of the relative importance of IPRs in developing countries. *Research Policy*, 32(9), 1657-1680. doi:[https://doi.org/10.1016/S0048-7333\(03\)00046-5](https://doi.org/10.1016/S0048-7333(03)00046-5)
- Locke. (2003). Two Treatises of Government, dalam Syafrinaldi, "Sejarah dan Teori Perlindungan KI" Universitas Riau, 21(1), 45-58
- Maryanti, S., Netrawati, I. G. A. O., & Nuada, I. W. (2020). Pandemi COVID-19 dan implikasinya pada perekonomian NTB. *Media Bina Ilmiah*, 14(11), 3497-3508.
- Much, N. (2012). Segala Tentang HAKI Indonesia (Buku Pintar Memahami Aturan HAKI Kita) Cetakan Pertama. Penerbit Buku Biru. Yogyakarta.
- Ong, Y. T., Ahmad, A. L., Zein, S. H. S., & Tan, S. H. (2010). A review on carbon nanotubes in an environmental protection and green engineering perspective. *Brazilian Journal of Chemical Engineering*, 27(2), 227-242. doi:<https://doi.org/10.1590/S0104-66322010000200002>
- Permata, N. D. (2019). Evaluasi Fungsi Pemanfaatan Hutan Kota Sebagai Kawasan Rekreasi Masyarakat Jabodetabek.
- Rahayu, S., & Asiati, D. I. (2020). Satisfaction as A Determination Of Muhammadiyah Members Loyalty In South Sumatera. *Jurnal Ilmu Manajemen*, 9(2), 99-106. doi:<https://doi.org/10.32502/jimn.v9i2.2447>
- Satjipto, R. (2006). Hukum Progresif, Kesinambungan, Merobohkan, dan Membangun. *Jurnal Hukum Progresif*, 2(1), 1.
- Satya, V. E. (2018). Strategi Indonesia menghadapi industri 4.0. *Info Singkat*, 10(9), 19-24.
- Tamara, A. (2013). Pemberdayaan Usaha Mikro, Kecil Dan Menengah Di Kota Manado. *Jurnal Hukum Unsrat*, 1(5), 64-79.
- UMKM, U. (1998). UU UMKM amanat Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia Nomor XVI/MPR-RI/tentang Politik Ekonomi dalam rangka Demokrasi Ekonomi.