

Acquisition of Copyright and Related Rights in Economic Development for SMEs in Indonesia (Perspective of Economic Rights in National and International Contexts)

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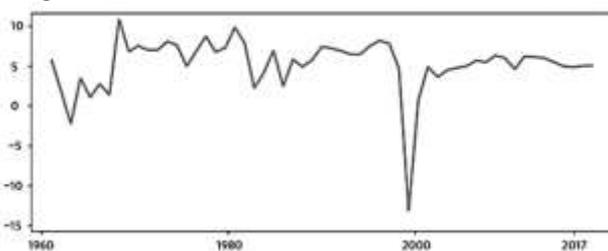
Abstract—Small and Medium-Sized Enterprises (SMEs) play a vital role in economic development, as they have been the primary source of job/employment creation and output growth, not only in developing but also in developed countries. However, the development of SMEs has its own challenges, especially related to copyright and related economic rights. This paper purposes to analyze how legal arrangements both nationally and internationally in the acquisition of copyright and related economic rights for SMEs in Indonesia. The method used is a normative legal study, in which studies and analyzes include studies of statutory rules and legal theories relating to the acquisition of copyright for SMEs. This paper finds that the Copyright Act and the SMEs Act specifically regulate the acquisition of copyright and economic rights for SMEs. In addition, WIPO Regulation also regulates the acquisition of copyright for SMEs.

Keywords—Acquisition of Copyright; Small and Medium Enterprises (SMEs); Economic Rights; National and International Legal Instrument

I. INTRODUCTION

Economic development in Indonesia was become one of most dynamic development in South East Asian region. Indonesia is immersed in a challenging situation: after the Asian financial crisis (AFC) of 1997–1998 as emphasized by Asian Development Bank and it has not been able to return to the high growth rates it had attained prior to it, about 17% per year during 1990–1997, against 5.3% during 2000–2017 (Figure 1.1). It seems that after recovering from the AFC, Indonesia entered a “new normal” with gross domestic product (GDP) growth at around 5%–5.5%. While this is high for world standards, the government of the world’s fourth most populous nation (over 260 million people) would like to eliminate poverty faster, create good employment, and attain upper-middle income status as soon as possible.[1]

Figure 1 Indonesia’s Actual Growth Rate, 1960-2017 (%)



Source: World Bank. World Development Indicators.
<http://databank.worldbank.org/data/home.aspx>

The growth also includes the growth of SMEs which is one of the pillars of economic development. From a worldwide perspective, it has been recognized that SMEs play a vital role in economic development, as they have been the primary source of job creation and output growth, not only in developing but also in developed countries. This condition is as described by Piper’s dissertation,[2] for instance, it states that 12 million or about 63.2% of total labor force in the United States (US) work in 350,000 firms employing less than 500 employees, which considered as SMEs. According to Aharoni,[3] SMEs make up more than 99% of all business entities and employ more than 80% of total workforce in this country. These enterprises, often called the foundation enterprises, are the core of the US industrial base.[2] SMEs are also important in many European countries. In the Netherlands, for instance, they account for 95% or more of total business establishments.[4] As in the US, also in other industrialized/OECD countries such as Japan, Australia, Germany, French and Canada, SMEs are an important engine of economic growth and technological progress. [5]

Data from 2011 showed that the foreign exchange of micro, small and medium enterprises (SMEs) has proven to be able to contribute significantly to the formation of national gross domestic product (GDP) and exports. MSMEs contribute 55.6 percent of current price GDP with an investment value of Rp 640.4 trillion or 52.9 percent of the total investment. Not only that, MSMEs also earned

foreign exchange of Rp 183.8 trillion or 20.2% of the total economic sector in Indonesia. In 2010 SMEs in Indonesia were more than the number of SMEs actors. That is as much as 51.3 million business units or 99.91 percent of the total number of business operators in Indonesia. The total workforce reaches 90.9 million workers, equivalent to 97.1 percent of all Indonesian workers. Even the Central Statistics Agency data released the situation after the economic crisis the number of MSMEs did not decrease, instead increased its growth to the most extensive, even able to absorb 85 million to 107 million workers until 2012. In that year the number of employers in Indonesia was 56,539,560 units. From this number, SMEs were 56,534,592 units or 99.99%. The remaining around 0.01% or 4,968 units are large scale businesses. This phenomenon explains that MSMEs are productive businesses to be developed to support macro and micro economic development in Indonesia and affect other sectors that can develop. One of the sectors that are affected by MSME growth is the banking service sector that is audible, because it is almost 30% of SMEs businesses use operational capital from banks.

However, within the SMEs itself still has many problems. The real performance faced by most businesses, especially micro, small and medium enterprises in Indonesia that is most prominent is the low level of productivity, low value added, and low quality of products. It must be acknowledged that MSMEs provide employment for most workers in Indonesia, but the contribution to national output is categorized as low. This is because MSMEs, especially micro and small businesses (which absorb a lot of labor), have very low productivity. If wages are used as productivity, average wages in micro and small businesses are generally below the minimum wage. This condition reflects the productivity of the micro and small sectors is very low when compared to larger businesses (Arto and Hutomo, 2013).

II. RESEARCH METHOD

The paradigm used in research is Constructivism (Legal Constructivism) in the context and substance of the substance of policy formation (Salim, 2016). The constructivist paradigm is as a critique of positivistic social science. Constructivism can be traced from Weber's thought which characterizes that human behavior is fundamentally different from natural behavior. Humans act as agents in producing social reality. The way construction is carried out on how to understand or give meaning to their own behavior.

Research conducted in the category of normative juridical legal research. According to Soerjono Soekanto (2001) a normative juridical approach is legal research carried out by examining library material or secondary data as a basic material to be investigated by conducting a search of regulations and literature relating to the problem under study. This means that the enactment of the law must be in accordance with higher rules, or the formation of the methods that have been determined at once to find out how

the law is implemented in the process of law enforcement. This research will examine the right to economy in copyright for MSMEs in Indonesia in the context of national and international legal rules.

This study uses a hermeneutic approach in socio-legal qualitative research. Research with this approach will see the rule of law as the basis for policy formation by looking at the chronology of the legal process of its formation. Hermeneutically, that is, analyzing the content and context of policy material. Qualitatively will interpret the meaning of the articles in the policy so that the correct meaning will be obtained sociologically, philosophically and juridically.

This study took place in the city of Semarang, Central Java Province, and also the Regional Office of the Ministry of Law and Human Rights in Central Java Province and the Central Java Cooperative and UMKM offices.

III. RESULT AND DISCUSSION

A. Acquisition of Copyright and Related Rights for SMEs (Copyrights Registration Process)

Copyright registration is based on Law No. 28 of 2014 states that there are 2 systems, namely through online and in person. Based on the diagram above is the registration of copyright online and generally accepted. The Government of Indonesia through the Ministry of Law and Human Rights facilitates MSMEs to register copyright that is different from others, in this case the Ministry of Law and Human Rights in collaboration with the Ministry of Cooperatives and SMEs.

Since August 17, 2019 Online registration that used to be the username holder is only the Regional Office of Law and Human Rights, but now every copyright holder can register while still getting assistance from the Regional Office of the Ministry of Law and Human Rights to minimize errors that might arise when registering online. This includes differences between the fees for registering copyrighted works between MSMEs and non-MSMEs. If non-SMEs Rp. 2000,000 but for SMEs only Rp. 600,000, so we need assistance from Ministry of Law and Human Rights.

Based on the Indonesian SMEs website, it is stated that SMEs, especially those engaged in creative activities such as crafts and fashion, need to protect their Intellectual Property Rights by registering Intellectual Property, in order to prevent misuse of their works or brands by other parties who are not responsible and at risk of exploiting the economic benefits of the work or certain brand. For this reason, the Deputy of Production and Marketing of the Indonesian Ministry of Cooperatives and SMEs facilitates the registration of Intellectual Property Rights, including Copyrights and Trademark Rights, to registered SMEs.

The Ministry of Cooperatives and SMEs of the Republic of Indonesia provides free facilitation facilities for SMEs to register copyright and trademarks with a mechanism determined by the Ministry of Cooperatives and SMEs. Copyright registration requirements for SMEs:

1. Fill in the registration form of the work made 2 (two) copies typed on the paper F \$ Copyright form;
2. Making a statement that the type of work (9) typed by the applicant is the property of the applicant or the designer and does not copy or copy the work of another person with stamp duty and signature;
3. NPWP/Tax ID (if any) and KTP/Citizen ID must exist;
4. Color photographs of motifs / paintings / drawings that will be registered with copyright;
5. Attach register SMEs certificate from the Ministry of Cooperatives and SMEs of the Republic of Indonesia

In addition to the above conditions, there are also additional requirements, namely this facility is prioritized for SMEs who:

1. Engaged in the production of food and beverages in packaging, crafts, and fashion.
2. Have a social media account or website that is separate from the personal account of the business owner.

Copyright is an exclusive right granted by the state to the creator through registration, meaning that for a legal protection there is a need for registration by the creator. based on data from the Ministry of Cooperatives and SMEs that from 2014 to May 2017 has facilitated as many as 2,550 MSMEs engaged in the business of clothing and batik, jewelry and accessories, handicrafts, bags and shoes, as well as *songket* and weaving to obtain copyrights. To get a copyright facility is a SMEs that is able to produce works of art and creativity that includes fine arts, drawing art, painting, sculpture, motifs, sound recording works, and musical compositions, because standardization and product certification is an effort to increase the added value and competitiveness of SMEs products both in international and domestic markets. Copyright and brand rights are one form of product certification which is part of Intellectual Property Rights (IPR). This intellectual property will be an invaluable asset for SMEs in innovating and creating. The above shows that the current SMEs already have awareness to register the product.

Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in real form without reducing restrictions in accordance with statutory provisions. While Copyright is every work of copyright in the fields of science, art, and literature that is produced on inspiration, ability, thought, imagination, dexterity, skills, or expertise expressed in tangible form (RI Law No. 28, 2014 About Copyright). Data obtained from the Profile of Micro, Small and Medium Enterprises, Potentially Financed by Banking, shows that there are at least 62 companies included in the Arts, Entertainment and Recreation cluster (Bank Indonesia, 2015). The cluster should be a collection of MSMEs that are most involved in copyright issues, including handicraft products, paintings, production houses, DVD cassette sales or rental, and so on.

Especially if points of sale or rental of DVDs or CDs are taken into account more deeply, the data released by Ambassador Michael B.G. Froman, the United States Trade Representative (USTR) in the 2015 Special 301 Report can be a lesson for the Indonesian people because in 2015 Indonesia was still included in the Priority Watch List.

In 2014, the Indonesian National Police only investigated 97 IPR criminal cases, and the Attorney General's Office only brought 12 IPR cases to the court (USTR, 2015). This condition makes it possible for Indonesian original products to be more difficult to penetrate the international market, especially IPR-based products such as Copyright. Crafts and paintings are very possible to be encouraged to protect Copyright because of the original works produced. While in the Production House sector many will be in contact with computer programs that have Copyright and at a high price. The Indonesian government in this case is demanded to play a more active role so that the Indonesian people have a higher awareness of intellectual property rights, especially Copyright (Ramadhani, Novianti 2016).

Copyright Protection has become a very important issue in the international eyes, as evidenced by Indonesia's inclusion in the Priority Watch List. On the other hand MSMEs should be able to take advantage of copyright protection for the art they produce such as paintings, crafts, and computer programs. Copyright protection is born attached to the creator since the copyrighted work was made and published, then get protection by the State for the life of the author plus 70 years after the death of the creator. Protection of Industrial Design is related to the protection of Copyright, especially in the case of artwork so that it can be considered by SMEs in choosing the IPR protection they need. For example, a batik painting style that is protected by Copyright if it is to be mass produced into a motif of a batik cloth, then the protection must be transferred to the protection of Industrial Designs. (Ramadhani, Novianti: 2016).

Central Java Province through the Office of Cooperatives of Small and Medium Enterprises annually facilitates SMEs to register copyright and trademarks. In 2017, it is almost the same as in 2016 that the number of recipients of intellectual property registration facilities by the Central Java Small and Medium Enterprises Cooperatives Office numbered 15 SMEs spread across several regions such as, Kudus, Semarang Regency, Brebes, Kendal, Jepara, Purbalingga, Surakarta, Sragen, and Semarang city. What makes it different is that in 2017 those who received Intellectual Property registration facilities were more varied in their regions, more numerous and scattered in Central Java.

Some factors that influence the reduced number of facilitation of Intellectual Property registration include:

1. Management of registration of intellectual property is increasingly complicated because it must issue a statement that the SMEs concerned are SMEs assisted and must be named;
2. Registration of intellectual property can be done online and can be done anywhere, even in each regency or city through the agency can facilitate without having to go to the Office of Cooperatives of Small and Medium Enterprises in Central Java;
3. Lack of legal awareness of SMEs about the importance of intellectual property registration.

B. Regulation of Economic Rights for SMEs in Indonesia in the Context of National and International Law

In general, copyright contains two essences, namely economic rights (economic rights) and moral rights (moral rights). Economic rights are the rights to obtain economic benefits for the work and related product rights. The content of economic rights includes the right to announce (performing rights) and the right to multiply (mechanical rights). The moral rights include the right of the creator to include his name in the work and the right of the creator to prohibit others from changing their work, including the title (Henry Soelistyo, 2011: 47).

While moral rights are rights inherent in the creator or actor that cannot be removed or deleted without any reason, even though copyright or related rights have been transferred (Yossy Suparyo, 2003: 62). Moral rights are regulated in Article 5 of Law No. 28 of 2014 concerning copyright. Article 24 paragraph (1) to paragraph (4) states that the creator or his heir has the right to sue the copyright holder so that the name of the creator is still included in the work. A work has been changed even though the rights of the work have been handed over to another party, except with the consent of the creator or heirs in the event that the creator has died. This provision also applies to changes in titles and subtitles, creation and changes in the name or pseudonym of the creator. In addition, the creator has the right to make changes to his creation according to propriety in society.

By having moral rights, the creator has the right to include his name or pseudonym in his creation or a copy of it in a general usage relationship. The creator also has the right to prevent other forms of change related to the copyrighted work which in turn will damage the appreciation and reputation of the creator other than that none of the above rights can be transferred as long as the creator is still alive except for the will of the creator based on the laws and regulations.

Specifically regarding the content of economic rights, it is definitively affirmed in Article 1 number 5 and 6 of the Copyright Act No. 28 of 2014, respectively concerning Announcements and Reproduction (Henry Soelistyo, 2011: 49). In Article 1 number 5 of the Copyright Law No. 28 of 2014 reads Announcement is the reading, broadcasting, exhibition, sale, distribution, or distribution of a work using any instrument, including internet media, or doing in any way so that a work can be read, be heard or seen by others. Whereas Article 1 number 6 of the Copyright Law No. 19/2002 reads that multiplication is the addition of a number of works, both in whole or in very substantial part by using the same or unequal materials, including permanent or temporary outsourcing.

Regarding the content of economic rights related to propagation that is often underestimated by society. Because with current technological advances, multiplying a creation becomes very easy. For example, increasing the number of creations in the form of books, multiplying books is very easy using a photocopier and now that provides photocopying services very much. Multiplying books with a photocopier will harm the creator regarding economic rights. If you buy the original book, the creator will get

royalties from the price of the original book, but if you only photocopy the costs incurred only the services of the photocopy.

In the same context, restrictions on economic rights, namely, where economic rights in copyright are also called exploitation rights, include but are not limited to:

1. Right to reproduce works.
2. Right to announce creation.
3. The right to transform works or transfer works
4. Right to reproduce works.

Economic rights are often synonymous with exploitation rights. This is because copyright gives a certain period of time to exploit the economic benefits of the copyrighted work to the creator. Exploitation activities can be in the form of a performer activity in which a singer chants a song (a creation) of music recorded on a compact disc or cassette by a recording producer to be sold publicly to consumers. Economic rights are rights which include reproduction, adaptation, distribution and communication rights (broadcasting, cabling) and public performance.

There are countries which incorporate economic rights of the author into the copyright law *verbis* expressly. For example, Brazil, in its copyright law states that the economic rights of the creator arise from the economic use of a copyrighted work, which ends for a lifetime for the creator. Her children, parents or wife / husband will forever enjoy the economic rights of the creator who are transferred through inheritance. Other successors of the creator will also enjoy the creator's economic rights for a period of 60 years, which starts and takes place on January 1 of the year following the death of the creator. Works published after the death of the creator have the same period of time starting from the legal protection (Supnik & Fauider, 1993).

IV. CONCLUSION

Acquisition of copyrights by SMEs based on existing data increasingly shows an increasing graph, it is based that the development of the creative industry and marketing facilities are increasingly more developed. Economic rights for MSMEs have been regulated in the 1945 Constitution and are described in Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises and strengthened by Law No. 28 of 2014 concerning copyrights which governs details about copyrights which are also related to moral rights for the creator. In the international world there are many instruments governing the economic rights of copyrights for SMEs, which are universally related to human rights, namely the recognition of the work of others, and other rules that form the basis of regulating Indonesian laws relating to economic rights for SMEs.

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