

*Research Article***Contextualization of Legal Protection of Intellectual Property in Micro Small and Medium Enterprises in Indonesia**Hari Sutra Disemadi<sup>1,2</sup><sup>1</sup>Faculty of Law, Universitas Internasional Batam<sup>2</sup>Doctor of Law Program, Universitas Pelita Harapan

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**ABSTRAK**

The growing number of Micro, Small and Medium Enterprises (MSMEs) has brought about big potential for the implementation of intellectual property protection. The management and the ability to create is an essential key to develop intellectual property. According to this issue, this study is aimed at investigating and analyzing the contextualization of legal protection of intellectual property in the development of MSMEs in Indonesia. Doctrinal legal research method was applied in this study. This legal study emphasizes on the conception that law can be seen as a set of laws and regulations which are systematically arranged based on a certain hierarchical order. The result of the study shows that MSMEs and intellectual property are two inseparable entities. One of the government efforts to develop MSMEs in Indonesia is by simplifying MSME regulation through the implementation of omnibus law in order to avoid overlapping of regulations which may lead to complicated bureaucracy. Another finding of this study is that basically the protection of intellectual property is considered highly important for the vendors of MSMEs. The implementation of legal protection for the vendors of MSMEs and their intellectual properties provides opportunity for the business owners to maximize the economic value of their intellectual property. Intellectual property rights can be collateral to obtain banking credit because intellectual property rights are admitted as property that its ownership can be handed over.

**Key words: Legal protection; Intellectual Property; MSME.****A. INTRODUCTION**

One of the aims of Indonesian government's policies in improving economic value in 2020-2024 is strengthening MSMEs or Micro, Small and Medium Enterprises (Nasution, 2020). MSMEs play an important role in the economic development and growth in Indonesia (Inayah, 2019). In Indonesia, MSMEs are a thriving industrial sector which has been the country's main economic pillar (Betlehn, & Samosir, 2018). According to Press Broadcast Number HM.4.6/103/SET.M.EKON.3/05/2021 issued

by Coordinating Ministry of Economic Affairs of The Republic of Indonesia on 05 May 2021, the number of MSMEs currently has reached 64.2 million with their contribution to GDP as much as 61.07% or worth 8,573.89 trillion rupiahs. The contribution of MSMEs to the economy of the country is, namely, in the ability to absorb 97% of total work force and to obtain up to 60.4% of the total investment. The high number of MSMEs in Indonesia has also had its own challenges as the current covid-19 Pandemic. To coping with those challenges, The government of

Indonesia has run some programs to support MSMEs, namely incentive and financing aid through a program called *Kredit Usaha Rakyat* (Indonesia's Guaranteed Microfinance Program) and *Gerakan Nasional Bangga Buatan Indonesia* (Gernas BBI) or The "Proud of Indonesian Products" National Movement, Digitalization of MSMEs Marketing, and a long term strategy to upgrade MSMEs level through Law Number 11 of 2020 on Job Creation (*UU Cipta Kerja*). The impact of covid-19 pandemic has led to shifting in the consumption pattern of goods and services, from offline to online pattern. This has become the momentum to accelerate digital transformation on MSMEs. The potential of Indonesia's digital economy is still widely open considering to the fact that Indonesia has the fourth biggest population in the world. The importance of MSMEs nowadays has required their owners to take into account legal protection for their business or the development of their business (Betlehn, & Samosir, 2018). The development of business by MSMEs nowadays is closely related to creative work in the form of art, text, picture, and so forth in social media such as Instagram, which is an application of pictures and video sharing associated with creation or work. This matter is closely related to intellectual property. Every business run by an MSME certainly has intellectual property in it (Asri, 2020). Some of the examples are logos and names owned by MSMEs as their brand; promotion videos and photos in social media as work of creation; and many more, depending on what is sold by the MSME. The importance of the protection of intellectual property is based on the economic value in it as well as sanction

applied if violation occurs. By considering the aforementioned matter, it can be understood that intellectual property is one of aspects that need to be considered especially in this digital era. There are many works or creations which are published digitally and those works and creations are also marketed digitally through pictures and videos in social media which are one form of creation. In addition, the presence of information transparency of a work brings the potential of piracy and intellectual property infringement.

Intellectual property comes from the result of human mind activities which creates a useful product or process. Essentially, intellectual property is the right to enjoy the economic potential of an intellectual creativity. Intellectual property is basically categorized into two main groups, namely the right to creation and the right to industrial property (Putri, & Nahrowi, 2020). Rights to creation cover intellectual properties in the field of science, art, literature, and related rights (exclusive rights for performers, phonogram producer, or any broadcast stations). Meanwhile, industrial property rights cover patent, brand, industrial designs and so forth (Darwance, Yokotani & Anggita, 2020). World Intellectual Property Organization (WIPO) defines intellectual property as any creation which is made by the creation of mind, such as invention, literary and any artistic creation, symbols, names, images, and designs in commerce (Antariksa, 2012). Intellectual property is a valuable asset that has potential to develop economy of a country (Ayunda, & Maneshakerti, 2021).

Legal protection of intellectual property grows and develops in developed industrial countries such as West Europe and America. Legal protection has become global system, particularly since the making of Agreement on Trade-Related Aspects of Intellectual Property Rights or TRIPs agreement (Roisah, 2017). TRIPs are an integrated part of agreement on the establishment of World Trade Organization (WTO) which has been ratified by many countries including Indonesia (Roisah, 2019). Indonesia ratified WTO Agreement Establishing through Law No. 7 Year 1994. TRIPs Agreement determines the minimal standard to regulate intellectual properties in countries which are the members of WTO. The content of TRIPs was negotiated during Uruguay Round in 1994. Uruguay Round is the 8<sup>th</sup> round of multilateral trade negotiations conducted within the framework of *General Agreement on Tariffs and Trade* or GATT (Geraldi, & Widhi, 2018). TRIPs Agreement contains minimal norms and standards of intellectual property protection (Roisah, 2019). This agreement introduces the law of intellectual property to international trade system for the first time and, up to now, it still becomes the most thorough and comprehensive international agreement regarding intellectual property. The fact that many countries have become its members indicates that international community is aware of and concerned with the protection of intellectual property. This has affected the effort to improve the protection of intellectual property in national level, including in Indonesia (Roisah, 2014).

Indonesia has big potential of intellectual property so that legal protection for it is necessary (Neilson, Wright, & Aklimawati, 2018). This potential can be seen in the fact that the focus of business in Indonesia is highly related to social media. A survey conducted by Sea Insights shows that 54% of the owners of MSMEs use social media to increase their sales (Ngertihukum.id, 2021). Nowadays, social media do not only serve as a means of communication, but also serve as a means of sharing various works or creations such as images to be uploaded in Instagram, 'Tiktok' video and any other creations. Therefore, social media are indirectly related to intellectual property in Indonesia. In addition, brands, which are part of intellectual property, is considered as one key factor with economic value which becomes consumers consideration in buying or using a service of a brand in Indonesia (Permata, Safiranita, & Utama, 2019). In economic world, the calculation of economic value over a brand comes in many terms such as brand reputation, brand awareness, brand equity, and so forth (Agnes, & Darmawan, 2020). This shows that any creation containing economic value needs to be protected. This fact shows how important intellectual property is. Creativity, management and human creation ability are keys to develop intellectual property (Gürkaynak et.al., 2018). 4.0 industrial era with emphasis on digitalization will soon shift to 5.0 society era. This momentum cannot be missed and must be used particularly to utilize intellectual property in order to boost the development of creative economy in Indonesia. The large number of MSMEs

is potential that must be utilized for the protection of intellectual property in Indonesia. In developing the potential of intellectual property, Indonesia needs commitment, collaboration, and synergy with all parties. In reality, there are some MSMEs owners who have not registered their intellectual property to provide preventive legal protection for their intellectual property. Directorate General of Intellectual Property Ministry of Law and Human Rights Republic of Indonesia recorded that from 2019 to 2021, there had been only 76,294 applications of intellectual property registration. As a matter of fact, the number of MSMEs in Indonesia is approximately 65.4 million (Ministry of Law and Human Rights, 2021). Previous study found that there are some MSMEs owners who have not understood and are even not aware of the importance of intellectual property such as brands. This has made guarantee for MSME brand protection legally weak (Disemadi, & Romadona, 2021). Weak legal protection may become disadvantage for the MSME owners.

One of the most important aspects for MSME owners is to give legal protection of intellectual property for their products, either in the form of brand, patent, copyright, or industrial design. This protection can be done by registering or listing their intellectual properties so that MSME owners can be benefited from it and people's economy will improve (Ahmad, & Paserangi, 2018). Unfortunately, the awareness of MSME owners to provide legal protection for their intellectual property rights is still low. Many MSME owners neglect legality aspects and regulations. In order to improve the potential of creative economy,

there are many aspects that need to be taken into account by MSME owners (The Ministry of Law and Human Rights, 2021). The lack of awareness from MSME owners regarding legal protection for intellectual property has become the underlying problem in this study. A study aiming at investigating the correlation between legal protection of intellectual property and business activities of MSMEs is considered urgent as a source of literacy for society especially for MSMEs regarding the importance of legal protection for intellectual property.

Topic in this study has been investigated in a previous study. The previous study investigating similar topic was by Muh. Ali Masnun in 2019. This study performed reorientation of MSME law empowerment through protection of rights of collective brands by using indicators of collective brand regulations and MSME characteristics. The empowerment of MSME laws through the protection of collective brand needs to be reviewed because there have been some drawbacks such as the inconsistency of regulation regarding the empowerment of MSMEs with collective brand. In addition, substantive requirements for the granting of the right over collective brand which are associated with the characteristics of the MSMEs cannot be applied for all, only applicable for small and medium enterprises. For the small enterprises, the requirements cannot be applicable for all small businesses while medium enterprises has more potential to receive rights over brand collectively (Masnun, 2019); Another publication in 2018 by Andrew Betlehn and Prisca Oktaviani Samosir shows

that MSMEs in Indonesia which have not registered their trademark because they lack of capital and also due to lacking of knowledge and awareness of the advantages of registering brand for MSME industry. Therefore, MSMEs which do not register their trademark cannot receive legal protection because a trademark will receive legal protection if it is registered (Betlehn, & Samosir, 2018); A study in 2020 by Agus Salim Ferliadi shows the potential of intellectual property which can be developed in MSMEs. However, the awareness of the importance of intellectual property in business run by MSMEs owners is considered low because the lack of knowledge from the owners, and education from the government regarding intellectual property and its urgency (Ferliadi, 2020); Still in 2020, Waspiyah, Rodyah, Dian Latifiani, and Ridwan Arifin in their study found that protection of economic rights for MSMEs is not optimum, as a matter of fact, some MSMEs have not received guarantee of brand right and copyright recognition of their products. This study came to the conclusion that in implementing protection of economic rights for MSMEs, cooperation across sectors and ministries is necessary (Waspiyah dkk, 2020); Jörn H. Block, Christian O. Fisch, Alexander Hahn, Philipp G.Sandner in their 2015 study analyzed motive of the use of trademark in MSMEs as innovative industry. This study shows that there is different motive of the use of trademark, some of them are for protection and marketing (Block et al, 2015); and A study by Sati-Salmah Sukarmijan dan Olivia De Vega Sapong in 2014 focused on investigating the importance of

intellectual property for MSMEs and its progress (Sukarmijan, & Sapong, 2014).

It is important to note that business activities of MSMEs are very wide and MSMEs themselves have their own specific regulations. So, whether those regulations regarding intellectual property in Indonesia have accommodated MSME business activities and whether they are in line with legislation regarding MSME. Different from the previous studies aforementioned and based on the aforementioned elaboration, this study focuses on investigating the importance of intellectual property protection for MSME owners as part of the effort to develop MSMEs. The urgency of this study arises from the lack of awareness and knowledge of business owners particularly MSMEs in Indonesia on legal protection of intellectual property. Thus, this topic has always become an important and actual topic to be further analyzed and discussed. The scope of research problem in this study is to question how the implementation of legal certainty regarding MSMEs in Indonesia is and what the correlation between protection of intellectual property and MSMEs development in Indonesia is.

## B. RESEARCH METHODS

This study applied doctrinal research method. This type of research emphasizes on the conception that law can be viewed as a set of legislations which are organized systematically based on certain order. This order must have specific character, which is the presence of harmonization and synchronization both vertical and horizontal (Suteki, & Taufani, 2018). This

study was conducted by examining and interpreting theoretical materials regarding principles, conception, doctrine, and legal norms, as well as legislation related to the development of MSME in Indonesia. In this study, the data analyzed were secondary data or data that were obtained indirectly through documentary study.

This doctrinal study is a qualitative study thus the form of data analyzed are not in the form of numbers, but in the form of information in words, or also called qualitative data. The data that were collected through law inventory were then classified to be further analyzed in order to draw correct and scientifically accountable conclusion. The result of the study was presented in the form of descriptive-analytical narrative elaboration. By doing so, it is expected that this study can elaborate all normative reality regarding contextualization of intellectual property in the development of MSMEs in Indonesia.

## C. RESULTS AND DISCUSSION

### 1. Regulation of Micro, Small and Medium Enterprises (MSME) in Indonesia

Important aspects including activities and business entities are regulated by government through regulations and laws. This aims to maintain the people's harmony, safety and other important aspects. Indonesia as a welfare state requires its government to not only protect the people safety and order, but also to actively take role in realizing social justice, public welfare, and people prosperity (Hetharie, & Tulia, 2021). Manifesting social justice for all people of Indonesia is one of the country's

aspirations. This means that there is just or fair treatment applied in various fields of life, including in economy field (Sihombing, 2018). All businesses run have to receive equal rights, either big or small business, or MSMEs. Constitutionally, this is clearly stipulated in Article 28 H The 1945 Constitutions of The Republic of Indonesia which stated that *"Every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness."* MSMEs are an integral part of the economy which has strategic position in manifesting national economic system which has become more equal, developed and fair (Zia, 2020). Furthermore, Indonesia has massive potential to develop MSMEs. MSMEs as one of private economic entity have potential and contribution to national economy. This contribution is the absorption of workforce due to the increasing number of MSMEs (Masnun, 2019).

Indonesia is a country that most GDP comes from MSMEs thus MSMEs has become one of factors having significant role in increasing the country income (Nugraheni, 2020). Many products produced by MSMEs in Indonesia have high economic value and uniqueness particularly when they enter foreign market. (Adaninggar, Saptono & Roisah, 2016). Moreover, MSMEs are able to widely open job opportunity and provide economic service widely to the people. MSMEs can also have role in the process of even distribution and the increase of people income, driving economic growth, and taking part in manifesting national stability (Masnun, 2020). As one of national economy pillars, MSMEs must

obtain main opportunity, support, and development as realization of clear stand of the government to people economic business group. In order to achieve that, legal certainty is essential in improving the ability and role as well as institutionalization of MSMEs in national economy. Legal certainty of the running of MSMEs in Indonesia is regulated in Legislation of The Republic of Indonesia Number 20 Year 2008 on Micro, Small, and Medium Enterprises (hereinafter referred to as UU UMKM).

Definition of MSME is regulated in Article 1 UU UMKM. Article 1 Number 1 UU UMKM stipulates that “*Micro enterprises means a productive enterprise owned by individuals and/or business entity/enterprise which fulfill the criteria of the micro enterprise as regulated in this Law*”; Article 1 Number 2 UU UMKM stipulates that “*Small Enterprise means an independent productive enterprise, which is run by individuals or a company which is not a branch companies owned, controlled, or becoming direct or indirect part of the Medium or Large Enterprises fulfilling the criteria of the Small Enterprises as referred to this Law*”; and Article 1 Number 3 UU UMKM stipulates that “*Medium Enterprises means an independent productive economic enterprise, which is run by individuals or a company which is not a branch companies owned, run, or becoming direct or indirect part of the Small or Large Enterprises with the amount of net assets or annual sales proceeds as provided for herein*”. Besides definition, UU UMKM also determines the purpose of MSMEs as stated in Article 3 UU UMKM stipulating that MSMEs are aimed “*to engender and develop their business in*

*order to develop the national economy based on equitable economic democracy*”. However, there are some factors that inhibit the growth of MSME in Indonesia. Those factors consist of capital, management, the capability of human resources, including weakness of production system. (Sumampouw, Kurnia & Arrobi, 2021).

The effort that has been made by the government in increasing investment and creating job opportunity regarding the development of MSMEs is stipulated in Law Number 11 Year 2020 on Job Creation (UU Cipta Kerja) which has been ratified on 5<sup>th</sup> October 2020. UU Cipta Kerja or Law on Job Creation is law that is formulated based on *omnibus law* method. At least there are 7 (seven) rules related to MSME which was amended in UU Cipta Kerja, 2 (two) of them are UU UMKM (Law on MSME) and Law Number 25 Year 1992 on Cooperative (UU Perkoprasian). The purpose of issuing UU Cipta Kerja (Law on Job Creation) is stated in Article 3 UU Cipta Kerja which one of the purposes is to create and increase job opportunity by providing ease, protection, and the empowerment of MSMEs as an effort to absorb as much as workforce by taking into account balance and the progress among the regions and the unity of national economy. In addition, UU Cipta Kerja is also the government’s effort to adjust various aspects of regulations regarding the standing, strength, and protection for MSMEs. UU Cipta Kerja elaborates a number of facilitation for MSMEs. This elaboration is stated in Chapter V from Article 87 to Article 104 UU Cipta Kerja.

In order to implement the provisions of Article 87 to Article 104 UU Cipta Kerja regarding MSMEs, the government has issued its implementation guidelines stated in government Regulation Number 7 Year 2021 on Facilitation, Protection, And Cooperative Empowerment and Micro, Small, And Medium Enterprises (hereinafter referred to as PP No.7/2021). Previously UU UMKM used MSME criteria based on net asset and annual sales income. However, in UU Cipta Kerja, these criteria were made based on business capital or annual sales income. Unfortunately, criteria in UU Cipta Kerja are not described in detail. Therefore, the regulation for these criteria is then stipulated in Article 35 to Article 36 Government Regulation no. 7/2021. The classification of MSMEs according to this regulation is based on business capital or annual sales income. The criteria for business capital are applied to classify MSME which is planned to be established before the enactment of Government Regulation No. 7/2021. Meanwhile, criteria of annual sales income used to classify MSMEs which has been established before the enactment of this regulation.

MSMEs criteria in Article 6 UU UMKM are regulated significantly different from the criteria in Government Regulation No. 7/2021. As comparison, here are the differences (**Look Table 1**):

**Table 1:** Comparison of MSME Criteria

UU UMK-M	Government Regulation No.7/2021
<p>Indicator: The Classification of UMK-M</p> <p>Classified based on net asset or annual sales. Net asset is the amount of asset</p>	<p>Indicator: <b>The Classification of UMK-M</b></p> <p>Classified based on the criteria of business capital or annual sales income.</p>

minus debt or liabilities.	Business capital is the businessmen own capital and loan capital to run business activities.
<p><b>Indicator: Net asset or business capital</b></p> <p>a. Micro Enterprise (up to Rp. 50,000,000); b. Small Enterprise (more than Rp. 50,000,000 up to Rp. 500,000,000); and c. Medium Enterprise (more than Rp. 500,000,000 up to Rp.10 Billion)</p> <p>Excluding the sites and the building of the enterprise.</p>	<p><b>Indicator: Net asset or business capital</b></p> <p>a. Micro Enterprise (up to Rp. 1 Billion); b. Small Enterprise (more than Rp. 1 Billion up to Rp. 5 Billion); and c. Medium Enterprise (more than Rp. 5 Billion up to Rp. 10 Billion)</p> <p>Excluding the sites and the building of the enterprise.</p>
<p><b>Indicator: Annual Sales Income</b></p> <p>a. Micro Enterprise (up to Rp. 300,000,000); b. Small Enterprise (more than Rp. 300,000,000 – up to Rp. 2.5 Billion); and c. Medium Enterprise: more than Rp. 2.5 Billion up to Rp. 50 Billion).</p>	<p><b>Indicator: Annual Sales Income</b></p> <p>a. Micro Enterprise (up to Rp. 2 Billion); b. Small Enterprise (More than Rp. 2 Billion up to Rp. 15 Billion); and c. Medium Enterprise (More than Rp. 15 Billion up to Rp. 50 Billion).</p>

**Source:** processed based on the comparison of UU UMK-M and Government Regulation No. 7/2021

The concept of simplifying the regulation of MSME through UU Cipta Kerja (Law on Job Creation) is done by making and/or amending some regulations and reformulating them. The empowerment of MSMEs through the forming of UU Cipta Kerja is expected to create a set of integrated regulation. This can prevent overlapping of regulations which may lead to complication in bureaucracy, high cost, and longer time taken to fulfill all the requirements for the investment (Rongiyati, 2019).

The ratification of UU Cipta Kerja with omnibus law as the formulating method became one of controversial issues in 2020, besides Covid-19 Pandemic in Indonesia. Without giving proper



education to the people, the government ratified UU Cipta Kerja during plenary session on 5<sup>th</sup> October 2020. This consequently led to negative stigma from many groups, the ratification which was considered hasty, not transparent and seemed to neglect democracy (Hadiyati, 2022). The regulation of MSMEs in UU Cipta Kerja based on Decision of The Constitutional Court Number 91/PUU-XVIII/2020 is declared conditionally unconstitutional. This decision was the first decision of The Constitutional Court which approved some part of proposal for formal test. The Panel of Judges of The Constitutional Court affirmed that UU Cipta Kerja was formally invalid. Therefore, The Constitutional Court stated declared that UU Cipta Kerja is conditionally unconstitutional. The Constitutional Court stated that the formation of UU Cipta Kerja is contrary to the 1945 Constitution of The Republic of Indonesia and has legal conditionally binding power as long as it does not mean 'no revision has been made for 2 (two) years since the decision was pronounced'. UU Cipta Kerja was still in effect until improvement was made within the grace period as determined in the decision. In the decision consisting of 448 pages, The Constitutional Court also ordered legislators to revise the Law within maximum 2 (two) years since the decision was declared. If within the grace period the legislators fail to complete the revision, UU Cipta Kerja will be declared unconstitutional permanently (Hadiyati, 2022). For the analysis of the decision of The Constitutional Court Number 91/PUU-XVIII/2020, UU Cipta Kerja was conditionally unconstitutional because The Constitutional Court must balance

between the requirements of law formation that must be fulfilled as formal requirements to generate laws which fulfill the element of legal certainty, usefulness and justice. Regarding the principle of transparency, the formation of law must involve the participation from the society. The participation of the society must be maximal and meaningful. This has become the embodiment of the order of the constitution in Article 22 A UUD NRI 1945. Thus, The Constitutional Court has given chances to legislators to revise and improve UU Cipta Kerja following the guidelines of laws formation which has fixed way and method, standard in the formation of laws using omnibus law method must also follow the fulfillment of the requirements of principles of laws formation that has been determined.

Despite the fact that the decision stated that UU Cipta Kerja was formally invalid, if analyzed further in the formation of UU Cipta Kerja, there are 2 (two) points related to economy recovery, namely the form of support to MSMEs and reformation of regulation in terms of bureaucracy efficiency. Both supports are expected to be able to bring changes to national economic sectors through the empowerment of MSMEs. However, the government's stand on MSMEs is still resistant to regulations because UU Cipta Kerja creates the opportunity for economic competition globally. Nevertheless, the effort to improve and develop MSMEs is made not only by the government, but also by all parties. This progress includes improvement in capitalization aspect, technology literacy, the making of empowerment

policy which oriented to people economy, and the improvement of intellectual property aspect itself.

The Aspect of intellectual property has also taken part in the effort to develop creative industry in Indonesia, one of them is through MSMEs (Balqis, 2021). Intellectual property is the source of material property for its owner (Sihombing, 2018). One of particular aspect in intellectual property is the right to economy (Balqis, & Santoso, 2020). Economy right is the right to receive economic profit over intellectual property (Ginting, 2020). The right to economy in intellectual property can be taken into account because it can be utilized by the businesses owners in industry or trade which generates profit (Sihombing, 2018). This shows that there is real correlation between MSMEs, creative industry and intellectual property in Indonesia.

## **2. Contextualization of The Protection of Intellectual Property in The Development of MSMEs in Indonesia**

In present economy era, a new economic concept has been born. This concept is the concept of creative economy, the concept which intensifies information and creativity by relying on stock of knowledge and ideas derived from human resources as main production factor in its economic activities (Hadiyati, 2021). The rising of this new concept appears because the world economic structure has experiences fast transformation following the growth of the economy, from the one that was based on natural resources to the one that is based on human resources such as the creativity of the human him/herself (Hakim, & Kholidah, 2020). Human

creativity which appears as one's intellectual asset has been long giving significant influence to human civilization, among others through inventions and works of creation and arts (Roisah, 2014). This creativity is called intellectual property (Kurnilasari, Yahanan & Rahim, 2018). Intellectual property was born from human intelligence and has role in providing legal protection for the ownership of intellectual property which is either communal or personal (Roisah, 2015).

Strong protection of intellectual property will trigger innovation and technology advancement in a country (Noerhadi, 2021). Legal protection of intellectual property is known as the system of intellectual property right (IPR). IPR is the right which is born from creative activities of human's thinking capability which is expressed in real form which has benefit and economy value (Wicaksono, 2019). IPR is a way to protect intellectual property by using existing legal instruments. Viewed from philosophical aspect, intellectual property was inspired by John Locke (1632-1404). According to John Locke, intellectual property right is the right owned by a human being, either tangible or intangible, because it generates from his/her intellectuality automatically it will become his/her ownership (Ramli dkk, 2021). Thus, every person naturally has right to him/herself because of his/her labor for making sacrifice in the form of inventing, processing, and adding 'personality' into an object. Locke emphasized the importance of appreciation to people who make 'sacrifice' to invent and process something coming from nature, in the form of right of ownership. The

concept developed by Locke is known as Labor Theory (Antariksa, 2012).

Legal protection for intellectual property has been developed fast internationally, and even it has become one of issues of globalization era and liberalization nowadays (Rosiah, 2015). Intellectual property has become an important issue for both people in Indonesia and the world (Al-Fatih, 2021). Indonesia as a developing country needs to develop industrial sector by improving competitiveness. One form of competitiveness is by utilizing the role of intellectual property such as industrial design, patent, brand, and other intellectual properties (Noerhadi, 2021).

Whether we are aware or not, the wealth of natural resources and human resources with various creative ideas has made industry in Indonesia grow every year. This can be seen from the thriving growth of MSMEs in Indonesia (Noerhadi, 2021). Businesses like MSMEs need innovations, and one of the innovation needed is the exploration of intellectual property. It is known that intellectual property is form of ownership that arises and is born from extraction process of human intellectual (Ferliadi, 2020). Intellectual property is an intangible asset which has economic value that can give benefit to MSMEs (Masnun, 2020). The dynamic of creative economy of MSMEs' owners in Indonesia has become essential to support economic stability and growth leading to strong and inclusive economy (Arianto, 2020). MSMEs can regrow faster than other bigger scale enterprises. Although heavily affected by economic recession caused by covid-19 Pandemic, as a matter

of fact, MSMEs have high endurance and act as national economic pillar because of their ability to survive in the mid of economic pressure and can regrow faster (Hanifawati, & Listyaningrum, 2021). The growth of MSMEs is thriving nowadays. Not only traditional enterprises but also technology based enterprises or startup are mushrooming. The existing MSMEs which are developing nowadays are divided into some categories, namely agriculture, livestock, fishery, forestry, electricity, gas, clean water, trade, hotel, restaurants, private services, and processing industries which one of them is creative industry (Toguan, 2021). MSMEs' potential to develop into bigger enterprises is also widely open. Therefore, the owners of MSMEs must prepare various important aspects so that their businesses develop. One of the important aspects is to provide legal protection for their intellectual property (Rizki, 2020). However, the awareness of MSMEs' owners to protect their intellectual property is still low. Many business owners neglect the aspect of legality and even the regulations. There are many aspects that need to be taken into account by MSMEs' owners in order to increase the potential of creative economy (The Ministry of Law and Human Rights, 2021). MSME as a small scale industry still considers that the protection of intellectual property is not urgent. This has been proven by the fact that there has been only small number of intellectual property registration by MSMEs' owners (Korawijayanti et al, 2021). Therefore, it can be said that MSMEs' owners' awareness regarding the legality of intellectual property is still low. They do not consider that

intellectual property can be valuable intangible asset. Neglecting legal protection of intellectual property may lead to legal dispute over intellectual property in the future. In fact, business activities done by MSMEs will also be connected with matter related to intellectual property. Thus, if MSMEs' owners are not aware of this issue and are lacking of knowledge about this issue, their businesses will be at high risk. Some activities of MSMEs related to intellectual property are: (1) **The Establishment and Introduction of MSME**, in the process of establishment and the introduction of an MSME, a brand, which is an intellectual property, is needed for this because It functions as a differentiating marker between one MSME and the others. Brand registration is important because a new brand can be protected by law only after it is registered and receives a certificate. If MSMEs are not aware of this, there can be other party which register the brand and finally becomes the owner of the MSME's brand which has initially been recognized and has economic value. No MSMEs expect this to happen because it will be a big loss for them if that occurs. (2) **Digital Marketing in Social Media**. In running their business, nowadays MSMEs often prefer digital marketing. In this marketing process, creativity is an important factor because a design of a picture and a video which will be used for the marketing and will be uploaded are the main factors that need to get more attention. Pictures and video are parts of creation that are protected by copyright. This shows that there is correlation between marketing and copyright in terms of the activities involved. Copyright itself is nothing

like a brand, which needs to be registered. Protection will be effective since it was announced, yet MSMEs need to remember that originality is what matters the most. Thus, in order for MSMEs to be protected during creating process, it is necessary for them to do some research and modification before finally deciding to publish the creation. (3) **The Product Marketed**. A business will always be about the products which are marketed and used by the consumers. MSMEs need to know what products they market because every product may have one or more intellectual properties that protect them. For a product in the form of books, copyright is the form of intellectual property. As mentioned in Article 40 section (1) Law Number 28 Year 2014 on Copyright (UU Hak Cipta) stating that: "Creations which are protected by copyright are creation in the field of science, art and literature consisting of: a. books, pamphlets, typhographical arrangement of published written work, and all other written works; b. Lectures, speeches, talks, and other similar works; c. visual aids made for educational and scientific purposes; d. songs and/or music with or without lyrics; e. dramatic works, musical dramas, dances, choreography, puppet shows, pantomimes; f. fine art works in any forms such as paintings, drawings, engravings, calligraphy, carvings, sculptures, or collage; g. applied art works; h. architectural works; i. maps; j. batik art works or other patterns art; k. photographic works l. Portraits ; m. cinematographic works; n. translations, interpretations, alterations, anthologies, databases, adaptation, arrangement, modification and other works resulting from

transformation;” However, if the product marketed is a new technology, the patent is intellectual property which protects the product. This is regulated in Law of The Republic of Indonesia Number 13 Year 2016 on Patent (UU Paten). If a product contains a good with special design in industrial sector, this product will be protected by Law Number 31 Year 2000 on Industrial Design (UU Desain Industri).

The aforementioned elaboration is the form of connectivity between MSMEs’ business activities and intellectual property. Through the explanation, we know that Indonesia has accommodated business activities through its intellectual property regulations. Protection of intellectual property has become an important part in national future development and contributed significantly in national and international economic development (Disemadi, & Romadona, 2021). Indonesia as a developing country must be able to take strategic steps to anticipate all changes and development as well as global tendency so that Indonesia’s national goal can be achieved. One of important step which can be conducted is to introduce intellectual property to the people and to protect it (Balqis, 2021). The system of intellectual property is a private right, meaning that it is an exclusive right given to an individual from the country which is a form of appreciation for one’s work or creativity. This is intended to stimulate others to be able to develop their intellectual property so that they can gain more value and benefit. The word ‘exclusive’ means the same as the word ‘special’. The characteristics of being special, from intellectual property point of view of, are attached to it. The

characteristics of being special is attached because its relation with the ability to dismiss other people/parties from using or taking advantages of a product’s intellectual property which is protected without permission or agreement from the owner of the right (Kesowo, 2021).

Indonesia’s government through The Ministry of Law and Human Rights, in this case specifically by Directorate General of Intellectual Property, provides support for MSME to register their intellectual properties. The support are among others in the form of giving incentive for the tariff of the registration and maintenance of MSMEs, on time completion of documents, Virtual Counter, and the simplification of registration requirements This was stated by Freddy Harris as General Director of Intellectual Property. Directorate General of Intellectual Property has made public service innovation by launching IPROLINE application (Intellectual Property Online) and Virtual Counter (Lokvit) in order to improve protection of intellectual property as well as to help reduce the practice of charging illegal fees (Ministry of Law and Human Rights, 2021).

The knowledge and awareness of the urgency of intellectual property for MSMEs will give them advantages (Disemadi, & Ariani, 2021). It eventually will upgrade the status of the business from small scale enterprise into medium scale enterprise, from medium scale enterprise into big scale enterprise, and ultimately, big enterprises will help achieve national goal which is to develop general welfare (Masnun, 2020). Sandianga Uno, The Minister of Tourism and Creative Economy, stressed that there

is an urgency to understand and aware of intellectual property for MSMEs. Protection of intellectual property must be a priority for MSMEs in order to implement their business ideas because intellectual property gives their products additional value (The Ministry of Law and Human Rights, 2021).

The understanding and utilizing of intellectual property can be achieved by obtaining information about its policies, its rules, its recent development and its practice. The protection of intellectual property has been an essential matter for all groups of society, such as for academics, professionals, and MSMEs themselves. As for example, owners of MSMEs frequently sell a product or service with special characteristic which distinguishes the product from other MSMEs' products. These distinct characteristics are called brand as part of intellectual property (Suhargon, 2019). Article 1 Law number 20 Year 2016 on Trademarks and Geographical Indications stated clearly that brand is characteristic regarding traits, general features, and is traded by some persons or legal entities collectively to distinguish other similar goods. Brand or trademark as part of intellectual property is considered having significant role for MSMEs. Trademark shows the quality of a product owned and attracts consumers' interest to buy the products. Meanwhile, from consumers' side, trademark is one of factors influencing them to make decision to buy and use a product or service. Trademark also comes with 'brand image' for consumers so that it gives trusted guarantee to stay buying or using the products or service again and again. This, definitely, is a

profitable opportunity for MSMEs' owners. Trademark is a conditional asset for its owner which can generate financial benefit and, as a result, MSMEs' owners need to make trademark one of their main concerns (Sukmadewi, 2018).

However, there are still many MSMEs which have not been legal yet, either in terms of their business form or legal body. The majority of MSMEs' owners do not focus on legal protection or the development of their business, or even registering their intellectual properties (Disemadi, & Ariani, 2021). MSMEs focus only on profit and simple business patterns without any future development planning (Suhargon, 2019). Protecting their intellectual properties by registering them, MSMEs can increase their profit and can have legal protection for their intellectual properties. Muhamad Asari, Siti Mahmudah, and Esti Handayani in their 2021 study also agreed that brand image and brand identity are aligned with brand love. The better the image of a brand and the easier consumers distinguish it from the other brands, the higher the level of consumers' love to the brand (Asari, Mahmudah, & Handayani, 2021). The philosophy of intellectual property protection is to promote development and the creation of new ideas which then creates conducive climate for the sake of the manifestation of those new ideas. By having protection for their intellectual properties, creators or inventor of intellectual properties will receive appreciation in the form of financial benefit (Noerhadi, 2021). This also applies for MSMEs which are aware of the urgency to protect their intellectual properties.

Intellectual properties have held more and more important roles in economic development. Through the empowerment of the system of intellectual property protection, economic development can be manifested simultaneously. In addition, in accordance with the growth of global market which has become more and more competitive, intellectual property is one important component to increase competitiveness. This is why it is necessary to empower and fully support cultural utilization and people creativity. It can be said that intellectual property, including here in Indonesia, is one pride of a country and the identity of a country that needs to be maintained properly

Protection of intellectual property particularly in MSMEs' business activities has been a crucial issue. Principally, protection of intellectual property is considered very important for MSMEs' owners because : 1) it acts as legal protection for MSMEs' owners and their intellectual properties. This protection is obtained if MSMEs' owners have registered their intellectual properties. By doing so, they automatically, including their intellectual properties, are legally protected. MSMEs' owners have exclusive rights or are free to utilize economic value gained from their intellectual property without violating the law; 2) It anticipates legal violation or disputes over intellectual property. Registering intellectual property has also made MSMEs' owners have strong legal basis over potential disputes with people who illegally use their intellectual property. This has also make other MSMEs more careful not to use or violate other MSMEs' intellectual properties;

and 3) It improves competence and extends the market target of MSMEs. This is because not every person or every MSME is able to express his/her creativity to generate intellectual property. By having protection for their rights to their intellectual properties, the people will be encouraged to be more creative and innovative so that the competition are increasing. This indirectly makes MSMEs' owners compete to create the best products or intellectual properties.

Normative law in Indonesia does not admit 'intellectual property as property', however the law recognizes it as goods/asset. In Civil code, it is stated that what is meant by goods according to the form is material good or tangible good and immaterial good or intangible goods. The explanation of rights to intellectual properties as material right is derived from Article 499 Civil Code, stipulating that "Asset is all goods and rights that can be the subject of property ". This Article clearly states that asset covers two main aspects, first, goods as intangible/material objects and goods as rights (intangible/immaterial object). Rights to intellectual property as exclusive right are essentially a legal right. Because it is legal right, rights to intellectual property can be classified into material right which is intangible, as a result, rights to intellectual property may be transferred to another party. The transfer of ownership itself is in the form of economic right (Hakim, & Kholidah, 2019). Thus, rights to intellectual properties can be categorized as goods, its material form can be in the form of legal ownership certificate which has been registered to

Directorate General of Intellectual Property (Ditjen HKI) (Mulyani, 2014).

In the development of MSMEs, rights to intellectual properties can be collateral in fiduciary scheme because rights to intellectual properties are admitted as asset that can be transferred, because what will be used as collateral is asset (Hakim, & Kholidah, 2019). However, rights to intellectual property can only be used as additional collateral with binding fiduciary collateral. This is in accordance with the provisions of Article 1 section 2 Law Number 4 year 1992 on Fiduciary Collateral stating that right to trademark which is proven in the form of certificate of intellectual property is moving good which is intangible, having economic value and can be transferred (Indrawati, 2021). Rights to intellectual property still cannot be used as collateral for bank credit. The obstacle of using rights to intellectual property as credit collateral in banks is that in formal juridical aspect there has not been legal basis that can be used as references for intellectual property to be collateral (Mulyani, 2014), and there also has not been assessment standard for intellectual property. Moreover, there is also uncertainty in the economic value of intellectual property and difficulty for banking parties to execute it if the debtor is in default of paying the debt (Indrawati, 2021). Rights to intellectual property as banking credit collateral has not been practiced in Indonesia, therefore the government must give special attention to it, considering that the role of intellectual property rights in life is an effort to encourage a person to develop his/her creativity and the knowledge he/she has.

Thus, intellectual property rights as collateral can be an alternative for finance which is highly needed by MSMEs to develop their business. In this case the government has significant role to make regulations and rules related to the utilization of intellectual property rights as banking credit collateral. .

Intellectual property rights are able to function as collateral and can be accepted by banks as credit collateral as long as the brand has fulfilled juridical and economic requirements (Hikmia, 2019). The juridical requirements are: 1) Intellectual property of the brand has been registered and has received the certificate of Intellectual property rights as the proof of its ownership; 2) The brand rights is still within the period of the protection during the granting of the credit ; 3) Intellectual properties belong to the debtor him/herself; 4) Intellectual property rights are not in dispute with a third party; and 5) Intellectual property rights must be free from collateral binding with other parties. The economic requirements are: 1) The ownership of intellectual property rights must be easy to be transfer to the other parties ; 2) Economic value contained in intellectual properties must be stable and it is even better if the value may increase in the future; 3) Intellectual property rights must have good reputation and target markets; and 5) There is financial statement of the owners for intellectual property in order to identify whether the intellectual property has economic value or not.

#### **D. CONCLUSION**

Intellectual property has significant correlation with MSMEs in Indonesia. MSMEs are an integral



part of the economy which has strategic position to manifest national economic system. MSMEs must obtain opportunity, support, protection and development as the manifestation of firm stand to people economic enterprises. This can be achieved by providing legal certainty. Legal certainty is affirmed by the Law of The Republic of Indonesia Number 20 Year 2008 on Micro, Small, and Medium Enterprises (UU UMKM), Law Number 11 Year 2020 on Job Creation (UU Cipta Kerja), and Government regulation Number 7 Year 2021 as rules of conduct of UU Cipta Kerja. The criteria of MSMEs in Article 6 UU UMKM are regulated significantly different (simple) in Government Regulation. The simplification of MSME regulations through UU Cipta Kerja was done by making and/or amending some regulations and reforming them. The empowerment of MSME regulations through the forming of UU Cipta Kerja is expected to create a set of regulations which are integrated.

It is important for MSMEs' owners to give intellectual property protection to their products. This is because MSMEs have important roles in national development and contribute significantly in national economic development. Basically, protection of intellectual property is urgent for MSMEs' owners, because it acts as legal protection for MSMEs' owners and their intellectual properties so that they can have wide opportunity to freely explore and utilize the economic value of their intellectual property. It is a form of anticipation of infringement or dispute over intellectual properties, and also improves competence and widens target markets of

MSMEs. Intellectual property rights can be used to develop MSMEs. Intellectual property rights can become banking credit additional collateral because intellectual property is admitted as material objects that can be handed over. However, the challenge is that in formal juridical aspect, there has not been legal basis that can be used as a reference of intellectual property rights as collateral. Therefore, the recommendation in this study is that there will be new legal construction as legality of intellectual property to be able to be credit collateral.

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