

AUTHORITY OF LOCAL GOVERNMENTS IN EMPOWERING INTELLECTUAL PROPERTY PRODUCTS OF SMALL MEDIUM ENTERPRISES FOR ECONOMIC IMPROVEMENT IN THE ERA OF DISRUPTION

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Abstract

This study aims to examine and analyze the authority of local governments in empowering the Intellectual Property of SME products in order to increase the economy in the era of disruption. This study uses a social legal research approach. The data used are primary and secondary data. Analysis of the data descriptively analytical. The theory used is the theory of authority, the theory of the legal system. The results of the study found that the authority of local governments in empowering Intellectual Property of SMEs products legally has been regulated in local government laws, the Job Creation Law and the Law on MSMEs, while improving the economy in the era of disruption needs to be strengthened in digital data collection, assistance and registration of IPR for SME products in particular, funding and strengthening technology and markets for SME products and Optimization of the IKM E-Smart Program.

Keywords: *Authority; Empowerment; SMEs; disruption;*

A. INTRODUCTION

The Republic of Indonesia is a unitary state adhering to the principle of decentralization by providing space in the form of opportunities and flexibility to regions to carry out regional autonomy. Regional autonomy is defined as having its own regulations or the power/authority to make its own regulations. And then the notion of regional autonomy developed into self-government which includes self-regulation and self-implementation. However, the definition of autonomy in general is the division of power between the center and the regions in the form of rights, powers, and obligations.

Since Indonesia's independence was proclaimed, the implementation of regional autonomy has basically received special attention by the founders of our country who agreed with the concept of power sharing in the administration of regional government by including it in the Constitution. This is based on the fact that this country is so vast and its culture and resources are so plural. As an implementation of the practice of regional autonomy, the government makes the rule of law the main basis. The laws and regulations governing regional autonomy are clear evidence that the Unitary State of the Republic of Indonesia is serious in realizing the ideals of decentralization even though the implementation is far from expectations. Until now we are still towards the true ideal of decentralization.

Decentralization itself is another word for regional autonomy. This ideal of decentralization

can be found in Article 18 of the 1945 Constitution which states that there is a concept of division of authority in the form of regional government at the first and second levels. Amendments to Article 18 of the Constitution have implications for the shift of a centralized government system towards a system that tends to be decentralized. This is driven by the demands of the community which can no longer be accommodated by a centralized government approach or paradigm.¹ Autonomous regions that have received regional autonomy policies are given the freedom to move and the opportunity to be able to take initiatives in the development process and decision-making both related to services to the community or those aimed at improving the level of community welfare.²

The authority of local governments in empowering SMEs has been regulated in the provisions of Law Number 23 of 2014 concerning Regional Government, and Law Number 11 of 2020 concerning the Law on Job Creation and Law Number 20 of 2008 concerning SMEs. With the granting of this authority, local governments are interesting to be studied more deeply in the context of the progress and welfare of SMEs as well as improving the global economy. This study will answer the role of local governments in empowering the Intellectual Property of SME products in order to increase the economy in the era of Disruption.

B. RESEARCH METHOD

This type of research is qualitative research, is a certain tradition in social science that fundamentally depends on observations of humans both in its area and in its terminology,³ which is used in research where the problem is not clear, carried out in a social situation that is not broad, so that the research results are more accurate deep.⁴ Law is not conceptualized as an autonomous normative phenomenon, but a social institution that is actually related to other social variables.⁵

This research uses a social legal research approach⁶, which conceptualizes law as a norm and at the same time as a reality.⁷ Socio-legal research is legal research with a non-positivistic paradigm, namely legal research with hermeneutic philosophy (constructivism paradigm) and critical theory paradigm (Critical Theory) through interpretative/verstehen.⁸

This study uses primary data and secondary data. Primary data in legal research can be seen as data representing legal behavior that develops in society.⁹ Primary data collection techniques were carried out by observation and in-depth interviews with key informants who had been determined by the researcher based on the characteristics of the study.¹⁰

- 1 Azhari, Abdul Kholiq. Negoro, Abdul Haris Suryo, Desentralisasi dan Otonomi Daerah di Negara Kesatuan Republik Indonesia (Malang: Intrans Publishing, 2019), 29.
- 2 Sanjaya, Wiliam. "Konstitusionalitas Pengaturan Dekonsentrasi Dalam Undang-Undang 23 Tahun 2014 Tentang Pemerintahan Daerah." PADJADJARAN Jurnal Ilmu Hukum 2, No.3 (2015): 584-597
- 3 Lexy J. Moeleong "Metode Penelitian Kualitatif" Remaja Rosdakarya, Bandung, 2014, page 4
- 4 Sugiyono, Memahami Penelitian Kualitatif, Dilengkapi Contoh Proposal dan Laporan Penelitian, Alfabeta, Bandung, 2015, page 25
- 5 Bambang Sunggono, Metode Penelitian Hukum, Rajawali Press, Jakarta, 1997, page 103.
- 6 Brian Z Tamahana " *Realistic Socio-Legal Theory Pragmatism and a Social Theory of Law*, Oxford University Press, New York, 1997, page 1
- 7 .X. Adjie Samekto, *Opcit.* Page .62, Baca juga Cavendish, 1997, *Law Cards Jurisprudence*, Cavendish Publishing Limited, The Glass House, Warthon Strees London, page. 129-130
- 8 Esmi Warassih, *Penelitian Socio-Legal; Dinamika Sejarah dan Perkembangannya*, Tulisan Ilmiah yang tidak dipublikasikan, page 5
- 9 Mukti Fajar ND dan Yulianto Achmad " *Dualisme Penelitian Hukum Normatif dan Empiris*, Yogyakarta, 2010, page156
- 10 Sanapiah Faisal, *Format-format Penelitian Sosial*, Dasar-dasar dan Aplikasi, Rajawali Press, Jakarta, page 135, lihat juga Masri Singarimbun dan Sofian Effendi (Editor), *Metode Penelitian Survei*, LP3ES, Edisi Revisi, Yogyakarta, 1987, page 192.

The data analysis technique used the data analysis technique of Strauss and J. Corbin¹¹ types, namely by analyzing the data since the researcher was in the field (field). The data will be analyzed using the interactive model proposed by Matthew B. Miles and A. Michael Huberman¹² which includes 3 (three) activities, namely data reduction, data presentation and conclusion drawing or verification.

C. RESEARCH RESULTS AND DISCUSSION

Authority is often equated with the term authority. The terms "authority" and "authority" are derived from the word "authority" both in the form of nouns. Authority is defined as the right and power to act; authority. Meanwhile, authority means: 1. Authorized right 2. The right and power to do something.¹³

Bagir Manan stated that authority in the language of law is not the same as power (macht). Power only describes the right to do or not to do. In law, authority simultaneously means rights and obligations. Authority is the power to carry out a public legal action. While authority is what is called formal power, power that comes from or is granted by law, namely legislative power and executive or administrative power. So, within the authority there are powers (rechtsbevoegheden).¹⁴ The authority possessed by the Government as a form of power granted by laws and regulations.¹⁵

The Indonesian legal system not only emphasizes local characteristics, but also accommodate the general principles espoused by international community. However, at times like today

many people give an unfavorable assessment of Indonesian legal system. Legal System Theory According to Lawrence Meir Friedman, a legal sociologist from Stanford University, there are three main elements of the legal system, namely the Legal Structure; Legal Substance; and Legal Culture.

The term "disruption" has been known for decades, but it became popular only after Harvard Business School professor Clayton M. Christensen wrote a book entitled *The Innovator Dilemma* (1997). This book is about competition in the business world, more specifically innovation. Christensen wants to answer an important question, why large companies and even market leaders (incumbents) can be defeated by smaller companies, even though these small companies lose in terms of funds and human resources. The answer lies in the major changes known as disruptions.

Disruption is not just a change, but a big change that changes the order. There are two important characteristics of disruption.

The important characteristics of disruption are as follows: First, change is very fundamental in terms of the business model. Market-leading companies are actually constantly innovating, but innovation is more aimed at sustaining growth and the market. Instead, new companies offer a new business model that is different from the previous one. Every year hotel companies innovate by rejuvenating rooms, enriching the restaurant menu to better service. However, an app company called Airbnb offers a new business model, which is to bring together people who have (unused) rooms with consumers who need rooms. Second, disruption always starts in the low-end market

11 A. Strauss and J. Corbin Busir, *Qualitative Research: Grounded Theory Procedure and Technique*, London Sage Publication, 1990, page 19

12 Matthew B. Miles & A. Michael Huberman, *Analisis Data Kualitatif*, UI Press, Jakarta, 1992, page 22

13 Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, Jakarta: Gramedia Pustaka Utama, 2008, page. 35

14 Aminuddin Ilmar, *Hukum Tata Pemerintahan*, Makassar: Universitas Hasanuddin, 2013, page. 115

15 Juniarto Ridwan dan Achmad Sodik Sudrajat, *Hukum Administrasi Negara dan Kebijakan Pelayanan Publik*, Bandung: Nuansa, 2012, page. 136

by offering a much lower price. Because initially serving the low-end market, the company was not detected by market leaders who focused more on the high-end market. Gradually when this company has a strong market foundation, the quality is further improved and then leads to the top market. It is at this point that the disruption theory then predicts that the market leader companies will lose. Disruption theory is widely used to explain major changes, not only in the business world, but also in communication. Christensen himself does not directly link disruption to the digital world. But many experts (such as Paul Paetz) believe that the digital world accelerates the process of disruption.

Small and Medium Enterprises are regulated in the Law of the Republic of Indonesia Number 20 of 2008 concerning Micro, Small and Medium Enterprises, Article 1 states that micro enterprises are productive businesses owned by individuals and individual business entities that fulfill micro enterprises as stipulated in the Act. Small 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 part of either directly or indirectly from micro-enterprises or large businesses that meet the criteria. small business as stipulated in the law. Meanwhile, medium-sized businesses are productive economic businesses that stand alone, which are carried out by individuals or business entities that are not subsidiaries or branches of companies that are owned, controlled, or become part of either directly or indirectly from micro-enterprises, small businesses, or large businesses that meet the criteria for micro enterprises as referred to in the law.

In developing and developed countries, SMEs have a very important role, not only because these business groups absorb the most labor compared to large businesses, but also their contribution to the formation and growth of gross domestic product (GDP) is greater than that of large businesses. So that the Government has the authority to empower these SMEs.

Empowerment of micro enterprises is carried out through data collection, partnerships, ease of licensing, institutional strengthening and coordination with stakeholders. Development of micro enterprises with the orientation of increasing the scale of business into small businesses. a. Determination of the provision of facilities/incentives in the field of investment which is the authority of the Regency/City Region. b. Making a map of district/city investment potential.

MSMEs have an important meaning in the development of the national economy and their role in the welfare of the community, because: (a) MSMEs are included in the pillars of economic development that are fostered and protected by the government; (b) small businesses have the potential to develop so that they can enter the global economic arena and (3) the existence of business resilience and independence, this people's economy has prospects in free market competition in the future. The development of MSMEs is one of the efforts made by the government to increase investment and create jobs. This effort is contained in Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja) which was ratified on October 5, 2020.

The Government's authority in empowering SMEs to improve the national economy by having global competitiveness, including the Financing of MSEs, Single Database of MSEs, Integrated Management of MSEs, MSE Partnerships, Ease of Business Licensing for MSEs, Ease of Financing Facilitation and Fiscal Incentives for MSEs, Special Allocation Funds, Assistance and Legal Assistance, Procurement of Goods and Services, and Bookkeeping/Financial Recording Systems/Applications

and Incubation, as well as allocating the provision of promotion places, business premises, and/or development of Micro and Small Enterprises on public infrastructure which includes: a. terminal; b. airport; c. Harbor; d. railway station; e. rest areas and toll road services; and f. other public infrastructure determined by the Central Government and/or Regional Government in accordance with their authority, and Ease of Doing Business.

The Role of Local Governments in Financing for Micro and Small Businesses, as expressly regulated in the provisions of the Job Creation Act, particularly in Article 21 of Law Number 11 of 2020 concerning amendments to Law Number 20 of 2008 concerning MSMEs, which regulates the authority the central government and regional governments as follows: Article 21 (1) The Central Government and Regional Governments provide financing for Micro and Small Enterprises; (2) State-Owned Enterprises provide financing from the allowance for the annual profit share allocated to Micro and Small Enterprises in the form of loans, guarantees, grants, and other financing. (3) National and foreign Large Enterprises shall provide financing allocated to Micro and Small Enterprises in the form of providing loans, guarantees, grants, and other financing. (4) The Central Government, Regional Governments, and the Business World shall provide grants, seek foreign aid, and seek other sources of financing that are legal and non-binding for Micro and Small Enterprises. (5) The Central Government and Regional Governments in accordance with their respective authorities shall provide incentives in the form of ease of licensing requirements, reduced tariffs for facilities and infrastructure, and other forms of incentives in accordance with the provisions of laws and regulations to the Business World that provides financing for Micro and Small Enterprises.

The provisions in Article 21 of the Law, the Central Government and Regional Governments provide financing for Micro and Small Enterprises in the form of providing loans, guarantees, grants, and other financing, including seeking foreign aid, as well as providing incentives in the form of ease of licensing requirements, reduced tariffs. facilities and infrastructure, and other forms of incentives.

Partnership with Supply Chain Pattern is cooperation between micro, small, and medium and large businesses that have dependence on the flow of goods and services. which converts raw materials into products in an efficient and economical effort covering various processes from production, product and service development, information systems, and product packaging or service delivery to consumers.

Article 93 Micro and Small Business Activities can be used as collateral for program credit. Article 94 (1) The Central Government and Regional Governments in accordance with their respective authorities shall simplify and simplify the process for Micro and Small Enterprises in terms of registration and financing of intellectual property rights, ease of import of raw materials and industrial auxiliary materials if they cannot be fulfilled from within the country, and/or export facilitation. (2) Further provisions regarding the ease and simplification of registration and financing of intellectual property rights, ease of import of raw materials and industrial auxiliary materials if they cannot be fulfilled from within the country, and/or export facilitation as referred to in paragraph (1) shall be regulated in a Government Regulation.

Government Regulation Number 7 of 2021 concerning Government Regulation of the Republic of Indonesia Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises Government Regulation of the Republic of Indonesia Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro Enterprises ,

Small, and Medium, Facilitation of Intellectual Property Rights Article 79 (1) companies that administer government affairs in the field of law and human rights provide convenience in obtaining intellectual property rights quickly, accurately, cheaply, and non-discriminatory in services in accordance with the provisions laws and regulations. (2) The convenience as referred to in paragraph (1) is in the form of relief from registration fees and registration of intellectual property rights for Micro and Small Businesses of at least 50% (fifty percent). (3) Ministries/institutions in accordance with their respective authorities assist Micro, Small and Medium Enterprises.

Program Credit Guarantee Article 80 (1) Micro and Small Business Activities can be used as program credit guarantees. (2) The program credit guarantee as referred to in paragraph (1) may be in the form of: a. work order; b. invoice; c. letter of order (purchase order); d. intellectual property rights; e. factoring; f. Ireping/bar code (chip/barcode) proof of ownership of movable objects; and/or g. employment contract.

The form of protection is in the form of fostering and developing MSMEs and cooperatives through partnership programs, training, increasing competitiveness, innovation and market expansion, access to finance, and the widest possible dissemination of information. Also, the ease of doing business for MSME actors can be seen through the exception of the minimum wage provisions for micro and small businesses. Article 90 B of the Employment Creation Law stipulates that the minimum wage for micro and small companies is determined based on an agreement between employers and workers in the company without the need to follow the minimum wage standard from the government. Then, in the Job Creation Law as well, MSMEs do not have to fulfill the obligation to give awards or bonuses as referred to in Article 92. Regarding licensing, in the Job Creation Law, licensing provisions are regulated in Article 91, where the article explains, MSME registration can be done online or offline, simply by attaching an Identity Card (KTP) and a business certificate from the RT, so that MSME business actors can then obtain a Business Identification Number (NIB) through electronic business licensing, while the business registration number is a single license. which applies to all business activities. Furthermore, regarding Article 92, Micro and Small Businesses are given convenience or simplification of tax administration in order to apply for financing facilities from the central government in accordance with the provisions of the legislation in the field of taxation, in paragraph (2) Micro and Small Businesses that apply for business licenses can given incentives in the form of no fees or fee waivers

Government Regulation Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises, regulates the provisions of the authority of the central government and regional governments, especially in Article 48 paragraphs (1), (2), and (3) which regulates the protection (1) The central government and regional governments are required to provide legal assistance and assistance services to Micro and Small Business actors, (2) Legal assistance and assistance services to micro and small business actors as referred to in paragraph (1) is free of charge, (3) legal assistance and assistance services include, legal counseling, legal consultation, mediation, and assistance outside the court. Then other forms of legal protection regulated in the Government Regulation are also listed in Article 51 which in essence provides legal assistance and assistance services to Micro and Small Businesses, the central government and local governments at least identify the legal problems faced by MSME actors. , open information to MSME actors regarding the forms and ways of accessing legal assistance and assistance services, as well

as allocating a budget for program implementation from legal assistance and assistance services activities.

The government's authority in empowering the Intellectual Property of Small and Medium Business Products in order to improve the economy in the era of disruption is vital, especially in assisting and facilitating SMEs in the registration of Intellectual Property Rights for SME products, both those originating from fashion, handicrafts, and culinary products. According to Focus Economy Outlook data, as of 2020 Indonesia has received a Gross Domestic Product (GDP) of 1.1 trillion from the creative economy sector. Indonesia is ranked as the third country with the largest creative economy in the world, after America and South Korea. The contribution of the creative economy to GDP is very large, reaching 7.28% of the total GDP. The benefits of the creative economy are enormous. In addition to increasing the country's foreign exchange, the creative economy is able to raise the standard of living of entrepreneurs who enter this field. In addition, financing, data collection, strengthening of technology, taxes and markets as well as the legal protection of SMEs as mandated in the relevant laws and regulations.

The industrial revolution 4.0 is very influential in changing aspects of human life. The industrial revolution 4.0 was first formed in Germany in 2011 marked by a digital revolution that had an impact on social change between living things. In the industrial revolution 4.0, more use of information and communication technology in full. In contrast to the three revolutions that have existed before. In the era of the industrial revolution 4.0 which fully uses information and communication technology, it results in enormous changes in life.

Minister of Industry Airlangga Hartarto said the government had set ten national priority steps to implement the Making Indonesia Industry 4.0 roadmap. Integrated roadmap as a clear guide (The program has been announced since 26 April 2018). The 10 steps are as follows:

1. Improve the flow of goods and materials. This step is intended to strengthen local production in the upstream and middle sectors through capacity building and accelerating technology adoption.
2. The second step, the Government will optimize the policy of industrial zones by aligning the roadmap in the industrial sectors in a comprehensive manner, both geographical aspects, transportation aspects, infrastructure, and others.
3. Third step, the government will accommodate sustainability standards, such as the ability of industries based on clean technology, electric power, biochemistry, and renewable energy.
4. Fourth step, empowering Micro, Small and Medium Enterprises.
5. Fifth step, the government will build a national digital infrastructure. In this case, there will be high-speed Internet development and cooperation in the field of digital technology, such as cloud, data center, security management, and broadband infrastructure.
6. The sixth effort is to attract foreign investment, this step can encourage technology transfer to local companies.
7. Seventh, the government will improve the quality of human resources by improving the quality of vocational schools.
8. The eighth effort, the government will prepare a pilot innovation center and optimize related regulations. These include protection of intellectual property rights and fiscal incentives.

9. The ninth step, the government will provide incentives for technology investment, namely redesigning the technology adoption incentive plan.
10. The government will harmonize rules and policies to support the industrial revolution 4.0

The government's authority in empowering Intellectual Property Products of Small and Medium Enterprises in order to improve the economy in the era of disruption, strategic steps are needed for SMEs including: 1) increasing creativity and registration of SME IPR products, 2) improving the capabilities and skills of SMEs, especially being able to use technology; 3) Utilizing digital technology to spur productivity and competitiveness for SMEs, 4) optimizing the E-Smart IKM program, the E-Smart IKM program is intended to increase the capacity development of the sector that dominates the industrial population in Indonesia. E-Smart IKM is a Small and Medium Industry (IKM) database system that presents industry profiles, centers and products that are integrated with existing marketplaces; 5) Make better use of digital technology in production and marketing; and 6) Encouraging technological innovation in Indonesia to have more technology-based entrepreneurs.

The development of the industrial revolution 4.0 has become a challenge for creators in using their work, because as we know that in this era of the industrial revolution 4.0, more use of technology as a source of information and communication results in social changes in people's lives. So for the creator can have a big risk to the results of his creation. Because as we know in Indonesia itself there are still many creators who do not know the issue of copyright protection for intellectual works (Lubis & Masnun, 2020). For example, industrial design creators, for many of them who pour their creations into free websites such as Pinterest, everyone is very easy to access the Pinterest application, which contains photos, designs, videos and other information. If the creator puts his work on Pinterest, it can be easily downloaded by users, and the use of the work does not have the permission of the creator.

Indonesia is one of the largest exporters in the creative industry sector. The handicraft products of the people in our country are very authentic and have their own characteristics. That's why the creative economy is one of our biggest economic strengths. During 2020, the Ministry of Communication and Information has taken down or taken down content in the digital space that violates intellectual property rights (IPR). This step is taken to ensure that the national digital space remains safe, productive, and competes in a healthy manner.

In 2021 the Ministry of Communication and Information has cut off access to 360 intellectual property infringing content, including copyright infringement. The Ministry of Communication and Information is currently labeled a 'blocking agency'. In addition to ensuring and keeping the digital space safe from IPR violations, digital literacy efforts are also massive and sustainable for the community. This is important so that everyone who uses the digital space has the skills to carry himself in the era of technological disruption.

Thus, the implementation of the authority of local governments in empowering the Intellectual Property of SME products in the Disruption era, in legal substance, harmonizes laws and regulations related to SMEs. Legal structure requires synergy between ministries and institutions, especially the Ministry of Law and Human Rights in the registration and protection of SME IP Products, the Ministry of Communications and Information in ensuring the security and protection of SME IP Products in the digitalization space, as well as the Ministry of Industry and the Ministry of Cooperatives

and SMEs. the Ministry of Finance and the Director General of Taxes as well as higher education institutions. Meanwhile, in legal culture, revitalize IP legal protection through IP registration and SME legal education.

D. CLOSING

The authority of local governments in empowering the Intellectual Property of SME products in the Disruption era has been legally regulated in local government laws, the Job Creation Law and the Law on SMEs, in improving the economy in the era of disruption it needs to be strengthened in digital data collection, mentoring and registration of KI for SME products in particular, funding and strengthening of technology and markets for SME products and Optimization of the IKM E-Smart Program. In the Job Creation Law and Government Regulation Number 7 of 2021, specifically the empowerment and legal protection of SMEs, so that the central government and local governments have given more attention to financing for SMEs who request legal assistance and assistance services such as legal counseling, legal consultation, mediation, and out-of-court assistance. So that in its implementation it requires the synergy of legal substances, legal structures and legal culture.