



IP Challenges Facing Micro, Small and Medium Sized Enterprises

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PANDYA ASTAGINA INSTITUTE

Pandya Astagina Institute is an institution engaged in the field of legal education and research in Indonesia.

The vision is to become a leading legal and policy research center focusing on the development of law in the field of technology and intellectual property in Indonesia.

Pandya Astagina's missions are as follows:

1. To facilitate stakeholders' discussion regarding legal policies in the field of technology and intellectual property for implementation and development of law in this fields;
2. To promote and introduce current issues in the field of technology law and intellectual property; and
3. To advocate nation's interest in the field of technology law and intellectual property.



DEFINITION

Small Enterprise

productive economic businesses standing alone, owned by individual persons or business entities that not constituting subsidiaries or not constituting company branches owned, controlled, or becoming direct or indirect portions of Medium or Large Enterprises.

Micro Enterprise

productive businesses owned by individual persons and/or individual business entities.

Medium Enterprise

productive economic businesses standing alone, owned by individual persons or business entities that not constituting subsidiaries or not constituting company branches owned, controlled, or becoming direct or indirect portions of Small or Large Enterprises.

SMEs IN INDONESIA

SMEs has become pivotal for the Indonesian Government. SMEs has contributed substantially to Indonesia's economic growth, as they play an essential role in social inclusion.

From creating jobs to having the capability of alleviating poverty, SMEs account for nearly 56% of business investment and 97% of domestic employment.

Recognizing the importance of SMEs, the Indonesian Government has provided support in numerous ways, with financial strategies to strengthen the sector.

However, major issues are SMEs still encountering difficulties in trying to establish and maintain their businesses when it comes to obtaining and maintaining IP rights → **common problems across Asia Pacific**

TRADEMARK REGISTRATION BY SMEs IN INDONESIA

2017	—————→	8.282
2018	—————→	8.829
2019	—————→	10.633
2020	—————→	10.529
2021	—————→	10.633

From total of 64,1 million SMEs registered in Indonesia

*Data provided by Ministry of Law and Human Rights



WHY INTELLECTUAL PROPERTY IS LESS “POPULAR” FOR MICRO, SMALL AND MEDIUM SIZED ENTERPRISES

- 1) Lack of awareness and insufficient information – only certain SMEs has the adequate knowledge on Intellectual Property;
- 2) Budget issue/constraint:
 - Still requires IP counsel if the applicant is facing office action, e.g. rejection or opposition by third party.
 - COVID 19 Pandemic.
- 3) Fast-changing industry; and
- 4) Enforcement issues.



GOVERNMENT INITIATIVES

Ministry of Economy has taken several programs for to support SMEs, such as:

1. Simplification of licensing procedures through One Single Submission;
2. Facilitating official fees deduction for the establishment of a SMEs;
3. Simplification of tax administration and customs incentives; and
4. Business partnership between SMEs and Government.



GOVERNMENT INITIATIVES

Ministry of Cooperatives and Small and Medium Enterprises has taken several programs for to support MSMEs, such as:

1. Coordinating with Ministry of Law and Human Rights to provide convenience and simplify the registration process for obtaining intellectual property rights for MSMEs; and
2. Providing IP registration facilitations for trademarks, copyrights, industrial designs, and geographical Indications for MSMEs.

GOVERNMENT INITIATIVES

Ministry of Tourism and Creative Economy has implemented 7 programs for SMEs, one of which is increasing SMEs awareness of Intellectual Property Rights by way of:

1. Conducting socialization and education on the importance of Intellectual Property Rights on several cities;
2. Providing one-on-one consultation sessions on several cities;
3. Providing free services to submit IP applications (mostly trademarks) (incl. responses to preliminary rejection and opposition); and
4. Assisting the process of collecting required documents for SMEs actors as Petitioners.

LACK OF AWARENESS

Majority of SMEs are still not aware on:

1. Intellectual Property is an intangible asset.
2. Intellectual Property can increase business competitiveness.
3. Adequate information on official fees and procedures for Intellectual Property application.

ENFORCEMENT

1. Lack of sentencing guidelines for criminal lawsuits.
2. No legal precedent system in courts, limited reporting/publicity for judgment.
3. Lack of training/knowledge by judiciary & law enforcers.
4. Insufficient publicity for IP laws and regulations.
5. Legal appeal process slow, nontransparent.
6. Criminal/civil systems disjointed.



COST BARRIERS

Currently, the IP laws and regulations have provided preferential official fees payable for IP registration filed by SMEs.

Official Fees:

IDR 1.800.000 – *for Normal Applicant*

IDR 500.000 – *for SMEs*

However the above preferential rate still considered high due to:

1. Budget constraint from owner of SMEs, particularly due to Covid-19 Pandemic;
2. SMEs still underestimate the importance of Intellectual Property protection.



RESULT

- 1) SMEs reluctant to file and protect their IP assets
- 2) The absence of IP culture among the SMEs → not a priority
- 3) Doing business without proper IP protection → taking risks
- 4) Unable to properly enter into and establish strong presence in the market.


CONSEQUENCES

- 1) High risk of intellectual property infringement, especially trademark;
- 2) The absence of proper IP registrations would result to:
 - Prohibition of the usage of trademarks by other parties;
 - Required to rebranding – “*first to file*” principle entails.
- 3) Not able to properly monetize their IP assets; and
- 4) Fail to compete and have a sustainable business.



ENFORCEMENT BENEFIT

- 1) Commercial Court to handle IP matters (previously only for Bankruptcy matters);
- 2) IP Court: more effective and efficient, specialized;
- 3) Appeals direct to Supreme Court;
- 4) Handles Trademark Civil cases, Patent, Design, Circuit Layout law disputes, and also Copyright;
- 5) Likely to reduce costs and increase speed of decisions; and
- 6) Crime by complaint: can be withdrawn if settled amicably.



CRIMINAL Warning letters, Police Raid on
retailers, suppliers, manufacturers of
counterfeit products.

Cancellation Claim based on bad faith
Deletion Claim due to non use
Claim for damage.

CIVIL



THINKABLE SOLUTION

1. Government to introduce “Package Deal” for SMEs – under IPO or other relevant authorities;
2. IP Consultants to implement special rate for assisting SMEs;
3. Government have to be more aggressive and systematic in:
 - a. Conducting socialization to increase awareness;
 - b. Conducting facilitation of IP registration and monitor the progress;
 - c. Igniting intention to protect their IP and explain the procedure;
 - d. Engaging stakeholder to be more involved;
 - e. Involving SME associations and Universities in educating the importance of IP protection



Thank You