

***Intellectual Property Legal Protection Against the Resilience of Start-Ups
in Overcoming the COVID-19 Pandemic in the Millennial Generation***

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The IAFOR International Conference on Education in Hawaii 2022
Official Conference Proceedings

Abstract

This study aims to raise the community's economic resilience, especially start-up companies, in overcoming the turmoil of the COVID-19 pandemic in the millennial generation through intellectual property protection. During the COVID-19 pandemic, various large companies and small and medium businesses experienced a decline in the business sector. As one of the actors in start-up companies, the millennial generation has also experienced a fall, which requires strengthening its resilience. The problem in this study is how the model of intellectual property legal protection against the resilience of start-ups in overcoming the turmoil of the COVID-19 pandemic. What are the obstacles in applying the intellectual property legal protection model to the resilience of start-up companies? The research method used in this research is normative juridical. Research locations in start-up companies in Indonesia, including the old city of Semarang, are cultural heritages as open spaces, providing business opportunities between local and modern businesses. This research was analyzed qualitatively. This research is expected to benefit the growth of the city's competitive ability. The results show that intellectual property protection is still low in start-up companies in the millennial generation due to other factors besides product quality. Product quality improvement can be made through the protection of intellectual works

Keywords: Legal Protection, Intellectual Property, Start-Up Resilience, COVID-19 Pandemic, Millennial Generation

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Introduction

Intellectual Property Protection becomes very urgent when productivity results decrease due to business competition in certain areas whose products are homogeneous. The Intellectual Property Rights System is proposed to justify economic development, increase innovation, and improve people's welfare.¹ Intellectual property is a right that arises or is born because of human intellectual ability through power, creativity, taste, and intention. Intellectual property is an intangible asset that is a source of productive profit for a company.

Intellectual Property from an economic perspective is considered capable of contributing to the economic growth of a nation. Stuart E. Eizenstat² confirms that the protection of innovation is critical for the future growth of developed and developing countries. The future of a nation can no longer only be piled on the natural wealth it has. Natural wealth owned by a government, its role, and contribution are fading along with the depletion of the availability of natural wealth itself, especially in the type of natural wealth that is not renewable.

During the COVID-19 pandemic, every business activity faces significant economic growth challenges, including start-up companies. On the one hand, this situation benefits new companies or start-ups that can act quickly and flexibly in the face of a pandemic with their innovations. Still, on the other hand, it has also experienced a decline due to the lack of awareness of start-up businesses to register their intellectual property for the products they produce. Data shows the number of micros, small, and medium enterprises (MSMEs) in Semarang City is around 16,327 business actors, and only 500 to 700 business actors have Intellectual Property Rights. Business actors who already have IPRs come from 10 business sub-sectors, including culinary, batik, and handicrafts.³

The old city of Semarang is located in Indonesia, known as the city of Dutch colonial heritage, which is currently a mainstay tourist destination in Semarang City, providing space and a place for business actors to market their products. Business actors who enter the category of start-up companies or start-ups are still developing to continue finding markets and developing their products. Start-ups are technology-based service and product companies. The data shows very few start-up companies in the old city registered and have intellectual property certificates compared to the number of business actors in the old city. For the business world, especially start-ups, it is essential to get the legality of the establishment of a start-up company, as well as to get intellectual property protection. This is intended to protect the innovations of the products produced. Therefore, an Intellectual Property Protection Model is needed for the Resilience of Start-ups in Overcoming the COVID-19 Pandemic in the Millennial Generation.

¹ Utomo, Tomi Suryo. 2010. *Hak Kekayaan Intelektual (HKI) di Era Global Sebuah Kajian Kontemporer*, Yogyakarta: Graha Ilmu. 1st ed. P.19

² Eizenstat, Stuart E. 2011. US Deputy Secretary of the Treasury, *Perlindungan Hak Milik Intelektual dan Negara Ekonomi yang baru tumbuh*, Article, in Budi Santoso, *Pergeseran Pandangan Terhadap Hak Cipta Studi pergeseran pandangan tentang Hak Cipta di Amerika Serikat dan di Indonesia*, The Inaugural Speech was delivered at the Acceptance Ceremony for Professorship in Law at the Faculty of Law, Diponegoro University, 22nd March 2011, P.24

³ Rizqi, Alif Nazzala. 2019. <https://semarang.bisnis.com/read/20190725/536/1128925/baru-700-pelaku-usaha-di-semarang-miliki-hak-kekayaan-intelektual>. Accessed on 30th December 2021

Research Method

The research method used in this research is normative juridical with a statutory and conceptual approach. Research locations in Indonesia include the old city of Semarang as a city of cultural heritage. The old city of Semarang as an open space provides local and modern business opportunities. Data sources are obtained through secondary data supported by primary and secondary legal materials, which are then analyzed qualitatively.

Discussion

Start-up Concept

Start-up is a process of starting a new business (pilot) developed to operate in technology. These products are made in the form of applications in digital format and run through websites online. Many aspects surround the establishment of a Start-up company, such as how the contract is made, how the intellectual property rights are protected, what the form of business is, how it is funded, and so on. There are several types of Start-ups: game creator start-ups; start-up trade (e-commerce); start-ups in the field of informatics (Gojek, Traveloka, Bukalapak); start-up of educational applications (Ruang Guru) and start-up of telemedicine applications/start-up of Health applications.

The development of start-ups in Indonesia is currently growing very rapidly. Indonesia is fertile ground for the development of start-ups. It is proven that Indonesia occupies the fifth position in the world of start-up businesses, namely 2,913 start-ups in 2019, after the US, India, UK, and Canada.⁴ Start-ups have now become engines of economic growth for the country. This start-up has been able to open thousands of job opportunities and help reduce unemployment in Indonesia. In 2020, during the COVID-19 pandemic, Indonesia has 11 unicorns, including Tokopedia, Traveloka, Bukalapak, and OVO. In addition, there is one decacorn, namely Gojek. Unicorn is a term for start-ups with a valuation above US\$1 billion or IDR 14 trillion. In comparison, a decacorn is a term for start-ups with a valuation above US\$10 billion or IDR 140 trillion. CB Insights data titled The Complete List of Unicorn Companies shows that Nusantara recorded four new unicorns this year, namely J&T Express, OnlinePajak, Ajaib, and Xendit.⁵

The high development of start-ups in Indonesia, on the one hand, is very encouraging for the potential of the millennial generation to take advantage of start-up business opportunities in the era of the COVID-19 pandemic. Still, on the other hand, many have failed. One of the causes of its failure is the lack of knowledge of start-up business actors on the legal aspects of establishing a start-up and the low number of intellectual property registrations.

⁴ https://kominform.go.id/content/detail/23975/di-wef-2020-menkominfo-pamerkan-pesatnya-perkembangan-start-up-indonesia/0/sorotan_media. Accessed on 28th December 2021

⁵ Setyowati, Desi. 2021 <https://katadata.co.id/desysetyowati/digital/61c416a490fcd/hampir-200-startup-ri-raih-investasi-total-rp58-6-t-goto-paling-besar#:~:text=Startup-,Hampir%20200%20Startup%20RI%20Raih%20Investasi%20Total%20Rp58%2C6%20T,Tokopedia%20mendapatkan%20investasi%20paling%20besar>. Accessed on December 30th 2021

Legal Aspects of Start-ups

Every economic activity carried out by a business actor has legal consequences. A business actor in running a start-up is based on legal provisions because the law is made to fulfill the principles of justice, benefit, and certainty. As stated by Gustav Racbruch with his theory of the purpose of law made to satisfy the values of justice, expediency, and legal certainty. In carrying out the three legal objectives, the principle of priority must be used.

Likewise, start-up companies to be established must meet these values, one of which is the value of legal certainty that the establishment of start-ups must be legal. The legality of establishing start-ups in Indonesia is based on Law Number 19 of 2016 concerning Electronic Information and Transactions, Law Number 7 of 2014 concerning Trade, and Presidential Regulation Number 74 of 2017 concerning the Roadmap for the National Electronic-Based Trading System.

The legal provisions governing Start-ups are still regulated in the old rules, namely Law Number 11 of 2008, in Article 9: the existence of e-commerce consumer protection which explains that start-up business actors who offer products through electronic systems must provide complete and accurate information concerning the terms of the contract, the manufacturer, and the product provided. Meanwhile, in the new provisions, Article 26 paragraph (1) of Law Number 19 of 2016 concerning Information Technology, any information through electronic media concerning a person's data must be carried out with the person's consent. Article 1 number (2) of the new ITE Law also states that a start-up is an electronic transaction, a legal action carried out using a computer, computer network, and/or electronic media.

In addition, in establishing a Start-Up, there are several licensing documents that a start-up business actor must own. These documents include the Trading Business Permit (SIUP) as contained in the Minister of Trade Regulation Number 7 of 2017 concerning the Third Amendment to the Minister of Trade Regulation Number 36 of 2007 concerning the Issuance of SIUP. The SIUP will remain valid as long as the Start-up company carries out business activities. To obtain a SIUP document to ensure that the commercialized goods have obtained an operational permit from the relevant institution or not, if the commercialized goods do not have a SIUP permit, they will be subject to criminal sanctions.

Intellectual Property Legal Protection Model against the Resilience of Start-ups in Overcoming the COVID-19 Pandemic in the Millennial Generation

Business actors who want their start-ups to grow must be registered to get intellectual property legal protection. Intellectual property law in the institutional context, two multilateral institutions respect intellectual property issues, namely WIPO (World Intellectual Property Organization) and TRIPS (Trade-Related Intellectual Property Rights). TRIPS essence contains four regulatory groups. First, linking IPR with the concept of international trade. Second, member countries must comply with the Paris Convention and the Berne Convention. Third, establish their own rules or regulations. Fourth, it is a provision on matters that generally include law enforcement efforts contained in the legislation of member countries.⁶ The Paris Convention aims to achieve unification in the field of trademark legislation with the hope that there will be a single type of trademark or trademark law that

⁶ Purba, Achmad Zen Umar. 2005. *Hak Kekayaan Intelektual Pasca Trip's*. 1st Ed, Bandung: Alumni. P. 22

can regulate trademark matters uniformly throughout the world. Revisions to the Paris Convention were carried out, among others, at The Hague in 1925, London in 1934, Lisbon in 1958 and Stockholm in 1967.⁷

Indonesia, as part of the international community, became a member of the two organizations by ratifying the Paris Convention for the Protection of Industrial Property and Convention Establishing the World Intellectual Property Organization and approving the results of the Uruguay Round decision with Law No. 7 of 1994 on WTO (World Trade Organization) Ratification. Indonesia is committed to complying with the various consequences that arise as a member of the two institutions by taking essential steps, including aligning the set of laws and regulations in intellectual property rights (IPR). In 1997, the Government of Indonesia revised several IPR laws and regulations, particularly in trademarks, namely Law Number 19 of 1992 concerning Marks, replaced by Law Number 15 of 2001 concerning Marks. Then was born the latest Trademark Law No. 20 of 2016 concerning Trademarks and Geographical Indications.

Law is not a static institution, according to Satjipto Rahardjo,⁸ but is experiencing development. Law and society have a reciprocal relationship. Likewise, intellectual property protection shows its correlation with Satjipto Rahardjo's view on its role and function in achieving prosperity and international trade. Intellectual property legal protection is needed because the intellectual property has a high economic value and provides benefits as an intangible asset to increase the resilience of start-ups in overcoming the COVID-19 pandemic in the millennial generation.

There was a decline in start-ups during the COVID-19 pandemic. According to start-up ranking records, the number of start-ups in Indonesia will reach 2,219 companies in 2021. The majority of start-ups are domiciled on the island of Java, especially Jabodetabek (Jakarta, Bogor, Tangerang, and Bekasi). The number of start-up business actors in Semarang is around 16,327. Only 500 to 700 business actors have intellectual property rights. This proves that the awareness of start-up business actors is still low to register their intellectual property in the form of brands, patents, or trade secrets for their products. To increase awareness of Start-up business actors, efforts to maintain resilience by registering an intellectual property for their products. Therefore, a model of intellectual property legal protection is needed for start-up resilience for the millennial generation during the covid 19 pandemic. Legal culture is more likely to immediately improve behavior or awareness of the law to register the intellectual property for legal protection.

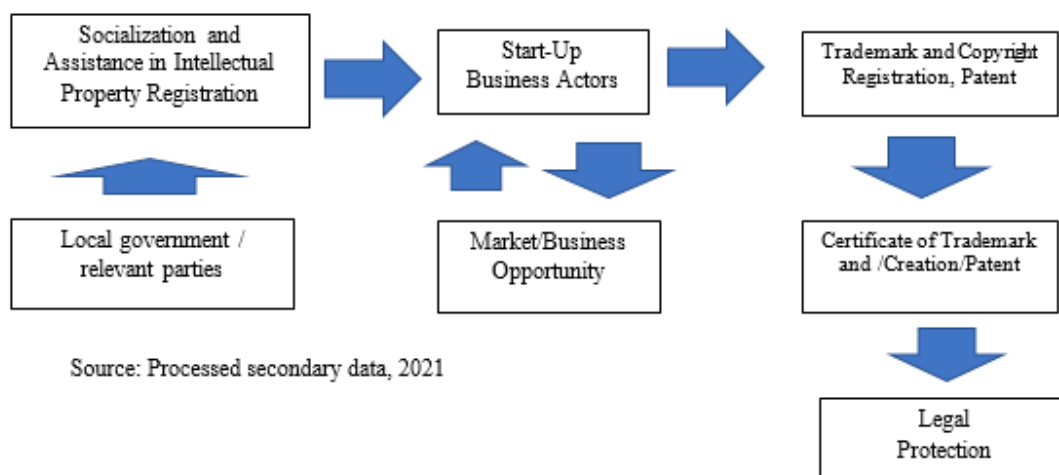
Intellectual property in the national legal system includes copyright as regulated in Law Number 28 of 2014; patent rights are regulated in Law Number 13 of 2016; trademark rights and geographical indications are regulated in Law Number 20 of 2016; Trade Secrets are regulated in Law Number 30 of 2000; industrial design as regulated in Law Number 31 of 2000; integrated circuit layout design is regulated in Law Number 32 of 2000. It will be detrimental to anticipate the risk of their products being taken or imitated by other parties, and start-up business actors register their trademarks. With trademark registration, it will provide legal protection and add value to its business during the development of information technology.

⁷ Gautama, Sudargo. 1993. *Hukum Merek Indonesia*, Bandung: Citra Aditya Bakti. P.157-158.

⁸ Rahardjo, Satjipto. 1991. *Ilmu Hukum*. Bandung: Alumnus. P.213

In addition to brand rights, it is also vital for start-up business actors to understand copyright. In copyright, there are computer programs closely related to start-ups. Copyright automatically gets legal protection to get its exclusive rights that arise after being expressed in a tangible form, including computer programs contained in start-ups. A computer program is a set of instructions described in the form of language, code, schematics, or any form intended to make the computer work to perform certain functions. However, computer programs are excluded in Law Number 28 of 2014 concerning Copyright, protected in Law Number 13 of 2016 concerning Patents. Examples of software (computer programs) excluded from copyright are created only to protect technical problems. For example, the Gojek, Grab application (software) can be installed on almost all consumer gadgets.⁹

The intellectual property protection model built is based on the awareness of Start-up business actors to understand the importance of intellectual property registration, especially trademarks as well as patents for Start-up businesses. In this case, there is assistance from related parties, the local government, to provide consultation and register intellectual property. The chart below shows a model of intellectual property legal protection for start-ups to realize Start-up resilience during the COVID-19 pandemic:



Source: Processed secondary data, 2021

Figure 1. A model of intellectual property legal protection for start-ups
Source: Processed secondary data, 2021

As mentioned above, the intellectual property protection model chart shows that Start-up business actors need a helping hand from the local government/related parties to maintain a Start-up business during the COVID-19 pandemic. The Indonesian ICT/Digital Creative Industry Society (MIKTI) recently designed a program called Start-up Merdeka, intended to help students as a generation of millennial who want to create start-ups. This program has been running for one semester, called MIKTI, in line with the Independent Learning Campus (MBKM) policy launched by the Ministry of Education, Culture, Research, and Technology. A total of 130 students from 28 universities took part in the first batch of independent study programs certified by Start-up Merdeka. Students have business ideas brought into programs designed to guide students to form a mindset and prepare knowledge and skills as start-up founders.¹⁰

⁹ Rizki, Mochamad J. 2020. <https://www.hukumonline.com/berita/baca/lt5f8e07a824547/wajib-tahu-ini-pentingnya-pendaftaran-merek-bagi-ukm-dan-startup/>. Accessed on 25th November 2021

¹⁰ Jati, Anggoro Suryo. 2021. <https://inet.detik.com/business/d-5868859/startup-merdeka-program-belajar-startup-untuk-mahasiswa>. Accessed on 29th November 2021

Seeing Indonesia's continuous effort in preparing the millennial generation, it is hoped that the Indonesian millennial generation can make start-ups into unicorns in the future. As already owned by Indonesian start-ups that have entered unicorns such as: Gojek, Bukalapak, Ovo, OnlinePajak, J&T, Xendit, Ajaib, and Kopi Kenangan. Kopi Kenangan gets the first phase of funding worth IDR 1.3 trillion, so Indonesia already has 9 Unicorns in the country.¹¹

Obstacles in Implementing the Intellectual Property Protection Model for Start-ups for the Millennial Generation

Start-up business in the COVID-19 pandemic has become an option among millennial. However, building an intellectual property protection model for a start-up business is not easy for the millennial generation. Start-ups require expert talent in running a start-up business by utilizing information technology. Still, in practice, start-up businesses encounter obstacles in applying the intellectual property legal protection model, including low awareness of intellectual property understanding, causing low intellectual property registration. In the end, legal protection for start-up business people has not been maximized.

Ministry of Research and Technology / BRIN Jumain Appe explained several obstacles that prospective start-up business actors in Indonesia often experience.¹² In general, these obstacles are government policies/regulations related to distribution permits or certification to set up a business that requires a long and expensive process, so start-up businesses fail. Meanwhile, other obstacles are external and internal factors. External factors are business competition factors, while internal factors do not have a clear goal and vision; not yet professional in designing the products contained on the website or brochures; lack of focus on start-up performance; governance/ management/ finance; build start-ups but are not wanted by today's society; and accept employees who do not have the skills, nor have they found market products.¹³

Conclusion

Start-ups are an arena for the millennial generation to cultivate their creativity to be honed and nurtured with their team to create start-up resilience through intellectual property protection. Start-ups inspire the millennial generation to channel their talents through information technology. During the pandemic, the start-up business experienced a decline and the lack of awareness of start-up business players to maintain the start-up business to register intellectual property. By registering intellectual property, the start-up business gets intellectual property protection.

The wealth protection model starts from the existence of a legal culture which is the attitude and behavior of a start-up business in developing its business. With assistance and socialization, people will be aware of the importance of intellectual property registration to get legal protection.

¹¹ Haryanto, Agus Tri. 2021. <https://inet.detik.com/business/d-5873595/ada-anggota-baru-ini-daftar-startup-unicorn-indonesia-di-akhir-2021>. Accessed on 29th December 2021

¹² Prayoga, Fadel. 2020. <https://economy.okezone.com/read/2020/08/27/455/2268424/deretan-masalah-yang-dihadapi-bisnis-start-up>. Accessed on 28th November 2021

¹³ Startup Studio Indonesia. 2021. <https://startupstudio.id/tantangan-perkembangan-startup-di-indonesia/>. Accessed on 28th November 2021

The obstacles faced in implementing the intellectual property protection model for the millennial generation, namely the lack of awareness of intellectual property understanding, cause the low intellectual property registration.

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