

ACCELERATION MODEL IN OBTAINING INTELLECTUAL PROPERTY RIGHTS (IPR) ON MICRO, SMALL AND MEDIUM ENTERPRISES (SMEs) IN SEMARANG CITY CENTRAL JAVA¹

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ABSTRACT

SMEs have an important position in IPR and welfare of the people. Ironically, not all the SMEs understand and want to apply for a patent. This is caused by many dominant factors which are ignorance and unfamiliarity mechanism of the IPR filing. Therefore, there needs to be an acceleration model to obtain IPRs on SMEs. The focus of the research is on the model of the acceleration to obtain IPR SMEs in Semarang, especially the LP2M Unnes' Patronage. The output target of the research is the creation of a model in the form of a prototype to enrich the teaching materials and both national and international accreditation journals publication. The methods of the research used a qualitative approach - hermeneutik with socio-juridical research. The analysis of the data used the analysis of interaction models constructivism in R & D analysis techniques. The study was conducted at SMEs LP2M Unnes' Patronage Gunungpati in Semarang, Central Java. The results showed that the model of accelerated acquisition of IPRs on SMEs in Semarang Central Java is to integrate the institutional IPR Center, in the forms of facilitating the acquisition of the intellectual property rights through an investigation of the potential IPR, IPR awareness of the importance of registration, facilitating by applying the registration along with the fulfillment of the IPR document, accelerating the substance of the examination process to commercialize the results of IPR and conduct legal assistance in case of IPR disputes. In addition, it is in the form of doing a patent investigation in an international patent document. The barriers of the accelerated acquisition of IPRs on micro, small and medium enterprises (SMEs) in Semarang Central Java is, internally as ordinary people, they do not know, even are apathetic about the findings or product protection for IPR, the difficulty of the process and procedures of IPR that they understand, the limited human resources who have willingness to accompany the IPR acquisition, the cost of which has not been able to be supported by the SMEs who are still growing. Externally, the government has no goodwill to help SMEs obtain the IPR; the lack of the IPR Center institutions that would help the inventor or inventor candidates. It is recommended to synergize the existing IPR Center (for example belonging to LP2M Unnes) with the SMEs in Semarang especially Gunungpati to perform the investigation process, dissemination, awareness, application, accelerating the acquisition of intellectual property rights to the commercialization together in partnership. At the same time, the acceleration obstacles can be overcome by the cooperation of the existing IPR Center (Unnes and Balitbang Semarang) performing a data base of potential IPR, facilitating and willingness to conduct a thorough assistance of the IPR acquisition.

Keywords: Acceleration Model, IPR, SMEs.

¹ Institutional Research - 2014-DIPA Unnes-Higher Education-Indonesia

A. Introduction

Empowerment of Micro, Small and Medium Enterprises as mentioned in the preamble of the Act No. 20 of 2008 on Small Micro Medium Enterprises need to be organized thoroughly, optimally and sustainably through the development of a favorable atmosphere, the provision of business opportunities, support, protection, and development of the widest businesses, in order to improve the position, role and potential of Micro, Small and Medium Enterprises in realizing the economic growth, proliferation and improvement of people's income, job vacancy creation, and poverty alleviation.

Developments in the industrial sector are the main priority of the economic development without neglecting the developments in other sectors. The industrial sectors are divided into large and medium industries and small and home industries. Definition that is used by Central Bureau of Statistics (BPS), large industry is a company which has 100 labors, medium industry is a company which has 20 up to 99 labors, small and home industry, is a company which has 5 up to 19 labors and home industry is a company which has 1 to 4 labors.

The SMEs centers generally produce simple patent. An invention is classified into simple patent because of its characteristics, namely a discovery through deep research and development (R&D). Although the form, configuration, construction or composition often known as "utility model", but it has practical utility values that have economic value, so that it remains to obtain legal protection. The simple patent only has the right to one (1) claim, the direct substantive examination conducted without the request of the inventor. In the event of rejection of the application of this simple patent, shall not be a subject to the compulsory licensing and annual fees.²It is in line with the content of Patents Act Article 104 which states, " All the provisions laid down in this Act shall apply *mutatis mutandis*(changing those things which need to be changed) to Simple Patents, except those which expressly not related to the simple patent."

It needs to be supported by the registration of the invention results by the inventor in the form of a simple patent. As known in general, small businesses with all the limitations are not infrequently also find practical tools which are useful for the community. For examples, a coconut grater, corn seed threshing machine, tool flytrap and so on. The findings were very rarely got legal protection of patents, it is due to a variety of factors, but the main factors are issues relating to the requirements and procedures for the submission of the registration. If this is drag on too long, the percentage of utility models digit percentage will not increase rapidly, as well as most of small businesses, as the inventor, will very rarely enjoy the protection of the simple patent law.³Considering the issues relating to the requirements and procedures for filing a simple patent application, this study focuses on the acceleration model in obtaining the IPR on micro, small and medium enterprises (SMEs) in Semarang, Central Java. This study aims to: find out the acceleration model and the constraints of IPR acquisition on the micro, small and medium enterprises (SMEs) in Semarang, Central Java. The research significance are: scientific aspect, this study is expected to give contribution to the treasury of the concepts, methods or development of IPR legal theory; Practical aspects, although this study is not intended for a solution to the bureaucrats, the results of this study can be used as a means of initial information for researchers who want to examine the same field of study as well as for law planners and executors in accordance with the concept that carried respectively; Law in the form of legislation has an important and strategic role in public law and order to create substantive justice. Acceleration policy becomes an important thing in the protection of intellectual works; the handling and setting of IPR acquisition in Indonesia is a crucial complex issue thus they require all elements of the nation to participate in synergy looking for a solution so that the labors are able to obtain an eligible protection of the community discovery. This contribution is the operational basic for the implementation of research. The output target of the research is the creation of models in the mechanism of the acceleration in obtaining the IPRs on SMEs in Semarang, Central Java. This study is also targeted to be tested in public, to be continued and to be published in the form of textbooks and international journals.

B. Review of Literature

International agreement on Trade-Related Aspects of Intellectual Property Rights (The TRIP's Agreement), does not provide a definition of Intellectual Property rights, but Article 1.2 states, "the rights of Intellectual Property consists of: Copyright and related, trademarks, geographical indications, industrial designs, patents, topographies of integrated circuits, protection of confidential information, control of unfair competition practices in the license agreement. Therefore, it can be concluded that Intellectual Property Rights protection is generally associated with the protection of the implementation of ideas and information that has commercial value. Intellectual Property Rights is a personal wealth that can be treated the same as other forms of wealth.⁴ Another definition of Intellectual Property Rights is rights with respect to the wealth which arises from human intellectual abilities. These capabilities can be in the form of works in the fields of technology, science, art and literature.⁵

Another way to answer the question of what Intellectual Property Rights is, hereinafter in short is IPR, is by making a list of key areas of human creativity that is protected by law on IPR. One such list is as stated in Article 2 (VIII) of the Convention establishing the World Intellectual Property Organization), which is commonly referred to WIPO in 1970 in which the IPR protection covers the following areas:

- a) Literature work, art and science
- b) Performance of the artists, phonogram and broadcasting

²Muhamad Djumhana dan R. Djubaedillah. *Hak Milik Intelektual, Sejarah, Teori dan Prakteknya di Indonesia*. (Bandung: PT. Citra Adhya Bakti) 2003. Page 122

³Budi, Santoso. *HKI (Hak Kekayaan Intelektual) Pengantar HKI*. (Semarang:Pustaka Magister). 2008. Page 40

⁴Tim, Linsaydkk.*Hak Kekayaan Intelektual Suatu Pengantar*(Bandung: PT. Alumni) 2006 Page 3

⁵MuhamadAhkamSubrotodanSuprapedi.*Pengenalan HKI (HakKekayaanIntelektual*. (Jakarta:PTIndeks 2008) 2008. Page 14

- c) Inventions in all fields of human endeavor
- d) Industrial Design
- e) Brand, signs of services, and the names of the trade show
- f) Protection of unfair competition.

And the other rights as a result of intellectual activity in the industrial, science and literature, and arts. Of course, the law protection of IPR varied in each state, not all the members of the Convention have legislation to protect all the rights which are mentioned in the list above. Act No. 14 of 2001 on patents divides patent into two parts. They are process patents and product patents in terms of the implementation of the patents. However, from a patented form, patent can be divided into simple patent and regular patent. The patent filing procedures are:

1. Patent Application filed by filling out the form provided for it in Indonesian and typed in 4 (four) copies.
2. Applicant must attach:
 - a. special power of attorney, if the application is filed by a registered patent agent as the attorney;
 - b. letter of transfer of rights, if the application is filed by a party who is not the inventor;
 - c. description, claims, abstract: each of triplicate (three);
 - d. pictures, if any: triplicate (three);
 - e. proof of the original priority, and the translation of the front page in Indonesian quadruplicate (four), when filed with the priority rights.
 - f. the translation of the description in English, if the original discovery in a foreign language other than English: in duplicate (two);
 - g. proof of payment of patent application fee 575.000,00 IDR (five hundred and seventy-five thousand Indonesian Rupiah); and
 - h. proof of payment of simple Patents application fee 125.000,00 IDR (one hundred twenty five thousand) and for the Simple Patent substantive examination 350.000,00 IDR (three hundred and fifty thousand Indonesian Rupiah);
 - i. additional cost of each claim, if more than 10 claims: 40.000,00 IDR per claim.
3. The description writing, claims, abstract and pictures which are referred to point 2 letter c and d are determined as follows:
 - a. only one page in each sheet of paper which may be used for the writing and pictures;
 - b. the description, claims and abstract are typed in HVS paper or similar which are separated, in A-4 size (29.7 x 21 cm) with a minimum weight of 80 grams
 - c. the A-4 paper must be white, flat and not shiny, and its use is done by placing the short side at the top and the bottom (unless it is used for pictures);
 - d. each sheet of the description, claims and pictures are numbered in Arabic numerals sequence at the top center and not on the border as defined in point 3 letter b (1);
 - e. on each of the five lines of typing of the description and claims lines should be given the rows numbers and each page is always the beginning (initial) of the numbers and they are placed on the left of the description or claims and not on the border as defined in point 3 letter b (3);
 - f. the Typing should be done in black ink (toner), with 1.5 line spacing, and with capital letters in size minimum of height of 0.21 cm;
 - g. signs with lines, chemical formulas, and certain signs can be written by handwriting or painted;
 - h. pictures must use black Chinese ink on white drawing paper A-4 in size with a minimum weight of 100 grams which is not shiny with the following limits:
 - i. all the patent documents that are filed must be in pieces of intact paper, should not be in a ripped, folded, damaged paper or images which are attached;
 - j. every term that is used in the description, claims, abstract and pictures should be consistent each other.

C. Research Methods

The research used Constructivism paradigm method, a qualitative-hermeneutik approach with socio-juridical type. The analysis of the data used the analysis interaction of constructivism models in R & D analysis techniques. The study was conducted at the SMEs of the Research Institutions and Community Service Unnes, known in Indonesian as LP2M Unnes, patronage in Gunungpati, Semarang, and Central Java

D. Results and Discussion

Gunungpati Sub district is a part of Semarang which is in the rather outermost area so that most of the people work in agriculture. Gunungpati Sub district has 16 villages with a land area of 5274.581 hectares, which consists of 1385.246 of agriculture land, and 3,889,335 of dry land including the state forests. However, the potential of small and medium enterprises in processing of products is growing rapidly. The following, Table 1, shows the effort and IPR potential shown.

Table 1
The Villages and Their IPRs Potentials in Gunungpati Subdistrict

Villages	IPR Potentials		
	Type of Product	Need of IPR	Assistance
Gunungpati Plalangan Mangunsari Ngijo Sekaran Patemon Pakintelan Sukorejo Jatirejo Sadeng Cepoko Nongkosawit Pongangan Sumurejo Kandri Kalisegoro	Processed food products (flour , <i>Ceriping</i> , cracker) Souvenir products of Kandri Village's tourism KandriBati k which hasCharacteristic of Semarangan	Copyright and Brands	UNNES IPR Centers

One of the villages that has many SMEs is Kandri. Kandri Village is a rural community in the city that becomes the Unnes Patronage (both in researches and services activities conducted by LP2M Unnes). Kandri, for more than five years has got a lot of information, socialization, even training and assistance in society potential empowerment. One of many efforts that was conducted by Unnes LP2M Assistance was for the farmers in the village to launch a farmer smart village whose goal as a Gunungpati tourism village. Then, in November, it became a tourism village which is based on the intelligence of the farmers in managing their farm while utilize them for educative tourism. Furthermore, Kandri village's communities also have conducted many activities of small and medium enterprises in the manufacturing and marketing of well-known batik Kandri. Besides, they also have been able to make processed foods which are ready to be sold outside the Central Java Province. Besides the routine activities, Kandri's people also run a business in processed foods, crafts which are managed through the local SMEs.

The condition of community in Gunungpati and its business in processed food, handicrafts, batik, farmer production, and organic plant that have not got protection of intellectual property rights (IPR) both the copyright and the trade secret as well as the trademark or patent. Therefore, it is highly needed the role of the campus community and the government to conduct a search, socialization, training and assistance to create awareness of the laws protection of their findings or discoveries. Kandri's Batik becomes an icon of Gunungpati, the price of Kandri's batik can be millions of Rupiah. However, it has not received IPR protection (copyrights and patents including Trademark). Gunungpati District's Government has conducted a potential search, community business as shown in Figure 1 below.

1. The Acceleration Model in Obtaining the IPR In Micro, Small and Medium Enterprises (SMEs) in Semarang, Central Java.

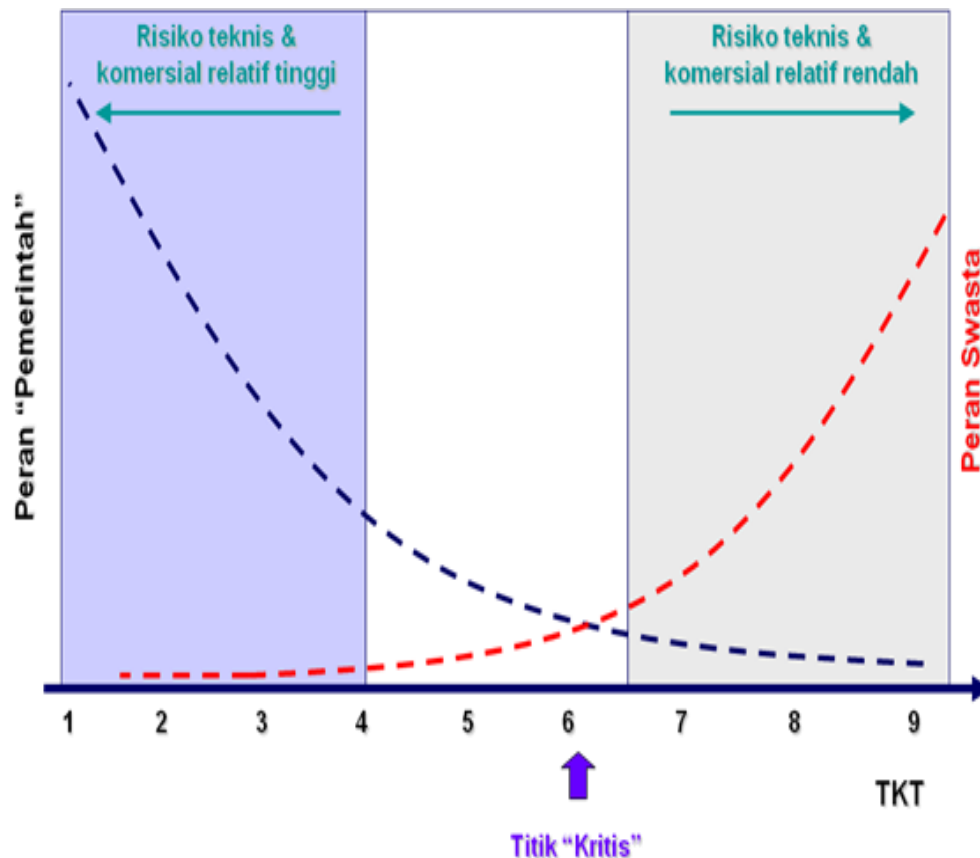
A model is a framework that is able to construct facts to a prototype to be used as a basis in conducting an activity. The acceleration model in obtaining the IPR is interpreted as a procedure that helps the managers and owners of SMEs Gunungpati to perform legal protections towards their inventions while increasing their economic value. This acceleration model is through the increasing of the IPR knowledge especially the Copyright and patent which will establish the awareness of laws protection of their findings. This formed legal awareness will be synergized with the achievement of the Vision and Mission of LP2M Unnes IPR centers. The acceleration in obtaining the IPR in the SMEs in Gunungpati will impact on the improvement of rights, namely Economic Rights, Moral Rights, and Patent Social Function Rights. Economic rights means that every intellectual property rights have an exclusive right that is called the economic rights. The economic rights are the rights to obtain the economic benefits of the intellectual property rights, because the Intellectual Property Rights is an object that can be valued in money. These economic rights are in the form of material which is obtained through the use of their own or for use by others under license. The economic rights were taken into account because of the patent can be used by others in the field of industry or trade profitably, or in other words, the patent is used as an object of trade. **Moral rights are** besides to the economic rights, in the Intellectual Property Rights there is also an inherent moral right. Moral rights are rights that protect private interests or the reputation of the inventors and they are attached to the inventors' their selves. If the patent is transferred to other parties, then the moral rights cannot be separated from the inventor because the moral right is personal and eternal. Personal nature shows a characteristic with respect to the good names, ability and integrity that are only owned by the inventors. While the eternal nature means that it is attached to the inventors for life even after the inventors died. The recognition of moral rights in this patent is set in Act No. 14 of 2001 on Patents Article 68, where

the transition of ownership of patents does not remove the right of the inventors to keep his name or other identity in the relevant patent. Social Function rights, namely the exclusive rights which are owned by the patents. It results them to give a right for the holder to carry out activities which are related to the product which are patented or the use of production process which is patented. In other words there is no other party may undertake these activities without permission from the patent holder. Social functioning patent implies that the property, in addition to the personal interests of the owner, it is also for the public interest. The public interest is a restriction on the use of private property rights which are regulated by legislations. In terms of this, Article 16 paragraph (3) of Act No. 14 of 2001 on Patents have set the social function of patents where the exclusive right may be excluded if a patent application is for the purposes of education, research, experiment, or analysis as long as it does not damage the normal interest of the holder patent.

Technology Readiness Levels (TRL). TRL is a systematic measurement (metric) which provides an objective measurement of maturity (maturity) of a technology. Naturally, TRL is an "indicator" that shows how ready / mature a technology is to be applied (in the objective perspective). Technology Readiness Level is a measurement of the level of technological readiness (on a scale of 1-9) as an indicator that shows how ready or mature a technology can be applied and adopted by users / potential users. Initially, TRL was developed by NASA as a tool to measure the development of the technology readiness; Risk mitigation: by considering the risks of technology, market, and management, it will be able to through the transition from R & D stage to the commercialization of technology; A good understanding of some of the requirements in the validation of the maturity of the technology and support the model of the commercialization.

TRL consists of nine stages. They are as follows.

9	The technology is really tested / proven through a successful operation
8	The Technology has a complete and eligible system (qualified) through the testing and demonstration in a real environment/applications
7	The prototype has been tested in a real environment
6	The model or prototype has been tested in a relevant environment
5	The component of the technology has been validated in a relevant environment
4	The component of the technology has been validated in a lab environment
3	The concept and important characteristics of the technology has been proven analytically and experimentally
2	The concept of technology and its application has been formulated
1	The basic principle of the technology has been researched

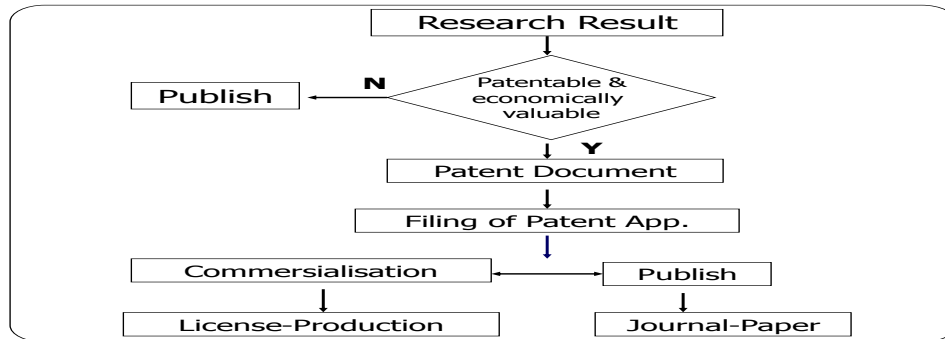


The role of LP2M Unnes IPR Center SMEs synergizes with the Department of Cooperatives, Department of Industry and Commerce, the Government of Gunungpati Sub district in accelerating the acquisition of IPRs. Synergy is the willingness to perform an equal partnership in obtaining the realization of the goal. Synergy that is intended in this research is a form of cooperation between the parties which are deemed to be capable in accelerating the acquisition of IPRs on the potential SMEs in Gunungpati-Semarang. Therefore, the institution that is possible is LP2M Unnes' IPR Center. Here is the Profile of Unnes' IPR Center. Its vision is as an IPR Center and Legal Aid of LP2M of Semarang State University becomes a center of innovation of information, services, and extracting the qualified IPR (Intellectual Property Rights) potential and legal aid which based on conservation values. The IPR Center and Legal Aid of LP2M of Semarang State University has missions:

1. Stimulating the growth and development of science and technology which are oriented to IPR.
2. Providing services for the academic community and the public to obtain information related to the useful IPR and Technology;
3. Providing services for the academic community and the public for registration, assessment, drafting, and proposing of the findings, trademark, industrial design and other activities related to IPR and science and technology;
4. Growing and developing the abilities of the academic community and society in exploring the superior potential of the regions in proposing the IPR acquisition;
5. Providing legal assistances to the academic community and society based on conservation values;

The Purpose

1. To be a facilitator for researchers and people who need assistances with regard to the intellectual property;
2. To produce benefit products for the community through the application of intellectual property;
3. To market the outcome / products as a source of income of Semarang State University;
4. Marketing the outcome / products as a source of income Semarang State University;
5. to be responsible for the outcome/ products related to the efforts to the violation and / competition which are unlawful.
6. to synergize human potential and the potential of IPR product to be the power of the university through LP2M be Independent;
7. to be a legal advocacy in education, training and community service;
8. to give a mediation for the legal aid to create the welfare of justice;
9. to give legal aid services which does not discriminate by emphasizing the values
10. to give acceleration models in obtaining patent, one of them is by doing a search of the patent documents nationally and internationally with the following procedures:

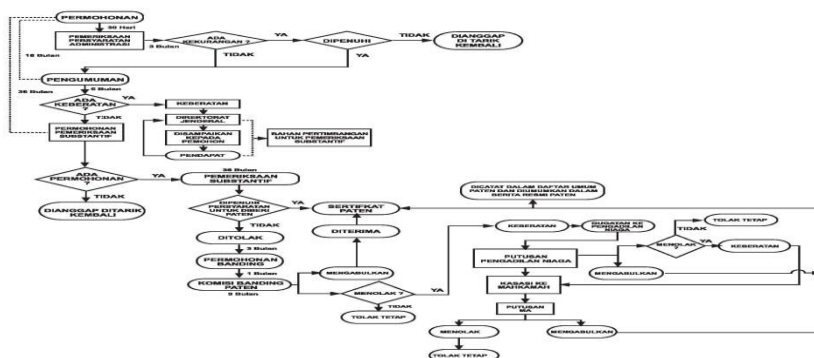
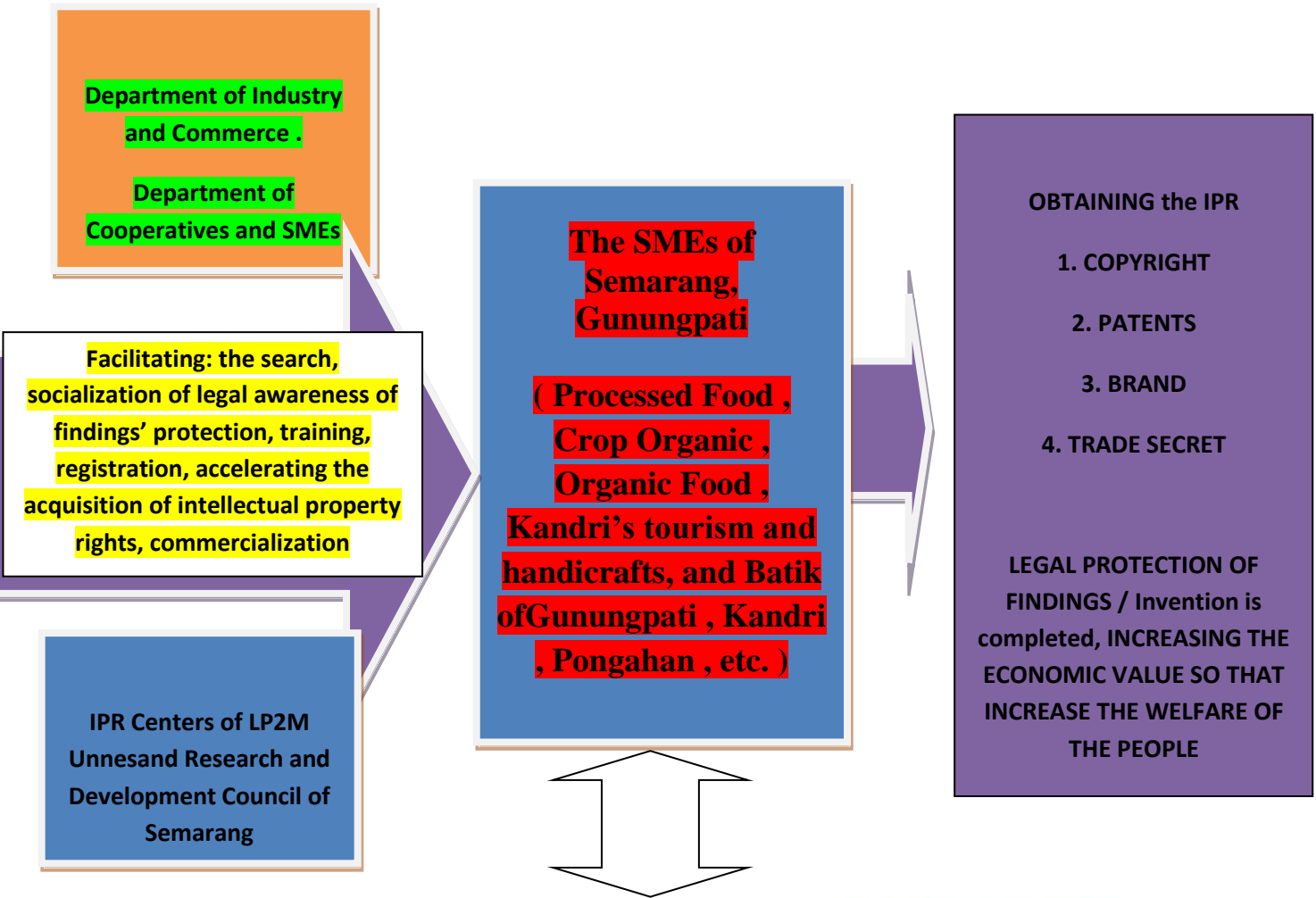


The utilization of patent activity on R and D

1. Patent Document is a source of technical information that is unique, which can be utilized by industry/R&D for the business strategy / research
2. Most of the inventions were first revealed to the public when the patent published.
3. The patent information analysis is used to map the flow of technological developments, past, present, and future predictions, even before the products appear on the market.
4. Looking for information on patent specification document, which is on the patent information database.
5. Information of patent documents in the process of application (published application) or which have been given (granted/issued) patent.



The model that is recommended in accelerating the acquisition of IPRs on SMEs in Semarang, Gunungpati is:



2. The Constraints in Accelerating the Acquisition of IPRs In Micro, Small and Medium Enterprises (SMEs) in Semarang, Central Java.

The results of data analysis of the constraints of the acceleration in obtaining the IPRs on the SMEs in Gunungpati, Semarang were basically divided into two: internal and external. Internal factors were the legislations factor and people's culture who do not realize the legal protections. External factors were the lack of synergy between the relevant institutions to have goodwill to assist the SMEs in the acquisition of intellectual property rights by local governments, related agencies and existing IPR centers; and the state does not guarantee the commercialization of intellectual property rights that exist so that it becomes unproductive even be counter-productive from the *dasa*(ten) values of IPR for the public welfare. This means that the acquired IPR should be the improving of the quality and economic value because there is no commercialization which makes the society shackled to use it.

E. Conclusion

The results showed the following conclusions:

1. Acceleration models on the acquisition of IPR on micro, small and medium enterprises (SMEs) in Semarang, Central Java is through legal awareness of the importance of law protection of the SMEs' findings which further it synergizes with the District Government of Gunungpati and UNNES LP2M IPR Center and Research and Development Council's IPR Center of Semarang along with the Department of Cooperatives SMEs and Department of Industry and Commerce. The acceleration models allow the establishment of a productive partnership that is able to realize an increasing of the social welfare in Gunungpati. Gunungpati SMEs are in the form of processed foods, organic horticultural, handicrafts and tourism, Kandri Batik, GunungpatiBatik. They have high potential IPR and need assistances from the Centers of IPR and related agencies.
2. The results of data collection on the constraints of acceleration in obtaining the IPR for SMEs in Gunungpati, Semarang are basically divided into two internal and external. Internal factors are legislation factor and people's culture who do not realize the legal protection. External factors are the lack of synergy between the relevant institutions to have goodwill in assisting the SMEs to acquire the intellectual property rights by the local governments, related agencies and existing IPR centers; and the state does not guarantee the commercialization of intellectual property rights that exist so that it becomes unproductive even be counter-productive from the *dasa*(ten) values of IPR for the public welfare. This means that the acquired IPR should be improvement of the quality and economic value because there is no commercialization which makes the society shackled to use it. These constraints make the SMEs in Gunungpati have not gained the IPRs (patents, copyrights, Trademark and Trade Secret).

Recommendations as constructive suggestions that should be implemented, among others:

1. Acceleration models on the acquisition of IPR on micro, small and medium enterprises (SMEs) in Semarang, Central Java through legal awareness of the importance of the law protection of findings should immediately be implemented by legal awareness with the participation of agencies and IPR Centers. The real form is through community service activities related to socialization, training and even assistance in the form of facilitation of IPR registration. Facilitating starts from search, identification, preparation and registration of documents to accelerate the acquisition of even commercialization. Immediately do productive cooperation in the form of synergy with the District Government of Gunungpati and UNNES LP2M & Research and Development Council of Semarang's IPR Centers along with the Department of Cooperatives SMEs and Department of Industry and Commerce.
2. The constraints of acceleration in obtaining IPR for the SMEs in Gunungpati, Semarang. There are internal and external factors which have to be overcome by reform the mindset of the SMEs' community in Gunungpati to be aware of legal protection for their findings. The state is suggested to give a review in the form of harmonization, the revision of relevant legislations which should be based on the needs of the community of legal protection and the increasing of people's welfare. Commercialization is the state's obligation to create a forum that is able to accelerate the commercialization of intellectual property rights which are acquired by the SMEs.

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