

Legal protection of intellectual property rights in the field of trademarks registered in Indonesia

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KEYWORDS

Legal Protection

Registered Trademark

ABSTRACT Legal protection of trademark rights in Indonesia in implementing the TRIPs agreement based on Law No. 20 of 2016 concerning Trademarks and Geographical Indications. The research aims to analyse the forms of legal protection for registered trademarks in Indonesia and how the government attempts to prevent the emergence of trademark counterfeiting. The scope of research concerns the legal protection of trademark rights in Indonesia. The research method uses normative qualitative research methods. Research results show that the significance of trademarks in discerning the origin of high-quality products becomes more pronounced. This serves to deter imitation or unauthorised utilisation of trademarks. The law is a deliberate set of rules created by society to foster orderly, safe, and peaceful living. As for the conclusion, to secure legal protection, start by applying for trademark registration. If it's discovered that the registered trademark belongs to someone else, the necessary legal step is to initiate a lawsuit to cancel the registered trademark. The development of legal protection for trademark rights is on the rise due to rapid economic growth, resulting in numerous imitations by irresponsible individuals.

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1. INTRODUCTION

Indonesia's rapid development of technology has had a significant impact on various aspects of development. (Mintar-sih et al., 2016). With the surge in international trade fostering a globalised market characterised by free trade, the need for an efficient legal protection framework in Intellectual Property Rights (IPR) becomes ever more crucial (Ritawati et al., 2023). This significance is evident in how legal safeguards in the realm of IPR can enhance Indonesia's standing in global forums. Domestically, it contributes to improving the quality, creativity, and innovation across various sectors of society, fostering technology and knowledge transfer, broadening IPR awareness, stimulating foreign investments, and safeguarding consumer interests, among other benefits.

Trademarks have historically served as identifiers for distinguishing the goods and services of a company from those of similar entities or as symbols representing the products they endorse. A trademark holds significant value or creates a positive impression when the associated product satisfies the needs or desires of its consumers. This economic value within the industrial sphere is recognised in Presidential Decree No. 24 of 1979, State Gazette No.15 of 1979, which pertains to the ratification of the Convention Establishing the World Intellectual Property Organisation

and the Paris Convention for the Protection of Industrial Property.

One of the Intellectual Property Rights that has an important role in improving industry and trade is the right to a trademark that has received legal protection. The owner of a registered trademark has a special right to use it or give permission to other persons or legal entities to use their trademark. The owner of a registered trademark obtains privileges that are enforceable under the law to determine who may and who is prohibited from utilising their registered trademark.

In its position to introduce a company's products, the trademark has a very important role for the owner of a product. This is due to the function of the trademark itself to distinguish one good and/or service from other goods and/or services that have similar criteria in the segment of similar goods and/or services.

Having a trademark means that one of the marketing strategies (marketing strategy) has been applied, namely the product development strategy (product development) to the user community (user), where the position of a trademark is influenced by whether or not the quality of the goods is concerned. So the trademark will always be sought if the product or service that uses the trademark has good quality and characteristics that can be used to create purchasing power (Budiman, 2019).

Trademarks are part of IPRs that cross borders. Everywhere, there are efforts to provide greater protection, especially for developing countries, such as The United States and other developed countries in Europe who want the protection of IPR from their citizens by other countries, so that the flow of technology invention of copyrights and trademarks that are well known in the field of trade, which has gained "goodwill" carefully with the sacrifice of a lot of cost and energy can be protected reasonably by other countries (Gautama & Winata, 1993).

In conjunction with the trademark, it certainly can not be separated from the possibility of civil disputes, criminal and Administrative courts (PTUN), so that it can not be separated from the judicial institutions, namely the general court, commercial court and arbitration institutions or other mediators. Thus, the public needs to understand how the settlement can be done in legal protection, institutions that regulate, and sanctions to protect the rights of licensees, which becomes very important in addressing the forms of infringement in the field of trademark. Therefore, the role of law enforcement is very important in providing adequate and proper legal protection.

In many cases, irresponsible imitation of trademarks for similar goods not only harms the legitimate trademark owner but also has negative consequences for the general public, especially consumers. This fraudulent behaviour creates confusion about the origin of goods or businesses, tarnishing the reputation of genuine trademark owners and deceiving consumers about product quality. Therefore, it is essential to address trademark issues effectively to protect both consumers and lawful trademark holders (Siahan, 2005).

With the development of the business world in various fields, especially in the field of trade, where an item to be recognised must have its trademark. This trademark shows the difference between each good and other similar goods. According to Law No. 20 of 2016 concerning Trademarks and Geographical Indications (hereinafter referred to as the Indonesian Trademark Law), in Article 1 Number 2, it is said that Trademarks are marks used on goods traded by a person or several persons jointly or legal entities to distinguish them from other similar goods (Fauzan, 2012).

Nevertheless, trademarked goods are still imitated and falsified by irresponsible parties to seek their own or group profits. With the rise of the business world, trademarks whose trademark rights have been registered legally can still be falsified. Therefore, the extent of criminal sanctions that can be applied against counterfeiters of well-known trademarks is limited by the existing legislation at this time.

Counterfeiting of branded goods is carried out by the perpetrator by producing branded goods that have been registered, which are then marketed and traded in the free market. The counterfeited goods in the market are much cheaper than the original goods.

Thus, it is very detrimental to the trademark holder, because the trademark is falsified, including the state, because the goods do not pay taxes, and the public itself does not understand which goods are genuine or counterfeit, because the quality of the goods is different and physically similar (Iqbal & Nugroho, 2021). Mass-produced counterfeit trademarks often closely resemble the originals at a glance, potentially leading consumers to believe they are purchasing genuine items, despite differences in quality.

This is because obtaining the goods or materials needed for counterfeiting is very easy in the market, and even these materials can be ordered by imitating the original trademark with existing methods or techniques.

Therefore, some of the problems that will be examined in this paper are as follows:

1. How is the legal protection of registered trademarks in Indonesia based on Law No. 20 of 2016 on Trademarks and Geographical Indications?
2. What is the International Role in Preventing the Emergence of Trademark Counterfeiting in the Implementation of TRIPs?

2. THEORETICAL AND CONCEPTUAL FRAMEWORK

Trademarks, as one of the legal systems in intellectual property rights, certainly have a very high historical and economic value. Based on the theory of natural law, a creator has the moral right to enjoy the results of his creation, including the benefits generated by his intellect (Sembiring, 2023). Thomas Aquinas, a leading figure in natural law theory, asserted that natural law is governed by reason and applies exclusively to rational beings (Hasibuan, 2003).

Natural law, being rational, implies the participation of rational beings in eternal law. Aquinas further posited that the right to ownership is a matter left to the state, as it is deemed the appropriate entity to regulate social affairs, signifying that private property rights serve a societal purpose.

Two theories can underlie the protection of intellectual property rights, namely, the theory of rewards and the theory of public benefit. These two theories cannot be separated from trademark protection. The theory of reward asserts that creators or inventors who deserve protection should be rewarded appropriately for their efforts in recognition of their achievements. The theory of public benefit, also known as the theory of economic growth stimulus, pertains to the protection of a trademark within the Intellectual Property Rights framework, emphasising that trademarks serve as instruments for fostering economic development. The overarching objective of establishing an effective Intellectual Property Rights protection system is to promote economic growth (Muhammad, 2001).

Researchers use the legal system theory because the evolution of such protection is inherently linked to the existing legal framework, and legal protection forms the core of the legal system. Drawing from Friedman's theory on the legal system, which comprises three key elements—structure, substance, and legal culture—the development of law is based on these foundational components (Friedman, 1975; ?).

The structural components in law protection are intricately linked to the legislative body, the House of Representatives, and institutions tasked with trademark protection, such as the Directorate of Trademark and the Directorate General of Intellectual Property Rights within the Ministry of Law and Human Rights of the Republic of Indonesia. These entities work collaboratively to address and resolve issues arising in the enforcement of trademark laws in Indonesia, particularly concerning compliance with the TRIPs Agreement to bolster globalisation and free trade (Kesowo, 1998).

The substantive elements in question are existing regulations, norms, and rules regarding human behaviour commonly known as applicable law. Meanwhile, the legal culture intended by Friedman in the theory of the legal system is the attitude of the community towards the law and the legal system of values, ideas, and expectations of the community about the law. In this study, researchers only limit the structural and substance aspects of the legal system theory.

In the opinion of Todung Mulya Lubis, the trademark is a sign that in itself contains sufficient distinguishing power (capable of distinguishing) from other similar goods; if there is no distinguishing feature, then it may not be called a trademark. In the opinion of Ita Gambiro, a Trademark is a sign to designate who is responsible for the goods of the trademark sold to the public (Gambiro, 1993).

According to Soekardono's opinion, which states that what is meant by a Trademark is a sign (Javanese: characteristic or *tengger*) with the name of a particular item, where necessary, also immortalised with similar goods made or traded by people. Soerjono Soekanto suggests that law enforcement involves aligning the values outlined in stable and visible regulations with behavioural attitudes, serving as the culmination of value elaboration. This process aims to establish, uphold, and sustain peaceful relationships in society (Soekanto, 2021).

In analysing the problems in this study, conceptually, the researcher uses several basic regulations that are both in force in Indonesia and internationally. For this reason, in terms of regulations, the researcher can provide the following:

The 1945 Constitution states that Indonesia is a State of law, and Articles 5, 20, and 33 of the 1945 Constitution regulate the formation of laws and social welfare. As stated in the 1945 Constitution, the 1945 Constitution requires the creation of public welfare and legal guarantees for every citizen. (Articles 5, 20, and 33 of the 1945 Constitution) (Undang-Undang Dasar Negara Republik Indonesia, 1945).

Trademark Law No. 15 of 2001, With the consideration of maintaining healthy business competition and in line with the development of globalisation, it is necessary to regulate trademarks in the rules and regulations that are increasingly felt to have an increasingly important role (Undang-Undang, 2016).

Trademarks are symbols that can take the form of images, names, words, letters, numbers, colour combinations, or combinations thereof. They possess the ability to distinguish and are utilised in trade or service activities. Trademarks are utilized on goods traded by individuals or legal entities to differentiate them from similar goods (Tatawu, 2022). Service marks are symbols utilised on services traded by individuals or legal entities to differentiate them from similar services. A collective mark, on the other hand, is a symbol used on goods or services with identical characteristics traded jointly by multiple individuals or legal entities to distinguish them from registered goods or services, as defined in Indonesian Trademark Law (Syahputra & Siregar, 2024).

Trademark Rights are special rights granted by the state to the owner of a registered trademark in the public register of trademarks for a certain period to use the trademark itself or permit a person or several persons jointly or a legal entity to use it.

Trademark infringement is the unauthorised use of a mark that resembles the mark of a legitimate owner, including trademarks, service marks, collectable marks, and trademark certificates, by creating a confusing equation for consumers. (Hasibuan, 2003). A well-known trademark is a brand that is a symbol of pride that consumers can rely upon, even though consumers do not know or realise who owns the trademark.

3. RESEARCH METHODS

This study utilises the Normative Juridical method alongside qualitative research approaches. The Normative Juridical method involves referencing legal norms found in laws, court decisions, and societal norms, while qualitative methods are employed to describe and analyse the practical implementation of legal principles (Mamudji, 2005).

This research is descriptive and analytical, by describing the legislation in force and associated with legal theories, in the practical implementation related to the problems to be studied. This approach will also elucidate and demonstrate the realities that arise as a result of applying the legislation and legal principles associated with legal theories in addressing trademark protection matters in Indonesia (Mamudji, 2005).

Data is gathered from primary and secondary sources. Primary data is obtained directly from the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights. Secondary data includes official documents, reports, laws, and regulations. Primary legal materials comprise binding documents like constitutional amendments and trademark laws, while secondary legal materials offer explanations and analyses, such as literature and legal journals. Tertiary legal materials provide supplementary guidance, such as dictionaries and legal reference materials (Mustomi, 2017).

4. RESULT AND DISCUSSION

4.0.1 Legal Protection of Trademarks Registered in Indonesia

The need for legal protection of trademark rights is increasing in connection with the rapid pace of the economy, giving rise to many imitations by irresponsible people. If the world of trade is more advanced, the transparency tools are getting better, and also the number of promotional tools is making the marketing area more widespread, then such circumstances increase the importance of a brand's meaning to distinguish the origin of quality products (Balik et al., 2023)

The law is a rule deliberately created by the community to achieve life in an orderly, safe, and peaceful manner. Consequently, community life is intricately intertwined with the law, serving as a benchmark for societal behaviour and facilitating social interactions during conflict.

However, the law doesn't always function as expected by society, particularly written laws, which are often static and formulated based on past circumstances. Yet, societal dynamics continually evolve, driven by the desire for prosperity. Hence, the law must adapt to these changes to ensure people feel safe and peaceful, without resorting to forced implementation.

Under the Declarative system, in the event of a trademark dispute, ownership typically favours the party prov-

ing legitimate market usage, regardless of registration status. However, this system poses numerous challenges and offers little benefit to the trade world. It lacks legal certainty for registered trademark holders and permits unauthorised registrations. This loophole allows individuals to register well-known trademarks, even if they're already in use beyond Indonesia's borders (Maulana, 2000).

For the owner of a well-known trademark, who has invested considerable effort in building and promoting their brand, to market their product in the territory of the Republic of Indonesia, they must initially address the issue of a registered trademark that lacks entitlement. This involves filing a lawsuit for the cancellation of the registered trademark through the Court, which is subject to a grace period of 9 months (Darwance et al., 2020)

Along with the development of an increasingly advanced economy, Act No. 21 of 1961 on company marks and trademarks turned out to be less up-to-date. As a result, there are many trademark violations, for Act No. 21 of 1961 needs to be replaced with a new trademark, Act No. 19 of 1992 on Trademarks.

It is generally accepted that a mark can be considered a trademark if it meets the absolute requirements of sufficient distinguishing power, is not too simple (for example, consists of only one letter in the form of a period, comma, question mark, or exclamation mark), and is not too difficult. Trademarks, both service marks and trademarks, have the power to distinguish one company's products from those of other companies.

According to the provisions of Article 1, number 1 of Law No. 20 of Indonesian Trademark Law, trademarks encompass various forms such as images, names, words, letters, numbers, colour combinations, or their combinations, possessing distinctiveness and utilised in commercial activities involving goods or services. These signs are either integrated into the goods, their packaging, or the services provided. Article 2 of Indonesian Trademark Law delineates two types of trademarks: (1) Trademarks and (2) Service brands (Suryansyah, 2019)

Trademarks refer to marks utilised on goods traded by an individual or group of individuals or legal entities to differentiate them from similar goods. (Article 1, point 2 of Indonesian Trademark Law). Similarly, service marks denote marks used on services traded by individuals or legal entities to distinguish them from similar services. (Article 1 point 3 of Indonesian Trademark Law).

Both trademarks are regulated in one Act, and the protection is not differentiated by either services or trade. According to Article 6(1), trademark and service mark registration applications may be denied if they bear similarities, either in essence or entirely, to marks already registered in the General Register for similar goods or services (General Register of Trademarks).

Hence, trademarks serve as identifiers of the origin of goods and services, connecting them with their respective producers. This underscores the guarantee of individual identity and the reputation of goods and services when traded.

Trademarks provide a guarantee of the value or quality of the goods and services concerned. It is not only useful for producers of trademark owners, but also provides protection and quality assurance of goods to producers. Trademarks also serve as a means of trade promotion and advertising for producers or entrepreneurs

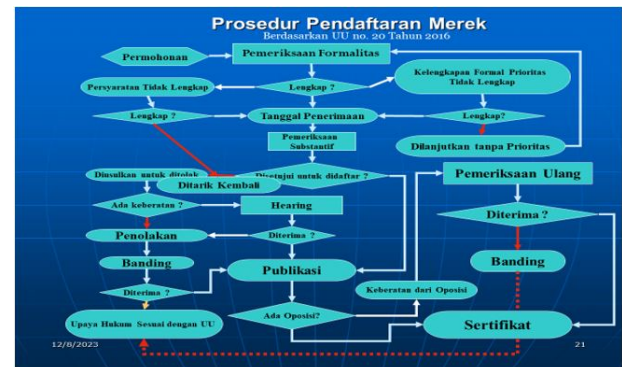


Figure 1. Trademark Registration Procedure

who trade healthily and benefit all parties. This has been recognised by the Commercial Advisory Foundation in Indonesia (CAFI), which states that the problem of trademarks in Indonesia plays an important role in the economic world, especially with the development of industrial enterprises in the framework of capital investment. (Djumhana & Djubaedillah, 2003)

For every person or legal entity that wants to use a trademark, for the trademark to be accepted and used, there are absolute requirements that must be met, the mark used as a trademark must have enough distinguishing power of the production of a company, or goods that trade production of a person, with the production of goods traded by others, the trademark must be registered to obtain legal certainty.

According to Article 5 of Indonesian Trademark Law, a trademark cannot be registered if it contains one of the following elements:

1. Contrary to prevailing laws and regulations, religious morality, decency, or public order (Article 5 letter a). Signs that are contrary to the prevailing laws and regulations, religious morality, decency, and public order cannot be accepted as marks. In the trademark, there should be no paintings or words that contradict religious morality, decency, and public order. It is not possible to include images that are unacceptable from a religious or ruling point of view, or the point of view of decency, politics, and public order. Paintings that do not meet moral norms also cannot be used as a trademark, and words that can offend feelings, decency, tranquillity, or religion, both in terms of the general public and a certain group of people (Gautama & Winata, 1993)
2. Does not have distinguishing power (Article 5 letter b). Marks that do not have distinguishing power, or that are considered to lack strong distinguishing power/are too simple, so they cannot be considered as marks. Example: a line mark, a dot mark, or something too difficult, like a picture of a tangled thread, so that the mark is not clear.
3. Has become public property (Article 5 letter c). Signs that have been widely and freely used among the public are no longer sufficient to be used as identification for the personal needs of certain people. For example, the sign is a painting of a human skull with crossbones placed underneath, which is generally known and also internationally known as a sign of danger of poison, or

a painting of a clenched hand and thumb up, which is generally known as a sign of praise or a thumbs-up. Then it can also be considered as public property. For example, the words Pancasila and so on.

4. A description of or relating to the goods or services for which registration is sought (Article 5 letter d). What is meant by a description related to the goods or services for which registration is requested is such as a picture of coffee for the type of coffee product, sweet/salty for the type of soy sauce it is intended that consumers are not mistaken, if it is justified there is a possibility that others will use the same trademark (Saidin, 1995),

According to Soegondo Soemodiredjo, around the world, there are four systems of trademark registration, namely (Notodisoerjo, 1982):

1. Registration without prior examination of the mark.
According to this system, the trademark applied for registration is immediately registered as long as the application requirements have been met, including payment of application, examination, and registration fees.
2. Registration with prior examination of the mark.
Countries such as the United States, the United Kingdom, Germany, and Japan organise prior examinations. Before registering a mark in the public register of its office, it is first announced in the Trade Journal/ The trademark registry office for a certain period, which provides an opportunity for third parties to file objections. If no objections are filed within the given period, the registration is granted.
3. Registration with a temporary Announcement
4. Registration with advance notice of the existence of a prior registered mark on behalf of another person that is the same or in its entirety. (Suryodiningrat, 1984)

A trademark can only be registered based on a request submitted by the owner or their attorney. In trademark registration, there are 2 two kinds of registration systems, namely:

1. Declarative System (Passive).

Under this system, registration does not give rise to rights in the mark, but merely creates a legal presumption that the registrant is deemed to be the owner or entitled party of the mark and that rights attach to the first user.

In the declarative system (positive), the registration function only facilitates proving that he is considered the rightful owner because of the first use. Thus, registration is not a necessity and is not an absolute requirement for the trademark owner to register their trademark. Thus, the declarative system has a weakness that does not guarantee legal certainty for the registrant.

2. Constitutive (Active) System.

In this system, the one who is entitled to a mark is the one who registers the mark. This registration gives rise to rights to the registered mark, and the only one

who is entitled to the mark, and third parties must respect the rights of the registrant as absolute rights.

Trademark registration aims to obtain legal certainty and legal protection for trademark rights (Mustomi, 2017). Trademark protection is contingent upon registration; therefore, registration is a prerequisite for obtaining rights to a trademark. Without registration, there is no entitlement to a trademark, resulting in a lack of legal protection (Sembiring et al., 2022).

3. However, once it has been registered and a trademark certificate is obtained, the trademark is safeguarded, preventing others from using the same mark. In other words, the right has been deemed a "special right" or "exclusive right". This confers upon the registered owner an exclusive right, allowing only them to utilise the trademark and grant permission to others through a licensing system. Unauthorised usage without meeting these requirements is prohibited. If not registered, then there is no protection at all because there is no right to the trademark. Failure to register results in no protection whatsoever, as no trademark right has been established (?).

Indonesia's initial trademark law, Law No. 21/1961, adopted a declarative system, but this approach is deemed outdated and incompatible with current circumstances. As a country based on law, prioritising legal certainty, it's fitting for Indonesia to transition from the declarative system outlined in Law No. 21/1961 to a constitutive system, as established by Law No. 19/1992. This shift ensures greater legal certainty, shielding registered trademark owners from challenges by others. Under the constitutive system, trademark registration guarantees legal protection. However, Law No. 19/1992, despite its constitutive framework, primarily safeguards trademark owners acting in good faith. Yet, it still falls short in providing adequate services and convenience, particularly for owners of well-known trademarks. Subsequent amendments, such as Law No. 14/1997, aimed to address shortcomings and align with international agreements. Ultimately, these efforts culminated in the enactment of Law No. 20/2016 on Trademarks and Geographical Indications, currently in force, aimed at bridging gaps and better serving the community.

The owner of an unregistered trademark can initiate legal action to cancel a registered trademark held by another party. This action can be taken after applying for registration with the Directorate General, citing the grounds specified in Article 4, Article 5, or Article 6 of the lawsuit filed with the Commercial Court. If either the plaintiff or defendant resides outside the territory of the Republic of Indonesia, the lawsuit must be filed with the Commercial Court in Jakarta, as stated in Article 68 of Indonesian Trademark Law.

4.1 The Role of the International Community in Preventing Trademark Counterfeiting

Nowadays, IPR issues are no longer the concern of one country alone but have become the concern of the international community. Since the signing of the Agreement Establishing the World Trade Organisation (WTO), IPR pro-

tection internationally has become stricter, and its enforcement can be carried out through a body under the WTO system called the Dispute Settlement Body (DSB).

To realise IPR protection that is efficient, effective, and beneficial to all WTO members, cooperation between WTO members is needed both regionally and internationally. For example, in ASEAN countries, a forum has been established to discuss IPR protection issues.

Likewise, the Asia Pacific region has formed a forum consisting of experts in the field of IPR to improve IPR protection by the protection standards set by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) (Mukherjee, 2023). The main objectives of the TRIPs agreement, as stated in its preamble are: (The World Trade Organization's "Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade", taking into account the need to promote effective and adequate protection of IPRs, and to ensure that IPR measures and procedures do not themselves become barriers to legitimate trade (Lertdhamtewe, 2015), To prevent trademark counterfeiting, TRIPs is intended to encourage a more conducive climate for trade and investment by:

1. Establishing minimum standards of IPR protection in the national legal systems of WTO member countries, for example, requires that each WTO member protect computer software under the Copyright system;
2. Setting standards for IPR administration and enforcement, for example, requires that each member establish a system for confiscation of pirated and counterfeit goods by customs officials and other remedies for IPR violators;
3. Creating a transparent mechanism requires each member to provide details of its national trademark law and system, and answer questions about its IPR system;
4. Creating an effective and predictable dispute settlement system to resolve IPR disputes among WTO members has considered disputes over patent protection in the pharmaceutical sector, exceptions to copyright protection, and the length of patent protection.
5. Enable mechanisms that ensure that the national IPR system contains widely accepted public policy objectives. For example, suppressing unfair business competition, facilitating the process of technology transfer, and improving public health and environmental preservation.
6. Provide mechanisms to deal with abuse of the IPR system, for example, measures to prevent the misuse of the enforcement mechanism of Trademark Rights to harm the interests of competitors, and to prevent unfair licensing practices (Lindsey et al., 2021)

TRIPs consists of a preamble and seven other sections, which cover not only the substantive standards of IPRs, but also the underlying principles that apply to the trademark

system, as well as how those rights are implemented, administered, and enforced to achieve the balance of interests for which TRIPs was established.

Article 7, therefore, contains important insights into the scope of IPRs, the exceptions and limitations to those rights, and how those rights are utilised and managed. This article has a potential role in interpreting the more specific articles on TRIPs (e.g. the articles in part II governing exceptions and limitations).

It is also useful to remind national policymakers that the primary purpose of an IPR system is not merely to create the legal basis for such rights, but also to grant, administer, and enforce them.

To play an international role in preventing counterfeiting of trademarks (part of IPR), it is necessary to organise regional cooperation activities. The main targets for regional cooperation in which Indonesia takes part are the ASEAN Framework Agreement and APEC cooperation in the Osaka work agenda. Regional cooperation in the field of IPR complements the multilateral system in two general ways, namely:

1. Harmonisation of laws and administrative procedures among ASEAN countries based on TRIPs and WTO Agreements.
2. Organise cooperation in the areas of training, inter-authority dialogue, and public and private sector awareness activities on IPR.

Asia Pacific Economic Cooperation, through the Asia Pacific Economic Cooperation (APEC) forum, has an active IPR cooperation program coordinated through the APEC's Intellectual Property Rights Experts Group (IPEG). Unlike TRIPs, which emphasise the establishment and implementation of legal rules, the emphasis in the IPEG process is on voluntary cooperation, the basic interests, and common ownership of the IPR system.

Its focus is on practical implementation issues, including technical assistance with TRIPs implementation and administrative harmonisation. Some of APEC's initiatives include:

1. Practical support for the broad implementation of TRIPs by APEC members.
2. Better and more efficient administration and enforcement of harmonised IPR, supported by higher public awareness and better-trained utilisation of IPR systems in commerce and the public sector.
3. Policy dialogue and information exchange on emerging IPR issues.
4. A practical response to an identified need for streamlined administration. (Lindsey et al., 2006)

At the ASEAN level of cooperation (comprising Brunei Darussalam, Philippines, Indonesia, Cambodia, Laos, Malaysia, Myanmar, Thailand, Singapore, and Vietnam), it has an active cooperation program in the field of IPR. In December 1995, Indonesia joined with its ASEAN partners to establish the ASEAN Framework Agreement on IPR cooperation. This agreement has established a formalised process of cooperation among ASEAN countries with objectives including (Hafez, 2004):

1. Strengthen and promote cooperation in the field of IPR, involving government agencies, the private sector and professional organisations;
2. Deepen cooperation arrangements among ASEAN members in the field of IPR, enhance ASEAN solidarity in promoting technological innovation, technology transfer and dissemination;
3. Explore the possibility of establishing an ASEAN patent system, including an ASEAN patent office;
4. Explore the possibility of establishing an ASEAN Trademark system, including an ASEAN Trademark office; and
5. Holding consultations on the development of IPR rules in ASEAN countries to create ASEAN standards and practices that are consistent with international standards (Lindsey et al., 2006, p. 54).

The ASEAN Framework Agreement on IPR Cooperation aims to strengthen cooperation among ASEAN member states in the field of intellectual property rights (IPR). It involves collaboration among government agencies, the private sector, and professional organisations to promote technological innovation, technology transfer, and information dissemination. The agreement also seeks to explore the possibility of establishing an ASEAN patent system and an ASEAN trademark system, including respective offices for patents and trademarks within ASEAN.

Furthermore, the agreement aims to hold consultations on the development of IPR rules in ASEAN countries to establish ASEAN standards and practices that align with international standards. This underscores ASEAN's commitment to enhancing the protection and effective utilisation of intellectual property rights across the region.

5. CONCLUSION

5.1 Conclusion

1. Legal protection of trademark rights in Indonesia based on Law No. 20 of 2016 on Trademarks and Geographical Indications.
Legal protection of trademark rights is growing in connection with the rapid pace of the economy, leading to a proliferation of unauthorised imitation by irresponsible individuals. As the world of trade advances and transparency tools improve, along with the increasing number of promotional tools, the marketing landscape expands. Consequently, the significance of trademarks in distinguishing product quality and origin becomes even more critical.
2. The Role of the International Community to Prevent Trademark Counterfeiting in the Implementation of TRIPs

To play an international role in preventing counterfeiting of trademarks (part of IPR), it is necessary to organise regional cooperation activities. The main targets for regional cooperation in which Indonesia takes part are the ASEAN Framework Agreement and APEC cooperation in the Osaka work agenda. Regional cooperation in the field of IPR complements the multilateral system in two general ways, namely, by harmonising laws and administrative procedures among ASEAN

countries based on TRIPs and the WTO Agreement. Cooperation in the areas of training, inter-authority dialogue, and public and private sector awareness activities on IPR. Asia Pacific Economic Cooperation (APEC), through the APEC Forum, has an active cooperation program in the field of IPR coordinated through the APEC's Intellectual Property Rights Experts Group (IPEG). Unlike TRIPs, which emphasise the establishment and implementation of legal rules, the emphasis in the IPEG process is on voluntary cooperation, the basic interests, and common ownership of the IPR system.

5.2 Suggestion

1. There is a need to increase the knowledge and quality of law enforcement (human resources) to better understand and comprehend the applicable provisions, especially the provisions that are the result of ratification of international treaties related to Intellectual Property Rights. The government, as the legislator, must immediately prepare clear rules of the game so that the provisions in the Act can run optimally and that different interpretations will not arise among law enforcers.
2. For well-known trademarks that have been registered by applicants who have acted in bad faith and are not used in trade within the period as stipulated in Article 61 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, if sufficient evidence has been found, the Directorate General of IPR must proactively carry out deletion. Facilitate the registration of trademarks, especially for domestic trademarks, so as not to be hijacked by foreign parties.

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