

# IP LAW ENFORCEMENT ISSUES IN INDONESIA FROM A PRACTICAL PERSPECTIVE\*

By: Cita Citrawinda Noerhadi\*\*

## I. Introduction

The government of Indonesia has proven that it takes IP crimes seriously by devoting resources to a National Task Force, but it is still in need of strong cooperation with IP owners/enterprises, IP stake holders, IP Associations, and close coordination between agencies (Court, Public Prosecutor, Customs, Supreme Court and Police). Strong IPR protection is crucial to protecting and stimulating business and fostering a creative economy. Counterfeit products in the automotive industry (engine parts, tires, disc brake pads, engine components, belts, brake fluid, oil, and filters) are a threat to public safety.

The topic that will be discussed is the legal system from IP protection to enforcement and implementation. As the TRIPs recognizes the importance of effective IPR border measures, how Customs control the importation of infringed goods and Customs *ex officio* enforcement; therefore, the effectiveness of law enforcement and border measures also depend on a functioning judiciary and close coordination between agencies (Customs, Supreme Court and Police). This close coordination is not functioning optimally today and the Government has not been successful in tackling this. Lack of proper and effective co-ordination and co-operation between government agencies is a problem for enforcing IPR, particularly since it involves close and timely cooperation between many instances. The establishment of the National Team of IPR Piracy Prevention should help remedy this situation.

Indonesia has acceptable legal frameworks largely in line with WTO - TRIPs Agreement that contain strong penalties for infringements, although some issues of concern remain. The legal frameworks are as follow:

1. Law No. 17 of 2006 concerning the Amendment of Law No. 10 of 1995 concerning Customs<sup>1</sup>
2. Law No. 19 of 2002 concerning Copyright<sup>2</sup>
3. Law No. 15 of 2001 concerning Trade Marks<sup>3</sup>
4. Law No. 14 of 2001 concerning Patent<sup>4</sup>
5. Law No. 32 of 2000 concerning Layout of Integrated Circuits<sup>5</sup>
6. Law No. 31 of 2000 concerning Industrial Design<sup>6</sup>

---

\* Art. presented in the 9<sup>th</sup> Federation of Asian Motorcycle Industries (FAMI) IPR Symposium 2013 with topic "IP Law Enforcement in Indonesia: Latest Development & Current Issues" held on 25 February 2013 in Jakarta.

\*\* Cita Citrawinda Noerhadi is IP Consultant and Mediator at *Law Office CITA CITRAWINDA NOERHADI & ASSOCIATES*, a Lecturer at the Post Graduate Program of Faculty of Law, University of Indonesia, Jakarta, and the President of the Indonesian Group of *Association Internationale pour la Protection de la Propriete Intellectuelle* (AIPPI)

<sup>1</sup> Took effect on 15 November 2006, State Gazette of the Republic of Indonesia of 2006 No. 93.

<sup>2</sup> Took effect on 29 July 2002, State Gazette of the Republic of Indonesia of 2002 No. 85.

<sup>3</sup> Took effect on 1 August 2001, State Gazette of the Republic of Indonesia of 2001 No. 110.

<sup>4</sup> Took effect on 1 August 2001, State Gazette of the Republic of Indonesia of 2001 No. 109.

<sup>5</sup> Took effect on 20 December 2000, State Gazette of the Republic of Indonesia of 2000 No. 244.

<sup>6</sup> Took effect on 20 December 2000, State Gazette of the Republic of Indonesia of 2000 No. 243.

7. Law No. 30 of 2000 concerning Trade Secrets<sup>7</sup>
8. Law No. 8 of 1999 concerning Consumer Protection<sup>8</sup>
9. Law No. 5 of 1999 concerning Anti-Monopoly and Unfair Competition<sup>9</sup>
10. The Supreme Court Directive No. 4 of 2012 concerning Temporary Seizure<sup>10</sup>
11. The Supreme Court Directive No. 5 of 2012 concerning Temporary Injunction<sup>11</sup>

## II. Stronger IP Protection

In terms of stronger IP protection in Indonesia, from the policy perspective, there is no weakness or lack of regulation to underlie an action. To ensure effective enforcement of IPR, not only the Police Investigators, but also the Civil Servant's Investigators from DGIPR have authority to investigate in IPR.

In term of law enforcement, the establishment of the new directorate, namely the Directorate of Investigation<sup>12</sup> (under the DGIPR) is one of the realized law enforcement efforts in the field of IPR. A significant role of the Directorate of Investigation is that Civil Servant Investigators<sup>13</sup> from the Directorate of Investigation have the authority to conduct investigations on criminal cases in the field of IP. The process of the investigation under the Directorate of Investigation is more focused due to the uniformity of the whole system and the investigative procedure, data collecting and administration. The Directorate of Investigation has its own duty and function as it works independently under the Directorate General of Intellectual Property Office. Since its establishment in March 2011, until December 2012, the Directorate of Investigation has received 72 cases (see Table 1 and 2).

---

<sup>7</sup> Took effect on 20 December 2000, State Gazette of the Republic of Indonesia of 2000 No. 242.

<sup>8</sup> Took effect on 20 April 1999, State Gazette of the Republic of Indonesia of 1999 No. 42.

<sup>9</sup> Took effect on 5 March 1999, State Gazette of the Republic of Indonesia of 1999 No. 33.

<sup>10</sup> Took effect of 30 July 2012.

<sup>11</sup> Took effect on 30 July 2012.

<sup>12</sup> It was established based on the regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. M.HH-05.OT.01.01 year 2010 concerning the Organization and Procedure of the Ministry of Law and Human Rights on December 31, 2010.

<sup>13</sup> Certain Civil Servants at the Directorate General shall be granted special authority as investigators as referred to in Law No. 8 of 1981 on Criminal Proceedings, to conduct investigations of criminal offenses in the field of IP. The Civil Servant Investigator periodically conduct monitoring of which its main goal is to socialize and to urge or warn toward the manager of the shopping mall not to sell counterfeit products that violate IP in the Indonesian territory.

**Table 1**  
**Statistics Report on IP Infringement (2011 - Dec. 2012)<sup>14</sup>**

No.	Year/ Month	IP Infringement				Total
		Copyright	Patent	Trademarks	Industrial Design	
	2011	2	0	26	6	34
	2012					
1	January	-	1	-	-	1
2	February	2	1	1	-	4
3	March	-	-	-	1	1
4	April	-	-	-	-	
5	May	-	-	2	-	2
6	June	-	-	2	1	3
7	July	-	-	6	-	6
8	August	2	-	1	-	3
9	September	-	-	2	-	2
10	October	1	-	4	3	8
11	November	1	-	3	-	4
12	December	-	-	3	1	4

**Table 2**  
**Status Report on IP Infringement (2011 - 2012)<sup>15</sup>**

IP Infringement	Investigation Process	Evident not found	Notice of Commencement of Investigation to Public Prosecutor	Request for Case Revocation	Total
<b>Copyrights</b>	2	1	1	3	
<b>Trademarks</b>	19	1	4	17	
<b>Industrial Designs</b>	2		1	7	
<b>Patents</b>	1		1		
<b>Total (%)</b>	24 (33%)	2 (3%)	7 (10%)	27 (38%)	72 (100%)

<sup>14</sup> Source: Directorate of Investigation, Directorate General of IPR, January 2013 with a slight modification.

<sup>15</sup> Source: Directorate of Investigation, Directorate General of IPR, January 2013.

The establishment of the Directorate of Investigation has significantly increased activities aimed at combating IPR infringement in Indonesia. The greatest amount of complaint cases reported to the Directorate of Investigation up to November 2011 were about counterfeit automotive spare parts of HONDA trade mark for canvas brakes, water pumps and generators bearing the trade mark HONDA; and screw drivers bearing the trade mark NGK.

On February 1, 2013, the largest raid was conducted in 3 located shops in Plaza Glodok, Hayam Wuruk, Center of Jakarta by the National Team of IPR Piracy Prevention together with a combined team consists of Civil Servants (PPNS) of DGIPR, Team of Politics, law and Security, PPNS team of the region office of Law and Human Rights DKI. 479 sacks and 421 boxes of pirated optical discs (DVD, CD, VCD) weight of 56 tons were raided and brought to the DGIPR office by 15 unit of trucks.<sup>16</sup>

The Directorate of Investigation also handles complaints based on public information concerning an infringement of a simple patent of “Heat Insulators”. Following the complaint, the Directorate of Investigation conducted a raid on the factory site (located in the village of Babakan, near the Sentul International Circuit, West Java) and confiscated 15 aluminum rolls, each measuring 1.5 meters in diameter with a height of 1.2 meters and a molding unit for printing. The team transported the evidence to the Directorate General of IPR Office.<sup>17</sup> Following the above raid, the DGIPR office and Police expect that the public will pay much more attention to the government policy against IPR infringement and the national anti-piracy campaign.

### **A. Strategic Perspective**

The establishment of the National Team of IPR Piracy Prevention by Presidential Decree No. 4 of 2006 on March 27, 2006 (coordinates with the legal institutions for IP law enforcement: Police, Judiciary, Customs, Civil Servant Investigators (PPNS) at the Ministry of Law and Human Rights and other related institutions) to formulate and decide the policy strategy. The national team<sup>18</sup> is directly responsible to the President. The task force has been given a wide range of duties all linked to the tackling of IPR infringements; formulate national policies and measures on how to tackle IPR infringements, study and propose solutions to strategy issues hampering effective enforcement, coordinate socialization and education in the field of IPR to government agencies and the public and foster cooperation at the bilateral, regional and multilateral level in the framework of tackling IPR infringements.

### **B. Police Institution Perspective**

---

<sup>16</sup> See [www.news.detik.com/read/2013/02/01/114719/2158501/10/razia-ditj...3](http://www.news.detik.com/read/2013/02/01/114719/2158501/10/razia-ditj...3), downloaded on February 13, 2013. The suspects/owners of the shops were not at the shops (7 employees would be investigated as witness). The suspect may be subject to punishment, imprisonment of 5 years and/or a fine of at most IDR 500,000,000 and is liable to imprisonment of 7 years and/or a fine of at most IDR 5,000,000,000. See Art. 72.2 and Art. 72.1 of Law No. 19 of 2002 concerning Copyright.

<sup>17</sup> The Directorate General of Intellectual property Rights, Ministry of Law and Human Rights, “Enforcement of Patent Infringement for “Heat Insulator”, March 2012, downloaded from [www.dgip.go.id/penindakan-pelanggaran-paten-insulasi-panas](http://www.dgip.go.id/penindakan-pelanggaran-paten-insulasi-panas) on 12 February 2013.

<sup>18</sup> The team consists of: 1) Minister of Coordination for Politic, law and Defense (Chairman); 2) Minister of Coordination for Economy (Vice-Chairman); Minister of Law and Human Right (Daily Chairman); Minister of Trade (Vice of Daily Chairman); Directorate General of Intellectual Property Right (Secretary); and Members (16 Departments and Non-Departments). The task force consists of three levels: ministerial, executive and staff. All groups meet a few times per year (on staff level monthly) and report their results to the President, showing the strong political back-up these efforts have.

The establishment of a specialized unit of the Directorate of Special Criminal Detectives<sup>19</sup> at the Regional Police Offices whose function, among others is to handle IP Cases, is a fundamental duty at the level of Regional Police under the Chief of Regional Police who is responsible for conducting investigations and specific crime investigations, to coordinating operations and controlling the administration of PPNS investigations in accordance with the provision of the legislation referred to in the Chief of Police Regulation No. 22 of 2010.

### **C. Judicial Level Perspective**

The establishment of a Commercial Court to handle IP civil disputes has already been provided in IP laws, since Trade mark, Patent and other IPR are closely related to the economy and trade; therefore, civil cases should be settled very quickly and in a relatively short time. Except for Trade Secrets, civil disputes are under the competency of the District Court.

IP Law also recognizes arbitration<sup>20</sup> or any other alternative dispute resolution for IPR dispute settlement.

### **D. Customs Enforcement System Perspective**

The government of Indonesia issued 2 (two) Supreme Court Directives on July 30, 2012, namely No. 4 of 2012 concerning Temporary Seizure and No. 5 of 2012 concerning Temporary Injunction. By the issuance of the Supreme Court Directives No. 4 of 2012 and No. 5 of 2012 the government has shown its seriousness in supporting law enforcement. The Supreme Court Directive No. 4 of 2012 regulates the requirements and procedures for the suspension of the release of the imported or exported counterfeit trade mark or pirated copyright goods,<sup>21</sup> by the customs authorities; therefore, the provisions of Art. 54 to Art. 64 of Law No. 17 of 2006 concerning the Amendment of Law No. 10 of 1995 concerning Customs<sup>22</sup> could be applied. Directive No. 5 of 2012 regulates the request for Temporary Injunction;<sup>23</sup> therefore, the Directorate of Customs has legal power to prevent and detain the entry of imported counterfeit

---

<sup>19</sup> Laporan Akuntabilitas Kinerja Instansi Pemerintah Satker Ditreskrimsus Polda Sulteng Tahun 2011, p. 3, downloaded from [www.humas.polri.go.id/.../LAKIP%20DITRESKRIMSUS%20TA%202011](http://www.humas.polri.go.id/.../LAKIP%20DITRESKRIMSUS%20TA%202011) on 6 February 2013.

<sup>20</sup> The Arbitration and Mediation Board for IPR (BAM HKI) established in Jakarta on 21 April 2011 and launched on 19 April 2012 and inaugurated by the Minister of Law and Human Rights of Republic of Indonesia, Dr. Amir Syamsuddin, S.H., M.H. The background on the establishment of this BAM HKI is to accommodate arbitration as the alternative dispute resolution (ADR) method of choice. This board consists of many arbiters from different backgrounds, namely: former judges, former Director of Patents, Copyright and Trademarks, lectures, IP consultants, and former IP examiner in the Directorate General of IP.

<sup>21</sup> See Art. 54 to Art. 64 of Law No. 17 of 2006 concerning the Amendment of Law No. 10 of 1995 concerning Customs which regulates on infringement and export import restriction and control of the goods resulted from IPR infringement.

<sup>22</sup> Cita Citrawinda, "Peraturan Mahkamah Agung No. 4 Tahun 2012 Tentang Perintah Penangguhan Sementara dan No. 5 Tahun 2012 Tentang Penetapan Sementara", *Media HKI* Vol IX/No. 04/Agustus 2012 p. 9. See also Cita Citrawinda, "Kendala Implementasi *Border Measures* dan *Provisional Measures* Perjanjian TRIPs di Indonesia", *Jurnal Hak Kekayaan Intelektual*, Volume 1, No. 1, April 2012 pp. 53-60.

<sup>23</sup> The provisions of Temporary Injunction are stipulated in Art. 49 - Art. 52 of Law No. 31 of 2000 concerning Industrial Design; Art. 125 - Art. 128 of Law No. 14 of 2001 concerning Patents; Art. 85 - Art. 88 of Law No. 15 of 2001 concerning Marks; and Art. 67 - Art. 70 of Law No. 19 of 2002 concerning Copyright.

products into the channels of commerce in the Indonesian territory without waiting for the process of judiciary ends.

In terms of Patent, since the suspension provision in the Customs Law is limited only to the importation of counterfeit trade mark or pirated copyright goods, it will lead to issues in practice. Art. 125 letter (a) of Patent Law No. 14 of 2001 regulates the provisional injunction to prevent the continuation of infringement on the Patent and the rights pertaining to the Patent, particularly to prevent the entry of products allegedly infringing the Patent and the rights pertaining to the Patent into the trade channel, including importation. The issuance of the Supreme Court Directives concerning Temporary Seizure will reduce infringing goods from entering Indonesia, since the customs seizure provisions provide practical solutions to many of the issues commonly faced by copyright and trade mark owners when goods are confiscated at the Indonesian border.

### **III. IP Law Enforcement Issues in Indonesia from a Practical Perspective**

In the prevailing Trade mark Law No. 15 of 2001, there is no protection for Non Traditional Marks, among others: sound, three dimensional marks and holograms, and there are no criminal sanction provisions against those whose criminal conduct threatens public health and safety (trade mark counterfeiting). Therefore, in practice it will impact the effectiveness of law enforcement. Since the draft of the Trade Mark Law has already been finalized, among others, there will be a new criminal provision of strong penalties: 5 (five) years of imprisonment at the longest and/or a fine amounting to Rp. 2.500.000.000 (two billion five hundred million rupiahs) at the most. Once the amendments to the prevailing Trade mark Law come into force, the additional criminal provisions for trade mark infringement will bring trade mark enforcement and deterrent outcomes against counterfeiters (hopefully there will be no more counterfeit products that threaten public health and safety circulated in the market).

In practice, the Judiciary usually imposes the minimum punishment in the case of IPR infringement, and the basis of this decision is not reasonable and not appropriate. Therefore, law enforcement does not run as expected by the IP owner.

The nature of IPR crimes is by complaint (warrants complaint); therefore, actions against IPR infringement (trademark, patent and industrial design) can only be conducted if there is a complaint (warrant complaints) made by the party who suffers; while for copyright piracy, the legal enforcers can take action directly against the pirated copyright.

In practice it might happen that there are different perceptions among investigators and prosecutors when dealing with IPR crimes. For example: in the case of Copyright, according to the prosecutor, the copyright holder should be examined. The Judge is in doubt to decide the case, since Art. 73 (1) of Law No. 19 of 2002 concerning Copyright stipulates that a work or goods resulting from any criminal actions of copyright including the devices used to conduct the actions shall be seized for the State to be destroyed.

In terms of Industrial Design, Art. 25 of TRIPs stipulates that the protection of an independently created industrial design is given to the ornamental or aesthetic aspect of a useful Art., must be new or original; the design should not be dictated by functional considerations and includes the protection of textile designs. Art. 26 of TRIPs governs the right to prevent others from applying

(making, selling or importing) the protected design for commercial products for a period of 10 (ten) years.

Conceptual weakness in the Industrial Design Law is the criteria of “novelty” and similarity of feature. The criteria of “novelty” cause technical and substantive matters. If the case arises, the “novelty” should be examined and proven by referring to the data of use or the sale. The issues of Industrial Design cases in the Commercial Court mostly related to the cancellation of the registered Industrial Design due to not being novel. The very limited or non-availability of related prior art documents related to “disclosure” impacts the limit and accuracy of the “novelty”. In terms of proving an offense, in practice it is difficult to distinguish between the manufacturing of a product with the exact same industrial design, or similar or only partially resembling the elements components.

Stimulant factors of infringement or counterfeiting are as follows:

1. Technology progress in the field of industry
2. Hard to control production activity
3. Non-availability of producer data due to lack of control of machinery importation and the weak control of importation of raw material
4. Significant price difference between legal products and illegal products
5. Legal enforcement is not effective yet, even though Government commitment is sufficiently high
6. Goods shipped from Indonesian harbors
7. Indonesia has a distinct geographical nature consisting of more than 17,000 islands which creates another challenge to control its borders for potential IPR infringement.

#### **IV. Conclusion**

IPR is still a concern in Indonesia, and strong commitment and consistency on IP enforcement from all agencies involved in IPR is needed. In parallel, those efforts must be intensified to increase public awareness of IPR and the seriousness of IPR infringements as counterfeiting risks consumer’s health and safety. Therefore, education and awareness strategies require further attention, to develop enforcement initiatives and best practice. Greater coordination is required with police, stakeholders or institutions (Customs Department and Officials, DG IPR, rights owners, Public Prosecutors, Police, Civil Investigators, and Judiciary to support better IPR enforcement. Pre-emptive and preventive efforts should be conducted through organizations/bodies/institutions related to IP enforcement starting from associations, Indonesian Chambers of Commerce (KADIN), exporters or importers, business people/investors, NGOs. Efforts must be made to improve the rules and procedures, capacity building of the law enforcers, strengthen the monitoring of counterfeit sales, and warning to counterfeiting manufacturers and retailers.

\*\*\*

## REFERENCES

- Republic of Indonesia, Law No. 17 of 2006 concerning Customs as Amendment of Law No. 10 of 1995 concerning Customs
- Republic of Indonesia, Law No. 19 of 2002 concerning Copyright
- Republic of Indonesia, Law No. 15 of 2001 concerning Trade mark
- Republic of Indonesia, Law No. 14 of 2001 concerning Patent
- Republic of Indonesia, Law No. 32 of 2000 concerning Layout of Integrated Circuits
- Republic of Indonesia, Law No. 31 of 2000 concerning Industrial Design
- Republic of Indonesia, Law No. 30 of 2000 concerning Trade Secrets
- Republic of Indonesia, Law No. 8 of 1999 concerning Consumer Protection
- Republic of Indonesia, Law No. 5 of 1999 concerning Anti-Monopoly and Unfair Competition
- Republic of Indonesia, Law number 7 of 1994 regarding the Ratification of the Agreement Establishing the World Trade Organization
- Supreme Court Directives No. 4 of 2012 concerning Temporary Seizure
- Supreme Court Directives No. 5 of 2012 concerning Temporary Injunction
- Laporan Akuntabilitas Kinerja Instansi Pemerintah Satker Ditreskrimsus Polda Sulteng Tahun 2011, downloaded from [www.humas.polri.go.id/.../LAKIP%20DITRESKRIMSUS%20TA%202011](http://www.humas.polri.go.id/.../LAKIP%20DITRESKRIMSUS%20TA%202011) on 6 February 2013
- The Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights, "Enforcement of Patent Infringement for "Heat Insulator", March 2012, downloaded from [www.dgip.go.id/penindakan-pelanggaran-paten-insulasi-panas](http://www.dgip.go.id/penindakan-pelanggaran-paten-insulasi-panas) on 12 February 2013
- Citrawinda, Cita "Kendala Implementasi *Border Measures* dan *Provisional Measures* Perjanjian TRIPS di Indonesia", *Jurnal Hak Kekayaan Intelektual*, Volume 1, No. 1, April 2012
- Citrawinda, Cita "Peraturan Mahkamah Agung No. 4 Tahun 2012 Tentang Perintah Penangguhan Sementara dan No. 5 Tahun 2012 Tentang Penetapan Sementara", *Media HKI* Vol IX/ No. 04/ Agustus 2012