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ISSUANCE OF THE NEW TRADEMARK LAW AND GEOGRAPHICAL INDICATION

After 15 years, Indonesia implemented has a new trademark law, namely Law No. 20 of 2016 on Trademark and Geographical Indication ("New Law"). This new law replaces the previous Law No. 15 of 2001 on Trademark ("Previous Law").

The New Law was passed by the parliament on 27 October 2016 and came into effect on 25 November 2016. The provisions under the New Law do not apply retroactively and will apply for trademark applications (and other applications) that are filed after the Law came into effect.

The New Law contains quite significant changes compared to the Previous Law. The key changes includes the following:

Expedited Registration Process – publication of a trademark application will now be carried out before the substantive examination stage, i.e. when the application has satisfied the minimum requirements and subsequently obtained a Filing Date. The New Law mandates the publication to take place after 15 days from the Filing Date and will take place for 2 months period. The examiners will proceed with conducting substantive examination after the expiry of the publication period to examine the application, opposition and rebuttal (if any). The substantive examination should be completed by 150 working days (or 6 months period). In overall the registration processes will take approximately 8, 5 months provided that no opposition filed against the application by a third party.

Detailed provisions on Geographical Indication – the New Law provides provisions in greater details on Geographical Indication, although there are still some implementation regulations must be further issued following issuance of the New Law.

Broader types of trademark – Non-traditional marks have been introduced in the form of sound marks, 3 dimensional trademarks and hologram, in addition to the previously protected name, logo, pictures, words, letters, numbers, colors and combination thereof.

Minimum Requirements – Filing Date will be granted upon fulfilment of a minimum requirements, namely: completed application form, trademark labels and payment of the official fees.

Renewal Grace period – the New Law stipulates a trademark registration may be renewed within 6 months before the expiry date of protection. Renewal can still be submitted within 6 month grace period with payment of fine.

Assignment of Pending Application – assignment of trademark is allowed to also applied for pending applications.

International Trademark Registration – The New Law contains a provision the regulate registration of international trademark, which allow Indonesia to adopt the Madrid Protocol.

Generic Trademarks – the New introduces a provision which allows any party to apply for a trademark that contains to a generic trademark, provided that the generic trademark is combined with another word with a distinctive elements.

Civil Claim for A Well-Known Trademark Owner – the New Law introduces the possibility for the owner of a well-known trademark, which has not obtained a registration of its trademark in Indonesia, to file a civil claim against any violation of its trademark.

Registration Systems – Offline and online filing of trademark application via Trademark Office website are available.

Criminal Sanctions – the New Law stipulates higher fine for trademark infringement. The law also stipulates punishments in the event the infringement results in damage to health, environment and death.

Transitional Provisions – Following issuance of the New Law, all trademark applications that were filed and have not yet completed before the enactment of the New Law will be subject to the provisions under the Previous Law.

Since the New Law has just come into effect, there will be challenges on how the provisions will be implemented in practice.

Any queries in relation to the New Law please contact us at office@kk-advocates.com