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TRADEMARKS AND COPYRIGHTS RECORDATION AT THE DIRECTORATE GENERAL OF CUSTOMS

Directorate General of Customs of the Republic of Indonesia (“**Customs Authorities**”) has taken legal actions to reduce the spread of counterfeit products and prevent export and import activities that infringe Law No. 20 of 2016 on Trademarks and Geographical Indications and Law No. 28 of 2014 on Copyrights (“**Intellectual Property**”).

In 2017, Ministry of Finance of the Republic of Indonesia has issued two regulations in relation thereto, for which Government Regulation No. 20 of 2017 on Control of the Import or Export of Goods Allegedly or Originated from Violations of Intellectual Property Rights (“**GR 20/2017**”) and Ministry of Finance Regulation No. 40/PMK.04/2018 on Recordation, Restraint, Guarantee, Temporary Suspension, Monitoring and Evaluation in Order to Control Import or Export of Goods Allegedly or Originated from Infringement of Intellectual Property Rights (“**MoF 40/2018**”).

Under these regulations, the owners of Intellectual Property Rights can file an application for Intellectual Property recordation at the Customs Authorities to prevent import and export activities of counterfeit products that are suspected to have violated Intellectual Property Rights. Upon recordation in accordance of these Rights, the Customs is able to take legal actions of temporarily withholding the products to enter Indonesian territory. Release of these products can only be implemented after a thorough confirmation from the Intellectual Property owner on whether or not the said products have violated any Intellectual Property Rights. These will be conducted jointly between the Customs Authorities, owner of the Intellectual Property Rights, owner of the imported products, the relevant Court officers and the officer of the Directorate General of Intellectual Property. Upon the finding of any Intellectual Property infringement, then the owner of the Intellectual Property Rights is able to submit a civil or criminal claim at the relevant court and/or relevant Police office in Indonesia.

The two said regulations are the only legal basis that can be utilize by the Customs Authorities to protect the owner of Intellectual Property Rights from having any counterfeit products to enter and be distributed in the territory of Indonesia.

To date, there have not been any multinational companies (“MNC”) that have applied for recordation of their Intellectual Property at the Customs Authorities. Such recordation must be made by their Indonesian registered subsidiary company. Currently, there is one recordation by an MNC, which is for hair protected from using counterfeit products and that the producers are assure of the market and are able to protect and maintain their good reputation.

The two mentioned regulations, is seriously being taken by the Customs Authorities as can be demonstrated through the activities of continuous socialization among the business actors. This is conducted through series of seminars and presentations with close cooperation with among others the Indonesian Anti Counterfeit Community (MIAP).



<https://www.beacukai.go.id/berita/sosialisasi-pp-dan-pmk-tentang-pengendalian-impor-atau-ekspor-barang-yang-diduga-merupakan-atau-berasal-dari-hasil-pelanggaran-hak-kekayaan-intelektual-.html>

All this has resulted in successful action of determining certain counterfeit products for which the owner of Intellectual Property Rights has previously made a recordation pursuant to the above mentioned regulations. i.e. the Customs Authorities withheld a container at Tanjung Perak, Surabaya. The container had a full load of ballpoints bearing the counterfeit mark.



<https://www.cnnindonesia.com/nasional/20200109193548-12-463999/bea-cukai-sita-satu-kontainer-pulpen-tiruan-dari-china>

The Indonesian Government shall therefore uphold the rights of Intellectual Property, subject to that the owner of Intellectual Property Rights be aware that they must implement recordation at the Custom Authorities to ensure that their rights are upheld, for which then the consumers are care products, for which the recordation was conducted by K&K Advocates' client.

For more information relating to the abovementioned, please feel free to contact Justi Kusumah at justi.kusumah@kk-advocates.com , Fajar Kusumo at fajar.kusumo@kk-advocates.com; and Eka Putra at eka.putra@kk-advocates.com

(Tulisan di atas adalah merupakan artikel dan tidak dapat dianggap sebagai advis atau opini hukum dari penulis dan/atau kantor hukum K&K Advocates).



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