

ENFORCEMENT OF INTELLECTUAL PROPERTY IN INDONESIA

I. General Introduction

In the efforts of administering and developing the intellectual property rights (IPR) system in the country, the Government of Indonesia has made a number of significant efforts. Those include the fulfillment of obligation under the TRIPS Agreement, the improvement of the IPR system, the improvement of public awareness on the importance of IPR, the fostering of closer and more productive cooperation with all related institutions and stakeholders including law enforcement agencies, and human capacity building.

In order to fulfill the obligation under TRIPS Agreement, Government of Indonesia has already completed its IP legislation. Currently, Indonesia has seven IPR laws. Six of them administered by Directorate General of Intellectual Property Rights (DGIPR), Ministry of Law and Human Rights, those are:

- Law No. 30 of 2000 regarding Trade Secret;
- Law No. 31 of 2000 regarding Industrial Design;
- Law No. 32 of 2000 regarding Lay-out Design of Integrated Circuit;
- Law No. 14 of 2001 regarding Patents;
- Law No. 15 of 2001 regarding Marks;
- Law No. 19 of 2002 regarding Copyrights;

And one law that administered by Ministry of Agriculture is law No. 29 of 2000 regarding Plant Variety.

And in the regard of IPR enforcement, these new laws have some main features among others:

- Recognizing the Commercial Courts as the judicial authorities in handling IPR civil cases, including its new procedural law like provisional decision (injunction) and the time period to settle IPR civil cases;
- Recognizing arbitration or any other alternative disputes resolutions for IPR disputes settlement;
- Recognizing a minimum sanction and/or fine for IPR infringer;
- Increasing the amount of maximum sanction and/or fine for IPR infringer.

However, there are also some IPR provisions regulated in other laws like:

- Law No. 10 of 1995 Regarding Customs (Chapter X, Art. 53 – 64). This law is administered by Directorate General of Customs and Excise, Ministry of Finance.
- Law no. 18 of 2002 regarding the National System of Research Development and Application of Science and Technology. (Art. 13 (2, 3,

and 4); Art. 16 (1), Art. 23 (1 and 2), and Art. 24 (3 and 4). This law is administered by The Office of State Minister for Research and Technology.

II. The Judicial System

The judicial power is vested by the 1945 Constitution in the Supreme Court and its subordinate courts in the judiciary of General Courts, Religious Courts, Military Courts and Administrative Courts, and also vested in the Constitutional Court (Mahkamah Konstitusi).

Basically, all criminal and civil cases in Indonesia are handled by the General Courts. The State Court or Pengadilan Negeri (P.N.) as the first instance. The High Court or Pengadilan Tinggi (PT) as appeal court or the second instance. And the Supreme Court or Mahkamah Agung (MA) as cassation court or third instance. But since the Government of Indonesia has established some other special courts as first instance in judiciary of General Courts (namely Human Rights Court, Children Court, Corruption Court, Commercial Court, Industrial Relation Court, and Marine Fishery Court), some jurisdictions of the State Courts have been moved to these courts and some of the procedural law were also changed and/or reform.

The Commercial Court for example. This court has jurisdictions as the first instance for bankruptcy cases and IPR civil cases. For these cases there is no appealing court. As second instance, they only recognized cassation to the Supreme Court. Beside that, the time period to settle a case by the Commercial Court is a lot faster than the State Court.

III. Civil Procedure

A. Civil Settlement Disputes

For civil remedies, there are two alternatives for IPR holder to settle an IPR disputes against the infringer of the right:

- Settled by the Commercial Court; or
- Settled by an arbitrage or any other alternative dispute resolutions (ADR).

For the first alternative, the IPR holder should file a lawsuit against the infringer of the right to claim for damages and/or ceased all the activities of the infringement. The lawsuit should be addressed to the Commercial Court which jurisdiction covered the domicile of the infringer. Regarding the jurisdiction of the Commercial Courts, Please see explanation below.

B. Judicial Authorities

As above mentioned, the IPR civil cases are trial by the Commercial Courts. Currently, base on Presidential Decree No. 97 of 1999, there are five Commercial Courts in Indonesia, namely:

1. **Central Jakarta** Commercial Court which located in Central Jakarta State Court. Its jurisdictions covered provinces of DKI Jakarta, West Java, South Sumatera, Lampung, and West Kalimantan.
2. **Medan** Commercial Court which located in Medan State Court. Its jurisdictions covered provinces of North Sumatera, Riau, West Sumatera, Bengkulu, Jambi, and Nangroe Aceh Darussalam.
3. **Semarang** Commercial Court which located in Semarang State Court. Its jurisdictions covered provinces of Central Java and Yogyakarta.
4. **Surabaya** Commercial Court which located in Surabaya State Court. Its jurisdictions covered provinces of East Java, South Kalimantan, East Kalimantan, NTB, and NTT.
5. **Makassar** Commercial Court which located in Makassar State Court. Its jurisdictions covered provinces of South Sulawesi, South East Sulawesi, Central Sulawesi, North Sulawesi, Maluku, and Papua.

IV. Criminal Procedure

A. Criminal Justice System.

There are two types of crimes:

1. Crimes upon formal complain or charges (*delik aduan*). This type of crimes needs a formal complain or charges from the victims in order to be processed by the authorities. The process can be ceased or stopped, if the victim withdraws or drops his charges.
2. Ordinary crimes (*delik biasa*). This type of crimes will be processed by the authorities whether there is a formal complain from the victim or not.

Mainly, crimes against IPR are classified as crimes upon formal complain or charges (*delik aduan*), except for the crimes against copyrights which classified as ordinary crimes (*delik biasa*).

B. Authorities

Base on Law No. 8 of 1981 Regarding Criminal Procedure Law, the authorities of Indonesia Justice system are:

1. Investigator

There are two types of investigators:

- Indonesia's State Police (POLRI); and
- Civil Servant Investigators or what so called PPNS.

2. Public Prosecutors

Public prosecutor is a District Attorney who so called “JAKSA”. At the top or national level, the public prosecutors lead by an Attorney General (Jaksa Agung). The Office of the Attorney General’s is called “Kantor Kejaksaan Agung”. At the provincial level, there is a High District Attorney Office or what so called Kantor Kejaksaan Tinggi. And every High District Attorney Office constitute of some State District Attorney Offices or what so called Kantor Kejaksaan Negeri.

3. Judicial Authorities

In the judicial criminal system, all criminal cases are trial by the judiciary of General Courts. As the first instance, there are 347 State Courts or Pengadilan Negeri (P.N.). As the second instance or appeal courts, there are 30 High Court or Pengadilan Tinggi (PT). And as the third instance or cassation court, is the jurisdiction of the Supreme Court or what so called Mahkamah Agung (MA).

C. IPR Criminal Sanctions

1. Patent Law

- Article 130: Any person who deliberately and without right infringes the rights of a patent holder by committing any of the acts as referred to in article 16 shall be sentenced to imprisonment of at most four years and or a fine of at most Rp.500,000,000 (five hundred million rupiahs);
- Article 131: Any person who deliberately and without right violates the rights of simple patent holder by committing any of the act as referred to in article 16 shall be sentenced to imprisonment of at most two years and or a fine of at most Rp 250,000,000 (two hundred and fifty million rupiahs);
- Article 132: Any person who deliberately fails to fulfill the obligations as referred to in article to in 25 paragraphs (3), Article 40, article 41 shall sentenced to imprisonment of at most two years.

2. Trademark Law

- Article 90: Any person who deliberately and without right uses a Mark which is similar in its entirety to a registered Mark of another party for the same kind of goods and/or services produced and/or traded shall be sentenced to imprisonment for a maximum period of (5) five years and/or a fine of a maximum amount of Rp.1,000,000,000 (one billion rupiahs).
- Article 91: Any person who deliberately and without right uses a Mark which is similar in its essential part to a registered Mark of another party for the same kind of goods and/or services produced and/or traded shall be sentenced to imprisonment for a maximum period of (4) four years and/or a fine of a maximum amount of Rp.800,000,000 (eight hundred million rupiahs);
- Article 92:



- (1) Any person who deliberately and without right uses a Mark which is similar in its entirety to a Geographical Indication of another party for the same kind of registered goods shall be sentenced to imprisonment for a maximum period of (5) five years and/or a fine of a maximum amount of Rp.1,000,000,000 (one billion rupiahs).
 - (2) Any person who deliberately and without right uses a Mark which is similar in its essential part to a Geographical Indication of another party for the same kind of registered goods shall be sentenced to imprisonment for a maximum period of (4) four years and/or a fine of a maximum amount of Rp.800,000,000 (eight hundred million rupiahs).
- Article 93: Any person who deliberately and without right uses a sign which is protected under Source of Indication of goods or services that are likely to deceive or mislead people as to the origin of the goods or services concerned shall be sentenced to imprisonment for a maximum period of (4) four years and/or a fine of a maximum amount of Rp.800,000,000 (eight hundred million rupiahs);
 - Article 94: Any person who trades goods and/or services that are known or shall be known that the goods and/or services resulted from the infringement as referred to in Article 90, Article 91, Article 92, and Article 93 shall be sentenced to imprisonment for a maximum period of 1 (one) year and a fine of a maximum amount of Rp.200,000,000 (two hundred million rupiahs).

3. Copyright Law

- Article 72:
 - (1) Any person who deliberately and without right conduct any acts as referred to in Article 2 paragraph (1) or Article 49 paragraphs (1) and (2) shall be sentenced to imprisonment of at least 1 (one) month and/or a fine of at least Rp.1,000,000 (one million rupiahs) or imprisonment of at most 7 (seven) years and/or a fine of at most Rp.5,000,000,000 (five billion rupiahs);
 - (2) Any person who deliberately broadcasts, exhibits, distributes, or sells to the public a work or goods resulting from an infringement of copyright or related rights as referred to in paragraph (1) shall be sentenced to imprisonment of at most 5 (five) years and/or a fine of at most Rp.500,000,000 (five hundred million rupiahs);
 - (3) Any person who deliberately and without right reproduces the use of a computer program for a commercial purposes shall be sentenced to imprisonment of at most 5 (five) years and/or a fine of at most Rp.500,000,000 (five hundred million rupiahs);
 - (4) Any person who deliberately violates the provisions of Article 17 shall be sentenced to imprisonment of at most 5 (five) years and/or a fine of at most Rp.1,000,000,000 (one billion rupiahs);
 - (5) Any person who deliberately and without right violates the provisions of Article 19, Article 20 or Article 49 paragraph (3) shall be sentenced to imprisonment of at most 2 (two) years and/or a fine of at most Rp.150,000,000 (one hundred and fifty million rupiahs);

- (6) Any person who deliberately and without right violates the provisions of Article 24 or Article 55 shall be sentenced to imprisonment of at most 2 (two) years and/or a fine of at most Rp.150,000,000 (one hundred and fifty million rupiahs);
- (7) Any person who deliberately and without right violates the provisions of Article 25 shall be sentenced to imprisonment of at most 2 (two) years and/or a fine of at most Rp.150,000,000 (one hundred and fifty million rupiahs);
- (8) Any person who deliberately and without right violates the provisions of Article 27 shall be sentenced to imprisonment of at most 2 (two) years and/or a fine of at most Rp.150,000,000 (one hundred and fifty million rupiahs);
- (9) Any person who deliberately violates the provisions of Article 28 shall be sentenced to imprisonment of at most 5 (five) years and/or a fine of at most Rp.1,500,000,000 (one billion and five hundred million rupiahs).

4. Industrial Design Law

- Article 54:
 - (1) any person who deliberately and without rights commits any acts as referred to in article 9 shall be shall sentenced to imprisonment of at most 4 years and or a fine of at most Rp. 300,000,000 (three hundred million rupiahs);
 - (2) any person who deliberately commits any act as referred to in article 8, article 23, article 32 shall be sentenced to imprisonment of at most 1 year and or fine of at most Rp. 45,000,000 (forty five million rupiahs);
 - (3) The criminal action as referred to in paragraph (1) and (2) shall constitute offence that warrants complaint.

5. Layout Design of Integrated Circuit

- Article 42:
 - (1) any person who deliberately and without right commits any acts as referred to in article 8 shall be sentenced to imprisonment of at most three years and /or a fine of at most Rp 300.000.000 (three hundred million rupiahs)
 - (2) any person who deliberately commits any acts as referred to in article 7, article 19, or article 24 shall be sentenced to imprisonment of at most one year and or a fine of at most Rp 45.000.000 (forty five million rupiahs);
 - (3) the criminal action as referred to in paragraph (1) and (2) shall constitute offence that warrants complaint.

6. Trade Secret Law

- Article 17
 - (1) Any person who deliberately and without rights uses the Trade Secret of another party, or conducts any acts as referred to in Article 13 or article 14 shall be sentenced to imprisonment of at most 2 year and or a fine of at most Rp.300.000.000 (three hundred million rupiahs);
 - (2) The criminal action as referred to in paragraph (1) shall constitute offence that warrants complain.

V. IPR Appeal Commission

Currently, DGIPR has established two types of appeal commissions, namely:

- Trademark Appeal Commission, and
- Patent Appeal Commission.

These two appeal commissions are special independent bodies in DGIPR. Trademark appeal commission has the rights by the law to examine an appeal objection of a trademark applicant which application of related trademark has been refused by the DGIPR on the grounds of substantive matters. Patent Appeal Commission has the rights by the law to examine an appeal objection of a patent applicant which application of related patent has been refused by the DGIPR on the grounds of substantive matters. The members of these appeal commission are not judges. But, they are professionals and government officials who have expertise in respective matters.

The appeal objection should be filed by the applicant in 3 months since the applicant receive the refusal letter on related patent or trademark application made by the DGIPR. If the verdict of the appeal commission accepts the appeal objection, the DGIPR will automatically cancel its refusal letter and registered the related patent or trademark application. On the opposite, if the verdict of the appeal commission refuses the appeal objection, the applicant still has the rights to file a lawsuit against this verdict to the Commercial Court. If the applicant still not satisfied on the verdict made by the Commercial Court, the applicant still has a chance to file a cassation to the Supreme Court.

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