

INTRODUCTION

The EIBD Working Group on Intellectual Property Rights (IPR's) aims at better understanding the opportunities arising from an improved legal and institutional protection of intellectual property, trademarks and cultural heritage.

This recommendation paper does not abandon itself to complain about inefficiencies on one side or a simply legalistic approach on the other. Any instrument of protecting intellectual property, or other achievements and resources deserving protection, should follow – among others - a business-minded rationale.

The following laws are related to IPR protection:

- Law No. 7 Year 1994 concerning the Ratification of Agreement Establishing the World Trade Organisation;
- Law No. 30 Year 2000 concerning Trade Secrets;
- Law No. 31 Year 2001 concerning Industrial Design;
- Law No. 32 Year 2000 concerning Layout Design of Integrated Circuits;
- Law No. 14 Year 2001 concerning Patents;
- Law No. 15 Year 2001 concerning Trademarks;
- Law No. 19 Year 2002 concerning Copyrights;
- Government Regulation No. 51 Year 2007 concerning Geographical Indication (“**Government Regulation No. 51/2007**”); and
- Government Regulation No. 7 Year 2005 concerning Organisational Structure, Duty, and Function of Trademark Appeal Commission (“**Government Regulation No. 7/2005**”).

However, several factors that would ensure the system, as a whole, works to protect against IPR violations have not been implemented to the fullest. These factors include; purchasing power, lack of knowledge on IPR and uncertainty in the enforcement of criminal law.

The categorisation of Indonesia under the 'Priority Watch List' by the U.S. Trade Representative (USTR), because of the high level of copyright infringement on products that use digital media or optical discs such as VCD's, CD's, DVD's and software, backs this up.

ISSUES

1. A lengthy trademark registration process with an average time of two years.

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2. The absence of regulations regulating well-known brands or trademarks, associated with Article 6, paragraph 1 letter b of Law No. 15 of 2001, regarding Trademarks relating to the protection of well-known brands.
3. The numerous similarities between trademark registrations require huge developments in the skills and knowledge (capacity building) for Trademark inspectors.
4. Many trademarks are registered in alleged bad faith.
5. The rules and implementation of these are not sufficient in the fight against trademark infringement. This is proven by probation and minimum fine sentences being issued as punishments. These do not act as a deterrent for the perpetrators.
6. The patent application process lasts on average five to six years through the Patent Cooperation Treaty (PCT) and longer if not.
7. Medicines are registered with the NA-FDC (BPOM) containing substances that are still protected under patents owned by others without prior permission/license.
8. Confidential Information is not protected under the Patent
9. There is a lack of boundaries for patents protecting invented software.
10. There is a lack of regulations surrounding Patents, resulting in them not always working in practice.
11. Industries, Universities and the general community have a lack of understanding of the benefits of patents. This results in an inefficient patent system.
12. It is an obligation to submit all patent applications in Bahasa Indonesia where accurate translations are demanded, especially in the claiming process.

13. There is a lack of understanding surrounding copy right protection with the owners due to the weakness in education and the socialisation of relevant issues
14. There is a lack of minimum compensation under the relevant laws surrounding copyright infringement (statutory damages).
15. Inadequate enforcement against copyright infringement even though it is a common offense.,
16. There are a number of copyright infringement cases occurring through the media and information technology that require special training for officers to tackle.
17. The lengthy duration of the Industrial design registration process with average time of 2 (two) years or more
18. The understanding and concept of industrial design protection within the community, the business community and relevant officials in government agencies needs to be improved
19. Lack of strategic programmes to create public awareness, especially within SME's and foreign companies, on the legal and normative substance of the design industry and its terms. Including the local community's cultural richness of Indonesia.

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20. There are currently a few Indonesian products which have a close relationship with a particular geographical area, but are yet to be granted protection under the GI scheme by the Indonesian government
21. There are no concrete guidelines towards the supervision and protection of Indonesian registered GI products offshore. This may lead to the abuse of names, places or Indonesian products which may bear no relation to the manner in which they are being used.

IMPACT

1. The lengthy terms and process for trademark and patent registration in Indonesia is considered to be the reason for trademark protection uncertainty, until the trademark/patent is finally registered. The absence of a government regulation in favor of Article 6, paragraph 1 letter b of Trademark Law No. 15 year 2001 can harm the owner of the well-known brand or Trademark;
2. Enforcement of inadequate legal protection can cause difficulties for companies that can lead to a decreasing level of investor confidence. Particularly in the form of violations surrounding the counterfeiting of well-being products such as medicines and cosmetics which can have fatal consequences.
3. Double patent registration where the contents of product are owned by different parties;
4. The low understanding of domestic patents gives the impression that the patent system is more reliable for foreign inventors or foreign companies.
5. Protracted patent applications process due to unclear explanations or descriptions of the claim and the patent application documents;
6. can result in the reduction of youth creativities, potential losses in state revenue from taxes, loss of potential employment, and lack of trust from the international community surrounding copyright enforcement in Indonesia;
7. The lengthy terms of the industrial design registration process in Indonesia can lead to legal uncertainty and the protection of industrial design creations. This can result in delays in the production and commercialisation of industrial design in question.
8. The lack of Government granted protection under the GI scheme has caused the name of some areas in Indonesia, which produce unique products, to be jeopardised by unauthorised parties, as such:
 - a. The use of the name “Gayo” by a Dutch company for their coffee product.
In 2008, the people of Indonesia were shocked to receive a letter from Holland Coffee B.V. (an Amsterdam-based Dutch company) (“**Holland Coffee**”) reprimanding the use of the name “Gayo” on the packaging of Gayo coffee exported to the Netherlands. Holland Coffee informed Indonesia that it had registered a trademark “Gayo Mountain Coffee” under its name. Holland Coffee prohibited CV Arvis Sanada,

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an Indonesian business entity which produces and exports Gayo Coffee to many countries, including the Netherlands. The registration of the word “Gayo” as a trademark was a wakeup call to the people of Indonesia, and therefore, instigated the protection of Gayo Coffee under the GI scheme in Indonesia and IFTO.

- b. The use of the name “Toraja” for the coffee product produced by a Japanese company.

Key Coffee Inc. (a Japanese company) registered a trademark “Toarco Toraja” for its sour and bitter tasting coffee to the Japanese Agency of Patent Registration. The registration was fully completed on 14 January 1977, and since then, Key Coffee Inc. had always prevented the use of word “Toraja” by any other coffee supplier. In Japan itself, there were disputes regarding the abuse of word “Toraja” by another coffee supplier (Avance Trading Co.). The monopoly of the word “Toraja” for the marketing of coffee was deemed to bring disadvantages to other coffee suppliers, and therefore, leading them to appeal to the Japanese authorities for a universal use of the word “Toraja”. They argued that “Toraja” was a name of a territory, and that it did not belong to anyone. Therefore, the use of it should not be limited. On the other hand, Indonesian coffee suppliers suffered difficulties in penetrating international markets (particularly Japan) with the original Toraja coffee.

SUGGESTED SOLUTIONS

1. Providing a more effective and efficient system to accelerate the process of a trademark, patent, copyright and industrial design registration, in order to improve legal certainty for investors;
2. Providing an official mechanism to accelerate trademark, patent and copyright registration applications with an official fee or charges in accordance with the principles of the justice and the public order;
3. The government must issue a Government Regulation (Peraturan Pemerintah) on the protection of well-known trademarks in favour of Article 6, paragraph 1 letter b of Law No. 15 Year 2001.;
4. Improve working facilities, infrastructure and compilation of a complete database of trademark registrations
5. Improve coordination between DG IPR and NA-FDC (BPOM) in the protection of the contents of drugs (and pharmaceuticals), nullifying double registrations for one product.
6. The enforcement and sanctions need to be affirmed and fully supported in order to generate a deterrent effect. Coordination between relevant law agencies, at various levels, needs to be enhanced so that the control and law enforcement will be simplified.
7. Requirements to improve the skills and the abilities of examiners in order to be more objective and comprehensive in deciding trademark, patent and copyright applications.

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Systemised and regular Education, socialization and training activities have to be held among the examiners.

8. Hold an Intensive socialisations among industries, research and development ministries, government institutions and universities regarding the benefits, importance and legal protection of the patent system and legal protection in order to grow awareness.
9. Necessary training on patent drafting, both for the inventor, researcher and consultant IPR's. Specifically for the patent examiner at the Patent Office;
10. The Indonesian Government needs to be more proactive in protecting products embodying specific and distinctive characteristics which are closely related to geographical areas. Therefore, the Indonesian Government must actively participate in the protection of such products.
11. DG IPR play a more active role in identifying products with particular characteristics to be developed. DG IPR should involve local communities who have been directly engaged in the process of the production of such products.
12. In addition, the Indonesian Government can contribute by doing the following:
 - a. Fund the research and development of a product to define the basic standard.
 - b. Encourage the society to maintain and rejuvenate existing products in their respective areas
 - c. Create a scheme that expedites the registration process of GI; and
 - d. Actively market and create the good image of Indonesian products in foreign markets.
13. The producers and the associations that work to protect these products should work together in lobbying to the government for the protection of their products;
14. The Governments of other states can help protect products bearing certain characteristics which are closely related to a geographical area by doing the following:
 - a. Conduct scrupulous due diligence upon any registered trademarks within its state of ownership.
 - b. Impose legal consequences to imitators or counterfeiters.
15. Countries within the EU are by now familiar with Indonesia's GI scheme. Especially since there are currently more than 3000 products registered. Comparative studies and the transfer of knowledge between Indonesian and EU officials will help with Indonesia gaining a better insight in (i) how to increase society's awareness in the importance of GI protection, and, (ii) the importance of maintaining the quality of protection..

WHO IS TO TAKE ACTION

1. Coordinate all related agencies in making changes and improvements to the Trademark regulation;
 - a. Directorate General of IPR: By issuing government regulations that better protect well known trademarks and improve the quality of protection that these and newly registered trademarks are given.

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- b. Indonesian Police Department: Develop their capacity in the field of IPR so that they are competent in the investigations of cases of related to Trademarks, Patents and Copyright infringements (IPR in general).
 - c. Court: appointing trained and experienced Judges in dealing with IPR cases. Judges to be placed at each of the Commercial Courts, designated to the handling of civil cases of IPR disputes.
 - d. National Agency of Food and Drugs Control (BPOM): Coordinate with the Directorate General of Intellectual Property Rights on the licensing of particular medication or food and beverages that often require BPOM registration.
 - e. Customs Department: Executing instructions and complete technical guidance related to efforts in the protection of trademarks and copyrights at Indonesian ports and airports.
2. Directorate General of Intellectual Property Rights and NAFDC (BPOM) has an important role to play in maintaining the *confidentiality of patent data*. It is and further advised that they pay more attention to this and coordinate efforts to develop system that fully protects data related to individual Patents (protection of data) at all institutes. Ultimately protecting the rights of the Patent owners.
 3. Directorate General of Intellectual Property Rights should begin to develop a more efficient system for patent protection.
 4. Hold intense socialisation, education and dissemination trainings on Copyright Law.
 5. Reorientation and improve Copyright law enforcement to encourage greater employment through the effect of technology transfer and foreign investment.
 6. Strong political will from the Government in reforming the law in an effort to improve Copyright protection in Indonesia.
 7. Extensive promotion through numerous media channels, in and outside of Indonesia, bilateral and multilateral, in an aim to reassure investors and foreign parties of Indonesia's positive policies involving the investment and trade of Copyrighted products.
 8. An extensive Anti-piracy and anti-counterfeiting campaign.
 9. The Government should immediately complete the draft amending Copyright Law enforcement to become better prepared in fighting perpetrators.
 10. The Indonesian Police Department must increase their cooperation with the relevant law enforcement agencies as well as training investigators in the field of IPR.
 11. Customs: Immediately make provisions to guidelines and technical instructions for controlling the flow of imports and exports of goods through ports and airports, especially those related to the Supreme Court Regulation No. 4 and no. 5 of the provisional measures, and the temporary suspension.
 12. The Ministry of Industry and Trade, the Ministry of Tourism and Creative Economy, the Ministry of Cooperatives and SME's, Universities, Associations and Professional

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organisations, to hold intensive socialisation and education programmes regarding Industrial Designs.

13. Producers and associations (local producers, farmers, research institutions, Indonesian Coffee and Cocoa Research Institute – ICCRI and Centre de Coopération Internationale en Recherche Agronomique pour le Développement – CIRAD, district, provincial and central government(s), the private sector and on previous occasions the French Embassy in Jakarta) related to products within specific regions that implement GI protection should work together to draw up common regulations for the production and determining the boundaries of protected areas.
14. Government to Government cooperation and support to simplify the registration process and fully recognize Indonesian GI's in Europe.