



# **THE EFFECTIVENESS OF TEMPORARY SUSPENSION ON COURT PRACTICES IN EFFORTS TO PROTECT INTELLECTUAL PROPERTY RIGHTS IN CUSTOMS AREA IN INDONESIA**

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<b>Received:</b> 6 <sup>th</sup> January 2023 <b>Accepted:</b> 6 <sup>th</sup> February 2023 <b>Published:</b> 11 <sup>th</sup> March 2023	In the business industry 4.0, high quality goods are given Intellectual Property Rights in order to provide protection and legal certainty, but there are still many cases of IPR violations, especially in the customs environment. The purpose of this study is to analyze and understand how the procedure and effectiveness of legal protection against the enactment of Temporary Suspension of violations of Intellectual Property Rights in the Indonesian Customs area. The research method used is a normative juridical legal approach with a statutory research approach (Statue Approach) originating from primary, secondary and tertiary legal materials. The results of the study show that the procedure for enacting a temporary suspension by Indonesian Customs for violations of Intellectual Property Rights must go through several processes, namely recording and prevention, but there is an ineffectiveness of legal protection caused by the legal factor itself, namely the recording process which is carried out separately from the registration of IPR so that many IPR holders do not submit an application for recording which results in weak protection of IPR in the Customs area.

**Keywords:** Suspension, Protection of Rights, HKI, Customs

## **INTRODUCTION**

Indonesia is a modern developing country, because the Government of Indonesia has stated its political policy to compete and keep up with the times, one way is to develop technology based on industry 4.0 so that it can generate high added value for the benefit of the state and society. The Government of Indonesia has decided on its political policy by declaring its participation and participation as a member of the World Trade Organization (WTO) and Asia Pacific Economic Cooperation (APEC). Indonesia's participation as a member of WTO and APEC has shown the seriousness of the Government in supporting a free and open economic system, and indirectly spur companies in Indonesia to further increase their competitiveness.

In business in the industrial sector based on 4.0, companies will produce high quality goods because in carrying out their business/production activities carried out by these companies, companies will use modern technology systems with technological tools that have and requires production costs ( cash flow ) that are not small. Because the production quality and production results of production goods are of high quality, companies requiring production of these goods should receive legal protection and legal certainty, one of which is the law on Intellectual Property Rights (IPR). IPR is a right that arises for the results of thought processes that produce a product or process that is useful for humans or in other words IPR is the right to enjoy economically the results of an intellectual creativity. IPR referred to includes but is not limited to marks, copyrights and related rights, patents and simple patents, industrial designs, layout designs of integrated circuits, plant varieties, and geographical indications.

Based on the descriptions above, we can understand that IPR is a right that comes from work, initiative, and creativity of human intellectual abilities that have benefits and are useful in supporting human life and have economic value. The real form of the work, initiative, and creativity of human intellect can be in the form of science, technology, art and literature.

Even though they have received legal protection and legal certainty as HKI, there are still many cases of HKI violations. Legal protection and legal certainty as IPR is still a work that must be completed and handled seriously. Based on data from the directory of the Supreme Court of the Republic of Indonesia, throughout 2020 there were approximately 100 ( one hundred ) decisions for violating intellectual property rights. Whereas previously Indonesia had ratified the Agreement Establishing the World Trade Organization, which was legalized through Law Number 7 of 1994

concerning Ratification of the Agreement Establishing the World Trade Organization . If there is a violation of intellectual property rights, especially Again violation Right Riches Intellectual happen in scope export and import .

Enforcement right riches intellectual especially in scope export and import ( border enforcement ) appears as one \_ issue important during the process of negotiating and drafting the TRIPS Agreement. Issues that arise during negotiation the that is related with arrangement For balancing between interest holder rights and parties importers (Gupta, 2009).

In accordance with Constitution Number 10 of 1995 concerning Customs as has changed with Constitution Number 17 of 2006, Directorate General of Customs and Excise given authority to do supervision guess violation Intellectual Property Rights to Then cross goods import nor export. Authority This Actually is embodiment mandate from The World Trade Organization (WTO) Trade Related Aspects of Intellectual Property Rights (TRIPS) especially related sections with border control If noticed well , then Actually the powers granted to Directorate General of Customs and Excise the is in accordance as suggested by TRIPs. However the powers granted to Directorate General Beadan Excise even more progressive compared to with the TRIPs recommendation , for example in matter supervision to export .

IPR is essentially a right with special and special characteristics because this right is granted by the State, cq the Ministry of Law and Human Rights of the Republic of Indonesia, cq the Director General of Intellectual Property Rights. The state, cq KEMENKUM HAM RI, cq the Director General of Intellectual Property Rights, based on statutory provisions, grants these special rights to those who are entitled according to procedures and conditions that must be met (Hartono, 2022). This right is given special and special rights by the State cq KEMENKUM HAM RI cq Director General of Intellectual Property Rights as referred to in Article 1 point (1) Government Regulation Number 20 of 2017 Concerning Import or Export Control of Goods suspected of constituting or originating from violations of Intellectual Property Rights Jo. Article 1 number (1) Supreme Court Regulation Number 6 of 2019 Concerning Temporary Suspension Orders, states " Intellectual Property Rights, hereinafter abbreviated as HKI, are exclusive rights granted by the State based on statutory regulations ".

Temporary Suspension, hereinafter referred to as Suspension, is a temporary suspension of the release of imported or exported goods from the Customs Area that is suspected of constituting or originating from the proceeds of IPR infringement as referred to in the provisions of Article 1 point 6 of the Minister of Finance Regulation Number 40/PMK.04/2018 concerning Recording, Prevention, Guarantees, Temporary Suspension, Monitoring and Evaluation in the Context of Controlling the Import or Export of Goods Allegedly Containing or Originating from the Results of Intellectual Property Rights Violation (PMK No. 40/PMK.04/2018) Jo. Article 1 point 7 Supreme Court Regulation Number 6 of 2019 Concerning Temporary Suspension Orders.

In fact, the protection of intellectual property rights should cover all kinds of intellectual property rights such as trademarks, copyrights and related rights, patents and simple patents, industrial designs, layout designs of integrated circuits, plant varieties and geographical indications. At present the protection of rights in the customs area only applies to Marks and Copyrights because recording can only be done on Marks and Copyrights, as stipulated in Article 2 of the Regulation minister finance Number 40 of 2018 " Control Import or Export on authority positions by Customs and Excise Officials done to suspected item is or originate from results IPR violations in the form of brand and rights create yes n g has approved and recorded on the system Directorate of Recording General of Customs and Excise . "

Prior to the temporary suspension, the Commercial Court at the local District Court will issue a temporary suspension order in advance at the request of the Applicant or the Owner of imported/exported goods suspected of originating or originating from the proceeds of infringement on Intellectual Property Rights. The temporary suspension order is a written order from the judge in the form of a stipulation ordering the customs and excise officer to temporarily suspend the release of imported/exported goods from the customs area which, based on sufficient evidence, is suspected to constitute or originate from an IPR violation.

Of the many cases of violations of intellectual property rights that have occurred at customs, there have been 2 (two) cases recently, namely: (i) On 7 October 2020, Officers at the Directorate of Customs and Excise (Bea Excise) Tanjung Emas found a violation of imported goods in the form of 185 cartons containing 390,000 razor blades and 521,280 razor heads imported by PT. LBA from China.; (ii) cases that were successfully disclosed by the Police in collaboration with the Ministry of Human Rights Law, the Directorate General of Customs and Excise, the Supreme Court and the Commercial Court at the Surabaya District Court that there had been an intellectual violation and then used legal remedies to temporarily determine the goods allegedly constituting or originating from infringement of intellectual property rights. Cases of violations of intellectual property rights which have become the center of public attention in 2019 to 2020 are cases of violations of the intellectual property rights of standard ballpoint AE7 Alfa Type 0.5 made in Indonesia owned by PT Standardpen Industries (PT SI). What happened to PT SI besides experiencing material losses, from a legal aspect, PT SI gained its own advantages because it obtained the protection and certainty of the law itself.

Legal efforts for Temporary Suspension This court is a new legal effort through the process of a commercial trial case within the general justice system in Indonesia, which has so far used civil procedural law. This happened as a realization of the obligation to adjust the legal system determined by the WTO, so a legal umbrella was created, namely Government Regulation Number 20 of 2017 concerning Import or Export Control of Goods Allegedly Consisting of or Originating from the Results of Intellectual Property Rights Violations and Regulation of the Supreme Court of the Republic of Indonesia Number 6 Know 2019 About Temporary Suspension Orders.

Control by providing a temporary suspension of import or export goods that are suspected of constituting or originating from, the results of IPR violations in Indonesia is one of the efforts to increase national economic growth by

participating in encouraging import or export activities to run according to fair trade practices ( fair trade ) by guaranteeing legal certainty over goods that have been protected by IPR' and implemented based on the spirit of active participation of the community ( public awareness ) and the state's obligation to protect IPR.

### METHOD

The writing method used in this research is normative legal research which is basically a normative juridical approach (based on statutory provisions). In this study used a statutory research approach ( statute approach ). The data collection stage uses a secondary data approach (data obtained from a literature study) where by researching and studying secondary data in the form of written materials that have a correlation with the problems in the object of writing this thesis.

#### 1. Type Study

Method writing used in study This ie with use method study law juridical normative .

#### 2. Approach Study

In study This used approach study legislation (statute approach).

#### 3. Type and Source Legal Materials

Stage data collection with use secondary data approach (data obtained from studies bibliography ) where with researching and studying secondary data form material written who has correlation with object problem \_ writing thesis this .

#### 4. Legal Material Collection Techniques

Collection of legal materials is carried out by identifying and inventorying positive legal rules, researching library materials (books, scientific journals and research reports) and other sources of legal materials relevant to the legal issues being studied . Legal materials that have been collected are then classified, selected and ensured that they do not conflict with each other to facilitate analysis and construction of a legal research.

#### 5. Legal Material Analysis Techniques

This writing analysis was carried out using an interpretive method which is a research procedure that produces descriptive data, namely what is stated in writing or verbally and real behavior, so that by using the interpretation method, it is hoped that in carrying out research that is easy to understand and understand about the research object .

### RESULTS AND DISCUSSION

With development globalization is taking place moment this , it's hard For a country can independent only from results production his country alone . it cause trading international with method import and export the more growing , especially Again with increase the world's inhabitants make the more variety need human . fast trading international this is also caused with progress technology information and transportation of course will make it easy For do marketing something product that can cross national boundaries.

Lately \_ this , trade international No free from exists goods categorized imports \_ as goods fake and stuff the naturally will raises loss Good from holder right brands , consumers , and countries. Latest data based on the results of the study by the Indonesian Anti- Counterfeiting Society (MIAP) on the impacts from exists forgery Right Riches Intellectuals (HKI) in Indonesia with the title "Economic Impacts of Counterfeiting and Piracy in Indonesia, 2020" where in studies the expose related with increasing practice forgery or IPR protected products \_ \_ significant with details mark loss the economy in 2020 will reach IDR 291 trillion . Loss This increase many times fold of the total value loss economics on results studies similar to what was done in 2015 viz amounting to Rp 65.1 trillion and in 2010 amounting to Rp 37 trillion . Nominally , a loss economy caused by circulation \_ product false the reach more from IDR 291 trillion , with loss on tax of IDR 967 billion as well as more of 2 million chance work (Aditya, 2021).

Product false This most originate from outside Indonesia, China and Hong Kong are many countries supply product imitation . Based on Organization for Economic Co-operation and Development (OECD) report , total imports goods counterfeits in 2013 totaled US\$461 or around IDR 6 thousand trillion . Amount , contributing 2.5 percent \_ from amount global import . Of this total , as much as 63.2 percent goods false originate from China. Then followed by Hong Kong, with a volume of 21.3 percent (Sari, 20210).

Based on PP number 20 of 2017 Article 2 Paragraph (2) that Intellectual Property Rights Include:

- a. Brand rights
- b. Right copyright and rights related ;
- c. simple patents and patents ;
- d. design industry ;
- e. layout design circuit integrated ;
- f. varieties plants ; And
- g. indication geography is .

In practice, the control of goods resulting from infringement of Intellectual Property Rights in the customs area only protects 2 types of Intellectual Property Rights , namely as follows:

#### (1). Copyright

The legal regulation governing copyright is Law Number 28 of 2014 concerning Copyright (UU No. 28 of 2014). Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation

is realized in a tangible form without reducing restrictions in accordance with the provisions of the laws and regulations as referred to in the provisions of Article 1 point 1 of Law No. 28th 2014.

Copyright consists of moral rights and economic rights. What is meant by moral rights are rights inherent in the Creator. Whereas what is meant by economic rights is an exclusive right of the Author or Copyright Holder to utilize his creations that have economic value.

(2). Brand

The legal arrangements governing marks, namely Law Number 20 of 2016 Concerning Marks and Geographical Indications (UU No. 20 of 2016) are quite good at accommodating issues related to marks and geographical indications. A mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement in 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to differentiate goods and/or services produced by persons or legal entities in trading activities of bodies and/or services as referred to in the provisions of Article 1 point 1 of Law no. 20th 2016..

Some of the processes that must be followed in order to be able to take a temporary suspension include recording and prevention by customs in the context of detecting an alleged copyright infringement, the recording and prevention process is as follows:

**a. Recording**

System recording Right Riches Intellectual Property Rights (IPR) is something step coordination between Customs and the Directorate General Riches Intellectual Ministry of Justice. System HKI recording is something system use digital instrument for can do control in existence guess goods import results IPR violations . System recording at Customs different with registration at the Directorate General of Intellectual Property Rights, however second agency This will Work The same in create system integrated For make it easy second party Work same and exchange data with Directorate General IPR.

First basic in IPR protection is something right riches intellectual Already registered with the Directorate General of Intellectual Property Rights. If an IPR has not registered at the Directorate General of Intellectual Property Rights, then recording at Customs Not yet Can done . The system at the Directorate General of Intellectual Property Rights is connected with system in Customs . In framework control goods false import results violation Right Riches Intellectual Property Rights (IPR) is carried out system recording of Intellectual Property Rights which is in essence is owner right must registered and domiciled in Indonesia, has proof ownership rights , data characteristics product , specification data works and letters accountability from owner right For all the consequences that arise from recording . Owner right must own HKI certificate as sign Already register right on HKI to Directorate General of Intellectual Property Rights who can used For registration in Customs and system HKI recording can processed For do control , Owner right should too domiciled in Indonesia because if happen guess goods import results violation of IPR, the Customs can quick do handling with contact owner right For can do confirmation Correct or nope guess goods imports that violate IPR. data collection system recording at Customs apply maximum 1 ( one ) year and can extended . Ordinances \_ or channel HKI recording is regulated in Article 5 and Article 6 of the Regulations Government Number 20 of 2017. Based on results interview with Customs and Excise Officials Cirebon , moment This system recording ( recording ) still in stage prepare application system available online information connect in a manner direct with various agency .

**b. Prevention**

one \_ authority Directorate General of Customs and Excise is do prevention to goods import export results violation of rights Riches Intellectual (IPR). this \_ set inside \_ Article 7 Regulations Government Number 20 of 2017. Prevention is action administration For postpone dispensing , loading , and transporting goods import or export until fulfilled obligation customs . Prevention carried out by Customs and Excise Officials on suspected goods results IPR violations that have been There is the data on the system Customs and Excise recording . at the moment goods import enter to area customs , Customs and Excise Officials do inspection based on management risk and do analysis intelligence based on information on the system IP recording . Customs and Excise Officials Then do announcement to owner right through existing data registered on the system related IPR recording with Correct or nope guess goods import results IPR violations based on proof from Customs and Excise Officials . Owner right on the HKI given maximum period of 2 (two) days after date announcement For do confirmation to Customs and Excise Officials about truth or No exists guess goods import results IPR violations . If right at the time give confirm , owner right on compulsory IPR do application Suspension to Chairman Court place area customs located and a maximum of 4 ( four ) days since exists confirmation from owner right over IPR. Application Suspension done with prepare condition administration and guarantee cost operational 100,000,000.00 IDR ( one hundred million rupiah) in form bank guarantee or company insurance ., process Not yet done Because Still in stage preparation and yet There is Regulation of the Minister of Finance (PMK) and regulations technical for process \_ right on the field . No exists Regulation of the Minister of Finance (PMK), Customs supervision related prevention No maximum Because prevention Not yet Once done . Regulation Government Number 20 of 2017 already arrange in a manner complete and clear , stay prepare the process for in the field . Customs and Excise Cirebon until moment This currently prepare team IP analyst with add knowledge and skills in the field IPR

When connected with the theory of ownership According to Locke, everyone naturally has rights over himself and therefore results his work ( labour ) because he has made sacrifices in the form of finding, processing, and adding "personality" to something, as expressed as following.

" ... yet every man has a "properties" in his own 'person'. this nobody has any right to but himself. the 'labor' of his body and the 'work' of his hands, we may say, are properly his. whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labor with it, and joined to it something that is his own, and thereby makes it his properties .

It was revealed that everything that existed on earth originally belonged to all mankind. Even so, "everything" referred to cannot be utilized directly without obtaining and processing it first. To be processed, something that exists in nature must be taken first, for example an animal that is to be eaten must first be caught, and processed by someone (which also means owned by that person). Therefore, Locke emphasizes the importance of giving awards to people who have made "sacrifice" to find and cultivate something that comes from nature, in the form of property rights . Justin Hughes connects Locke's view with the problem of protecting IPR through the statement that IPR is obtained through process of learning/understanding (cognitive). Thus, even though the "input" Which push process creation the originate from the environment outside si creator, process "assembly" creation That Alone happened in in his mind so that No Again pure like form at first. <sup>10</sup> in in discussion about IPR, draft Which developed by Locke This Then known as Labor theory .

In John Locke's theory, he explained that IPR is a category of ownership of the results of human work, where this must be given an award. So in this case it can be concluded that the form of appreciation for IPR must get protection.

Based on the description above, IPR protection must be fully protected by the state, both in the customs area and outside the customs area. The procedure for implementing temporary suspension is the spearhead of protection from IPR violations in the customs area, but the protection of IPR in the customs area has not been implemented optimally.

IPR protection in the customs area only covers trademarks and copyrights, while IPR covers several Brand Rights copyright and rights related , patents and simple patents , industrial designs , layout designs circuit integrated , variety plants ; And indication geography is . So the protection of intellectual property rights has not been implemented optimally by the state.

When connected with the theory of legal effectiveness according to Soerjono Soekanto is that whether a law is effective or not is determined by 5 (five) factors, namely:

1. The legal factor itself (law);
2. Law enforcement factors, namely the parties that make up and apply the law;
3. Factors of facilities or facilities that support law enforcement;
4. Community factors, namely the environment where the law applies or is applied;
5. Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.

The temporary suspension procedure in the recording system is the ineffectiveness of legal protection, one of the influencing factors is the legal factor itself (law), where in the process of requesting a recording it should be carried out simultaneously with the registration of IPR so that the state can be present to provide maximum protection for IPR holders . However, in fact, the mechanism for the application process for recording is carried out separately, so that many IPR holders do not apply for recording. So this causes weak protection of intellectual property rights in the customs area.

## CONCLUSION

1. Implementation of Suspension While the release of imported goods related to violations of Intellectual Property Rights in the customs area is not fully able to protect because it only covers Marks and Rights copyright , while patents and simple patents , industrial design , layout design circuit integrated , variety plants ; And indication geography is . It cannot be implemented in a temporary suspension to protect intellectual property rights in the customs area because the recording process can only be carried out by Copyright and Trademarks, so the application of a temporary suspension for protection efforts in the Customs area in intellectual property rights has not been implemented optimally by the state.
2. Legal protection for temporary suspension of violations of Intellectual Property Rights in the customs area is not yet legally effective because the detention process is only 2 days after notification from customs for alleged violations of intellectual property rights, while the court authorized to issue temporary suspension orders is only the Commercial Court, where Indonesia only has 5 (five) commercial courts so that the process of requesting suspension is often hindered by distance and time and the existence of a security deposit of Rp. 100,000,000 which is used as a condition for applying for temporary suspension is an obstacle for Rights Holders in an effort to protect their own rights, especially MSME entrepreneurs.

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