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## Indonesia Issues New Implementing Regulation for Customs Recordal

The Indonesian Ministry of Finance has issued a new regulation that makes it possible to record trademarks and copyright with the Directorate General of Customs and Excise so that customs authorities can inform intellectual property rights owners of potential counterfeit goods. Minister of Finance Regulation No. 40/PMK.04/2018 regarding 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 (“MOF 40/2018”) was issued on April 16, 2018, and came into effect on June 16, 2018.

MOF 40/2018 serves as the implementing regulation for Government Regulation No. 20 of 2017 regarding Import Control or Export of Goods Allegedly/Originated from Infringement of Intellectual Property. The scope of this new implementing regulation is outlined below.

### Recordation of Trademark and Copyright

According to MOF 40/2018, an owner or holder of a trademark or copyright may submit an application for customs recordation of its IP rights if it is a business entity in Indonesia. A distributor cannot apply for recordation, potentially creating an enforcement hurdle in the future if Indonesian customs authorities encounter infringing goods with trademarks or copyrights registered to a foreign company that does not have a local Indonesian entity in its name.

An application may be submitted online at <https://customer.beacukai.go.id>, and the competent customs official will examine each application before approving the recordal of IP rights into the customs recordation system. Each recordation is valid for a maximum of one year from the date of approval and is applicable for all ports within Indonesian territory. Each recordation may also be extended, provided that an extension application is filed at least 30 days before the recordation period ends.

Each IP rights holder is required to appoint an expert who has sufficient knowledge of the goods related to the trademark or copyright that will be recorded in the customs recordation system. The expert should be capable of identifying counterfeit goods, and be familiar with the distribution channels of genuine goods.

Customs officials will conduct an interview with the appointed expert, who will be expected to show his or her knowledge of the product and distribution channel, and assist authorities in verifying alleged counterfeit goods. The expert does not have to be the rights holder or someone from the rights holder’s company, as long as the expert has been appointed and is capable. It is thus important for the rights holder to provide regular product training to update its expert’s knowledge.

After recordation is completed, the IP rights owner or holder must notify customs officials if there are any changes to its recorded trademark or copyright. Should the need

arise, the rights owner or holder may submit an application to revoke the recordation of its IP rights before the recordation’s actual expiration date.

### Restraint and Prevention

Article 10 of MOF 40/2018 allows customs officials to conduct an inspection of suspicious imported or exported goods. The information contained in each IP rights recordation will enable customs officials to obtain sufficient evidence during inspections or conduct effective intelligence analysis of potentially infringing goods.

If potential IP infringement is found, customs officials will notify the IP rights owner or holder, who will have two days to decide whether to submit a request for a temporary suspension order to the relevant court.

### Temporary Suspension

If a temporary suspension order is sought, the IP rights owner or holder must provide security guarantees to customs officials in the amount of IDR 100 million (approximately USD 7,100), either in the form of a bank guarantee or a guarantee issued by an insurance company. The IP rights owner or holder must then submit a temporary suspension request to the court and provide a receipt to the competent customs official within four days after confirmation that the request has been submitted.

After receiving the court order for temporary suspension, the customs official must notify the following parties within one day: (1) the importer or exporter of the suspected counterfeit goods; (2) the IP rights owner or holder; and (3) the Directorate General of Intellectual Property.

Customs officials will implement the temporary suspension for 10 working days after receiving the court order. The IP rights owner or holder may also submit a petition to the court to extend the temporary suspension for a maximum of 10 additional working days.

During the temporary suspension, the IP rights owner or holder can request to inspect the alleged infringing goods by submitting a request for physical inspection to customs officials within two working days from the date on which the court issued the suspension order.

Customs officials must terminate the temporary suspension should any of the following events occur:

- ▶ the period for temporary suspension or extension of temporary suspension lapses;
- ▶ an order is issued by the Commercial Court to stop the temporary suspension; or
- ▶ civil or criminal legal action is initiated.

### Additional Considerations

Article 24 of MOF 40/2018 places the responsibility for all operational costs arising from the restraint and temporary suspension of the alleged infringing goods on the IP rights owner or holder. The operational costs for storage, handling of goods, and labor are estimated to be IDR 100 million (about USD 7,100), approximately the same amount as the IP rights owner or holder’s security guarantees.

Brand owners should be aware of the short timeframe for action once a temporary suspension has been initiated and must act quickly in conducting inspection and taking further legal action. Proactive brand owners may also consider providing training to Indonesian customs officials on the identification of counterfeit goods from genuine products, thereby increasing the capabilities of authorities in enforcing IP rights in this jurisdiction in the future.

Although MOF 40/2018 has yet to be applied in practice, the enactment of this implementing regulation does reflect the continual efforts and commitment of the government to strengthen the overall IP protection regime in Indonesia. 🏠