

PP 20 YEAR 2017 AND PMK 40 / PMK.04 / 2018

The Regulation of the Minister of Finance No. 40/PMK.04/2018 on the Recording, Postponement, Deposit, Suspension, Monitoring and Evaluation to control of Import or Export of Suspected Counterfeit Goods infringing on other parties' Trademark Rights and Copyrights (hereinafter referred to as "IP RIGHT" was approved on 13 April 2018 and will come into effect on 16 June 2018. This is implementing regulation of the Regulation No. 20 of 2017 on Control of Import or Export of Suspected Counterfeit Goods infringing on other parties' IP RIGHT approved on 30 May 2017 and came into force on 2 August 2017. Several highlight issues relating to the both regulation mentioned above are as follows:

1. Recording System of IP RIGHT in Directorate General of Customs and Excise (DGCE)

- Eligibility for Recording IP RIGHT:
 - ✓ Holder of IP RIGHT registered in DGIP
 - ✓ Owner who has business entity in Indonesia
- Recording Requirements :
 - ✓ proof of ownership of rights (Trademark Certificate);
 - ✓ Articles of the Corporation
 - ✓ Tax registration (NPWP)
 - ✓ Business Permit (SIUP)
 - ✓ Company Registry (TDP)
 - ✓ data regarding the characteristics of the authenticity of the product,
 - ✓ a statement of responsibility from the owner or holder of the rights to any consequences arising from the recording;
 - ✓ appointment of an examiner (product expert) who understands the trademark and/or the copyright of the requested goods.
- Decision of Approval or Rejection on Recording of IPRIGHT:

The decision shall be issued no later than 30 days from the date of application for the recordal of IP Right which previously should pass formal and material research process as well as data validation to government agencies and related organizations. Duration of Record of IP Right in DGCE is valid for 1 (one) year and thereafter can be annually renewed.

2. Postponement and Suspension

- The Customs shall notify IP Right holder of the decision on the postponement. The Right holder confirms the notification within 2 (two) days from the date of notification.
- The right holder should request for the Suspension to the Court at latest 4 (four) days after confirmation. The Court is the Commercial Court of the District Court in the jurisdiction of the local Customs Area where suspect counterfeit goods imported and/or exported
- The right holder should pay deposit of Rp. 100.000.000, - (One Hundred Million).
- The decision to grant or reject the suspension application shall be given by the Court no later than 2 (two) days after the application for the suspension is filed.
- The determination of suspension orders shall be notified to the Customs no later than 1 (one) day after the granting decision on the said application. The Customs should notify the decision for suspension to Importer, IP Right Holder and DGIP.
- The suspension shall be held on 10 (ten) days since the date of commencement of the warrant or determination suspension is accepted and can be extended 1 (one) time for the next 10 (ten) days.

インドネシア税関での侵害貨物差止めについて

2017年知的財産権（商標・著作権）侵害疑義貨物輸出入管理に関する政令第20号（2017年8月2日施行）にかかる実施細則である財務大臣法令 No. 40/PMK.04/2018 が2018年6月16日付で発効される。以下は当該法令の要点である。

1. 商標権又は著作権の税関での登録制度

- 登録資格
 - ✓ インドネシア商標登録権利者又は著作権登録権利者
 - ✓ インドネシアで現地事業実体を有すること
- 登録要件
 - ✓ 商標権又は著作権のインドネシア登録証明書
 - ✓ 会社定款
 - ✓ 納税者番号 (NPWP)
 - ✓ 事業許可書 (SIUP)
 - ✓ 会社登録証 (TDP)
 - ✓ 真正商品の特徴の説明書
 - ✓ 権利所有者の権利行使責任供述書
 - ✓ 真正品の商標又は著作権に精通する鑑定人の指名
 - ✓ 真正品輸出入業者情報
- 登録可否
商標権又は著作権の税関登録は申請日から30日以内に提出書類審査結果に基づき、登録の可否査定をするものとする。
- 登録存続期間
登録日から1年とし、その後、1年毎存続期間の更新は可能

2. 差止め手続

- 税関が疑義品を発見後、権利者に通知
- 当該通知から2稼働日以内に権利者は差止めの要否を税関に確認
- 税関への確認後、差止めする場合は4稼働日以内に侵害品の輸出入の発生地区管轄の商務裁判所に差止申請及び差止め保証金1億ルピア (Rp.100.000.000) の支払い
- 裁判所は差止め申請日受領後2稼働日以内に差止め決定
- 裁判所は決定後、1稼働日以内に税関に差止め決定通知
- 税関は、輸出入業者、権利者、知財局に差止め決定の通知
- 税関は差止め決定の日から10日間疑義貨物を差止め。
（*当該差止め期間は、更に10日間の更新可能）