

LAW OF THE REPUBLIC OF INDONESIA

NUMBER 15 OF 2001

CONCERNING TRADEMARKS

Considering:

- (a) that in the era of global trade, in line with the international conventions already ratified by Indonesia, the role of Trademarks has become highly important, particularly in assuring fair competition in business;
- (b) that in view of the foregoing, it is necessary to have adequate legislation on Trademarks in order to promote services to the general public;
- (c) that based on the consideration in items (a) and (b), and the experience in enforcing the existing Trademark Law, it is deemed necessary to replace Law Number 19 of 1992 on Trademarks as already amended under Law Number 14 of 1997 on Amendment to Law Number 19 of 1992 on Trademarks.

In view of:

- (1) Article 5 paragraph (1), Article 20, and Article 33 of 1945 Constitution of the Republic of Indonesia;
- (2) Law No 7 of 1994 on Ratification of the Agreement Establishing the World Trade Organization (State Gazette of the Republic of Indonesia of 1994 Number 57, State Gazette Supplement Number 3564).

With the endorsement of the People's Representative Assembly of the Republic of Indonesia it has been decided to declare the effectiveness of the Law of Trademarks.

Elucidation: One aspect of development that has become actual and received serious attention in the past ten years and a trend that may still persist in the future is the growing influx of globalization rush in the socio-economic-cultural areas as well as in other sectors of life. The advancement of information and transportation technology has brought about rapid increase in the trade sector, and has even made the world as a single, common market. It will be hard to maintain the era of globalised trade unless that is a climate of fair competition. Here, Trademark has such a highly important role it requires more adequate ruling. In view of this and in line with the international conventions already ratified by Indonesia, as well as the experience of administering Trademarks, it is deemed necessary to revise the Law of Trademark that is Law Number 19 of 1992 (State Gazette of 1992 Number 81) as already amended under Law Number 14 of 1997 (State Gazette of 1997

Number 31), hereafter referred to as former Trademark Law and supersede it with new Law of Trademark.

Some noticeable differences in this Law are that it, compared with the former Trademark Law includes the process of completing an Application. In this Law, substantive inspection is made after the Application has been declared satisfying the administrative requirements. Before, the substantive inspection is made after the completion of the announcement of the Application. Under this Law, it will take shorter time to know whether an Application is accepted or rejected, and it gives the opportunity to other parties to make a complaint of an Application already approved for registration. Now, the announcement time is set at three months, a shorter time than in the former Trademark Law. As the announcement time has been made shorter, the processing time through completion of an Application is made shorter in the efforts to improve services to the general public.

As regards the Priority Right, this Law stipulates that if the Applicant fails to show the evidence of application receipt that has produced the Priority Right, an Application shall be processed in the usual procedure without observing the Priority Right.

Another matter is the rejection of an Application that causes the Applicant to incur a loss. In respect of this, it is necessary to make a ruling that will help the Applicant find out more clearly of the reasons of the rejection of his or her Application by first informing the an Applicant that his or her Application will be rejected.

Besides protection of Trade Mark and Service Mark, this Law also includes a ruling on protection of geographical indication, that is, signs showing the area of origin of some goods, from geographical factor, including factor of the nature or human factor or a combination between both factors that give the particular goods the characteristics and quality of the product. The same ruling also affects indication of origin.

Further, as Trademark is a par of economic/business activities, the settlement of disputes will require the services of a special court, the Commercial Court, through which it is expected that disputes in Trademark could be timely settled. Besides, there must be special law procedure through which to settle the issues of Trademark as another intellectual property rights. A special court for cases of Trademark and other intellectual property rights is also known in some other countries such as Thailand. In this Law, the Trademark is even more protected, that is, through Interim Decision of the Court which protects the owner from incurring more losses. Besides, to give more opportunities for settlement of disputes, this Law also stipulates provisions on Arbitration or Dispute Settlement Alternative.

This law covers Trademark ruling in a single text, that the general public will find it easier to use. In these respects, the provisions in the former Trademark Law whose substance is not changed, also included in this Law.

Chapter I - General Provisions

Article 1

For the purpose of this Law:

- (1) Trademark means any sign in the form of a picture, name, word, letters, figures, color composition, or a combination of the said elements that makes it distinguishable and is used in the trading of goods or services.
- (2) Trademark is Mark used on goods traded by a person or a number of persons jointly, or a legal entity in order to distinguish the goods from other goods of the same type.
- (3) Service Mark is Mark used on services traded by a person or a number of persons jointly, or a legal entity in order to distinguish the services from other services of the same type.
- (4) Collective Mark is Mark used on goods or services of the same characteristics traded by a person or a number of persons jointly or a legal entity jointly to distinguish the goods and/or services from other goods and/or services of the same type.
- (5) Application is application for Trademark registration made in writing to the Directorate General.
- (6) Applicant is the party making the Application.
- (7) Inspector is a Trademark Inspector, an official who by competency is so appointed in a Ministerial Decree, and is assigned to do inspection of Trademark registration Application.
- (8) Attorney is Consultant on Intellectual Property Rights.
- (9) Minister is the minister in charge of the ministry with the tasks and responsibilities cover among other things the area or intellectual property rights, including Trademark.
- (10) Directorate General is Directorate General on Intellectual Property Rights which is within the ministry supervised by the Minister.
- (11) Filing Date is the date the Application that has fulfilled the administration requirements is received.
- (12) Intellectual Property Right Consultant is a person who has the competency in the area of intellectual property rights and who particularly renders services on the submission and processing of Applications of Patents, Trademarks, Industrial designs and other fields of intellectual property rights and is registered as an Intellectual Property Right Consultant with the Directorate General.
- (13) License is permit issued by the owner of a registered Trademark to another party on an agreement based on an assignment of right (not a transfer of right) to use the particular

Trademark for all or a part of the type of goods and/or services registered under a definite period and conditions.

- (14) Priority Right is the right of an applicant to make an application from a country that belongs to the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization to get the acknowledgment that the filing date in the country of origin be the priority date in the country of destination that is also a member of the two conventions, as long as such an application is made within the period provided in the Paris Convention for the Protection of Industrial Property.
- (15) Day is working day.

Chapter II - Scope of Trademarks

PART ONE – GENERAL

Article 2

Trademark as provided under this Law comprises Trade Marks and Service Marks.

Article 3

Right to Trademark is an exclusive right conferred by the State on the owner of a Trademark registered in the Trademark General Registry for a definite period of time by using the Trademark for him/herself or permitting the use thereof by another party.

Elucidation: Except otherwise provided, the party in this and subsequent articles of this Law is an individual person, a number of persons jointly, or a legal entity.

PART TWO – REGISTERED AND UNREGISTERED MARKS

Article 4

A Trademark shall not be registered on an Application made by an Applicant with bad faith.

Elucidation: An Applicant with good faith shall be the Applicant who registers his or her Trademark properly and fairly, without any intentions to get a free ride, imitate or copy the

fame of other's Trademark for his or her business that causes a loss to the other party, or that creates the condition of unfair competition, deceiving and misleading consumers. Example, the "A" Trademark that has become widely well known to the public for many years, is imitated in such a way that it has a similarity in principle or in entirety to the "A" Trademark. This is an example of bad faith of the imitator, as it at least indicates an element of deliberateness in imitating such a well-known Trademark.

Article 5

A Trademark shall not be registered if it contains any of the following elements:

- (a) is against the prevailing laws and regulations, religious morality, decency or public order;
Elucidation: The definition of against religious morality, decency and public order is that if the use of the sign affect the feeling, graciousness, restful situation or religious faith of the general public or particular community.
- (b) is not distinctive;
Elucidation: A sign is deemed to be not distinguishable if it is too simple such as a line or a period, or too complicated that it does not clearly represent anything.
- (c) has become public domain; or
Elucidation: One example of this is the sign of a skull over a crossing bone that has been commonly known as a sign of a danger.
- (d) is a description or related to goods or services being applied for registration.
Elucidation: The Trademark is associated with or only mentions the goods or services being applied for registration, such as the Kopi Trademark or a picture of coffee for coffee or coffee product.

Article 6

- (1) An Application shall be rejected by the Directorate General if the Trademark:
 - (a) has similarity in principle or in entirety to the Trademark owned by another party that has been registered before for goods and/or services of the same type;
Elucidation: Similarity in principle means similarity contributed by significant elements between one Trademark and another Trademark, that may give an impression of a similarity in regards of shape, placement, writing style, or a combination of elements or similarity in the pronunciation contained in the concerned trademarks.
 - (b) has similarity in principle or in entirety to an already well-known Trademark owned by another party for goods and/or services of the same type.

Elucidation: The rejection of an Application that has similarity in principle or in entirety to a well-known Trademark for goods and/or services of the same type is determined by observing the public's general knowledge of the Trademark in the particular business sector. Besides, an observance is made of the reputation of the well-known Trademark achieved through intensive and extensive promotion, investments in a number of countries all over the world by its owner, and accompanied by evidence of the Trademark's registration in several countries. If the above aspects are still insufficient, the Commercial Court may order an independent institution to conduct a survey to achieve a conclusion of whether the Trademark is well-known or otherwise that becomes the basis of the rejection.

- (c) has similarity in principle or in entirety to a well-known geographical indication.
- (2) The provision as described in paragraph (1) item (b) may also apply to goods and/or services that are not of the same type as long as they fulfill particular requirements as may be further provided in a Government Regulation.
- (3) An application shall also be rejected by the Directorate General if the Trademark:
 - (a) is or resembles the name of a famous person, photo or name of a legal entity of another person, except with a written approval of the rightful person;
Elucidation: Name of legal entity here means the name of a legal entity used as Trademark and is recorded in the Trademark General Registry.
 - (b) is an imitation or resemblance of a name or abbreviation of a name, flag, coat of arms or logo or emblem of a state or a national as well as international agency, except with a written approval of the relevant authority;
Elucidation: National institution here includes mass organization or socio-political organization.
 - (c) is an imitation or resemblance of a sign or official seal used by a state or a Government agency, except with a written approval of the relevant authority.

Chapter III - Application for Trademark Registration

PART ONE – REQUIREMENTS AND PROCEDURES FOR AN APPLICATION

Article 7

- (1) An Application shall be made in writing in the Indonesian language to the Directorate General, giving the following indications:

- (a) date, month and year;
 - (b) full name, citizenship, and address of the Applicant;
 - (c) full name and address of the Attorney if the Application is made through an Attorney;
 - (d) colors if the Trademark being applied for registration uses color elements;
 - (e) name of country and the date the Trademark is first registered if the Application is made using the Priority Right.
- (2) The Application shall be signed by the Applicant or his or her Attorney.
 - (3) The Applicant as described in paragraph (2) may consist of one or a number of persons jointly, or a legal entity.
 - (4) The Application shall be attached with the payment receipt of the cost.
 - (5) If an Applicant is made by more than one Applicant who jointly have the right to the particular Trademark, the names of all the Applicants shall be indicated by choosing one address as their address.
 - (6) In the case of an Application as described in paragraph (5), the Application shall be signed by one of the Applicants having the right to the Trademark attaching thereto a written approval of all the Applicants being represented.
 - (7) In the case of an Application as described in paragraph (5) is made through their Attorney, the power of attorney shall be signed by all the parties having the right to the Trademark.
 - (8) The Attorney as described in paragraph (7) shall be an Intellectual Property Right Consultant.
 - (9) The requirements for becoming an Intellectual Property Right Consultant shall be provided in a Government Regulation, and the procedure for the appointment shall be provided in a Presidential Decree.

Article 8

- (1) The Application for two (2) or more classes of goods and/or services may be made in a single Application.

Elucidation: In principle, an Application may be made for more than one classes of goods or classes of services in accordance with the Trademark Law Treaty already ratified under the Presidential Decree Number 17 of 1997. This is meant to make it easier for the owner of the Trademark in using his or her Trademark for a number of goods and/or services belonging to a number of classes that should not be required to undergo the administrative process that requires submission of a number of Applications separately for the respective classes of goods and/or services.
- (2) The Application as described in paragraph (1) shall indicate the types of goods and/or services that belong to the class being applied for registration.

- (3) The class of goods or services as described in paragraph (1) shall be further provided in a Government Regulation.

Article 9

The requirements and procedure of the Application shall be further provided in a Government Regulation.

Article 10

- (1) An Application made by an Applicant residing or having its permanent domicile outside the territory of the Republic of Indonesia make the Application through his or her Attorney in Indonesia.

Elucidation: This provision applies to an Application using Priority Right.

- (2) The Applicant described in paragraph (1) shall state the domicile of his or her Attorney as his or her domicile in Indonesia.

PART TWO – APPLICATION FOR TRADEMARK REGISTRATION WITH A PRIORITY RIGHT

Article 11

An Application using a Priority Right shall be made within six (6) months as from the filing date of the first registration of the Trademark in another country that is a member of the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization.

Elucidation: This provision is meant to serve the interests of the country that only becomes one of the members of the Paris Convention for the Protection of Industrial Property 1883 (as amended several times) or the Agreement Establishing the World Trade Organization.

Article 12

- (1) In addition to fulfilling the requirement as described in Part One of this Chapter, the Applicant with a Priority Rights shall be accompanied by evidence of the filing date of the first registration of the Trademark that has produced the Priority Right.

Elucidation: The evidence of Priority Right in the form of the registration form and receipt of the form that also indicates the filing date. If the transcription or photocopy of the receipt, the approval or the transcription or photocopy of the receipt is given by the Directorate General if the Application is made the first time.

- (2) The evidence of the Priority Right as described in paragraph (1) shall be translated into Indonesian language.

Elucidation: The translation shall be done by an authorized and sworn translator.

- (3) If the provisions described in paragraph (1) and paragraph (2) are not fulfilled in a period of no longer than three (3) months as from the expiry of the right to make an Application with a Priority Right as described in Article 11, the Application shall still be processed but without the Priority Right.

PART THREE – INSPECTION OF SUFFICIENCY OF A TRADEMARK REGISTRATION

Article 13

- (1) The Directorate General shall inspect the sufficiency of a Trademark registration as described in Article 7, Article 8, Article 9, Article 10, Article 11 and Article 12.
- (2) If there is insufficiency in an Application for Trademark registration as described in paragraph (1), the Directorate General shall require that the sufficiency of the Application be fulfilled in no later than two (2) months as from the date of the written notice to require such sufficiency.
Elucidation: The date of the written notice is the date as indicated by the postal seal.
- (3) In the case of sufficiency relating to the requirements as described in Article 12, the period for fulfilling the sufficiency shall be no longer than three (3) months as from the expiry of the period to make an Application with the Priority Right.

Article 14

- (1) If the sufficiency of the requirements is not fulfilled in the period described in Article 13 paragraph (2), the Directorate General shall notify in writing to the Applicant that the particular Application is deemed withdrawn.
- (2) If a Application is deemed to have been withdrawn as described in paragraph (1), all the costs already paid to the Directorate General shall not be claimed.

PART FOUR – FILING TIME OF AN APPLICATION FOR A TRADEMARK

Article 15

- (1) The Applicant who has successfully fulfilled the administrative requirements as described in Article 7, Article 8, Article 9, Article 10, Article 11 and Article 12 shall receive the Filing Date.

Elucidation: The Filing Date may be the same as the date the Application is submitted if the Application is found sufficiently fulfilling the requirements. If the sufficiency is fulfilled on any date after the date of submission, the later shall be the Filing Date.

- (2) The Filing Date as described in paragraph (1) shall be recorded by the Directorate General.

PART FIVE – CHANGE TO AND WITHDRAWAL OF A TRADEMARK REGISTRATION

Article 16

A change to an Application shall only be allowed for a change in the name and/or the address of the Applicant or his or her Attorney.

Article 17

- (1) An Application may as long as it is pending the decision of the Directorate General may be withdrawn by the Applicant or his or her Attorney.
- (2) If such a withdrawal as described in paragraph (1) is made by the Attorney, the withdrawal shall be based on a power of attorney drawn up for the purpose of such withdrawal.
- (3) If an Application is withdrawn, no claim may be made of all the costs already paid to the Directorate General.

Chapter IV - Trademark Registration

PART ONE – SUBSTANTIVE INSPECTION

Article 18

- (1) In no later than thirty (30) days as from the Filing Date as described in Article 15, the Directorate General shall make a substantive inspection of an Application.
- (2) The substantive inspection as described in paragraph (1) shall be undertaken in accordance with the provisions of Article 4, Article 5 and Article 6.
- (3) The substantive inspection as described in paragraph (1) shall be completed in no longer than nine (9) months.

Article 19

- (1) A substantive inspection shall be undertaken by an Inspector of the Directorate General.
- (2) An Inspector shall be an official who for the competency he or she possesses is appointed and discharged as a functional official by the Minister based on particular requirements and qualifications.
- (3) An Inspector shall be entitled to functional level and allowances and of the rights as provided in the prevailing laws and regulations.

Elucidation: Level here means the rank of the functional official as provided in the prevailing laws and regulations.

Article 20

- (1) If the Inspector reports that following an inspection an Application is found eligible for registration, then the Application shall with an approval of the Director General be announced in the Official Trademark Bulletin.
- (2) If the Inspector reports that following an inspection an Application is found ineligible for registration then, with an approval of the Director General, a written notice shall be made thereof to the Applicant or his or her Attorney, giving the reasons therefore.
- (3) The Applicant may in no later than thirty (30) days as from the receipt of the written notice as described in paragraph (2) file a complaint or comment thereof giving the reasons therefore.

- (4) Unless there is a complaint or a comment as described in paragraph (3), the Directorate General shall issue a decision of the rejection of the particular Application.
- (5) If the Application or his or her Attorney files a complaint or a comment as described in paragraph (3) and the Inspector reports that the comment is acceptable then, with approval of the Director General, the Application shall be announced in the Official Trademark Bulletin.
- (6) If the Applicant or his or her Attorney files a complaint or a comment as described in paragraph (3) and the Inspector reports that the comment is not acceptable then, with an approval of the Director General, a decision of the rejection of the Application shall be issued.
- (7) The decision of a rejection as described in paragraph (4) and (6) shall be notified in writing to the Applicant or his or her Attorney giving the reasons therefore.
- (8) If an Application is rejected, no claim may be made of all the costs already paid to the Directorate General.

PART TWO – ANNOUNCEMENT OF A PUBLICATION

Article 21

The Directorate General shall in no later than ten (10) days as from an Application is approved for registration, announce the Application in the Official Trademark Bulletin.

Article 22

- (1) An announcement shall last three (3) months and be made:
 - (a) by placing it in the Official Trademark Bulletin published periodically by the Directorate General; and/or
 - (b) placing it in a special facility provided by the Directorate General that makes it easily seen by the general public.

Elucidation: Special facility provided by the Directorate General includes a notice board. If possible, this special facility may be developed to microfilm, microfiche, CD-ROM, the internet and other media.
- (2) The date an Application starts being announced shall be indicated by the Directorate General in the Official Trademark Bulletin.

Article 23

The announcement is made by indicating the following:

- (a) full name and address of the Applicant, including his or her Attorney's if the Application is made through an Attorney;
- (b) class and type of goods and/or services of the Trademark being applied for registration;
- (c) Filing Date;
- (d) name of country and the filing date of the first application if the Application is made with a Priority Right; and
- (e) sample of the Trademark, including descriptions of the colors and if the label of the Trademark uses a foreign language and/or an alphabet other than Latin and/or a figure that is not commonly used in Indonesian language, with the translation thereof into the Indonesian language, Latin alphabet and figure commonly used in Indonesian language, and the pronunciation thereof in Latin.

PART THREE – COMPLAINT AND PROTEST

Article 24

- (1) During the announcement period as described in Article 22, any party may file a complaint or protest in writing to the Directorate General of the particular Application at a cost.
- (2) The complaint as described in paragraph (1) may be made if there are sufficient reasons with evidence that the particular Trademark being applied for registration is a Trademark that based on this Law shall not be registered or be rejected.
- (3) In the case of a complaint as described in paragraph (1) the Directorate General shall in fourteen (14) days as from the date such a complaint is received forward a copy of such a complaint to the Applicant or his or her Attorney.

Article 25

- (1) The Applicant or his or her Attorney may make a protest of a complaint as described in Article 24 to the Directorate General.
- (2) The protest as described in paragraph (1) shall be made in writing no later than two (2) months as from the date the copy of the complaint is received from the Directorate General.

PART FOUR - REINSPECTION

Article 26

- (1) In the case of a complaint and/or protest, the Directorate General shall use such a complaint or protest as consideration for a re-inspection work of the Application that has been announced as described in Article 21.
- (2) The re-inspection of an Application as described in paragraph (1) shall be completed in two (2) months as from the expiry of the announcement period.
- (3) The Directorate General shall notify in writing to the complainant of the result of the re-inspection as described in paragraph (1) and paragraph (2).
- (4) If the Inspector reports that a re-inspection result shows a complaint is acceptable, the Directorate General shall notify thereof in writing to the Applicant that the Application shall not be registered or is rejected and in such a case the Applicant or his or her Attorney may make an appeal.
- (5) If the Inspector reports that a re-inspection result shows a complaint is unacceptable then, with the approval of the Director General, the Application shall be declared approved for registration in the Trademark General Registry.

Article 27

- (1) In the case there are no complaints as described in Article 24, the Directorate General shall issue and grant a Trademark Certificate to the Applicant or his or her Attorney in no later than thirty (30) days as from the date the announcement period expires.
- (2) In the case an complaint is not acceptable as described in Article 26 paragraph (5), the Directorate General shall issue and grant a Trademark Certificate to the Applicant or his or her Attorney in no later than thirty (30) days as from the date the Application is approved for registration in the Trademark General Registry.
- (3) The Trademark Certificate as described in paragraph (1) shall contain the following:
 - (a) full name and address of the owner of the registered Trademark;
 - (b) full name and address of the Attorney if the Application is made as described in Article 10;
 - (c) the date of application and the Filing Date;
 - (d) name of country and the date the Trademark is first registered if the Application is made using the Priority Right;

- (e) label of the registered Trademark, including descriptions of the colors if the Trademark uses color elements, and if the Trademark uses a foreign language and/or an alphabet other than Latin and/or a figure that is not commonly used in Indonesian language, with the translation thereof into Indonesian language, Latin alphabet and figure commonly used in Indonesian language, and the pronunciation thereof in Latin.
 - (f) registration number and date;
 - (g) class and types of the goods and/or services the Trademark is registered; and
 - (h) period the registered Trademark is valid.
- (4) Any party may request an official copy of the Trademark Certificate recorded in the Trademark General Registry at a cost.

PART FIVE - PROTECTION PERIOD OF A REGISTERED TRADEMARK

Article 28

A registered Trademark is legally protected for a period of ten (10) years as from the Filing Date and this period may be extendable.

PART SIX - APPEAL

Article 29

- (1) An appeal may be made of a rejection of an Application related to reasons and basis of substantive nature as described in Article 4, Article 5 or Article 6.

Elucidation: An appeal is only limited to the reasons or considerations of substantive nature, that make the basis of the rejection. Hence, an appeal may not be made for other reasons such as the withdrawal of the Application.

- (2) An appeal shall be made in writing by the Applicant to the Trademark Appeal Committee sending a copy thereof to the Directorate General at a cost.
- (3) An appeal shall be made by giving a full account of the complaint and the reasons for the rejection of the Applicant as a result of the substantive inspection.
- (4) The reasons as described in paragraph (3) shall not be a rectification of the rejected Application.

Elucidation: The reasons, explanations or evidence to accompany an application for appeal shall be the more thorough descriptions of the reasons, explanations or evidence that have or should have been submitted. This provision is meant to prevent the possibility of using the

appeal as a means to cover insufficiency in the Application, as the opportunity to satisfy the requirements have been given at the previous stage.

Article 30

- (1) An appeal shall be made no later than three (3) months as from the date of the written notice regarding the rejected Application.
- (2) If no appeal is made within the period described in paragraph (1) the rejection of the Application shall be deemed to have been accepted by the Applicant.
- (3) If the rejection of an Application is deemed to have been accepted by the Applicant as described in paragraph (2), the Directorate General shall announce the rejection.

Article 31

- (1) The Trademark Appeal Committee shall make a decision in no later than three (3) months as from the appeal is received.
- (2) If the Trademark Appeal Committee accepts an appeal, the Directorate General shall make an announcement as described in Article 21, except regarding an Application already announced in the Official Trademark Bulletin.
- (3) If the Trademark Appeal Committee rejects an appeal, the Applicant or his or her Attorney may file a complaint of the decision of the appeal to the Commercial Court in no later than three (3) months as from the date the decision of rejection is received.
- (4) Only a kasasi may be made of the decision of the Commercial Court.

Article 32

The procedure of the application, hearing and settlement at the appeal level shall be further provided in a Presidential Decree.

PART SEVEN - TRADEMARK APPEAL COMMITTEE

Article 33

- (1) The Trademark Appeal Committee is an independent body within the ministry in charge of intellectual property rights.

Elucidation: The Appeal Committee shall in performing its tasks work independently based on competency and may not be influenced by any persons.

- (2) The Trademark Appeal Committee shall be composed of a Chairman concurrently member, a vice chairman concurrently member, and members consisting of people of the required competency as well as a senior Inspector.

Elucidation: An expert that may be appointed member of the Appeal Committee may come from the civil service or the private sector. Senior inspector here means the inspector who has had enough experience in inspecting Applications.

- (3) The members of the Trademark Appeal Committee as described in paragraph (2) shall be appointed and discharged by the Minister for a period of three (3) years.
- (4) The Chairman and Vice Chairman shall be elected by the members of the Trademark Appeal Committee.
- (5) In the examination of an appeal, the Trademark Appeal Committee shall set up a panel of odd number members consisting of at least three (3) persons, one of them being a senior Inspector who has not made a substantive inspection of the Application.

Elucidation: The panel shall consist of odd number members in order that a majority of vote can always be reached.

Article 34

The organization structure, tasks and functions of the Trademark Appeal Committee shall be further provided in a Government Regulation.

PART EIGHT - EXTENSION OF THE PROTECTION PERIOD OF A REGISTERED TRADEMARK

Article 35

- (1) The owner of a registered Trademark may apply for an extension for the same period.
- (2) The application for the extension as described in paragraph (1) shall be made in writing by the owner of the Trademark or his or her Attorney in twelve (12) months before the expiry of the protection period of the registered Trademark.
- (3) The application for an extension as described in paragraph (2) shall be made to the Directorate General.

Article 36

An application for extension shall be approved if:

- (a) the particular Trademark is still used on the goods and/or services as stipulated in the Trademark Certificate; and
- (b) the goods and/or services as described in item (a) are still produced and traded.

Article 37

- (1) An application for an extension shall be rejected by the Directorate General if the application fails to satisfy the requirements provided in Article 35 and Article 36.
- (2) An application for an extension shall be rejected by the Directorate General if the Trademark has similarity in principle or in entirety to a Trademark owned by another person, with due observance of the provision of Article 6 paragraph (1) item (b) and paragraph (2).
- (3) The rejection of an extension shall be notified in writing to the owner of the Trademark or his or her Attorney giving the reasons therefore.
- (4) The complaint of a rejection of an application for extension as described in paragraph (1) and paragraph (2) may be made to the Commercial Court.
- (5) Only a kasasi may be made of the decision of the Commercial Court.

Article 38

- (1) The extension of the protection period of a registered Trademark shall be recorded in the Trademark General Registry and be announced in the Official Trademark Bulletin.
- (2) The extension of the protection period of a registered Trademark shall be notified in writing to the owner of the Trademark or his or her Attorney.

PART NINE - CHANGE IN NAME AND/OR ADDRESS OF THE OWNER OF A REGISTERED TRADEMARK

Article 39

- (1) An application for the change in the name and/or address of the owner of a registered Trademark shall be made to the Directorate General at a cost for recording in the Trademark General Registry, accompanied by a valid copy of the evidence of the change.

- (2) The change in name and/or address of the owner of a registered Trademark already recorded by the Directorate General shall be announced in the Official Trademark Bulletin.

Chapter V - Transfer of a Right to a Registered Trademark

PART ONE - TRANSFER OF A RIGHT

Article 40

- (1) The right to a Trademark may be transferred in:
 - (a) inheritance;
 - (b) last will and testimony;
 - (c) bequest;
 - (d) agreement; or
 - (e) other reasons acceptable according to laws and regulations.

Elucidation: Other reasons acceptable according to laws and regulations means that such reasons are not against this Law, such as ownership of Trademark due to dissolution of a legal entity that used to be the owner of the Trademark.
- (2) The change of right to a Trademark as described in paragraph (1) shall be applied to the Directorate General for the recording thereof in the Trademark General Registry.
- (3) The application for a change of right to Trademark as described in paragraph (2) shall be accompanied by the supporting documents thereof.

Elucidation: The documents include Trademark Certificate and other evidence corroborating the ownership of the Trademark.
- (4) The change of right to a registered Trademark already recorded as described in paragraph (2), shall be announced in the Official Trademark Bulletin.
- (5) The change of right to a registered Trademark that is not recorded in the Trademark General Registry shall not have a legal effect on a third party.

Elucidation: The provision that the legal effect shall only be valid after the transfer of right to the Trademark has been recorded in the Trademark General Registry is meant to ensure proper supervision and legal certainty.
- (6) The recording of a transfer of right to a Trademark as described in paragraph (1) shall require a payment as provided in this Law.

Article 41

- (1) The change of right to a registered Trademark may be accompanied by the transfer of goodwill, reputation or other aspects attached to the particular Trademark.
- (2) The right to a registered Service Mark that is inseparable from the personal ability, quality or skills of the concerned provided of the services may be transferred on the condition that there is a guarantee in the quality of service provision.

Elucidation: The transfer of right to Trademark in this paragraph shall only be possible if there is a guarantee, by the owner of the Trademark as well as the holder of the Trademark or the Licensee, to maintain the quality of services being rendered. This will require the owner of the Trademark (the Licensor or the party transferring the Trademark) to draw up a special guide on the methods to render the services covered by the Trademark.

Article 42

The transfer of right to a registered Trademark shall only be recorded by the Directorate General if it is accompanied by a written statement of the transferee that the particular Trademark shall be used for the trading of goods and/or services.

PART TWO - LICENSE

Article 43

- (1) The owner of registered Trademark shall have the right to License other parties under an agreement that the Licensee shall use the Trademark for a part of all the types of goods or services.
- (2) The License agreement shall be effective in the territory of the Republic of Indonesia, except agreed otherwise, for a period of no longer than the term of protection of the particular Trademark.
- (3) A License agreement shall be applied for registration with the Directorate General at a cost and the legal effect of such License agreement registration shall apply to the concerned parties and a third party.
- (4) The License agreement as described in paragraph (3) shall be recorded by the Directorate General in the Trademark General Registry and be announced in the Official Trademark Bulletin.

Article 44

The owner of a Trademark who has licensed it to another party as described in Article 43 paragraph (1) shall still have the right to use it or to License another third party to use the Trademark, except otherwise agreed.

Article 45

The License agreement may stipulate that the Licensee may further license it to another party.

Article 46

The use of a registered Trademark by a Licensee in Indonesia shall be deemed the same as the use of the Trademark in Indonesia by the owner of the Trademark.

Elucidation: If the owner of a registered Trademark does not use the Trademark by himself or herself in the trading of goods or rendering services in Indonesia, the use of the Trademark by the Licensee shall be the same as the use of the registered Trademark by the owner. This is in respect of the possible deletion of a Trademark registration that is not used in trade or rendering services for three (3) years consecutively as provided in Article 61 paragraph (2) item (b).

Article 47

- (1) A License agreement shall not contain a stipulation, either directly or indirectly, that may adversely affect the economy of Indonesia nor a restriction that may retard the ability of Indonesians to master and develop technology in general.
- (2) The Directorate General shall reject an application for a License registration that stipulates restrictions as described in paragraph (1).
- (3) The Directorate General shall notify in writing of the rejection and the reasons therefore as described in paragraph (2) to the owner of the Trademark or his or her Attorney and to the Licensee.

Article 48

- (1) A Licensee with good faith, who later finds that the Trademark is cancelled due to its being similar in principle or in its entirety to a registered Trademark, shall still be able to exercise such License agreement until the expiration of the License agreement.
- (2) The Licensee as described in paragraph (1) shall no longer be obliged to pay royalty to the Licensor whose Trademark has been cancelled but to the owner of the Trademark whose Trademark is not cancelled.
- (3) If the Licensor has before received a royalty in lump sum from the Licensee, then the Licensor shall surrender a part of the royalty he or she has received to the owner of the Trademark whose Trademark is not cancelled in the amount proportionate to the part of the term concluded in the License agreement.

Article 49

The requirements and procedure of the application for License agreement registration and the provisions on the License agreement as described in this Law shall be further provided in a Presidential Decree.

Chapter VI - Collective Mark

Article 50

- (1) An application for the registration of a Trademark or a Service Mark as a Collective Mark may only be accepted if the Application clearly states that the Trademark shall be used as a Collective Mark.
- (2) In addition to the explicit statement of the use of the Collective Mark as described in paragraph (1), the Application shall be accompanied by a copy of the conditions the use of the Mark as a Collective Mark, signed by the owner of the Trademark.
- (3) The conditions on the use of Collective Mark as described in paragraph (2) shall at least stipulate the following:
 - (a) nature, general characteristics, or quality of the goods and services to be produced or traded;

- (b) conditions for the owner of the Collective Mark to conduct an effective supervision on the use of the Mark; and
- (c) penalty for a violation of the conditions on the use of a Collective Mark.

Elucidation: The provision of the nature, general characteristics and quality of the goods or services and the supervision thereof, implies that there are requirements the parties jointly using the Collective Trademark shall fulfill.

- (4) The conditions described in paragraph (3) shall be recorded in the Trademark General Registry and be announced in the Official Trademark Bulletin.

Article 51

An Application for the registration of a Collective Mark shall undergo an inspection of the compliance with the requirements as described in Article 7, Article 8, Article 9, Article 10, Article 11, Article 12 and Article 50.

Article 52

A substantive inspection of an Application for the registration of a Collective Mark shall be undertaken in accordance with the provision of Article 18, Article 19 and Article 20.

Article 53

- (1) Any change in the conditions of the use of a Collective Mark shall be applied for the registration thereof with the Directorate General accompanied by the valid copy of such change.
- (2) The change as described in paragraph (1) shall be recorded in the Trademark General Registry and be announced in the Official Trademark Bulletin.

Article 54

- (1) The right to a Collective Mark may only be transferred to another party that has the ability to conduct an effective supervision in accordance with conditions of the use of the Collective Mark.

- (2) A transfer of the right to a registered Collective Mark as described in paragraph (1) shall be applied for registration with the Directorate General at a cost. (3) The recording of the transfer of right as described in paragraph (2) shall be recorded in the Trademark General Registry and be announced in the Official Trademark Bulletin.

Article 55

A registered Collective Mark may not be licensed to another party.

Chapter VII - Geographical Indications and Indications of Origin

PART ONE - GEOGRAPHICAL INDICATION

Article 56

- (1) A geographical indication is protected as an indication of the area where some goods come from which by geographical factors including the factors of the nature, human kind, or a combination between the two factors gives particular characteristics and quality to goods produced.

Elucidation: Geographical indication is an indication or identity of an object coming from a particular place, area or region that shows the quality, reputation and characteristics including the natural and human factors that make the attributes of the article. The sign that represents a geographical indication may be a label fixed on the article produced. The sign may take the form of name of place, area or region, a word, picture, letter, or a combination of these elements. Name of place may be the name indicated in the geographical map or a name that because of continuous use has become the name of the place where the article is produced. A protection of geographical indication includes the materials produced by the nature, agriculture activities, handicraft, or particular industrial products.

- (2) A geographical indication gets a protection after it has been registered based on an application made by:
- (a) an institution representing the community in the area which produces the goods, comprising:
 - (1) the party producing the goods that are a natural resource or natural-rich;
 - (2) producers of agricultural products;

- (3) makers of handicraft items or industrial products; or
- (4) traders selling the goods;
- (b) an institution authorized therefore; or
- (c) consumer groups of the goods.

Elucidation: An institution representing the community in the area which produces the goods is the institution authorized to register the geographical indication and the institution shall be a Government's agency or other public institution as a cooperative, association, etc.

- (3) The provisions on the announcement as described in Article 21, Article 22, Article 23, Article 24 and Article 25 shall apply mutatis-mutandis to the announcement of an announcement of an application for a registration of a geographical indication.
- (4) An application for a registration of geographical indication shall be rejected by the Directorate General if the particular sign:
 - (a) is against the religious morality, decency, public order or may confuse or mislead the general public of the nature, characteristics, quality, source, production process, and/or the uses thereof;
 - (b) fails to satisfy the requirements as a geographical indication.
- (5) An appeal of a rejection as described in paragraph (1) may be made to the Trademark Appeal Committee.
- (6) The provisions on the appeal as described in Article 29, Article 30, Article 31, Article 32, Article 33 and Article 34 shall apply mutatis mutandis to an appeal as described in paragraph (5).
- (7) A registered geographical indication shall get a legal protection for the period as long as such characteristics and/or quality that make the basis of the protection of geographical indication are still at place.
- (8) If before or at the time an application for the registration of a geographical indication, a sign has been used in good faith by another party who does not have the right to register in as in accordance with the requirements described in paragraph (2), the party with a good faith may still use the sign in two (2) years as from the time the sign is registered as a geographical indication.
- (9) The provision on the procedure of registration for geographical indication shall be further provided in a Government Regulation.

Article 57

- (1) The holder of the right to a geographical indication may file a complaint against the user of a geographical indication without the right thereto in the form of a claim of a compensation and the end of using as well as the destruction of such a geographical indication used without the right thereto.
- (2) To prevent a larger loss on the part of the party whose right has been violated, the judge may order that the violator end all the production, duplication, and order to destroy the geographical indication label used without right.

Article 58

The provision on temporary decision as described in Chapter XII of this Law shall apply mutatis mutandis to exercising right to geographical indication.

PART TWO - INDICATION OF ORIGIN

Article 59

Indication of origin is protected by a sign that:

- (a) satisfies the provision of Article 56 paragraph (1), but is not registered; or
- (b) merely indicates the origin of goods or services.

Article 60

The provisions in Article 57 and Article 58 apply mutatis mutandis to the holder of right to geographical indication.

Chapter VIII - Abolition and Cancellation of Trademark Registration

PART ONE - ABOLITION

Article 61

- (1) The abolition of a registration of a Trademark from the Trademark General Registry may be made on an initiative of the Directorate General on an application by the owner of the particular Trademark.
- (2) An abolition of a Trademark registration on an initiative of the Directorate General may be undertaken if:
 - (a) The Trademark has not been used for three (3) consecutive years in trading of goods and/or services as from the registration date or the latest use, except for reasons acceptable by the Directorate General;
Elucidation: The latest use is the use of the Trademark in the production of goods or services being traded or rendered. The moment of the latest use shall be the latest use though the goods are thereafter still in circulation in the general public.
 - (b) The Trademark is used for goods and/or services that are not in accordance with the goods or services the application has been made for, including the use of a Trademark that is not in accordance with the registered Trademark.
Elucidation: Not in accordance with the use includes inconsistency in the writing of a word or letter or inconsistency in the use of colors.
- (3) The reason as described in paragraph (2) item (a) shall be for:
 - (a) an import ban;
 - (b) a ban related to a permit for the circulation of the goods using the particular Trademark or a decision of the authority that is of temporary status; or
 - (c) another similar ban provided in a Government Regulation.
- (4) An abolition of a Trademark registration as described in paragraph (2) shall be recorded in the Trademark General Registry and be announced in the Trademark Official Bulletin.
- (5) A complaint of a decision of abolition of a Trademark registration as described in paragraph (2) may be made to the Commercial Court.

Article 62

- (1) An application for the abolition of a Trademark registration by the owner of the Trademark or his or her Attorney affecting a part or all the types of goods and/or services shall be made to the Directorate General.
- (2) If the Trademark as described in paragraph (1) is still bound by a License agreement, the abolition thereof may only be made if it is approved in writing by the Licensee.
- (3) An exception to an approval as described in paragraph (2) shall only be possible if in the License agreement the Licensee expressly agrees to waive such approval.
- (4) The abolition of a Trademark registration as described in paragraph (1) shall be recorded in the Trademark General Registry and be announced in the Official Trademark Bulletin.

Article 63

The abolition of a Trademark registration on for a reason as described in Article 61 paragraph (2) item (a) and item (b) may only be made by a third party in the form of a complaint to the Commercial Court.

Article 64

- (1) Only a kasasi may be made of the decision of the Commercial Court on the case as described in Article 63.
- (2) The decision of a court as described in paragraph (1) shall forthwith be forwarded by the clerk of the court to the Directorate General after the decision has been pronounced.
- (3) The Directorate General shall abolish the particular Trademark from the Trademark General Registry and announce thereof in the Official Trademark Bulletin if the decision of the court described in paragraph (1) has been accepted and has become legally definite.

Article 65

- (1) The abolition of a Trademark shall be made by the Directorate General by deleting the particular Trademark from the Trademark General Registry and putting the notes on the reason therefore and the date the abolition is made.
- (2) The abolition of a registration as described in paragraph (1) shall be notified in writing to the owner of the Trademark or his or her Attorney mentioning the reason for the abolition and a

clarification that as from the date of abolition from the Trademark General Registry, the Trademark Certificate thereof shall become null and void.

- (3) The abolition of a registration shall put an end to the legal protection of the particular Trademark.

Article 66

- (1) The Directorate General may abolish a Collective Trademark registration on the following basis:
 - (a) an application therefor by the owner of the Collective Trademark with a written approval of all the users of the Collective Trademark;
 - (b) there is sufficient proof that the Collective Trademark has not been used for three (3) consecutive years as from the registration date or the latest use thereof, except for reasons acceptable by the Directorate General;
 - (c) there is sufficient proof that the Collective Trademark is used for goods or services that are not in accordance with the goods or services the application has been made for; or
 - (d) there is sufficient proof that the Collective Trademark has not been used in accordance with the regulation on the use of a company.
- (2) The application for an abolition of a Collective Trademark as described in paragraph (1) item (a) shall be made to the Directorate General.
- (3) The abolition of a Collective Trademark registration as described in paragraph (2) shall be recorded in the Trademark General Registry and be announced in the Official Trademark Bulletin.

Article 67

The abolition of a Collective Trademark may also be made in the form of a complaint by a third party to the Commercial Court based on reasons as described in Article 66 paragraph (1) item (b), item (c) and item (d).

PART TWO - CANCELLATION

Article 68

- (1) A complaint of a Trademark registration may be made by the concerned party for reasons as described in Article 4, Article 5 and Article 6.

Elucidation: The concerned party includes: the public prosecutor, consumer foundation, and religious board.

- (2) The owner of an unregistered Trademark may make a complaint as described in paragraph (1) after making an application therefore to the Directorate General.
- (3) The complaint for a cancellation as described in paragraph (1) shall be made to the Commercial Court.
- (4) If the plaintiff or the defender resides outside the territory of the Republic of Indonesia, the complaint shall be made to the Commercial Court in Jakarta.

Article 69

- (1) A complaint for a cancellation of a Trademark registration may only be made in a period of five (5) years as from the date of the Trademark registration.
- (2) A complaint for a cancellation may be made beyond the time limit if the Trademark is against the religious morality, decency, or public order.

Elucidation: Against religious morality, decency or public order means as described in Article 5 item (a). Against public order includes bad faith.

Article 70

- (1) Only a kasasi may be made of the decision of the Commercial Court on a complaint for a cancellation.
- (2) The decision of a court as described in paragraph (1) shall forthwith be forwarded by the clerk of the court to the Directorate General after the decision has been pronounced.
- (3) The Directorate General shall effect the cancellation of the particular Trademark registration from the Trademark General Registry and announce it in the Official Trademark Bulletin after the decision of the court as described in paragraph (1) has been received and has become permanently valid.

Article 71

- (1) The cancellation of a Trademark registration shall be made by the Directorate General by deleting the particular Trademark from the Trademark General Registry and putting the notes on the reason therefor and the date the abolition is made.

- (2) The cancellation of a registration as described in paragraph (1) shall be notified in writing to the owner of the Trademark or his or her Attorney mentioning the reason for the cancellation and a clarification that as from the date of deletion from the Trademark General Registry, the Trademark Certificate thereof shall become null and void.
- (3) The deletion of a Trademark from the Trademark General Registry as described in paragraph (1) shall be announced in the Official Trademark Bulletin.
- (4) The cancellation of a registration shall put an end to the legal protection of the particular Trademark.

Article 72

Besides the reasons for a cancellation as described in Article 68 paragraph (1), an application for the cancellation of a registered Collective Mark may also be made to the Commercial Court if the use of the Collective Mark is against the provisions as described in Article 50 paragraph (1).

Chapter IX - Trademark Administration

Article 73

Administration of Trademarks as provided under this Law shall be undertaken by the Directorate General.

Article 74

The Directorate General shall maintain a nationwide documentation network system and Trademark information that is capable of providing best possible information of Trademarks to the general public.

Chapter X - Costs

Article 75

- (1) Each Application for Trademark extension, application for an excerpt from the Trademark General Registry, recording of a transfer of right, change in name and/or address of the owner of a registered Trademark License agreement registration, complaint of an Application, application for an appeal and so forth as stipulated under this Law shall be charged in the amount as shall be provided in a Government Regulation.
- (2) Further provisions on the requirements, period and procedure of the payment of the charges as described in paragraph (1) shall be made in a Presidential Decree.
- (3) The Directorate General with an approval of the Minister and the Minister of Finance may use the revenues from the charges as described in paragraph (1) and paragraph (2) based on the prevailing laws and regulations.

Elucidation: This Law provides for the possibility of the use of Non-Tax State Revenues by the Directorate General that comes from the money charged in Trademark administration. To use the revenues means the use of Non-Tax State Revenues based on the prevailing systems and mechanisms. In this regard, all the revenues shall be deposited in the state treasury as Non-Tax State Revenues. Then the Directorate General applies to the Minister of Finance for the use of the Non-Tax State revenues for purposes rightful according to law that is presently provided in Law Number 20 of 1997 concerning Non-Tax State revenues (State Gazette of the Republic of Indonesia of 1997 Number 43).

Chapter XI - Settlement of Disputes

PART ONE - COMPLAINT OF TRADEMARK INFRINGEMENT

Article 76

- (1) The owner of a registered Trademark may make a complaint of another party who without the right thereto has used a Trademark that is similar in principle or in entirety for the goods and services of the same type in the form of:
 - (a) a claim for damages; and/or
 - (b) the end of all acts relating to the use of the Trademark.

- (2) The complaint as described in paragraph (1) shall be made to the Commercial Court.

Article 77

A complaint of a Trademark infringement as described in Article 76 may be made by the Licensee of a registered Trademark by him or herself or together with the owner of the Trademark.

Article 78

- (1) Pending the completion of the process and to prevent a bigger loss, the judge may at a request thereof by the owner of the Trademark or the Licensee as the plaintiff order the defender to stop the production, distribution and/or trading of the goods or services in which the Trademark has been used without the right thereto.
- (2) If the defender is also required to surrender the goods in which the Trademark has been used without the right thereto, the judge may order that the surrender of the goods or the value of the goods be made after the decision of the court has become permanently valid.

Article 79

Only a kasasi may be made of the decision of the Commercial Court.

PART TWO - PROCEDURES OF A COMPLAINT TO THE COMMERCIAL COURT

Article 80

- (1) A complaint for the cancellation of a Trademark registration shall be addressed to the Chief of the Commercial Court whose jurisdiction covers the area where the defender resides or is domiciled.

Elucidation: Chief of Commercial Court is the Chief of the District Court where the Commercial Court is located.

- (2) If the defender resides outside the territory of the Republic of Indonesia, the complaint shall be addressed to the Chief of the Commercial Court of Central Jakarta.

- (3) The clerk shall register a complaint for the cancellation of a Trademark registration on the date the complaint is submitted issuing to the plaintiff a written receipt thereof signed by the clerk dated the same as the date the claim is registered.

Elucidation: Except otherwise provided, clerk in this Law means the clerk of the District/Commercial Court.

- (4) The clerk shall forward a complaint for a cancellation to the Chief of the Commercial Court in no later than two (2) days as from the day the complaint is registered.
- (5) In no later than three (3) days as from the date the complaint is registered the Commercial Court shall review the complaint and decide the date of the hearing.
- (6) The hearing of a complaint for a cancellation shall be made no later than sixty (60) days as from the date the complaint is registered.
- (7) The summons of the parties shall be made by the bailiff no later than seven (7) days as from the complaint for cancellation is registered.

Elucidation: Bailiff here is the bailiff of the District/Commercial Court.

- (8) The decision of a complaint for a cancellation shall be made no later than ninety (90) days as from the date the complaint for cancellation is registered and may be extended for no longer than thirty (30) days on an approval of the Supreme Court.
- (9) The decision of a complaint for cancellation as described in paragraph (8) that gives full accounts on the legal considerations that make the basis of the decision shall be read out in a session open to public and may be effected first despite a further legal process is being sought therefor.
- (10) The content of the decision of the Commercial Court as described in paragraph (9) shall be delivered by the bailiff to the parties no later than fourteen (14) days as from the decision of the complaint for cancellation is pronounced.

Article 81

The procedure of a complaint as provided in Article 80 shall mutatis mutandis apply to the complaint as provided in Article 76.

PART THREE - KASASI

Article 82

Only a kasasi may be made of the decision of the Commercial Court as described in Article 80 paragraph (8).

Article 83

- (1) The application for a kasasi as described in Article 82 shall be made no later than fourteen (14) days as from the date the decision applied for kasasi is pronounced or notified to the party by registering to the clerk who has made the decision.
- (2) The clerk shall register the application for kasasi on the date the complaint is submitted issuing to the applicant for kasasi a written receipt thereof signed by the clerk dated the same as the date the registration is made.
- (3) The applicant for kasasi shall have submitted the memorandum of kasasi to the clerk in seven (7) days as from the date the application for kasasi is registered as described in paragraph (1).
- (4) The clerk shall send the application for kasasi and memorandum of kasasi as described in paragraph (3) to the defendant of kasasi no later than two (2) months as from the application for kasasi is registered.
- (5) The defendant of kasasi may submit a contra memorandum of kasasi to the clerk no later than seven (7) days as from the date the defendant of kasasi receives the memorandum of kasasi as described in paragraph (4) and the clerk shall send the contra memorandum of kasasi to the applicant for kasasi no later than two (2) days after the receipt of the contra memorandum of kasasi is received by the clerk.
- (6) The clerk shall submit the dossiers of the case of kasasi to the Supreme Court no later than seven (7) days as after the expiry of the period as described in paragraph (5).
Elucidation: Dossiers of the case of kasasi here means the appeal for kasasi, memorandum of kasasi and/or contra memorandum of kasasi as well as other documents.
- (7) The Supreme Court shall review the dossiers of the case of kasasi as described in paragraph (6) and decide the hearing day no later then two (2) days after the date the application for kasasi is received by the Supreme Court.
- (8) The hearing of the application for kasasi shall be made no later than sixty (60) days as from the day the application for kasasi is received by the Supreme Court.
- (9) The decision on the application for kasasi shall be pronounced no later than ninety (90) days as from the date the application for kasasi is received by the Supreme Court.
- (10) The decision of the application for kasasi as described in paragraph(9) that gives full accounts on the legal considerations that make the basis of the decision shall be read out in a session open to public.
- (11) The clerk of the Supreme Court shall send the copy of the decision of kasasi to the clerk no later than three (3) days as from the date the decision on the application for kasasi is pronounced.

- (12) The bailiff shall send the decision on the kasasi as described in paragraph (11) to the applicant for kasasi and the defendant of the application for kasasi no later than two (2) days as from the receipt of the decision on the kasasi.

PART FOUR - ALTERNATIVE DISPUTE RESOLUTION

Article 84

Besides the settlement through complaint as described in Part One of this Chapter, the parties may also seek settlement through Arbitrage or an Alternative to Settlement of Disputes.

Chapter XII - Interim Decision of the Court

Article 85

The party whose right has been adversely affected may request the chief of the Commercial Court to issue an interim decision of:

- (a) banning the entry of goods related to the infringement of Trademark right;

Elucidation: This provision is meant to prevent the party affected by the infringement to incur more losses that the Commercial Court shall have the authority to issue an interim decision to prevent the continuation of the infringement and the influx, including the importation, of the goods alleged to have been the product of the act of Trademark infringement. No appeal may be sought of such interim decision.

- (b) securing the evidencing object relating to the infringement of the Trademark. This is designed to prevent the infringer from removing evidencing object.

Elucidation: This is designed to prevent the infringer from removing evidencing object.

Article 86

- (1) An application for an interim decision shall be made in writing to the Commercial Court by fulfilling the following requirements:

- (a) attaching the evidence of Trademark ownership;

Elucidation: Evidence of Trademark ownership is Trademark Certificate. If the applicant for the decision is a Licensee the evidence shall be the certificate of License agreement recording.

- (b) attaching the evidence of a substantial initial indication of an infringement of a Trademark;
- (c) clear descriptions of the goods and/or documents being requested, sought, collected and secured for evidence purposes;

Elucidation: Such descriptions include descriptions of the type of article or service alleged to have been produced in infringement of Trademark.

- (d) the indication of a concern that the party alleged to have made an infringement of Trademark will be able to easily remove the evidence; and
- (e) pay a guarantee in cash money or bank guarantee.

Elucidation: The guarantee shall be equal to the value of the goods or services covered in an interim decision.

- (2) If the interim decision as described in Article 85 has been made, the Commercial Court shall forthwith notify the party being charged and to give an opportunity for a hearing.

Article 87

If the judge of the kasasi issues an interim decision, the judge of the Commercial Court to examine the dispute shall decide to change, cancel or substantiate the decision as described in Article 85 in no later than thirty (30) days as from the interim decision is issued.

Article 88

If an interim decision:

- (a) is substantiated, the guarantee already deposited shall be returned to the applicant for the decision and the applicant for the decision may apply for a complaint as described in Article 76;
- (b) is cancelled, the guarantee already deposited shall be given to the party being charged as a compensation for damages arising from such interim decision.

Elucidation: If the guarantee is in the form of a bank guarantee, the judge shall order that the guarantee be cased.

Chapter XIII - Investigation

Article 89

- (1) Beside the investigator of the Indonesian National Police, particular Civil Service Officials of the Directorate General shall be authorized as investigators as provided in Law Number 8 of 1981 concerning Criminal Law Procedure to investigate criminal act in Trademark.
- (2) The Civil Service Investigator as described in paragraph (1) shall have the following authorities:
 - (a) to examine the evidence of a report relating to a criminal act in Trademark;
 - (b) to interrogate the persons or legal entities alleged as having taken a criminal act in Trademark based on the report in item (a);
 - (c) to request information and evidencing materials from the persons or legal entities in regard of criminal act in Trademark;
 - (d) to exercise an examination of the bookkeeping, records and other documents relating to a criminal act in Trademark;
 - (e) to make an investigation in particular places suspected as being the location of evidencing materials, bookkeeping, records and other documents and to confiscate the materials and goods produced in the violation that may be used as evidence in a criminal case in Trademark; and
 - (f) to request expert assistance in ding the investigation of a criminal act in Trademark.
- (3) The Civil Service Investigator as described in paragraph (1) shall notify the commencement of an investigation and the results thereof to the Indonesian National Police.
- (4) The Civil Service Investigator as described in paragraph (1) shall give the results of his investigation to the Public Prosecutor through the Indonesian National Police, by observing the provision of Article 107 of Law Number 8 of 1981 concerning Criminal Law Procedure.

Chapter XIV - Criminal Penalty

Article 90

Anyone who wilfully without the right thereto uses a Trademark that is similar in entirety to a registered Trademark owned by another party for the same type of goods and/or services produced

and/or traded shall be subject to a maximum imprisonment of five (5) years and/or a maximum fine of one billion rupiah (Rp.1,000,000,000.00).

Article 91

Anyone who willfully without the right thereto uses a Trademark that is similar in principle to a registered Trademark owned by another party for the same type of goods and/or services produced and/or traded shall be subject to a maximum imprisonment of four (4) years and/or a maximum fine of eight hundred million rupiah (Rp.800,000,000.00).

Article 92

- (1) Anyone who willfully without the right thereto uses a sign that is similar in entirety to a geographical indication owned by another party for the same or the same type of registered goods shall be subject to a maximum imprisonment of five (5) years and/or a maximum fine of one billion rupiah (Rp.1,000,000,000.00).
- (2) Anyone who willfully without the right thereto uses a sign that is similar in principle to a geographical indication owned by another party for the same or the same type of registered goods shall be subject to a maximum imprisonment of four (4) years and/or a maximum fine of eight hundred million rupiah (Rp.800,000,000.00).
- (3) The labeling of the place of origin on goods that have been made in violation or the labeling of a word that shows the goods are an imitation of registered and protected goods based on geographical indication shall be subject to the provision described in paragraph (1) and paragraph (2).

Article 93

Anyone who wilfully and without the right thereto uses a sign protected on the basis of indication of origin on goods or services that will deceive or mislead the public of the origin of the goods or origin of the services shall be subject to a maximum imprisonment of four (4) years and/or a maximum fine of eight hundred million rupiah (Rp.800,000,000.00).

Article 94

- (1) Anyone who trade goods and/or services who know or should know that such goods and/or services are the products of violations as provided in Article 90, Article 91, Article 92 and Article 93 shall be subject a maximum imprisonment of one (1) year and/or a maximum fine of two hundred million rupiah (Rp.200,000,000.00).
- (2) The act as described in paragraph (1) shall be a crime.

Article 95

The criminal act as described in Article 90, Article 91, Article 92, Article 93 and Article 94 shall be complained delict.

Chapter XV - Transitional Provision

Article 96

- (1) An application, extension of term of a registered Trademark, recording of a transfer of right, recording of a change in name and/or address, request for an abolition or cancellation of a Trademark registration submitted in accordance with Law Number 19 of 1992 as already amended under Law Number 14 of 1997 concerning Trademark that is still pending on the date this laws becomes effective shall be processed in accordance with the said law.
- (2) All Trademarks already registered in accordance with Law Number 19 of 1992 as already amended under Law Number 14 of 1997 concerning Trademark that are still effective at the time this Law is enacted shall remain effective according to this Law for the remaining parts of their terms.

Article 97

The Trademarks referred to in Article 96 paragraph (2) may still be subject to complaint for cancellation to the Commercial Court as described in Article 68, based on the reasons as described in Article 4, Article 5 and Article 6.

Article 98

Trademark disputes that are still in process in court at the time this Law becomes effective shall be processed in accordance Law Number 19 of 1992 as already amended under Law Number 14 of 1997 concerning Trademark until a decision that is permanently valid.

Article 99

All rulings issued in accordance with Law Number 19 of 1992 as already amended under Law Number 14 of 1997 concerning Trademark that have been prevailing on the date this Law becomes effective shall remain effective as long as they are not against or have not been replaced by new rulings based on this Law.

Chapter XVI - Closing Provisions

Article 100

With the effectiveness of this Law, Law Number 19 of 1992 as already amended under Law Number 14 of 1997 concerning Trademark is hereby delared null and void.

Article 101

This Law shall become effective on the date it is enacted.

In order that every person knows about it, it is hereby ordered that this Law be promulgated in the State Gazette of the Republic of Indonesia.