

Efektivitas penegakan hukum hak atas merek dan hak cipta oleh otoritas kepabeanan : tantangan dan hambatan pelaksanaannya = The Effectiveness of trademark and copyright enforcement by customs authority challenges and obstacles in its performance

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Abstrak

Berkembangnya perdagangan yang melewati batas-batas negara dan adanya perdagangan bebas mengakibatkan semakin terasa kebutuhan perlindungan terhadap hak kekayaan intelektual yang sifatnya tidak lagi timbal balik, tetapi sudah menjadi urusan masyarakat internasional. Organisasi Perdagangan Dunia WTO mengatur dan mewajibkan negara-negara anggotanya untuk memberikan perlindungan yang ketat terhadap hak kekayaan intelektual. Indonesia sebagai anggota WTO telah mengeluarkan undang-undang yang mengatur tentang hak kekayaan intelektual, selain itu negara-negara anggota WTO harus menetapkan otoritas kepabeanan untuk menegakkan hukum hak atas merek dan hak cipta. Dalam posisinya sebagai otoritas pengawas lalu lintas barang baik yang masuk maupun yang keluar dari wilayah pabean Indonesia, otoritas kepabeanan diwajibkan mengendalikan, mengawasi dan menegakkan hukum atas impor atau ekspor barang hasil pelanggaran hak intelektual sebagai lanjutan dari ratifikasi persetujuan WTO untuk memberikan perlindungan kepada pemilik hak. Dengan meningkatnya upaya perlindungan hak atas merek dan hak cipta, peran pihak otoritas kepabeanan dalam melaksanakan perlindungan hak kekayaan intelektual juga semakin penting, karena tugas dan wewenangnya yang sangat efektif dalam menghadapi perdagangan barang khususnya terhadap barang-barang yang diduga melanggar hak atas merek dan hak cipta, baik barang yang dipalsukan maupun barang hasil bajakan sebelum beredar ke pasar domestik atau sebelum barang tersebut di ekspor keluar wilayah pabean Indonesia. Praktek peredaran barang palsu atau bajakan menyebabkan sejumlah kerugian ekonomi. Selain itu, pemalsuan dan pembajakan memiliki efek merugikan bagi kesehatan publik dan keamanan produk. Selanjutnya, pemalsuan merek maupun pembajakan hak cipta merupakan masalah yang perlu dicarikan solusi tindakan untuk memberantasnya. Banyaknya pemalsuan merek, pembajakan hak cipta ataupun pelanggaran hak kekayaan intelektual, konsekuensi logisnya dapat menimbulkan sanksi masyarakat internasional terhadap Indonesia. Sanksi tersebut tidak hanya berdampak ekonomis serta moral yang dapat menurunkan harkat dan martabat bangsa Indonesia. Jika Indonesia tidak dapat melaksanakan penegakan hukum hak atas merek dan hak cipta secara efektif dan memadai, Indonesia akan dikucilkan dari pergaulan internasional. Terdapat beberapa kesimpulan hasil penelitian yang dicapai dari penelitian ini yakni: Pertama, bahwa penegakan hukum hak atas merek dan hak cipta yang dilaksanakan oleh otoritas kepabeanan belum efektif untuk memberikan perlindungan kepada pemilik hak ditinjau dari sudut pandang peraturannya; Kedua, penegakkan hukum hak atas merek dan hak cipta untuk memberikan perlindungan kepada pemilik hak belum efektif karena adanya hambatan dari faktor-faktor yang mempengaruhi efektivitas penegakan hukum; Ketiga, dalam upaya mencegah pelanggaran hak atas merek dan hak cipta, perlu dipertimbangkan adanya sistem pengelolaan terintegrasi antar institusi yang berkaitan dengan efektivitas penegakkan hukum oleh otoritas kepabeanan dalam pelaksanaan perlindungan hak.

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The development of cross border trade and the presence of free trade have resulted in more senses for the

needs of protection against intellectual property rights which its character is no longer reciprocal, but it has become international community affairs. World Trade Organization WTO has regulated and obligated its member countries for providing tight protection against intellectual property rights. Therefore, Indonesia as a member of WTO has promulgated law regulating intellectual property rights. Apart from that, the member countries of WTO have to stipulate customs authorities for enforcing the law on intellectual property rights. In its position as supervisory authority for goods, both entering to as well as outgoing from the Indonesian customs territory, the customs authority is obligatory to control, supervise and enforce the law on import or export of goods resulting from violation to trademark and copyright as continuation from WTO approval ratification for providing protection to the rights holder. By increasing efforts of protection for trademark and copyright, the role of customs authority in implementing protection to trademark and copyright is also getting more important, because their duties and authorities are quite effective in facing trade of goods particularly against goods which are suspected to violate trademark and copyright, both goods which are falsified and goods resulting from the result of piracy prior to circulation to domestic market or before such goods are exported outside the Indonesia customs territories. The circulation of falsified or pirated goods has caused an amount of economic losses. Other than economic impact, falsification and piracy have adverse effect to public health and product safety. Trademark falsification as well as piracy of copyright goods constitutes a problem with needs to look for solution of action for fighting against it. The increasing number of counterfeit trademark, pirated copyright goods or violations to intellectual property rights may arise in international community sanction against Indonesia. Such sanction may have economic as well as moral impact which can reduce the dignity and prestige of the Indonesian nation. If Indonesia is unable to execute the enforcement against trademark and copyright effectively and sufficiently, Indonesia will be isolated from international society. The results as achieved from this research are Firstly that enforcement of trademark and copyright as executed by customs authority have not been effective to provide protection to the owner of right as viewed from the perspective of its regulation. Secondly apart from that, enforcement against trademark and copyright for providing protection to the rights holder has not been effective because there are obstacles from the factors which have influenced the effectiveness of enforcement. Thirdly in the efforts of preventing violation to the trademark and copyright it needs to be taken into account the presence of inter authorities integrated management system in the implementation of trademark and copyright protection.