

Analisis persyaratan pemohon perekaman merek dan hak cipta pada sistem perekaman Direktorat Jenderal Bea dan Cukai dalam kaitannya dengan prinsip national treatment berdasarkan persetujuan TRIPs = Analysis of requirements for applicant of trademark and copyright recordation in the recordation system of the Directorate General of Customs in Relation to national treatment principle according to the TRIPs agreement

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Abstrak

Peraturan Pemerintah No. 20 tahun 2017 tentang Pengendalian Impor atau Ekspor Barang yang Diduga Merupakan atau Berasal dari Hasil Pelanggaran Hak Kekayaan Intelektual (selanjutnya disebut PP Pengendalian Impor Ekspor Pelanggaran HKI) mengatur prosedur Perekaman & Penegahan sebagai bagian dari penegakan HKI di kawasan pabean. Adapun Pasal 5 ayat (3) PP Pengendalian Impor Ekspor Pelanggaran HKI menyatakan bahwa perekaman hanya dapat diajukan oleh Pemilik atau Pemegang Hak yang merupakan badan usaha, yang berkedudukan di Indonesia. Di sisi lain, Persetujuan TRIPs sendiri mengatur prinsip national treatment. Dengan demikian Peneliti bermaksud untuk meninjau prinsip national treatment berdasarkan Persetujuan TRIPs dan pengaturan tindakan penegakan HKI di kawasan Pabean berdasarkan Persetujuan TRIPs, dan akhirnya mengkaji bagaimana ketentuan persyaratan pemohon perekaman ditinjau dari prinsip national treatment berdasarkan Persetujuan TRIPs. Penelitian ini dilakukan dalam bentuk penelitian hukum normatif (doktriner).

Kesimpulan dari penelitian ini adalah ketentuan mengenai prinsip national treatment tidak diatur secara tegas maupun secara eksplisit dalam peraturan perundang-undangan, namun penerapan prinsip tersebut tetap tersirat dalam peraturan perundang-undangan di bidang HKI. Persetujuan TRIPs mengatur tindakan penegakan di kawasan pabean, yaitu prosedur Penangguhan (suspension of release) dan prosedur Penegahan (ex officio action). Ketentuan persyaratan pemohon perekaman HKI sebagaimana diatur di dalam Pasal 5 ayat (3) PP Pengendalian Impor Ekspor Pelanggaran HKI bertentangan dengan prinsip national treatment berdasarkan Persetujuan TRIPs karena telah mengakibatkan tertutupnya kesempatan bagi Pemilik atau Pemegang Hak atas Merek dan Hak Cipta asing mendapat perlindungan khususnya dalam hal tindakan Penegahan. Saran dari Peneliti adalah agar Pasal 5 ayat (3) PP Pengendalian Impor Ekspor Pelanggaran HKI dapat dirubah sehingga tidak bertentangan dengan prinsip national treatment.

*Government Regulation Number 20 of 2017 concerning Import or Export Control of Goods Allegedly are or Derived from Results of Intellectual Property Rights Infringement (hereafter refer to Regulation of Import Ekspor of IP Infringement) regulate the procedure of recording & ex officio preliminary suspension as a part of the IP enforcement in customs area. Article 5 paragaraph (3) of the Regulation of Import Ekspor of IP Infringement states that recording can only be submitted by the Owner or Rights Holder who is a business entity, domiciled in Indonesia. On the other hand, the TRIPs Agreement regulates the national treatment principle. Thus the Researcher intends to review the national treatment principle and the IP enforcement in the customs area according to the TRIPs Agreement, and finally review how the requirements for the recording applicant viewed from the national treatment principle according to*

the TRIPs Agreement. This research was conducted in the form of normative legal research (doctrinaire). The conclusion of this study is that the provisions regarding the national treatment principle are not explicitly regulated in legislation, but the application of these principles remains implicit in the legislation of IP. The TRIPs Agreement regulate IP enforcement in the customs area, i.e. procedure of suspension of release and the procedure of ex officio action. The requirements for the applicant of trademark and copyright recordation in the recordation system of the Directorate General of Customs as stipulated in Article 5 paragraph (3) of the Regulation of Import Ekspor of IP Infringement is in contrary to the national treatment principle according to the TRIPs Agreement, because it has resulted in the closed opportunity for foreign Owners or Rightsholders of Trademarks and Copyright to receive legal protection, namely the ex officio preliminary suspension. Therefore, the researcher recommend to chane the provision of Article 5 paragaraph (3) of the Regulation of Import Ekspor of IP Infringement so it would not in contrary to the national treatment principle according to the TRIPs Agreement.</i>