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A Simple Principle, Fast and Low Cost Temporary Determination of the Commerce Court on Registered Brands

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Abstract

While the determination of the Trademark Act although derived from the common law system but if applied in Indonesia should follow the procedural law in the legal system adopted by Indonesia, namely civil law. The principle of fast, simple and low cost Determination While the Commercial Court in the case of Brand is expected to provide legal protection to the owner of the registered trademark. Therefore the main issues that will be studied in this research is: Why is the principle of fast, simple and low cost Determination While the Commercial Court required in the settlement of the Brand? Then how to apply the principles of fast, simple and low cost in a provisional decision of the Commercial Court in the case of Brand in Indonesia ?. The method used is a normative legal research method. The nature of this research is an explanatory, descriptive and prescriptive. Explanatory research or testing rules will explain the principles of fast, simple and low cost Determination While the Commercial Court. Descriptive research will reveal the principles of simple fast and inexpensive Determination While the Commercial Court and the rules related. Research prescriptive used to plan a rapid establishment of legal norms simple and low cost Determination While in the case of the brand. The research proves that: The first principle is simple fast and low cost Commercial Court Case Determination While Brand is necessary in order to provide legal protection to the owner of the registered trademark. The second principle is fast, simple and low cost Commercial Court Case Determination While brands can be implemented with some adjustments. Based on these results, the recommendation of the research is the Trademark Act of 2001 should be changed to do some revisions mainly on the simplification of processes and procedures for registration of Trademark further a need for the Institute Estimator assets to assess bail and redress, need to be added the amount of the Commercial Court in place to accommodate the interests of the applicant a provisional decision, the need for firm action in the implementation of a provisional decision by the threat of contempt of court and the

need to improve legal education to the community, especially with regard to the registered mark and the determination as to increase public awareness of the importance of legal protection of trademarks through determination whilst in realizing the principle of simple fast and inexpensive.

Keyword: determination while justice, Commercial Court

1. Introduction

Many criticisms that emerged towards the judiciary is not a phenomenon that is growing in Indonesia only, but occurs worldwide. In the industrialized countries, the criticism leveled justice seekers, especially from economic circles is much more intense. The American economy alleges that the collapse of national economies caused by the high cost of justice.¹ With the weaknesses inherent in the formal justice system itself, has caused the justice seekers increasingly shied away from the settlement of the dispute through the courts (from litigation to non-litigation), this condition does not only hit the courts in Indonesia, but hit almost all countries in the world, both countries of Western and Eastern.² This may be because the public wants the courts can deliver justice to the people.³

One principle of justice is the principle of simple, fast, and low cost. The principle of the law is the heart of a rule of law or a bridge that connects between the rules of law and positive law with the ideals of the social and ethical views of society.⁴

Article 4 Paragraph (2) of the Constitution of the Republic of Indonesia Number 48 Year 2009 concerning Judicial Authority that the Court helped formulate the search for justice and trying to overcome all the barriers and obstacles to the achievement of justice that is simple, fast and inexpensive. More specifically provided for in Article 2 paragraph (4) of the Constitution of the Republic of Indonesia Number 48 Year 2009 concerning Judicial Authority in the form of Justice is done with a simple, quick and inexpensive.

Indonesian conditions were mostly still wearing colonial law, the necessary seriousness in the formation of laws.⁵ The choice of the policy and administrative decisions certainly influenced the culture, behavior, and values that live in the community of a country.⁶ Experts have agreed that the elements that make up the content of the national law are customary law, Islamic law, the law of continental European and Anglo-Saxon law.⁷

While the determination of a new thing in the Indonesian legal system. Pursuant to Article 85 of Law No. 15 of 2001 on Marks,⁸ containing provisions Determination While it can be concluded that the stipulation While this is intended to prevent a greater loss to the party whose rights have been violated. The Supreme Court has issued RI Supreme Court Regulation No. 5 of 2012 on Determination While.

A trademark or services as part of so-called Intellectual Property Rights (IPR) play a major role in today's business world. IPR is a system that is now attached to the layout of modern life.⁹ Simply put

¹Hatta Ali, *Justice Simple. Fast and Cost Lightweight Towards Restorative Justice*, (Bandung: PT. Alumni, 2013), p. 3.

²Runtung, "The success and failure of the Alternative Dispute Resolution (Study of Society Karo in Kabupaten and Berastagi)," Dissertation, (Graduate Programs University of Sumatra Utara, Medan, 2002), p. 91.

³Rusli Muhammad, *Institutions portrait Indonesian Court* (Jakarta: Rajawali Pers, 2006), p. 180.

⁴Satjipto Rahardjo, *Legal studies*, (Bandung: Alumni, 1982), p. 85.

⁵Suhaidi, Papers Public Lecture in *Law Enforcement to Protect Public Interests Seeing Values Sense of Law and Justice Life in Society* (Paper presented at a public lecture at the Islamic University Tamiang), Kuala Simpang, Aceh, March 4, 2013.

⁶Ningrum Natasya Sirait, *Indonesia in the face of International Competition, Inauguration Speech Remain in the field of international law*, (Medan: USU, September 2, 2006), p.1-2.

⁷Tan Kamelo, *Problematic Enforcement of Islamic Law in Aceh Judging from the National Law*, (paper presented at a seminar at the International Islamic University Tamiang), Kuala Simpang, Aceh, December 23, 2012.

⁸Republic of Indonesia, *Law No. 15 of 2001 on Marks, Article 85*.

⁹Achmad Zen Umar Purba, *Post-TRIPS Intellectual Property Rights* (Bandung: Alumni, 2005), p.1.

IPR is a right arising from the ideas that produce a useful product for humans. IPRs can also be interpreted as a right for a person because he has made something useful for others.¹⁰ Substantively, in essence can be described as a sense of intellectual property rights to the assets which are the product if the result of human thought or human intellectual abilities. In other words, HKI is right, of assets arising from human intellectual abilities. This kind of personal wealth.¹¹ IPR is the official term used by the legislators in legislation Indonesia.¹²

IPR was not solely related to the law alone but a close relationship with issues of trade, economic and technological development as well as a business foundation for advancing socio-cultural nation and society in general.¹³

As one of the rights included in IPR, trademarks have the same age with the trade itself.¹⁴ Indonesia can create the Trademark Act is affiliated with the provisions of international brands i.e. Trademark Law No. 19 of 1992 and the change of the trademark registration system declarative system adopted in the Trademark Act 1961 to constitutive system imposed internationally.¹⁵ Recognition or requirement onset rights to the brand for brand owners according to the constitutive system is registered trademark in the Directorate General of Intellectual Property Rights as stated in Article 3 of the Trademark Law in 2001.

Major changes in the global harmonization efforts carried out by the establishment of a treaty in the field of aspects related to trade and IPRs, namely Trade Related Aspects of Intellectual Property Rights/TRIPS. IPR, as contained in TRIPS is a concept which provides for the granting and protection of the right to an individual for his work.¹⁶ A TRIP is a document of the World Trade Organization (World Trade Organization). After World War II, the international community aware of the need for the establishment of an international organization in the field of trade.¹⁷

TRIPS set the rules of the minimum for the laws of IPR national in order to achieve a balance of rights and interests between producers and users of knowledge in the field of technology and to prevent member states to use IPR as an inhibitor of trade veiled countries other.¹⁸

In order enforcement of Intellectual Property rights Article 50 (1) TRIPS establishes the authority of the member state of the judiciary to order prompt and effective provisional measures.¹⁹

While the determination of provisional measures is a term of Article 50 TRIPs. Determination While the Court is a form of legal remedy temporary that can be applied in a dispute/problem concerning IPR (specifically on industrial design, patents, trademarks and copyrights) by parties who feel that their rights are violated, in order to prevent greater losses on parties whose rights have been violated.²⁰

¹⁰ Haris Munandar dan Sally Sitanggang, *Recognize IPR Intellectual Property Rights Copyright, Patent, Trademark and ropes INS* (Jakarta: Erlangga, 2008), p. 2.

¹¹ Eddy Damian, *Copyright Law* (Bandung: Alumni, 2005), p.34.

¹² Abdulkadir Muhammad, *Study of Economic Law of Intellectual Property Rights* (Bandung: Citra Aditya Bakti, 2001), p. 1

¹³ Harsono Adisumarto, *Particularly Intellectual Property Patent and Trademark* (Jakarta: Akademika Pressindo, 1984), p. 10.

¹⁴ Erman Rajagukguk in the "Preface" to the dissertation H.D. Effendi Hasibuan, *Brand Protection: Study of Judgments Indonesia and the United States*, (Jakarta: Graduate School of Law, University of Indonesia, 2003), p. xi

¹⁵ H.D. Effendy Hasibuan, *Brand Protection Study of Judgments Indonesia and the United States*, (Molds One. Jakarta: Graduate School of Law, University of Indonesia, 2003), p.76

¹⁶ Ahmad Zen Umar Purba, *Some of the TRIPs Agreement and Strategic Issues*, (Bandung, PT. Alumni and FH Publisher Agency, the University of Indonesia, 2011), p 21.

¹⁷ Huala Adolf, *International Economic Law*, (Bandung; PT. Raja Grafindo Persada, 2005), hal. 115.

¹⁸ Cita Citrawinda Priapantja, *Intellectual Property Challenges of the Future*, (Jakarta: Faculty of Law, University of Indonesia, 2003), p. 19-20.

¹⁹ Marni Emmy Mustafa, *Principle - the principle of Proceedings in Patent Law Enforcement in Indonesia is associated with TRIPs-WTO*, (Bandung, PT. Alumni, 2007), p 144.

²⁰ Djamal, *While the determination of the Court (On Intellectual Property Rights)*, (Bandung; Pustaka Reka Cipta, 2008), p. 135.

2. Results and Discussion

2.1 Fast Simple Principles and Determination of Costs While Light Commercial Court of the Registered Brand

2.1.1 Simple Principles Fast and Cost Lightweight

In Act No. 4 of 2004 was also in Article 4 paragraph (2) states that "Justice is done with a simple, fast and low cost". Furthermore, in the explanation of Article 4 paragraph (2) mentioned "This provision is intended to meet the expectations of those seeking justice". What is meant by "simple" is the examination and settlement of cases is done in a way that is efficient and effective. What is meant by "low cost" is the cost of a case that can be life lay by the people. However, in the investigation and settlement of the case do not sacrifice the provisions in the search for truth and justice.

Quick proceedings concerning the course of the examination to the decision and implementation. Not infrequently happens that the proceedings were protracted, do not necessarily hang. Many inhibiting factors are not exempt from the parties themselves, of witnesses or evidence and of the judges themselves. In general, people prefer that the case is soon cut off, even though the decision is not favorable than if checks his case lasted for years even though the decision ultimately benefit.

Too much formality elusive or regulations *berwayuh arti* (dubious), thus allowing the emergence of various laws and lead to a reluctance or fear to advance the court proceedings. A quick word refers to the course of justice. Too much formality is an obstacle to the course of justice. In this case not only the course of justice in the trial upfront checks, but also settlement rather than interrogation in court until the signing of the decision by the judge and implementation. The rapid course of justice would increase the authority and increase public confidence in the courts.

Procedural simplicity and simplicity of the formulation of the rules of procedural law will facilitate and thereby accelerate the course of justice. Simplicity procedural means simplicity judicial process that does not use complicated procedures or long-winded and too much use formalities. Simplicity formulation of the regulations means that rules formulations using legal language that is simple and easy to understand without leaving the precise legal language.

Cost is determined by the People's life lay light that case the high costs caused mostly interested parties are reluctant to file charges to the court right.²¹ However, experience proves that there are still many difficulties to be litigants seeking justice for a small fee. We should bear in procedural law which we will later form given the setting on the way out.²² Regarding the cost of light in litigation, it can be argued that it is something that is coveted.

The Supreme Court in revision of renewal has set the vision of the organization that sets embody the rule of law through judicial authority which is independent, effective, and efficient and gain public trust, professionals and provide legal services of high quality, ethical, affordable and low cost for the community and be able to answer the call of service *public*.²³

2.1.2 Lembaga Pengadilan Niaga

The establishment of the Commercial Court can be traced started and the Law on Judicial Power and the Law on General Courts.

Amendments to Law Number 14 Year 1970 About the Main Principles of Judicial Power became Act No. 35 of 1999 concerning Amendment to Law Number 14 Year 1970 About the Main Principles of Judicial Power, said the same thing anyway. Further to amend Act No. 35 of 1999 concerning Amendment to Law Number 14 Year 1970 About the Main Principles of Judicial Power, into Law Number 4 Year 2004 on Judicial Power.

²¹Sudikno Mertokusumo, *Civil Procedure Code Indonesia*, (Yogyakarta: Publisher Liberty, 1982), p. 24.

²²Setiawan, *Various Problems of Law and the Civil Procedure Code*, (Bandung: Publisher Alumni, 1992), p. 426.

²³The Supreme Court of Republic of Indonesia, *Print Books Reform the Supreme Court*, 2003

In these changes, Article 2 states the following:²⁴

“Implementation of judicial power as referred to in Article 1 shall be made by a Supreme Court and judicial bodies underneath it in the general courts, religious courts, military courts, administrative courts, and by a Constitutional Court.”

In Article 15 Paragraph 1 is expressed as follows:²⁵

“Special courts can only be established in one of the jurisdictions referred to in Article 10 stipulated by the Law.”

Law No. 2 of 1986 concerning the General Court set²⁶ Article 7 states that the District Court was established by Presidential Decree, and in Article 8 also affirmed that in the General Court may be held specialization regulated by law.²⁷

Thus, it is clear that the Commercial Court established under the mandate of the Bankruptcy Law: a special form (differentiation) of the general courts. Commercial Court can also be referred to as special courts in general courts.

The monetary crisis in 1997 had an impact in the economic field. Continuous deterioration and failure of the economic recovery efforts, one of which is caused by the operation of legal mechanisms and distrust of foreign investors in the process of recovery and social-political stability.²⁸ Basic and IMF demands to establish a Commercial Court due to lack of legal mechanisms is good and the level of confidence of foreign investors who continued to decline, until the serious implications in the domestic economy.²⁹

Through the Government Regulation in Lieu of Law No. 1 of 1998 established the Commercial Court for the first time. At first, that in August 1998, the Commercial Court jurisdiction only in the territory of the Central Jakarta District Court. New in July 2000, the Government re-establishes the Commercial Court in three cities, namely Medan, Surabaya and Makassar.

The principles applied in proceedings in the Commercial Court is³⁰; competent and modern, independence and Impartial (Impartial), participatory and accountable, accessible and transparent and fast process and the rule of law. Duration proceedings that go into the expansion of the authority of the Commercial Court, specifically regulated in the legislation. As a result of the prescribed period, then handling the case is expected to be more systematic.

2.1.3 Registered Trademark Protection

Anglo-Saxon legal system literature regarding Intellectual Property Rights (IPR), which in the Netherlands, the term is known as *Intellectuele Eigendomsrecht*, has been known for a long time to protect the results of human creativity and commerce. There is no single worldwide understanding of IPR, although many countries have recognized several types of IPR, such as copyright, patents, trademarks, trade secrets and industrial designs.³¹ Subsequent developments, influenced by the progress of science and technology, the development of trade and investment, which raises new creativity in this

²⁴Indonesia, *the Law on Judicial Power, Law No. 4 of 2004, the State Gazette No. 8 of 2004, Supplement to State Gazette No. 4358.*

²⁵Indonesia, *the Law on Judicial Power, Law No. 4 of 2004, the State Gazette No. 8 of 2004, Supplement to State Gazette No. 4358.*

²⁶Indonesia, *Act On general Justice, Law No. 2 of 1986, the State Gazette No. 20 of 1986, Supplement to State Gazette No. 3327.*

²⁷Indonesia, *Act On general Justice, Law No. 2 of 1986, the State Gazette No. 20 of 1986, Supplement to State Gazette No. 3327.*

²⁸ Andi Muhammad Asrun, A. Prasetyantoko, Dkk, “*Juridical Analysis And Empirical Commercial Court*”, the First Matter, Jakarta: CINLES-Centre for Information and Law-Economics Studies, 2000, p. 2.

²⁹*Ibid*, p. 12.

³⁰Steering Team and the Commercial Court Preparatory Formation of Anti-Corruption Court, “*Blueprint and Commercial Court Action Plan*”, Jakarta: Office of the State Minister of National Development Planning / National Development Planning Agency, 2004, Page 3-4.

³¹Anne Gunawati, *Protection of Famous Brand Goods and Services Not Similar Against Unfair Competition*, (PT. Alumni; Bandung, 2015) p. 54

type of IPR, such as music, photography, movies, computer programs, and innovation of new technologies.³² Some writers and academics as well as in the legislation uses several different terms. The term of Intellectual Property Rights (IPR) is used by Eddy Damian, Insan Budi Maulana and Saidin³³. While Mahadi, Muhammad Djumhana and R. Djubaedillah, and Sudargo Gautama use the term Intellectual Property Rights (HMI)³⁴. In the Guidelines of State Policy (Guidelines) 1993 and 1998 Guidelines to translate the term IPR Intellectual Property Rights (HMI). Law Number 25 Year 2000 on the National Development Program (*PROPENAS*) 2000-2004 which is a further elaboration and guidelines translate the IPR 1999-2004 by Intellectual Property Rights (IPR).³⁵ Based on the Decree of the Minister of Law and Legislation of the Republic of Indonesia Number M.03.PR.07.10 2000 and approval of the Minister of State for Administrative Reform of the Republic of Indonesia Number 24/M/PAN/1/2000 used synonym "Intellectual Property Rights" abbreviated "IPR", has been officially adopted as the standard term in Indonesian since 2000 ago.

Brand enactment Dutch Colonial in Indonesia after Indonesian independence is as the application of Article II, the Transitional Provisions of the Constitution Act, 1945. This brand also remains valid in the future Law of the Republic of Indonesia in 1949 and the Law while in 1950.³⁶ With the enactment brands originating from the Netherlands that it is not a legal vacuum.

On August 5, 1948, Indonesia ratified the London version of the Paris Convention or the London Act 1934.³⁷ Indonesia is obliged to accept and acknowledge the terms defined by the Paris Convention including the necessary creation of the Act which specifically regulates the brand, namely through Law No. 21 of 1961 on Corporate Brand and Brand Commerce³⁸ that it is nothing but a translation of the Dutch Trademark Act that *Reglement Industriële Eigendom Kolonien 1912*. Law No. 21/1961 Trademark registration system adheres first to use the system or declarative system is a system that provides protection to the person or persons and / or legal entity that uses the brand for the first time in Indonesia based on the principle of "the prior user has a better right" as mentioned in Article 2. A disadvantage of this system is inefficient because it is difficult to apply to find out who the owner or holder of rights to a trademark which is actually suppose at the same time appeared some similar trademarks.³⁹

Further legislation brand replaced by Law No. 19 of 1992 on Marks which adopts a constitutive or first to file system, namely the exclusive right to be born when the brand is registered, just use poses no exclusive rights and obtain legal protection. Constitutive system based on the principle of "*prior in tempora, Melior de jure*" which means "who is first to register its brand, then he is entitled to get legal protection." This principle is also called the 'first to file principle'.

Changes subsequent Trademark Act into Law No. 14/1997 is a consequence of the Uruguay Round agreement signed by Indonesia on 15 April 1994 in Marrakesh Morocco and Indonesia's entry into one of the members of the World Trade Organization (WTO) on November 2, 1994, is a

³² Rocque Reynolds and Natalie Stolanoff, *Intellectual Property Text and Essential Cases*, 2nd Edition, The Federation Press, NSW 2005, p.1

³³ Tim Lindsey, Eddy Damian, Simon Butt, Tomi Suryo Utomo, *Intellectual property rights; An Introduction*, Publisher PT. Alumni, Bandung, 2002. Insan Budi Maulana, et al, *Capita Selecta Intellectual Property Rights*, the Centre for Legal Studies, Islamic University of Indonesia (UII) in Yogyakarta in cooperation with IPR Clinic Foundation, Jakarta, 2000; see also Insan Budi Maulana, *Ferris IPR (Intellectual Property Rights)* Hecca Publishing, Jakarta, 2005. Saidin, *Legal Aspects of Intellectual Property Rights (Intellectual Property Rights)*, Rajawali Press, Jakarta, 1997

³⁴ Mahadi, *Immaterial Rights*, BPHN, Bina Cipta, Jakarta, 1985. See also Muhammad Djumhana & R. Djubaedillah, *Intellectual Property Rights (History, Theory and Practice in Indonesia)*, Revised Edition, Citra Aditya Bakti, Bandung, 2006., see also Sudargo Gautama, *Aspects of Intellectual Property Rights*, PT. Eresco, Bandung, 1990.

³⁵ Anne Gunawati, *Op., cit.*, p. 55

³⁶ Lindsey, Tim, ed., *An Introduction to Intellectual Property Rights*, Bandung : PT. Alumni, 2002, p. 132.

³⁷ Hasibuan, H.D. Effendy, *Brand Protection Study of Judgments Indonesia and the United States*, Jakarta: Indonesia Graduate University, 2003, p 48.

³⁸ *Indonesia. Law on Trademark and Brand Commerce Company. Law No. 21 1961 Law on Trademark and Brand Commerce Company, Supplement No. 2341.*

³⁹ Insan Budi Maulana, *Business Success Trademark, Patent and Copyright*, Bandung PT: Citra Aditya Bakti, 1997, p. 1-2

fundamental driving force in the changes in the area of Legal Rights Intellectual Property (IPR) in Indonesia through the enactment of Law No. 7 of 1994 on Ratification of the Agreement Establishing the World Trade Organization (the Agreement Establishing the World Trade Organization)⁴⁰ IPR protection to be carried out more efficiently, effectively and profitably for all members of the WTO participants. Cooperation among WTO members are regional and international levels: for example in the Asia Pacific region which is composed of experts in the field of IPR discuss IPR protection in order to conform with the standards of protection set Agreement on Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (hereinafter abbreviated TRIPs).⁴¹ Indonesia became a member of the WTO it is legally Indonesia is also bound by the provisions concerning IPR. Under the provisions of TRIPs Indonesia given the opportunity during the four (4) years from the signing of an agreement to revise, change or formation of legislation in the field of Intellectual Property Rights in Indonesia⁴² On May 7, 1997 enacted Law No. 14 of 1997 on the Amendment of Act No. 12 of 1992 on Marks. Furthermore, in the preamble of Law No. 15 of 2001 in lieu of Law No. 14 of 1997, which is the latest brand law explains that in this era of global trade, in line with international conventions ratified by Indonesia, merk becomes very important role, especially in maintaining healthy competition. It is necessary for appropriate arrangements about a brand in order to provide improved services for the public.

2.1.4 Penetapan Sementara Pengadilan Niaga Atas Merek Terdaftar

A provisional decision as one of the remedies that can be done by the parties to the dispute in the IPR. Inclusion of provisions on a provisional decision is intended to prevent the possibility of greater losses on the party whose rights have been violated, because the judge of the Commercial Court through a provisional decision may be given the authority to issue a provisional decision in order to prevent the continued violation and the entry of goods suspected of infringing intellectual property rights to the trade channel, including actions importation.

Approval of TRIPs in Section 2 Article 44 mentions Injunction Regarding the provisional measures set in TRIPs agreement section 3, article 50. Determination While a form of legal remedy provided by law IPRs, created in order to protect the interests of holders of intellectual property rights so that rights holders it can use its rights as optimally as possible. Similarly, when in found an infringement which it is possible undermining exclusive rights held by holders of IPR, such as there has been a violation and the entry of goods suspected of infringing intellectual property rights to the trade channel, including importation of goods that the protection of IPR, then the IPR holder is given the right to take legal action Court Decision. To see more details about Determination While it can be seen one - by one in the legislation on IPR which became the basis of Determination While itself, namely Law No. 31 Year 2000 regarding Industrial Design Article 49 through Article 52, Law Number 14 of 2001 on Patents Article 125 to Article 128, of Law No. 15 of 2001 on Marks Article 85 through Article 88.

While the suspension of The Supreme Court Regulation No.4 of 2012 and Determination While (The Supreme Court Regulation) 5 Year 2012, the temporary suspension of article 44 adopted a provisional decision TRIP's and Article 50 of the TRIP's. The difference is essential that "Unlike Article 50, the which essentially aims to Prevent an infringement from occurring, Article 44 Applies to an infringement that has already been determined" means that that Article 44 TRIPS is intended for a violation that has occurred, ice stop the infringement, while Article 50 TRIPS which is the main goal to prevent an offense.

⁴⁰Indonesia. *Law On Ratification of the Agreement Establishing the World Trade Organization (the Agreement Establishing the World Trade Organization), Act No. 7 In 1994, LN No. 57 of 1994, Supplement No. 3564.*

⁴¹Lindsey, *op. cit.*, p.23.

⁴²Lihat Pasal 65 ayat (2) *Agreement on Trade Related Aspects of Intellectual Property Rights, April 15th, 1994.*

2.1.5 Simple Principles Fast and Light weight Cost Determination while Providing Legal Protection of the Commercial Court to Owners of a Registered Trademark

In order to provide legal protection to the owner of the registered trademark, the District Court / Commercial Court may set a provisional decision by the court. Article 85 UUM 2001 stated that based on sufficient evidence aggrieved parties whose rights may ask the judge of the Commercial Court to issue a provisional decision on:

- a) Prevention of entry of goods related to trademark infringement. This provision is intended to prevent a greater loss to the party whose rights have been violated, so that the Commercial Court is authorized to issue a provisional decision in order to prevent the continued violation and the entry of products allegedly infringing the rights to the brand to the trade channel, including importation;
- b) Storage of evidence relating to the infringement of the trademark. This is intended to prevent the offender destroy evidence.

While determining application submitted in writing to the Commercial Court with the following requirements:

- a) Attach proof of ownership of the brand, the brand certificate or letter of the license agreement registration if the applicant is the determination of licensees;
- b) Attach evidence of the existence of strong initial instructions on trademark violations;
- c) Clear information on the types of goods and/or documents requested, sought, collected and secured for evidentiary purposes;
- d) There are fears that the alleged violations of the brand will be able to easily eliminate the evidence; and
- e) Pay guarantee in the form of cash or bank guarantees, which amount must be proportional to the value of goods or services that are subject to a provisional decision.

The Supreme Court Regulation 4 Year 2012 on Temporary and the Supreme Court Regulation No. 5 Year 2012 on a provisional decision is the exclusive jurisdiction of the Commercial Court that specifically address the issue of civil, temporary suspension and provisional decision is a new thing in the procedural law in Indonesia, because it has some things that were previously unknown to the principles of civil law in Indonesia.

The Supreme Court Regulation aims not to allow the circulation of counterfeit goods and to protect domestic industries also protect consumers as well as the Indonesian state obligations as a WTO member. The need for judicial quick, simple and inexpensive as a result of violation of the rights of Intellectual Property, which has been detrimental to the owner/holder of Rights of Intellectual Property negative impact on the creators of the brand owners, inventors, designers, entrepreneurs, investment, harm the state of the taxes due to the release counterfeit goods, while detrimental to the nation's image, which in turn greatly harm the country's economy.

If there is sufficient evidence alleged violations brands are protected in Indonesia within the jurisdiction of Customs Area in place of the Commercial Court are located, the applicant (owner / holder of the right) to the brand can ask the Chairman of the Commercial Court in the District Court to ask for the order Suspension While such stipulation written to Customs officials in order to suspend temporarily imported goods or export from Customs Area, the Commercial Court injunction aimed at suspending temporarily the goods of trademark infringement. Implementation of prevention goods infringement of Intellectual Property Rights in Indonesia Customs Area based on the Customs Act 10 of 1995 as amended by Act 17 of 2006, Customs officials can suspend the import or export expenditures suspected of infringing intellectual property rights of customs area in two lines yudicial schemes and schemes ex officio.

Suspension temporary terms and implementation by the Supreme Court Regulation No. 4 of 2012

The owner/holder of the rights to the brand perdaftaran submitted to the Commercial Court with the accompanying request for temporary suspension.⁴³

- a) Proof of ownership of the mark or copyright.
- b) Details and clear explanation of the import or export of goods.
- c) Pay a guarantee in the form of cash or bank guarantee equal to the value of goods.
- d) Pay other costs (the cost of containers, etc.) including court fees

Once the registration is accepted then within a period of one (1) day President of the Court appointed judges to examine the request. Appointed judge will consider the evidence, heard the applicant, determine bail, as well as well as other costs. Within a period of two (2) days of the Court establishes granted or refused. If the request is granted then within 10 days of receipt of the determination by the customs to carry out the court orders asking for permission to the owner to inspect the goods. If the request is rejected, the security deposit is returned to the applicant, whereas in the case fee charged to the applicant.

President of the Court gave the order to the customs, and customs on goods directly prevent appropriate court order. If the import or export of goods not found in the customs area, customs informed the Chairman of the Court.

With permission from the court chairman, customs and bailiffs defendant examination of confiscated goods to the identification of the event made by the bailiff. Suspension expenditures maximum of 10 days and can be extended 1 x for 10 days with an extended warranty. If 10 days is not extended, customs officials end the suspension measures expenditures. Within 10 days the applicant began a legal action must report to customs. If not extended by KPN customs terminate the suspension action, in the case of perishable goods defendant filed a written request to KPN to end the suspension to deliver guarantees, customs may ask for an end to the suspension without giving guarantees.⁴⁴ If there has been a violation of the guarantee of the goods returned to the applicant. If there is no trademark infringement bail submitted to the defendant. If the defendant suffered losses exceeds the value of collateral respondent may file a lawsuit. Examination of goods and proved to be quite the trademark infringement, the applicant can file a legal action as stipulated in the Act in force.⁴⁵

Based the Supreme Court Regulation Determination While it is the determination issued by the commercial court, in the form of a command to be obeyed by all parties concerned by the application submitted by the applicant (owner/holder of the right) against violation of the right to industrial designs, patents, trademarks and copyrights covering jurisdiction violations based on sufficient preliminary evidence carried out by the defendant who allegedly violate the rights or the control of the evidence, as mentioned above for:

- a) Prevent the entry of goods suspected of infringing Intellectual Property Rights in the trade lanes
- b) Securing and prevent the removal of evidence by Offenders
- c) Stop the violation in order to prevent greater losses.⁴⁶

According to the provisions of the Law of Commercial Court judge will give a verdict within 30 days since issued a provisional decision that it can strengthen, change and cancel the provisional decision within 30 days as well as the right to be heard for the Respondent. Inspection is done in a very short time and proved a simple event.

Procedures and requirements for a provisional decision based on the rules of the Supreme Court no. 5 In 2012 owners/holders of the Commercial Court to file a trademark registration application for a provisional decision to participate:

⁴³Article 2 Paragraph (3) the Regulation of the Supreme Court of the Republic of Indonesia 4 of 2012

⁴⁴Article 2 Paragraph (3) the Regulation of the Supreme Court of the Republic of Indonesia 4 of 2012

⁴⁵Article 12 the Regulation of the Supreme Court of the Republic of Indonesia No. 4 In 2012

⁴⁶the Regulation of the Supreme Court of the Republic of Indonesia No. 5 Year 2012 Article 1 Paragraph (1), (2), (3) and (4)

- a) Proof of ownership of the mark or copyright.
- b) Details and clear explanation of the import or export of goods.
- c) Pay a guarantee in the form of cash or bank guarantee equal to the value of goods.
- d) Pay other costs (the cost of containers, etc.) including court fees.

Once the registration is accepted then within a period of one (1) day President of the Court appointed judges to examine the request. Judge appointed to consider the evidence, heard the applicant, determine whether bail is proportional to the value of the goods and the costs incurred. The application process is confidential until published.⁴⁷

If granted it will be listed actions taken, ordered the defendant to allow the bailiff, accompanied by the applicant carrying out the determination, Commander in bailiffs to carry out a provisional decision, mentioning the amount of the security deposit, as well as the costs incurred are charged to the applicant, and include the phrase "Those who do not obey determination This can be convicted of article 216 of the Criminal Code". In the case of rejecting the request, it stated that the court rejected the request of the applicant, return the bail to the applicant and charge court fees to the applicant.

The petition is granted, the bailiff shall undertake such determination in accordance with the ruling of the determination, in executing the determination accompanied by the applicant / attorney plus by 2 witnesses bailiff read out a provisional decision before the parties who were at the site, the implementation of a provisional decision must be stated in the news event, which is signed by the bailiff, the parties and the witnesses who were present at that moment.⁴⁸ Within 1x24 hours of the parties shall be notified about the execution of the defendant including the right to be heard. After the judge heard the testimony of both parties, and to consider carefully the evidence, the judge gave a provisional decision should decide to change or cancel, strengthen the provisional decision within a period of 30 days after the issuance of such determination. If the judge finds the fact that the applicant only partially approved a proven, then a provisional decision is changed in accordance with the facts discovered. If the provisional decision modified the bail partly handed over to the respondent proportionally. If the judge found that the applicant cannot prove petition the judge to cancel the provisional decision, the guarantee money that had been deposited must be submitted to the defendant, the defendant can file a claim for compensation if it receives assurances are not enough to recover the losses suffered significantly. If the results of further investigation it turns out the court found the fact the applicant to prove the petition in full, then a provisional decision strengthened, and a security deposit should be returned to the applicant.

As a consequence of the existence of legal protection rights to the trademark, registered trademark owner has the right to bring a civil action for damages if the brand is used or the rights of others without her permission. In Article 76 paragraph (1) UUM 2001 stated that the owner of the registered mark may file a lawsuit against the other party without right to use a brand that has a similarity in principle or in its entirety for goods or services similar form of claim for compensation and / or termination of all acts relating to the use of the brand. From the content of Article 76 paragraph (1), it can be known no kind of form action lawsuit for violation of the registered trademark, namely tort or violation of cessation of use of the mark.

Compensation here can also be the compensation of material and immaterial damages. Material compensation in the form of a real loss and can be valued in money. While immaterial compensation in the form of claims for compensation caused by the use of a brand with no rights, so that the party entitled morally suffer losses.⁴⁹ Pursuant to Article 76 paragraph (2) UUM, 2001, registered trademark infringement lawsuit filed with the Commercial Court. This means that the authority to hear the dispute or trademark infringement lawsuit in the hands of the Commercial Court as a special judicial body. Empowerment Commercial Court meant that the trademark dispute can be resolved in a relatively quick time. This is because the brand is part of the economic activity or the business world, so the

⁴⁷Article 5 of the Regulation of the Supreme Court of the Republic of Indonesia No. 5 In 2012

⁴⁸Article 8 of the Regulation of the Supreme Court of the Republic of Indonesia No. 5 In 2012

⁴⁹Saidin, *Legal Aspects of Intellectual Property Rights*, (Jakarta: PT. Rajagrafindo Perkasa, 1995),p. 304.

brand dispute settlement specifically requires judicial bodies, namely the Commercial Court. UUM 2001 also entitles the judge to perform certain actions during the investigation is still ongoing. Article 78 states that as long as the inspection and to prevent greater losses, the judge at the request of the trademark owner or licensee as the plaintiff may order the defendant to stop the production, distribution and / or trade in goods or services using the trademark unlawfully. In addition, the judge may also order that the delivery of goods or the value of goods carried out after a court decision has permanent legal force if the defendant turns prosecuted also deliver goods using the brand without rights.

Article 78 UUM 2001 confirms that the Commercial Court against the decision of an appeal may be filed.

Concerning procedures registered trademark lawsuit in the Commercial Court under Article 80 through Article 8L UUM 2001. Article 80 states that the registered trademark lawsuit filed with the Chairman of the Commercial Court in the jurisdiction where the defendant lives or domiciles, except the defendants residing outside the territory Indonesia, the lawsuit revocation is submitted to the Chairman of the Jakarta Commercial Court. Plaintiff filed a cancellation on the date the lawsuit filed and the plaintiff be given a receipt, which is signed by him on the same date as the date of registration of the lawsuit. Furthermore, within a maximum period of 2 (two) days after the registration date, the clerk is obliged to submit it to the Chairman of the Commercial Court. Commercial Court given time during the three (3) days from the date of registration of the lawsuit to study the lawsuit and set a trial day. Within a maximum period of 60 (sixty) days after the lawsuit is filed, a hearing on the lawsuit was held. Summoning the parties carried out by the bailiff later than seven (7) days after the lawsuit filed registration.

A decision on the lawsuit shall be made no later than ninety (90) days after the lawsuit is filed and can be extended later than 30 (thirty) days upon approval of the Chief Justice, with contains a complete legal reasoning underlying the decision and shall be pronounced in open court to the public and can be implemented a Although against the verdict filed a legal action. The bailiff who will deliver the decision of the Commercial Court to the parties no later than 14 (fourteen) days after the date of issuance of the.

Commercial Court decision cannot be appealed, but the appeal may be filed. This provision is included in Article 82 UUM 2001 stating that the verdict of the Commercial Court as referred to in Article 80 paragraph (8) may be filed cassation. Regarding the procedure of appeal against the decision of the Commercial Court under Article 83 UUM 2001. Application appeal must be filed no later than 14 (fourteen) days after the date of the judgment filed cassation pronounced or notified to the parties and submitted to the registrars who have disconnected the lawsuit. Clerk Negeni / Commercial Court will register the appeal on the date the application concerned an appeal is filed and a receipt signed by him on the same date with the registration date.

Furthermore, within 7 (seven) days from the date the request is filed, the applicant must submit the appeal has the memory of cassation to the clerk of the District Court / Commercial Court. Appeal and cassation memory must be sent clerk of the District Court / Commercial Court to the defendant of the cassation at the latest 2 (two) days after the request is filed. At least seven (7) days after the date the defendant cassation accept cassation, the defendant of the cassation may submit a counter memory cassation to the Clerk of Court / Commercial Court and the clerk of the District Court / Commercial Court is obliged to deliver the counter against the cassation to the applicant of the cassation at the latest 2 (two) days after the brief counter clerk of the District Court/Commercial Court.

Next, in a period of seven (7) days after the termination of the period of delivery of counter cassation. clerk of the District Court / Commercial Court is obliged to submit the case file an appeal to the Supreme Court. The Supreme Court shall examine the case file the appeal and set a hearing no later than 2 (two) days after the date the appeal is received by the Supreme Court. The examination hearing on the appeal conducted at the 60 (sixty) days after the date the appeal is received by the Supreme Court.

A decision on the cassation shall be made at the latest 90 (ninety) days after the date the appeal is received by the Supreme Court and contains a complete legal reasoning underlying the decision and shall be stated in a court session that is open to the public. Clerk of the Supreme Court is obliged to deliver the decision of cassation to the clerk of the District Court / Commercial Court no later than three (3) days after the date of the decision on the appeal is pronounced.

Then, bailiffs Court / Commercial Court is obliged to deliver the decision to the applicant and the defendant of the cassation appeal no later than 2 (two) days after the decision was received.

Settlement of Disputes over trademark rights may Also be made out of court, either using arbitration or alternative dispute resolution. In Article 84 UUM 2001 stated that in addition to the settlement of a lawsuit through the District Court/Commercial Court, the parties may resolve Disputes through arbitration or Alternative Dispute Resolution. Alternative Dispute Resolution here cans negotiation, mediation, conciliation, etc.

2.2 Principle of Simple Fast and Cost of Light in Indonesia

A provisional decision in the case of the brand must be in accordance with the principle of speedy trial is simple and inexpensive. A provisional decision of the court in case the brand has become a bottleneck that is not simple, quick and cost no light. Therefore, to maintain the rapid entry into force of the principle of civil simple low cost need to find a way out to remove these constraints.

If we consider the limiting factors are principally caused by man are related in the meantime Determination and regulatory factors or legislation concerned. Therefore, both of these factors need attention, guidance and supervision. To apply the principles of fast, simple and low cost in the meantime Determination. To answer this questions the need for the following steps.

First, the need for asset Estimator Institute to assess the security deposit and damages. In the Supreme Court Regulation No. 5 of 2012 on a provisional decision determined the obligation of the applicant to pay a security deposit in the amount proportional to the amount of the security deposit to the value of goods deferred expenditures and costs that will be incurred as a result of the provisional decision. Costs will be incurred as a result of orders provisional decision referred to in point 4 include the following approximate warehouse rental, lease containers (demorages), freight moved dump. The security deposit is the authority of the courts to determine how much should be paid. Determination of the amount of money these guarantees is difficult to judge because the judicial practice in Indonesia, because the books of the company or the owner of IPR incomplete. Against these problems authors suggest a need for the Institute to assess the asset Estimator bail and restitution.

The valuation of intellectual property assets of a creator or inventor, or the assets of a company's creative industries, is very easy.⁵⁰ Since an intellectual property can be used as an asset in the nineties, many large corporations in the United States set a wealth-asset such as intellectual property as an important factor for corporate strategy. The absence of accounting standards generally accepted in the world resulted in the calculation of the intellectual property assets in the form of intangibles such as mentioned above is not easy. To overcome the difficulty of making standards accounting standard that is acceptable in general (parallel with national laws are being drafted various industrialized countries) a coordination efforts for the harmonization of standards of accounting standard to calculate the intangible assets in the form of riches intellectual owned corporation has started long ago. Association of Accountants Europe has tried to make cooperation between the stakeholders in accounting consists of academics economic, legal experts intellectual property rights, to formulate accounting standards Uniform solve the problems of accounting in calculating the assets of the corporation in the form of intangible or intangible. At international level, efforts to formulate a credible accounting standard

⁵⁰Eddy Damian, Papers: *Seminar on the Protection of IPR as a tool Collateral in the National Law System*, held Kemenkuham RI-National Law Development Agency, 26 to 28 February 2013 in Bandung.

acceptable in general have been cultivated by the Accounting Standards Committee (IASC)⁵¹ as an asset assessment institution independent of private intellectual property. The main effort is to formulate accounting standards for assessing intangible assets (including intellectual property assets) are internationally accepted by member states. Furthermore, the establishment of an Institute of Intellectual Property Asset Management (LMA- IPR) credible is *a conditio sine quanon* on today. An LMA can be used state-IPR and IPR holders as a power tool for economic development, both for the individual IPR holders, indigenous people, corporations and countries.⁵²

Second, the need to set up a new Commercial Court. Through the Government Regulation in Lieu of Law No. 1 of 1998 established the Commercial Court for the first time. At first, that in August of 1998, the Commercial Court jurisdiction only in the territory of the Central Jakarta District Court. New in July 2000, the Government re-establishes the Commercial Court in Cities three items, namely Medan, Surabaya and Makassar. Although in each district and municipality there is a court but to date only five district courts that have commercial court.

Although five of the commercial court, as Mentioned previously established within the territory of the court but the commercial court each wider than the territory of the district court that there is a commercial court in it. The amount of five (5) commercial court the which resulted in a bit of trouble to Reviews those seeking justice (trademark applicant) who lived far away from the office where the commercial court is located. Therefore, based on the provisions in Act No. 37 of 2004 states that in the future will be formed a new commercial court in other places besides the five already existing commercial court. Furthermore, based on Reviews these provisions also explained that the establishments of this new commercial court by taking into account the needs and readiness of existing resources.

Data from the study Showed that there are five commercial courts, the commercial court to examine and Decide most cases is the Central Jakarta Commercial Court. Since the establishment of this court (1998) until 2006 there were some 50 cases of bankruptcy petition filed in this court.⁵³ The number of applications most cases occurred in 1999, which amounted to almost three times the number of petition cases registered in the previous year (1998). On the average number of bankruptcy petition filed to the Central Jakarta Commercial Court from 1999 showed a declining trend in every year.

In general, judge actions of other commercial brands that includes cases, patents, copyrights and industrial designs that have been examined and decided upon by the commercial court shows increase in number each year. Nevertheless exclusively brand case showed a significant increase in the number every year.

In Article 300 paragraph (2) of Law No. 37 of 2004 states that the establishment of the commercial court is done in stages with the president's decision to address the needs and readiness of the required resources. It can be concluded that the establishment of the commercial court is done with the proviso that takes into account the needs and readiness of existing resources. In the explanation of Law No. 37 of 2004 with particular regard to Article 300 paragraph (2) there is no further explanation of the terms of the commercial court's establishment. pay attention to the readiness of existing resources, existing District Court almost in every district and town throughout Indonesia. so if the government deems it necessary to form a new commercial court then in state court in other places can be established commercial court.

Third, the need for statutory provisions that govern if there are people who deliberately do not comply can be subject to sanctions Determination While Contempt of court is punishable by

⁵¹IASC was established in 1973 by the Institution of Professional Accountants of Australia, Canada, France, Germany, Japan, Mexico, Netherlands, United Kingdom, and the United States with the aim of achieving the principle - the principle of accounting uniforms for use businesses and organizations conducting Financial Statements internationally

⁵²Eddy Damian, S.H, op., cit.

⁵³Tata Wijayanta, 2008, Kes completion Kebankrapan in Indonesia Commercial Court and the High Court of Malaysia: A Comparative Study, PhD thesis, Universiti Kebangsaan Malaysia, Bangi. hal.180; Commercial Court-Central Jakarta District Court and the United States Agency for International Development (USAID), 2006 Activity Report, 2006, the Commercial Court-Court of Central Jakarta, Jakarta, p. 15.

imprisonment. Order of contempt of court (mock or belittle the courts) are institutions that originated in the common law (not common law) that the law is not written in English. In 1945 not found the provisions on contempt of court. It is not surprising, especially since the reform of everyone in public may interfere, stripped, disparaging and insulting the court. The right to freedom of expression and speech can be done almost without limit, except a very real set in legislation such as the Criminal Code. The concern at the time of Determination While done for example defendant mobilized thugs to obstruct the officer, so that a provisional decision failed. Against this incident also need for firm action on the obstacle with the threat of contempt of court punishable by imprisonment. This needs to be done to maintain the authority of the law, especially law enforcement.

As has been stated upfront that the current services performed by the Commercial Court to search the Justice in the provisional decision has not been entirely satisfactory. In certain cases still faced with obstacles in its implementation.

Therefore it is necessary to seek a breakthrough in order to eliminate those barriers. In line with the desire to improve the weaknesses that exist, then the Supreme Court has set a vision to reform the organization's mission.

The vision is "to realize ... the rule of law through an independent judiciary, effective, efficient and gain public confidence, professional and provide quality legal services ethical, affordable and low cost for the community and be able to answer the call of public service".⁵⁴

To achieve this vision has been assigned the mission of the Supreme Court as follows:

- a) Bring a sense of justice in accordance with the laws and regulations and meet the public sense of justice.
- b) Realizing self-reliant and independent judiciary free from the interfering hands of others.
- c) Improving access to public services in the field of justice.
- d) Improving the quality in internal put on trial.
- e) Realizing judicial institutions that are effective, efficient and dignified and respected.
- f) Carry out an independent judiciary is not impartial and transparent.⁵⁵

Vision and mission of the Supreme Court is an effort for the realization of the Supreme Court of Indonesia as a legal state. However, the success of these efforts largely depends on implementing human beings in addition to the legal rules are fair and the community are aware of the law.

In an effort to provide services just society there needs to be a system that is in line with the principle of justice. To achieve a sense of justice in accordance with the laws and regulations and meet the public sense of justice, it is necessary to implement the principle of speedy trial is simple and inexpensive. The principal task is to create a legal order, because the order is a basic requirement of the existence of organized communities. In order to create order in society, sought to hold a certainty. Certainty here interpreted as legal certainty in the law and therefore legal certainty. This is caused by the legal sense has two aspects. The first aspect is that there is legal certainty for concrete events; the second aspect is the existence of a legal protection against arbitrary misconduct.⁵⁶ Legal certainty is essentially a certainty about how the citizens resolve legal problems, how the role and usefulness of legal institutions to the community and beyond. Theoretical aspects of legal certainty and the protection of the law, namely that provisional decision to run properly it will provide legal certainty as to the execution of the what is pursued purpose of the law to seek legal certainty be done and also the legal protection for those who acquire rights as a holder of a registered mark to obtain legal protection than the provisional decision.

In civil cases law enforcement in case brand issues should pay attention to the things mentioned above which is principally:

- a) The rule of law will be enforced
- b) Offender law enforcement

⁵⁴ *Blueprint for reform of the Supreme Court of the Republic of Indonesia. the Supreme Court, 2003, p. 1-2.*

⁵⁵ *Ibid Hal 4*

⁵⁶ *L.J Van Appeldoorn, Introduction to Law, Pradnya Paramita, Jakarta, 1955, p. 30.*

c) Social environment where the law applies.

The first factor relates to the illicit. Indonesia has had Law Number 15 Year 2001 Tentang Brand although not perfect, but has undergone several adjustments to the TRIP's international settings. Substantially the Trademark Law still needs to be improved because there are still some drawbacks. Furthermore, in a society there is a strong tendency to abide by the law because of fear of negative sanctions if the law is violated. Therefore, in the setting of a provisional decision and suspension while obstruct or hinder the implementation of the provisional decision has fear, criminal sanctions of the Contempt of Court. Thus setting a provisional decision to come is expected to be a law that can follow the development of law in society, who can keep up with technology and can realize the principle of speedy trial is simple and low cost. The second factor that must be considered in the enforcement of this provisional decision is itself the perpetrator of law enforcement, among others: Judges, Registrar, bailiff, Legal adviser, Actors Law Enforcement it can be referred to as primary key law enforcement is fair and equitable. In the hands of law enforcement actors abstract into concrete seekers apply to legal / justice.⁵⁷ Law enforcement with regard to the implementation of the law are still many weaknesses in business practices in the field, this is due to lack of knowledge, understanding, and rigorous law enforcement officers dealing with cases of well-known brands. As a result, enforcement of Reviews these cases growing niche to be less than satisfactory even legalized. Though discussion of IPRs at the international level has been shifted from the minimum standards that must be complied with by members of the law enforcement (law enforcement). Therefore, The Necessary socialization of brands Including provisions on a provisional decision on an ongoing basis between relevant agencies, and Director General of Intellectual Property Began as early doors, investigator, judge as a case breaker, and customs officers as guards cross national boundaries. A law enforcement should have been professional in carrying out the duties Reviews their items, namely law enforcement officers who carry out law enforcement on the basis of sufficient knowledge, reliability, skill and a strong personality and dignity that contains the nature and character of glory or dignity. Law enforcement professional and dignified borne in upholding the honor of the job or position.

The third factor that must be met in order to enforce the laws that are fair social environment as the applicable law. Law enforcement is very influenced by the realities of social, economic, political and cultural. Specific interests such as economic and political interests of the dominant can determine the form of law enforcement. Therefore it is necessary to create a conducive social requirement that law enforcement can be implemented fairly and correctly. This factor is a form of cultural community, especially businesses. To better understand the brand as the identity of a product or service. It is very important that the community, especially businesses do not do anything in violation of the rights of others, by means of fraudulent acts deeds form of piracy, imitation of the brands owned by other parties. Business operators are expected to produce local brands are good quality and have a high reputation. Socialization and legal counseling can be done by the Higher Education and Research Institute of socialization is also given to the public not to buy pirated goods results, so that consumers do not suffer losses because of generally poor quality pirated goods results. It is expected the law enforcement in the development of law in Indonesia can realize that there are three things mentioned above, namely the rule of law to be enforced it is fair or equitable, the law enforcement professional and dignified as well as the social environment as a law that applies conducive to enforcement the law can be implemented fairly and correctly.

⁵⁷ Bagir Manan, *Authoritative Judicial system (a search)*, the Supreme Court of the Republic of Indonesia, 2004, p. 10-12

3. Conclusion and Recommendation

3.1 Conclusion

Mark law in Indonesia in this regard is Act No. 15 of 2001 provides protection to the owner of the registered trademark of trademark infringement actions. However, not all owners of registered marks are protected, only the owner of the registered mark of good will who obtains protection from all forms of trademark infringement as stipulated in Article 4 of the Trademark Act of 2001. In order to provide legal protection to the owner of the registered trademark, the District Court / Commercial Court the court may set a provisional decision. Article 85 UUM 2001 stated that based on sufficient evidence aggrieved parties whose rights may ask the judge of the Commercial Court to issue a provisional decision on the prevention of the entry of goods relating to infringement of trademark and storage of evidence relating to the infringement of the trademark. The provisions concerning provisional decision brand case determined the obligation of the applicant to pay a security deposit in the amount proportional to the amount of the security deposit to the value of goods deferred expenditures and costs that will be incurred as a result of the determination of the case while the brand. The security deposit is the authority of the courts to determine how much should be paid. Determination of the amount of money these guarantees are difficult to judge because the judicial practice in Indonesia, because the book of the company or the brand owner is not complete. Both the amount of the Commercial Court that only five of the Commercial Court in Indonesia resulted in difficulties for those seeking justice (provisional decision applicant) who lived far away from the office where the commercial court is located. The third concerns at the time of Determination While brand case the efforts of other parties that the provisional decision failed.

3.2 Recommendation

In order to keep abreast of legal needs in society and in order to further improve the public service Trademark Act 2001 should be amended to do some revisions mainly on the simplification of processes and procedures Trademark registration. Globalization in the field of trade in goods and services are increasingly widespread and growing demands a Trademark registration system that is easy, cheap and efficient. Commerce court must be supported by competent human resources. That is the good ability of all parties to support the performance of the Commercial Court, including Judge and Clerk. Given the scope of this court include dynamic commercial nature; the Commercial Court should be supported by modern facilities and infrastructure. Besides the fact that the modern facilities and infrastructure that will make it easier for interested parties to the make the access to the Commercial Court. Reviews These include facilities and infrastructure, and the physical condition of the courts begin to use information technology tools so expect fast principle is simple and low cost can be Realized.

References

Books

- [1] Adisumarto, Harsono, *Particularly Intellectual Property Patent and Trademark*, Akademika Pressindo, Jakarta, 1984.
- [2] Ahmad, Z. Ansori, *History and Status BW in Indonesia*, CV, Rajawali, Jakarta, 1986.
- [3] Ali, Hatta, *Justice Simple, Fast and Cost Lightweight towards Restorative Justice*, PT. Alumni, Bandung, 2013.
- [4] Amirizal, *Business Law*, Jakarta; Djambatan, 1996.
- [5] Andi, Muhammad Asrun, A. Prasetyantoko, et.al, *Juridical Analysis And Empirical Commercial Court*, CINLES-Centre for Information and Law-Economics Studies, Cet.1; Jakarta, 2000)

- [6] Aristotle, Rhetoric, 1361a (W. Rhys Roberts trans., 1954, <http://www.public.iastate.edu/~honey1/rhetoric/rhet1-5.html>).
- [7] Asshiddiqie, Jimly, *Constitution and Konstitusionalisme Indonesia*, led. The Constitutional Court and Constitutional Law Study Center of the University of Indonesia, Jakarta, 2004.
- [8] Badruzaman, Mariam Darius, *Various Business Law*, PT. Alumni, Bandung, 1994.
- [9] Bainbridge, David I., *Intellectual Property*, Pitnan Publishing, fourth ed, London, 1999.
- [10] Bell, Abraham and Gideon Parchomovsky, "A Theory of Property," 90 Cornell Law Review 531 (2005).
- [11] Damian, Eddy, *Copyright Law*, PT. Alumni, Bandung, 2005.
- [12] David Lametti, "Property and (Perhaps) Justice. A Review Article Of James W. Harris, Property And Justice And James E. Penner, The Idea Of Property In Law," 43 McGill Law Journal 663 (1998)
- [13] Directorate General of Intellectual Property of the Ministry of Justice and Human Rights, *Handbook of Intellectual Property Rights*, Directorate General of Intellectual Property Rights Ministry of Law and Human Rights, Jakarta, 2013.
- [14] Djamal, *While the determination of the Court (On Intellectual Property Rights)*, Pustaka Reka Cipta, Bandung, 2008.
- [15] Djumhana, Muhamad and R. Djubaedillah, *Intellectual Property: The History of Theory and Practice in Indonesia*, PT Citra Aditya Bakti, Bandung, 2003.
- [16] Djumhana, Muhammad and R. Djubaedillah, *Intellectual Property Rights (History, Theory and Practice in Indonesia)*, Citra Aditya Bakti, Edisi Revisi, Bandung, 2006.
- [17] Foster, Frank H. and Robert L. Shook, *Patents, Copyrights and Trademarks: The Total Guide to Protecting the Rights to Your Invention, Product, or Trademark. Now Better Than Ever*, Second Ed., John Wiley & Sons. Inc, New York, 1993.
- [18] Friedman, Lawrence, *The Legal System: A Social Science Perspective*, Russel Sage Foundation, New York, , 1975.
- [19] Friedman, Lawrence, *the Republic of Choice: Law, Authority, and Culture*, Harvard University Press, 1990.
- [20] Fuadi, Munir, *Modern Banking Law*. PT. Citra Aditya Bakti. Cet 1 Bandung, 1999.
- [21] Gautama, Sudargo dan Rizawanto Winata, *Comments on the New Trademark Act of 1992 and Rule Execution*, PT. Alumni, Bandung, 1997.
- [22] Gautama, Sudargo dan Rizawanto Winata, *Trademark Law Reform Indonesia (in the framework of the WTO, TRIPS 1997)*, PT Citra Aditya Bakti, Bandung, 1997.
- [23] Gautama, Sudargo dan Rizawanto Winata, *Conventions New Intellectual Property Rights To Indonesia*, Cet. 1, Citra Aditya Bakti, Bandung, 2002.
- [24] Gautama, Sudargo, *Aspects of Intellectual Property Rights*, PT. Etesco, Bandung, 1990.
- [25] Gunawati, Anne, *Protection of Famous Brand Goods and Services Not Similar Against Unfair Competition*, PT. Alumni, Bandung, 2015..
- [26] Harahap, Yahya, *General Overview Brand and Trademark Law in Indonesia Based on Law No. 19 of 1992*, Citra Aditya Bakti, Bandung, 1996.
- [27] Harris, Property and Justice and James E. Penner, The Idea Of Property In Law," 43 McGill Law Journal 663 (1998).
- [28] Hartono, Sunaryati, *Capita Selecta Comparative Law*, PT. Alumni, Bandung, 1982.
- [29] Hasan ,Djuhaendah, *Material Guarantee Institute For and and Other Attached to the Land of the Conception of Application of Principle of Separation Horizontal*, Citra Aditya Bakti, Bandung, 1996.
- [30] Henry Campbell Black, *Black's Law Dictionary* 6th edition, St. Paul: West Publishing, Co.
- [31] J. Supranto, *egal Research Methods and Statistics*, Rineka Cipta, Cet. 1, Jakarta, 2003.
- [32] J.F. Glastra Van Loon, dalam Soedjono Dirdjosisworo, *Introduction to Law*, PT. Raja Grafindo Persada, Jakarta, 1996.

- [33] J.W. Harris, *Property and Justice*, Clarendon Press, Oxford:, 1996.
- [34] Jane C. Ginsburg et.al., *Trade Mark and Unfair Competition Law, Cases and Material*, Michie Law Publishers, second edition ,Virginia:, 1991.
- [35] Japan Patent Office — Asia Pacific Industrial Property Center, JIII, Trademark disputes and Handling (Trademark Dispute and Their Handling)
- [36] Jill Mc.Keough & Andrew Stewart, *Intellectual Property in Australia*, 2nd edition, Butterworth, Sidney, 1997.
- [37] Kusumaatmadja ,Mochtar, *Legal Development within the Framework of National Development*, Binacipta, Bandung, 1986.
- [38] Kusumaatmadja, Mochtar, *Community Law and National Law Development, a Description about Platform Thought Patterns and Mechanism of Legal Reform in Indonesia*, Binacipta, Bandung, 1976.
- [39] Kusumaatmadja, Mochtar, *Concepts of Law in Development (set Essay)*, PT. Alumni, Bandung, 2002.
- [40] Lindsey, Tim et.al.. *Intellectual Property Rights “An Introduction”*, PT Alumni, Bandung:, 2005.
- [41] Mahadi, *Immaterial Rights*, BPHN, Bina Cipta, Jakarta, 1985.
- [42] Manan, Bagir, *An Overview of the Indonesian Judicial Authority Law Number 4 of 2004*, the Supreme Court, Jakarta, 2005.
- [43] Markus, Keith E., *intellectual Property Rights in The Global Economic*, Institute for International Economic, Washington D.C., 2000.
- [44] Maulana, Insan Budi, et al, *Capita Selecta DI Intellectual Property Rights, the Centre for Legal Studies*, Islamic University of Indonesia (UII) in Yogyakarta in cooperation with the Clinic Yayasan IPR, Jakarta, in 2000.
- [45] Maulana, Insan Budi, *Bianglala IPR (Intellectual Property Rights)* Hecca Publishing, Jakarta, 2005.
- [46] Maulana, Insan Budi, *Protection Famous Brand in Indonesia from time to time*, Citra Aditya Bakti, Bandung, 1999.
- [47] Maulana, Insan Budi, *Business Success Trademark, Patent and Copyright*, Citra Aditya Bakti, Bandung, 1997.
- [48] Mayana Ranti Fauza, *Protection of Industrial Design in Indonesia in the Era of Free Trade*, Grasindo, Jakarta, 2004.
- [49] Michael B. Metzger, et. al., *Business Law and the Regulatory Environment: Concepts and Cases*, Eighth edition, Boston: Irwin, 1992.
- [50] Miller, Arthur R. and Michael H. Davis, *Intellectual Property Patents, Trademarks, and Copyrights*, St Paul Minn West Publishing Co., 1990.
- [51] Mossof, Adam, “Property? Putting The Pieces Back Together”, 45 Arizona Law Review 371 (2003).
- [52] Muhammad, Abdulkadir, *Legal Assets*, PT. Citra Aditya Bakti, Bandung, 1994.
- [53] Muhammad, Abdulkadir, *Study of Economic Law of Intellectual Property Rights*, Citra Aditya Bakti, Bandung, 2001.
- [54] Muhammad, Rusli, *Institutions portrait Indonesian Court*, Rajawali Pers, Jakarta, 2006.
- [55] Munandar, Haris and Sally Sitanggang, *Recognize IPR Intellectual Property Rights Copyright, Patent, Trademark and ropes INS*, Erlangga, Jakarta, 2008.
- [56] Mustafa, Marni Emmy, *Proceedings in the principles of the Patent Law Enforcement in Indonesia Associated with TRIPs-WTO* (Doctoral Dissertation, University of Padjadjaran) 2006.
- [57] Mustafa, Marni Emmy, *Proceedings in the principles of the Patent Law Enforcement in Indonesia is associated with TRIPs-WTO*, PT. Alumni, Bandung, 2007.

- [58] Nils Victor Montan, Chander M. Lall dan Clifford Borg-Marks, (Author & Ed.), *Trademark Anticounterfeiting in Asia and The Pasific*, New York: INTA, 2001.
- [59] Ohmae. Kenichi, *A world without limits*, Bina Rupa aksara, Jakarta, 1991.
- [60] Philips, O. Hood, Paul Jackson, and Patricia Leopold, *Constitutional and Administrative Law*, Sweet & Maxwell, 8 ed, London:, 2001.
- [61] Pound, Roscoe, *Introduction to Philosophy of Law*, translation Drs. Mohamad Radjab, Bharatara KaryaAksara, Jakarta, 1998
- [62] Priapantja, Cita Citrawinda, *Indonesian Law Culture Facing Globalization: Trade Secret Protection in Pharmaceutical Sector*, Chandra Pratama, Jakarta, 1999.
- [63] Purba, Achmad Zen Umar, *Intellectual Property Rights Post-TRIPs*, PT.Alumni, Bandung, 2005.
- [64] Purba, *Some of the TRIPs Agreement and Strategic Issues*, PT. Alumni dan Badan Penerbit FH. Universitas Indonesia, Bandung, 2011.
- [65] Rahardjo, Satjipto, *Legal studies*, PT. Citra Aditya Bakti, Bandung, 1991.
- [66] Rajagukguk, Erman in the "Preface" to the dissertation H.D. Effendi Hasibuan, *Brand Protection: Study of Judgments Indonesia and the United States*, Pacsarjana Program Faculty of Law, University of Indonesia, Jakarta, 2003.
- [67] Reynolds, Rocque and Natalie Stolanoff, *Intellectual Property Text and Essential Cases*, The Federation Press, 2nd Edition, NSW, 2005
- [68] Ricketson , Sam and Megan Richardson, *Intellectual Property: Cases, Materials and Commentary*, 2nd Edition, Butterworths, Sidney, 1998
- [69] Roszkowski, Mark E., *Business Law: Principles, Cases and Policy*, Harper Collins Publishers, Third edition, New York, 1992.
- [70] Runtung, *The success and failure of the Alternative Dispute Resolution (Study of Society Karo in Kabanjale and Berastagi*, Dissertation Graduate Program University of Sumatra Utara, Medan, 2002
- [71] Saidin, *Legal aspect Intellectual Property Right*, Rajawali Pers, Jakarta, 1997.
- [72] Salman, Otje and Anthon F. Susanto, *Legal Theory: Given, Collecting, and Reopened*, Refika Aditama, Bandung, 2004.
- [73] Sherman, Brad dan Lionel Bently, *The Making of Modern Intellectual Property Law*, Cambridge University Press, New York USA, 1999.
- [74] Sitompul, Zulkarnaen, *Protection of Customer Funds Bank, An Idea About establishment of the Deposit Insurance Agency in Indonesia*, Graduate School of Law, University of Indonesia, Cet. 1, Jakarta, in 2002.
- [75] Soedjono Dirdjosis, *Company Law Concerning Intellectual Property (Copyright, Patent, Trademark Rights)*, Mandar Maju, Bandung, 2000.
- [76] Soekamto, Soerjono, *Introduction to Legal Research*, UI-Press, Jakarta:, 2005.
- [77] Soekamto, Soerjono, Sri Mamudji, *Normative Legal Research A Brief Overview*, CV. Rajawali, Cet. 2, Jakarta, 1986.
- [78] Soekardono, *Indonesia Trade Law*, UI Press, Jakarta, 1983.
- [79] Sofwan, Sri Soedewi Masjchoen, *Law Civil Objects*, Liberty, Yogyakarta, 1983.
- [80] Steering Team and the Commercial Court Preparatory Formation of Anti-Corruption Court, "Blueprint and Commercial Court Action Plan", the Office of the State Minister of National Development Planning / National Development Planning Agency, Jakarta, 2004.
- [81] Waluya, Harry, *International Economics*, Rineka Cipta, Jakarta, 1995.
- [82] William Blackstone, *II Commentaries on the Law of England*, Chapter 1, 3, Wayne Morrison ed, 2001.

Legislation

- [1] Constitution of the Republic of Indonesia Year 1945
- [2] Law on Judicial Power, Law - Law No. 48 of 2009
- [3] Law No. 49 Year 2009 on general Justice
- [4] Law on Judicial Power, Law - Law No. 4 of 2004
- [5] Law No. 15 of 2001 on Marks
- [6] Law No. 14 of 1997 on the Amendment of Law No. 19 of 1992 on Marks
- [7] Law No. 19 of 1992 on Marks
- [8] Law No. 2 Year 1986 about the general Justice
- [9] Law Number 14 Year 1970 about the Principal Provisions on Judicial Power
- [10] Act No. 21 of 1961 on Marks Company and Brand Commerce

Journals and Papers

- [1] Gita Dewi, Chandra, Unlisted brands and Legal Protection in Indonesia, *Varia Peradilan* No. 335 in October 2013.
- [2] Hendrarto Darudoyo and Wawan Zulmawan, "Born On the initiative of the IMF", *Warta Ekonomi* Number 48 Year XI 2000.
- [3] John Locke, *The Second Treatise of Civil Government* 1960, <http://oregonstate.edu/instruct/phl302/texts/locke/locke2/2nd-contents.html>.
- [4] Manan, Bagir, Consistency National Development and Law Enforcement, *Varia Peradilan*, Year XXVIII 323, October 2012.
- [5] Marzuki, Peter Mahmud, Practical understanding Regarding Intellectual Property Rights, *Jurnal Hukum Ekonomi, FH-UNAIR*, Edition III, February 1996.
- [6] Peter Knight, *Protecting the Brand*, diambil dari <http://www.claytonutz.com> Christopher M. Wadlow, "Passing Off Enters The Supermarket Age. *Reckitt & Colman Products Ltd v Borden Inc*", diambil dari <http://www.westlaw.com> diakses tanggal 14 Desember 2008. diakses tanggal 13 Mei 2013
- [7] Priapantja, Cita Citrawinda, Overview of Crime in the Field of Trademark, *Jurnal legislasi Indonesia* Vol.3 No.4, December 2006.
- [8] Purba, A. Zen Umar, "Growing Role of Intellectual Property in Business Creativity", *Papers on II- Workshop Center for the Socialization and Dissemination of Technology*, The Habibie Center, Jakarta, July 13, 2000
- [9] Ramli, Ahmad M. and Muhammad Amirulloh, Brand Protection in Indonesia in Theory and Practice, *Journal Hukum Internasional*, Padjadjaran University, Vol.1, No.3, December 2002.