Goods/Services Classification Issues in Indonesia

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Classification of goods and services in Indonesia under Law no. 15 of 2001 concerning Marks is specifically addressed in Article 8, which stipulates that a trademark application shall specify the kinds of goods and/or services under the applied class to which the protection is sought. Stipulation under this article is however still incomplete as law clearly requires for further regulation to be put forward under a government regulation, which unfortunately has yet to be issued until today. Instead, classification of goods and/or services under Indonesian trademark registration system still refers to 42 classes regulated by Government Regulation No. 24 of 1993, which was issued following the even older trademark law of 1992.

This in fact exposes problematic situation when it comes to determine the most appropriate classification for goods and/or service in filing trademark registrations. Moreover, the lack of adequate guidance or elucidation on determining goods and/or services of the same kind indeed brings forward even more difficult situation in the trademark application process, especially due to one important rule under the Indonesian Trademark Law that *an application for registration of a Mark shall be refused by the DGIP is the relevant Mark has a similarity in its essential part or in its entirety with a Mark owned by another party, which has previously been registered for the same kind of goods and/or services*.

In view of the foregoing, the trademark protection system in Indonesia now is in urgent need of a clear and definitive official classification of goods and services is urgently needed as guidelines, for which function the Indonesian Trademark Office now mainly refers to the Nice Agreement. While according to WIPO Indonesia is still among the 68 countries that have yet to ratify the agreement, the Indonesian Trademark Office indeed regards the agreement's 45 classes of goods and services as their principal guidelines in both the administration process as well as the goods/services classification during trademark registration process.

On the other hand, however, in spite of the fact that Nice Agreement has been acknowledged internationally as a primary source of reference for trademark registration systems applied worldwide by many countries with or without ratification, for Indonesia in particular the non-ratification status of the Nice Agreement actually presents some practical limitation.

Most importantly, being an unratified agreement the Nice Agreement lacks the capacity to be treated as an official legal instrument for the trademark protection system in Indonesia. No official translation to the substantial matters of the agreement such classes and kinds of goods and services also poses legal problems since the Indonesian language is the only official language in the country, especially for official and legal affairs. Furthermore, there is still no legal certainty as to how goods and/or services shall be classified, particularly when it comes to goods and/or services of the same kind.

Also, the absence of definitive official guidelines, when facing the fact that goods and services classification in the Indonesian trademark protection system will continue to develop along with developments in the relevant areas, will eventually result in many differing as well as conflicting determination between the applicant and the Indonesian Trademark Office on how a particular good and/or service shall be classified, let alone the potential for multiple language interpretation between different parties that may further complicate the situation.

Such instances of inconsistency in trademark registration processes indeed may pose a great risk of legal uncertainty. It is hoped that in the future a fixed classification of goods and services for trademark registrations can be established so as to provide a more certain legal protection for the interests of trademark owners and applicants alike.

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