

INDONESIA

Trademark Law

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CHAPTER I GENERAL PROVISIONS

Article 1

In this Law

1. Mark shall mean a sign in the form of a picture, name, word, letters, figures, composition of colors, or a combination of said elements, having distinguishing features and used in the activities of trade in goods or services.

2. Trade Mark shall mean a mark that is used on goods traded by a person or by several persons jointly or a legal entity to distinguish the goods from other goods of the same kind.

3. Service Mark shall mean a mark that is used for services traded by a person or by several persons jointly or a legal entity to distinguish the services from other services of the same kind.

4. Collective Mark shall mean a mark that is used on goods and/or services having the same characteristics that are traded jointly by several persons or legal entities to distinguish the goods and/or services from others of the same kind.

5. Application shall mean the application for registration of a mark that is filed in writing at the Directorate General.

6. Applicant shall mean the party that files an application.

7. Examiner shall mean the marks examiner who is an official who because of his expertise, is appointed by a Ministerial Decree and shall have the duty to examine applications for registration of mark.

8. Proxy shall mean a consultant of intellectual property rights.

9. Minister shall mean the Minister, whose scope of duties and responsibilities includes the guidance in the field of intellectual property rights, including marks.

10. Directorate General shall mean the Directorate General of Intellectual Property Rights under the department presided over by the Minister.

11. Filing Date shall mean the date of receipt of an application that has fulfilled the administrative requirements.

12. Consultant of Intellectual Property Rights shall mean a person who has expertise in the field of intellectual property rights and specifically provides services in filing and handling applications of patents, marks, industrial designs and other fields of intellectual property rights and shall be registered as a Consultant of Intellectual Property Rights at the Directorate General.

13. License shall mean a permission granted by the owner of a registered mark to another party by means of an agreement based on the grant of right

(not the transfer of right), to use the relevant mark, either for all or some of the kinds of goods and/or services that are registered for a certain period of time and certain requirements.

14. Priority Right shall mean the right of an applicant to file an application originating from a member country of the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization in order to get recognition that the filing date of the country of origin to be the priority date in the country of designation that is also a member country of the two agreements, provided that the filing of the application is made during the period prescribed in the Paris Convention for the Protection of Industrial Property.

15. Day shall mean working day.

CHAPTER II SCOPE OF MARKS

Part One General

Article 2

Marks as regulated under this Law shall include trade marks and service marks.

Article 3

The right to a mark is the exclusive right granted by the State to the owner of the mark which is registered in the General Register of Marks for a limited period, in which he shall himself use the mark or grant permission to another party to use it.

Part Two Marks that cannot be registered and marks that are refused

Article 4

A mark shall not be registered on the basis of an application by an applicant having not good faith.

Article 5

A mark shall not be registered if it contains one of the following elements:

- a. In contradiction with the prevailing rules and regulation, morality of religion, or public order;
- b. Has no distinguishing features;
- c. Has become public property; or
- d. Constitutes information or related to the goods or services for which registration is requested.

Article 6

(1) An application for registration of a mark shall be refused by the Directorate General if the relevant mark:

- a. 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.
- b. Has a similarity in its essential part or in its entirety with a well-known mark owned by another party for the same kind of goods and/or services.
- c. Has a similarity in its essential part or in its entirety with a known geographical indication.

(2) The provision as referred to in paragraph (1) letter b is also applicable to goods and/or services, which are not of the same kind, provided that it fulfils certain conditions that will be regulated further by Government Regulation.

(3) An application for registration of a mark shall also be refused by the Directorate General if:

- a. It constitutes or resembles with the name of a famous person, photograph, or the name of a legal entity belonging to another party, except with a written consent from the entitled party;
- b. It constitutes an imitation or resembles with a name or abbreviation of a name, flag or coat of arms or a symbol, or an emblem of a state, or of a national or international institution, except with a written consent from the competent authority;
- c. It constitutes an imitation or resembles with an official sign or seal or stamp used by a state or a government institution, except with a written consent from the competent authority.

CHAPTER III APPLICATION FOR REGISTRATION OF MARK

Part One Requirements and Procedure of Filing

Article 7

(1) An application shall be made in writing in the Indonesian language to the Directorate General by stating

- a. The date, month and year;
- b. Complete name, nationality and address of the applicant;
- c. Complete name and address of the proxy, if the application is filed through one;
- d. Colors, if the mark uses color elements;
- e. Country and filing date of the original application, if the application is filed with priority right.

(2) The application shall be signed by the applicant or his proxy.

(3) The applicant as referred to in paragraph (2) may comprise of a person or several persons jointly together or a legal entity.

(4) The application shall be furnished with the receipt of payment of fee.

(5) In the event the application is filed by more than one person who are jointly entitled to the mark, the name of the persons shall be included by choosing one address as their address.

(6) In the event of the application as referred to in paragraph (5), the application shall be signed by one of the applicants entitled to the mark and be furnished with a written consent from them.

(7) In the event the application as referred to in paragraph (5) is filed through a proxy, the power of attorney for this purpose must be signed by all parties entitled to the relevant mark.

(8) The proxy as referred to in paragraph (7) shall be a Consultant of Intellectual Property Rights.

(9) Further provisions regarding the requirements for the appointment as a Consultant of Intellectual Property Rights shall be regulated by Government Regulation whilst the procedure of appointment shall be

regulated by Presidential Decree.

Article 8

(1) An application for 2 (two) or more classes of goods and/or services may be filed in a single application.

(2) The application referred to in paragraph (1) shall mention the kinds of goods and/or services that are covered by the class applied for registration.

(3) The classes of goods or services referred to in paragraph (1) shall be further regulated by Government Regulation.

Article 9

Further provisions regarding the requirements and procedure of filing shall be regulated by a Government Regulation.

Article 10

(1) An application that is filed by an applicant who resides or permanently domiciles outside the territory of the Republic of Indonesia must be filed through a proxy in Indonesia.

(2) The applicant as referred to in paragraph (1) shall state and choose the residence of his proxy as his legal domicile in Indonesia.

Part Two Application for registration of mark with priority right

Article 11

An application with a priority right shall be filed within a period of 6 (six) months at the latest, commencing from the first filing date of the application in another country, which is a member of the Paris Convention for the Protection of Industrial Property or a member of the World Trade Organization.

Article 12

(1) In addition to fulfilling the provisions as referred to in Part One of this Chapter, an application with a priority right must also be completed with an evidence of the receipt of the application for the first time which gives rise to said priority right.

(2) The evidence of priority right as referred to in paragraph (1) shall

be translated into the Indonesian language.

(3) In the event the provisions as referred to in paragraphs (1) and (2) have not been fulfilled within a period of at the latest 3 (three) months after the expiry of the right to file an application with a priority right as referred to in Article 11, the application shall be processed without a priority right.

Part Three Examination on the completeness of requirements for registration of mark

Article 13

(1) The Directorate General shall conduct an examination of the completeness of requirements for registration of a mark as referred to in Article 7, Article 8, Article 9, Article 10, Article 11, and Article 12.

(2) If in fact there are deficiencies in the completeness of requirements as referred to in paragraph (1), the Directorate General shall request that such deficiencies be remedied within a period of at the latest 2 (two) months from the date of dispatch of the letter from the Directorate General requesting the completion of such deficiencies.

(3) Where such deficiencies pertain to the requirements referred to in Article 12, the period for remedying the deficiencies in said requirements shall be at the latest 3 (three) months from the date of expiry of the period of filing of an application with a priority right.

Article 14

(1) Where deficiencies in the requirements are not corrected within the period as referred to in Article 13 paragraph (2), the Directorate General shall notify the applicant or his proxy in writing that the application is deemed withdrawn.

(2) Where an application is deemed withdrawn as referred to in paragraph (1), all fees that have been paid to the Directorate General cannot be reimbursed.

Part Four Period of receipt of Mark Registration Application

Article 15

(1) In the event all administrative requirements as referred to in Article 7, Article 8, Article 9, Article 10, Article 11, and Article 12 have been fulfilled, the application shall be given a filing date.

(2) The filing date of the application as referred to in paragraph (1) shall be recorded by the Directorate General.

Part Five Amendment and withdrawal of Application for Mark Registration

Article 16

Amendment of an application shall only be allowed for the change of name and/or address of the applicant or his proxy.

Article 17

(1) As long as an application has not been decided by the Directorate General, it can be withdrawn by the applicant or his proxy.

(2) Where the withdrawal of the application as referred to in paragraph (1) is made by the proxy, it must be made on the basis of a special power of attorney for the purpose of said withdrawal.

(3) Where an application is withdrawn, all fees that have been paid to the Directorate General cannot be reimbursed.

CHAPTER IV REGISTRATION OF MARKS

Part One Substantive Examination

Article 18

(1) The Directorate General shall conduct a substantive examination of an application within a period of 30 (thirty) days at the latest from the filing date as referred to in Article 15.

(2) The substantive examination as referred to in paragraph (1) shall be conducted with due regard to the provisions of Article 4, Article 5, and Article 6.

(3) The substantive examination as referred to in paragraph (1) shall be finished no later than 9 (nine) months.

Article 19

(1) The substantive examination shall be conducted by the examiner at the Directorate General.

(2) The examiner shall be the official who, due to his skills and qualifications, is appointed and dismissed as functional official by the Minister on the basis of certain requirements.

(3) The examiner shall be given a functional rank and allowances in addition to other rights in accordance with prevailing laws and regulations.

Article 20

(1) Where the examiner concludes the result of the substantive examination that an application can be approved for registration, the Directorate General with the approval of the Director General shall announce the application in the Official Gazette of Marks.

(2) Where the examiner concludes the result of the substantive examination that an application cannot be registered or shall be refused, the Directorate General with the approval of the Director General shall notify in writing the applicant or his proxy stating the reasons therefor.

(3) Within a period of 30 (thirty) days at the latest from the date of receipt of the notification, the applicant or his proxy may submit an

objection or a comment, stating the reasons therefor.

(4) In the event the applicant or his proxy does not submit any objection or comment as referred to in paragraph (3), the Directorate General shall decide on the refusal of the application.

(5) In the event the applicant or his proxy submits an objection or a comment as referred to in paragraph (3) and the examiner concludes that such objection or comment can be accepted, the Directorate General with the approval of the Director General shall announce the relevant application in the Official Gazette of Marks.

(6) In the event the applicant or his proxy submits an objection or a comment as referred to in paragraph (3) and the examiner concludes that such objection or comment cannot be accepted, the Directorate General with the approval of the Director General shall refuse the application.

(7) The refusal as referred to in paragraphs (4) and (6) shall be notified in writing to the applicant or his proxy, stating the reasons therefor.

(8) Where an application is refused, all fees that have been paid to the Directorate General cannot be reimbursed.

Part Two Announcement of application

Article 21

Within a period of at the latest 10 (ten) days as of the date of approval for registration, the Directorate General shall announce the application in the Official Gazette of Marks.

Article 22

The announcement shall last for 3 (three) months and be conducted by

- a. Placement in the Official Gazette of Marks that is published periodically by the Directorate General, and/or
- b. Placement in a special medium, which can be easily and clearly seen, provided by the Directorate General.
- c. The date of commencement of the announcement shall be recorded by the Directorate General.

Article 23

The announcement shall be made by mentioning:

- a. The full name and complete address of the applicant, as well as the full name and address of the proxy;
- b. The class and kind of goods and/or services for which registration of the mark has been requested;
- c. The filing date of the application;
- d. The name of the country and the filing date of the first application, if the application is filed with a priority right.
- e. A sample of the mark label, including information concerning its colors, and if the mark label uses a foreign language and/or letters other than the Latin alphabet and/or numerals which are not commonly used in Indonesian language, it must be furnished with its translation in the Indonesian language, using the Latin alphabet or numerals which are commonly used in Indonesian language, as well as its pronunciation in the Latin spellings.

Part Three Objection and Rebuttal

Article 24

(1) During the period of announcement as referred to in Article 22, any person or legal entity may file an objection to an application, in writing to the Directorate General.

(2) The objection as referred to in paragraph (1) may be filed where there is sufficient reason accompanied by evidence that the mark for which registration is requested is a mark, which under this Law shall not be registered or shall be refused.

(3) In the case of an objection as referred to in paragraph (1), the Directorate General shall within a period of at the latest 14 (fourteen) days from the date of receipt of the objection send a copy of the letter containing said objections to the applicant or his proxy.

Article 25

(1) The applicant or his proxy shall be entitled to file a rebuttal to the objection as referred to in Article 24 at the Directorate General.

(2) The rebuttal as referred to in paragraph (1) shall be filed in writing within a period of at the latest 2 (two) months from the date of receipt of the copy of the objection sent by the Directorate General.

Part Four Re-examination

Article 26

(1) In the case of an objection and/or rebuttal, the Directorate General shall use the objection and rebuttal as additional material for the re-examination of the application that has been announced as referred to in Article 21.

(2) The re-examination of the application as referred to in paragraph (1) shall be completed within a period of 2 (two) months from the date of expiry of the announcement.

(3) The Directorate General shall notify in writing to the party that has filed the objection about the result on re-examination as referred to in paragraphs (1) and (2).

(4) Where the examiner concludes the result of examination that the objection can be accepted, the Directorate General shall notify the applicant in writing that the application cannot not be registered or is refused; and in such a case, the applicant or his proxy may file a request for an appeal petition.

(5) Where the examiner concludes the result of examination that the objection cannot be accepted, with the approval of the Director General, the application shall be registered in the General Register of Marks.

Article 27

(1) Where there are no objections as referred to Article 24 paragraph (1), the Directorate General shall issue and grant a Mark Certificate to the applicant or his proxy within a period of 30 (thirty) days at the latest from the date of expiry of the announcement period.

(2) In the case that an objection cannot be accepted as referred to Article 26 paragraph (5), the Directorate General shall issue and grant a Mark Certificate to the applicant or his proxy within a period of 30 (thirty) days at the latest commencing from the date the relevant application was approved for registration in the General Register of Marks.

(3) The Mark Certificate as referred to in paragraph (1) shall contain:
a. The full name and address of the owner of registered mark;
b. The full name and address of the proxy, where the application is filed

based on Article 10;

c. The date of application and date of filing;

d. The name of country of and the first filing date, where the application is filed with priority rights;

e. The specimen of registered mark, including the illustration of the colors if the mark uses color elements, and if the mark uses a foreign language and/or letters other than Latin and/or figures that are not commonly used in the Indonesian language, it shall be furnished with the translation in the Indonesian language, using Latin letters and figures that are commonly used in the Indonesian language, and the spelling in Latin.

f. Number and date of registration;

g. Class and type of goods and/or services of the registered mark; and

h. Period of validity of the mark registration.

(4) Any person may file a request for the official excerpt of a Mark Certificate that is recorded in the General Register of Marks.

Part Five Period of Protection of Registered Marks

Article 28

A registered mark shall have legal protection for a period of 10 (ten) years from the filing date and the protection period can be extended.

Part Six Appeal Petitions

Article 29

(1) A petition for appeal may be filed against the refusal of an application on the grounds of substantive matters as referred to in Article 4, Article 5, or Article 6.

(2) A petition for appeal shall be filed in writing to the Mark Appeal Commission by the applicant or his proxy and a copy thereof shall be sent to the Directorate General, with a payment of fee.

(3) An appeal petition shall be filed by describing in detail the objection to the refusal of the application as the result of substantive examination.

(4) The grounds as referred to in paragraph (3) must not constitute corrections or completions of the refused application.

Article 30

(1) A petition for appeal shall be filed within a period of not longer than 3 (three) months from the date of notification of refusal of the application.

(2) In the event the period provided in paragraph (1) has lapsed without an appeal petition, the refusal of the application shall be deemed accepted by the applicant.

(3) Where the refusal of the application has been deemed accepted as referred to in paragraph (2), the Directorate General shall record this in the General Register of Marks.

Article 31

(1) The decision of the Mark Appeal Commission shall be made within no later than 3 (three) months as of the date of receipt of the appeal petition.

(2) In the event the Mark Appeal Commission accepts the appeal petition, the Directorate General shall conduct the announcement as referred to in Article 21 except for applications that have already been announced in the Official Gazette of Marks.

(3) In the event the Mark Appeal Commission refuse the appeal petition, the applicant or his proxy may bring an action to the Commercial Court within a period of 3 (three) months at the latest from the date of receipt of the refusal.

(4) Against the decision of the Commercial Court as referred to in paragraph (3), may only be filed an appeal to Supreme Court.

Article 32

The procedure for the appeal petitions and examinations as well as the settlement of appeals shall be regulated further by a Presidential Decree.

Part Seven The Mark Appeal Commission**Article 33**

(1) The Mark Appeal Commission is a special independent body under the department responsible for intellectual property rights.

(2) The Mark Appeal Commission comprises a chairman who is also acting as a member, a deputy chairman who is also acting as a member, members comprising some experts in the necessary field, and senior examiners.

(3) The members of the Mark Appeal Commission as referred to in paragraph (1) are appointed and dismissed by the Minister, for a service term of 3 (three) years.

(4) The Chairman and deputy chairman are elected from and by members of the Mark Appeal Commission.

(5) To examine appeal petitions, the Mark Appeal Commission shall form a council in an odd number of at least 3 (three) people, one of whom is a senior mark examiner that has not conducted a substantive examination on the application.

Article 34

The structure of organization, duties and functions of the Mark Appeal Commission shall be regulated further by Government Regulation.

Part Eight Extension of Protection Period of a Registered Mark

Article 35

(1) The owner of a registered mark may file a request for the extension of the protection period for additional periods of the same duration.

(2) The request for extension as referred to in paragraph (1) shall be filed in writing by the owner or his proxy within a period of 12 (twelve) months before the expiry of the protection period of said registered mark.

(3) The request for extension as referred to in paragraph (2) shall be submitted to the Directorate General.

Article 36

A request for the extension of the protection period shall be approved if:

- a. The relevant mark is still used on the goods or services as stated in the Mark Certificate; and
- b. The goods or services as referred to in (a) are still produced and traded.

Article 37

(1) A request for the extension of the protection period shall be refused by the Directorate General if it does not fulfill the provisions as referred to in Article 35 and Article 36.

(2) A request for the extension of protection period shall be refused by the Directorate General, if the relevant mark has similarities in its essential part or its entirety with a well-known mark of another person, taking into account the provisions as referred to in Article 6 paragraph (1) letter b and paragraph (2).

(3) The refusal of a request for the extension of the protection period shall be notified in writing to the mark owner or his proxy, stating the reasons therefor.

(4) Any objections on the refusal as referred to in paragraphs (1) and (2) may be filed at the Commercial Court.

(5) Upon the decision of the Commercial Court as referred to in paragraph (3) may only be filed a cassation.

Article 38

(1) An extension of the period of protection of a registered mark shall be recorded in the General Register of Marks and announced in the Official Gazette of Marks.

(2) The extension of the period of protection of a registered mark shall be notified in writing to the mark owner or his proxy.

Part Nine Change of Name and/or Address of a Registered Mark Owner

Article 39

(1) A request for the change of name and/or address of a registered mark owner to be recorded in the General Register of Marks shall be filed at the Directorate General, with a payment of fee and accompanied by a valid copy of the evidence of said change.

(2) The change of name and/or address of a registered mark owner which has been recorded by the Directorate General shall be announced in the Official Gazette of Marks.

CHAPTER V TRANSFER OF RIGHTS OF A REGISTERED MARK

Part One Transfer of Rights

Article 40

(1) The rights of a registered mark may be transferred by:

- a. Inheritance;
- b. Will;
- c. Legacy;
- d. Agreement; or
- e. Other reasons justified by law.

(2) The transfer of rights to a registered mark as referred to in paragraph (1) must be filed at the Directorate General to be recorded in the General Register of Marks.

(3) The transfer of rights of a registered mark as referred to in paragraph (1) shall be accompanied by supporting documents.

(4) The transfer of rights to a registered mark which has been recorded by the Directorate General shall be announced in the Official Gazette of Marks.

(5) The transfer of rights of a registered mark which is not recorded in the General Register of Marks shall have no legal consequences to any other party.

(6) The transfer of rights of a mark as referred to in paragraph (1) shall be recorded with a payment of fee as regulated in this Law.

Article 41

(1) A transfer of rights of a registered mark may be accompanied by the transfer of fame, reputation or other things related to the mark.

(2) The right of a registered service mark that cannot be separated from the ability, quality, or skills of the party rendering the service can be transferred provided that there is a guaranty on the quality of service to be rendered.

Article 42

The transfer of rights to a registered mark may only be recorded by the

Directorate General if it is accompanied with a written statement from the receiver of rights that the relevant mark will be used for trade of goods and/or services.

Part Two Licensing

Article 43

(1) The owner of a registered mark shall be entitled to grant a license to another person with an agreement that the licensee will use the mark either all or parts of the kinds of goods or services.

(2) A license agreement shall be valid for the entire territory of the Republic of Indonesia, unless agreed otherwise, for a period not exceeding the period of protection of the registered mark concerned.

(3) The recording of a license agreement must be requested at the Directorate General with the payment of a fee and the legal consequences of the recording of the license agreement shall apply to all parties concerned and to any other third party.

(4) A license agreement referred to in paragraph (3) shall be recorded by the Directorate General in the General Register of Marks and shall be announced in the Official Gazette of Marks.

Article 44

The owner of a registered mark who has given a license to another person as referred to in Article 43 paragraph (1) shall continue to be allowed to use by himself or to give a license to another third party to use the said mark, unless agreed otherwise.

Article 45

A license agreement may provide that the licensee may give further licenses to third parties.

Article 46

The use of a registered mark in Indonesia by a licensee shall be deemed the same as the use in Indonesia of the said mark by the owner of the mark.

Article 47

(1) A license agreement shall be prohibited to contain provisions, which

may directly or indirectly give rise to effects which damage the Indonesian economy or to contain restrictions that obstruct the ability of the Indonesian people to master and develop the technology in general.

(2) The Directorate General must refuse any request for the recording of a license agreement, which contains prohibited provisions as referred to in paragraph (1).

(3) The Directorate General shall notify the owner of the mark or his proxy and the licensee in writing of the refusal as referred to in paragraph (2), stating the reasons therefore.

Article 48

(1) A good faith licensee of a mark that is subsequently cancelled on the basis of a similarity in principle or in its entirety with another registered mark shall be entitled to continue carrying out the license agreement until the expiry of the period of said license agreement.

(2) A licensee as referred to in paragraph (1) shall no longer be obligated to continue the payment of royalties, which would still properly be due to the licensor of the cancelled mark, but instead shall be obligated to make the payment of royalties to the owner of the mark that has not been cancelled.

(3) Where a licensor has already received royalties as a lump sum from the licensee, the said licensor shall be obligated to surrender a portion of the royalties he has received to the owner of the mark that has not been cancelled, in proportion to the remaining period of the license agreement.

Article 49

The provisions regarding requirements and procedure of filing the request for the recording of a license agreement and further provisions regarding license agreements as referred to under this Law shall be regulated by a Presidential Decree.

CHAPTER VI COLLECTIVE MARKS

Article 50

(1) An application for registration of a trade mark or a service mark as a collective mark shall only be accepted if it is clearly stated in said application that the mark would be used as a collective mark.

(2) In addition to the affirmation on the use of a collective mark as referred to in paragraph (1), the said application must be accompanied by a copy to the regulation on the use of said mark as a collective mark, signed by all relevant mark owners.

(3) The regulation on the use of a collective mark as referred to in paragraph (2) must contain, at least:

- a. The nature, the general characteristics, or the quality of the goods or services to be produced and traded;
- b. Provisions for the owner of the collective mark to conduct effective supervision of the use of the said mark; and
- c. Sanctions for violations of the regulation on use of the collective mark.

(4) The provisions as referred to in paragraph (3) shall be recorded in the General Register of Marks and announced in the Official Gazette of Marks.

Article 51

An application for registration of a collective mark shall be subject to an examination of the completeness of requirements as referred to in Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, and Article 50.

Article 52

The substantive examination on the application for registration of a collective mark shall be conducted in accordance with the provisions of Article 18, Article 19, and Article 20.

Article 53

(1) Any change in the regulation on the use of a collective mark must be filed at the Directorate General for record, accompanied by a valid copy evidencing said change.

(2) The change as referred to in paragraph (1) shall be recorded in the General Register of Marks, and announced in the Official Gazette of Marks.

(3) The change in the regulation on the use of a collective mark shall apply to any third parties after it has been recorded in the General Register of Marks.

Article 54

(1) The rights to a registered collective mark may only be transferred to recipients capable of conducting effective supervision in accordance with the regulation on the use of the collective mark.

(2) The transfer of rights to a registered collective mark as referred to in paragraph (1) must be filed to the Directorate General for recordation, with a payment of fee.

(3) The transfer of rights as referred to in paragraph (2) shall be recorded in the General Register of Marks and announced in the Official Gazette of Marks.

Article 55

A registered collective mark may not be licensed to any other third party.

CHAPTER VII GEOGRAPHICAL INDICATION AND SOURCE OF ORIGIN

Part One Geographical Indications

Article 56

(1) Geographical indication shall be protected as a sign which indicates the place of origin of goods, which due to its geographical environment factors, including the factor of the nature, the people or the combination of the two factors, gives a specific characteristics and quality on the goods produced therein.

(2) Geographical indication shall be protected after registration, based on an application filed by:

a. An institution that represents the society in the area, which produces the goods concerned, which consists of:

1. Parties who undertake business on goods of natural products or natural resources;

2. Producers of agricultural products;

3. People who make handicraft or industrial products; or

4. Merchants who sell the goods concerned;

b. An institution that is given the authority to do so; and

c. Groups of consumers of the goods concerned.

(3) The provisions concerning the announcement referred to in Article 21, Article 22, Article 23, Article 24, and Article 25 shall also apply mutatis mutandis to the announcement of application for registration of geographical indication.

(4) An application for the registration of a geographical indication shall be refused by the Directorate General, if the sign concerned:

a. is against morality of religion, public order, likely to deceive or mislead people as to the characteristics, such as features, quality, source of origin, process of production or use;

b. is not qualified to be registered as a geographical indication.

(5) An appeal petition may be filed against the refusal as referred to in paragraph (4).

(6) The provisions on appeal petitions in Article 29, Article 30, Article 31, Article 32, and Article 33, and Article 34 shall apply mutatis mutandis to any appeal petitions as referred to paragraph (5).

(7) A registered geographical indication enjoys a legal protection, which persists as far as the features and/or the quality on which the protection has been conferred still exist.

(8) If prior to or on the date of application for registration of a geographical indication, a sign has been used in good faith by another party who has no right to register pursuant to the provisions as referred to in paragraph (2), the party who has been acting in good faith may continue to use the sign concerned for a period of 2 (two) years as from the date of its registration as a geographical indication.

(9) Further provisions concerning the procedures for registration of geographical indication shall be regulated by Government Regulation.

Article 57

(1) The holder of right on geographical indication may file a lawsuit against an unrightful user of the geographical indication, in the form of claim for damages and an order for stopping the use as well as disposal of labels of the geographical indication concerned which has been unlawfully used.

(2) To prevent any further loss on the party whose right has been infringed, a judge may order the infringer to cease any activities of producing, multiplying, and may order to destroy labels of the geographical indication which have been unrightfully used.

Article 58

The provisions regarding the provisional decision by the Court as referred to in CHAPTER XII of this Law shall apply mutatis mutandis to the implementation of the rights on geographical indication.

Part Two Source of Origin

Article 59

Source of origin shall be protected as a sign which:

- a. complies with the provisions of Article 56 paragraph (1), but has not been registered; or
- b. solely indicates the origin of certain goods or services.

Article 60

The provisions as referred to in Article 57 and Article 58 shall apply

mutatis mutandis to the holder of rights on source of origin.

CHAPTER VIII NULLIFICATION AND CANCELLATION OF REGISTRATION OF A MARK

Part One Nullification

Article 61

(1) The nullification of mark registration from the General Register of Marks may be made by the Directorate General either at its own initiative or at the request of the owner of the mark concerned.

(2) The nullification of a mark registration on the initiative of the Directorate General may be made if:

- a. the mark which has not been used for 3 (three) consecutive years in trade of goods and/or services from the date of registration or of the last use, except there is an excuse which is acceptable to the Directorate General; or
- b. the mark is used for the kind of goods and/or services, which is not in pursuant to the kind of goods, or services for which the mark application for registration was filed, including the use of mark, which is not in accordance with the registered mark.

(3) The reasons as referred to in paragraph (2) letter a are:

- a. import prohibition;
- b. the prohibition related to the permit for the distribution of goods using the mark concerned or any temporary decision from the competent authority;
- c. other similar prohibitions imposed by Government Regulation.

(4) The nullification of mark registration as referred to in paragraph (2) shall be recorded in the General Register of Marks and announced in the Official Gazette of Marks.

(5) Any objection against the decision on the nullification of a mark registration as referred to in paragraph (2) may be submitted to the Commercial Court.

Article 62

(1) A request for the nullification of registration of a mark by the mark owner or his proxy, either for all or for part of the kinds of goods and/or services, shall be submitted to the Directorate General.

(2) Where the mark as referred to in paragraph (1) is still bound by a

valid license agreement, the nullification may only be made with a written consent of the licensee.

(3) Exception as to the consent of the licensee as referred to in paragraph (2) may only be made possible where the licensee clearly agrees to waive such consent in the license agreement.

(4) The nullification of registration of a mark as referred to in paragraph (1) shall be recorded in the General Register of Marks and announced in the Official Gazette of Marks.

Article 63

Any third party shall also be able to file a request for the deletion of the registration of a mark on the grounds as referred to in Article 61 paragraph (2) letter a and letter b in the form of a claim filed at the Commercial Court.

Article 64

(1) Upon the decision of the Commercial Court as referred to in Article 63 may only be filed an appeal to the Supreme Court.

(2) The decision of the Court as referred to in paragraph (1) shall be forwarded by the Clerk of the Court concerned to the Directorate General after the date on which the decision is made.

(3) The Directorate General shall execute the deletion of the mark concerned from the General Register of Marks and announce it in the Official Gazette of Marks where the decision of the Court as referred to in paragraph (1) has been awarded and has been legally binding.

Article 65

(1) The nullification of the registration of a mark shall be carried out by the Directorate General by crossing out the mark concerned in the General Register of Marks and noting the reasons for and the date of said deletion.

(2) The nullification of the registration of a mark as referred to in paragraph (1) shall be notified in writing to the mark owner or his proxy, stating the reasons therefore and stressing that as of the date of deletion from the General Register of Marks, the relevant Mark Certificate shall be declared to be null and void.

(3) The nullification of registration of a mark shall cause the termination of the legal protection on the relevant mark.

Article 66

(1) The Directorate General may nullify the registration of a collective mark on the basis of:

- a. a request from the owner of collective mark with a written consent from all users of the collective mark;
- b. sufficient evidence that the collective mark has not been used for three years consecutively from the date of registration or from the date of the last use, except there is an excuse acceptable to the Directorate General;
- c. sufficient evidence that the collective mark is being used for the kind of goods and/or services which is not in pursuant to the kind of goods and/or services applied for in the registration; or
- d. sufficient evidence that the collective mark has not been used in accordance with the regulation on the use of the collective mark.

(2) The request for the nullification of registration of a collective mark as referred to in paragraph (1) letter a shall be filed at the Directorate General.

(3) The deletion of registration of a collective mark as referred to in paragraph (2) shall be recorded in the General Register of Marks and announced in the Official Gazette of Marks.

Article 67

A request for the deletion of registration of a collective mark can also be filed by any third party in the form of a lawsuit at the Commercial Court on the grounds as referred to in Article 66 paragraph (1) letter b, letter c, and letter d.

Part Two Cancellation

Article 68

(1) A lawsuit for the cancellation of a registered mark may be filed by any interested party based on the grounds as referred to in Article 4, Article 5 or Article 6.

(2) An owner of unregistered mark may file a lawsuit as referred to in paragraph (1), after filing an application at the Directorate General.

(3) The lawsuit for cancellation as referred to in paragraph (1) shall be filed at the Commercial Court.

(4) Where the plaintiff or the defendant resides outside the territory of the Republic of Indonesia, the lawsuit shall be filed at the Commercial Court in Jakarta.

Article 69

(1) A lawsuit for cancellation of the registration of a mark shall be filed within a period of 5 (five) years after the date of mark registration.

(2) A lawsuit for cancellation may be filed without a time limit if the mark concerned is contrary to morality of religion, ethics and public order.

Article 70

(1) Upon the decision of the Commercial Court as referred to in Article 68 paragraph (4) may only be filed a cassation to the Supreme Court.

(2) A copy of the decision of the Court as referred to in paragraph (1) shall be forwarded by the Clerk of the Court concerned to the Directorate General after the date on which the decision is made.

(3) The Directorate General shall execute the cancellation of the mark concerned from the General Register of Marks and announce it in the Official Gazette of Marks where the decision of the Court as referred to in paragraph (1) has been awarded and has been legally binding.

Article 71

(1) The cancellation of the registration of a mark shall be carried out by the Directorate General by crossing out the mark concerned in the General Register of Marks and noting the reasons for and the date of said cancellation.

(2) The cancellation of registration of a mark referred to in paragraph (1) shall be notified in writing to the owner of mark or his proxy, stating the reasons therefor and stressing that as of the date of deletion from the General Register of Marks, the Mark Certificate concerned shall be declared to be null and void.

(3) The crossing out of the registration of a mark in the General Register of Marks referred to in paragraph (1) shall be announced in the Official Gazette of Marks.

(4) The cancellation and the crossing out of a mark registration shall cause the termination of the legal protection on the relevant mark.

Article 72

In addition to the grounds as referred to in Article 68 paragraph (1), a request for the cancellation of registration of a collective mark may also be filed at the Commercial Court, if the use of the collective mark is contrary to the provisions as referred to in Article 50 paragraph (1).

CHAPTER IX ADMINISTRATION OF MARKS

Article 73

The Directorate General shall conduct the administration of marks as regulated under this Law.

Article 74

The Directorate General shall implement a national network system of mark documentation and information, which is capable of providing information to the public as widely as possible.

CHAPTER X FEES

Article 75

(1) A fee, the amount of which shall be regulated by a Government Regulation, shall be paid upon the filing of an application or a request for the renewal of a mark, a request for excerpt of the General Register of Marks, a request for the recording of the transfer of right, a request for the amendment of name and/or address of owner of a registered mark, a request for the recording of a license agreement, a request for the objection on an application, a request for an appeal petition, and other matters regulated in this Law.

(2) Further provisions regarding the requirements, periods and methods of payment of fees as referred to in paragraph (1) shall be regulated by a Presidential Decree.

(3) The Directorate General with the approval from the Minister and the Minister of Finance may use the income originating from the fees as referred to in paragraphs (1) and (2) in accordance with the prevailing rules and regulations.

CHAPTER XI SETTLEMENT OF DISPUTES

Part One Lawsuit against Infringement of Mark

Article 76

(1) The owner of a registered mark may file a lawsuit against any other party that unlawfully uses a mark for goods and/or services which has similarity in its essential part or its entirety with his mark, in the form of:

- a. claim for compensation, and/or
- b. the termination of all acts that are related to the use of the relevant mark.

(2) The lawsuit referred to in paragraph (1) shall be filed at the Commercial Court.

Article 77

The lawsuit against the infringement of mark as referred to in Article 76 may also be filed by a licensee of a registered mark either by himself or together with the owner of the relevant mark.

Article 78

(1) Upon a request of the owner of a registered mark or the licensee of a registered mark as the plaintiff, a judge may order the defendant to cease the production, distribution and/or trade of goods or services which use the said mark without right thereto during the hearings and to prevent greater damages.

(2) Where the defendant is also demanded to surrender the goods which use the mark without right thereto, a judge of the Commercial Court may order that the surrender of the goods or the value of the goods be carried out after the decision of the Court has become final and legally binding.

Article 79

Upon the decision of the Commercial Court may only be filed an appeal to Supreme Court.

Part Two Procedure of a Lawsuit at the Commercial Court

Article 80

(1) A lawsuit for the cancellation of registration of a mark shall be

filed to the Head of Commercial Court within the legal jurisdiction in which the defendant lives and domiciles.

(2) Where the defendant domiciles outside the territory of the Republic of Indonesia, the lawsuit shall be filed to the Head of Commercial Court of Central Jakarta.

(3) The Clerk of the Court shall register the lawsuit for cancellation on the date it is filed and produce a receipt signed by him with the same date with the registration date of the lawsuit.

(4) The Clerk of the Court shall deliver the lawsuit to the Head of Commercial Court at the latest 2 (two) days after the registration date of the lawsuit.

(5) Within the period of 3 (three) days at the latest after the registration date, the Commercial Court shall study the lawsuit and determine the date for a hearing.

(6) The examination on a lawsuit shall be conducted within the period of 60 (sixty) days after the registration date of the lawsuit.

(7) The summons of parties concerned shall be made by the confiscation clerk at the latest 7 (seven) days after the registration date of the lawsuit.

(8) A decision on the lawsuit shall be made at the latest 90 (ninety) days after the registration date of the lawsuit and may be extended at the latest for 30 (thirty) days with the approval of the Head of Supreme Court.

(9) The decision as referred to in paragraph (8), which contains a complete legal reasoning as the basis of the decision, shall be stated in a court session which is open to the public and may be implemented in advance, although a legal action is filed on the decision.

(10) The decision as referred to in paragraph (9) shall be delivered by the confiscation clerk to the parties at the latest 14 (fourteen) days after the date of issuance of the decision.

Article 81

The procedure for filing a lawsuit as provided for in Article 80 shall also apply mutatis mutandis to any lawsuit as provided for in Article 76.

Part Three Cassation**Article 82**

Upon the decision of the Commercial Court as referred to in Article 80 paragraph (8) may only be filed a cassation to the Supreme Court.

Article 83

(1) The request for cassation as referred to in Article 82 shall be made at the latest 14 (fourteen) days after the date of the decision, by registering with the Clerk of the Court that has made a decision of the lawsuit.

(2) The Clerk of the Court shall register the request for cassation on the date it is filed and produce a receipt signed by him, with the same date with the registration date.

(3) The applicant for cassation shall deliver the brief of the cassation to the Clerk of the court within a period of 7 (seven) days commencing from the date of filing of request for cassation as referred to in paragraph (1).

(4) The Clerk of the Court shall deliver the request for cassation and the brief of the cassation as referred to in paragraph (3) to the defendant of the cassation at the latest 2 (two) days after the request is filed.

(5) The defendant of the cassation may submit a counter against the cassation to the clerk of the court at the latest 7 (seven) days after the date the defendant received the brief of cassation as referred to in paragraph (4), and the clerk of the court shall deliver the counter against the cassation to the applicant of the cassation at the latest 2 (two) days after he received the said counter.

(6) The Clerk of the Court shall deliver the request for cassation, the brief of cassation and the counter against the cassation as well as the relevant documents to the Supreme Court at the latest 7 (seven) days after the termination of the period as referred to in paragraph (5).

(7) The Supreme Court shall study the request for cassation as referred to in paragraph (6) and determine the date for a hearing at the latest 2 (two) days after the request was received.

(8) The examination hearing on the request for cassation shall be conducted at the latest 60 (sixty) days after the date on which the Supreme Court received the request.

(9) A decision on cassation shall be made at the latest 90 (ninety) days after the date on which the Supreme Court received the request.

(10) The decision on cassation as referred to in paragraph (9) that contains a complete legal reasoning as the basis of the decision shall be stated in a court session that is open to the public.

(11) The Clerk of the Supreme Court shall deliver the decision of cassation to the Clerk of the Commercial Court at the latest 3 (three) days after the decision was made.

(12) The confiscation clerk of the court shall deliver the decision of cassation as referred to in paragraph (11) to the applicant of the cassation and the defendant of the cassation at the latest 2 (two) days after the decision was received.

Part Four Alternative Dispute Resolution

Article 84

In addition to the settlement of disputes as referred to in Part One of this Chapter, the parties concerned may settle their dispute through an arbitration or an alternative dispute resolution.

CHAPTER XII PROVISIONAL DECISION BY THE COURT

Article 85

On the basis of an adequate evidence, the party whose rights have been infringed may request to the judge at the Commercial Court to issue a provisional decision regarding:

- a. the prevention of entry of goods related to infringement of the right of mark;
- b. the keeping of evidence relating the infringement of relevant mark.

Article 86

(1) The request for a provisional decision shall be filed in writing at the Commercial Court by:

- a. enclosing/attaching evidence on the ownership of mark;
- b. enclosing/attaching evidence on a strong indication of the infringement of mark;
- c. stating clearly the goods and/or documents requested, sought, collected and kept for the purpose of evidencing;
- d. stating a doubt or worry that the party allegedly committed the infringement of mark will be able to easily eliminate evidence; and
- e. paying insurance in the form of cash or bank guarantee.

(2) Where the provisional decision as referred to in Article 85 has been implemented, the Commercial Court shall immediately notify the party affected by the action and grant a chance to be heard.

Article 87

Where the Commercial Court has issued a provisional decision, a Judge at the Commercial Court who has examined the relevant dispute shall decide whether to amend, cancel or reaffirm the injunction as referred to in Article 85 within the period of 30 (thirty) days at the latest as of the date of issuance of the relevant provisional decision.

Article 88

Where a provisional decision has been:

- a. affirmed, the insurance money that has been paid shall be returned to the party that has filed for the decision and the party may file a lawsuit as referred to in Article 76;
- b. canceled, the insurance money party that has been paid shall be given to the party affected by the action as a compensation for the provisional decision.

CHAPTER XIII INVESTIGATION

Article 89

(1) In addition to investigating officers at the State Police of the Republic of Indonesia, certain civil servants at the Directorate General shall be granted special authority as investigators as referred to in Law No. 8 of 1981 on Criminal Proceedings, to conduct an investigation of criminal offences in the field of marks.

(2) The civil servant investigator as referred to in paragraph (1) shall be authorized:

- a. to conduct examination of the truth of reports or information relating to criminal offences in the field of marks;
- b. to conduct examination of persons or legal entities suspected of committing criminal offences in the field of marks, based on the accusation as referred to in (a);
- c. to collect information and evidence from persons or legal entities in connection with incidents of criminal offences in the field of marks;
- d. to conduct examination of books, records and other documents relating to criminal offences in the field of marks;
- e. to inspect locations on which evidence, books, records, and other documents to be found, as well as to confiscate materials and goods resulting from infringements which can be used as evidence in the criminal trials in the field of marks;
- f. to request expert assistance in the scope of carrying out the duties of investigation of criminal offences in the field of marks.

(3) The civil servant investigators as referred to in paragraph (1) shall inform the investigating officers at the State Police of the Republic of Indonesia about the initiating and the result of an investigation.

(4) The civil servant investigator as referred to in paragraph (1) shall forward the results of an investigation to the Public Prosecutor through the investigating officers at the State Police of the Republic of Indonesia in view of the provision of Article 107 of Law No. 8 of 1981 on Criminal Proceedings.

CHAPTER XIV CRIMINAL PROVISIONS

Article 90

Whosoever deliberately and without right uses a mark which is similar in its entirety to a registered mark of another party for the same kind of goods and/or services produced and/or traded shall be sentenced to imprisonment for a maximum period of 5 (five) years and/or a fine of a maximum amount of Rp. 1,000,000,000.00 (one billion rupiahs).

Article 91

Whosoever deliberately and without right uses a mark which is similar in its essential part to a registered mark of another party for the same kind of goods and/or services produced and/or traded shall be sentenced to imprisonment for a maximum period of 4 (four) years and/or a fine of a maximum amount of Rp. 800,000,000.00 (eight hundred million rupiahs).

Article 92

(1) Whosoever deliberately and without right uses a mark which is similar in its entirety to a geographical indication of another party for the same kind of registered goods shall be sentenced to imprisonment for a maximum period of 5 (five) years and/or a fine of a maximum amount of Rp. 1,000,000,000.00 (one billion rupiahs).

(2) Whosoever deliberately and without right uses a mark which is similar in its essential part to a geographical indication of another party for the same kind of registered goods shall be sentenced to imprisonment for a maximum period of 4 (four) years and/or a fine of a maximum amount of Rp. 800,000,000.00 (eight hundred million rupiahs).

(3) The representation of actual origin of goods, which result from an infringement, or words, which indicate that the goods concerned are the imitation of registered goods and protected under geographical indication shall not prejudice the applicability of provisions referred to in paragraphs (1) and (2).

Article 93

Any person who deliberately and without right uses a sign which is protected under source of origin of goods or services that are likely to deceive or mislead people as to the origin of the goods or services concerned shall be sentenced to imprisonment for a maximum period of 4 (four) years and/or a fine of a maximum amount of Rp. 800,000,000.00 (eight

hundred million rupiahs).

Article 94

(1) Whosoever trades goods and/or services that are known or shall be known as goods and/or services resulted from the infringement as referred to in Article 90, Article 91, Article 92, and Article 93 shall be sentenced to imprisonment for a maximum period of 1 (one) year and/or a fine of a maximum amount of Rp. 200,000,000.00 (two hundred million rupiahs).

(2) The criminal offences as referred to in paragraph (1) shall be infringement.

Article 95

The criminal offences referred to in Article 90, Article 91, Article 92, Article 93, and Article 94 shall be offence that warrants complaint.

CHAPTER XV TRANSITIONAL PROVISIONS

Article 96

(1) Any application, the extension of the protection period of a registered mark, the recordation of the transfer or right, the recordation of the change of name and address, the request for the deletion or the cancellation or a registered mark that has been filed on the basis of Law No. 19 of 1992 regarding Marks as amended by Law No. 14 of 1997 however has not been finished on the date of effect of this Law, shall be finished in accordance with the provisions under said Law.

(2) All marks that have been registered on the basis of Law No. 19 of 1992 regarding Marks as amended by Law No. 14 of 1997 and are still valid on the date of effect of this Law shall continue to be valid for the rest of the registration period.

Article 97

Upon a mark as referred to in Article 96 paragraph (2), a claim for cancellation may still be requested at the Commercial Court as referred to in Article 68, based on the grounds as referred to in Article 4, Article 5 and Article 6.

Article 98

All disputes on marks that are still being processed in the Court by the time this Law becomes effective shall be processed based on Law no. 19 of 1992 as amended by Law no. 14 of 1997 regarding Marks, until it is granted a decision that is legally binding.

Article 99

All implementing regulations issued on the basis of Law No. 19 of 1992 as amended by Law No. 14 of 1997 regarding Marks in existence on the effective date of this Law shall be declared to be valid as long as they are not in contradiction to this Law or have not been replaced by new ones on the basis of this Law.

CHAPTER XVI CLOSING PROVISIONS

Article 100

Upon the effectiveness of this Law, Law No. 19 of 1992 as amended by Law No. 14 of 1997 regarding Mark shall be declared to no longer be valid.

Article 101

This Law shall take effect on the date of its promulgation.

In order that every person may know of it, the promulgation of this Law is ordered by placement in the State Official Gazette of the Republic of Indonesia.