

**GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA
NUMBER 20 OF 2017
ON
CONTROL OF THE IMPORT OR EXPORT OF GOODS WHICH ARE SUSPECTED OF RESULTING OR
ORIGINATING FROM VIOLATIONS OF INTELLECTUAL PROPERTY RIGHTS**

BY THE GRACE OF GOD ALMIGHTY

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

That in order to implement Article 64, paragraphs (1) and (2) of Law Number 10 of 1995 on Customs, as amended by Law Number 17 of 2006 on the Amendment to Law Number 10 of 1995 on Customs, it has been deemed necessary to establish Government Regulation on the Control of Imports or Exports of Goods Resulting from Violations of Intellectual Property Rights;

Observing:

1. Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia;
2. Law Number 10 of 1995 on Customs (State Gazette of the Republic of Indonesia of 1995 Number 75, Supplement to the State Gazette of the Republic Indonesia Number 3612), as amended by Law No. 17 of 2006 on the Amendment to Law Number 10 of 1995 on Customs (State Gazette of the Republic of Indonesia of 2006 Number 93, Supplement to the State Gazette of the Republic of Indonesia Number 4661).

HAS DECIDED:

To establish:

GOVERNMENT REGULATION ON THE CONTROL OF IMPORTS OR EXPORTS OF GOODS RESULTING
FROM VIOLATIONS OF INTELLECTUAL PROPERTY RIGHTS

**CHAPTER I
GENERAL PROVISION**

Article 1

Under this Government Regulation, the following definitions are employed:

1. Intellectual Property Rights (*Hak Kekayaan Intelektual*) from this point onwards are referred to as IPRs and are exclusive rights which are granted by the State based on laws and regulations.
2. Import is the activity of transporting goods into Customs and Excise Territory.
3. Export is the activity of removing goods from Customs and Excise Territory.
4. Customs and Excise Areas are areas with certain borders at seaports, airports or other places which are designated for the flow of goods, which are fully under the supervision of the Directorate General of Customs and Excise.
5. Customs and Excise Territory is the territory of the Republic of Indonesia covering land, water and airspace areas, as well as certain places in Exclusive Economic Zones and Continental Shelf in which Customs and Excise Law is applicable.
6. Temporary suspension of release (*Penangguhan*) from this point onwards is referred to as the Suspension and is an act of temporarily suspending the release of Imported and Exported goods from Customs and Excise Areas which are suspected resulting or originating from the violation of IPRs.



7. Detention (*Penegahan*) is an act of suspending the release, load, or transportation of Imported or Exported goods until all of customs and excise duties have been fulfilled.
8. Owners or Holders of Rights are the owners or holders of IPRs which are protected under Indonesian laws and regulations on the intellectual property sector.
9. Customs and Excise Officials are officers at the Directorate General of Customs and Excise who have been appointed for certain positions in order to perform certain duties based on Customs and Excise Law.
10. The Court is the Commercial Court at the District Court in the jurisdiction territory where the Customs and Excise Area is located.

Article 2

- (1) The scope of the provisions under this Government Regulation cover the control of Imports or Exports of goods resulting from violation of IPRs.
- (2) IPRs as referred to in Paragraph (1), include but are not limited to:
 - a. trademarks;
 - b. copyrights and related rights;
 - c. patents and petty patents;
 - d. industrial designs;
 - e. layout-designs (topographies) of integrated circuits;
 - f. varieties of plans; and
 - g. geographical indications.

Article 3

- (1) Customs and Excise Officials must control of the Import and Export of goods which are suspected of resulting or originating from the violation of IPRs through the following means:
 - a. Detention in accordance with the authority of the Customs and Excise Officials; or
 - b. Suspension based on orders from the Chief of the Court.
- (2) Detention as referred to in paragraph (1) letter a is to be enforced in accordance with the position of the Custom and Excise Officials and involves allegations of violations of IPRs in the form of trademarks or copyrights which have been recorded on the recordation system at the Directorate General of Customs and Excise.
- (3) Suspension as referred to in paragraph (1) letter b is enforced based on orders of the Chief of the Court through the issuance written orders to Customs and Excise Officials.

Article 4

Suspension, as referred to in Article 3 paragraph (1) letter b cannot be enforced for:

- a. goods which have been taken out of the Customs and Excise Area;
- b. goods which are designated as goods controlled by the state as referred to in the Customs and Excise Laws; or
- c. goods which are suspected to have violated provisions on criminal offences for customs and excise.

CHAPTER II RECORDATION OF IPRs AND DETENTION

DIVISION ONE RECORDATION OF IPRs

Article 5

- (1) The Owners or Holders of Rights of trademark or copyright may submit written applications to the Customs and Excise Officials to perform recording on the recordation system of the Directorate General of Customs and Excise.
- (2) Applications as referred to in paragraph (1) must attach:
 - a. Proof of ownership of the rights;
 - b. Data regarding the authentic features of products, such as trademarks, details of the goods, trade names, product displays, packaging, distribution and marketing routes, as well as the amount of products which are marketed within a territory if the IPRs is in the form of trademark;
 - c. Data regarding the features or specifications of the copyrighted work in the field of science, art, literature or related rights which are created if the IPRs are in the form of copyrights; and
 - d. Affidavit stating the responsibility of the Owners or Holders of Rights over any consequences arising from the recordation process.
- (3) Recording on the recordation system at the Directorate General of Customs and Excise, as referred to in paragraph (1), is filed by the Owners or Holders of Rights in the form of business entities which are domiciled in Indonesia.
- (4) Customs and Excise Officials will grant approval or refusal to applications referred to in paragraph (1) within 30 (thirty) days upon receiving an application.
- (5) The approval for the recording in the recordation system at the Directorate General of Customs and Excise is valid for maximum of 1 (one) year since the approval date and can be extended.
- (6) The Customs and Excise Officials may revoke the approvals referred to in paragraph (5) based on the monitoring and evaluation results.
- (7) Provisions on the procedures for the application, research, approval, refusal and monitoring and evaluation of the recording in the recordation system will be regulated under a Ministry of Finance Regulation.

Article 6

- (1) In order to record data on the recordation system, Customs and Excise Officials will validate data regarding the IPRs.
- (2) Data validation, as referred to in paragraph (1), can be conducted through coordination with relevant institutions or parties.

DIVISION TWO DETENTION

Article 7

- (1) The Customs and Excise Officials may perform the Detention of goods which are suspected of resulting or originating from the violation of IPRs in the form of trademarks or copyrights.
- (2) The Customs and Excise Officials which have found the goods which are suspected of resulting or originating from the violation of IPRs must notify the Owners or Holders of Rights based on sufficient evidence.
- (3) Sufficient evidence, as referred to in paragraph (2), is received by Custom and Excise Officials during customs and excise examinations or intelligence analysis based on information obtained from the IPRs recordation system at the Directorate General of Customs and Excise.
- (4) Towards notifications as referred to in paragraph (2), Owners or Holders of Rights must present confirmation for requested Suspension orders a maximum of 2 (two) days after the notification date.
- (5) In the event that Owners or Holders of Rights have presented confirmation as referred to in paragraph (4):
 - a. Owners or Holders of Rights shall:
 1. Meet any administrative requirements in order to request a court order for Suspension to

- the Chief of the Court;
2. Present a deposit of operational cost to the Customs and Excise Officials of IDR 100,000,000 (one hundred million rupiah) in the form of a bank guarantee or guarantee from an insurance company; and
 3. Submit a Suspension application to the Chief of the Court, within a maximum of 4 (four) business days after the notification date from the Owners or Holders of Rights; and
- b. The Customs and Excise Officials may provide a summary in regards to any Imported or Exported goods which are suspected resulting or originating from the violation of IPRs in the form of trademark or copyrights to fulfill the requirement for requesting a Suspension from the Chief of the Court.

CHAPTER III REQUESTS AND ORDERS OF SUSPENSION

DIVISION ONE REQUEST OF SUSPENSION

Article 8

- (1) The Owners or Holders of Rights or their proxies may submit applications for Suspension of Imported or Exported goods which are suspected of resulting or originating from the violation of IPRs, by virtue of:
 - a. Notification from the Customs and Excise Officials as referred to in Article 7 paragraph (2); or
 - b. Initiative from the Owners or Holders of Rights.
- (2) The Suspension request as referred to in paragraph (1) must also be supported by an application for physical examination approval for the Imported or Exported goods which will be Suspended.

Article 9

- (1) Suspension request as referred to in Article 8 is undertaken by the Owners or Holders of Rights through application to the Chief of the Court.
- (2) The request as referred to in paragraph (1) is to be submitted accompanied by:
 - a. Sufficient evidences on the violation of IPRs;
 - b. Proof of the IPRs ownership;
 - c. Comprehensive details and information relating to the Imported or Exported goods which will be Suspended, to be acknowledged by the Customs and Excise Officials in an efficient manner; and
 - d. Guarantee deposits.
- (3) The application as referred to in paragraph (1) must be submitted to the Chief of the Court in the jurisdiction which covers the Customs and Excise Area where the Imported or Exported goods which are suspected resulting or originating from the violation of IPRs are taking place.
- (4) The Court will either approve or reject the application as referred to in paragraph (1) through an order within 2 (two) business days of the application submission date.

Article 10

In the event that the application is submitted based on the initiative of Owners or Holders of Rights as referred to in Article 8 paragraph (1) letter b, then the Owners or Holders of Rights will present a guarantee for operational costs amounting to IDR 100,000,000.00 (one hundred million rupiah) in the form of a bank guarantee or guarantee from an insurance company to the Customs and Excise Officials within 2 (two) days of the order for Suspension being received by Customs and Excise Officials.

DIVISION TWO

DECREE OF SUSPENSION ORDERS

Article 11

The Court will render the decree order for Suspension to Customs and Excise Officials in the area which the Import or Export of goods which are suspected to have resulted or originated from the violation of IPRs are conducted a maximum of 1 (one) business day after the order is rendered.

Article 12

Provisions on the procedure for the request, examination and order of Suspension to the Court are regulated by laws and regulations.

CHAPTER IV

COMMENCEMENT OF SUSPENSION

Article 13

Based on the decree order of Suspension, as referred to in Article 11, the Customs and Excise Officials:

- a. Will present written notification to the following parties:
 1. Importers, exporters or owner of the goods;
 2. Owners or Holders of Rights; and
 3. The Directorate General for Intellectual Property,In regard to the decree orders of Suspension from the Court; and
- b. Suspension will commence from the date of the decree order being received.

Article 14

Owners or Holders of Rights may initiate schedules for physical examinations of Imported or Exported goods to Customs and Excise Officials within 2 (two) business days at the latest from a decree order of Suspension being received by the Customs and Excise Officials.

Article 15

- (1) The physical examination of Imported or Exported goods is to be conducted in accordance with a schedule which has been determined by the Customs and Excise Officials.
- (2) The examination of the Imported or Exported goods as referred to in paragraph (1) is to be performed by the Owners or Holders of Rights together with:
 - a. The Customs and Excise Officials;
 - b. Representative from the Court;
 - c. Representative from the Directorate General of Intellectual Property; and
 - d. Importers/ exporters/owners of goods or their proxies.
- (3) In the event that the importers/exporters/owner of the goods or their proxies as referred to in paragraph (2) letter d are unable to attend, then the physical examinations will be still undertaken.

Article 16

- (1) The Customs and Excise Officials will perform the Suspension within a maximum of 10 (ten) business days from the order or decree for Suspension being received.
- (2) The Owners or Holders of Rights may request Suspension extensions a maximum of 1 (one) time for the duration of 10 (ten) business days at the longest to the Chief of the Court.



- (3) An extension of Suspension must be accompanied by a guarantee as referred to in Article 9 paragraph (2) letter d and the operational cost guarantee as referred to in Article 7 paragraph (5) letter a number 2 or Article 10.

CHAPTER V TERMINATION OF SUSPENSION

Article 17

The Custom and Excise Officials must terminate any Suspension in the event that:

- a. The Suspension period as referred to in Article 16 paragraph (1) has expired;
- b. The extension periods referred to in Article 16 paragraph (2) has expired;
- c. The Court issues a decree order to terminate the Suspension; or
- d. Legal measures or other actions have been performed towards the goods which are suspected of resulting or originating from the violation of IPRs.

Article 18

- (1) Under certain conditions, importers, exporters or owners of the goods may submit a request to the Chief of the Court to render a written order to the Customs and Excise Officials to terminate the Suspension.
- (2) The request to terminate the Suspension as referred to in paragraph (1) must be accompanied by an equal guarantee as referred to in Article 9 paragraph (2) letter d.

Article 19

- (1) In the event that the Suspension period expires:
 - a. The suspended goods will be settled in accordance with the laws and regulations; and
 - b. The operational cost guarantee as referred to in Article 7 paragraph (5) letter a number 2 or Article 10 will be invoked to cover any operational costs incurred by the execution of Detention and/or Suspension.
- (2) In the event that the invocation of operational cost guarantee as referred to in paragraph (1) letter b is not sufficient to cover all of the costs incurred during the execution of Detention and/or Suspension, the shortfall will be charged to the Owners or Holders of Rights.
- (3) In the event that the invocation of operational costs as referred to in paragraph (1) letter b is greater than the costs incurred for the execution of Detention and/or Suspension, the excise will be returned to the Owners or Holders of Rights.
- (4) Further provisions on procedures to invoke, charge or return operational cost guarantees are regulated under a Ministry of Finance Regulation.

CHAPTER VI EXCEPTIONS FROM SUSPENSION

Article 20

- (1) The provisions on the Suspension measures do not apply to:
 - a. goods carried by passengers;
 - b. goods carried by transportation crews;
 - c. goods carried by border crossers; or
 - d. consignments organized by postal services or couriers, which are not intended for commercial purposes.
- (2) Further provisions on the criteria for commercial purposes for goods carried by passengers,



transportation crews, border crossers or consignments organized by postal services or couriers are regulated under a Ministry of Finance Regulation.

Article 21

- (1) The provisions on Suspension measures do not apply to transferred- or forwarded-transshipment Imported goods which are shipped outside Customs and Excise Territory which are suspected of resulting or originating from the violation of IPRs.
- (2) The control of Imported transshipment goods which are suspected of resulting or originating from the violation of IPRs as referred to in paragraph (1) will be undertaken by the Customs and Excise Officials by presenting a notification letter to the customs officials in the country of destination of the subsequent transportation.

CHAPTER VII CLOSING PROVISION

Article 22

This Government Regulation comes into force 60 days from the date of its promulgation.

For public cognizance, it is hereby ordered that it be promulgated in the State Gazette of the Republic of Indonesia.

Established in Jakarta,
on 30 May 2017
PRESIDENT OF THE REPUBLIC OF INDONESIA
Signed.
JOKO WIDODO

Promulgated in Jakarta
on 2 June 2017
MINISTER OF LAW AND HUMAN RIGHTS OF THE REPUBLIC OF INDONESIA
Signed.
YASONNA H. LAOLY

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 2017 NUMBER 108

**ELUCIDATION
OF
GOVERNMENT REGULATION OF REPUBLIC OF INDONESIA
NUMBER 20 OF 2017
ON
THE CONTROL OF IMPORTS OR EXPORTS OF GOODS WHICH ARE SUSPECTED OF RESULTING OR
ORIGINATING FROM VIOLATIONS OF INTELLECTUAL PROPERTY RIGHTS**

I. GENERAL

In accordance with Law Number 10 of 1995 on Customs and Excise, as amended by Law Number 17 of 2006, the Directorate General of Customs and Excise possesses the authority to supervise suspected violations of IPRs throughout the realm of Import or Export traffic. This authority is the embodiment of the mandate from the World Trade Organization (WTO) TRIPS (Trade Related Aspects of Intellectual Property Rights), especially as it relates to the border measures. If properly observed, the authority given to the Directorate General of Customs and Excise is in accordance with the measures recommended by TRIPS. It should be noted, however, that in certain events the authority which is granted to the Directorate General of Customs and Excise is even more progressive when compared to the TRIPS recommendations, for example in the case of supervision of Exports.

In essence, this Government Regulation contains descriptions of the basic supervision reference for IPRs by the Directorate General of Customs and Excise, as set out under the Customs and Excise Law. In addition, this Government Regulation introduces a number of new features, namely recordation of IPRs by the Directorate General of Customs and Excise. It is important to note that this mechanism is not intended to replace the current registration mechanism for IPRs at the Directorate General of Intellectual Property at the Ministry of Law and Human Rights. This recordation mechanism is only intended to assist the Directorate General of Customs and Excise to obtain sufficient data in regard to existing IPRs. Thus the Directorate General of Customs and Excise may undertake more efficient profiling and targeting actions. In certain countries, similar recordation mechanisms have been implemented for some time and in a practical sense they have contributed significantly to assisting the customs and excise authorities to better fulfill their supervision function.

The control of the Import and Export of goods which are suspected of resulting or originating from the violation of IPRs in Indonesia is one of the measures introduced to improve national economic growth. This is achieved by encouraging fair trade in import and export activities through legal certainty over goods which are protected by IPRs based on public awareness and the government's duty to protect IPRs.

II. ARTICLE BY ARTICLE

Article 1

Self-explanatory.

Article 2

Self-explanatory.

Article 3

Paragraph (1)

Letter a

Self-explanatory.

Letter b

What is meant by "order from the Chief of the Court" is a Court decree.

Paragraph (2)

What is meant by “recording system of the Directorate General of Customs and Excise”, commonly referred to as a *recording system*, is a way of inputting IPR data into the database of the Directorate General of Customs and Excise.

Article 4

Self-explanatory.

Article 5

Paragraph (1)

Self-explanatory.

Paragraph (2)

Letter a

What is meant by “proof of IPRs ownership” are certificates, statements letters or affidavits of ownership, or any other proof-based on laws and regulations.

Letter b

What is meant by “data regarding marketing” includes marketing routes and areas.

Letter c

Self-explanatory.

Letter d

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Paragraph (5)

Self-explanatory.

Paragraph (6)

Self-explanatory.

Paragraph (7)

Self-explanatory.

Article 6

Paragraph (1)

Self-explanatory.

Paragraph (2)

What is meant by “relevant authorities” are associations of Owners or Holders of Rights and international organizations related to the protection of IPRs.

Article 7

Paragraph (1)

Self-explanatory.

Paragraph (2)

Notification regarding suspected violations of IPRs may be undertaken via electronic or non-electronic media.

Paragraph (3)

Self-explanatory.



Paragraph (4)

Confirmation of Owners or Holders of Rights to the Directorate General of Customs and Excise may be undertaken via electronic or non-electronic media Paragraph (5)

Letter a

What is meant by “operational cost guarantee” is a guarantee which will be used to cover all of the costs incurred during the execution of Detention/Suspension, for example operational costs, examination costs, loading costs, storing costs and handling costs, which are not included as costs incurred during the process of obtaining a decree order of Suspension from a Court.

Letter b

Self-explanatory.

Article 8

Self-explanatory.

Article 9

Self-explanatory.

Article 10

Self-explanatory.

Article 11

A decree order of Suspension may be delivered to the Customs and Excise Officials via electronic and non-electronic media.

Article 12

What is meant by “laws and regulations”: for example, Supreme Court Regulations.

Article 13

Self-explanatory.

Article 14

Self-explanatory.

Article 15

Paragraph (1)

Physical examinations of Imported or Exported goods are performed for the purpose of settling goods which are suspected of resulting or originating from violations of IPRs.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Article 16

Self-explanatory.

Article 17

Letter a

Self-explanatory.

Letter b

Self-explanatory.

Letter c

Self-explanatory.

Letter d

What is meant by “legal measures” are confiscations undertaken by investigators and executions of conservatory arrests by Court bailiffs.

Article 18

Paragraph (1)

What is meant by “certain conditions”, are, for example, that the Suspended imported or exported goods are perishable in nature.

Paragraph (2)

Self-explanatory.

Article 19

Paragraph (1)

Letter a

The settlement of suspended goods may involve:

- a. Settlement in accordance with the import or export procedure, based on laws and regulations for the customs and excise sector;
- b. Handing over to Investigators in the event that criminal legal action is taken based on criminal provisions;
- c. Handing over to the Court bailiffs in the event that the Owners or Holders of Rights submit a lawsuit and/or request for conservatory arrest over the suspended goods; or
- d. Alternative dispute resolution based on laws and regulations.

Letter b

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Return or assignment of operational cost guarantee is performed by calculating the handling costs incurred during the executing of the Suspension, such as examination costs, storing costs and transportation costs, but which do not include costs incurred during the process to obtain a decree order of Suspension from a Court.

Paragraph (4)

Self-explanatory.

Article 20

Self-explanatory.

Article 21

Paragraph (1)

What is meant by “transferred-transshipment of imported goods” are goods which are transported via a Customs and Excise Office, including the loading process.

What is meant by “forwarded-transshipment imported goods” are goods which are transported via Customs and Excise Office without undergoing any loading process.

Paragraph (2)

Self-explanatory.

Article 22

Self-explanatory.

SUPPLEMENT TO STATE GAZETTE OF THE REPUBLIC OF INDONESIA NUMBER 6059

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