THE CRIMINAL POLICY OF TRADEMARKS AND OMNIBUS LAW FOR INTELLECTUAL PROPERTY RIGHTS

Ifrani
Faculty of Law, Lambung Mangkurat University
Jl. Brigjen H. Hasan Basri, South Kalimantan Indonesia 70124
Email: ifrani@ulm.ac.id

Abstract: From the Global Intellectual Property Center (GIPC) survey, Indonesia still considered weak in protecting intellectual property. Then the political direction of law began to look at the concept of the omnibus law to promote the ease of doing business (EoDB). Therefore, the purpose of this study is to analyze first, the legal protection issues of famous brand holders in Act No. 20/2016 through political instruments and criminal law policies. Secondly, the concept of the omnibus law as ius constituendum of the Act Related to Indonesian Intellectual Property in the political perspective of criminal law. The normative method was chosen because of the object of the study on the principles of law, theories, and doctrines of jurisprudence. The results of this study show that although Indonesia’s IPR index score increased in 2019, its global ranking declined. This means that despite increases in scores, Indonesia’s IPR enforcement tends to be stagnant when compared to other countries. The IPR-related Act can be combined into an omnibus law. The aim is to simplify the laws of Patents, Trademarks, Copyrights, Industrial Designs, Layout Designs of Integrated Circuits, and Communal Investment Credit which greatly affect the economy and investment in Indonesia.

Keywords: Politics; Penal; Trademark; Intellectual Property; Omnibus Law.

INTRODUCTION

The politics of national law are increasingly facing tough challenges when globalization in all aspects of life cannot be stopped. Globalization is a characteristic of the relations that goes beyond conventional boundaries, such as nations and countries. In principle, the more developed a country is, the more criminal acts are influenced by economic factors and social disparities.¹

The process of globalization makes the world seem compressed and there is an intensification of global awareness of the world as a whole. Globalization became more for-

malized after the birth of the World Trade Organization. WTO was founded on April 15th, 1994, in Marrakech, Morocco. The seed of WTO is the General Agreement on Tariffs and Trade (GATT) which has been established since 1947. After the establishment of the WTO was signed, GATT will continue to stand as part of the results of the WTO negotiations with the General Agreement on Trade and Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The process of establishing the WTO was quite long through negotiations in the Uruguay Round which was held in the GATT forum, from September 1986 to April 1994. This agreement marked the development of legal studies on IPRs internationally.

International developments have influenced the development of national law, including the interconnection between the development of international law and the national law of each country, the creation of a transnational arena in legal practice that originates from the forces and logic that work in the economic field. Economic globalization has had a profound influence on legal aspects. The implications of economic globalization on law are unavoidable because legal globalization follows economic globalization, various substances of legislation are influenced by cross-border international treaties. Countries in the world that are involved with economic globalization and free trade, both developed and developing countries and even underdeveloped countries, must standardize laws in their economic activities.

But unfortunately, the development of IPR in Indonesia has not been very encouraging, for example, it can be seen from the fact that counterfeit product and passing-off in trademarks is a problem for many industries on a global scale. No industry and country are free from the threat of counterfeiting. The goal of the counterfeiters usually large profits without spending large capital. Based on the report from the International Chamber of Commerce (ICC), the global economic value of counterfeiting and piracy is predicted to reach USD 4.2 trillion, and by 2022. It will potentially threaten 5.4 million jobs. Furthermore, according to a survey from the Global Intellectual Property Center (GIPC), Indonesia is still considered weak in IP Protection.

From the direction of legal politics in Indonesia, we can see that the legislative body begins to implementing the concept of omnibus law to increase the ease of doing business (EoDB). Therefore in this case it is also necessary to study the application of the omnibus law in Indonesian IPR.

Based on the description above, this research was conducted with the issue formulations:
1. What are the problems for well-known trademark holders in Act 20/2016 through political instruments and criminal law policies?
2. What is the potential for using the omnibus law as a future concept of Law related to Indonesian IPR?

METHOD

The legal research in essence it seeks to present the law integrally following the needs of the study for scientific developments. On
that basis, the most fitting research method to be used in this study is normative legal research. This method was chosen because the object of research is on the concept and principles of law, theories, and legal doctrines.4

The type of approach used in this study can be seen in the table below.

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<th>Table 1: Approach used in Research</th>
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<td><strong>Approach</strong></td>
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The legal materials used in this research can be explained as follows:

a. Primary legal materials as the main object of analysis using the Act on Trademark and Geographical Indications and Theory of Rights, Rule of Law Theory, and Criminal Law Policy which is associated with the problems addressed.

b. Secondary legal material as a literature source consisting of books, articles in scientific journals, academic papers, and research reports as contained in the bibliography as a reference to support arguments.

ANALYSIS AND DISCUSSION

The Trademark Protection and Issue From the Perspective of Criminal Policy

Theoretical Framework of IP as a Protected Rights

Conceptually, ‘Rights’ are social and legal institutions. Indonesia as a rule of law views rights as an important object to protect.5 Right is always related to two aspects, which are aspects of the owner and something owned. Legal terminology combines the two and unites it into the term ‘right’.6

The explanation of IPR can be started from the concept of rights according to law. As L.J. Van Apeldoorn stated, rights are laws that are associated with a human being or a certain legal subject and transform into power and a right arises when

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4 Mukti Fajar and Yulianto Ahmad, *Dualisme Penelitian Hukum: Normatif dan Empiris* (Yogyakarta: Pustaka Pelajar, 2009), 33-38

5 The Indonesian state is not only a classic rule of law but has also embraced the concept of a modern rule of law through the characteristics of the welfare state. Moreover see M. Yasir Said and Ifrani, *Pidana Kehutanan Indonesia* (Bandung: Nusa Media, 2019), 1-8. Also see M. Yasir Said and Yati Nurhayati, “Paradigma Filsafat Etika Lingkungan Dalam Menentukan Arah Politik Hukum Lingkungan,” *Al-Adl: Jurnal Hukum* 12, no. 1 (2020) : 40, https://ojs.uniska-bjm.ac.id/index.php/alldi/article/view/2598/1939

the law begins to move.\textsuperscript{7}

Meanwhile, Satjipto Rahardjo stated that the law protects a person’s interests by allocating power to that person to act in his interests. The allocation of power is carried out in a measured manner, its breadth and depth are determined. Such power is known as right. According to Fitzgerald, the characteristics inherent in legal rights are

1. The right is attached to the person who is the owner or subject of the right. That person is also the owner of the title for the goods which are the object of the rights;
2. The right is assigned to another person, which is the holder of the obligation. Between rights and obligations there is a correlative relation;
3. The right that exists in a person obliges commission or omission. This is known as the content of rights;
4. The commission or omission is concerning the object of rights;
5. Every right according to the law has a title, which is a certain event on which the right is attached to the owner.\textsuperscript{8}

Property is the equivalent of the word ownership. So property rights can be defined as ownership of an object as a consequence of the right to someone by law. Meanwhile, the word intellectual means intelligence, thinking power, and brain abilities possessed by a person. So IPR can be interpreted as the power given by law to a legal subject (human/legal person) over an object which is the result of human intelligence. The theories that are used as the basis for IPR protection, among others:

a. Natural Right Theory: Natural rights theory is derived from natural law theory. Natural law theorists include Thomas Aquinas, John Locke, and Hugo Grotius. According to John Locke (1632-1704), by nature humans are agents of moral. Man is a substance of mental and right, the human body itself is the property of the man concerned.\textsuperscript{9} The main thing inherent in humans is the freedom they have. Humans with the freedom they have are free to take action. Even so, freedom is not as free as it is, but it is still tied to aspects of morality and freedom that other people also have. Freedom makes people creative in processing their lives, using their minds to make or create something useful for themselves and many people. Efforts to utilize the work of the brain are what produce a new creation, design, or invention and then naturally and automatically belongs to the creator, designer, or inventor. At the same time also have the right to use it, economically, socially, and culturally. On the other hand, other people are obliged to respect the rights that arise.

b. Labor Theory: This theory is a continuation of natural rights theory. Whereas in the theory of natural rights the emphasis is on human freedom to act and do something, in the labor theory, the emphasis is on the aspects of the process of producing something and something that is produced. Everyone has a brain, but not every-

\textsuperscript{7} C. S. T. Kansil, \textit{Pengantar Ilmu Hukum dan Tata Hukum Indonesia} (Jakarta: Balai Pustaka, 1989), 119.

\textsuperscript{8} Satjipto Rahardjo, \textit{Ilmu Hukum} (Bandung: Citra Aditya Bakti, 1996), 53.

one can use their intellect to produce something. According to the motivation theory put forward by David McClelland, that someone produces something because he has the motivation to excel. This means that creating a product is not completely automatic, but through several stages, that must be passed. Then the work process that produces a creation or invention at the same time gives rise to power (rights) over the creation, design, or invention. So that other people are not allowed to acknowledge the work or inventions of others, and to the creator, designer or inventor must be given legal protection.

c. Social Exchange Theory: Followers of this theory include George C. Homan and Peter Blau. Social exchange theory is based on the elementary principles of economic transactions. People who provide goods and/or services will certainly expect to receive a return in the form of the goods and/or services they want. It is important to note that not all social transactions can be measured in a tangible manner, such as money, goods, or services, sometimes what is more valuable is the intangible, such as respect/friendship. The relation with IPR is the need for the creator, designer or inventor to be given remuneration for the work that has been produced. People can benefit from the IPR work, but also have to give something to the creator, designer, or inventor. There is some kind of exchange or relationship that is mutually beneficial. A creator, designer or inventor will feel appreciated for their work and efforts so that they are motivated to be more active in producing other useful new works.

d. Functional Theory: Followers of this theory including Talcot Parsons and Robert K. Merton. The study of functional theory or functionalism departs from the basic assumption which states that all social structures or those that are prioritized lead to integration and adaptation of the prevailing system. The existence or continuity of existing structures or patterns is explained through important and useful consequences or effects in overcoming various problems that arise and develop in people’s lives. The functionalists try to show that an existing pattern has met the vital system requirements to explain the existence of this pattern. The object of study in the community. Marion J. Levy defines society as a system of action with characteristics, which is involving a plurality of interacting individuals, an element of self-fulfillment, the ability to exist longer than the individual’s life. To fulfill one’s own needs, a person tries to be more creative in managing the resources he has, both natural and human resources that produce new creations, designs, or inventions. In line with the concept of system integration and adaptation that is believed by functional theory, the creation or invention must be functional in people’s lives. This means that it must make a positive contribution to the social system and not weaken the integration of the existing system or society. Works or inventions that harm society
are not worthy of protection and their existence can be ignored. One of the requirements for IPR protection must be functional for humans.¹⁰

**Trademarks in the Perspective of Criminal Policy**

The term ‘Politik’ (Indonesian) comes from the word ‘Politics’ (English) or ‘Politiek’ (Dutch), which in general can be interpreted as general principles that function to direct the government in a broad sense, including law enforcement officials in managing, regulating, or resolving public and private affairs, or legislative drafting of laws and regulations and the application of laws/regulations, with the (general) objective that leads to efforts to realize the welfare or prosperity of the community (citizens).¹¹ While the term politics of criminal law known in the Dutch literature as *stafrechtspolitiek*.¹²

According to Utrecht, the politics of law investigates what changes must be made in the current law to conform to social realities. Political law makes an *Ius constitutuendum* (the law that will apply) and tries to make the *Ius constitute* one day act as an *Ius constitu-

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¹² Aloysius Wisnubroto, *Kebijakan Hukum Pidana dalam Penanggulangan Penyalahgunaan Komputer* (Yogyakarta: Universitas Atmajaya, 1999), 10

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¹⁴ *Ibid.*, 24

¹⁵ Imam Syaukani and A. Ahsin Thoari, *Dasar-Dasar Politik Hukum* (Jakarta: PT. Raja Grafindo Persada, 2010), 26-27
Well-Known Trademarks Protection Through Penal Instrument

Elucidation of Article 76 (2) of the 2016 Trademark Act discusses the unregistered owner of a well-known mark. So that what is meant by “Well-Known Mark owners” is divided into well-known trademark owners who register their trademarks in Indonesia, in this case clearly they have the same protection as other registered marks, and then there are Well-Known Mark owners whose trademarks are not registered in Indonesia. In this case, this means that a well-known trademark that is not registered in Indonesia is distinguished from the holder of the registered mark rights as stipulated in Act 20/2016.

Thus, the legal consequence is if a person or corporation has a well-known trademark if it does not register the Mark as stipulated in Act 20/2016 on Trademarks and Geographical Indications, although the owner of the Mark still has legal protection, he cannot immediately file a lawsuit against the violation. The owner of a Well-Known Mark who is not registered can only file a lawsuit as referred to in Article 76 paragraph (1) after applying to the Minister.

Furthermore, through criminal law means, enforcement efforts are regulated with complaint offenses as regulated in Article 103 of Act 20/2016. The shift from normal offenses to complaint offenses is an improvement in the enforcement of Indonesian trademark law. However, there is one thing that remains a problem, that Act 20/2016 still equates criminal enforcement of registered marks (ordinary marks) with well-known trademarks. We believe, the complaint offense is not appropriate for crime of infringement against well-known marks.

According to the Academic Draft of the 2016 Trademark Bill by the team under Prof. Dr. Insan Budi Maulana, S.H., LLM. They changing the offense based on the consideration that many countries in the world use complaint offenses as a method of criminal settlement.  

Furthermore, by considering that enforcement of trademark law does not have to use criminal instruments but rather better used in a civil lawsuit instrument. As for the consideration of the team under Prof. Dr. Insan Budi Maulana, SH., LLM, that the attitude of some police officers in solving trademark cases is still far from the ideals of justice seekers. This is because the high costs, mentality, morality, and the ability of the police’s intellectual resources in handling criminal cases on trademark are often not following the objectives of the Police Law.

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16 Insan Budi Maulana et al., Academic Draft of the 2016 Trademark Bill (Jakarta: Departemen Hukum dan HAM RI, 2008), 18-36.
17 Further quoting directly from the Final Report of Academic Draft of Trademarks Bill: “Kita sulit berharap polisi akan menangani perkara pidana merek secara gratis, dan melakukan penyitaan, pembuatan berita acara pemeriksaan tanpa biaya. Alasan tidak ada anggaran merupakan alasan klasik, yang seringkali saksi korban pelapor yang telah mengalami kerugian akibat pelanggaran merek, harus mengeluarkan biaya yang seharusnya tidak perlu terjadi dalam melaksanakan penegakan hukum.”
Besides, according to Prof. Dr. Insan Budi Maulana, SH., LLM Team, settlement through the means of criminal law also presents another disappointment, namely, there is no certainty about the time for settlement of case filings which should be immediately submitted to the public prosecutor, and the process for resolving Trademark case in court.

Therefore based on the explanation of Prof. Dr. Insan Budi Maulana, SH., LLM on the grounds of changing an ordinary offense to a complaint offense, we can conclude that there are at least 3 (three) main reasons for the shift in the offense, those are:

1. Many countries in the world use complaint offenses as a basis for enforcement;
2. Lack of resources by the police and other criminal law enforcers to handle cases, which has the potential to cause loss of public trust;
3. Civil law instruments are believed to be more effective and efficient in handling cases of violation of trademark rights.

For this argument, we think it is necessary to pay attention to the need for different approaches to law enforcement between ordinary and well-known trademarks. On the one hand, we completely agree that the complaint offense in IPR is a correct approach of criminal enforcement given the complexity of the object of IPR. But on the other hand, a well-known trademark is a special mark generally known so law enforcement can enforce the law.

**1. First**, related to the argument that many countries in the world use complaint offenses. We believe, comparative studies like this should be carried out rigorously and selectively. Given Seid’s Theory of Non-Transferability Law, I believe that law cannot be formed based on the large number of people who use this norm. This is because the formation of the law is a prescriptive design that aims to establish an order not only when the law was formed, but also in the future. So that using a comparative law argument must be given comprehensively and holistically;

**2. Second**, regarding the lack of resources for the police and criminal law enforcers, we agree when speaking to the overall trademark enforcement system. Meanwhile, in this paper, we emphasize that there is a need to separate the enforcement of trademark criminal law. So in we believe, a complaint offense is appropriate for an ordinary trademark, while for a well-known trademark, the resources of criminal law enforcement will not be burdened as before;

**3. Third**, the use of civil law instruments is felt to be more effective and

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18 Quoting: “...faktor-faktor tersebut mengakibatkan ketidakpercayaan masyarakat terhadap institusi kepolisian dan penegak hukum (pidana) lainnya. Oleh karena itu penyelesaian perkara secara perdata yang akan ditangani oleh hakim-hakim niaga menjadi salah satu solusi penegakan hukum merek yang efisien. Meskipun masih ada kekurangan dan kelemahan hakim-hakim niaga dalam menangani perkara Merek, namun putusan hakim-hakim niaga masih dapat ditelaah, apakah perkara itu sarat kolusi atau tidak.”
efficient, as, in the previous context, I agree as long as it is related to ordinary marks. As for well-known marks, of course, not all well-known trademarks holders have followed the development of trademark law in Indonesia. Furthermore, civil remedies, especially in litigation, will certainly take time and resources from the parties. Especially if the well-known mark holder does not have a representative in Indonesia. Therefore we think the use of normal offenses should also be given to a well-known trademark as an active legal effort to encourage investment in Indonesia.

Furthermore, for a more comprehensive study, we were also analyzing the philosophical basis of IPR protection which shifts the application of criminal offense from normal to complaint offense, to find a paradigm for the development of intellectual property offenses in Indonesia. In this case, we addressed the consideration of the use of complaint offense in the 2014 Copyrights Act. According to the explanation in the Academic Draft of the 2014 Copyrights Bill by Prof. Dr. Abdul Gani Abdullah, SH., the shifting in offense is considering 3 major reasons, which are:19

1. Law enforcement officials will not be able to determine whether a criminal act of copyright has occurred simply by comparing the results of copyright infringement with the original creation. Only the creator or copyright holder can have more confidence which one is the original work and which is not an original work or a copy of the original work so that they can immediately report a violation of their exclusive rights.

2. In carrying out legal proceedings, it is impossible for law enforcement officials to immediately know whether a party has received permission to publish or reproduce a work. Therefore, there must be a complaint beforehand from the creator or copyright holder.

3. In practice, if a copyright violation occurs, the party whose copyright is infringed often wants compensation from infringer rather than punishment through imprisonment.

Meanwhile, if this argument is also used against the shift in offenses in the Trademark and Geographical Indication Act. We believe that several argumentation points can be discussed:

1. First, related to the consideration that law enforcement officials will not be able to determine whether a criminal act has occurred. We think that this point only applies to the ordinary mark. As for well-known marks, of course, law enforcers can distinguish between passing off and falsification of well-known marks. Because in essence, a well-known trademark is a brand that creates a familiar impression for the viewer. So if the mark cannot be recognized by law enforcers, then the mark is not a well-known mark;

2. Second, related to the consider-
ation that it is impossible for law enforcement officials to immediately know whether a party has received permission. In my opinion, this is not a problem in the investigation process. Law enforcers may ask for a copy of the license to use/reproduce a well-known mark by the trademark holder;

3. **Third**, related to the consideration that parties whose rights have been violated want compensation more than criminal enforcement. In my opinion, this is not necessarily true when it comes to well-known trademark holders, who of course have relatively high financial resources. So that in terms of law enforcement, it is not certain that they want compensation money, they may just want the perpetrators of passing offs and counterfeiting to be processed using retributive and restorative legal means to stop these harmful practices.

Furthermore, according to data from the Global Intellectual Property Center (GIPC) regarding the 2019 IP Index, Indonesia is ranked 45th out of 50 countries with an index score of 12.87. This means that Indonesia is included in the 6th lowest rank in the enforcement of IPR internationally. Meanwhile, when compared to the 2016 index which was the end of the use of normal offenses in the old Trademark Law, Indonesia was ranked 33rd with an index score of 8.59.21

The interesting part of this data is although Indonesia’s score index has increased, its global ranking has decreased. This means that even though the score has increased, the enforcement of Indonesian IPR tends to be stagnant when compared to other countries.

For an instance is that in 2016 Indonesia outperformed several countries such as Vietnam, Thailand, and India. But based on 2019 data, the three countries actually outperformed Indonesia with index scores of 13.81 (Vietnam), 14.50 (Thailand), and 16.22 (India) respectively.22 This proves that there are problems in IPR protection in Indonesia, especially about trademark enforcement. Whereas in the US Chamber’s GIPC report, it is stated that in the context of trademark protection in Indonesia, especially about trademark enforcement. Whereas in the US Chamber’s GIPC report, it is stated that in the context of trademark protection in “the ability of trademark owners to protect their trademarks”. Indonesia obtained a relatively low score index of 0.25.23

We think it is necessary to separate the use of criminal offenses against the ordinary and well-known trademark. While ordinary mark can be used complaint offenses, well-known trademark, on the other hand, require active and responsive law enforcement to eradicate passing off and counterfeit products.


22 Based on data in 2016, Vietnam obtained an index score of 7.83, Thailand had an index score of 7.4, and India with an index score of 7.05. This score is several levels below Indonesia, which at that time obtained an index score of 8.59.

23 GIPC, Loc.Cit.
Omnibus Law as the Future Direction of IPR Criminal Policy

Today there are about 42 thousand regulations covering laws, government regulations, presidential regulations, ministerial regulations to the policy of governors, mayors, and regents in the regions. As for the 42 thousand laws and regulations, many contradict each other. Given the production of legislation in the past partially regulating too much. Often the formation of regulations in each ministry/agency at the central and local governments is more driven by sectoral egos without taking into account the interests of other sectors and the needs of the community.

The regulatory problems in Indonesia can no longer be resolved to utilize harmonization. However, a legal breakthrough must be made to resolve overlapping problems through the concept of Omnibus Law. Some time ago, the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency, Sofyan Djalil, once put forward the concept of the omnibus law. This concept is also known as the omnibus bill which is often used in countries that adhere to the common law system such as the United States in making regulations. Regulation in this concept is to make a new law to amend several laws at once. The omnibus law model is only known in the Anglo Saxon legal system and is not known in the civil law system.

The definition of the Omnibus Law starts from the word Omnibus. The word ‘Omnibus’ comes from Latin and means for everything. In Bryan A. Garner’s Black Law Dictionary Ninth Edition it is mentioned omnibus: “relating to or dealing with numerous object or item at once; including many things or having various purposes, which means relating to or dealing with various objects or items at once; includes many things or have multiple purposes.” When coupled with the word Law, it can be defined as law for all. So, the concept of the omnibus law is a comprehensive rule, not tied to a single regulatory regime.

Then, is it possible to combine all forms of IPR in one comprehensive arrangement with the omnibus law model? We think, in general, all areas of IPR are contained in one big law. However, of course, the legislator must pay attention to the separation of the IPR family itself in dividing the legal categories.

For example, in general, the IPR field is grouped into copyrights and industrial property rights, consisting of patents, models and designs, industrial designs, trademarks, geographical indications, new plant varieties, and integrated circuit layout. Along with


26 According to Act 28/2014, Copyright is defined as the exclusive right of a creator that arises automatically based on the declarative principle after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations. Copyright is also part of intellectual property in the fields of science, art, and literature which has a strategic role in supporting national development and advancing public welfare as mandated by the 1945 Constitution of the Republic of Indonesia. Copyright itself includes two other rights, namely moral rights and economic rights. This is stipulated in Article 5 to Article 19 of Act 28/2014 on Copyright.

27 Chandra Irawan, Politik Hukum Hak Kekayaan Intelektual Indonesia (Bandung: Mandar Maju, 2012), 14
the times and the advancement of science and technology and art, the object of IPR continues to develop. What is not currently the object of IPR, in the future it is very likely an important object of IPR. Furthermore, according to Graham Dutfield, the development of IPR internationally has three characteristics: (1) the broadening of existing rights, for example, the development of software in copyrights, microorganism and genetic cloning in patent, (2) the creation of new rights, for an instance new plant varieties, integrated circuit layout and performers rights, and (3) the progressive standardization of the basic features of IPR’s, for example, an increase in the period of patent protection by 20 years, and the provisions of patent requirements.28

Then in the meeting to discuss the strategy for the formation of the omnibus law by the Directorate General of Intellectual Property (DJKI), Ministry of Law and Human Rights (Kemenkumham). Freddy Harris as the Director-General of Intellectual Property (Dirjen KI) explained that the law related to IP can be integrated into an omnibus law. The aim is to simplify the laws on Patents, Trademarks, Copyrights, Industrial Designs, Integrated Circuit Layout Designs, and Communal IP which greatly affect the economic and investment climate in Indonesia. Furthermore, the Directorate General of Intellectual Property also offers an omnibus law concept of Intellectual Property.29

Then it becomes a question to practice the ‘Omnibus Law’ policy, is it necessary to change the Lawmaking Act? To answer this question, we quote Jimly Ashshiddiqie’s opinion in his paper entitled “Omnibus Law, Simplification of Legislation, and Administrative Codification”. That the Lawmaking Act should be ideally revised for omnibus law. The new provisions regarding the “Omnibus Law” should be explicitly stated in the Lawmaking Act. However, even without amendments to the Lawmaking Act, the practice of forming the Omnibus Law could have been carried out by ignoring some material guidelines for the creation of Acts that are used as the guidelines that only guiding and do not need to be applied rigidly. The guideline was prepared based solely on practices that have been carried out so far so that the format and design process follow these existing habits, which can be breached so that new constitutional conventions and constitutional habits are formed as a legal basis equivalent to laws and regulations that invite for further practices.30

Whereas the next thing that concerns us is how the concept of criminal sanctions regulation in the draft IPR legislation in the form of the Omnibus Law. Because basically at the

time of formation it was directed at a form of codification which was administrative. Then the regulated criminal sanctions must be adjusted to the teachings of criminal law. So that in this case the formulation of criminal sanction and its nature must be determined whether it is an administrative penal law or formed in a purely separate criminal law, for example as part of the economic criminal law.

If we return to the politics of criminal law, this development must become an integral legal basis. This means that not only penal and non-penal policies go hand in hand, but also penal policies must be adjusted to the direction of current legal developments. Especially when many irregularities occur in the practice of drafting criminal legislation at this time.  

So it is also necessary to pay attention to the aspects of the punishment through sanctions imposed both in the form of punishment and treatment.  

CONCLUSION

Based on the discussion above, it can be concluded that:

1. It is necessary to separate the use of criminal offenses between ordinary and well-known trademarks. This is because well-known trademarks required active and responsive law enforcement.

2. The laws related to intellectual property (KI) can be integrated into the omnibus law. However, it must still pay attention to the teachings of criminal law because it is directed at a form of codification that is administrative. So that later the formulation of criminal sanctions and their nature must be determined whether it is an administrative penal law or established in purely criminal law.

Suggestion

1. We suggest providing maximum and active legal protection, the lawmaker needs to understand the difference between the problem of criminal law enforcement in ordinary and well-known trademarks.

2. As for the criminal policy direction we agreed with the concept of omnibus law. However, still, it must be adjusted to the direction of criminal law developments.

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