

COMPARATIVE STUDY ON THE IMPLEMENTATION OF THE MINIMUM PROTECTION PRINCIPLE UNDER TRIPS AGREEMENT AND TRADEMARK LAW BETWEEN INDONESIA AND AUSTRALIA

By:

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ABSTRACT

Minimum protection principle (“MPP”) is one of the fundamental principles found under the TRIPS Agreement. The MPP exists as a mean to guarantee that the member States of the TRIPS Agreement ensure—within their own domestic laws—a minimum level of protection towards their intellectual property, with each Member State free to further extend such level of protection as accustomed to their own domestic conditions and circumstances. In this legal research, the Author has focused on the protectionism towards trademark under both Indonesian law and Australian law in accordance with the provisions set by the TRIPS Agreement along with a comparative study to seek suggestions and recommendations that could be implemented under Indonesia’s own trademark law and Australia’s.

Through a normative approach, the Author has conducted an analysis on written sources such as the Indonesian Trademark Law (Law No. 20 of 2016) and the Australian Trademark Law (Trade Mark Act 1995 (Cth.)) which acts as the main trademark law applicable under both legal systems and ultimately comparing its provisions with the TRIPS Agreement—both as a comparison on its implementation within domestic regulations and seeking of compliance of its obligations under the Agreement. The Author has also analysed other written sources such as case laws from both legal systems and policies that has been set out by the governing bodies for intellectual property in order to determine further protectionism towards trademark outside of the minimum protection set by the TRIPS Agreement.

Both Indonesia and Australia have shown compliance towards the provisions of the TRIPS Agreement. Though Indonesia did not at first, it has shown vast development of protectionism towards trademark throughout the stages of amendments until the current law that is today. Australia, even before the ratification of the TRIPS Agreement into their domestic laws, had already implemented provisions similar to TRIPS. Both legal systems also provided extensive protection towards trademarks, specifically well-known trademarks and trademarks registered under foreign languages by comparing case laws on both matters along with other technical issues such as the registration of trademarks and scope of protection of the elements of a trademark.

Keywords: Trademark, Trademark Law, Minimum Protection Principle, Comparative Study

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PENELITIAN KOMPARATIF TERHADAP IMPLEMENTASI DARI MINIMUM PROTECTION PRINCIPLE DALAM PERJANJIAN TRIPS DAN UNDANG – UNDANG MEREK DAGANG INDONESIA DAN AUSTRALIA

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Intisari

Minimum Protection Principle (“MPP”) adalah salah satu prinsip fundamental di bawah Perjanjian TRIPS. MPP bertujuan untuk menjamin bahwa negara anggota dari Perjanjian TRIPS akan memberlakukan tingkat perlindungan minimal terhadap kekayaan intelektual di dalam hukum domestiknya masing-masing. Setiap anggota Perjanjian TRIPS di bebaskan untuk memperluas tingkat perlindungannya berdasarkan kondisi dan situasi domestik negaranya. Dalam penelitian hukum ini, Penulis memfokuskan pada perlindungan terhadap merek dagang di bawah hukum Indonesia dan hukum Australia sesuai dengan ketentuan yang ditetapkan oleh Perjanjian TRIPS—bersamaan dengan studi banding untuk memperoleh saran dan rekomendasi yang dapat dilaksanakan di bawah undang-undang merek Indonesia dan Australia.

Melalui pendekatan normatif, Penulis melakukan analisis terhadap sumber tertulis seperti Undang-Undang Merek Indonesia (UU No. 20 tahun 2016) dan Undang-undang Merek Australia (Trade Mark Act 1995 (Cth.)) dan Penulis juga membandingkan ketentuan –ketentuan yang tertera di dalam kedua undang – undang tersebut dengan Perjanjian TRIPS. Kemudian, Penulis telah menganalisa sumber tertulis lain seperti yurisprudensi dari kedua sistem hukum dan juga kebijakan yang telah ditetapkan oleh badan yang mengatur mengenai kekayaan intelektual untuk menentukan perlindungan lebih lanjut terhadap merek dagang di luar dari perlindungan minimum yang sudah ditetapkan oleh Perjanjian TRIPS.

Baik Indonesia dan Australia telah menunjukkan kepatuhan terhadap ketentuan Perjanjian TRIPS. Meskipun awal mulanya Indonesia tidak, pada saat ini, Indonesia telah menunjukkan perkembangan besar terhadap perlindungan merek dagang di seluruh tahap amandemen hingga undang-undang yang berlaku. Sedangkan Australia yang belum meratifikasi Perjanjian TRIPS ke dalam undang-undang domestiknya telah menerapkan ketentuan yang mengikuti prinsip dan asas Perjanjian TRIPS. Kedua sistem hukum juga memberikan perlindungan luas terhadap merek dagang, khususnya merek dagang terkenal dan merek yang terdaftar menggunakan bahasa asing dengan membandingkan yurisprudensi kedua negara tersebut bersamaan dengan masalah teknis lainnya seperti pendaftaran merek dagang dan cakupan perlindungan terhadap elemen merek dagang.

Kata Kunci: Merek, Hukum Merek, Minimum Protection Principle, Studi Komparatif

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