

# A comparative legal study of customs protection of intellectual property right between China and Indonesia in terms of customs recordation = Perbandingan hukum atas perlindungan hak kekayaan intelektual di bea cukai antara China dan Indonesia mengenai perekaman

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## Abstrak

Indonesia and China are members of the TRIPS Agreement and are members of the WTO. As members of the WTO, Indonesia and China are obliged to comply with the TRIPS and therefore there are several provisions in TRIPS that need to be regulated or amended in each country's intellectual property regime. One of such is the border measures as the means of customs protection towards intellectual property goods that are being imported or exported, which is seen as an effective measure to stop the infringement of intellectual property rights because it might stop the infringing goods before they enter and circulate freely and broadly into the free market. One of the mechanisms mentioned in TRIPS is ex officio detention. In supporting this authority, there is a mechanism called customs recordation that allows the owner or right holder of the intellectual property right to record their right in the customs. Now, Indonesia and China both have the same regulatory frameworks of customs recordation, by the newly enacted Minister of Finance Regulation Number 40 PMK.04 2018 concerning Recordation, Detention Penegahan, Guarantee,

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Suspension Penangguhan, Monitoring and Evaluation in Regards to The Control Over Imported or Exported Goods Suspected or Resulted from Intellectual Property Rights Infringement. In comparing the two countries regulatory frameworks, there are several differences and similarities that are found. One worth to be mentioned is how Indonesia does not allow foreign established companies to record their IPR in customs recordation system, unlike China. It is found by a theoretical approach that there are actually several points that support on why does Indonesia shall include foreign established companies in recordation system such as, it generates economic growth of individual and country, stimulate market productivity, and as a means to the development of science and technology.