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Legal Regulatory Issues Regarding Parallel Import Activities in Indonesia

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Abstract

Parallel import is a legal phenomenon that often sparks debate in the context of trademark protection in Indonesia. This activity is frequently perceived as infringing the exclusive rights of trademark holders, although it simultaneously supports fair competition and provides broader access to imported goods. This study aims to analyze the legal regulatory issues surrounding parallel import activities and their implications for the legal protection of trademark holders. The research method used is normative legal research with statutory and conceptual approaches. Legal sources include primary legal materials, such as relevant laws, and secondary legal materials in the form of books, scholarly journals, and other supporting literature. The analysis is conducted descriptively to map the prevailing legal regulations and evaluate their effectiveness in providing legal protection. The study finds that the regulations regarding parallel imports in Indonesia still fail to provide adequate legal certainty. The absence of clear norms on the legality boundaries of parallel import activities creates uncertainty for both trademark holders and business actors. Additionally, inconsistencies in law enforcement exacerbate the situation. The findings recommend revising the regulations to not only reinforce legal protection for trademark holders but also consider the principles of fair competition. Such revisions are expected to create a balance between protecting the exclusive rights of trademark holders and meeting market demands for competitively priced imported goods.

1. Introduction

The impact of industrialization is free trade. Free trade is a terminology for the trade liberalization regime of a commodity, whether goods or services. The scope of free trade territorially includes not only bilateral and trilateral relations but also multilateral relations. This, of course, opens up a new paradigm in economic concepts, namely the paradigm of an open economy. Therefore, the conception in the trade liberalization regime opens the possibility that a country can consume a commodity in greater amounts than its production capacity for a particular commodity.[1]

Speaking of trade liberalization certainly brings utility, especially for countries with low gross domestic product. In developing countries, this is marked by an increase in exports of commodities in the manufacturing sector, which is technically labor-intensive. Therefore, from Carbaugh's perspective, trade liberalization brings significant potential for domestic

[1] Scott L Baier et al., "On the Widely Differing Effects of Free Trade Agreements: Lessons from Twenty Years of Trade Integration," *Journal of International Economics* 1, no. 8 (2019), https://ssrn.com/abstract=2885252.

production to stimulate economic growth. However, Carbaugh also notes that trade liberalization brings very complex polemics in the dynamics of a country's market.

The potential for complex problems in the dynamics of trade liberalization has, of course, initiated the awareness of a fair trade ecosystem. The World Trade Organization (WTO), which is the global trade organization, initiated the creation of a multilateral agreement for a healthy and fair trade ecosystem. The Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPs), is an agreement signed by about 123 countries.[2] This agreement contains substance related to the creation of policies on the movement of goods and services, labor policies, and law enforcement, especially in the field of Intellectual Property Rights (IPR). The expectation of the TRIPs agreement is to encourage a competitive global market without barriers between member countries.[3] Indonesia responded to the TRIPs agreement by ratifying it through the Indonesian Law Number 7 of 1994 on the Ratification of the Agreement Establishing the World Trade Organization.

As the global market develops, the movement of commodities to meet consumer needs becomes faster. As a result, a phenomenon arises from international trade activities, namely parallel imports. The background of parallel import activities lies in the causal nexus between differences in the real value of currencies between countries and the jurisdictional capacity of a country in managing branded commodities at competitive prices. Pierre Kobel states that...:[4]

> "…that parallel imports involve the transfer of genuine goods from one market to another without the authorization of the trademark owner or exclusive rights holder. This activity disrupts the official distribution channels established by the trademark owner or patent holder."

This can be interpreted as genuine products produced in one contractual country, then imported to another country without a contractual agreement. Commodities resulting from parallel imports are known as "gray market goods." Gray market goods are original (genuine) products, but their distribution channels do not come from official distribution routes. Causally, an official distribution channel is one that arises from a contractual agreement between the licensor (brand owner) and the licensee (brand holder). However, gray market goods are not considered illegal items, as they enter through customs channels and fulfill the obligation to pay duties.[5]

This activity certainly has impacts and problems for the domestic market in Indonesia, marked by several cases, some of which have even reached the courts, such as in 2005. The

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[2] Romi Habie, "Eksistensi Trade Facilitation Agreement Dalam Perpektif Undang-Undang Nomor 17 Tahun 2017 Tentang Protocol Amending The Marrakesh Agreement Establishing World Trade Organization," *Jurnal Restorative Justice* 5, no. 2 (December 12, 2021): 164–80, https://doi.org/10.35724/jrj.v5i2.3758.
[3] Chelsea Bodimeade and Felicity Deane, "Evolving Theory of IP Rights: Promoting Human Rights in the Agreement on Trade-Related Aspects of Intellectual Property Rights," *Journal of Intellectual Property Law and Practice* 18, no. 8 (August 1, 2023): 603–14, https://doi.org/10.1093/jiplp/jpad056.
[4] Yichi Zhang, "Research on Regional Trade Agreement Exceptions Under the World Trade Law," *Journal of Humanities and Social Sciences* 14, no. 3 (2023): 4085.
[5] Syed Muhammad Maqsood and Yasir Ali Soomro, "Gray-Market, Gray-Market Products, Brand Image, Price Consciousness, Price-Quality Inference, Risk Averseness.," *Marketing and Management of Innovations*, no. 1 (2021): 124–34, https://doi.org/10.21272/mmi.2021.1-10.

first case involves Konrad Hornschuch AG and Rudi Hartanto. Konrad Hornschuch AG is a German wallpaper company, d-c-fix, that has had a market presence in Indonesia since 1978. Initially, the wallpaper was imported by the Rudi Hartanto family from Konrad Hornschuch AG to be marketed in Indonesia. As the business continued under Rudi Hartanto as the heir, Rudi Hartanto terminated the cooperation agreement and chose Hang Tai (Far East) Trading Ltd. as the new business partner, registering his business to obtain a trademark certificate from the Ministry of Law and Human Rights of the Republic of Indonesia. Hang Tai (Far East) Ltd. is a licensee of Konrad Hornschuch AG based in Hong Kong for the d-c-fix wallpaper market in the Asia-Pacific region. Seeing the increasing market demand for d-c-fix wallpaper, Konrad Hornschuch AG appointed PT. Cahaya Hamparan Surya as the licensee for the Indonesian market, but this registration was rejected. As a result, Konrad Hornschuch filed a lawsuit in the Commercial Court through its legal representative. The court ruled in favor of Konrad Hornschuch, considering that Rudi Hartanto had committed a trademark infringement.

Upon further examination of the case above, parallel import activities are categorized as trademark infringement. This is, of course, contradictory to the substantial meaning of the laws in Indonesia. The Indonesian Law No. 20 of 2016 on Trademarks and Geographical Indications (previously Indonesian Law No. 15 of 2001 on Trademarks) affirms that an activity is considered a trademark infringement if a legal subject attaches a trademark that is identical or nearly identical to the registered trademark of another party at the Ministry of Law and Human Rights.

The issue of parallel imports still lacks clear legal protection. Referring to the previous paragraph, it is said that the court made an error in interpreting a particular article in the law. This has led to a legal vacuum and legal uncertainty for the public, which could potentially harm those who genuinely need protection. Furthermore, the losses caused by parallel import activities in civil law are known as unjust enrichment.[6] Parallel import activities fall into the concept of unjust enrichment due to efforts by certain parties to gain wealth unfairly. Therefore, parallel import activities result in losses, including unearned profits (lucrum cessans).

Referring to the explanation in the previous paragraph, there is a relationship between the legal vacuum, parallel import policy, and the creation of a healthy business competition climate. In this regard, legal regulation of parallel imports should be *ius constituendum* to create a healthy competitive environment in the domestic market. Therefore, the legal issues in this research are divided into two: first, the regulation of parallel imports in trademark law in Indonesia, and second, the reform of trademark law regarding parallel import activities in Indonesia. The aim of this research is to analyze the legal regulation and protection for trademark holders who are harmed by parallel import activities in Indonesia.

This research is inspired by three previous works: First, *Exclusive Rights of Trademark Licensees in Parallel Importation Activities* by Edbert Seligshan Horman. Second, *Parallel Imports in Indonesian Trademark Law* by Amirul Mohammad Nur. Third, *The Practice of Parallel Import*

[6] Hans Warendorf, "Unsur Kerugian Dalam Ujustified Enrichment Untuk Mewujudkan Keadilan Korektif (Corrective Justice)," *Yuridika* 33 (2018): 25.

in Indonesia Viewed from Intellectual Property Law in the Trademark Field: A Case Study of PT. Modern Photo Tbk and PT. International Photographic Supplies/PD STAR Photographic Supplies by Lita Analistya Dipodiputro. However, the discussion in these three previous works only addresses legal analysis and repressive solutions to the violations arising from parallel imports. Therefore, the goal of this paper is to offer an urgent perspective on the preventive resolution of parallel import activities.

2. Methods

This study employs a normative legal research methodology, which focuses on analyzing the provisions found in laws and regulations and illustrating the law as a standard for human conduct in society.[7] Two approaches are used in this research: the legislative approach and the conceptual approach. The research utilizes various legal sources, including primary legal materials such as statutes, and secondary legal materials, which include books, scholarly articles, and other relevant literature connected to the research topic, namely legal protection for trademark owners in parallel import activities. The research uses descriptive analysis and legal materials analysis techniques, where the researcher not only describes but also evaluates based on the findings, with the goal of addressing the research questions.

3. Results and Discussion

3.1. Legal Regulation of Parallel Import Activities in Indonesia

The phenomenon of parallel imports in Indonesia should not be regarded as a new discourse within the domestic market. There is no precise data to determine when the parallel import phenomenon first emerged in the domestic market. However, a relevant indicator for this discourse can be traced to the protest raised by the Motion Picture Association (MPA) in 1998. This protest was fundamentally directed at the government regarding the practice of parallel imports of illegal films and videos. Furthermore, the widespread distribution of foreign films through parallel imports has led to a reduction in control by licensors or licensees over intellectual property. As a result, MPA suffered significant losses because films were marketed without legitimate licenses.

The case above, however, does not fully represent the trademark-related issues in Indonesia. Another case that can be used as a reference to understand both formal and material losses is the case involving Fuji Film roll films. As an introduction, Fuji Film is the largest camera roll company based in Japan and has license holders worldwide. In summary, Tony Widharma, the leader of International Photographic, entered into a distribution agreement with Union Camera Ltd. based in Hong Kong. This led to competitive pricing in the domestic market. Although price competition is common in markets, the main issue arose because Fuji Film, as the licensor, already had a distribution agreement with Modern Photo, Tbk. for the Indonesian market. Consequently, Modern Photo, Tbk. felt harmed by this activity. In the ruling, Tony Widharma was not found guilty of legal violations because there was no

[7] K Benuf, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," Jurnal Gema Keadilan 7, no. 1 (2020): 23, https://doi.org/https://doi.org/10.14710/gk.7.1.20-33.

exclusive distribution agreement between Modern Photo, Tbk. and Fuji Film for the distribution of the roll films.

In another case, involving the German paper company Kondrad Hornshuch AG and Rudi Hartanto, who was engaged in parallel imports of the wallpaper paper type d-c-fix, the situation mirrored the previous case. Rudi conducted parallel imports by purchasing a license from Hang Tai (Far East) Trading Ltd. for the Indonesian market. However, unlike the previous case, Kondrad Hornshuch AG won the lawsuit, and the Jakarta Commercial Court ruled that Rudi Hartanto had violated trademark rights. Referring to the development of these cases, various issues arise in addressing trademark violations. The legal vacuum (recht vacuum) is the reason why the courts are inconsistent in their decisions. As a result, to this day, business actors tend to choose alternative steps to avoid engaging in parallel import activities. For example, PT. Astraindo Senayasa, as the official distributor of Intel in Indonesia, has implemented a product identification strategy through hologram stickers on the packaging of officially marketed products to differentiate them from parallel imports.

Before discussing how the legal regulations regarding parallel imports in Indonesia are weak, it would be easier to understand the concept and urgency of parallel import activities. Morr explains that an activity can be called a parallel import if:[8]

> "*a commodity in a geographical area is produced under a contractual agreement between the licensor and licensee, and then imported into a geographical area as if it were outside the terms of the relevant contact*."

A similar, more complex perspective is presented by Shahnan, who aims to obtain a broader definition. According to him, parallel import can occur when:

> "*Commodities within a geographic area are produced under a contractual agreement that governs the rights and obligations between the licensor and licensee. In these agreements, there are usually provisions regarding the production, distribution or sale of products in a particular region. However, in practice, products that have been manufactured under these contracts are then imported or re-traded into other geographical areas, including the agreement's home territory, without complying or conforming to the terms set out in the agreement. This may involve breach of license restrictions, violation of territorial exclusivity, or disregard of price controls that have been established by the licensor*."[9]

Linked to the two definitions above, parallel import activities essentially occur when a commodity, whether goods or services, produced within the jurisdiction of a country according to the copyright owner's agreement, is imported into another jurisdiction outside of that agreement by an individual or company that is not an official importer or distributor. Based on this definition, parallel import is often understood narrowly as the activity of importing goods produced outside the importing country. However, this activity also includes

[8] Liu Xueying and Pazgal Amit, "The Impact of Gray Market on Product Quality and Profitability," *Customer Needs and Solutions* 7, no. 1 (2020): 62–73, https://doi.org/https://doi.org/10.1007/s40547-020-00105-6.
[9] Ibid

re-importation, which occurs when goods initially produced within the importing country are exported to the global market and then imported back into their country of origin.

In the context of parallel imports, the characteristics of the goods marketed do not fall under the category of genuine goods. This is a distinctive feature of parallel import activities. Parallel import activities, by definition, fall within the gray goods market. Therefore, goods resulting from parallel import activities are considered gray goods. The terminology of gray goods has a specific meaning and distinction from the black goods market, as the goods produced through parallel imports are original (genuine) products, but their distribution channels are unofficial. On the other hand, goods from the black market are illegal items, whether due to distribution regulations or smuggling (items not passing through customs).[10]

The last sentence of the paragraph above undoubtedly triggers a deeper discourse regarding the legality of goods resulting from parallel imports. The entry of parallel import goods into a jurisdiction's market involves customs procedures. In this regard, when goods enter the domestic market of a country, they are subject to certain administrative fees or what is known as import duties. Therefore, it becomes even clearer that the status of goods resulting from parallel import activities is that of official and genuine products.

he urgency of parallel import activities is fundamentally to provide consumers with easy access to goods in demand at relatively lower prices. As a result, the availability of goods in the market becomes abundant, leading to more competitive pricing. In addition to this factor, another influencing factor of parallel import activities is the harmonization of more open international trade (trade liberalization).[11] This allows for combating the monopolistic and oligopolistic practices of goods by a single company. However, in essence, parallel import practices are not efforts to engage in predatory pricing.[12] While it may be superficially similar due to the common goal of profit, the flow and consequences of parallel import activities are not intended to eliminate competitors.

Parallel import activities in Indonesia, in both public and academic discussions, have not been a central concern in assessing the impact of this activity's potential for injustice. Referring to existing regulations, the Indonesian Law No. 20 of 2016 on Trademarks and Geographical Indications (hereinafter referred to as the Trademark and Geographical Indications Law, or UU MIG) has a legal gap regarding the regulation of parallel imports. Article 83 paragraph (1) of the UU MIG addresses the legal standing of business actors in filing a lawsuit in the event of a trademark infringement. This provision is reinforced by the existence of Article 100 of the UU MIG, which affirms the form and sanctions for trademark

[10] Zhong-Zhong Jiang et al., "Inducing Information Transparency: The Roles of Gray Market and Dual-Channel," *Annals of Operations Research* 329 (August 25, 2020): 227–306.
[11] Srivastava Abhishek, Tsan-Ming Choi, and Mahajan Aarushi, "Impacts of Gray Market Selling on the Supply Chain under Product Upgrade and Pricing Flexibility Decisions," *Naval Research Logistics (NRL)* 71, no. 3 (2023): 365–88, https://doi.org/https://doi.org/10.1002/nav.22157.
[12] Lei Xu et al., "Gray Marketing Phenomena in Global Supply Chains: Can Pricing Strategies Help?," *Transportation Research Part E: Logistics and Transportation Review* 187 (July 1, 2024), https://doi.org/10.1016/J.TRE.2024.103541.

infringements.[13] Referring to these articles, when analyzed through a grammatical interpretation, it can be understood that an activity falls under the classification of trademark infringement if a party uses a trademark without authorization or if there is similarity in the essential components of the trademark.

In line with the background of this research, parallel import activities face legal uncertainty because the UU MIG does not explicitly distinguish parallel import from other trademark infringements. Although parallel import involves genuine goods imported without the trademark owner's permission, its legal status remains unclear. Below are three main reasons for this uncertainty:

1. Uncertainty in the Legitimacy of Parallel Imports
   Genuine goods imported without the permission of the trademark owner can be considered illegal as they fall under the category of "unauthorized use," even though the goods are not counterfeit and bear a valid trademark.
2. Ambiguity of the Term "Unauthorized"
   Parallel imports are carried out by third parties without direct permission from the license holder, but without falsifying the trademark. However, the law does not explicitly clarify whether parallel imports are considered trademark infringements as regulated under Article 83 and Article 100.
3. Potential Conflict with the Free Market Principle
   Parallel imports are part of the free trade principle, but the textual interpretation of Articles 83 and 100 could hinder the trade of legitimate, genuine goods due to the lack of clarity regarding the trademark owner's rights in this context.

Articles 83 (1) and 100 have not undergone significant changes since the 2001 Trademark Law, despite the enactment of Law No. 6 of 2023 on Job Creation (Cipta Kerja Law), which removed the term "intentionally" from these provisions. As a result, parallel import activities carried out intentionally can still be classified as trademark violations under the substance of the regulation.

In contrast, the regulation on parallel imports in Indonesia's Patent Law, specifically in Law No. 13 of 2016 on Patents, is more explicit. Article 160 of the Patent Law clearly states that parallel imports without the permission of the patent holder constitute a violation of the law. Therefore, businesses engaging in parallel imports face binding legal sanctions. However, there is an exception for pharmaceutical products under the Patent Law. Specifically, Article 135(a) exempts parallel imports of pharmaceutical products from criminal and civil lawsuits, provided the product is imported by the rightful patent holder and is sold to a country by the patent holder in accordance with legal provisions.

The legality granted by the Patent Law to businesses involved in parallel imports still imposes limitations. The patent holder retains the right to claim compensation for any losses

[13] M Hawin and B Riswandi, *ISU-ISU PENTING HAK KEKAYAAN INTELEKTUAL DI INDONESIA*, vol. 1 (Yogyakarta: Gajah Mada University Press, 2020).

caused by parallel imports of their pharmaceutical products. This shows the application of caution in adopting the principle of patent rights exhaustion. Nonetheless, parallel imports are not considered criminal acts, reflecting the recognition of the importance of providing public access to affordable pharmaceuticals. Patent holders can still file civil lawsuits, demonstrating limited control over the distribution of their products.

The legislative rationale for allowing parallel imports of pharmaceutical products in the Patent Law is based on several factors. First, the legislature aimed to improve public access to medicines, which are often more affordable in the domestic market. This provision was adopted from the Doha Declaration on TRIPs and Public Health, which was established in 2001 at the WTO conference. The declaration is an agreement among WTO member countries to ensure access to essential medicines. Thus, the author believes that the complexity and urgency of guaranteeing access, particularly in the health sector, are crucial for meeting public needs and preventing market abuse, which typically leads to monopolistic or oligopolistic practices.

Returning to the issue of trademarks, it is essential to protect trademark owners in the context of parallel imports. The key protection should focus on safeguarding the value and reputation of the trademark. A trademark is a vital element in preserving a product's reputation and image in the eyes of consumers. Trademark owners have the right to control the distribution of their products to prevent damage to the brand's image or quality, as there is economic value embedded in the trademark. Parallel imports can result in products with the same trademark but different quality or specifications entering the domestic market. This can confuse consumers and undermine trust in the brand.

In summary, if the Trademark Law (UU MIG) were to grant exclusive import rights to trademark holders, the situation would differ. Trademark holders in Indonesia would have a solid legal foundation to prevent others from importing branded goods without their consent. In other words, only the trademark holder or authorized parties would have the authority to import these goods. In this context, parallel imports could be prevented because the trademark holder would have full control over who is allowed to import branded products into Indonesia.

3.2 Legal Reform on Parallel Import Activities in Indonesia

The market should not be narrowly defined as a morphological representation; rather, it is created through the interaction between supply and demand. This perspective is a reflection of Strobe's view, which posits that the market is part of social institutions, emerging automatically without initiation. In this regard, Adam Smith classified the market as a unity encompassing economic frameworks, law, and morality. Within this context, the means by which the market communicates is through price.

Liberal economics, at its core, does not regard the eschatology of justice as the primary goal to be achieved. This line of thinking aligns with Adam Smith's view, which asserts that economic actors—producers, distributors, and consumers—should be free to pursue their

personal interests.[14] Consumers, for example, aim to achieve utility maximization, while producers and distributors seek profit maximization. This perspective emphasizes that the market is not designed to serve a specific purpose but rather is the result of dynamic interactions that occur naturally.[15]

Continuing this idea, Adam Smith emphasized that the market is an entity that must operate freely, without external intervention. Within this framework, each individual or economic actor has the right to prioritize their personal interests. Consumers seek optimal fulfillment of their needs, while producers and distributors focus on maximizing profit. This viewpoint suggests that the market is not a system governed by a singular goal, such as social justice, but a natural mechanism driven by the relationship between supply and demand.

Thus, liberal economics views the market as a process that operates autonomously, where individual freedom in pursuing personal interests is an essential element in creating market equilibrium. This strengthens the argument that the market is not explicitly designed by humans but develops as a result of the spontaneous interaction of various individual interests.

The explanation in the previous paragraphs raises a significant question regarding its connection to parallel imports. The liberal economic system does not recognize a shared purpose, so market freedom often impacts trademark holders. Therefore, a legal framework is needed to act as a safeguard in providing justice. Justice, in essence, is the most critical component in the formation of law, yet the definition of justice remains highly abstract among legal scholars, making it difficult to reach a consensus on its interpretation.

Parallel import activities, in this context, do not reflect justice, especially for trademark holders. Reflecting on Aristotle's theory of justice, which focuses on the principles of balance and proportion, equality of rights applies to individuals in equal conditions, while differential rights are granted to those with relevant special characteristics. From this perspective, justice does not always mean giving the same thing to everyone but rather adjusting to the needs, contributions, or circumstances of each individual.

Aristotle divided justice into two main types: distributive justice and commutative justice. Distributive justice refers to the proportional distribution of rights and duties, where each individual receives something according to their contribution or need in society. [16] Meanwhile, commutative justice pertains to fairness in relationships between individuals, especially in transactions and exchanges. This form of justice requires an equal balance between rights and obligations among the parties involved. Thus, Aristotle's theory emphasizes that justice must be contextual, considering differences in individual conditions and roles, while ensuring balance in social and economic relationships.

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[14] S Brandes, *The Market's People: Milton Friedman and the Making of Neoliberal Populism.* (Fordham University Press, 2020), https://pure.mpg.de/rest/items/item_3193042/component/file_3501298/content.
[15] Nina Serdarevic and Sigve Tjøtta, "Applying Adam Smith's Theory of Moral Sentiments to Elicited Social Norms: Giving and Taking in Dictator Games," *Social Sciences & Humanities Open* 6, no. 1 (January 1, 2022): 100290, https://doi.org/10.1016/J.SSAHO.2022.100290.
[16] Yosef Keladu, "KESAMAAN PROPORSIONAL DAN PERLAKUAN TEORI KEADILAN ARISTOTELES," *Diskursus* 19, no. 1 (2023).

According to Aristotle, distributive justice refers to the proportional division of rights and contributions in society.[17] In the context of parallel imports, distributive justice can be linked to how the economic benefits of international trade are shared among the various parties involved, such as trademark holders, both licensors and licensees. Licensors often claim exclusive rights over the distribution of their products in specific regions. Based on distributive justice, they are entitled to protection for the investments and innovations they have made, so parallel-imported goods without permission could be seen as infringing on their rights. Moreover, licensees also have the right to compete fairly in the market. If parallel imports are left unregulated, official distributors who have contributed to the marketing and distribution of the product may suffer disproportionate losses.

Furthermore, commutative justice relates to fairness in relationships between equals, including trade transactions. In the context of parallel imports, this encompasses aspects such as honesty in trade, protection of intellectual property rights, and the establishment of fair pricing. Parallel import transactions often involve an unequal relationship between those importing goods without permission and the trademark holders. From a commutative justice standpoint, this activity can be viewed as violating justice principles because the rights of trademark holders are not respected, despite their significant contribution to the creation and development of the product.

Integrating Aristotle's theory of justice into parallel import regulation means balancing the interests of licensors, consumers, and licensees. Regulations should allow the proportional distribution of rights and obligations based on the contributions of each party (distributive justice) while ensuring that transactions are conducted fairly and transparently (commutative justice). Therefore, limiting parallel imports to protect the exclusive rights of trademark holders, while still allowing certain imports that meet specific criteria, such as products at more affordable prices for certain groups in society, is necessary. Furthermore, transparency in the sourcing of parallel-imported goods is crucial so that consumers can trace the origin of the products and ensure that they meet the same quality standards as official products.

Finally, reflecting from the perspective of *ius constituendum*—the law designed for the future—it is important to balance market freedom with the need for justice and rights protection. In the context of parallel imports, *ius constituendum* may include regulations granting exclusive import rights to trademark holders, as emphasized in several international legal systems. This aims to ensure that trademark holders have full control over the distribution of their products, thereby protecting their intellectual property rights. However, such regulations should be designed in a way that does not hinder healthy competition or sacrifice consumer interests.

4. Conclusions

The phenomenon of parallel imports in Indonesia represents an activity that presents both advantages and challenges. Parallel imports offer consumers wider access to more affordable products while promoting market competition. However, this activity also introduces risks for

[17] Subhan Amin, "Keadilan Dalam Perspektif Filsafat Hukum Terhadap Masyarakat," *El-Afkar: Jurnal Pemikiran Keislaman Dan Tafsir Hadis* 8, no. 1 (2019).

trademark holders, such as reputational damage, inconsistent product quality, and loss of distribution control.

From a legal perspective, the Indonesian Intellectual Property Law (UU MIG) does not explicitly regulate parallel imports, thereby creating legal uncertainty regarding their status. This ambiguity encompasses issues such as the legitimacy of unauthorized trademark use, the definition of "without rights," and potential conflicts with the principle of free trade. Conversely, the Patent Law specifically regulates parallel imports, particularly in relation to pharmaceutical products, by providing exceptions that allow certain imports for public interest, such as ensuring more affordable access to medications.

Utilizing Aristotle's theory of justice, parallel imports can be examined through the lenses of distributive and commutative justice. Distributive justice emphasizes the protection of trademark holders' rights over their investments and innovations, while commutative justice advocates for fairness and balance in commercial transactions. Therefore, the regulation of parallel imports should ideally protect the exclusive rights of trademark holders while still permitting certain imports to facilitate product accessibility within society.

To address these issues, the concept of *ius constituendum* (future law) should be developed with a balanced approach that considers market freedom, intellectual property protection, and consumer access. More specific and transparent regulatory frameworks are required to ensure that parallel imports are conducted in compliance with standards that safeguard the interests of all stakeholders, including trademark holders, authorized distributors, and consumers.

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