

WEAKNESSES OF THE TERRITORIAL PRINCIPLE IN TRADEMARK PROTECTION (Case Study of The Trademark ARM ARUMI Moto Parts Owned by PT Dtech Inovasi Indonesia)

Gerri Endra Jaya¹, Budi Santoso²

¹ Student of the Faculty of Law, Diponegoro University, Semarang, Indonesia

² Lecturer of the Faculty of Law, Diponegoro University, Semarang, Indonesia

ABSTRACT: Intellectual Property is intangible wealth. Intellectual property is an important aspect for the industry to monopolize the inventions that have been discovered. There are issues in the trademark protection system, namely the territorial principle. The territorial principle is a principle that emphasizes that the protection of intellectual property is only granted within the territory of the relevant country and does not cover global protection. This writing uses a normative legal writing method, with an approach through legislation and case studies. Data is collected from literature studies. The territorial principle has weaknesses because the inventor only receives protection in the country where they register. This opens up opportunities for the inventions that have been discovered to be owned by others outside the territory of the application registered by the inventor. The case of ARM ARUMI Moto Parts owned by PT Dtech Inovasi Indonesia serves as evidence of the weakness of trademark protection based on the territorial principle. The trademark ARM ARUMI Moto Parts, which has been registered in Indonesia, can still be registered in Malaysia and the Philippines with similar brand labels, phonetics, classes, and goods by parties other than PT Dtech Inovasi Indonesia.

KEYWORDS: ARM ARUMI Moto Parts, Territorial Principle, Intellectual Property.

I. INTRODUCTION

Intellectual property according to David Bainbridge is that area of law which concerns legal rights associated with creative effort or commercial reputation and goodwill. The definition of intellectual property is understood in a legal conception because intellectual property is very close to the protection of intellectual property. Meanwhile, according to the Microsoft Encarta Dictionary, Intellectual Property is defined as a noun that refers to wealth protected by law and has certain criteria in order to be protected by the authorities responsible for the protection of intellectual property.

Intellectual property arises due to competition and disputes about the ownership of an invention discovered in the world. History records that intellectual property first developed in Venice, Italy in 1470. Intellectual property played a strategic role at that time because many scientists published their inventions, and these inventions needed to be protected, with exclusive rights held by the inventor who first discovered them. Scientists who emerged in 1470, such as Galileo, Caxton, Archimedes, and others, sought to obtain protection for their inventions and to monopolize the inventions they had developed.

Since the introduction of intellectual property protection in 1470 in Venice, the protection of intellectual property rights has begun to receive serious attention to protect inventors who have successfully made discoveries that are considered to have added value. The development of intellectual property has led to what is known as intellectual property rights. Intellectual property rights are rights regulated under property law. Thus, anyone who possesses intellectual property rights, in an intangible manner, has a form of wealth or property in the field of intellectual property.

OK Sadikin defines intellectual property rights as property rights whose source comes from human thought or reasoning manifested as immaterial objects. Intellectual property rights are understood as intangible wealth, but the owner of intellectual property still receives economic and exclusive rights so that no one can freely use the inventions first introduced by the inventor. Intellectual property according to Insan Budi Maulana is divided into 2 (two) major parts, namely:

1. Industrial Property Rights or industrial wealth rights relate to inventions, specifically in parts that have relevance to industry. Industrial Property Rights include intellectual property in patents, trademarks, industrial designs, trade secrets, and integrated circuit layouts; and
2. Copyrights or copyright which is intellectual property to protect findings in the form of works of art, songs, literature, and matters related to other creations.

WEAKNESSES OF THE TERRITORIAL PRINCIPLE IN TRADEMARK PROTECTION (Case Study of The Trademark ARM ARUMI Moto Parts Owned by PT Dtech Inovasi Indonesia)

One of the intellectual properties is industrial property rights. The development of modern times has resulted in the emergence of many patents, industrial designs, or trademarks registered by the owners of industrial property rights. Intellectual property is protected by each country, therefore patents, trademarks, and industrial designs owned by inventors must be registered in their respective countries.

In records based on data, applications for the registration of intellectual property rights in the region of the Association of Southeast Asian Nations (ASEAN) tend to increase every year and the number of applications tends to vary. The following diagram shows the number of applications for the registration of intellectual property rights in ASEAN:

Figure 1. Number of Applications for the Registration of Intellectual Property Rights in ASEAN

Flag	Country	Patents	Designs	Trademarks
	Brunei	1,651	199	58,161
	Cambodia	1,486	1,261	141,775
	Indonesia	198,350	94,349	1,748,809
	Lao PDR	197	553	66,043
	Malaysia	210,622	40,141	1,070,440
	Myanmar	0	127	9,870
	Philippines	77,171	21,314	655,880
	Singapore	232,612	43,757	543,729
	Thailand	183,133	82,269	1,230,251
	Viet Nam	116,539	55,830	826,831

Source: ASEAN IP Register

Applications for the registration of intellectual property rights in ASEAN show a fairly high number. In the data, applications for intellectual property rights in the form of trademark applications are the highest across all ASEAN countries with a significant gap between the number of trademark applications and the number of patent and industrial design applications. This indicates that the application for trademark protection in ASEAN is very high.

Based on the Trade Related Aspects of Intellectual Property Rights (TRIP's) Article 15, trademarks are defined:

“Any signs, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colors as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.”

TRIP's is the legal basis for international agreements that have been ratified by many countries around the world. TRIPS serves as the legal foundation for the protection of intellectual property existing in the world, and member countries that ratify TRIP's can create legislation in their countries referring to the TRIP's Agreement.

In addition to TRIP's, the legal basis that can be used as a reference in the protection of intellectual property, particularly trademarks, includes:

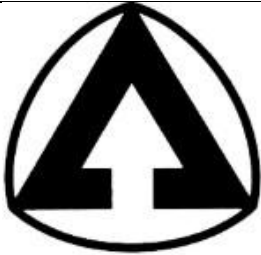
1. TRIP's Agreement in 1994 ratified by the Government of Indonesia through Law Number 7 of 1994;
2. Paris Convention ratified by the Government of Indonesia through Presidential Decree Number 15 of 1997;
3. Trademark Law Treaty (TLT) ratified by the Government of Indonesia through Presidential Decree Number 17 of 1997;
4. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks ratified by the Government of Indonesia through Government Regulation Number 22 of 2018;
5. Law Number 20 of 2016 concerning Trademarks and Geographical Indications along with its implementing regulations.

Law Number 20 of 2016 concerning Trademarks and Geographical Indications, hereinafter referred to as UU Merek, defines a trademark as: “A trademark is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in 2 (two) dimensions and/or 3 (three) dimensions, sounds, holograms, or combinations of 2 (two) or more of these elements to distinguish goods and/or services produced by individuals or legal entities in the trade of goods and/or services.”

WEAKNESSES OF THE TERRITORIAL PRINCIPLE IN TRADEMARK PROTECTION (Case Study of The Trademark ARM ARUMI Moto Parts Owned by PT Dtech Inovasi Indonesia)

Trademarks are divided into 2 (two) parts, namely trademarks for goods and service marks. In Indonesia, the classification of trademarks for goods is always marked with class 1-34, while service marks are marked with class 35-45. A trademark for goods is a trademark used on goods that are traded with the aim of distinguishing the goods produced by the owner of the trademark from other goods produced by other parties. Meanwhile, a service mark is a trademark used on services traded by the owner of the mark to distinguish it from other services owned by other parties. Furthermore, here are some trademarks for goods and service marks that exist in Indonesia:

Table 1. Trademarks for Goods and Service Marks in Indonesia

Merek Dagang	Merek Jasa
 aerostreet (Merek Dagang Aerostreet di Kelas 25)	 J.CO (Merek Jasa J.CO di Kelas 35)
 EIGER (Merek Dagang Eiger di Kelas 5)	 XXI (Merek Jasa XXI di Kelas 41)
 ASUS (Merek Dagang ASUS di Kelas 9)	 Shopee (Merek Jasa Shopee di Kelas 45)

Various applications for the registration of trademarks and service marks are registered by the trademark owners to the Director General of Intellectual Property (DJKI) of the Ministry of Law of the Republic of Indonesia. The purpose of registering these marks is to obtain protection for the marks that have been developed and used by the trademark owners so that no other party uses the marks, causing confusion among the public regarding the marks.

Intellectual property protection currently is based on territorial protection. Territorial protection means that trademarks registered in Indonesia do not directly apply globally, so their protection is limited to the country of Indonesia. Territorial protection is adopted by member countries of TRIPs, which results in the fact that if a trademark has been registered in Indonesia, it is not necessarily protected in other countries, for example, in Malaysia or the Philippines.

This is a weakness in the protection of intellectual property. Intellectual property protection should be understood as a group of systems that embody the dreams of the state to provide recognition, respect, and protection to every resident who has worked hard to make discoveries or contribute intellectual works that can be useful for the country. Intellectual works produced through reasoning to generate a discovery must be valued. Therefore, appreciation for the results of works must be protected through holistic and progressive intellectual property protection for the creation of a fair industrial climate. However, intellectual property protection faces challenges when intellectual property is protected only within territorial limits and does not apply globally.

The territorial principle is a principle that causes intellectual property protection to be protected only where the intellectual property is registered. The territorial principle, when defined in The Territorial Principle in Criminal Law, is a principle that states

WEAKNESSES OF THE TERRITORIAL PRINCIPLE IN TRADEMARK PROTECTION (Case Study of The Trademark ARM ARUMI Moto Parts Owned by PT Dtech Inovasi Indonesia)

that legal jurisdiction depends on the place where a criminal act is committed. In line with this, the territorial principle in intellectual property results in intellectual property protection that is territorial in nature and does not apply internationally. This harms brand owners who have developed their brands but are imitated and used by others in different countries.

One case illustrating the weakness of intellectual property protection, particularly trademarks adhering to the territorial principle, is the trademark ARM ARUMI Moto Parts owned by the Indonesian company PT Dtech Inovasi Indonesia, which has received protection in Indonesia but was counterfeited by irresponsible parties in Malaysia and the Philippines. The applicants for the ARM ARUMI Moto Parts trademark in Malaysia and the Philippines are not affiliated with PT Dtech Inovasi Indonesia, but due to the weakness of intellectual property protection, the trademark owned by PT Dtech Inovasi Indonesia can easily be counterfeited by others in Malaysia and the Philippines.

Based on the description above, the author is interested in writing an article titled WEAKNESS OF THE TERRITORIAL PRINCIPLE IN TRADEMARK PROTECTION (Case Study of the Trademark ARM ARUMI Moto Parts owned by PT Dtech Inovasi Indonesia). The author will elaborate on what is meant by the territorial principle and how the weakness of the territorial principle in the trademark protection system, particularly in the case of the ARM ARUMI Moto Parts trademark in Indonesia, Malaysia, and the Philippines, owned by three different owners.

II. RESEARCH METHOD

The research method used by the author is normative legal research. Research using normative legal research is based on approaches and analyses of laws and regulations and case approaches. This approach is used by the author to understand and analyze a problem more broadly and holistically. The data collection used by the author in this research is through library research. The data collected comes from scientific works such as scientific journals, books, dictionaries, and others. The writing that has been analyzed will be described to see the relationship between variables. In this case, it is the weakness of the territorial principle in the intellectual property protection system.

III. RESULT

The Weakness of the Territorial Principle in the Protection of the ARM ARUMI Moto Parts Trademark.

A trademark as stated in the Trademark Law is defined as a brand or sign on goods to distinguish the goods of the trademark owner from those of other parties. Trademarks play an important role in the industry because these brands are listed on the products resulting from the industry that will be marketed. The trademark ARM ARUMI Moto Parts is a trademark developed by an entrepreneur from Indonesia. The trademark ARM ARUMI Moto Parts is registered in classes 11, 12, and 35 and focuses on the machinery industry and the manufacture of motorcycle spare parts, with sales aimed at domestic sales and a small market abroad.

Furthermore, here is a summary of the trademark ARM ARUMI Moto Parts owned by PT Dtech Inovasi Indonesia:

Table 2. Trademark owned by PT Dtech Inovasi Indonesia

Marks	List of goods or services
 REGISTERED Registration Number IDM001162985	Class 11: Air conditioners for vehicles, Anti-glare devices for vehicles, apparatus for lighting, heating, steam generating, cooking, cooling, drying, ventilating, water supply and sanitation purposes, vehicle indicator bulbs, VEHICLE LAMP COPs, defrosters for vehicles, refrigeration installations for vehicles, water valves for air conditioning systems for vehicles, ventilation fans, backup lights for land vehicles, vehicle dynamo lamps, brake lights for vehicles, motorcycle lamps, lamps for vehicles, blower motors for air conditioners for vehicles, motorcycle lamp instrument panels, heating equipment for vehicles, air cleaners, not part of machines, lighting (LED) for vehicles, temperature control devices for vehicles, boiler pipes [tubes] for heating installations, vehicle reflectors, VEHICLE LAMP HOUSINGS, radiator caps, humidifier units as part of vehicles.

WEAKNESSES OF THE TERRITORIAL PRINCIPLE IN TRADEMARK PROTECTION (Case Study of The Trademark ARM ARUMI Moto Parts Owned by PT Dtech Inovasi Indonesia)

 REGISTERED Registration Number IDM001168601	Class 12: anti-glare devices for vehicles, theft deterrent devices for vehicles, hitch hooks for vehicles, axles for vehicles, brake parts for vehicles, handlebar parts, ball joints for vehicles, tyres for vehicles, drive shafts for land vehicles, other than parts of motors and engines, bearings (for land vehicles), vehicle number plate frames, steering balls for vehicles, brake drums for land vehicles, bicycle bottom brackets, chassis for land vehicles, engine mounts for land vehicles, handlebar mounts for motorcycles, mechanical elements for land vehicles, vehicle luggage hooks, clutch gears for vehicles, gearing for land vehicles, hubs for land vehicles, direction indicators for vehicles, spokes for land vehicles, seats for motor vehicles, throttle cables for motorcycles, transmission cables for vehicles, seat covers for vehicles, calipers, disc brake linings, brake rubbers (ash caps), horns for vehicles, clips adapted for fixing parts of motor vehicles to the body of a car, steering knuckles, for vehicles, clutches for vehicles, axle couplings or axle connectors [vehicles [land]], seats for land vehicles, Electric engines and motors for motorcycles, scooters, three-wheeled vehicles and four-wheeled vehicles, Motors for vehicles, mudguards for land vehicles, vehicle footboards, parachutes for restraining vehicle movement, springs [land vehicles], brake linings for vehicles, brake caliper protectors for vehicles, Seat protectors for vehicles (seat covers), handlebar clamps, motorcycle axle covers, tire covers for vehicles, mirror bolt covers, vehicle engine covers and protectors, gear covers, brake caliper covers, brake master covers, motorcycle radiator covers, side covers for two-wheeled vehicles, vehicle steering wheel cover, cover for vehicle gas tank, anti-skid equipment for vehicle wheels, suspension shock absorbers for vehicles, shock absorbers [land vehicles], suspension shock absorbers for land vehicles, gears for land vehicles, axles for land vehicles, PROPORTIONING VALVE (BRAKE FLUID DIVIDER), rack end part of vehicle (car), frame for land vehicles, transmission chain for land vehicles, disc brakes for vehicles, brakes for land vehicles, wheels for land vehicles, brake hose for vehicles, steering wheel for vehicles, stabilizer bar for land vehicle suspension, Front and rear wheel stabilizer, standard for land vehicles, shock absorber suspension for land vehicles, vehicle suspension tube, patch for repairing vehicle tires, turn signal for land vehicles, gas tank for land vehicles, luggage place for vehicles, vehicle seat, transmission for land vehicles, gear shift lever for motorcycles, brake fluid cap, wheel nap cap for land vehicles, vehicle oil cap, air pump [vehicle accessories].
 REGISTERED Registration Number IDM001238641	export and import of heavy equipment and spare parts, Motorcycle spare parts and accessories sales agent services, wholesale distributor services for automotive spare parts and components, wholesale services related to motor vehicle spare parts, online retail services, retail services related to motor vehicle spare parts, Retail services, wholesale and online stores, including retail bakeries, pharmacies, and auto parts services, online wholesale store services, spare parts and components inventory management for manufacturers and suppliers, Sales of goods online or offline, both retail and wholesale for electrical or electronic goods accessories products.

WEAKNESSES OF THE TERRITORIAL PRINCIPLE IN TRADEMARK PROTECTION (Case Study of The Trademark ARM ARUMI Moto Parts Owned by PT Dtech Inovasi Indonesia)

The brand owned by PT Dtech Inovasi Indonesia in the table has received protection from DJKI Ministry of Law of the Republic of Indonesia. However, due to the territorial principle, the brand cannot be protected in other countries even though the trademark search system can be viewed at the World Intellectual Property Organization (WIPO).

After gaining popularity for the sale of motorcycle engines and spare parts in Indonesia, this has been used by other parties to "ride on" the fame of the ARM ARUMI Moto Parts brand in Indonesia for the purpose of enriching themselves. Counterfeiting of the ARM ARUMI Moto Parts brand has occurred in 2 (two) different countries, namely Malaysia and the Philippines. Products with the ARM ARUMI Moto Parts brand owned by PT Dtech Inovasi Indonesia have indeed been sold several times in Malaysia and the Philippines. The sales included the ARM ARUMI Moto Parts trademark on every item sold to Indonesia, Malaysia, and the Philippines.

Seeing the opportunity for the brand that has been developed by PT Dtech Inovasi Indonesia and the weakness of the territorial principle in brand protection, other parties in Malaysia and the Philippines registered the same brand in the same class for similar goods, thus allowing them to monopolize the sale of goods with the ARM label in Malaysia and the Philippines. Counterfeiting of the trademark has caused economic harm and has violated the intellectual work that has been developed. Furthermore, below is a comparison of the brand labels owned by PT Dtech Inovasi Indonesia registered in Indonesia and the brand labels registered in Malaysia and the Philippines in the name of other parties.

Table 3. Comparison of Brand Labels Arm Arumi Moto Parts in Indonesia, Malaysia, and the Philippines

Etiket Merek milik PT Dtech Inovasi Indonesia	Etiket Merek milik Low Mei Yean di Malaysia	Etiket Merek milik Chen. Zhengrong di Filipina
 Kelas 12	 Kelas 12	 Kelas 12

In the table above, the brand ARM ARUMI Moto Parts owned by PT Dtech Inovasi Indonesia, ARUMI Moto Parts ARM owned by Low Mei Yean, and ARUMI Moto Parts ARM owned by Chen Zhengrong have similarities in pattern, phonetics, and class and similar goods. These similarities should serve as a reason to reject the registered brands in Malaysia and the Philippines; however, instead of rejecting them, the brands can actually be registered.

Malaysia and the Philippines, as members of the World Trade Organization (WTO) and having ratified the Paris Convention, must strictly adhere to the regulations set forth in the Paris Convention regarding the protection and safeguarding of trademarks.

Article 6 of the Paris Convention states:

- (1) The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.
- (2) A period of at least five years from the date of registration shall be allowed for requesting the cancellation of such a mark. The countries of the Union may provide for a period within which the prohibition of use must be requested.
- (3) No time limit shall be fixed for requesting the cancellation or the prohibition of the use of marks registered or used in bad faith."

Article 6 of the Paris Convention emphasizes that member countries that have ratified the Paris Convention must reject an application for a similar trademark or a trademark that is an imitation that may cause confusion due to the registration of that trademark.

In addition, the Paris Convention also emphasizes that a registered trademark must be rejected if it has similarities to another trademark and is used on similar products. This can certainly serve as a basis for the Governments of Malaysia and the Philippines, particularly for the Ministry handling intellectual property, to reject the application for ARM ARUMI Moto Parts class 12 owned by Low Mei Yean and Chen Zhengrong because a similar trademark has previously been registered for similar product use in Indonesia. The Paris Convention must be enforced in the intellectual property protection regime. The recognized international conventions serve as a legal basis to provide fair protection for inventors of industrial property rights. This can be seen when, prior to the existence of international conventions, there were difficulties in protecting intellectual property due to the

WEAKNESSES OF THE TERRITORIAL PRINCIPLE IN TRADEMARK PROTECTION (Case Study of The Trademark ARM ARUMI Moto Parts Owned by PT Dtech Inovasi Indonesia)

challenges of harmonizing the laws of one country with another.

The Weakness of the Territorial Principle and the Need for a Centralized System in the WIPO Search Channel for Intellectual Property Registration

Trademark protection must be taken seriously because trademarks are industrial property rights. The lack of optimized trademark protection by WIPO and member countries that ratified the TRIPS agreement impacts many sectors, for example, the economic sector. Counterfeiting of trademarks that occurs today is not entirely the fault of the trademark owners. Trademark owners are known to spend a lot of funds to protect, promote, and maintain the existence of the trademarks they have developed. Trademarks as intangible assets have become important assets for entrepreneurs and trademark owners. Therefore, the counterfeiting of trademarks that occurs across countries is very detrimental and injures intellectual works.

Trademarks as property can be seen from the values of famous trademarks. For example, the Coca-Cola trademark is valued at 39 billion US dollars. These values are certainly similar to the values of the PEPSI, LEVI'S, EIGER trademarks, and other trademarks. Trademark protection that only applies across territorial boundaries has resulted in the emergence of bad faith in trademark registration applications. The case of ARM ARUMI Moto Parts has indicated that the weakness of trademark protection has caused economic and moral losses to the owner of ARM ARUMI Moto Parts who resides in Indonesia. Economic losses, for example, include a decline in sales due to the presence of similar products circulating in the market with the same trademark label. In addition, sales have decreased due to policies from third parties that blacklist the sale of similar products due to trademark violations.

The essence of these violations is found in trademark infringements on products sold in Malaysia because the owner of the ARM ARUMI Moto Parts trademark is Low Mei Yean, who counterfeited the ARM ARUMI Moto Parts trademark owned by PT Dtech Inovasi Indonesia. The global trademark protection system should be centralized through WIPO. WIPO, as a channel for intellectual property searches, should be usable by every country to check whether the trademark to be registered does not have similarities with existing trademarks. By implementing this, it can be ensured that the registered trademark is the one first registered by the owner, thus adhering to the principle of first to file.

The first to file system means that an industrial property right is granted protection due to registration. Therefore, if one has industrial property rights, it is obligatory to register in order to obtain protection. The first to file protection not only means that protection is granted due to registration, but also means that protection will be given to whoever registers first with the relevant authority.

Consequently, if a similar trademark is registered, the protection will be granted to the trademark owned by the party that registered first. In the case of ARM ARUMI Moto Parts, the registration conducted in Malaysia and the Philippines under a name other than PT Dtech Inovasi Indonesia should no longer be able to obtain protection. This is because the registration date of the ARM ARUMI Moto Parts trademark in Indonesia was done prior to the registration in Malaysia and the Philippines.

IV. CONCLUSION

Based on the description written above, the author draws several conclusions, namely:

1. The territorial principle is a principle known in the trademark protection system. This principle means that intellectual property protection, particularly industrial property rights, is only granted limited to the country requested by the applicant for protection.
2. The weakness of the territorial principle is evident in the case of the ARM ARUMI Moto Parts trademark. The ARM ARUMI Moto Parts trademark developed in Indonesia by PT Dtech Inovasi Indonesia was counterfeited by another party in Malaysia and the Philippines with similar labels, phonetics, classes, and goods. Strangely, the application for the ARM ARUMI Moto Parts trademark in Malaysia by Low Mei Yean was granted protection by the intellectual property protection authority, just as the application for the ARM ARUMI Moto Parts trademark in the Philippines by Chen Zhengrong was granted protection in the Philippines. This results in uncertainty in the trademark protection system. According to the Paris Convention, the application for the ARM ARUMI Moto Parts trademark in Malaysia and the Philippines should have been rejected due to its similarity with an already existing trademark. The role of the trademark examiner is also needed to check the WIPO channels. The purpose of this is to ensure that no identical trademarks are owned by different individuals. As a result of the weakness of the territorial principle, PT Dtech Inovasi Indonesia, which regularly exports products to Malaysia, is disrupted because the trademark used by PT Dtech Inovasi Indonesia is monopolized by irresponsible authorities in Malaysia.

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WEAKNESSES OF THE TERRITORIAL PRINCIPLE IN TRADEMARK PROTECTION (Case Study of The Trademark ARM ARUMI Moto Parts Owned by PT Dtech Inovasi Indonesia)

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