

## **ABSTRACT**

AULIVIA ADJANI TRIHARSO (00000024773)

### **“CANCELLATION OF TRADEMARK BASED ON SIMILARITY IN PRINCIPLE OR OVERALL (CASE STUDY NUMBER 39/Pdt.Sus-Merek/2018/PN.Niaga.Jkt.Pst.)”**

(x+96 pages: 6 pictures)

Within the economic concept, a Mark is an asset for companies which has an economic value. A Mark functions as a distinguishing element for goods or services provided by a person or legal entity with other goods or services provided by another person or legal entity. According to Law Number 20 Year 2016 concerning Trademarks and Geographical Indications (“UU MIG”), if a similarity of dominant element exists between one Mark and the other which gives an impression on the existence of similarity, whether in terms of shape, way of placement, way of writing or combination between elements, or even similarity in terms of pronunciation of the Mark will be considered as a substantial similarity. Within this research, the author uses the normative juridical research based on living legal norms in Indonesia. This research also uses the normative and case approach of Decision Number 39/Pdt.Sus-Merek/2018/PN.Niaga.Jkt between Mark “WD-40” owned by WD Company against Mark “GET ALL-40” owned by Benny Bong. Based on the legal research conducted, mark “GET ALL-40” is proven to have similarity of dominant element with Mark and Painting “WD-40” namely similarity of blue and yellow colors, placement of element composition, as well as similarity of placement of number “-40”. Within the panel of judges’ consideration, they also acknowledged the existence of bad faith. In the registration of a well-known mark, although UU MIG does not provide sufficient explanation regarding bad faith, the judges assessed that the plagiarism conducted by “Get-All 40” causes an unfair business competition, outwitted and deceived customers, that being said, the registration of “GET ALL-40” mark was registered in bad faith pursuant to the elucidation of Article 21 paragraph (3) of UU MIG. Therefore, the role of judges plays an important role in assessing and interpreting the understanding of well-known mark and substantial or whole similarity within the dispute case they handle.

Reference: 70 (1984 - 2020)

Keyword: Well-Known Marks, Trademark Cancellation, Similarity in Principle, Bad Faith