

ABSTRACT

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JURIDICAL REVIEW OF BAD FAITH IN THE APPLICATION FOR TRADEMARK REGISTRATION (ARTICLE 21 PARAGRAPH 3 ACT NUMBER 20 OF 2016 ON TRADEMARK AND GEOGRAPHICAL INDICATION)

(xiii + 113 pages)

Trademark is distinctive mark of authentically through which the product of particular manufactures or the rendible commodities of particular merchants may be distinguished from those of others. According to Indonesian law, regulations concerning trademark is written in Act Number 20 of 2016 on Trademark and Geographical Indication (Act). Based on that written law, Indonesia uses a constitutive system in registering a trademark. This system requires the owner of the product or commodity to register it straight to the trademark office for it to be legally protected. Based on Article 21 paragraph 1, the trademark that is to be registered shall be denied of registration if the brand or trade name has similarities with other brands. In addition, the registered trademark must not be based on bad faith (Article 21 paragraph 3). Bad faith, generally implying or involving actual or constructive fraud, or design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. This regulation may seem promising, but there has been a flaw in the disposition of bad faith as one of the terms in registering a trademark in Act No. 20 of 2016 on trademark and geographical indication. The legal substance regulated in Article 21 paragraph 3 has been accommodated in Article 21 paragraph 1 of the act. As seen that there has been some disadvantages to the Indonesian society caused by this inconsistency, this thesis provides proofs and evidences that would eventually suggest the lawmakers to eliminate article 21 paragraph 3 of the act.

Key Words: Trademark, Registration, Bad Faith, Eliminate

References: 38 (1942-2015)