

ABSTRAK

Joshua Bakti Radityo (01659190022)

PROSES BANDING PADA KOMISI BANDING MEREK DAN PENGAJUAN GUGATAN PADA PENGADILAN NIAGA DALAM SENGKETA PERLINDUNGAN MEREK TERKENAL YANG BELUM TERDAFTAR DI INDONESIA

(xv + 126 halaman)

Menurut Pasal 21 ayat (1) huruf b UU No. 20 Tahun 2016 tentang Merek dan Indikasi Geografis suatu permohonan pendaftaran merek harus ditolak apabila merek tersebut memiliki persamaan dengan merek terkenal milik pihak lain. Melalui ketentuan ini seharusnya merek terkenal yang hendak didaftarkan di Indonesia tidak akan ditolak permohonannya karena memiliki persamaan dengan merek yang sudah terdaftar di Indonesia. Namun pada implementasinya, banyak ditemukan kasus merek yang terdaftar di Indonesia memiliki persamaan atau meniru merek-merek terkenal yang ada di dunia. Dengan adanya fakta ini, proses banding pada Komisi Banding Merek dan gugatan melalui Pengadilan Niaga memiliki peranan penting untuk memberikan kepastian hukum dalam proses pendaftaran dan penyelesaian sengketa merek bagi pemilik merek terkenal.

Perlu dilakukan penelitian untuk mengetahui penyebab perlindungan merek terkenal yang belum terdaftar belum dapat dilakukan secara efektif di Indonesia dan meneliti hubungan antara proses banding pada Komisi Banding Merek dan gugatan pada Pengadilan Niaga agar kedua opsi penyelesaian sengketa tersebut dapat menunjang efektifitas perlindungan merek. Penelitian ini dilakukan secara yuridis normatif dengan pendekatan Undang-Undang dan studi kasus. Berdasarkan hasil penelitian ditemukan adanya kekosongan hukum antara hubungan proses banding pada Komisi Banding Merek dengan gugatan Pengadilan Niaga yang menciptakan ketidakpastian dalam penegakan hukum merek dan dapat merugikan hak pemilik merek yang sah. Selain itu, ketidakefektifan perlindungan merek terkenal yang belum terdaftar di Indonesia terletak pada lemahnya Struktur Hukum pada Ditjen HKI khususnya berkaitan dengan proses pemeriksaan substantif.

Referensi: 46 (1976-2018)

Kata kunci : Merek Terkenal, Komisi Banding Merek, Pengadilan Niaga

ABSTRACT

Joshua Bakti Radityo (01659190022)

PROCESS OF APPEAL AT COMMISSION OF MARKS APPEAL AND SUBMISSION OF LAWSUIT AT COMMERCIAL COURT REGARDING DISPUTES OF FAMOUS TRADEMARK PROTECTION WHICH HAS NOT BEEN REGISTERED IN INDONESIA

(xv + 126 pages)

According to Article 21 paragraph (1) letter b of Law no. 20/2016 on Trademarks and Geographical Indications an application for registration of a mark must be rejected if the mark is similar to a well-known trademark owned by another party. Through this provision, the application for a well-known trademark to be registered in Indonesia should not be rejected because it has similarities with a trademark already registered in Indonesia. However, in its implementation, there are many cases of trademarks registered in Indonesia that have the same or imitate well-known brands in the world. With this fact, the appeal process to the Mark Appeal Commission and the lawsuit through the Commercial Court have an important role in providing legal certainty in the registration process and the settlement of trademark disputes for well-known mark owners.

Research needs to be carried out to find out why the protection of well-known trademarks that have not been registered cannot be carried out effectively in Indonesia and examine the relationship between the appeal process at the Comission of Marks Appeal and the lawsuit at the Commercial Court so that the two dispute resolution options can support the effectiveness of trademark protection. This research was conducted in a normative juridical manner using a statute approach and case studies. Based on the research results, it was found that there was a legal vacuum between the relationship between the appeal process at the Comission of Marks Appeal and the Commercial Court lawsuit which created uncertainty in the enforcement of trademark law and could harm the rights of the legitimate trademark owner. In addition, the ineffectiveness of the protection of well-known trademarks that have not been registered in Indonesia lies in the weak legal structure at the Directorate General of IPR, especially in relation to the substantive examination process.

References: 46 (1976-2018)

Keywords: Well Known Trademark, Comission of Marks Appeal, Commercial Court