

ABSTRAK

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PERBANDINGAN PENERAPAN PERLINDUNGAN HUKUM TERHADAP KEMASAN DAGANG (*TRADE DRESS*) DI INDONESIA DAN AMERIKA SERIKAT

(xii + 125 halaman: 7 gambar; 7 tabel)

Penelitian ini membandingkan pengaturan hukum dan penerapan perlindungan *trade dress* di Indonesia dan Amerika Serikat (AS) melalui putusan pengadilan di kedua negara. Melalui metode penelitian hukum normatif, penelitian ini menemukan bahwa AS secara eksplisit mengakui dan melindungi *trade dress* di bawah *Lanham Act*, yang meliputi keseluruhan tampilan produk seperti bentuk, warna, dan desain, dengan dua kriteria utama dalam perlindungan *trade dress*, yaitu non-fungsionalitas dan *secondary meaning*. Sebaliknya, di Indonesia, pengaturan *trade dress* belum diatur secara eksplisit dalam Undang-Undang No. 20 Tahun 2016 tentang Merek dan Indikasi Geografis (UU 20/2016), sehingga perlindungan elemen visual produk hanya diatur secara tidak langsung sebagai bagian dari merek. Di Amerika Serikat, kasus *Adidas Stan Smith vs Skechers Onix* menunjukkan penerapan perlindungan berdasarkan kriteria non-fungsionalitas dan *secondary meaning*. Sementara itu, di Indonesia, kasus *Jack Daniel's vs Jackstar* dan *Dolpin vs Delfino* mengilustrasikan penerapan hukum yang terbatas pada elemen visual merek, tanpa kriteria khusus untuk *trade dress*. Akibatnya, keputusan pengadilan di Indonesia lebih bervariasi karena kurangnya kriteria khusus dan seringkali tidak sejalan dengan praktik internasional seperti di Amerika Serikat.

Kata Kunci : merek, kemasan dagang, *trade dress*

Referensi : 54 (1984-2023)

ABSTRACT

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COMPARISON OF THE IMPLEMENTATION OF LEGAL PROTECTION FOR TRADE DRESS IN INDONESIA AND THE UNITED STATES

(xii + 125 pages: 7 images; 7 tables)

This research compares the legal regulations and application of trade dress protection in Indonesia and the United States (US) through court decisions in both countries. Through normative legal research methods, this study finds that the US explicitly recognizes and protects trade dress under the Lanham Act, which includes the overall appearance of the product such as shape, color, and design, with two main criteria in trade dress protection, namely non-functionality and secondary meaning. In contrast, in Indonesia, trade dress regulations have not been explicitly regulated in Law No. 20 of 2016 concerning Trademarks and Geographical Indications (Law 20/2016), so that the protection of visual elements of the product is only indirectly regulated as part of the brand. In the United States, the *Adidas Stan Smith vs Skechers Onix* case shows the application of protection based on non-functionality and secondary meaning criteria. Meanwhile, in Indonesia, the *Jack Daniel's vs Jackstar* and *Dolpin vs Delfino* cases illustrate the application of the law that is limited to the visual elements of the brand, without specific criteria for trade dress. As a result, court decisions in Indonesia are more varied due to the lack of specific criteria and are often not in line with international practices such as in the United States.

Keywords: trademark, trade dress, trade dress protection

References: 54 (1984-2023)