

Analisis Perbandingan Penerapan Kriteria dan Perlindungan Hukum Terhadap Merek Terkenal Dalam Sengketa Merek di Indonesia, Malaysia, dan India = Comparative Analysis of Criteria and Legal Protection of Well-known Marks in Trademark Disputes in Indonesia, Malaysia, and India

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Abstrak

Pengaturan mengenai merek di Indonesia diatur dalam Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis. Pengaturan terkait merek dalam undang-undang tersebut juga meliputi pengaturan mengenai merek terkenal. Adanya ketentuan terkait merek terkenal dalam undang-undang tersebut ditandai dengan diaturnya kriteria merek terkenal dan perlindungan merek terkenal. Selain itu, Permenkumham No. 67 Tahun 2016 sebagai peraturan turunan dari UU MIG, memuat ketentuan yang lebih spesifik berkenaan dengan kriteria merek terkenal. Namun demikian, sekalipun UU MIG telah mengatur perlindungan terhadap merek terkenal, pengaturan tersebut dirasa belum cukup karena tidak mencakup perlindungan merek terkenal dari tindakan passing off dan dilusi merek. Tidak adanya pengaturan terkait perlindungan merek terkenal dari tindakan passing off dan dilusi merek dapat merugikan pemilik merek terkenal dan konsumen dari merek terkenal tersebut. Oleh karenanya, dalam skripsi ini Penulis menganalisis dan membandingkan pengaturan mengenai perlindungan merek terkenal, khususnya dari tindakan passing off dan dilusi merek antara Indonesia, Malaysia, dan India. Selain itu, Penulis juga menganalisis penerapan kriteria merek terkenal serta penerapan doktrin passing off dan dilusi merek dalam sengketa merek terkenal di Indonesia, Malaysia, dan India melalui putusan pengadilan yang telah berkekuatan hukum tetap. Dalam penulisan skripsi ini, Penulis menggunakan metode penelitian yuridis-normatif dengan data yang diperoleh melalui studi kepustakaan. Hasil penelitian menunjukkan bahwa pengaturan terkait perlindungan merek terkenal dalam UU MIG, belum mencakup keseluruhan unsur doktrin passing off dan dilusi merek, sehingga belum dapat dikatakan bahwa Indonesia menerapkan doktrin passing off dan dilusi merek dalam ketentuan mereknya.

.....Regulation of trademark in Indonesia is regulated in Law No. 20 of 2016 concerning Trademarks and Geographical Indication. The Law No. 20 of 2016 also includes the regulation of well-known trademarks. The existence of provisions related to well-known trademarks in the Law No. 20 of 2016 is marked by the stipulation of criteria for well-known trademarks and protection of well-known trademarks. In addition, Permenkumham No. 67 of 2016 as a derivative regulation of the Law No. 20 of 2016 contains more specific provisions regarding the criteria for well-known trademarks. However, even though the Law No. 20 of 2016 has regulated the protection of well-known trademarks, the regulation is deemed insufficient because it does not cover the protection of well-known trademarks from passing off and trademark dilution. The absence of regulation related to the protection of well-known trademarks from passing off and trademark dilution can be detrimental to well-known trademark's owners and consumers. Therefore, in this thesis the Author analyzes and compares the regulation regarding the protection of well-known trademarks, especially from passing off and trademark dilution between Indonesia, Malaysia, and India. In addition, the Author also analyzes the application of the criteria for well-known trademarks, especially the application of the doctrine

of passing off and trademark dilution in well-known trademark disputes in Indonesia, Malaysia, and India through court decisions that have permanent legal force. In writing this thesis, The Author uses a juridical-normative research method with data obtained through library research. The result of the research shows that the regulation related to the protection of well-known trademarks in Law No. 20 of 2016 does not cover all elements of the doctrine of passing off and trademark dilution, so it cannot be said that Indonesia applies the doctrine of passing off and trademark dilution in its trademarks provisions.