

Daya Pembeda Merek Tiga Dimensi: Analisis Terhadap Doktrin Shadow Test dalam Pemeriksaan Merek Tiga Dimensi di Indonesia = Distinguishing Power of Three-Dimensional Marks: an Analysis of the Shadow Test Doctrine in the Examination of Three-Dimensional Marks in Indonesia

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Abstrak

Skripsi ini membahas mengenai konsep perlindungan Merek Tiga Dimensi di Indonesia dari berbagai sisi, baik definisi, perlindungan, penerapan hukum, maupun pemeriksaan pendaftaran Merek Tiga Dimensi. Pengaturan Merek Tiga Dimensi tunduk terhadap Undang-Undang Nomor 20 Tahun 2016 tentang Merek (UU Merek) dan Peraturan Menteri Hukum dan HAM Nomor 67 Tahun 2016 tentang Pendaftaran Merek (Permenkumham Pendaftaran Merek). Akan tetapi, dalam UU Merek dan Permenkumham Pendaftaran Merek tidak diatur secara khusus tentang pemeriksaan pendaftaran Merek Tiga Dimensi ini. Selain peraturan perundang-undangan, petunjuk teknis dari Direktorat Jenderal Hak Kekayaan Intelektual Kementerian Hukum dan HAM pun belum mengatur tentang pemeriksaan pendaftaran Merek Tiga Dimensi. Dengan demikian, terdapat beberapa permasalahan hukum yang terjadi, mulai dari tolok ukur pendaftaran objek tiga dimensi hingga pelaksanaan pemeriksaan, khususnya pemeriksaan substantif, pendaftaran Merek Tiga Dimensi di Indonesia. Oleh karena itu, diperlukan beberapa solusi untuk menyelesaikan permasalahan hukum tersebut. Solusinya antara lain merumuskan Peraturan Menteri Hukum dan HAM berupa petunjuk teknis pendaftaran Merek Tiga Dimensi di Indonesia dan penerapan shadow test dalam pemeriksaan substantif Merek Tiga Dimensi.

.....This mini-thesis discusses the concept of Three-Dimensional Trademark protection in Indonesia from various sides, including the definition, protection, legal application, and examination of Three-Dimensional Trademark registration. The regulation of Three-Dimensional Trademark is subject to Act No. 20 of 2016 on Trademark (Trademark Law) and Minister of Law and Human Rights Regulation Number 67 Year 2016 on Trademark Registration (Minister of Law and Human Rights Regulation on Trademark Registration). However, the Trademark Law and the Minister of Law and Human Rights Regulation on Trademark Registration do not specifically regulate the examination of Three-Dimensional Trademark registration. In addition to the laws and regulations, the technical guidelines of the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights have not yet regulated the examination of Three-Dimensional Trademark registration. Thus, there are several legal problems that occur, ranging from the benchmarks of registration of three-dimensional objects to the implementation of examination, especially substantive examination, of Three-Dimensional Trademark registration in Indonesia. Therefore, some solutions are needed to solve these legal problems. The solutions include formulating a Minister of Law and Human Rights Regulation in the form of technical guidelines for the registration of Three-Dimensional Trademarks in Indonesia and the application of the shadow test in the substantive examination of Three-Dimensional Trademarks.