

## Analisa teori dan aspek hukum merek deskriptif di Indonesia

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### Abstrak

[<b>ABSTRAK</b><br>

Istilah-istilah deskriptif digunakan dalam perdagangan untuk menyampaikan informasi kepada konsumen mengenai atribut, sifat atau keunggulan suatu produk. Merek yang hanya terdiri dari istilah deskriptif ini disebut sebagai merek deskriptif. Merek adalah suatu tanda yang digunakan untuk membedakan barang atau jasa dari suatu produsen dan produsen lain. Karena itu merek deskriptif seharusnya tidak dapat didaftar karena dianggap tidak mempunyai daya pembeda.. Merek deskriptif di Indonesia tidak dapat didaftar, baik di dalam ketentuan UU merek No. 21 tahun 1961 yang menggunakan sistem pendaftaran deklaratif, maupun dalam UU Merek No. 19 tahun 1992 yang menggunakan sistem pendaftaran konstitutif, hingga UU Merek No. 15 tahun 2001 yang berlaku saat ini. Namun dalam kenyataannya di Indonesia terdapat merek-merek deskriptif yang didaftar, terutama berdasarkan Putusan Pengadilan. Tesis ini meneliti mengenai masalah pendaftaran merek deskriptif di Indonesia, dengan menggunakan pendekatan konseptual yang meneliti mengenai konsep Secondary Meaning, pendekatan undang-undang dengan meneliti undang-undang merek di Indonesia dan pendekatan komparatif dengan melakukan perbandingan undang-undang merek di beberapa Negara berkaitan dengan masalah pendaftaran merek deskriptif. Pendekatan kasus juga dilakukan untuk meneliti putusanputusan pengadilan yang menjadi dasar didaftarkannya merek-merek deskriptif di Indonesia. Dari hasil penelitian yang dilakukan didapat hasil bahwa masalah utama dalam pendaftaran merek deskriptif ini adalah tidak jelasnya pengaturan mengenai merek deskriptif ini dalam Undang-Undang Merek di Indonesia. Hal ini mengakibatkan terjadi perbedaan pendapat antara Hakim dan Pemeriksa merek mengenai merek deskriptif ini. Seharusnya dibuat suatu pengaturan yang jelas dan rinci mengenai pendaftaran merek deskriptif dengan memperhatikan keseimbangan antara kepentingan pemilik merek dengan kepentingan pihak ketiga sesuai dengan ketentuan dalam Paris Convention dan TRIPS Agreement

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Descriptive terms commonly used in the course of trade to convey information about attribute, characteristics or quality of a product, to consumers. Trademark, consists solely of descriptive terms is called Descriptive Marks. Trademark is a sign, used to distinguished goods or services from a producer from another. Therefore Descriptive Mark should not be registered because it lacks

distinctive nature. Descriptive Mark in Indonesia is non-registrable, in the provision of The Trademark Act No. 21/1961 which used declarative system or in its predecessor, The Trademark Act No. 19/1992, even in the current Trademark Law in Indonesia, The Trademark Act No.15/2001. On the contrary, there are Descriptive Marks registered in Indonesia, based on Court and Supreme Court Decision in Indonesia. This Tesis analyses the problem regarding the registration of Descriptive Marks in Indonesia, using Conceptual Approach which analyze the concept of Secondary Meaning, and using Statute Approach to analyze Trademark Law in Indonesia, and also using Comparative Approach to compare Trademark Law in various country in relation to Descriptive Mark. Case-Approach also used to analyze various Court and Supreme Court decisions in Indonesia that become Landmark Decision in Descriptive Mark registration problems. Based on this Legal Research, we find that the major problem in the problematic registration of Descriptive Mark is because of the ambiguity of the current Trademark Law in Indonesia, regarding Descriptive Mark. This problem is causing different opinion between Judges and Trademark Examiner regarding Descriptive Mark. There should be more clear and comprehensive provisions in Indonesian Trademark Law about Descriptive Mark, which also considered the legitimate interests of trademark owners and third parties, based on the provisions in Paris Convention and TRIPS Agreement.;

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