

Tinjauan yuridis ratifikasi Singapore Treaty on the law of trademarks bagi perkembangan hukum merek di Indonesia = Legal review ratification Singapore Treaty on the law of trademarks for the development of trademark law in Indonesia

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Abstrak

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Sengketa pelanggaran merek dalam dunia perdagangan tidak terlepas dari adanya itikad buruk dari pelaku usaha untuk memenangkan persaingan yang kadangkala dilakukan secara tidak jujur/ tidak fair. Salah satu tindakan tersebut adalah tindakan passing off. Indonesia yang menganut sistem first to file (adanya keharusan mendaftarkan merek untuk memperoleh perlindungan) sebagai sistem perlindungan merek, pada dasarnya tidak mengenal konsep passing off, karena passing off adalah bentuk perlindungan hukum bagi merek yang tidak terdaftar/ unregistered trademarks. Perkembangan teknologi menyebabkan merek juga mengalami perkembangan dengan munculnya non-traditional trademark seperti merek suara, hologram, tiga dimensi, aroma dan sebagainya yang walaupun belum diatur dalam Undang-Undang Nomor 15 Tahun 2001 tentang Merek namun telah diakomodasi dalam Singapore Treaty on The Law of Trademarks. Tesis ini bertujuan menganalisis hal yang menarik dari Singapore Treaty apabila dikaitkan dengan bentuk perlindungan hukum merek dan konsep pendaftaran merek di Indonesia serta menganalisis perlu/ tidaknya Indonesia melakukan ratifikasi terhadap Singapore Treaty untuk mengembangkan konsep perlindungan hukum merek di Indonesia. Penelitian yang akan digunakan peneliti adalah bersifat eksploratif dan deskriptif, dengan pendekatan kualitatif. Metode yang peneliti gunakan adalah metode penelitian hukum normatif dengan pendekatan konseptual. Hasil penelitian menunjukkan bahwa ratifikasi Singapore Treaty relevan dilakukan Indonesia bagi perkembangan hukum merek nasional. Adapun hasil ratifikasi sebaiknya dapat diakomodasi dalam Rancangan Undang-Undang tentang Merek.

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ABSTRACT

Trademark infringement dispute in world trade cannot be separated from bad faith of entrepreneurs to win the competition which is sometimes done dishonestly/ unfair. One of such action is the act of passing off. Indonesia, which adopts a first to file system (registration is a must to gain protection of trademarks) as a trademark protection system, basically does not recognize the concept of passing off, because passing off is a common law tort which can be used to enforce unregistered trademark rights. Technological developments lead to the developing

of trademarks with the emergence of non-traditional trademarks such as sound trademarks, holograms trademarks, three-dimensional trademarks, scent trademarks, etc. Although haven't been regulated by Law Number 15 Year 2001 concerning Marks, those trademarks have been accommodated in Singapore Treaty on the Law of Trademarks. This thesis aims to analyze the interesting case of the Singapore Treaty in associated with a form of legal protection of the trademarks and the concept of a trademark registration in Indonesia as well as to analyze the needs of Indonesia to ratify Singapore Treaty for development of the concept regarding trademarks protection in Indonesia. This research characters are exploratory and descriptive. Qualitative approach is used by researcher with normative legal research methods and conceptual approach. The results shows that the ratification of the Singapore Treaty is relevant to be implemented in order to develop Indonesia trademarks law. The results of the ratification should be able to be accommodated in the Draft Law on Marks.; Trademark infringement dispute in world trade cannot be separated from bad faith

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