

Pelindungan merek terkenal asing yang merupakan nama orang terkenal dalam sengketa di pengadilan Indonesia ditinjau dari segi hukum perdata internasional: studi kasus Pierre Cardin = Protection of foreign well-known marks using well known person's names in dispute on Indonesian court from the perspective of private international law: case study of Pierre Cardin

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Abstrak

Hukum perlindungan merek di Indonesia telah mengatur mengenai merek terkenal sejak tahun 1992. Sejak saat itu pula, terdapat suatu ketentuan dalam undang-undang yang melarang nama orang terkenal untuk didaftarkan sebagai merek di Indonesia. Namun, hingga saat keberlakuan undang-undang merek terbaru tahun 2016, belum ada penjelasan mengenai definisi dari kualifikasi "orang terkenal" tersebut, meskipun telah banyak terdapat merek-merek yang merupakan nama orang di Indonesia maupun negara-negara lainnya. Merek terkenal dan merek yang merupakan nama orang terkenal pun seringkali beririsan satu sama lain. Hal tersebut menjadi suatu permasalahan besar dalam kasus sengketa merek "Pierre Cardin", yang kemudian menimbulkan pertanyaan tentang apakah merek "Pierre Cardin" sebagai merek terkenal asing yang merupakan nama orang dilindungi di Indonesia sesuai undang-undang yang berlaku.

.....The law of trademark protection in Indonesia has regulated the protection of well known marks since 1992. Since then, the law also regulated the prohibition to register a trademark using well known person's names in Indonesia. However, until the latest trademark law was enforced in 2016, there has been no explanation by the law regarding the definition of a "well known person", despite the vast use of marks using person's names in Indonesia and other countries. This caused a major problem in the case of "Pierre Cardin" trademark dispute, which then raised a question regarding the protection of the trademark as a foreign well known mark that uses a well known person's name in Indonesia, according to the governing law. This research is aimed to analyze the problem on the basis of the related regulation in the trademark law that was enforced in Indonesia at the time of the dispute, which was Law No. 15 of 2001, using the normative juridical method through a descriptive typology. It is concluded from the research that the trademark Pierre Cardin is not protected in Indonesia according to the court judgement which was influenced by factors related to the governing law and the court proceedings.