

ABSTRAK

PERLINDUNGAN HUKUM BAGI PEMEGANG HAK ATAS MEREK TERKENAL TERHADAP PERBUATAN PENDAFTARAN MEREK OLEH PIHAK KETIGA BERDASARKAN UNDANG-UNDANG NOMOR 20 TAHUN 2016 TENTANG MEREK DAN INDIKASI GEOGRAFIS (Studi Putusan Mahkamah Agung Nomor 557 K/Pdt.Sus-HKI/2015)

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Hak atas merek adalah hak yang bersifat khusus yang diberikan oleh negara kepada pemiliknya untuk menggunakan sendiri merek atau memberikan izin pada orang lain untuk menggunakannya. Agar hak merek mendapat perlindungan dan pengakuan dari negara, maka pemilik merek harus mendaftarkannya kepada negara.

Permasalahan dalam penelitian tesis ini adalah pengaturan hukum tentang pemegang hak atas merek menurut undang undang nomor 20 tahun 2016 tentang merek dan indikasi geografis, perlindungan hukum bagi pemegang merek terkenal terhadap perbuatan pendaftaran merek oleh pihak ketiga, Pertimbangan hukum hakim atas pendaftaran merek terkenal oleh pihak ketiga berdasarkan putusan No. 557 K/Pdt.Sus-HKI/2015.

Penelitian menggunakan sifat penelitian deskriptif analitis, jenis penelitian yang digunakan dalam penelitian ini adalah yuridis normatif dengan menggunakan studi pustaka serta analisis data menggunakan metode kualitatif yang menghasilkan data deskriptif-analitis.

Kesimpulan dalam penelitian tesis ini yaitu bahwa pengaturan hukum tentang pemegang hak atas merek diatur dalam Pasal 1 angka 5 UU No. 20 tahun 2016 tentang merek dan indikasi geografis. Perlindungan hukum bagi pemegang merek terkenal terhadap perbuatan pendaftaran merek oleh pihak ketiga dilindungi secara preventif maupun represif. Perlindungan preventif mendaftarkan merek ke Dirjen HAKI. Merek dapat dilindungi secara represif secara administratif melalui penghapusan merek yang terdaftar di Dirjen HAKI dan secara hukum melalui gugatan di Pengadilan Niaga untuk pembatalan dan pelanggaran merek atau di Pengadilan Negeri untuk kasus pidana. Pertimbangan hukum hakim dalam putusan No. 557 K/Pdt.Sus-HKI/2015 adalah hanya berpijak kepada asas *first to file* yang sudah diakui di Indonesia, namun Hakim mengabaikan ketentuan merek terkenal yang diakui pula dalam UU Merek. Hal tersebut dikarenakan hakim tidak mempertimbangkan fakta-fakta persidangan yang diketahui bahwa merek Pierre Cardin telah memenuhi ketentuan yang diatur dalam UU merek mengatur suatu merek disebut terkenal jika telah didaftar beberapa negara, terdapat pengetahuan umum masyarakat, telah memiliki reputasi berdasarkan promosi yang dilakukan secara gencar dan besar-besaran.

Kata Kunci : Perlindungan Hukum, Pemegang Hak, Merek Pendaftaran Merek, Pihak Ketiga.

ABSTRACT

LEGAL PROTECTION FOR WELL-KNOWN TRADEMARK RIGHTS HOLDERS AGAINST TRADEMARK REGISTRATION ACTIONS BY THIRD PARTIES BASED ON LAW NUMBER 20 OF 2016 CONCERNING TRADEMARKS AND GEOGRAPHICAL INDICATIONS (Study of Supreme Court Decision Number 557 K/Pdt.Sus-HKI/2015)

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The right to a brand is a special right granted by the state to its owner to use the brand themselves or to give permission to others to use it. In order for brand rights to receive protection and recognition from the state, the brand owner must register it with the state..

The problem in this thesis research is the legal regulation regarding trademark rights holders according to Law Number 20 of 2016 concerning trademarks and geographical indications, legal protection for well-known trademark holders against trademark registration acts by third parties, and legal considerations of judges regarding the registration of well-known trademarks by third parties based on decision No. 557 K/Pdt.Sus-HKI/2015.

The research uses descriptive analytical research, the type of research used in this research is normative juridical using library research and data analysis using qualitative methods which produce descriptive-analytical data

The conclusion of this thesis research is that the legal regulation regarding trademark rights holders is regulated in Article 1 number 5 of Law No. 20 of 2016 concerning trademarks and geographical indications. Legal protection for well-known trademark holders against trademark registration acts by third parties is protected preventively and repressively. Preventive protection registers a trademark with the Directorate General of Intellectual Property Rights. A trademark can be protected repressively administratively through the deletion of a trademark registered with the Directorate General of Intellectual Property Rights and legally through a lawsuit in the Commercial Court for cancellation and trademark infringement or in the District Court for criminal cases. The judge's legal considerations in decision No. 557 K/Pdt.Sus-HKI/2015 were only based on the first to file principle that has been recognized in Indonesia, but the Judge ignored the provisions of well-known trademarks which are also recognized in the Trademark Law. This is because the judge did not consider the facts of the trial which were known that the Pierre Cardin trademark had fulfilled the provisions stipulated in the Trademark Law which stipulates that a trademark is called well-known if it has been registered in several countries, there is general public knowledge, has a reputation based on promotions that are carried out intensively and on a large scale.

Keywords : Legal Protection, Rights Holders, Trademark Registration, Third Parties