



**LEGAL ANALYSIS OF LAWSUIT FORMALITIES ASPECT
WITH PROPOSITION OF WELL-KNOWN MARKS BY
FOREIGN MARKS (CASE STUDY OF WELL-KNOWN MARK
NUMBER 790 K/PDT.SUS-HKI/2020)**

THESIS

RACHEL SEPTIANA IRAWAN

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FACULTY OF HUMANITIES

LAW STUDY PROGRAM

CIKARANG

January, 2023



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THESIS

**Submitted as one of the requirements to
obtain Bachelor of Law degree**

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January, 2023

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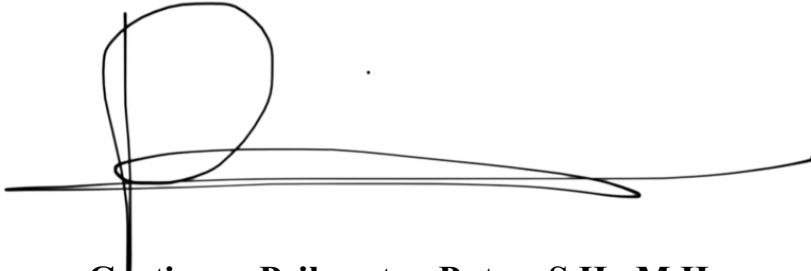
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ABSTRACT

Name : Rachel Septiana

Title : Legal Analysis of Lawsuit Formalities Aspect With Proposition of Well-Known Marks By Foreign Marks (Case Study Of Well-Known Mark Number 790 K/Pdt.Sus-HKI/2020)

Brand has become a very important identity in the trade sector and the world economy. If there is a foreign well-known mark, whose mark has been registered in Indonesia by another party but the foreign well-known mark has not been registered before, of course this has the potential to cause a dispute. In the case of Decision Number 790 K/Pdt.Sus-HKI/2020 a foreign mark filed a lawsuit against the Indonesian party who had previously registered the mark on the same brand, with the proposition that it was a well-known mark and trademark cancellation lawsuit. However, in the court the Panel of Judges had not yet reached the stage of examining the main case, this was related to the formality aspect of the lawsuit filed by the Defendant. In his analysis, the author used a normative juridical approach and found defects that were not in accordance with the formality aspect, which made the lawsuit formally flawed and the decision became the decision of *Niet Ontvankelijke Verklaard* (NO). The inappropriate aspect of formality is, in the making a power of attorney and *ne bis in idem* defects. The author also finds a deficiency in Law Number 20 of 2016 concerning Trademarks and Geographical Indications in terms of trademark registration in Indonesia, there are no requirements regarding mark philosophy and this results in multiple interpretations and different interpretations regarding well-known brands and similarities in essence or in whole.

Keywords: Not yet registered in Indonesia, Well-Known Mark, Aspect of Formality, Mark Philosophy, Multiple interpretations

ABSTRAK

Nama : Rachel Septiana

Judul : Analisa Hukum Mengenasi Aspek Formalitas dalam Gugatan Merek Terkenal oleh Merek Luar (Studi Kasus Merek Terkenal Nomor 790 K/Pdt.Sus-HKI/2020)

Merek telah menjadi identitas yang sangat penting dalam sektor perdagangan dan ekonomi dunia. Apabila terdapat merek terkenal milik negara luar Indonesia yang mereknya telah didaftarkan di Indonesia oleh pihak lain namun merek terkenal tersebut belum didaftarkan sebelumnya tentu hal ini berpotensi menimbulkan sengketa. Dalam kasus Putusan Nomor 790 K/Pdt.Sus-HKI/2020 merek asing melakukan gugatan terhadap pihak Indonesia yang melakukan pendaftaran merek terlebih dahulu atas merek yang sama, dengan dalil merek terkenal dan Gugatan pembatalan merek. Namun dalam persidangan tersebut Majelis Hakim belum sampai tahap pemeriksaan pokok perkara, hal ini berkaitan dengan aspek formalitas dalam gugatan yang diajukan Tergugat. Dalam analisisnya penulis menggunakan metode pendekatan yuridis normative dan menemukan kecacatan yang tidak sesuai dengan aspek formalitas hal ini yang membuat gugatan menjadi cacat formil dan putusan tersebut menjadi putusan Niet Ontvankelijk Verklaard (NO). Aspek formalitas yang tidak sesuai adalah dalam pembuatan surat kuasa dan cacat ne bis in idem. Penulis juga menemukan kekurangan dari Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis dalam hal pendaftaran merek di Indonesia yaitu tidak adanya persyaratan mengenai filosofi merek dan hal ini mengakibatkan adanya multitafsir dan perbedaan interpretasi mengenai merek terkenal dan persamaan pada pokoknya atau keseluruhannya.

Kata kunci : Belum didaftarkan di Indonesia, Merek Terkenal, Aspek Formalitas, Filosofi Merek, Multitafsir

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