



Three-Dimensional Functional Brand Protection in Indonesia After the Implementation of Law Number 6 of 2023 (Comparison of Regulations in the United States and Japan)

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Abstract

Since the entry into force of the Law No. 20 of 2016 on Trademarks and Geographical Indications, Indonesia has officially granted recognition to 3 (three) dimensional trademarks. Nevertheless, this Act only provides provisions concerning the formality requirements for filing applications for registration of 3 (three) dimensional trademarks. Substantially, the Act No. 6 of 2023 on the Establishment of Government Regulations replaced the Law No. 2 of 2022 on the Creation of Works into the Act adding a provision in article 20 of the Act no. 20 of 2016 that forms of a functional nature cannot be registered as trademarks. There is no explanation of the meaning of functional form in this Act. Based on this problem, the author tries to study the implications of the current Copyright Act using grammatical interpretation methods as well as using a comparative approach to the provisions in the United States and Japan. This article explains about the three-dimensional distinctive force, associated with the secondary meaning theory. Based on research in literature, it is known that there is a breakdown between trademarks and patents in the registration of forms of a functional nature. This article also reinforces the argument that a functional form cannot be protected as a trademark.

Keywords: *Three Dimensional Trademarks; Distinctiveness; Secondary Meaning; Functionality Doctrine*

Introduction

Intellectual property has a major impact in the global economy. In today's increasingly complex globalization, mass commerce requires producers to have an identity for marketed products. Which is a product identity that makes it an important asset in product marketing.¹ According to Kotler and Keller, the brand is very important, as it can influence customer behavior and guarantee future earnings.² As a result,

¹ Ranti Fauza Mayana dan Tisni Santika, *Hukum Merek "Perkembangan Aktual Perlindungan Merek dalam Konteks Ekonomi Kreatif di Era Disrupsi Digital"* (Bandung: Refika Aditama, 2021), hlm.41.

² K Bagus Wardianto, "Implementasi Konsep Ekuitas Merek di Indonesia: Sebuah Perspektif Keuangan", *Jurnal Business UHO*, Vol.4 No. 2 (Juli 2019): 222

companies from various industries have given priority to building and managing the brand to maximize the value of these intreal assets. A company for example, is possible to have more than one brand. It is not uncommon even for companies that have more than one brand of the same product and then classify them according to lifestyle and consumer habits. Call it PT Indofood CBP Successfully prosperous Among the instant brand noodles are indomies, supernoodles, sarimi, with indomies at the highest levels of the product. This is not without reason, for in the business of mapping consumer preferences and levels becomes necessary in marketing products to master the market. Since Indonesia's protection system is constituent, then under article 3 of act no. 20 of 2016, the right to birth or acquisition by registration.³

Brands exist in the trade and/or services systems can make it easier for consumers to select products based on each manufacturer's reputation. Through brands, consumers can come to know the origin and source of any desired item or service, so these conditions can build the brand loyalty. In practice, the brand is used to build consumer loyalty.⁴ Consumer loyalty to certain brands is an important asset to the manufacturer. Consistent with this, in its official page, the world intellectual property organization gives brands' definition asa marker which can distinguish goods or services from one company to another.⁵

A brand is, ina conventional sense, a sign consisting of combinations of Numbers, letters, words, pictures, logos, or combinations of them. Such marks are often referred to as the traditional brand. Article 1 Numbers 1 The Law number 20 in 2016 of brands and geographical indicators defines the brand asa marker that can be graphically displayed of pictures, logos, names, words, letters, Numbers, sets of colors in 2 (two) or 3 (three) ora combination of 2 (two) or more of these elements to distinguish goods and/or services produced by persons or corporations in the trade activities of goods and/or services. By this definition, for a mark to be a brand should be represented graphically, have a different power, and be used in the trade activities of goods and/or services. As the age progresses, the scope of brand protection is extended to any single voice, color, scent, touch, hologram or even product movement.⁶ Even so, sprawl in brand laws and geographical indications includes only the three-dimensional brands, sound brands, and holographic brands.⁷

A three-dimensional brand is not set clearly in the laws Number 20 in 2016. Aside from brand definition 1 figure 1, the rules regarding a three-dimensional brand are mentioned only in section 4 of the verse (6). This stipulation sets out only requirements in a three-dimensional brand application that includes a three-dimensional brand label of a front, back, top, bottom, sideways, and claim description of protection. In general, the requirements for registration of a traditional brand are valid for a three-dimensional brand.⁸ In addition to meeting the requirements for formalities, a three-dimensional brand must also go through a substantiating examination stage. This means that the absolute as well as the relative basis of brand denial as indicated in article 20 and article 21 of the law number 20 in 2016 also applied to the three-dimensional brand.

On the date 2 November 2020, Indonesia passes laws Number 11 in 2020 of creative work. Act number 11 in 2020 was further declared unconstitutional by the constitutional court. To fill the legal vacuum, the government then issue The rule of government substituting act number 2 in 2022 on copyright labor, which is finally set into law through Act 6 in 2023. This law changed the time of brand

³ Rendy Alexander, "Penerapan Prinsip First to File pada Konsep Pendaftaran Merek di Indonesia", *Jurnal Kertha Semaya*, Vo. 10 No.9, (2022): 2116.

⁴ Aris Prio Agus Santoso dkk, *Hukum atas Kekayaan Intelektual* (Yogyakarta: Pustaka Baru Press,2020),hlm.49.

⁵ WIPO, *Trademarks*, <http://www.wipo.int/trademarks/en/>, diakses pada 31 Agustus 2023.

⁶ Agung Indriyanto dan Iرنie Mela Yusnita,*Aspek Hukum Pendaftaran Merek*(Jakarta:Rajawali Pers,2017),hlm. 159.

⁷ Ranti Fauza, *Op.cit*, hlm.145.

⁸ Agung Indriyanto dan Iرنie Mela Yusnita, *Op.cit*, hlm.167.

substantiation check into 30 days of work, which had previously been 90 days of work. Moreover, within the law there are provisions for additional reasons for refusing their appeal. Article 180 of the copyright law at work states that they cannot be registered when they contain a functional form. Nevertheless, copyright law does not provide an explanation regarding functional forms. Leaving from this matter, the authors did research on the implications of the three dimensions of the post-valid brand Settings of the law 6 in 2023 and attempt to do a legal interpretation of when a three-dimensional form is said to be functional, slices with other laws of intellectual property, and relative to functional mark Settings by comparing functional three-dimensional signs in other countries such as the United States and Japan. The question that provides the point for discussion in this regard is to know the valid implications of the law number 6 in 2023 to three-dimensional applications, its functional properties in Indonesia, and to know the arrangements for functional three-dimensional signs in the United States and Japan.

In analyzing the above two questions, the writer USES a constitutional approach, a conceptual approach, and a comparative approach. Legislation approaches are used because it requires analysis of the norms associated with the three-dimensional brand. Conceptual approaches are used because writers have tried to use grammatical interpretations of functional words on three-dimensional brands. A comparative approach is used because the writer feels the need to study the functional, three-dimensional brands in developed countries such as the United States and Japan.

Problem Formulation

Based on the background of the problem that has been described in the section above, there is a problem formulation that will be discussed in this writing, namely:

- (1) How can the implication The law number 6 in 2023 on the regulation of replacement government law number 2 in 2022 About copyright work into a law against three-dimensional brands of protection in Indonesia?
- (2) How does the number of functional dimensions of sign 3 (three) in the United States and Japan compare?

Research methods

The method used in this research is normative juridical, which is research using statutory regulations as study material. The data collection technique used by researchers in this research is a library study technique where data is obtained from scientific writings and research in articles and other journals.

Etymologically, "the term normative legal research comes from English, namely *normative legal research* , in Dutch it is called *normative juridisch onderzoek* , while in German it is called *normative juristische recherche*.⁹

⁹Salim HS and Erlies Septiana Nurbani, 2014, *Application of Legal Theory in Thesis and Dissertation Research*, Raja Grafindo Persada, Jakarta, Pg . 18

Discussion

1. The Implication the Law Number 6 in 2023 on the Regulation of Replacement Government Law Number 2 in 2022 About Copyright Work into a Law Against Three-Dimensional Brands of Protection in Indonesia

Before they expire law Number 20 in 2016, Indonesia knows only traditional brands, such as pictures, Numbers, letters, photographs, names, or combinations of such elements. After law Number 20 in 2016, there was an expanding brand definition that also included sound, holographic, and three-dimensional brands. Brand 3 (three) dimensions may be packaging, product shape, or spatial design into which products or services are sold.¹⁰ Juridical, new Indonesia's three-dimensional brand registration is regulated after the invitation the law number 20 in 2016 on brands and geographical indications. Based on the author's search on the intellectual property database site, a three-dimensional application for registration was found Before the law Number 20 in 2016 came into effect. It must be acknowledged that although brand 3 (three) of dimension was not yet regulated the law 15 in 2001, the directorate general of intellectual property has provided protection against the brand 3 (three) dimensions. Some of them:

Table 1.

A three-dimensional brand application before its expiration the law number 20 in 2016 (intellectual property database).

| No | Brand | No. Registration | Receipt Date | Class |
|----|---|------------------|-------------------|-------|
| 1. | Johnnie Walker Red Label + 3d bottle painting | IDM000414615 | February 18, 2010 | 33 |
| 2. | Johnnie Walker Black Label + 3d bottle painting | IDM000414613 | February 18, 2010 | 33 |
| 3. | Johnnie Walker Blue Label + 3d bottle painting | IDM000414616 | February 18, 2010 | 33 |
| 3. | Johnnie Walker Gold Label + 3d bottle painting | IDM000414620 | February 18, 2010 | 33 |

According to the writer, by referring to the provisions in chapters 4 and 5 In the law number 15 in 2001, the above three brands' registration can take place as long as they are not obstructed by the absolute basis and relative rejection of brand registration as arranged in chapters 5 and 6 Under law 15 in 2001. On his way, the law 15 in 2001 later was repealed and replaced with law number 20 in 2016 on brands and geographical indications. the law number 20 in 2016 provides the basis for brand 3 (three) dimensional protection law in Indonesia. As mentioned in article 1 figure 1 of the law 20 in 2016, that a brand should be represented graphically, having different power and being used in trade goods and/or services. Graphic representation of a brand 3 (three) dimensional form of visible view up, down, sideways, front, or back of the 3 sign (three) of the dimensions submitted in a request. According to the authors, there is no problem in achieving graphic representation of brand 3 (three) dimensions.

In addition to graphic representation, the 3 (3) mark of dimensions must have different power. To be protected, they must have a differentiating power either through the distinctiveness or through the distinctiveness gained (secondary meaning).¹¹ The differentiating power derived from constant use is found in descriptive brands (representing a product). The function of the differentiating power is to convey the unique characteristics of the brand and source of goods and services so that the consumer can

¹⁰ *Ibid.* hlm.161.

¹¹ Cita Citrawinda Noerhadi, *Perlindungan Merek Terkenal dan Konsep Dillusi Merek dari Perspektif Global* (Jakarta : Pustaka Obor Indonesia, 2020), hlm. 158.

distinguish them from other goods and services.¹² Brand differentiating power requirements are basically designed to prevent monopolizing certain public words or descriptive words that can prevent others from using them. In addition, the terms of mark requirements have different power to appear in a memory-brand brand is a legal definition for distinguishing the goods and/or services of one company with the products of another company.¹³ A brand, including a non-traditional brand, can only be registered and protected if it has differing characteristics or characteristics.

Chapter 20 letter e the law number 20 in 2016 states that they cannot be registered when they have no differentiating power. In its explanation chapter 20 e, it states that a sign is considered to have no distinguishing power if it is too simple or too complex. The challenge in three-dimensional brand protection is how a consumer can identify a manufacturer of a product by looking at a packaging form, a product shape, or an icon without having to look at a brand name embedded in a three-dimensional sign.

In Indonesia, there is no standard in determining a brand's different power spectrum. The United States has a "spectrum of distinctized" guide used by the federal court in determining their differentiating power. Here are five kinds of brands based on the difference power.¹⁴

a. Generic brand

Generic brands are the lowest brands of differentiation because they are only common names of goods or services. Example: aqua for mineral water products.

b. A descriptive brand

A descriptive brand is a brand that USES words or terms associated with the quality or character of the goods or services offered. Example: good noodles, Indonesia's sharia bank, Singapore airlines.

c. Suggestive brand

Suggestive brands may give the consumer impression or perceptions of the characteristics and quality of the item. Example: diabetes for beverage products for diabetes people, airbus for flight service.

d. Brand brands

A brand is a brand that USES a term or word that is unrelated to the product/services offered. Example: elephants sit for sarong products, Windows for computer software products.

e. Ful brand

Ful is a brand that has no meaning whatsoever other than what it means as a brand.¹⁵ This brand is usually the word of creation. Example: Google.

Eric and mark make a deeper division of the brand based on the differentiating power that is:¹⁶

- 1) Inherently distinctive: eligible for immediate protection upon use. It consisted of 3 (three) of naphful, suggestive, and suggestive;

¹² Yuliana Utama, "Pelindungan Merek Berbasis Tingkat Daya Pembeda Ditinjau dari Doktrin Dilusi Merek di Indonesia", *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum UNPAD*, Vol. 5 No.1 (Desember 2021) :140.

¹³ Rahmi Jened, *Hukum Merek (Trademark Law) dalam Era Global dan Integrasi Ekonomi* (Jakarta: Kencana, 2017), hlm.62.

¹⁴ Dwi Agustine Kurniasih, *Apalah Arti Sebuah Nama? (What's in a Name?)*, *Rechtsvinding Online*, https://www.rechtsvinding.bphn.go.id/jurnal_online/Apalah%20Arti%20Sebuah%20Nama1_Dwi.pdf diakses pada 1 September 2023

¹⁵ Rika Ratna Permata dkk, *Pelanggaran Merek di Indonesia* (Bandung: Refika Aditama, 2021), hlm.23.

¹⁶ Rahmi Janed, *Op.Cit.*, hlm.65

- 2) Capable of being distinctive: eligible for protection only after development of consumer association (secondary meaning). The tag that includes the group is the interpretive, miss descriptive, and her personal names;
- 3) Incapable of being deceptive: not eligible for trademark protection regardless of length of use. Included in this category are: generic terms, despots, and geographically desceceptive mistried.

The next requirement of a brand is that it is used in the trade activities of goods and/or services. The long-term use of a dimensional sign 3 (three) would enable a secondary meaning to make a difference. Secondary meaning (secondary meaning) is a common term in a common law law system, where a three-dimensional sign is thought to have other functions not only as it is functional but also as a marketable agent. The concept of secondary meaning originally appears in the context of a descriptive brand protection, which is used to distinguish "source of meaning" or the sense of a word that differs from the origin of things to "primary sense of the word," since they have a function of distinguishing their origin.

Black's Law Dictionary translating secondary meaning : "A special sense that a trademark or a tradename for business, goods or services has acquired even though the trademark or tradename was not originally protectable."¹⁷

Based on practices in the United States, most of the packaging and the shape of a product is secondary meaning, so their applicant must point out that the 3 (three) of the proposed dimensions is valid. According to the authors, such practices are understandable because consumers generally do not associate the shape or packaging of a product with the identity of the manufacturer, unless it has been used constantly with major promotions.

The law number 6 in 2023 provides an expansion of the absolute reason for their rejection. In chapter 108 this law states that they cannot be registered if they contain functional forms. The requirements of a functional sign cannot be listed as a brand are not new. In developed countries like the United States, identifying a three-dimensional sign is not functional and can be given trademark protection.¹⁸ While it regulates that a functional sign cannot be registered asa brand, in law number 6 in 2023 there is no further explanation for the purpose of a functional sign.

In the science of law, where there is a provision but not clearly in application, legal discovery can be made. Legal winnowing is basically an activity in the practice of law that cannot be separated from the science (theory) of law. One method of legal discovery was the interpretation of the law. The interpretation of law is the method of discovery of the law in the case of its rules there is but is not clear to apply to events. Basically, the interpretation of the law will always be a linguistic interpretation or is often known by an objective method. The grammatical method of interpretation is a way of interpreting the requirements in legislation according to words (terms) found in the regulatory regulations by assessing the meaning of words generally used in the vernacular.¹⁹ A functional word has a root "function." According to the dictionary of English, function has several meanings, one of which means the usefulness of a matter. Whereas functional words have a defined meaning; Viewed in terms of function.²⁰

¹⁷ Garner, *Black's Law Dictionary*, hlm.1354.

¹⁸ Junimart Girsang dkk, *Hukum Merek Tiga Dimensi dan Desain Industri: Perbandingan Hukum di Indonesia, Amerika, dan Australia*, *University of Bengkulu Law Journal*, Vol.6 No.1, (2021): 68.

¹⁹ Sudikno Mertokusumo, *Penemuan Hukum Sebuah Pengantar* (Yogyakarta: Maha Karya Pustaka, 2020), hlm.70.

²⁰ Kamus Besar Bahasa Indonesia Online, <https://kbbi.web.id/fungsional>, diakses pada 3 September 2023.

According to article 108 of the law number 6 in 2023, it is stated that they cannot be registered when they have a functional form. Interpretation needs to be done, remembering that the explanatory section says "quite clearly" and does not provide a functional sense of the word. The requirements for the functional sign are also found in brand law in the United States and Japan.²¹ Provisions in the United States and Japan claim that a brand is rejected when a brand is functional. This means that when the shape of 3 (three) dimensions provide an advantage both technical and economically, the shape of 3 (three) cannot be given protection as a brand. By referencing the great explanations of the indriyanto, the brandy-check coordinator of the directorate general of intellectual property, functional benefits can be forms of being more efficient, facilitating storage/transport, giving more performance or durability, and enabling the products to fit or connect with other products.²²

The writer claims that a functional, three-dimensional form can be protected only through patent applications. In the patent system, any tool or process given for protection must have a particular function or use, whether completely or otherwise the development of existing ones. Patents are the exclusive rights of technological inventiveness for a period of time to perform an invention themselves or give consent to others to do the invention.

Patent protection is given to new inventions, inventive measures, and applicable in the industry.²³ An invention is said to be new if on the acceptance date, it is not the same as the technology revealed earlier. Containing an inventive move means that the invention is unprecedented for a person with a particular engineering skill. Applicable in the industry means that the invention can be applied to the industry as outlined in patent applications. The criteria applied to a Tracy industry, for a patent of a product, they should be able to be made repeatedly (en/se) of the same quality, whereas if an inventive is a process, they should be able to run or run in practice.²⁴ An invention must be connected to technical fields, be associated with solutions to technical problems, and be defined in a technical feature.²⁵

Intellectual property gives the holder exclusive rights to wear on his own, prohibit, or permit others to use an intellectual property. Patent is an exclusive right, in that it is a right granted only to the patent holder for a period of time either by using his own commercial rights or by assigning further rights to others.²⁶ Therefore, those not authorized to obtain patent approval were barred from using protected patents. As the above explains, when a three-dimensional product is functional, it can be protected only by patent registration. This makes it important that a functional form is not monopolized by a single manufacturer indefinitely, since brand protection may be extended without further limitation. The form must be used freely by anyone when the time of its protection is over. This is important, since brand laws give brands a length of 10 (ten) years of protection and can be extended without limiting the number of applications of extensions, so that if a form 3 (three) of a functional dimension is protected through their system, they will potentially produce a monopoly on a form.

²¹ Agung Indriyanto dan Iرنie Mela Yusnita, *Op.Cit*, hlm.202.

²² Hukum Online, <https://www.hukumonline.com/berita/a/yuk--kenali-pelindungan-objek-tiga-dimensi-antara-merek--desain-industri-dan-paten-lt63d8a0f33e584/?page=2>, diakses pada 3 September 2023

²³ Slamet Yuswanto, *Memahami Paten* (Bandung: Keri Media, 2017), hlm.17.

²⁴ Endang Purwaningsih, *Hukum Paten* (Bandung : Mandar Maju, 2019), hlm. 204.

²⁵ Direktorat Jenderal Kekayaan Intelektual, *Modul Kekayaan Intelektual Tingkat Dasar Bidang Paten* (Jakarta, 2020), hlm. 17.

²⁶ Rani Fauza Mayana dan Tisni Santika, *Kekayaan Intelektual Kesehatan Masyarakat* (Bandung: Refika, 2021), hlm.65

2. The Number of Functional Dimensions of Sign 3 (Three) in the United States and Japan Compare

Territorial principles are fundamental in the laws of international intellectual property. This principle means that an intellectual property, both brand, copyright, patent, and so forth is only protection in the countries where applications are made and given. Every country has rules on intellectual property, including a different brand. Differences can be seen either in terms of registration, filing requirements, the status of institutions that provide protection (joining under the ministry or for independent institutions), substantiating requirements, appeals, litigation mechanisms, to law enforcement through the criminal system. An arrangement regarding a brand that cannot be registered or rejected can differ from country to country. Literature says around the world there are four brand registration systems:

a. Registration without checking brands first.

According to this system of things, the brand requesting registration is promptly registered where the conditions of the request have been met, including the payment of application, inspection, registration;

b. Registration with a brand check first.

Countries such as the united states, britain, west germany, and japan first conducted examinations before listing a brand in their public offices, which was first announced in the trade journal/brand registration office for a period of time provide opportunity for the third parties to protest;

c. Registration with temporary announcements;

d. Registrations with advance reporting of another registered name have a parallel.²⁷

Differences-these differences result in a difference in the acceptance or rejection of A brand application. This means that a brand registered in country a would not necessarily be acceptable if it were filed in B, C, D, because of territorial protection and the different systems of their registration. Owners who are protected in Germany cannot urge the Indonesian government to provide top protection if Indonesia is not enabled to provide adequate protection from existing legislation. These differences are reasonable, even in other legal courts, where differences in both degrees and requirements vary, let's call leveraging a prerequisite for a transition of rights in a purchasing agreement that may differ from one country to another.

As we know, in developed countries such as the United States and Japan, dimensional brand 3 (three) arrangements have been recognized first in legislation. Indonesia, the new set of the brand 3 (3) dimensions in the law number 20 in 2016 is about the brand and geographical indication. In the lanham act section 1052 (e)(5) prohibits trademark registration for any sign of any material that is entirely functional.

The brand definition in the lanham act is as follows:"any word, name, symbol, or device, or any combination there of [that is] (1) used by a person, or (2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this act, to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown."

The definition given by the Lanham act is broad and covers all kinds of traditional and non-traditional brands. There is a functionality doctrine in the United States, for when the owners have exclusive rights to a functional mark, it is feared that legitimate rivalry would be lacking on the use of

²⁷ Endang Purwaningsih, *Paten dan Merek* (Malang: Setara Press, 2020), hlm.63.

certain features. Functionality doctrine is often a hindrance to non-traditional brand registration. Functionality doctrine sets the line between brand and patent in the case of a filed brand functional.²⁸

Functional in this regard means that the form of a product is designed to perform certain functions or USES. A form of a product is said to be functional if it is important for the use of a product, or if it directly or indirectly affects the cost and quality of a product. The functionality doctrine cannot be denied by the argument that the sign/three-dimensional form has secondary meaning. This means that while the three-dimensional sign has been able to get the consumer to identify a particular shape with the manufacturer as a result of continued long-term use, it cannot be given protection if the three-dimensional sign has a technical feature.

The terms regarding brands in Japan are set up in the 127 act of 1959, last changed with the Law nomor 3 in 2019. Brand 3 (three) dimensional protection in Japan began to be known since Japan revised brand law in 1996. Among these main changes of revision are the application of unused brand retraction systems, post-grant opposition applications, improved brand protection, the removal of associated brand systems, and three-dimensional brand protection. Another non-traditional brand has been adopted by Japan since the change of the Japanese adopted act on April 25, 2014 and is effectively valid since April 1, 2015. In addition to three-dimensional brands, Japan also provides protection against other non-traditional brands, for example:

- a. color marks. In this case it is protected by color (or the combination of colors) as a specific part of a product;
- b. Position brand, which is the brand of letters, Numbers, pictures, placed in a specific part of a product;
- c. movement brand, where a sign representation must represent a series of picture movements from beginning to end;
- d. The d-brand hologram, which when viewed from various sides can represent more than one sign;
- e. sound brand, which can identify the product manufacturers, is generally represented graphically with both notation and sonogram.

Provisions regarding marks which cannot be registered as brands are set in chapter II, Article 3. In chapter II the cartoon act, Article 3 verse (1) figure iii is mentioned in the following way:

“consists solely of a mark indicating, in a common manner, in the case of goods, the place of origin, place of sale, quality, raw materials, efficacy, intended purpose, shape (including shape of packaging; the same applies in Article 26 paragraph (1), items (ii) and (iii)), the method or features including time of production or use, quantity, price, or, in the case of services, the location of provision, quality, articles to be used in the provision, efficacy, intended purpose, modes, method or features including time, quantity or price of provision”;

According to the above regulations, Japan also does not allow functional brands to be registered. In Indonesia itself, before it expires The Law 6 in 2023 of the provision of government regulation substituting the law 2 in 2022 of labor copyright to act, no provision stating a functional form/form cannot be registered as a brand. Law number 20 in 2016 sets only the requirements of formality in applications of brand 3 (three) dimensions. Article 108 the law number 6 in 2023 of the establishment of the law number 2 in 2022 of labor copyright to act adds that functional signs cannot be registered as a brand, and so today both Indonesia, the United States, and Japan have a clear arrangement that a Functional three-dimensional forms cannot be registered as the brand

²⁸ Ranti Fauza Mayana dan Tisni Santika, *Hukum Merek, Op.Cit.*, hlm.15

Conclusion

Increasingly widespread trade in goods and services, both directly and indirectly, has affected intellectual property legislation. Indonesia's early brand protection, which simply includes traditional brands, has been known to accelerate. The law number 20 in 2016 About brands and geographical indications have recognized the three-dimensional sign as one type of brand being protected. The law provides clear requirements regarding document requirements that should be completed when applying for three-dimensional brand registration. However, within this law there is no further description of the three-dimensional brand. At present, Indonesia has a law of number 6 in 2023 on the establishment of a government regulation substituting the law no 2 in 2022 labor Copyright Act into a law. The change in this law shortened the time of brand substantiating examination to 30 (thirty) days of work. In addition, an addition was given to article 20 of the law number 20 in 2016. The stipulation that functional forms cannot be given such protection as the brand.

By using a grammatical interpretation of the provisions under article 108 of statute number 6 in 2023 on the regulation of government substituting the law 2 in 2022 on occupational copyright to act, a functional form means having technical features. The interpretation is made because there is no explanation in the regulations regarding these regulations. The United States and Japan also do not allow functional human resource protection. In the United States, although a functional form is already secondary meaning is still of secondary significance with their system of things. Writers agree with the view that a three-dimensional sign, the special functional form can be protected only through a patent system. When a functional form is protected through their system of brands, the proprietor of the brand can extend indefinitely protection time that will eventually result in monopoly on a functional form with no time limit.

Economic globalization has had an impact on Indonesia, especially on the protection of intellectual property. Intellectual property, especially the brand, needed a firm arrangement so as to ensure legal certainty, fairness, and justice for stakeholders. In three-dimensional brand 3 (three) protection, there needs to be a definite arrangement for when a functional sign is. This can be done by changing the minister's rules of law and human rights 67 in 2016 number on brand registration, as a result of an additional set of brand 3 (three) dimensions in the law number 6 in 2023.

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