



Registrasion of Sound Marks in Indonesia

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Abstract

The Purpose of this paper is to be able to identify and understand the arrangement for the registration of the sound trademark in Indonesia and the comparison with Australia and also to examine the procedure of sound marks registration in Indonesia. This research method uses normative legal research methods related to using a statutory approach and comparative approach. The results of this paper indicate that the regulation of sound mark registration in Indonesia follows the general trademark registration requirements and in the case of sound mark registration in Indonesia it does not provide a clear definition so that it can lead to legal uncertainty and even multiple interpretations. In contrast to Australia, the regulation of sound mark registration guidelines is more strict, detailed and restrictive. Registration of a Sound Mark in Indonesia can be carried out by submitting an application for registration the label attached by the applicant is in the form of a notation and a sound recording, or a sonogram.

I. Introduction

The development in the industrial sector is growing rapidly as well as the development of human capabilities in the form of creativity, taste and initiative to produce works in various fields, both art, technology and new science. A variety of new and unique intellectual works have been born from human intellectual creativity. The latest types of technology need to be given legal protection as an intellectual process of human thinking. Intellectual property rights are so widespread that they have developed over time and with the development of the times. This development cannot be separated from the era of globalization with the development of increasingly sophisticated information technology.¹

In accordance with the current economic developments, trademark is one of the valuable assets for the company because the company uses trademark in the sale of its goods and services. A well-known mark will be able to be used to develop the company's business more broadly and increase the competitiveness of other

¹ Ni Ketut Supasti Dharmawan, *Harmonisasi Hukum Kekayaan Intelektual Indonesia* (Denpasar: Swasta Nulus, 2018).

companies.² In this case, trademark holds important value in terms of marketing a product because the brand will affect the selling power of a product. Therefore it's natural to provide legal protection for trademark.³

In this modern era where the world is filled by many trademarks with high-tech designs, non-traditional trademarks have emerged as a requirement for trademark protection that has its own characteristics.⁴ Sound mark as a non-traditional trademark is one of the technical methods that popular consists of an important part of forming a well-known mark, the law of trademark serves as a protector of the sound mark.⁵ Along with the globalization era the government should be requires updating the laws and regulations in the field of intellectual property considering that the legal protection for the rightful owner of the trademark is intended to provide special rights for the trademark owner so that other parties cannot use the same mark with the goods or services they own.

Indonesian Law Act No. 20 of 2016 concerning Trademark and Geographical Indications in its development has a positive impact on trademark protection in Indonesia where the inclusion of protection for non-traditional brands in the form of sound marks as one of the distinguishing sign. The formulation of this sound mark is regulated in Article 1 Number 1 Indonesian Law Act of Trademarks and Geographical Indications which states that:

"Trademark is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in the form of 2 (two) dimensions and / or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and / or services produced by people or legal entities in the activities of trading goods and / or services."

Article 2 paragraph (3) Indonesian Law Act of the Trademarks and Geographical Indications Law also provides:

"Protection for marks consisting of signs in the form of images, logos, names, words, letters, numbers, color arrangements, in the form of 2 (two) dimensions and / or 3 (three) dimensi, sounds, holograms, or combinations of 2 (two) or more of these elements to distinguish goods and / or services produced by people or legal entities in the activities of trading goods and / or services".

² Jisia Mamahit, "Legal Protection of Brands in the Trade in Goods and Services," *Lex Privatum* 1, no. 3 (2013): 146352.

³ Agus Adi Pranatha and Ni Ketut Supasti Dharmawan, "Eksistensi Destination Branding Dalam Undang- Undang Merek Dan Indikasi Geografis," *Kertha Semaya : Journal Ilmu Hukum* 9, no. 1 (2021): 170, <https://doi.org/10.24843/ks.2020.v09.i01.p15>.

⁴ Irene Calboli, "Chocolate, Fashion, Toys and Cabs: The Misunderstood Distinctiveness of Non-Traditional Trademarks," *IIC International Review of Intellectual Property and Competition Law* (Springer Berlin Heidelberg, 2018), <https://doi.org/10.1007/s40319-017-0667-x>.

⁵ Xinyu Zhang, "From Audio Branding to Sound Trademark : A Comparative Study in the EU and the US," 2021, 409-24, <https://doi.org/10.4236/blr.2021.122023>.

Internationally the sound mark has been long regulated in the Trade Related Aspect of Intellectual Property Rights (TRIPs) of 1995, in article 15.1 TRIPs which states that the mark is:

“Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.”

Trademark as an intellectual property right is basically a sign to identify the origin of goods and services from a company that is one with goods and services issued by another company.⁶ Based on this, it can be interpreted that any sign or combination of signs can be registered as a trademark. Based on this explanation, it can be interpreted that any sign or combination of these signs can be registered as a trademark even though a condition that the brand is visually visible can be applied which in Indonesia can be referred to as a graphic appearance.

Regarding The World Intellectual Property Organization (WIPO) provides the definition of sound mark as a sign that can consist of “the sound of music, whether existing or previously reserved specifically for trademark registration purposes. These sounds may also consist of non-musical sounds either in nature (e.g. animal sounds or by meteorological or geographical features) or produced by machines and other man-made devices”.⁷

Sound mark actually become a concern related to the registration process. The Indonesian Law of Trademarks and Geographical Indications and regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 12 of 2021 concerning Amendments to the Regulation of the Minister of Law and Human Rights Number 67 of 2016 concerning Trademark Registration (hereinafter referred to as Minister of Law and Human Rights Trademark Registration of 2021) only regulates conditions related to general sound marks such as the need to attach a sound trademark label in the form of notation, sound recordings and sonograms. In this case the Trademarks and Geographical Indications Act and the 2021st Act of Trademark Registration cannot give a definition of a sound mark nor does it provide an example of making notations, sound recordings and sonograms as well as the duration of the sound mark.

⁶ Rahmi Jened, *Hukum Merek (Trademark Law) Dalam Era Global Dan Integrasi Ekonomi* (Jakarta: Kencana, 2015).

⁷ World Intellectual Property Organization - WIPO. (1993). *Introduction to Trademark Law and Practice*, 1993, https://www.wipo.int/edocs/pubdocs/en/wipo_pub_653.pdf accessed on 5 May 2022.

In the legislation, it is only regulated regarding requirements related to the registration of sound marks in general such as attaching sound mark labels in the form of notations, sound recordings and also sonograms. In the case of sound trademark registration in Indonesia, it does not provide a definition related to the sound mark and also a sample file that must be attached including its duration so that in the case of registration of a sound mark in Indonesia it can cause legal uncertainty and even multi-interpretation. This leads to an error in the registration of the sound mark caused because the conditions given by the law are very general without being accompanied by an explanation of the example of the creation. Given that sound is a non-visual sign but the absence of a sound mark definition and the vagueness of specific terms and regulations regarding the registration of a sound mark that are detailed and clear may create legal uncertainty for the applicant. In consequence based on this description, it is important to further study the "Registration of Sound Marks in Indonesia".

This writing focuses on two problems, among others, first how is the arrangement for the registration of the sound marks in Indonesia and the comparison with Australia and second, how is the procedure of sound marks registration in Indonesia. The Purpose of this paper is to be able to identify and understand the arrangement for the registration of the sound marks in Indonesia and the comparison with Australia and also to examine how is the procedure of sound marks registration in Indonesia.

From the results of the search that the author has done, the writing of the article entitled Registration of Sound Marks in Indonesia can be said to be new and no one has reviewed it before. Therefore this article has an element of renewal as a contribution to the protection sound trademark in Indonesia. Although this paper has had an update and does not contain elements of plagiarism in it.

As a comparison element the following articles will describe similar issues among others, first journal with the author Ni Putu Winda Pramesti Dewi and Ida Ayu Sukihana in 2019 entitled "Pendaftaran Suara Sebagai Merek Non Tradisional Berdasarkan Undang - Undang Nomor 20 Tahun 2016 Tentang Merek". This journal raises issues, namely: can sound be registered as a mark under Law no. 20 of 2016 and the legal consequences of a sound not being registered as a mark.⁸ Based on the observation of journal titles and issues by Ni Putu Winda Pramesti Dewi and Ida Ayu Sukihana, This journal focuses on whether the sound can be registered as a trademark in Indonesia and the legal consequences of not registering the voice as a brand in Indonesia, while in this paper that the author made there is an update where the sound mark can be registered in Indonesia, therefore in this paper the author discusses in more detail about the arrangements of sound marks registration in Indonesia and its comparison with other countries as well as procedures for registering voice marks in Indonesia in the context of protecting the sound mark itself.

⁸ Ni Putu Winda Pramesti Dewi And Ida Ayu Sukihana, "Pendaftaran Suara Sebagai Merek Non Tradisional Berdasarkan Undang - Undang Nomor 20 Tahun 2016 Tentang Merek," *Kertha Semaya : Journal Ilmu Hukum* 7, no. 5 (2019): 1, <https://doi.org/10.24843/km.2019.v07.i05.p15>.

Second, journal with the author Yoga Saputra and Yati Nurhayati in 2019 entitled "Analisis Perlindungan Terhadap Merek Non-Tradisional Ditinjau Berdasarkan Undang-Undang Nomor 20 Nomor 2016". This journal raises issues, namely: the protection of non-traditional trademarks in Indonesia and the procedures for registering non-traditional trademark in Indonesia.⁹ Based on the observation of journal titles and issues by Yoga Saputra and Yati Nurhayati, This journal focuses on whether about the importance of non-tradisional trademark protection in general also the importance of non-traditional trademark registration, while in the journal that the author created focusing on the protection of non-traditional trademark specifically sound mark which is discusses in more detail about the arrangements of sound marks registration in Indonesia and its comparison with other countries as well as procedures for registering sound marks in Indonesia. Therefore, it is ensured that this paper does not have plagiarism elements and has elements of renewal which are expected to be useful for the development of Legal Studies in Indonesia.

2. Research Methods

Legal research is a process taken to find the rules of law, legal doctrines to be able to answer existing legal issues. This paper uses normative research methods as an effort to solve problems from legal issues in this paper.¹⁰ This research will examine related to the norms or laws and regulations that regulate non-traditional trademark registration with sound differentiating power, using a statute approach, which is an approach that is carried out by examining all laws and regulations related to legal issues that are being handled and also using a comparative approach which is a method of investigation based on comparison. The technique of tracing legal materials uses document study techniques, as well as study analysis using qualitative analysis.

3. Result and Discussion

3.1. Arrangements the Sound Mark Registration in Indonesia and the Comparison with Australia

The right of a trademark can only be acquired after the trademark is registered. Trademark rights, both traditional and non-traditional, including sound marks, must be registered first in order to get legal protection for this matter in accordance with the principle of *the first to file system* adopted in the trademark registration system in Indonesia.¹¹ The regulation of sound trademark registration in Indonesia is regulated in the Law of Trademark and Geographical Indications and the Minister of Law on Trademark Registration 2021. Same as the other types of marks, sound mark registration can also be used to identify the origin of a product which the sound mark

⁹ Yoga Saputra and Yati Nurhayati, "Analisis Perlindungan Terhadap Merek Non-Tradisional Ditinjau Berdasarkan Undang-Undang Nomor 20 Nomor 2016," *Al-Adl : Jurnal Hukum* 11, no. 2 (2020): 207, <https://doi.org/10.31602/al-adl.v11i2.2603>.

¹⁰ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2021).

¹¹ Tania Novelin and Pande Yogantara S, "Perlindungan Hukum Terhadap Merek Terdaftar Akibat Tindakan Trademarks Squatting Di Indonesia," 2022, 166-76, <https://doi.org/10.24843/JMHU.2022.v11.i01.p12>.

registration requires a detailed description of the mark.¹² In Indonesian legislation, it is only regulated regarding requirements related to the registration of sound marks in general such as attaching sound mark labels in the form of notations, sound recordings and also sonograms. In the case of sound trademark registration in Indonesia, it does not provide a definition related to the sound mark and also a sample file that must be attached including its duration so that in the case of registration of a sound mark in Indonesia it can cause legal uncertainty and even multi-interpretation.

Based on Article 1 number 1 of the Trademark Law and Geographical Indications, sound marks can be registered in Indonesia by displaying them graphically considering the absence of implementing regulations regarding the registration of sound marks so that the registration of Indonesian marks follows the requirements for trademark registration in general. Registration of trademarks in general whether exercising priority rights or not is regulated in Article 4 paragraph (1) to Article 4 paragraph (8) of the Trademark Law and Geographical Indications jo Article 3 paragraph (1) to Article 3 paragraph (3) of Minister of Law and Human Rights Trademark Registration of 2021 Number 12 of 2021 concerning Amendments to Minister of Law and Human Rights Trademark Number 67 of 2016 concerning Trademark Registration.

Registration of sound mark in Indonesia should have four conditions, especially administrative requirements that must be observed and met in order for the application for a sound mark to be accepted. The four conditions there are: "first in accordance with Article 4 paragraph (4) of the Trademark and Geographical Indication Law jo Article 3 paragraph (3) letter b of Minister of Law and Human Rights Regulations Number 12 of 2021 concerning Amendments to Minister of Law and Human Rights Regulations Number 67 of 2016 concerning Trademark Registration, the application for a sound mark must pass a brand label in the form of a sound. The second condition, which is based on Article 4 paragraph (8) of the Trademark and Geographical Indication Law jo Article 3 paragraph (5) of Minister of Law and Human Rights Regulations Number 12 of 2021 concerning Amendments to Minister of Law and Human Rights Regulations Number 67 of 2016 concerning Trademark Registration states that the sound brand label attached is in the form of notation and sound. Furthermore, the third step is that if the brand label cannot be displayed in the form of notation, the brand label can be displayed sonogram. The last condition is that in accordance with Article 1 number 1 of the Trademarks and Geographical Indications Act, the sound brand mark needs to be presented in graphic form".

In Indonesia, it has been regulated in laws and regulations related to the registration of sound marks but has not been regulated in detail. The legislation related to the registration of the sound mark does not provide a definition and also an explanation regarding the sound mark itself. "The legislation also does not provide an explanation of examples of sound recordings, sonograms or notations. So is the duration of the sound recording, and the sonogram. So that the absence of detailed arrangements

¹²Ranti Fauza Mayana, "Perlindungan Merek Non Tradisional Untuk Produk Ekonomi Kreatif Berdasarkan Undang-Undang Nomor 20 Tahun 2016 Tentang Merek, Indikasi Geografis Dan Perspektif Perbandingan Hukum," *Jurnal Bina Mulia Hukum* 2, no. 1 (2017): 26-41, <https://doi.org/10.23920/jbmh.v2n1.3>.

regarding the registration requirements of this sound mark creates confusion for the applicant in fulfilling the registration requirements, whether in this condition the attachments included are only one example, such as for example just attaching a notation, or whether they have to include all three examples of the attachments such as sound recordings, notations and sonograms. It is this condition that will create legal uncertainty for the voice mark applicant in fulfilling the application which may result in the rejection of the application for registration of the voice mark”.

Compared with Australia, the trademark registration arrangements in Indonesia cannot be said to be firm, limitative and detailed. As in Australia, the regulation of sound trademark registration guidelines is regulated more firmly, in detail and limitatively through the Trademark Manual of Practice and Procedure.

Part 21.6 of The Australian Trademark Manual of Practice and Procedure on Sound (auditory) trade marks gives the following definition of sound marks:

“A sound trade mark can be anything auditory. It can be a complex orchestral fanfare, or a simple mechanical clicking noise. It can be sung or spoken words, or a combination of voice and other sounds. It can be the sound of a dog barking, a bell ringing or a baby crying. Whatever it is, it must serve the purpose of identifying the trade source of the goods/services in respect of which it is to be used.”

Based on this definition, it can be interpreted that a sound brand is a sound trademark that can be any auditory sound. “It can be the boisterous sound of an elaborate orchestra, or a simple mechanical click. The voice can be sung or the utterance of words, or a combination of other sounds and sounds. The sound can be the sound of a dog barking, ringing a bell or a baby crying. Whatever the sound, it must function with the aim of identifying the source of the goods/services traded in connection with the use of the voice”.

The registration of a sound mark in Australia should have six criteria for an applicant to register his/her voice mark as provided in Australian Trademark Manual of Practice and Procedure part 21.6. in 6.1 regarding the representation and description of a sound trademark that must be met i.e.:

“An application for a sound as a trade mark must include a graphical representation of the mark. This may be a simple verbal description of the sounds. Musical notation is acceptable as a graphical representation of a sound mark consisting of a musical piece. However, a lengthy piece of musical notation such as the complete score of an orchestral or piano piece is unlikely to meet registrability requirements. The name of a specific piece of music is not acceptable as a graphical representation unless additional information is supplied to identify the particular rendition claimed as a trade mark. Refer to the first example of acceptable endorsements below. In general, the musical notation of the specific piece would be more appropriate than just its name. As well as the graphical representation, the applicant must supply a clear and concise description of the trade mark which will be entered as an endorsement to the application. The applicant must supply recordings of the trade mark on a

medium which allows for easy replaying. Currently, the most common media are CDs, DVDs and MP3 recordings".¹³

The description and the recorded representation of the trade mark should together clearly define all the details which constitute the trade mark. Examples of suitable endorsements to accompany the representations are as follows:

"The trade mark is a sound mark. It comprises the sound of dogs barking to the traditional tune "Greensleeves" as rendered in the audio tape accompanying the application. The trade mark consists of the sound of two steps taken by a cow on pavement, followed by the sound of a cow mooing (clip, clop, MOO) as rendered in the recording accompanying the application. The trade mark consists of the sound of a soprano voice singing wordlessly to the tune represented in the musical score attached to the application. The trade mark is demonstrated in the recording accompanying the application form. The trade mark consists of a repeated rapid tapping sound made by a wooden stick tapping on a metal garbage can lid which gradually becomes louder over approximately 10 seconds duration. The sound is demonstrated in the recordings accompanying the application".¹⁴

It also provides for four forms of sound that can be registered in The Australian Trademark Manual of Practice and Procedure part 6.2 are as follows:

"The registrability of sound as a trademark, namely the first Functional sounds are sounds caused by the normal operation of an equipment. Then the second is a sound that is capable of distinguishing (Sounds which are capable of distinguishing) can be interpreted that the voice registered is a sound that must have the ability to distinguish from similar goods /services. The three sounds that have sufficient adaptation to distinguish (sounds which have insufficient adaptation to distinguish) mean that sounds fall into this category if they contain or consist of ordinary sounds, that is, sounds that other merchants may want to use for their similar goods. The amount of evidence required will depend on the nature of the trademark. Fourth is a sound that does not have an innate adaptation to distinguish (Sounds which have no inherent adaptation to distinguish) i.e. Sounds that are functional or very common are very much desirable for the trader to register. In this kind of situation, this kind of sound does not have the inherent adaptation to distinguish. Therefore, the trademark examiner must ensure that on the date of registration, such a sound must be able to distinguish the goods/services registered with similar goods/services".¹⁵

¹³ Australian Government. (2022). Trademark Manual of Practice and Procedure. <https://www.ipaustralia.gov.au/about-us/accountability-and-reporting/freedom-of-information/information-publication-scheme/register-information-assets/tm-manual>, accessed on 5 May 2022.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

Basically graphic representation is an insurmountable barrier to the registration of non-traditional trademarks, such as sound, aroma and taste, however as a member of the Paris Convention, it must accept any trademark registration, including non-traditional marks with sound distinguishing power.¹⁶ In Australia, legislative turning points relating to non-traditional signs began to be regulated in 1995 when the Australian Trade Marks Act 1955 was introduced. Under this Act, the shape, colour, sound and fragrance may be registered in accordance with the broad definition of a sign as contained in section 6 of this Act. Thus, in Australian legislation there are provisions that explicitly regulate the registration of colours, sounds and fragrances.¹⁷

In accordance with the legal certainty theory, this theory requires that there are legal arrangements in legislation made by authorized and authoritative parties, so that these rules have juridical aspects that can guarantee certainty that the law functions as a rule that must be obeyed. The sound mark has been arranged in detail and clearly through The Australian Trademark Manual of Practice and Procedure so as not to cause errors in its registration nor is it guaranteed legal certainty for the applicant of the sound marks in Australia. In Indonesia, it has been regulated in laws and regulations related to the registration of sound marks but has not been regulated in detail. The legislation related to the registration of the sound mark does not provide a definition and also an explanation regarding the sound mark itself therefore in according to this theory that the legal certainty is not guaranteed yet.

3.2. Registration Procedure of Sound Marks in Indonesia

Based on Article 4 of the Law on Marks and Geographical Indications, the registration of a mark in Indonesia can be carried out by submitting an application for registration of a Mark by the Applicant/his proxy to the Minister using either electronic or non-electronic media. In relation to the trademark applied for, the Law on Marks and Geographical Indications accepts applications for non-traditional marks in the form of 3 (three) dimensional marks, sound marks, and hologram marks. In the form of a mark in the form of sound, the label attached by the applicant is in the form of a notation and a sound recording. However, if the sound cannot be displayed in the form of a notation, the request may be to label the sound mark in the form of a sonogram (type of brand as sound mark). In submitting this voice request, in addition to the notation, the applicant may include the sound of the song/verse.

There are the steps to apply for a Trademark online in Indonesia, which are:

1. The first step of the applicant will be to send his email address to the Directorate General of IPR to get a registration account.
2. After getting the registration account, the applicant will charge the registration fee that has been set. The amount of the tariff that must be paid has been stated on the official website of the <http://www.dgip.go.id/tarif-merek>

¹⁶ Danny Friedmann, "EU Opens Door for Sound Marks: Will Scent Marks Follow?," *Journal of Intellectual Property Law and Practice* 10, no. 12 (2015): 931-39, <https://doi.org/10.1093/jiplp/jpv174>.

¹⁷ Amanda Scardamaglia and Mitchell Adams, "Registering Non-Traditional Signs as Trade Marks in Australia: A Retrospective" 2753, no. January 2013 (2015): 1-12, <https://ssrn.com/abstract=2779449>.

3. The applicant will make payments to a commercial bank appointed by the Minister of Finance to receive a deposit of Non-Tax State Revenue.
4. After the applicant makes a payment, he will get a payment billing code. Furthermore, if you have received the billing code, the applicant will fill out an electronic form through the official website of the <https://merek.dgip.go.id>. If filling out this electronic form, the parts that must be filled in by the applicant include:
 1. Applicant data containing the identity of the applicant containing the name, address and nationality of the applicant. Furthermore, the applicant's address and electronic mailing address are included accompanied by the applicant's telephone number. If the trademark application is filed jointly or more than one applicant then all applicants are obliged to sign the form of the trademark application and select one of the addresses as the applicant's address.
 2. The applicant's mailing address if this correspondence address is different from the address stated on the applicant's identity card.
 3. The applicant's mailing address if this correspondence address is different from the address stated on the applicant's identity card.
 4. The applicant's e-mail address.
 5. The name and date of the priority proof, if the applicant is from abroad accompanied by an official translation of the priority proof Directorate General of Intellectual Property Rights.
 6. Marks details, including Marks label, brand name, language meaning / foreign number / Mark pronunciation sound, translation if foreign term, marks color, and marks elements to be claimed as a trademark.
 7. Color if the marks requested for registration uses color elements.
 8. Class of goods and / or services as well as description of the type of goods and / or services.
 9. Name, address and e-mail address and telephone number of the power of attorney (beneficiary). After the applicant fills in the data in the online form, then the applicant is required to upload supporting documents such as: marks ownership statement letter, mark labels, Proof of priority, Power of Attorney, Letter of approval for the appointment of a representative and Proof of payment of the application fee per class.

If the applicant has completed filling out the form and meets the specified requirements, then Indonesian Directorate General of IPR will provide the date of receipt. The flow of the trademark registration application process is by submitting an application for trademark registration by the applicant or his attorney to the Minister of Law and Human Rights electronically or non-electronically.

The first step for the applicant or his attorney is to fill out the trademark application form in Indonesian to the Minister of Law and Human Rights. This form contains the signature of the applicant and his attorney and is attached with a brand label. For sound marks, marks labels are attached in the form of notation and voice recordings. In

applying for registration of a mark if the applicant is more than one person who is jointly entitled to the mark, all the names of the applicant are listed by choosing one of the addresses of the applicant. "The application is signed by one of the petitioners entitled to the mark by attaching the written consent of the petitioners representing. Keep in mind that there are several applications that must be submitted by the attorney, namely applications in which one or more applicants are foreigners and foreign legal entities domiciled abroad; and applications and matters relating to the administration of the mark submitted by the applicant who is resident or permanently domiciled outside the territory of the Republic of Indonesia". After the application, the next trademark registration process is a formality check and substantive examination, if the registration application requirements are deemed not to meet the requirements for completeness, the fulfillment of these requirements is the longest 2 (two) to 3 (three) months. This time begins to be calculated from the date the notice of completeness of the requirements is sent. If it has been approved, the Directorate General of IPR starting 10 days after that will make an official brand announcement in the brand news. The time to be announced is 3 (three) months long.

Second, the announcement of the application for registration of the trademark. This announcement was published in the Official Trademark Gazette and lasted for two months. Within this two-month period, each party may submit an objection in writing to the Minister of Law and Human Rights on the application for registration of the mark concerned for a fee. Within that period, objections to the mark can be submitted in writing and addressed to the Directorate General of IPR. "This objection can be made if there are sufficient reasons and accompanied by evidence that the mark requested for registration is a mark that cannot be registered or rejected. Such objections may be refuted by the applicant or his attorney by submitting in writing a copy of the objection to the Minister of Law and Human Rights within a period of not more than two months from the date of sending a copy of the objection submitted by the Minister of Law and Human Rights".

Third, the issuance of a brand certificate. If there is no problem with the trademark registration application submitted and passes substantive examination, the mark will be officially registered. The Minister of Law and Human Rights will issue the brand certificate. However, if the examiner decides that the trademark application cannot be registered or rejected, the Minister of Law and Human Rights notifies the applicant or his attorney in writing stating the reason. "The applicant or his attorney may submit a response in writing within a period of not more than 30 (thirty) days from the date of sending the notification letter from the Minister of Law and Human Rights. As for if the applicant or his attorney does not provide a response, then the Minister of Law and Human Rights rejects the application for registration of the mark, but if the applicant or his attorney submits a response and the examiner decides that the response is acceptable, the Minister of Law and Human Rights then issues the trademark certificate. If the response from the applicant or his attorney cannot be accepted, the Minister of Law and Human Rights rejects the application for the mark. The refusal is notified in writing to the applicant or his attorney stating the reasons. In accordance with what is regulated in the Paris Convention and also in the Trademark Law in Indonesia, trademark registration will be rejected if the mark does not have a

distinguishing character, violates the rights of third parties and the mark concerned is not in accordance with the principles of public order".¹⁸

In addition, the non-registration of a mark is because the application for the mark is not in good faith. "A good faith applicant is an applicant who registers his mark properly and honestly without any intention whatsoever to piggyback, imitate or plagiarize the terms of the other party's mark for the benefit of his business which results in losses to the other party or gives rise to conditions of fraudulent competition, outwitting, or misleading consumers. The removal of the mark can be carried out after obtaining a recommendation from the brand appeals commission".¹⁹

The clearly regulation of the procedures for registering sound marks will have a have a positive impact to sound trademark owners in accordance with the theory of intellectual property right protection from Robert M. Sherwood known as the "reward" theory and the "recovery" theory. Based on the "reward" theory, the owner of a trademark that produces a trademark which is one of the fields of intellectual property right should be rewarded for his hard work, his trademark should not be violated or used by others in the trade of goods and or services without permission from the trademark owner. Based on the "recovery" theory, the owner of the trademark has the economic right to be able to recover the costs he has incurred in connection with the resulting tradenark which is used as a mark on the goods produced, sold or marketed, and also on the services that use the mark.

4. Conclusion

The arrangement for Sound Trademark Registration in Indonesia follows the requirements for trademark registration in general in accordance with the Law on Trademarks and Geographical Indications and Minister of Law and Human Rights Regulations Number 12 of 2021 concerning Amendments to Minister of Law and Human Rights Regulations Number 67 of 2016 concerning Trademark Registration. In the case of sound trademark registration in Indonesia, it does not provide a definition related to the sound mark and also a sample file that must be attached including its duration so that in the case of registration of a sound mark in Indonesia it can cause legal uncertainty and even multi-interpretation. Compared to Australia, the regulation of sound trademark registration guidelines is regulated more firmly, in detail and limitatively through the Trademark Manual of Practice and Procedure. Registration procedure of Sound trademarks in Indonesia can be done by submitting an application for Trademark registration made by the Applicant/his attorney to the Minister either using electronic and non-electronic media. In the form of a brand in the form of a sound, the label attached to the applicant is in the form of a notation and a sound

¹⁸ Dayu Windari, "Pelanggaran Merek Terkenal Dan Perlindungan Hukum Bagi Pemegang Hak Dalam Perspektif Paris Convention, Trips Agreement dan UU Merek Indonesia," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 3, no. 3 (2014), <https://doi.org/10.24843/jmhu.2014.v03.i03.p06>.

¹⁹ Febri Noor Hediati, "Optimization of Supervision on The Acceptance of Trademark Registration in the Context of Trademark Protection," *Journal of Legal Voices* 2, no. 2 (2020): 234, <https://doi.org/10.26740/jsh.v2n2.p234-257>.

recording. However, if the sound cannot be displayed in the form of a notation, then the applicant can attach the brand label of the sound in the form of a sonogram. Trademark registration will be rejected if the mark does not have a distinguishing character, violates the rights of third parties and the brand concerned is not in accordance with the principles of public order.

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