

# Legal Protection of Trademarks In International Trade

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## ABSTRACT

Research this aim for analyze protection law to brand trade foreign in context trading international in Indonesia. Using approach qualitative with method studies documents and analysis juridical normative, research This highlight effectiveness principle first to file as arranged in Law No. 20 of 2016 concerning Trademarks and Indications Geographical. Research results show that although system This give certainty law in a way administrative, still there is weakness in aspect protection preventive to brand foreigners who have not registered in Indonesia. Lack of coordination between institution such as DJKI, Directorate General of Customs and Excise, and Directorate General Protection Consumer make things worse situation, so that owner brand foreign prone to experience dispute. This study also found that provision existing laws Not yet fully capable protect brand famous from registration patterned good faith No both parties local. Therefore that, system reform is needed protection brands that include integration between institutions, strengthening inspection substantive, and implementation principle protection to brand famous. Findings This expected can give contribution to development policy law riches more intellectual fair and responsive to challenge globalization trade.

**Keywords :** protection law, first to file, wealth intellectual, trade international

## INTRODUCTION

In the context of a state based on the rule of law, every action state administrators must based on the rules applicable law. This is confirm that power government No can executed in a way arbitrary, but rather must based on regulation legislation that is valid and reflects the will of the people (Jeffri et al., 2022). One of form protection the law that becomes part from right basic humans, especially in aspect culture and economy, is protection to right riches intellectual, including brand trade mark. Brand is not just symbol or logo, but rather reflect identity, reputation, and quality products that influence decision consumer in choose goods and services ( Ar et al., 2019).

Along with development system law in Indonesia, protection to brand has experience transformation from system declarative or "first to use" becomes system constitutive or "first to file". Shift This in a way official implemented since implementation Law No. 20 of 2016 concerning Trademarks and Indications Geographical. In the system this, right on brand given to the party who first registered brand said, not to the party who first used it. Although system This give certainty law in recording administrative, in practice cause various problems, especially for owner brand foreigners who have not register its brand in Indonesia.

In some case, registration more beginning by the party local to brand foreigners who have famous in a way international cause occurrence conflict law. Cases such as dispute between Polo Ralph Lauren and Polo Indonesia or BYD "Denza" shows How the first to file principle can defeat ownership legitimate substance at the level international. Research by Aristiani and Bagiastra (2023) revealed that protection to brand famous in Indonesia yet own mechanism strong substantive. This is open opportunity the occurrence of trademark squatting and giving rise to uncertainty laws that can harm owner global brand.

Coordination between institution government like Directorate General Riches Intellectuals (DJKI), Directorate General of Customs and Excise, and Directorate Protection Consumer Still nature sectoral and not yet integrated optimally. Even though DJKI has arrange mechanism registration and protection law to brand, system records carried out by Customs and Excise nature optional, not mandatory. As a result, many brand foreigners who do not can prevented its circulation although they No legitimate registered in the name of the actual owner.

According to Artija and Purwaningsih (2024), protection law of a legal nature preventive must strengthen through brand database integration, enhancement transparency inspection substantive, as well as obligation recording for brand foreigners who have known globally.

Data from DJKI shows that violation to right on brand still become type violation riches the highest intellectual in Indonesia. Although happen decline total number of cases from 236 cases in 2023 to 53 cases in 2024, violations to brand still dominate (DJKI, 2024). This figure show that risk to owner brand foreign still height, and things This can influence interest investment foreign to Indonesia.

Protection weak laws No only impact on Indonesia's reputation in trading international, but also shows Not yet optimally state commitment in ensure certainty law on right riches intellectual. The country has not quite enough answer strategic for create system laws that protect all perpetrator good business local and foreign. If not There is effort repair system, the potential for investors to interesting self from the Indonesian market will the more big Because afraid will lost right law on brand they. In the context This research by Alexander (2022) confirms the importance of system reform protection brands in Indonesia to be more adaptive to dynamics global trade and demands transparency law.

Therefore that, protection law to brand trade must seen as an integral part of effort create climate healthy and competitive business. The system strong and consistent laws in protect brands, including mechanism preventive and repressive, will strengthen Indonesia's position as a friendly country to investment foreign at a time uphold tall supremacy law.

## Research methods

### Types of research

This research uses a qualitative approach with a juridical-empirical research approach that combines theoretical analysis of legal materials, such as textbooks, scientific journals, and laws and regulations.

### Research subjects

The research subjects in this case are the Directorate General of Intellectual Property of the Ministry of Law, the Directorate General of Consumer Protection and Trade Order of the Ministry of Trade, and the Directorate General of Customs and Excise of the Ministry of Finance. The selection of these institutions as research subjects is highly relevant and strategic in the context of trademark legal protection, particularly in international trade.

### Data source

The data sources in this study are divided into three categories: primary data, secondary data, and tertiary data. Primary data refers to information obtained directly from primary sources that are closely related to the problem being studied, as stated by Amirudin (2006). Primary data is obtained through interviews, observations, or surveys involving parties directly related to the research topic.

Meanwhile, secondary data is data obtained from library materials, including books, scientific journals, reports, and other documents relevant to the research topic. Secondary data provides a theoretical basis and a broader legal context to strengthen the research analysis ( Ibrahim, 2005).

Tertiary data refers to data obtained from compilations or summaries of secondary materials, such as encyclopedias, legal dictionaries, and indexes, which help in providing an introduction or general guide to concepts relevant to the issues discussed ( Azwar, Saifuddin, 2014).

### Data collection technique

The quality of research depends heavily on the quality and completeness of the data generated in qualitative research. Questions that are always considered in data collection are what, who, where, when, and how. Qualitative research relies on data triangulation generated from three methods: *interviews* , *participant*

*observation* , and *document records* ( Salim, 2016) .

To obtain data or information that supports research, it is necessary to pay attention to data collection techniques . The data collection techniques are interview, observation and documentation techniques.

### **Data Analysis**

The data analysis technique used is descriptive-qualitative analysis, an analysis method used to describe or depict qualitative data systematically and in-depth. This method aims to understand certain phenomena or events by explaining the meaning of the data obtained, either through interviews, observations, or written documents ( Jonaedi et.al., 2016). The main focus of descriptive-qualitative analysis is to provide an accurate picture of the situation, process, or relationship between variables, without using statistical or numerical approaches.

## **RESULTS AND DISCUSSION**

### **Implementation First to File System in Legal Protection of Trademarks For Protect Foreign Products in Indonesia**

Legal protection for foreign brands in Indonesia is based on the first-to-file system, namely the principle that exclusive rights to a brand are granted to the party who first officially registers the brand with the Directorate General of Intellectual Property (DJKI), not to the party who first uses the brand. This provision is explicitly regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which replaces the previous law and serves as the legal basis for managing brand rights in Indonesia.

Internationally, the first-to-file principle is recognized and implemented in many countries, primarily to provide legal certainty regarding who owns a trademark based on official administrative data. In Indonesia, this principle is considered successful in providing administrative certainty by clarifying who holds the legitimate rights to a trademark, based on the date of application filing. However, this system also creates serious problems in practice, particularly when well-known foreign trademarks have not yet been registered in Indonesia.

Trademark squatting, or the unauthorized registration of well-known trademarks, is a common practice. In these cases, the perpetrator registers a globally recognized foreign trademark before the legitimate owner registers it with the Directorate General of Intellectual Property Rights (DJKI). Consequently, the original owner of the trademark loses the right to use its trademark in Indonesia, being overridden by administrative provisions favoring the first registrant. This results in economic losses, damages the brand owner's reputation, and creates legal uncertainty, particularly for foreign investors seeking to enter the Indonesian market.

In addition to these issues, the Indonesian legal system also lacks strong protection for well-known trademarks. Although recognized in international treaties such as the Paris Convention and the TRIPS Agreement, its implementation within the national system remains weak. Protection for well-known trademarks should be preventive, preventing unauthorized parties from using or registering the trademark. However, in the Indonesian system, such protection is more repressive, pursued through lawsuits for cancellation in the Commercial Court after the infringement has occurred.

A trademark cancellation lawsuit is one of the primary legal remedies available to the legitimate owner of a foreign trademark registered by another party. This lawsuit is regulated under Articles 77 to 83 of the Trademark and Geographical Indications Law. However, this procedure is often time-consuming, expensive, and does not guarantee a favorable outcome for the legitimate owner. One of the main challenges in trademark cancellation is proving bad faith on the part of the registrant. The court must be convinced that the registrant intentionally registered the trademark with the intention of profiting from the reputation of the foreign trademark. This evidentiary requirement is not easy and can be a barrier for foreign trademark owners to regain their rights.

The lack of coordination between state institutions exacerbates this problem. Several related institutions, such as the Directorate General of Consumer Protection and Trade Order, the Directorate General of Customs and Excise, each have their own functions in trademark protection. The Directorate General of Consumer Protection

is responsible for the registration process, protection, and resolution of trademark-related legal disputes. Meanwhile, the Directorate General of Consumer Protection oversees products in the market, and Customs and Excise plays a role in preventing counterfeit products at the border.

However, in practice, these three institutions lack an integrated system for comprehensive verification and oversight of registered brands circulating in the Indonesian market. For example, although Customs and Excise has a trademark registration mechanism, registration is voluntary. This means that if a brand owner has not registered, Customs officers lack a strong legal basis to detain counterfeit products entering the border. This opens up significant opportunities for the circulation of counterfeit goods, even when the brand is already globally recognized.

Research by Artija & Purwaningsih (2024) revealed that Indonesia's trademark protection system still faces structural challenges. In their study, they highlighted that the national system lacks a robust preventive mechanism to protect foreign trademarks, and there is no integrated information system between institutions. They also emphasized the need for a comprehensive legal protection strategy, encompassing policy, supervision, and concrete law enforcement.

A similar study by Aristiani & Bagiastra (2023) found that trademark squatting in Indonesia is not explicitly regulated by law. Consequently, foreign trademark owners must resort to lengthy legal proceedings to prove ownership and bad faith on the part of local registrants. They recommend revising the legislation to prevent this practice from its inception through a substantial verification system and early notification of well-known trademarks.

Research by Novelin & Yogantara (2022) also highlights the weak position of foreign well-known trademark owners in the Indonesian legal system. They state that the first-to-file principle often conflicts with the principle of fairness because it ignores aspects of use and reputation. Their study states that strengthening legal recognition of well-known trademarks and special procedures to expedite the resolution of disputes over illegally registered well-known trademarks are necessary.

Meanwhile, the Directorate General of Customs and Excise has begun to demonstrate progressive progress by increasing the number of brands registered in the registration system. Official data shows that by mid-2025, 76 goods and 43 brands had been registered in the system. Programs such as the Customs Visit to Potential Recordants (CVPR) have also been actively implemented to attract brand owners to register their rights in the registration system. However, this step is not sufficient because it is not mandatory.

From a policy perspective, Indonesia also needs to consider adopting a broader international system, such as the Madrid Protocol, which allows for centralized international trademark registration. By adopting this system, foreign trademark owners can automatically obtain protection in Indonesia when registering their trademarks through the international system. Several Southeast Asian countries, such as Singapore and Thailand, have adopted this system to simplify the process of cross-border trademark registration and protection.

Overall, although the first-to-file principle has a strong legal basis and is internationally recognized, its implementation in Indonesia still presents many challenges. The lack of a preventive system, the lack of explicit recognition of well-known trademarks, weak coordination between institutions, and the complexities of cancellation lawsuit procedures pose significant challenges to providing fair legal protection for foreign trademarks.

To this end, several concrete steps are needed to improve the trademark protection system in Indonesia. First, the government needs to strengthen the early warning system, which informs international trademark owners of similar applications. Second, more detailed regulations regarding bad faith are needed to allow the Directorate General of Consumer Protection (DGIP) to reject trademark registration applications that indicate bad intentions. Third, there must be systematic coordination between the DGIP, the Directorate General of Consumer Protection, and Customs and Excise, so that trademark protection can be implemented across sectors and in real time.

Finally, education for business actors, rights holders, and the wider public is key. Many foreign brand owners still don't understand the importance of registration in Indonesia, as well as the available legal registration and protection mechanisms. With proper education and a fair and integrated legal system, Indonesia can create a more conducive investment environment and more effectively protect intellectual property rights.

### **The role of the state in Protect Foreign Products from Possibility Occurrence Trademark Dispute**

Protection to right richers intellectuals, especially brand trade, is aspect important in create climate healthy and competitive business, especially in context globalization trade. In Indonesia, the system protection law on brand foreign refers to the first to file principle, namely right exclusive on brand given to the party who first registered it in a way official to Directorate General Riches Intellectuals (DJKI), not to the party who uses it for the first time brand the in-practice business. Principles This has poured in Law No. 20 of 2016 concerning Trademarks and Indications Geographical , which is base law for all administrative and enforcement processes right brands in Indonesia.

Basically, the first to file system is applied. For give certainty law and convenience administrative, because the earliest party do registration will consider as owner legitimate on brand said. However, in in practice, the system This cause a number of problems, especially to protection brand foreigners who have not had time registered by the owner the original. When the brand foreigners who have known wide in the global market yet do registration in Indonesia, gap law This can utilized by the parties local that is not own connection whatever with owner brand the for do registration more past. Phenomenon This known as a squatting trademark, namely the practice of “ hijacking ” fame something brand famous for the sake of getting profit economy or law in a way No valid.

Research by Rendy Alexander (2022) revealed that although the first to file principle is legally base giving right brands in Indonesia, their implementation No valid in a way absolute. If proven that something registration done with good faith No okay then principle the can aborted through mechanism lawsuit cancellation. However Thus, the proof good faith bad is not easy thing. This process demand owner brand original For show global brand reputation them, market presence, and existence indication intention wicked from applicant local . This becomes challenge alone due to legal process the eat long time, cost high, and requires complex proof. In addition, courts in Indonesia often prioritize aspect formality registration rather than substance right ownership brand.

This condition exacerbated by the lack of coordination between institutions the government involved in supervision and protection right richers intellectual. DJKI as institution main person in charge registration and supervision brand Not yet own mechanism proactive For detect or prevent trademark squatting practices. Other institutions such as Directorate General Protection Consumers and Order Commerce as well as Directorate The General of Customs and Excise has also not operate role protection in a way integrated. As a result, the owner brand foreign often face risk lost right exclusive on its brand in Indonesia if Not yet register it more Formerly formally, although brand the has known in a way wide in a way international.

Example concrete from weakness protection preventive is case dispute between Polo Ralph Lauren brand, a global brand from the United States, with company local registered the “Polo Indonesia” brand is more in the past in Indonesia. Although visually and semantically there is similarities, and Polo Ralph Lauren has long been known as global brands, rights exclusive given to owner brand local Because they more Formerly register brand the to DJKI. In case this, owner original must go through track litigation long For cancel registration is done with good faith No well, a process that is not always produce victory Because protection to brand well-known in Indonesia is still very limited.

Aristiani & Bagiastra's (2023) research also highlights that trademark squatting practices in Indonesia have not yet accommodated in a way firm in Trademark Law. Absence of provision explicit rules that regulate prohibition to registration brand with good faith bad make court only depend on interpretation against Article 21 and Article 83 of Law No. 20 of 2016 for finish cases similar. Even in Lots case, success lawsuit Cancellations are highly dependent on completeness proof reputation brand and association with applicant local.

Furthermore, protection to brand foreigners in Indonesia also do not nature automatic although brand the Already get protection in their country of origin or in other countries that are members in system international like Paris

Convention or TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement. Principle territoriality adopted by Indonesia states that protection law only valid in the territory of Indonesia and only after brand registered. This is show that confession brand famous international No necessarily ensure protection If Not yet There is formal registration in Indonesia.

In addition, the mechanism records in the Directorate General of Customs and Excise, which should be be at the forefront in prevent entry product false or violate brand, nature voluntary. This means that the owner brand must in a way active submit application recording so that the product they enter on the Customs watch list. If this This No done, then product false with similar brands can enter to the Indonesian market without obstacle law. This is return show weakness in mechanism proper preventive measures become priority in system protection riches modern intellectual.

Strengthening efforts system protection law to brand foreign demand improvements to some aspect strategic. First, it is necessary existence harmonization regulations national with agreement international as well as affirmation prohibition of trademark squatting in the Trademark Law. Second, it is necessary built system notification early or verification administrative information to owner global brand if there is effort registration by other parties in Indonesia. Third, it is necessary formed system integrated between DJKI, Ministry of Trade, and Customs in do supervision brand through data digitalization and integration system information.

Research by Novelin & Yogantara (2022) also emphasizes importance approach multidisciplinary and cross-disciplinary institution in handle case violation brand foreigners. They stated that during enforcement law only focus on aspects litigation, without supported by mechanisms strong administrative and institutional framework, then protection provided No will effective. Therefore that, a legal strategy is needed that includes protection preventive (prevention) and repressive (law enforcement) in a balanced.

Indonesian government through the DJKI actually has start develop system inspection substantial to application brand, but implementation Still not optimal. In addition, it is necessary considered implementation system opposition open giving room for public, including owner brand foreign, for submit object to application considered brand resemble or copy brand famous. System This has implemented in a number of countries and proven capable prevent conflict ownership since early.

In a way overall, challenge protection brand foreigners in Indonesia do not only lies in the aspect juridical, but also in capacity institutional and cultural laws that have not been fully support system riches healthy intellectual. For strengthen Indonesia's position in global trade as well as interesting investment foreigners in the sector industry branded, Indonesia must capable build system protection an effective, transparent, and trusted brand. This No only question protection law only, but also related with Indonesia's reputation and credibility as a country of law that respects right riches intellectual in framework law international.

## CONCLUSION

Based on results research , can concluded that Indonesia adheres to system *first to file* with approach constitutive as arranged in Law no. 20 of 2016. System This give right brand to the party who first registered, without consider use previously. Although give certainty law in a way administrative, system This Not yet capable protect brand foreigners who have not registered, so that vulnerable misused by other parties and giving rise to uncertainty law. Existing regulations Not yet Enough support protection preventive, especially to brand famous international.

The role of the state in protection brand divided in recognition, protection, and enforcement. However, all three Not yet walk in a way integrated system Customs and Excise Recommendation nature optional, supervision by the Directorate Protection Consumer Still passive, and the inspection by DJKI has not yet been carried out maximum. As a result , protection law to product foreign from dispute brand trade not optimal.

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