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Strengthening Indonesia's First-to-File Trademark Regime through Consistent Registration Protection and Evidence-Based Well-Known Mark Exceptions

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ABSTRACT

This study examines the need to strengthen Indonesia's first-to-file trademark regime through consistent registration protection and evidence-based exceptions for well-known marks. The legal problem arises from the tension between a system that prioritizes the first applicant and the continued protection of unregistered well-known marks, particularly foreign trademarks, which may challenge existing registrations. This inconsistency creates legal uncertainty and potential unfairness for registered trademark owners. The study aims to analyze the regulation of well-known trademarks and the implementation of the first-to-file principle in Indonesia, especially in cases involving bad-faith registration. Its novelty lies in emphasizing the need to reconcile Article 76 of Law No. 20 of 2016 with the first-to-file doctrine by requiring clear evidentiary standards for well-known mark exceptions. Using a normative legal research method, this study analyzes statutes, legal doctrines, and court decisions, supported by a comparative legal approach. The findings show that Indonesian courts protect well-known marks against bad-faith registration, as reflected in the *Yoshikawa Corporation v. Suko Martin* and *Toyota Motor Corporation v. Marzuki Tan* cases. This study argues that Indonesia should strengthen registration-based protection while applying well-known mark exceptions only through objective and evidence-based assessment.

INTRODUCTION

Legal protection for trademarks is based on the need to prevent consumer confusion, which can harm both individuals tricked by confusing or deceptive trademarks into purchasing goods and services other than those intended for them and providers of goods and services who lose sales when consumers are confused or deceived.¹ Based on these needs, the WTO and its member countries formulate special regulations on trademarks in international trade, to be agreed upon and applied uniformly in each member country's national laws, thereby avoiding disputes in the field of trademarks. Indonesia, a WTO member, has signed the Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS). By signing this agreement,

¹ Rasmus Dalgaard Laustsen, *The Average Consumer in Confusion-Based Disputes in European Trademark Law and Similar Fictions* (Swiss: Springer International Publishing, 2020).

Indonesia must harmonize its laws and regulations, including those on trademarks, with the agreement.

The provisions of TRIPS, specifically Article 16, paragraph 2, and Article 6bis of the Paris Convention (1967), are instrumental in protecting well-known trademarks. TRIPS requires that recognition of a well-known trademark consider the trademark's recognition within the relevant public sector, including awareness gained through promotional efforts in member countries.² This aligns with Article 6bis of the Paris Convention, which extends similar protection to services and emphasizes the importance of public recognition in determining the status of a well-known trademark. These provisions can be further explored by linking them to the Madrid Agreement and its subsequent Madrid Protocol, which serve as pivotal frameworks for international trademark registration. The Madrid Protocol, an evolution of the Madrid Agreement, introduced significant innovations to streamline and harmonize the trademark registration process globally, thereby expanding its geographical reach. Indonesia's ratification of the Madrid Protocol through Presidential Regulation No. 92 of 2017 underscores its commitment to active participation in global trade and ensures that trademarks registered under this system receive international protection.³ By leveraging these frameworks, legal practitioners can strengthen their arguments in cases involving well-known trademarks, ensuring compliance with international standards while supporting the broader objectives of intellectual property law.

Recent studies on well-known trademarks in Indonesia have focused on various aspects of legal protection and judicial practice. Ananta and Roisah (2026) examined the protection of foreign well-known trademarks through a juridical analysis of Commercial Court practices and found that inconsistent judicial interpretations continue to create legal uncertainty for trademark owners.⁴ Lestari, Rahmatiar, and Abas (2025) analyzed the protection of well-known trademarks against bad-faith applications through Supreme Court Decision Number 1850 K/Pdt.Sus-HKI/2022 and emphasized that the principle of good faith remains a crucial element in trademark registration.⁵ Meanwhile, Sihotang, Suhariyanto, and Setiawan (2025) discussed legal protection for registered trademarks in infringement disputes and highlighted that, although trademark registration serves as the primary basis for legal protection, several challenges remain, including inconsistent law

² Ni Ketut Supasti Dharmawan, et al., "Beyond Territoriality: Assessing the Effectiveness of the Madrid System for Trademark Protection in Indonesia," *Sriwijaya Law Review*, 2026, 1–20.

³ Trisa Rembonita and Fokky Fuad Wasitaatmaja, "Public Domain as Indonesia's Trademark Law in the Utilitarian's Perspective," *International Journal Multidisciplinary Science* 3, no. 2 (2024): 09–19.

⁴ Priska Maulidina Ayu Ananta and Kholis Roisah, "Perlindungan Merek Terkenal Asing di Indonesia: Telaah Yuridis atas Praktik Pengadilan Niaga: Protecting Well-Known Foreign Trademarks in Indonesia: A Juridical Analysis of Commercial Court Practices," *Semarang Law Review (SLR)* 7, no. 1 (2026): 41–62.

⁵ Widya Annisa Pudji Lestari, Yuniar Rahmatiar, and Muhamad Abas, "Perlindungan Hukum terhadap Merek Terkenal atas Permohonan Merek yang Diajukan dengan Itikad Tidak Baik (Studi Putusan Nomor 1850 K/Pdt. Sus-HKI/2022)," *Jurnal Ilmiah Advokasi* 13, no. 3 (2025): 779–96.

enforcement and the increasing number of trademark disputes.⁶ These studies show that research on well-known trademarks has largely focused on legal protection, judicial considerations, and the principle of good faith, while further research is needed to examine the consistency of legal protection in addressing contemporary trademark disputes in Indonesia.

This research aims to analyze regulations regarding the registration of well-known marks and the first-to-file principle in trademarks in Indonesia. In this era of globalization, trademarks have become increasingly important for differentiating products and services among companies. Therefore, legal protection of trademarks becomes increasingly important. However, in Indonesia many cases arise where famous trademarks cannot be registered because other parties have registered the Trademark first. This creates problems in trademark protection in Indonesia. This research is expected to contribute to the development of legal science in Indonesia, especially in the field of famous trademark protection and the first-to-file principle. It is also hoped that it can provide recommendations for the government and stakeholders to improve trademark protection in Indonesia. In addition, the results of this research can contribute to the development of trademark protection law in Indonesia.

METHODS

The research adopts a normative legal methodology, emphasizing a comprehensive analysis of laws, legal principles, and doctrines pertinent to trademark registration and disputes.⁷ This approach focuses on legal issues arising from similarities between previously registered trademarks in Indonesia and well-known international trademarks. The study meticulously examines the legal framework established by Law Number 20 of 2016 concerning Trademarks and Geographical Indications, as well as the Ministry of Law and Human Rights of the Republic of Indonesia Number 12 of 2021 Concerning Amendment To The Regulation of the Minister of Law and Human Rights Number 67 of 2016 Concerning Trademark Registration. Additionally, the research incorporates a comparative legal analysis, evaluating trademark laws and regulations from various jurisdictions to provide a broader perspective on resolving trademark disputes. By relying on established legal principles and doctrines, this study aims to deliver a sharper and more profound legal analysis, contributing to the understanding and resolution of complex issues in trademark law.

⁶ Roymartin Sihotang, Didik Suhariyanto, and Puguh Aji Hari Setiawan, "Perlindungan Hukum Merek Terdaftar dalam Sengketa Pelanggaran Merek di Indonesia," *Viva Themis: Jurnal Ilmu Hukum Dan Humaniora* 8, no. 2 (2025): 514–26.

⁷ Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 1–9.

DISCUSSION

Implementation of the First-to-File System for Trademarks in Indonesia

Indonesia uses a first-to-file trademark system, meaning applicants who submit trademark applications first will be registered and receive an earlier acceptance date and registration number. However, applicants must meet the minimum requirements set out in trademark regulations, such as completing the application form, attaching a trademark label, paying fees, and attaching proof of payment. These minimum requirements have been determined in Article 13, paragraph (2) of the Trademark and Geographical Indications Law.

The implementation of the First-to-File system for trademarks in Indonesia marks a significant shift in the country's intellectual property law, aligning with global standards to ensure legal certainty and fairness in trademark registration.⁸ Under this system, priority is given to the party that first files a trademark application, rather than the party that first uses the trademark in commerce. This approach aims to minimize disputes and clarify ownership rights. However, its application has raised various legal and practical issues, particularly in cases involving bad-faith registrations or competing claims from prior users. Several examples, such as disputes between local businesses and international brands or cases of trademark squatting, highlight the challenges and complexities of this system in Indonesia's legal landscape. These cases underscore the importance of diligent filing practices and proactive measures to protect trademark rights under the First to File framework.

1) *Yoshikawa Corporation vs. Suko Martin*

On January 14, 2022, Yoshikawa Corporation filed a lawsuit against Suko Martin in a trademark dispute concerning the YOSHIKAWA trademark. The Defendant was the registered owner of the YOSHIKAWA trademark in Indonesia under registration number IDM000332132, filed on June 14, 2002, in Class 21 for kitchen utensils. By contrast, the Plaintiff, a Japanese manufacturer of high-quality kitchen equipment established in 1952, only filed its YOSHIKAWA trademark in Indonesia on January 7, 2022, under application number DID2022001667 in the same class. To establish that its mark was well known, the Plaintiff submitted evidence showing registration of the YOSHIKAWA mark in more than 39 countries, extensive product promotion, an affidavit from its President Director regarding the history of the company and trademark, and prior registrations in Japan dating from 1992 and 1993 in Classes 8 and 21. Based on this evidence, the Court held that the Plaintiff's YOSHIKAWA mark had existed long before the Defendant's Indonesian registration and qualified as a well-known trademark. Because the Defendant's mark was identical and used for similar goods, the Court found that the registration had been made in bad faith, with the intention of imitating the

⁸ Muh Ali Masnun, Dicky Eko Prasetyo, and Mohd Badrol Awang, "Reconstructing Indonesia's Trademark Registration System through the Lens of General Principles of Good Governance to Realize Substantive Justice," *Journal of Law and Legal Reform* 5, no. 3 (2024).

Plaintiff's mark for commercial gain, thereby creating unfair competition and risking consumer confusion. The Court therefore granted the Plaintiff's claim in full and ordered the Directorate General of Intellectual Property to remove the Defendant's trademark from the Trademark Register and announce the cancellation in the Trademark Gazette. This ruling was later upheld by the Supreme Court, which rejected the Defendant's appeal in Decision No. 1489 K/Pdt.Sus-HKI/2022.

2) *Toyota Motor Corporation vs. Marzuki Tan*

Toyota owns the LEXUS trademark in Indonesia, registered across several classes, including Classes 3, 9, 12, 18, 25, 36, 37, and 39, primarily for automotive products and related spare parts. However, Marzuki Tan also registered the LEXUS trademark in Indonesia under Class 11 for sanitary products, with registration number IDM000497591. Toyota argued that LEXUS is a well-known trademark internationally, particularly in connection with luxury vehicles marketed in the United States and Europe, and supported this claim with evidence of trademark registrations in multiple countries, including Argentina, Chile, and Switzerland. On that basis, Toyota maintained that Marzuki Tan had registered the mark in bad faith to benefit from the reputation and commercial value of the LEXUS brand. In Decision No. 45/Pdt.Sus-HKI/Merek/2017/PN Jkt.Pst, the Court fully upheld Toyota's claim. The judges recognized LEXUS as a well-known trademark and affirmed that Toyota was the legitimate party entitled to use the mark in Indonesia. The Court further held that Marzuki Tan's registration had been made in bad faith because it was substantially similar to Toyota's famous mark. Accordingly, the Court ordered the cancellation of Marzuki Tan's LEXUS trademark and instructed the Directorate General of Intellectual Property to remove it from the Trademark Register.

Nevertheless, the Court did not apply the First to File system in a purely formalistic manner. The Court considered evidence showing that Yoshikawa Corporation had used and registered the YOSHIKAWA mark long before the Defendant's Indonesian registration. The Plaintiff proved that it was a Japanese company established in 1952, that its mark had been registered in Japan since 1992 and 1993, and that the YOSHIKAWA mark had been registered in more than 39 countries. The Plaintiff also submitted evidence of extensive promotion and corporate history to establish that the mark was well known. Based on these facts, the Court concluded that the YOSHIKAWA mark belonged to the Plaintiff and had acquired the status of a well-known trademark.

Viewed through Radbruch's theory, the Yoshikawa case illustrates how legal certainty must be corrected when formal registration is obtained in bad faith. Although Suko Martin was the first registrant in Indonesia, the registration could not be protected because it was identical to the Plaintiff's well-known mark and used for similar goods.⁹ The Court found that the Defendant's

⁹ Elsa Savira et al., "Good Faith over First Filing: Rebalancing Formal Certainty and Substantive Justice in Indonesian Trademark Law," *Veredas Do Direito* 23, no. 10 (2026).

registration was made with the intention of imitating the Plaintiff's mark for commercial gain. This created unfair competition and risked misleading consumers. Therefore, cancellation of the registered mark was justified not because legal certainty was ignored, but because legal certainty cannot be used to legitimize bad-faith registration.

The Supreme Court's rejection of the Defendant's appeal in Decision No. 1489 K/Pdt.Sus-HKI/2022 further confirms that Indonesia's first-to-file system is not absolute. The trademark register should provide certainty, but it must also be kept free of marks obtained through imitation, bad faith, or unfair competition. In this sense, canceling Suko Martin's registration strengthened the integrity of the registration system rather than weakening it.

A similar pattern appears in *Toyota Motor Corporation v. Marzuki Tan*. Toyota had registered the LEXUS mark in Indonesia across several classes, particularly for automotive products and related services. Marzuki Tan, however, registered the LEXUS mark in Class 11 for sanitary products. Formally, this registration concerned a different class of goods. Under a narrow interpretation of trademark classification, one might argue that the registration should be allowed because it was not in the same class as Toyota's main automotive products. However, the Court considered the broader reputation of the LEXUS mark and the possibility that the Defendant's registration took unfair advantage of Toyota's well-known brand.

In Decision No. 45/Pdt.Sus-HKI/Merek/2017/PN Jkt.Pst, the Court recognized LEXUS as a well-known trademark. Toyota supported its claim by showing international registrations and the global reputation of the LEXUS brand, particularly in luxury vehicles. The Court concluded that Marzuki Tan's registration was substantially similar to Toyota's famous mark and had been made in bad faith. Therefore, the Court ordered the cancellation of the Defendant's LEXUS trademark and instructed the Directorate General of Intellectual Property to remove it from the Trademark Register.

From the perspective of Radbruch's legal certainty theory, the Toyota case demonstrates that legal certainty does not merely mean protecting every registered mark. If registration of a mark creates confusion, exploits the reputation of a well-known mark, or reflects bad faith, then protecting that registration would contradict the justice element of law. Legal certainty must provide reliable protection to legitimate trademark owners, but it must not become a shield for trademark squatting. The Court's decision therefore reflects an attempt to harmonize the certainty of registration with the justice of protecting the rightful owner of a well-known mark.

Both Yoshikawa and Toyota show that Indonesia's first-to-file system operates as a qualified registration system. The first registrant is generally protected, but that protection can be defeated when the registration conflicts with a well-known mark or is made in bad faith. This model reflects the dialectical relationship between legal certainty and justice in Radbruch's theory. Legal certainty

is necessary because business actors need predictable rules for acquiring trademark rights. However, justice is equally necessary because a predictable system that protects dishonest registration would damage the legitimacy of trademark law.

The "First to File" system in trademark registration has three categories of trademarks: inherently distinctive, which is immediately protected; capable of becoming distinctive, which is only protected after the development of consumer associations; and incapable of becoming distinctive, which is not protected even though they have been used for a long time.¹⁰

The policy decision behind trademark protection, which includes protection against trademark piracy, has become a concern in every country in the world. Nuraini, as can be concluded from the words of McCarthy, stated that "policies of consumer protection, property rights, economic efficiency, and unusual concepts of justice underlie the law of trademarks."¹¹

In Indonesia, the first-to-file system is applied during the substantive examination stage for both national and international trademark applications. The process involves checking whether the mark has already been registered, conducting a substantive review if it has not, allowing the applicant to respond if the application is rejected, and permitting the applicant to reply to any objections raised by third parties.

Trademarks examiners also carry out searches to look for comparable trademarks that are registered or that have been previously submitted in the DGIP database to ensure that the mark has never been registered or owned by another party or through other means. Next, analyze the trademark documents and assess the trademark elements under Article 20 and Article 21 of the Trademark and Geographical Indications Law, including the type of goods or services applied for, then make a decision.

The provisions in Article 21 require the registration of a mark to be rejected if it contains the same elements as a well-known mark, whether for goods and/or similar goods or goods and/or goods that are not similar. This provision shows that owners of well-known marks receive legal protection. Protection is provided by granting trademark registration institutions the possibility to refuse the registration of a trademark that is substantially or completely similar to a well-known trademark owned by another party.¹²

In addition, trademarks that have not been registered according to the provisions of Article 76, Paragraph (2) of Law Number 20 of 2016 are allowed to file a lawsuit for trademark cancellation after

¹⁰ Revie Rachmansyah Pratama and Kholis Roisah, "Hubungan Hukum terhadap Kepemilikan Hak Cipta yang Dijadikan Merek bagi Pencipta dan Pemegang Merek," *Jurnal USM Law Review* 8, no. 1 (2025): 65–85.

¹¹ S. Bhavana, "The Analysis on Intellectual Property Rights and Fashion Industry," *Issue 6 Int'l JL Mgmt. & Human* 7 (2024).

¹² Ranjan Himanshu, "Trademark Confusion in the Era of Big Data Algorithmic Branding: Consumer Deception and Competition Law Challenge," in *AI Transformations in Global Legal Systems* (IGI Global Scientific Publishing, 2026), 157–96.

applying to the minister. Under this article, the owner of a well-known mark whose trademark has not been registered in Indonesia can file a lawsuit for trademark cancellation if a trademark registration, obtained in bad faith, is similar to his trademark.

Provisions still protect unregistered trademark owners as an exception to the First-to-File Registration System, which should provide rights and protection only to registered trademark owners.¹³ This exception appears in Article 76 of Law Number 20 of 2016, which allows owners of unregistered trademarks to file a trademark cancellation lawsuit.

This makes the First-to-File trademark registration system adopted by Law Number 20 of 2016 inconsistent. Because the owner of an unregistered trademark can file a lawsuit for the cancellation of a registered trademark without the requirement of being famous.¹⁴ Article 76 of Law Number 20 of 2016 only requires the requirements to apply to the minister. This results in the First-to-File system for trademark registration being applied as if it were meaningless, and registered trademark rights become weak or nonexistent, creating legal uncertainty.

Foreign trademark owners can exploit Article 76 paragraph (2) of Law Number 20 of 2016 by using their trademark in Indonesia without registering it immediately. Foreign trademark owners choose to wait; if a local businessman registers their trademark, the foreign trademark owner can file a lawsuit for cancellation, accompanied by an application to register the trademark, so that unregistered trademark owners can file a claim for cancellation.¹⁵ This can be detrimental and cause injustice for local entrepreneurs, who are often in a weak position when competing with foreign entrepreneurs.

Apart from that, the provisions of Article 76 paragraph (2) open up the possibility for registered trademark owners to lose their trademarks due to a trademark cancellation lawsuit. The First To File registration system must be implemented strictly and consistently, meaning that applicable laws and regulations grant legal protection only to registered trademark owners. Or at least toughen the requirements for filing a trademark cancellation lawsuit as contained in Article 76 paragraph (2), such as providing additional requirements that only owners of well-known unregistered trademarks can file a trademark cancellation lawsuit, as stated in Article 56 of Law Number 19 of 1992.

The increasing number of trademark registration applications in Indonesia from year to year (See Table 1) can increase the risk of trademark cancellation if trademark examiners conduct searches

¹³ A'an Efendi Fitriani, Selvi Nurma, Dyah Octorina Susanti, "Perlindungan Hukum Pemegang Hak Merek yang Sesuai dengan Karakteristik Hak Merek," *Jurnal Rechts* 11, no. 2 (2022): 239–56.

¹⁴ Tati Sri Hardina, "Legal Protection of Famous Trademark Disputes Registered Under the Law (Case of Polo by Ralph Lauren Trademark Dispute)," *International Journal of Social, Policy and Law* 4, no. 3 (2023): 52–66.

¹⁵ Sebastian Putra Gunawan, Lucianus Budi Kagramanto, and Endang Prasetyawati, "Legal Consequences of Mark Cancellation of Brand Licensees," *International Journal of Social Science Research and Review* 6, no. 3 (2023): 368–76, <https://doi.org/10.47814/ijssrr.v6i3.1068>.

only through the DGIP database, which contains only registered trademark data. has been registered in Indonesia. Meanwhile, the problem faced in trademark disputes is that the plaintiff (owner of a well-known mark) has not registered their trademark in Indonesia.

Table 1.
Application for Trademark Registration in Indonesia by Year

Type of Applications	Years									
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Foreign Applications	15.693	16.230	16.571	12.843	12.268	10.451	10.593	10.505	13.097	15.934
Domestic Applications	46.206	49.920	52.047	56.508	68.963	76.462	85.757	102.482	113.005	120.860

Source: Annual Report of the Directorate General of Intellectual Property 2024¹⁶

Trademarks' legal protection only applies to registered trademarks. Registering a trademark provides stronger protection, especially if the mark conflicts with a similar trademark.¹⁷ Although most entrepreneurs realize the importance of using a trademark to differentiate their products from competitors' products, not everyone realizes the importance of trademark protection through registration.

When applying for a trademark, the applicant must comply with both material requirements and formal requirements. Substantive requirements are requirements for the mark to be registered that do not conflict with absolute and relative grounds, while formal requirements are administrative requirements for documents.

Trademark registration will be accepted if it meets the formality and substantive requirements established by the Trademark Law. Sufficient differentiating power is an important requirement and main characteristic of trademarks. Trademarks must be strong enough to differentiate one company's goods or services from those of other companies.¹⁸ According to Article 6, paragraph (1) of the Trademark Law, a mark is considered to be "substantially the same" as another registered trademark if there is the same impression in the form, placement, writing, combination of elements, or sound of speech in the trademark. Article 6 paragraph (2) allows the famous trademarks provisions to be applied to goods or services that are not similar to certain requirements determined by the Government Regulation. However, no government regulation has addressed this yet.

Legal protection for trademarks, whether foreign or domestic, known or unknown, is granted only to

¹⁶ "Kementerian Hukum Republik Indonesia Direktorat Jendral Kekayaan Intelektual," n.d., <https://www.dgip.go.id/unduh/report-tahunan>.

¹⁷ Vanny Fiandra Cahyani and Laina Rafianti, "Urgensi Pendaftaran Warna sebagai Potensi Merek Dagang Berdasarkan Undang-Undang Nomor 20 Tahun 2016," *Jurnal Hukum, Politik dan Ilmu Sosial* 3, no. 1 (2024): 170–82.

¹⁸ Henry Winata and Satino, "Kritik Yuridis terhadap Sistem First to File pada Perlindungan Hukum Merek Indonesia," *Jurnal USM Law Review* 8, no. 3 (2025): 2178–97.

registered trademarks.¹⁹ For this reason, every trademark owner must register their trademarks with the DGIP to obtain legal protection. Registered trademarks receive legal protection for 10 (ten) years and apply retroactively from the date of receipt of the relevant trademark application. At the trademark owner's request, the protection period for a registered trademark can be extended at any time for the same period. Legal protection based on the first-to-file principle system is given to owners of registered trademark rights who have "good intentions," both preventively and repressively.

Post-Registered Trademark Protection

Trademark protection in Indonesia is granted through registration under the first-to-file principle. This means that the party that first files a trademark application and fulfills the legal requirements obtains priority, including the acceptance date and registration number. Under Article 13, paragraph (2) of the Trademark and Geographical Indications Law, the minimum requirements for obtaining a filing date are completing the application form, submitting the trademark label, and paying the prescribed fee with proof of payment. In the digital era, this process has become more accessible through the official online platform at www.merek.dgip.go.id, allowing applicants to register their trademarks independently. This development reflects the Directorate General of Intellectual Property's effort to provide efficient, transparent, and accessible trademark registration services.

Tim Lindsey put forward various basic theories of trademark protection. As Rafianti notes, a trademark is a right that the owner or trademark holder can own because the owner has created a name or logo to identify its product.²⁰ Choosing a trademark is not easy in the business world because trademarks must be attractive, easy to remember, and have special characteristics that make consumers want to buy goods or use services.

According to Nahdliyah, a trademark certificate gives the owner confidence in using the trademark and serves as proof of ownership.²¹ A trademark certificate also serves as legal evidence if, at a later time, another party is sued for using the trademark without the owner's authorization. Law No. 20 of 2016 grants exclusive rights to trademark owners to prevent other parties from using the mark, whether in the form of words, images, colors, or other distinctive elements. In this sense,

¹⁹ Shafa Salsabila, Ahmad M. Ramli, and Rika Ratna Permata, "Pelindungan Merek terhadap Penyesatan Afiliasi Merek Dalam Dunia Digital Berdasarkan UU Merek dan UU ITE," *Media Hukum Indonesia (MHI)* 2, no. 2 (2024): 15–25.

²⁰ Laina Rafianti, et al., "Sosialisasi Pemberdayaan Kewirausahaan di Kabupaten Indramayu melalui Sosialisasi Hukum Merek Dan Indikasi Geografis," *Agrikultura Masyarakat Tani* 2, no. 2 (2025): 54–64.

²¹ Hadziqotun Nahdliyah, Muhammad Chusnul Khitam, and Rika Izatul Fitri, "Legal Protection for the Owner of Brand Rights According to Law Number 20/2016 of Trademark and Geographical Indication (Trademark and Geographical Indication)," *Jurnal Independent* 13, no. 1 (2025): 56–64.

the certificate not only confirms ownership but also serves as a legal warning that the trademark is lawfully owned and protected and therefore cannot be used by others without permission.

In addition to rights, trademark owners have obligations to use the trademark. If the trademark owner does not use the trademark for three consecutive years in the trade of goods and/or services from the date of registration or last use, then the third party can file a lawsuit with the Commercial Court to have the trademark removed²² under the provisions of Article 74, Paragraph 1 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

A trademark certificate constitutes formal legal proof of ownership and establishes the holder as the lawful registered owner of the mark. Under Article 4, paragraph (1) of Law No. 20 of 2016, a trademark application must be filed in good faith to be eligible for registration. Furthermore, Article 21, paragraph (1), requires the refusal of any application that is identical or substantially similar to another party's registered or well-known trademark for similar goods and/or services. Once the mark is approved and registered by the Directorate General of Intellectual Property, the owner acquires exclusive rights to use the trademark and to prevent unauthorized use or registration by other parties. These rights must also be maintained by complying with legal obligations, including renewal every ten years and properly recording any valid transfer of ownership.

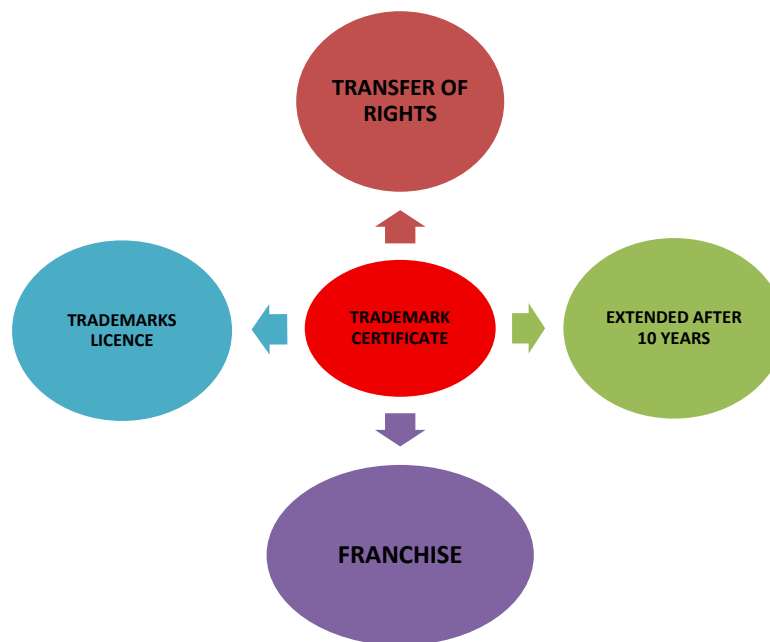
Trademark owners have a fundamental responsibility to safeguard and enhance the trademark associated with their goods and services. A mark serves as a distinctive identifier, separating one business's offerings from another and ensuring consumer recognition and trust.²³ Effective trademark management involves strategic efforts to establish a strong identity, promote the mark's value, and secure its acceptance in the marketplace. Additionally, Krascikov et al. explained that trademark owners may leverage their rights through mechanisms such as licensing and franchising, which allow for controlled expansion while preserving ownership and legal protections.²⁴ These measures must be carried out in accordance with applicable law to preserve the integrity of the trademark and to prevent unauthorized use, infringement, or dilution. Proper trademark management is therefore not only a matter of commercial strategy, but also a legal responsibility requiring continuous vigilance, careful planning, and strict compliance with intellectual property regulations.

²² Donny Agus Prakoso, "Legal Protection of Famous Brands Based on Law Number 20 of 2016 Concerning Brands and Geographical Indications," *Journal Equity of Law and Governance* 4, no. 1 (2024): 52–62.

²³ C M Harmeling, J W Moffett, and M J Arnold, "Toward a Theory of Customer Engagement Marketing," *J. of the Acad. Mark. Sci* 45 (2017): 312–335, <https://doi.org/10.1007/s11747-016-0509-2>.

²⁴ Alexander Krasnikov and Satish Jayachandran, "Building Brand Assets: The Role of Trademark Rights," *Journal of Marketing Research* 59, no. 5 (2022), <https://doi.org/10.1177/00222437221097>.

Figure 1.
Post-Registered Trademark



A trademark owner may transfer their rights to another party in the course of business. Once the transfer is validly made, all rights attached to the trademark pass to the new owner, and the original owner no longer retains legal control over the mark. Under Article 41 of the Trademark and Geographical Indications Law, trademark rights may be transferred through inheritance, a will, waqf, a gift, an agreement, or other lawful causes recognized by legislation. For the transfer to have legal effect against third parties, it should be recorded with the DGIP, since an unrecorded transfer does not produce legal consequences for outsiders. At present, the recordation process can also be completed online, which supports greater administrative efficiency and legal certainty. However, recordation must be distinguished from registration because the two have different legal functions in trademark law. Registration is the legal process through which a trademark owner obtains exclusive rights over a mark. In Indonesia's first-to-file system, trademark rights arise only after the Directorate General of Intellectual Property registers the mark. Therefore, registration has a constitutive function, meaning that it creates or gives birth to trademark rights. Without registration, a mark generally does not receive full exclusive protection under the trademark system, except in limited situations such as well-known marks or bad-faith disputes.

By contrast, recordation does not create trademark rights. Recordation is an administrative act used to record certain legal facts or legal changes relating to an already existing trademark right. In other words, recordation presupposes that a trademark right has already been registered or that a legal relationship concerning the mark already exists. Recordation is commonly used for matters such

as assignment of trademark rights, licensing agreements, changes of name or address of the trademark owner, merger or corporate restructuring, security interests, or customs recordation for border enforcement. Its purpose is to update official records so third parties, government authorities, and business actors can know the trademark's current legal status.

The distinction can be understood from the legal effect of each process. Registration determines whether a mark is accepted as a protected trademark. It involves formal and substantive examination, including assessment of distinctiveness, similarity with prior marks, public order, bad faith, and possible conflict with well-known marks. Once registration is granted, the applicant becomes the legal owner of the mark and may use, license, transfer, or enforce the mark against infringers. Thus, registration is the source of exclusive trademark rights.

The parties may include provisions in the agreement, including canceling the license agreement midway if one party does not fulfill its obligations. This also applies in several countries, such as America and the European Union. Licensing contracts in the United States and the European Union always include provisions for mid-term cancellation, so both parties understand the terms.²⁵ If the party receiving the license wants to terminate the agreement midway, it must first notify the licensor, and the change will take effect only after the next month. This ensures company operations can be managed smoothly.

When applying to recording the transfer of trademark rights, the following documents must be attached or uploaded: (a) a letter of application for the transfer of rights; (b) proof of transfer of trademark rights, which may include: an inheritance decree, a will, a waqf deed, a gift deed, an agreement deed, or other evidence recognized by statutory regulations; (c) a photocopy of the trademark certificate, an official extract of the registered trademark, or proof of application; (d) an authenticated copy of the deed of incorporation if the recipient is a legal entity; (e) a photocopy of the applicant's identification; (f) a power of attorney if submitted through a representative; and (g) proof of payment per registration number, with applicable fees available on the official website www.dgip.go.id/tarif-merek.

Following the registration of a trademark, a number of legal consequences arise, particularly where the mark may qualify as a well-known mark. The status of a well-known mark carries important legal significance, as it not only reflects the mark's commercial reputation but also strengthens its protection against infringement and bad-faith registration. Under Indonesian trademark law, an application must be refused if the proposed mark is identical or substantially similar, in whole or in part, to an existing well-known mark for similar goods and/or services. Protection may also extend

²⁵ Marco Mastracci, *The International Distribution Agreement: A Practical Approach to Transnational Contracting across the European Union, the United States and Latin America* (Universal-Publishers, 2020).

to dissimilar goods or services, provided that certain legal conditions are met, including the filing of an objection by the owner of the well-known mark and the prior registration of that mark. The enactment of Minister of Law and Human Rights Regulation No. 12 of 2021, which amended Regulation No. 67 of 2016 on Trademark Registration, brought greater legal certainty by clarifying the criteria used to determine whether a trademark is considered well-known, thereby addressing a longstanding ambiguity in Indonesian trademark law.

Legal Protection of Well-Known Marks in Indonesia

The Indonesian government has ratified the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), one of the annexes to the WTO Agreements, as part of its commitment to strengthening intellectual property protection, particularly for well-known trademarks. This ratification was implemented through Law Number 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization. Consequently, the Indonesian government and all components of the country are obliged to follow, obey, and implement the Convention's substance.²⁶

This ratification strengthened Indonesia's commitment to international trademark protection, including compliance with the Paris Convention under Presidential Decree No. 15 of 1997. Trademark protection in Indonesia is governed by Law No. 20 of 2016 on Trademarks and Geographical Indications. Under Article 83, the owner or licensee of a registered trademark may sue any party that unlawfully uses an identical or substantially similar mark for the same goods or services. Minister of Law and Human Rights Regulation No. 12 of 2021 sets the criteria for determining a well-known mark, considering, among other factors, public recognition of the mark in the relevant trade sector.

The community referred to is the consumer community, or the community in general, that has a close relationship with the production, promotion, distribution, and sale of goods and/or services protected by the famous trademark in question.²⁷ Under Article 18, paragraph (3) of Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 67 of 2016, a trademark is determined to be a well-known mark by considering several criteria. These include the level of public knowledge or recognition of the mark in the relevant business sector, the volume of sales and profits generated from its use, the market share the mark controls in the distribution of goods and/or services, and the geographical scope of its use. Other relevant factors are the duration of the mark's use, its registration or application for registration in other countries, the degree of success in

²⁶ Dahris Siregar, "Legal Assessment of Default in Treaty Law from the Perspective of Contractual Freedom on the Protection of the Parties' Rights," *Rechtenstudent* 7, no. 2 (2026): 103–14.

²⁷ Otom Mustomi et al., "Legal Protection of Intellectual Property Rights in the Field of Trademarks Registered in Indonesia," *AMCA Journal of Community Development* 5, no. 1 (2025): 14–21.

trademark law enforcement, especially where competent authorities have recognized the mark as well known, and the value attached to the mark as a result of its reputation and the quality assurance associated with the goods and/or services it protects. Together, these criteria show that the legal assessment of a well-known mark is based not only on registration status but also on commercial reputation, market presence, and legal recognition.

These provisions are in the Permata writings²⁸ based on recommendations, the criteria are based on WIPO's well-known marks, which determine whether a trademark is well-known or not. The authorities should take into account several things, including the level of knowledge and recognition of the trademarks in the relevant public sector, the period and geographical area of the trademark promotion, and the extent of the trademark promotion and its geographical area.²⁹ In addition, the competent authority must recognize the period and geographical area of each registration, and the record of successful implementation of the rights attached to the trademark, as well-known.

Based on Article 21 paragraph (1) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Trademark applications will be rejected if the trademark is similar to or identical to a well-known trademark. This applies both to similar goods and/or services and to goods and/or services that are not similar but meet certain requirements. Article 21 paragraph (1) letter b has the same method as implementing Article 21 paragraph (1) letter (a), which contains grounds for rejection if the trademark has similarities with a registered trademark belonging to another party or which was submitted first. by other parties for similar goods and/or services. One significant difference is that the well-known/well-known trademark that is the basis for rejection may not be registered or applied for in the first place. In a substantive examination, the objection letter and additional evidence submitted at the announcement stage by the owner of a well-known/well-known mark become the main reference for the examination of the opposing party.

Rejection of applications that have similarities with well-known/well-known trademarks by other parties for similar goods and/or services is carried out by taking into account the general public recognition of the trademark in the relevant business aspect.³⁰ In addition, you must consider the trademark's reputation and how quickly and widely it gains recognition. In addition, owners of well-known trademarks invest in several countries worldwide, and their trademarks are registered in

²⁸ Rika Ratna Permata, "Unregistered Well-Known Mark Protection in Indonesia," 2014, <https://doi.org/10.2139/ssrn.2860059>.

²⁹ I. Gede Mahatma Yogiswara Winatha, A.A Gede Agung Indra Prathama, and Putu Chandra Kinandana Kayuan, "Comparative Analysis of Legal Protection and Criteria of Well-Known Marks (Indonesia, United States, India, China, and Germany)," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 43–54.

³⁰ Dinda Aprilia Batubara, O. K. Saidin, and Edy Ikhsan, "Legal Protection of Well-Known Marks Against Passing Off: A Comparative Perspective," *Jurist-Diction* 8, no. 3 (2025): 301.

several countries. If this is not enough, the Commercial Court can order an independent institution to conduct a survey to conclude whether the trademark is well known as a basis for rejection.

Protection of unregistered famous trademarks and legal action can be taken against people who dishonestly try to register such famous trademarks for personal gain. This is regulated in Article 76 and its explanation, where it is stated that a claim to cancel a registered trademark can be filed by an interested party based on the reasons set out in Article 20 and/or Article 21, and the owner of a trademark that has not been registered can file a claim after applying to the Ministry of Law and Human Rights. A cancellation lawsuit is filed with the Commercial Court against the owner of the registered trademark. The classification of unregistered trademarks includes honest trademark owners whose trademarks have not been registered and/or well-known marks that are not registered.

Indonesia's trademark regime is formally based on the first-to-file principle, meaning exclusive rights arise from registration rather than prior use. In legal terms, priority is granted to the party that first files a trademark application in good faith, and an application must be rejected if it is identical or substantially similar to another protected mark. However, this principle is not absolute. Indonesian law also protects well-known unregistered trademarks, which may serve as grounds for refusal or cancellation where bad faith is involved. This shows that the first-to-file system operates alongside broader legal principles, especially good faith, fair competition, and consumer protection. As a result, trademark protection in Indonesia is not determined solely by filing priority, but also by whether the application respects others' rights and reputation.

Various types of trademark infringement generally occur when a trademark uses the same sign as an existing trademark. Once registration is granted, the trademark is used in the production of goods or services. The error in this case does not lie only with the infringer but also with the trademark inspection apparatus. This occurs due to a lack of skill and accuracy in carrying out substantive examinations related to trademark registration, which are carried out by violators. A trademark that should be rejected is registered by the trademark inspection apparatus, thereby causing loss to the actual trademark owner.³¹ This shows that professionalism among trademark inspection officials is very necessary to reduce cases of trademark infringement.

DGIP must provide good services to the public in the field of trademark rights registration, both national and international. Therefore, this is a challenge for DGIP, especially trademark examiners, to provide the best service to trademark registrants so that cases of trademark infringement caused by mistakes and errors by trademark examiners can be reduced. One of the main challenges is

³¹ Edi Ribut Harwanto and Samsul Arifin, "Legal Protection of Unregistered Marks in Indonesia," *Journal of Humanities, Social Sciences and Business (JHSSB)* 2 (2022): 128.

language. The Madrid Protocol requires all applications to be submitted in English, French, or Spanish. This can be a problem for trademark owners who do not speak any of these languages, as they may need to hire a translator or seek assistance from a local attorney to prepare their application.³² Another barrier is the “home” or “basic” registration requirement. To use the Madrid Protocol, trademark owners must have a registration in their country or region of origin. This means that if a company does not have a registered trademark in its home country, it cannot use the Madrid Protocol to protect its trademark internationally.

Additionally, the Madrid Protocol does not guarantee that a trademark will be registered in all countries specified in the application. Each country has its trademark laws and regulations and may reject applications for a variety of reasons. This may result in additional costs and delays for trademark owners who must file separate applications in each country. Finally, there is the question of opposition. Once an application is submitted through the Madrid Protocol, it will be subject to third-party opposition in each designated country. This means that even if the application is approved by the International Bureau, it may still face opposition from local trademark owners who believe the trademark is too similar to their own.

One way to protect trademarks that will be traded internationally (well-known trademarks) is through licensing or selling the trademark rights. However, there is a difference between the two: through a license, the owner of the trademark rights can still use them to produce goods or services, whereas if he sells them, he can no longer use them. The trademark rights have been transferred to the buyer. Furthermore, through a license, entrepreneurs permit a party to make the product for sale. Permission to make these products is not given free of charge. As a reward for making a product and/or, usually, for including the right to sell the resulting product, the entrepreneur who gives the permit receives a payment called a royalty. The amount of royalties is always related to the number or size of products produced and/or sold within a certain time.

The licensee must pay royalties to the trademark owner, as the licensor depends entirely on their mutual agreement. The parties are free to determine when the payment must be made and in what amount. The Trademark Law does not regulate this. Royalty payments can be made every six months or once a year. If paid every six months, the amount is calculated based on each unit of goods produced within six months or each unit of goods sold within six months. Likewise, if paid annually, the royalty amount is calculated based on each unit of goods produced during the year or each unit of goods sold during the year. The amount of royalty payments is determined by mutual agreement between the parties. The parties may determine the contents of the agreement, including

³² Yusuf Gunawan, “Global Brand Dilution dan Pengakuan Internasional: Harmonisasi Perlindungan Merek Terkenal dalam TRIPS Agreement dan Madrid Protocol,” *IBLAM Law Review* 6, no. 1 (2026): 239–54.

terminating the license agreement midway if one party fails to fulfill its obligations.

CONCLUSION

Indonesia should strengthen the practical application of its first-to-file trademark system by ensuring that legal protection is granted consistently while still accommodating internationally recognized standards for well-known marks. To answer the research objectives, the study suggests that the government refine the legal framework so that exceptions to registration priority are more clearly limited and do not weaken the certainty of registered rights. Article 76 of Law No. 20 of 2016 should be clarified to prevent misuse and to ensure that cancellation claims by unregistered trademark owners are restricted to truly well-known marks supported by strong evidence. In practice, the Directorate General of Intellectual Property should improve the quality of substantive examinations by expanding examiner competence, strengthening comparative trademark searches beyond domestic databases, and increasing sensitivity to bad-faith filings. For international protection, Indonesia should also improve procedural guidance related to the Madrid Protocol, including language assistance and clearer requirements for foreign applicants. These measures can create a more predictable and balanced trademark system, reduce disputes, protect legitimate business interests, and support both domestic entrepreneurs and international trademark owners in fair competition.

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