

Normative Reconstruction of Trademark Dispute Resolution in Indonesia: Harmonizing First-to-File and Well-Known Mark Protection

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ABSTRACT

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Trademark disputes in Indonesia reveal persistent tensions between the first-to-file principle and the protection of well-known marks. Although the constitutive registration system aims to ensure legal certainty, its rigid application has generated inconsistent judicial outcomes when confronted with internationally recognized trademarks. This study examines the normative weaknesses of Indonesia's trademark dispute resolution framework and proposes a reconstructed legal model to harmonize registration-based protection with reputation-based recognition. This research employs a normative juridical method supported by statute, case, and comparative approaches. Primary legal materials include the Indonesian Trademark and Geographical Indications Law, relevant international instruments, and selected judicial decisions. Comparative analysis is conducted with Singapore, Malaysia, the European Union, and the United States to identify best practices in recognizing well-known marks. The findings indicate three principal deficiencies: the absence of clear standards for assessing distinctiveness, the lack of codified objective criteria for recognizing well-known marks, and insufficient statutory parameters for determining bad faith registration. These weaknesses contribute to fragmented judicial interpretations and reduced legal predictability. The study proposes normative reconstruction through the incorporation of measurable indicators—such as consumer recognition, duration of use, market share, and advertising intensity—alongside explicit formulation of bad faith criteria and strengthened jurisprudential consistency. Such reform is essential to enhance legal certainty, protect brand equity, align Indonesia with international intellectual property standards, and foster sustainable economic development in a globalized market.



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Introduction

The rapid expansion of global trade and digital commerce has significantly elevated the importance of trademark protection within the broader framework of Intellectual Property Rights (IPR). Trademarks no longer function merely as identifiers of origin but have evolved into strategic business assets representing reputation, goodwill, and market differentiation. In the contemporary global economy, effective trademark protection is indispensable for ensuring fair competition, safeguarding consumer trust, and attracting both domestic and foreign investment (Medase & Basit, 2023). Strong intellectual property regimes are also closely linked to trade relevance and economic competitiveness in the global market (Guan, 2025).

Indonesia, as a member of the World Trade Organization (WTO) and a signatory to the Paris Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), is obligated to align its domestic trademark regime with international standards. The current legal framework, primarily governed by the Trademark and Geographical Indications Law (UU MIG), adopts a constitutive system based on the first-to-file principle, whereby exclusive rights are granted to the first party who

registers a mark. This system is intended to ensure legal certainty and administrative efficiency (Ariyesti et al., 2020). However, in practice, rigid adherence to the first-to-file doctrine has generated recurring disputes, particularly when registered marks conflict with internationally recognized well-known marks that may not yet be registered in Indonesia.

The protection of well-known marks presents a doctrinal challenge within Indonesia's trademark system. International legal instruments recognize that famous marks deserve protection even in the absence of domestic registration, provided they meet certain criteria of reputation and recognition (Samaranayake, 2025). Nevertheless, Indonesian legislation does not clearly codify objective standards for determining well-known status. As a result, courts frequently rely on inconsistent interpretations when assessing distinctiveness, fame, and bad faith in trademark registration (Johnson, 2024). This inconsistency undermines legal predictability and weakens investor confidence.

Several landmark disputes illustrate this normative tension. Cases involving IKEA, BMW, Pierre Cardin, and Monster Energy demonstrate how Indonesian courts oscillate between strict formalism—prioritizing registration chronology—and pragmatic recognition of global reputation (Pujiono et al., 2021). The absence of clear statutory parameters often leaves judges to interpret abstract concepts such as “distinctiveness” and “good faith” without authoritative guidance. Such interpretative fragmentation not only erodes legal certainty but also risks undermining Indonesia's compliance with international intellectual property standards (Arslan et al., 2023).

Scholarly discourse has addressed various aspects of trademark protection in Indonesia and other jurisdictions. Studies have examined intellectual property harmonization in ASEAN (Ma & Yu, 2025), the protection of famous marks in comparative legal systems (Amarkhil, 2025), and the theoretical foundations of legal certainty and justice in Indonesian law (Arifin et al., 2023). However, existing literature tends to analyze either the shift from declarative to constitutive systems or the principle of good faith in isolation. There remains a significant research gap concerning the normative reconstruction required to harmonize the first-to-file principle with the protection of well-known marks in Indonesia.

From a theoretical perspective, this issue implicates the fundamental objectives of law—legal certainty, fairness, and protection. Legal protection is closely associated with safeguarding rights and preventing unjust enrichment in intellectual property disputes (Orozco, 2024). Legal efficiency and consistency are essential to maintaining trust in judicial systems (Anderlini et al., 2020). Furthermore, judicial interpretation plays a crucial role in addressing normative ambiguities where statutory provisions lack clarity (von Staden, 2012). Indonesia's trademark regime reveals deficiencies in integrating these theoretical dimensions, particularly in the absence of codified standards and consistent jurisprudence.

Therefore, this study seeks to critically examine the normative weaknesses of Indonesia's trademark dispute resolution framework and to propose a reconstructed legal model that harmonizes the first-to-file system with internationally recognized principles protecting well-known marks. By employing a normative juridical approach combined with comparative analysis, this research aims to contribute both doctrinal clarity and practical guidance for policymakers, judges, and business actors. Ultimately, strengthening trademark protection is essential not only for legal coherence but also for sustainable economic development in an increasingly interconnected global market.

Method

This research adopts a normative juridical method (doctrinal legal research), which focuses on examining legal norms, principles, and doctrines governing trademark protection and dispute resolution in Indonesia. Normative juridical research is particularly appropriate for analyzing statutory regulations, judicial decisions, and legal doctrines in order to assess their coherence, consistency, and conformity with international intellectual property standards. Rather than relying on empirical data collection, this study concentrates on the interpretation and systematic analysis of legal materials to identify normative weaknesses and formulate a reconstructed legal framework.

The study applies a statute approach by examining relevant national and international legal instruments. Domestically, the primary object of analysis is the Indonesian Trademark and Geographical Indications Law (Undang-Undang Merek dan Indikasi Geografis), including its amendments through Law No. 11 of 2020 on Job Creation. Particular attention is given to provisions regulating distinctiveness, bad faith registration, and the protection of well-known marks, especially Articles 20 and 21. Internationally, the research refers to the Paris Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to evaluate Indonesia's alignment with global standards concerning the protection of well-known marks (Guan, 2025).

In addition to the statute approach, this study utilizes a case approach by analyzing selected judicial decisions that reflect normative tensions in trademark disputes. Prominent cases involving IKEA, BMW, Pierre Cardin, and Monster Energy are examined to identify patterns of judicial reasoning, interpretative inconsistencies, and the practical challenges arising from the rigid application of the first-to-file principle. These cases serve as analytical illustrations to demonstrate how ambiguities in statutory provisions lead to divergent judicial outcomes and reduced legal predictability (Pujiyono et al., 2021).

A comparative approach is also employed to enrich the normative analysis. The legal frameworks of selected jurisdictions—namely Singapore, Malaysia, the European Union, and the United States—are examined as comparative references. These jurisdictions were selected because they have developed clearer criteria for recognizing well-known marks and more consistent mechanisms for resolving conflicts between registered and famous marks. Through this comparative perspective, the study identifies best practices and evaluative benchmarks that may inform the reconstruction of Indonesian trademark law (Ma & Yu, 2025; Samaranayake, 2025).

The legal materials used in this research consist of primary, secondary, and tertiary sources. Primary legal materials include statutory regulations, international agreements, and relevant judicial decisions. Secondary legal materials comprise academic books, journal articles, and scholarly analyses discussing trademark protection, legal certainty, and dispute resolution. Tertiary materials, such as legal dictionaries and encyclopedias, are consulted to clarify conceptual definitions where necessary. All materials are systematically collected, classified, and analyzed using qualitative juridical analysis.

The analytical process involves several stages. First, the study conducts legal interpretation to examine the meaning and scope of statutory provisions related to distinctiveness, well-known marks, and good faith registration. Second, it applies legal construction to identify normative gaps and inconsistencies within the existing framework. Third, comparative evaluation is undertaken to measure Indonesia's regulatory approach against international standards and best practices. Finally, based on this analysis, the research formulates a normative reconstruction aimed at harmonizing the first-to-file principle with the protection of well-known marks, thereby enhancing legal certainty, fairness, and compliance with international obligations.

Through this methodological framework, the research seeks to provide doctrinal clarity and policy-oriented recommendations capable of strengthening Indonesia's trademark dispute resolution system in the context of global economic integration.

Results and Discussion

Legal Protection of Trademarks under the First-to-File System in Indonesia

Indonesia adopts a constitutive trademark system based on the **first-to-file principle**, whereby exclusive rights are granted to the party who first registers the mark with the Directorate General of Intellectual Property. In theory, this system provides legal certainty because ownership can be objectively verified through the official registry. The administrative nature of this system reduces evidentiary disputes regarding prior use and strengthens formal clarity in trademark ownership.

However, the research findings indicate that rigid reliance on registration chronology often generates normative tension when confronted with internationally recognized well-known marks. Although Indonesian law acknowledges the concept of well-known marks, the statutory formulation lacks objective and measurable criteria. This normative ambiguity creates interpretative space that leads to inconsistent judicial outcomes. The absence of detailed parameters regarding distinctiveness, reputation, and bad faith registration weakens predictability and undermines legal certainty.

Judicial Inconsistencies in Trademark Disputes

The case analysis reveals recurring inconsistencies in judicial reasoning. In disputes involving global brands such as IKEA, BMW, Pierre Cardin, and Monster Energy, courts have oscillated between formal adherence to the first-to-file principle and pragmatic recognition of global reputation.

In certain cases, courts prioritized registration chronology despite clear evidence of international reputation. In other instances, judges annulled local registrations by invoking bad faith or consumer confusion principles. These divergent outcomes demonstrate that statutory ambiguity has transferred interpretative responsibility to judges without providing sufficient normative guidance. As a result, similar factual circumstances have produced different legal conclusions, diminishing legal predictability.

This inconsistency reflects a structural weakness: the absence of codified standards for determining well-known status and assessing similarity beyond identical goods or services. Without objective benchmarks, judicial discretion becomes expansive and fragmented.

Comparative Analysis with Other Jurisdictions

To evaluate Indonesia’s regulatory shortcomings, this study compares its framework with selected jurisdictions that have developed clearer mechanisms for recognizing well-known marks and resolving conflicts between registered and famous marks. The comparative perspective reveals significant structural differences.

Before presenting the comparison, it is important to emphasize that Singapore, Malaysia, the European Union, and the United States were selected because they represent jurisdictions with established intellectual property enforcement systems and codified recognition criteria for well-known marks.

Table 1. Comparative Framework of Well-Known Mark Protection

Jurisdiction	Criteria for Well-Known Mark Recognition	Approach to Conflict Resolution
Singapore	Fame assessed by reputation, duration of use, extent of promotion	Courts give strong protection; priority even over local registrants if bad faith is proven
Malaysia	Uses “global reputation” test; recognition beyond domestic market	Well-known marks protected even if unregistered
European Union (EUIPO)	Detailed guidelines: market share, intensity, geographical scope of use, investment in promotion	Strict refusal of registration for similar marks, covering both identical and dissimilar goods
United States	Protection under Lanham Act; recognition based on consumer surveys, market presence, advertising investment	Strong remedies against dilution and confusion, including injunctions and damages
Indonesia	Recognition mentioned in UU MIG, but criteria remain vague	Judicial outcomes inconsistent; registry allows overlapping entries

Source: Comparative synthesis based on Ma & Yu (2025); Samaranyake (2025); Johnson (2024).

The comparative findings demonstrate that Indonesia lacks codified evidentiary benchmarks. Unlike the EU or the United States, where measurable factors such as market share, advertising investment, and consumer surveys guide judicial reasoning, Indonesian courts operate with broad interpretative discretion. This regulatory gap contributes directly to inconsistent adjudication.

Normative Weaknesses Identified

Based on doctrinal and comparative analysis, three primary normative weaknesses are identified.

First, the concept of distinctiveness is insufficiently defined. The law focuses primarily on formal similarity but does not clearly incorporate consumer perception or market-based recognition as evaluative standards. This omission creates interpretative inconsistency when assessing similarity and confusion.

Second, the legal framework provides only general acknowledgment of well-known marks without codifying objective indicators. The absence of measurable standards makes it difficult for judges to consistently determine reputation status.

Third, the concept of bad faith registration lacks explicit statutory indicators. Without clear parameters, courts rely heavily on subjective judicial reasoning, which contributes to unpredictability.

These weaknesses collectively undermine legal certainty and reduce investor confidence in Indonesia’s trademark regime.

Proposed Normative Reconstruction

The findings support the need for normative reconstruction aimed at harmonizing the first-to-file system with well-known mark protection.

First, distinctiveness should be evaluated not only through visual or phonetic similarity but also through consumer perception, market recognition, and reputation evidence. Incorporating measurable criteria—such as advertising intensity, duration of use, and geographical scope—would align Indonesia with international best practices.

Second, objective standards for recognizing well-known marks should be codified, drawing upon internationally recognized guidelines and comparative models. Clear parameters would reduce judicial fragmentation and enhance predictability.

Third, the principle of good faith should be explicitly defined in statutory provisions. Indicators such as intent to imitate, absence of legitimate business interest, and opportunistic registration should be clearly articulated to prevent abuse of the first-to-file system.

Finally, jurisprudential consistency should be strengthened by reinforcing the role of Supreme Court precedents in guiding lower courts. Institutionalizing interpretative consistency would significantly enhance legal coherence.

Implications for Legal Certainty and Economic Development

The reconstruction of trademark norms has broader implications. From a legal perspective, it would enhance consistency and transparency in dispute resolution. From an economic standpoint, stronger protection of well-known marks would attract investment and promote fair competition. Aligning domestic regulations with international standards would also strengthen Indonesia's credibility within the global intellectual property framework.

In summary, the results confirm that while Indonesia's first-to-file system provides administrative clarity, its incomplete normative structure generates uncertainty when confronted with well-known mark disputes. Comparative analysis demonstrates that clearer codification and objective standards are essential for harmonizing legal certainty with fairness in trademark protection.

Conclusion

This study critically examined the normative weaknesses of Indonesia's trademark dispute resolution framework, particularly in addressing conflicts between registered marks under the first-to-file principle and internationally recognized well-known marks. The findings demonstrate that although the constitutive system provides administrative clarity and formal legal certainty, its rigid application without clear substantive standards has generated recurring judicial inconsistencies.

The research identifies three principal normative deficiencies. First, the concept of distinctiveness remains inadequately defined, as it relies heavily on formal similarity without incorporating measurable consumer perception and market-based indicators. Second, the statutory recognition of well-known marks lacks codified objective criteria, resulting in broad judicial discretion and fragmented interpretations. Third, the notion of bad faith registration is insufficiently articulated, leaving courts without consistent parameters for evaluating opportunistic filings.

Comparative analysis further reveals that jurisdictions such as Singapore, Malaysia, the European Union, and the United States have established clearer evidentiary benchmarks and anti-dilution mechanisms, thereby enhancing legal predictability and investor confidence. In contrast, Indonesia's regulatory framework remains underdeveloped in providing systematic guidance for harmonizing registration-based protection with reputation-based recognition.

Accordingly, this study proposes a normative reconstruction of Indonesia's trademark law, particularly Articles 20 and 21 of the Trademark and Geographical Indications Law. The reconstruction includes: (1) the incorporation of objective indicators for assessing distinctiveness and well-known status, such as duration of use, market share, advertising intensity, and consumer recognition; (2) explicit statutory formulation of bad faith indicators to prevent opportunistic registration; and (3) reinforcement of jurisprudential consistency to minimize contradictory judicial outcomes.

Strengthening these normative elements will not only enhance legal certainty and fairness but also improve Indonesia's compliance with international intellectual property standards. Ultimately, a harmonized trademark protection framework is essential for safeguarding brand equity, fostering fair competition, attracting investment, and supporting sustainable economic development in the context of global economic integration.

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Conflict of Interest

The authors declare that there are no conflicts of interest regarding the publication of this article.

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