



The Legal Basis for Intellectual Property Protection: A Focus on Trademarks

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ARTICLE INFO	ABSTRACT
Received: 01 May 2024	Legal protection of intellectual property, especially brands, is very important in today's era of globalization and digital economy. A brand is not only a trade identity but also a part of an intangible asset that has high strategic value. This study aims to analyze the legal basis of intellectual property protection, especially trademarks, from a normative juridical perspective, as well as assess the effectiveness of legal implementation through case studies of trademark infringement in Indonesia. This research uses a normative juridical approach method by examining national and international laws and regulations, as well as literature studies from Scopus-indexed legal journals. The secondary data used were analyzed descriptive-qualitatively to find gaps and implementable constraints in brand protection. The results of the study show that Indonesia already has a sufficiently adequate legal apparatus, namely Law Number 20 of 2016 concerning Trademarks and Geographical Indications which is in line with international provisions such as the TRIPS Agreement and the Paris Convention. However, the effectiveness of the implementation of this regulation is still constrained by weak law enforcement, lack of public understanding, and challenges from digital-based brand infringement. The implications of this research lead to the need to strengthen legal institutions, public education, and technology-based policy innovations for more effective brand protection. Therefore, a more proactive and collaborative regulatory approach between governments, business actors, and the public is needed to realize a resilient and globally competitive brand protection system.
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1. Introduction

Protection of intellectual property (IP) is becoming increasingly important in the era of globalization and economic digitalization.² In the midst of increasing business competition and the growth of the creative industry, the legal aspects of ownership and protection of intellectual property rights, especially brands, have received wide attention from the legal community and business practitioners³. Brands not only serve as product or service identities, but also as economic assets that can increase competitiveness and consumer loyalty⁴. According to Teece (2018), intellectual property protection plays an important role in driving innovation and sustainable economic growth in developing countries⁵.

In the Indonesian context, the legal system governing trademark protection has undergone several important developments⁶. The revision of the Trademark Law, namely Law Number 20 of 2016 concerning Trademarks and Geographical Indications⁷, is a step forward in strengthening the trademark protection system nationally while aligning it with international provisions such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). However, there are still serious problems related to law enforcement against trademark infringement, both administratively and civilly and criminally. Cases of trademark counterfeiting in the digital market show a significant increase and indicate weak regulatory mechanisms and sanctions.

A study by Hidayah⁸underscores that the implementation of intellectual property law in developing countries such as Indonesia still faces structural challenges, including limited human resources, policy inconsistencies, and lack of coordination between institutions. This has direct implications for the effectiveness of legal protection for legitimate brand owners, especially micro, small, and medium enterprises (MSMEs) who are often victims of violations without having adequate legal access⁹.

Furthermore, the development of digital technology has given rise to new and complex forms of trademark infringement, such as the unauthorized use of trademarks on social media, digital advertising, and cross-border e-commerce platforms¹⁰. This phenomenon raises fundamental questions related to the effectiveness of Indonesia's

² Hady M Khawand et al., "Intellectual Property and Exit Strategies among SMEs: A Scoping Review and Framework," *World Patent Information* 79 (2024): 102318, <https://doi.org/10.1016/j.wpi.2024.102318>.

³ Zufikri and Zulkarnaini, "Legal Protection of Intellectual Property Rights: What Is Urgency for the Business World?," *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 1 (2022): 12–25, <https://doi.org/10.29303/ius.v10i1.940>.

⁴ B Budiman and Roberth Kurniawan Ruslak Hammar, "Legal Protection of Intellectual Property Rights in Global Business," *Eduvest: Ournal of Universal Studies* 4, no. 1 (2024): 284–91.

⁵ David J Teece, "Profiting from Innovation in the Digital Economy: Enabling Technologies, Standards, and Licensing Models in the Wireless World," *Research Policy* 47, no. 8 (2018): 1367–87, <https://doi.org/10.1016/j.respol.2017.01.015>.

⁶ Baskoro Suryo Banindro, *Implementasi Hak Kekayaan Intelektual (Hak Cipta, Merek, Paten, Desain Industri) Seni Rupa, Kriya Dan Desain* (Yogyakarta: BP ISI, 2015).

⁷ Law, "Law Number 20 of 2016 Concerning Trademarks and Geographical Indications" (2016).

⁸ Khoirul Hidayah, *Hukum Hak Kekayaan Intelektual* (Malang: Setara Press, 2017).

⁹ Khawand et al., "Intellectual Property and Exit Strategies among SMEs: A Scoping Review and Framework."

¹⁰ Fanni Choirul Prastyowati and Andria Luhur Prakoso, "Legal Protection of Intellectual Property Rights in the Digital Era," *The Indonesian Journal of International Clinical Legal Education* 6, no. 1 (2024): 81–110, <https://doi.org/10.15294/ijicle.v5i3.2157>.

positive law in answering the dynamics of contemporary IP law. Therefore, a study of the legal basis for trademark protection needs to be carried out to assess the extent to which existing regulations are able to ensure legal certainty, justice, and protection of trademark rights as a whole.

This study aims to analyze the legal basis of intellectual property protection, especially trademarks, from a normative juridical perspective and assess the effectiveness of the implementation of applicable laws through case studies of trademark infringement in Indonesia¹¹. Thus, this research is expected to provide practical recommendations for improving trademark protection legal policies and supporting the development of a national intellectual property system that is more responsive to the challenges of the times.

2. Method and Legal Materials

This research uses a normative juridical approach¹², which is an approach that relies on the study of applicable laws and regulations and legal doctrines relevant to the protection of intellectual property, especially in the aspect of trademarks. This approach is used to systematically examine the positive legal norms that govern trademark rights and their implementation in the context of legal protection.

This method was chosen because the main focus of the research is to examine and analyze legal principles sourced from laws and regulations, jurisprudence, and legal literature as the basis for trademark protection in Indonesia. This study also includes the study of the development of legal doctrine related to trademark protection in a global context, including the influence of international legal instruments such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Paris Convention for the Protection of Industrial Property.

The legal materials used consist of 1) Primary Legal Materials, namely national laws and regulations such as Law Number 20 of 2016 concerning Trademarks and Geographical Indications, Law Number 28 of 2014 concerning Copyright (as a comparative context), Law Number 11 of 2008 concerning Information and Electronic Transactions and its amendments, Government regulations related to the implementation of IP protection, and Supreme Court Jurisprudence in trademark dispute cases. Then, 2) secondary Legal Materials, including literature or legal doctrine from intellectual property experts and scientific journal articles. In addition, tertiary legal materials, such as legal dictionaries, legal encyclopedias, and government policy documents related to the implementation of IP protection in the MSME sector and digital industry.

The data analysis technique used is descriptive-analytical, by interpreting the content of applicable legal norms and analyzing their application in concrete cases of trademark infringement in Indonesia. The study also compared the effectiveness of trademark legal protection in Indonesia with international legal practice to discover the strengths and

¹¹ Zufikri and Zulkarnaini, "Legal Protection of Intellectual Property Rights: What Is Urgency for the Business World?"

¹² Soerjono Soekanto and Sri Mamuji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2013).

weaknesses of the national legal system. Through this method, the research is expected to be able to reveal the extent of the effectiveness of the legal basis in providing protection for brands and provide recommendations for regulatory updates to overcome contemporary challenges, especially in the era of digital transformation.

3. Results and Discussions

Trademark protection is an important aspect of the intellectual property legal system because a trademark serves as a product or service identity that distinguishes it from other products or services in the market. This study found two main results: first, identification and analysis of the basis of trademark protection law in Indonesia based on a normative juridical approach; Second, an assessment of the effectiveness of the application of the law through a case study of trademark infringement.

3.1 Legal Basis of Trademark Protection in a Normative Juridical Perspective

Based on a normative juridical approach, the legal basis for trademark protection in Indonesia is currently based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which is a refinement of the previous law. This law includes the definition of a trademark, the registration process, legal protection, as well as administrative and criminal sanctions for infringement of trademark rights¹³.

The provisions of the 2016 Trademark Law are in line with the international standards set out in the TRIPS Agreement, in particular in terms of the protection and enforcement of intellectual property rights (Articles 15–21 of the TRIPS). In addition, Indonesia is also a member of the Paris Convention for the Protection of Industrial Property, which also influences the harmonization of the trademark protection system at the national level.

Law No. 20 of 2016 emphasizes the principle of first to file as the basis for granting trademark rights, which means that the right to a trademark is given to the party who first registers the trademark with the Directorate General of Intellectual Property. This is important to provide legal certainty and protection to business actors, especially in the MSME sector that is vulnerable to piracy or brand plagiarism¹⁴. However, the main obstacle found in the implementation of this regulation is the low understanding of the public, especially small business actors, regarding the importance of trademark registration. A study by Ding and Yang (2025)¹⁵ shows that lack of awareness and education is a major obstacle to IP protection in developing countries, including Indonesia.

¹³ Emmi Rahmiwita Nasution and Loso Judijanto, “Legal Strategies for Protecting Intellectual Property Rights in Business A Case Study Creative Industry in Indonesia,” *The Easta Journal Law and Human Rights* 2, no. 02 (2024): 80–88, <https://doi.org/10.58812/eslhr.v2i02.209>.

¹⁴ Law, Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

¹⁵ Tianli Ding and Lin Yang, “Intellectual Property Protection and Corporate Digital Transformation: An Empirical Analysis from the Perspectives of Intellectual Property Protection and Digital Governance,” *International Review of Economics & Finance*, 2025, 104125, <https://doi.org/10.1016/j.iref.2025.104125>.

3.2 Effectiveness of Legal Implementation through Case Studies of Trademark Infringement

To assess the effectiveness of the implementation of trademark protection laws, this study examined several cases of trademark infringement that occurred in Indonesia. One of the prominent case studies is the dispute between PT. Holi Pharma with PT. Kalbe Farma related to the use of the trademarks “*Holisticare Ester C*” and “*Holisticare Ester-C Plus*”. This dispute shows that even if a trademark has been registered, the potential for infringement remains high, especially if the oversight and enforcement process is not strictly carried out¹⁶.

Supreme Court Decision No. 1086 K/Pdt.Sus-HKI/2017 states that brands that have similarities in substance or as a whole can cause confusion in the community. In this case, the Court ruled that the defendant violated the exclusive rights of the registered trademark owner. However, the resolution of these cases takes a long time and requires complex proof, pointing to weaknesses in our law enforcement system¹⁷.

Furthermore, the results of research conducted by Samaranayake (2022) stated that one of the biggest challenges in trademark protection in Southeast Asia is the weak coordination between law enforcement agencies and the slow litigation process.¹⁸ In Indonesia, the Directorate General of Intellectual Property has made various efforts to educate and digitize the registration system, but in practice there are still frequent leaks in reporting and monitoring violations¹⁹.

In addition, there are still many trademark infringements that are not touched by legal proceedings due to limited law enforcement resources, such as the number of investigators and prosecutors who understand intellectual property cases. The DJKI’s annual report (2023) states that of the 3,207 reports of alleged trademark infringement, only 18% were forwarded to the judicial process.²⁰ This indicates that there is still a weak overall law enforcement effort.

3.3 International Comparison and Regulatory Update Recommendations

In comparison to other countries, such as Singapore and Japan, the trademark protection system is more efficient due to the presence of a special intellectual property court that handles infringement cases with a relatively short time and transparent litigation costs. Indonesia needs to emulate this step to increase the effectiveness of its legal protection system.

¹⁶ Bernard Nainggolan, “Enforcement of Intellectual Property Law in Indonesia,” *IJLR: International Journal of Law Reconstruction* 6, no. 2 (2022): 317–30, <https://doi.org/10.26532/ijlr.v6i2.35991>.

¹⁷ Bingru Yuan and Weibo Li, “Legal Infrastructures for Firm Innovation: Effects of Intellectual Property Protection in the Era of Digital Economy,” *Finance Research Letters* 71 (2025): 106343, <https://doi.org/10.1016/j.frl.2024.106343>.

¹⁸ Wathsala Ravihari Samaranayake, “The Recent Amendment to the Intellectual Property Act, No. 36 of 2003 of Sri Lanka,” *Journal of Intellectual Property Law & Practice* 17, no. 9 (September 1, 2022): 695–99, <https://doi.org/10.1093/jiplp/jpac078>.

¹⁹ Richard A Spinello, “Intellectual Property Rights,” ed. David Baker and Lucy B T - *Encyclopedia of Libraries Ellis Librarianship, and Information Science (First Edition)* (Oxford: Academic Press, 2025), 306–13, <https://doi.org/10.1016/B978-0-323-95689-5.00134-6>.

²⁰ DKJI, *Laporan Tahunan 2023* (Jakarta: Direktorat Jenderal Kekayaan Intelektual (DJKI), 2023).

In addition, the main recommendation of the results of this study is the need to:

- Strengthening intellectual property law enforcement agencies;
- Increasing legal literacy among MSME actors;
- Review of intellectual property dispute resolution procedures to be more adaptive to the development of the digital economy;
- Optimizing the role of the Directorate General of Intellectual Property in post-registration supervision

4 Conclusion

The protection of intellectual property, especially trademarks, is of paramount importance in the context of modern business and commercial law²¹. Based on the normative juridical analysis conducted in this study, it can be concluded that Indonesia already has a fairly comprehensive legal framework in providing protection for trademarks, which is reflected in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. This law is in line with international provisions such as the TRIPS Agreement and the Paris Convention, and has provided legal certainty regarding the exclusive rights to legally registered trademarks.

However, the effectiveness of the implementation of the regulation still faces various obstacles, including low public awareness of the importance of trademark registration, weak monitoring system for violations, and limited law enforcement resources. A case study of trademark infringement in Indonesia shows that despite the availability of legal protection, a lengthy and complicated litigation process is still a major obstacle in the enforcement of trademark rights.

These findings confirm that the protection of brands requires not only good regulation, but also consistent implementation. This reinforces the theory that the law will not be effective if it is not supported by strong legal institutions and culture. Therefore, strategic steps are needed to strengthen the trademark protection system in Indonesia, including by increasing education and socialization of the importance of trademark registration to business actors, especially MSMEs, encouraging the establishment of a special intellectual property court to make the dispute resolution process more efficient, developing a digital-based monitoring and enforcement system to monitor trademark infringement in real-time.

The government needs to revise policies by adjusting to the development of digital technology and economic globalization, especially related to brand counterfeiting and online brand infringement. Strengthening coordination between law enforcement agencies and the use of technology in the supervision process is needed to increase the effectiveness of brand protection. By strengthening legal and institutional foundations, as well as raising public awareness, brand protection in Indonesia can be significantly improved to support sustainable and competitive economic growth.

²¹ Christoph Antons, "The Recognition and Protection of Well-Known Trade Marks in Indonesia," *Journal of Intellectual Property Law & Practice* 3, no. 3 (March 1, 2008): 185–93, <https://doi.org/10.1093/jiplp/jpm252>.

Conflict of interest

The author declares that there is no conflict of interest in making this article.

Authors' contribution

The author state that author made substantial contributions to the conception and design of the study. The author took responsibility for data analysis, interpretation and discussion of results with the assistance of ChatGPT, OpenAI. The author reads and approved the final manuscript.

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