

# Analysis of the First-to-File Principle in Indonesian Trademark Registration from a Justice Perspective

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## Abstract.

*Trademark protection in Indonesia is regulated under the first to file system, in which rights to a trademark are granted to the party who first registers it at the Directorate General of Intellectual Property (DJKI). Although this system provides legal certainty, its application often leads to injustice, especially in the case of trademark squatting, where a party who is not in good faith registers a mark that has been recognized by another party with the aim of obtaining profits. This research aims to analyze the application of the first to file principle in trademark registration in Indonesia from the perspective of justice, as well as evaluate the legal measures that can be applied to prevent abuse of this system. This research uses the normative juridical method with the analysis of primary, secondary, and tertiary legal materials, as well as John Rawls' theory of justice approach as the basis for policy evaluation. The results show that weaknesses in the definition of good faith, the criteria for famous marks, and the limitation of similarities in essence cause legal uncertainty and open loopholes for abuse. Policy reform is needed through improving the legal substance, strengthening the institutional structure of the DJKI, and simplifying the dispute resolution mechanism through mediation and arbitration. The research conclusions emphasize the importance of more inclusive and equitable legal reforms to protect the rights of legitimate trademark owners, especially small and medium enterprises. With proper legal reform, it is expected that the trademark protection system in Indonesia can become more transparent, effective, and contribute to fair business competition.*

**Keywords:** First to file, Trademark squatting, Fairness, Famous Marks and Law Reform.

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## I. INTRODUCTION

The rapid development of globalization has driven changes in various aspects of life, including dynamic economic growth [1]–[3]. In this context, trademark as a form of intellectual property play an important role in distinguishing products and services [4]–[6]. Trademark provide a distinctive feature that helps consumers associate quality and reputation with a particular product. However, infringement of registered trademark rights often occurs, leading to unfair business competition and counterfeiting practices [7], [8]. In Indonesia, the trademark registration system adheres to the constitutive principle (first to file), where the exclusive right to the trademark is obtained through registration. Trademark registration becomes important to obtain legal protection, as unregistered marks are considered as publicly owned marks [9], [10]. Although this system provides legal certainty, there are significant drawbacks, especially in relation to fairness for trademark owners who have been using their marks commercially but have not registered them. Trademark disputes often arise when parties who do not have good faith register well-known marks that have not been registered [11], [12]. This practice is known as trademark squatting, where a particular party registers a well-known mark with the intention of reselling it to the original owner [13], [14]. A striking case example is the Polo and Pierre Cardin trademark dispute (Decision No. 49 PK/Pdt.Sus-HKI/2018) [15], where the first registrant who did not have original rights successfully won rights to the mark [16]. In this context, the application of the first to file principle may create injustice, especially for disadvantaged trademark owners. Although there is a mechanism to file a cancellation lawsuit, the lengthy legal process and high costs are often an obstacle for original trademark owners to regain their rights [17], [18]. This is potentially detrimental to MSMEs and large unregistered trademarks.

Fairness in the trademark registration system should consider the principle of social justice, where every individual, especially those who are disadvantaged, should have equal access to legal protection [19]. John Rawls' theory of justice emphasizes the importance of providing equal opportunities for all parties, including trademark owners who are late in registering their trademarks. In this case, the legal system must

be able to protect the legitimate rights of trademark owners from abusive practices. Policy reforms related to the trademark registration system in Indonesia are urgently needed to ensure that the first to file principle is not abused [20]. Strict law enforcement, easy access to justice, and extensive education for the public and law enforcement are key in building a system capable of preventing abuse of the trademark registration system [21], [22]. By strengthening all these elements, Indonesia can build a more resilient legal structure in protecting trademark rights and supporting overall legal development. The anticipated contributions of this research include theoretical advancements in the field of legal studies, particularly in Intellectual Property Rights, as well as practical benefits for various stakeholders. These stakeholders include good-faith trademark registrants, the Directorate General of Intellectual Property Rights, which can utilize the findings to improve trademark protection, and the general public, who will gain insights into the significance of legal protection for trademarks and the implications of trademark registration in Indonesia. Furthermore, this research is expected to provide valuable knowledge for practitioners and academics engaged in the domain of Intellectual Property Rights.

## II. METHODS

This research uses a normative juridical method [23] with an approach that focuses on analyzing the application of the first to file principle in the practice of trademark squatting from the perspective of justice in supporting legal development in Indonesia. This normative legal research aims to analyze the validity of the law by examining legal materials such as legal principles, positive law, rules, and applicable legal rules [24]. In this approach, the law is seen as written norms in laws and regulations that guide behavior that is considered appropriate and appropriate for society. The types of data used in this research include primary, secondary, and tertiary data [23]. Primary data includes various relevant laws and regulations, such as the Civil Code, Law No. 20/2016 on Trademarks and Geographical Indications, and other related regulations. Secondary data includes legal doctrines contained in academic literature and scientific articles, both published and unpublished. Meanwhile, tertiary data consists of supporting sources such as legal dictionaries, encyclopedias, and non-legal publications that provide additional understanding of primary and secondary legal materials [25], [26].

The research materials for this study were collected through a comprehensive literature review, encompassing the identification, selection, and compilation of legal sources from various references, including the Parahyangan Catholic University Library, the Supreme Court database, and digital journals accessible online. This study employs a qualitative descriptive analysis method, aiming to systematically structure and analyze data to gain an in-depth understanding of the research problem and its potential solutions. The analytical process is conducted through a systematic interpretation approach, which examines the interrelationship between legal provisions within statutory regulations to derive a holistic and well-founded conclusion. By adopting this approach, the study aspires to contribute significantly to the development of recommendations that not only align with existing legal norms but also integrate the principle of substantive justice within Indonesia's trademark protection framework.

## III. RESULT AND DISCUSSION

### **Application of the First to file Principle in Trademark Registration in Indonesia in the Face of Trademark Squatting Cases Viewed from the Principle of Justice**

#### **A. Application of the First to file Principle in Trademark Registration in Indonesia: Challenges and Justice Perspectives**

The first-to-file system in Indonesia's trademark registration framework ensures legal certainty by granting exclusive rights to the party that first submits a trademark application, as stipulated in Article 3 of Law No. 20 of 2016 on Trademarks and Geographical Indications. However, the implementation of this system presents significant challenges concerning the principle of fairness, particularly in cases of trademark squatting a practice in which an entity acting in bad faith registers a trademark identical or substantially similar to a pre-existing mark without legitimate rights or intent to use it in a reasonable manner. This legal framework creates opportunities for trademark squatters to exploit foreign trademarks by preemptively

registering them before their rightful owners can do so in Indonesia. Such registrants frequently manipulate legal loopholes by securing trademarks with established reputations and subsequently using their registration as leverage to demand financial compensation from the original owner.

Should the rightful owner refuse to comply, the squatter may initiate litigation aimed at prohibiting the mark's use within the jurisdiction. Furthermore, the first-to-file system engenders injustices for original trademark proprietors who may not have had the opportunity to formally register their marks in Indonesia prior to their exploitation by third parties. Consequently, rightful owners often face the burden of either purchasing back their own trademarks from squatters or engaging in protracted and costly legal disputes. The authority of the Directorate General of Intellectual Property (DJKI) to annul such registrations is restricted unless bad faith can be substantiated a determination that can only be made through judicial proceedings in the Commercial Court. This procedural requirement places a considerable burden on original owners, further exacerbating the systemic inequities within Indonesia's trademark registration system.

### **B. Legal Loopholes in the First to file System**

The first to file principle in Indonesia has weaknesses in testing good faith, although Article 21 paragraph (3) of the Trademark Law [27] states that the application can be rejected if filed in bad faith. In practice, the DJKI often only conducts a formal examination without investigating the background of the registrant. As a result, well-known trademarks abroad may be registered by parties who have no legitimate relationship with the trademark. In addition, the definition of "substantially similar" in Article 21 paragraph (1) [27] has no clear boundaries, thus opening up room for broad interpretation and creating legal uncertainty. Some trademark squatting cases that occurred in Indonesia show how weak the legal protection for the original trademark owner is. A well-known example is the Pierre Cardin trademark dispute, where a local party registered this trademark ahead of the original French owner. The Central Jakarta Commercial Court in Decision No. 15/Pdt.Sus.Merek/2015/PN.Niaga.Jkt.Pst ruled in favor of the local registrant on the basis of the first to file principle, while the original owner had to face a long and expensive legal process to cancel the registration. The same thing also happened in the case of the Prada trademark dispute, where the Supreme Court rejected the lawsuit of the global trademark owner because the local registrant had first registered the trademark in Indonesia.

### **C. International Cases and their Implications**

The phenomenon of trademark squatting is not exclusive to Indonesia but is also prevalent in other jurisdictions that adhere to the first-to-file system, including China, Turkey, and various Latin American countries. A notable example is the Michael Jordan case in China, in which the Supreme People's Court ultimately ruled in favor of the renowned athlete after an extensive legal battle against a local company that had registered and used the name "Qiaodan," a transliteration of "Jordan" in Chinese characters. This case underscores the critical importance of protecting well-known trademarks at the global level and highlights the necessity of stricter regulations within the first-to-file system to mitigate the risk of misuse by opportunistic parties. In developing countries, trademark squatting presents a significant legal and economic challenge, primarily due to weak law enforcement mechanisms and pervasive corruption. One such case involved the Reebok trademark in Latin America, where local entities successfully registered the mark in several countries before the parent company had the opportunity to secure its legal rights. This situation compelled Reebok to undergo protracted and costly litigation to reclaim ownership of its trademark, demonstrating the systemic vulnerabilities within trademark registration frameworks in jurisdictions that prioritize filing over actual use. The persistence of such issues underscores the urgent need for comprehensive legal reforms and enhanced enforcement measures to safeguard legitimate trademark owners from predatory registration practices [28].

### **D. Analysis from John Rawls' Justice Perspective**

In reviewing the application of the first to file principle from a justice perspective, the Justice as Fairness theory proposed by John Rawls is relevant [29]. Rawls argues that a fair policy is one that takes into account the position of individuals in society without regard to their social or economic status. The concept of veil of ignorance, where policy makers are unaware of their socio-economic position or condition, can be used as an approach to create a more inclusive and fair legal system [22], [30]. In the context of trademark

registration, the first to file system tends to favor parties that have advantages in terms of access to information, financial resources, and legal knowledge. Small and medium-sized enterprises are often at a disadvantage as they do not have the capacity to register their marks immediately, even though they have been using them for years. Rawls emphasized the importance of the principle of social justice in the distribution of resources and the protection of fundamental rights for all individuals. Therefore, policies are needed that take into account the equality of opportunity factor, where all parties have equal opportunities to protect their marks without having to face huge administrative and financial barriers.

### **Legal Arrangements in Indonesia in Preventing Abuse of the First to File Principle in the Intellectual Property System in the Framework of Legal Development in Indonesia to Realize Justice for All Communities**

#### **A. Development of Trademark Law in Indonesia: Challenges and Solutions in the Application of the First to file Principle**

Trademark registration in Indonesia uses a constitutive system, where rights to a trademark are only obtained after it is registered with the Directorate General of Intellectual Property (DJKI), as stipulated in Article 3 of Law No. 20 Year 2016 on Trademarks and Geographical Indications [31]. This system aims to provide legal certainty for the first registrant. However, in practice, the application of the first to file principle raises various legal issues and injustices, especially in the case of trademark squatting, where parties who are not in good faith can register marks that have been used by other parties without legal rights. The legal uncertainty that arises regarding the interpretation of good faith, well-known trademarks, and similarities in essence makes it difficult to enforce the law fairly. The unclear boundaries in the law open a loophole for parties who want to abuse this system. This has an impact on the ecosystem of unfair business competition and harms business actors who actually have rights to the trademark. Although Law No. 20 Year 2016 has regulated that trademark registration must be done in good faith, proving it is still a big challenge because there is no clear mechanism to assess whether the registration is done with the right intention or just to benefit from the fame of other parties' trademarks. This legal uncertainty makes the law not fully function as a fair guide to behavior in society [32], [33]

#### **B. Legal Loopholes in the Application of the First to file Principle**

Some weaknesses in the first to file system in Indonesia include [34], [35]:

##### 1. Weaknesses in Proving Good Faith:

Article 21 paragraph (3) states that a registration can be rejected if it is filed in bad faith, but there is no clear mechanism to assess and prove this. The DJKI often only conducts a formal examination without investigating the background of the registrant.

##### 2. Lack of Definition of Equation at Principal:

Article 21 paragraph (1) prohibits the registration of marks that are substantially similar, but the definition has not been detailed in the law. As a result, there are different interpretations between the courts and the DJKI.

##### 3. No Protection for Famous Marks:

Well-known trademark that have not been registered in Indonesia are often victims of trademark squatting. This shows that the first to file system does not take into account the reputation of marks that have long been used abroad.

The Pierre Cardin and Prada cases in Indonesia [15] illustrate how foreign owners of famous trademark can lose their rights in Indonesia because local parties have registered their trademarks first. In the Pierre Cardin case, the court ruled that the mark remained the property of the party who first registered it, even though the original mark owner had long been using the mark abroad.

#### **C. Development of Trademark Law in Indonesia**

To overcome the challenges in Indonesia's trademark law system, legal development efforts are needed that include improvements in legal substance, legal structure, and legal culture as outlined in the National Medium-Term Development Plan (RPJMN). Mochtar Kusumaatmadja emphasized that the law must function as a means of reforming society that not only aims to create legal certainty, but also social justice for all parties involved.

1. Legal Substance Improvement:
  - A. Drafting more detailed regulations related to good faith, famous marks, and similarities in essence, so as not to open up too much room for interpretation.
  - B. Recognition of well-known trademarks, even if not yet registered in Indonesia, to protect the original trademark owner from trademark squatting.
  - C. Establishment of a stricter substantive examination mechanism in the trademark registration process to assess the relationship between the registrant and the registered trademark.
2. Strengthening the Legal Structure:
  - A. Increase the capacity of DJKI in conducting more in-depth supervision and examination of trademark registration to prevent registration in bad faith.
  - B. Simplify and accelerate the process of resolving trademark disputes by adding mediation and arbitration mechanisms as an initial step before entering the court realm.
  - C. Improve the professionalism of judicial officers in handling trademark disputes through specialized training on intellectual property law.
3. Improving the Culture of Law:
  - A. Increase public and business awareness of the importance of trademark registration through education and socialization.
  - B. Promote transparency in the trademark registration process by providing public access to registered trademark data.
4. Analysis of Justice in the Application of the First to file Principle  
 Looking at the first to file system from the perspective of Justice as Fairness by John Rawls, justice should provide equal access to all parties. The veil of ignorance concept proposed by Rawls emphasizes that the legal system should be designed without favoring certain parties who have advantages in economic resources or legal access. Unfortunately, in practice, the first to file system favors those with better access to information and resources, so small businesses often experience injustice.

In this context, the trademark registration system should ensure that all businesses, especially small and medium-sized businesses, have an equal opportunity to protect their trademarks without having to face complex and costly lawsuits.

Based on the challenges faced in implementing first to file, some recommendations that can be implemented include:

1. Revision of Trademark Law:
  - A. Establish clearer guidelines regarding the definitions of good faith, substantially similar, and well-known marks.
  - B. Adding rules that give priority to first to use trademark owners to strengthen legal protection.
2. Strengthening the Role of DJKI:
  - A. Increase transparency in the trademark registration process and open access for the public to raise objections to suspicious registrations.
  - B. Provide a database of internationally recognized famous marks as a reference in the examination of new marks.
3. Dispute Resolution Mechanism:  
 Encourage the use of mediation and arbitration to resolve trademark disputes before going to court, in order to reduce costs and time for the aggrieved party.

Trademark registration in Indonesia adheres to the first-to-file system, wherein exclusive rights over a trademark are granted upon successful registration with the Directorate General of Intellectual Property (DJKI). However, this system is frequently exploited by parties acting in bad faith, who register trademarks that do not rightfully belong to them with the intent of deriving undue benefits. Such practices result in legal uncertainty and injustice for the original trademark owners. Several provisions within Law No. 20 of 2016 on Trademarks and Geographical Indications (MIG Law) contribute to this legal ambiguity, including Article 3, which establishes the first-to-file principle; Article 21, which addresses similarities in essence between trademarks; and Articles 76–79, which outline the procedural requirements for trademark cancellation, a

process characterized by lengthy proceedings and substantial costs. The primary issues in Indonesia's trademark protection framework include the lack of a clear legal definition of good faith, the absence of robust protection for well-known trademarks, and the inefficiency of existing dispute resolution mechanisms. The five-year time limitation stipulated in Article 77 poses a significant barrier for trademark owners who only become aware of an infringement after the prescribed period has elapsed.

Additionally, the application of Article 83(2), which pertains to the protection of well-known trademarks, remains challenging in practice due to the absence of automatic recognition mechanisms in Indonesia's legal system. To address these deficiencies, it is imperative to introduce substantive and structural reforms in Indonesia's trademark law. These reforms may include the integration of the first-to-file and first-to-use principles, the explicit recognition of well-known trademarks, and the enhancement of DJKI's capacity to conduct substantive examinations of trademark applications. Furthermore, the introduction of alternative dispute resolution (ADR) mechanisms, such as mediation and arbitration, prior to the initiation of court proceedings, as well as the imposition of stricter criminal sanctions for trademark violations, would serve as effective deterrents against unauthorized trademark registration and infringement. The overarching goal of trademark law reform in Indonesia is to establish a more equitable, transparent, and efficient legal framework that ensures optimal protection for genuine trademark owners while simultaneously curbing opportunistic abuses by unscrupulous parties. By strengthening regulatory provisions and enhancing institutional capacity, Indonesia can foster a fair and competitive business environment while simultaneously bolstering public trust in its trademark protection system.

#### **IV. CONCLUSION**

The application of the first-to-file principle in trademark registration in Indonesia offers legal certainty by granting exclusive rights to the first party to submit a registration application. However, in practice, this system raises significant concerns regarding justice, particularly in cases of trademark squatting, where bad-faith actors exploit legal loopholes to register trademarks belonging to others, often disadvantaging original owners with limited resources. An analysis grounded in John Rawls' theory of justice suggests that the current legal framework fails to adequately protect vulnerable stakeholders, such as small business owners, and lacks mechanisms to ensure good faith in trademark registration. To enhance fairness, policy reforms are required to improve the legal structure, institutional capacity, and dispute resolution mechanisms. Additionally, substantive legal updates are necessary to provide clear definitions of good faith, establish criteria for well-known trademarks, and refine regulations on similarity in essence, as the current legal ambiguity often results in uncertainty and injustice. To address these issues, several recommendations are proposed.

Legislators should revise the Trademark and Geographical Indications Law to eliminate legal loopholes and introduce alternative dispute resolution (ADR) mechanisms, such as mediation and arbitration, to reduce litigation burdens. Judges require specialized training in intellectual property law to ensure that rulings reflect substantive justice principles beyond literal statutory interpretation. The Directorate General of Intellectual Property (DJKI) should enhance examination procedures by modernizing trademark databases to prevent fraudulent registrations while actively engaging in regulatory revisions. Law enforcement agencies must consistently implement sanctions, enforce strict legal compliance, and engage in public legal awareness campaigns to deter violations. Furthermore, business actors and the public should actively utilize DJKI's online services, report trademark misuse, and increase their legal literacy on trademark protections. Implementing these comprehensive reforms will contribute to a transparent, equitable, and effective trademark protection system, promoting healthy competition and ensuring optimal legal safeguards for all stakeholders.

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