

*(Research/Review) Article*

# Legal Protection for Owners of Well-Known Trademarks from the Perspective of Court Decisions

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**Abstract:** Protection of well-known trademarks is a crucial aspect of intellectual property systems, especially in the face of global trade dynamics and the development of digital technologies. This study aims to analyze the effectiveness of legal protection for owners of well-known trademarks from the perspective of court decisions in Indonesia. Using a qualitative method based on a normative juridical approach and case studies of court rulings (including the Hugo Boss and Superman cases), this research reveals that trademark protection in Indonesia remains reactive, dependent on litigation, and has not fully prevented the registration of confusingly similar trademarks by parties acting in bad faith. Moreover, the absence of objective standards for defining well-known trademarks and indicators of bad faith weakens legal certainty. On the other hand, courts have begun to show consistency in rejecting trademark registrations that violate the principles of well-known trademark protection, although this has yet to be supported by an adequate administrative system from the Directorate General of Intellectual Property (DJKI). The study recommends the establishment of technical regulations, strengthening DJKI's capacity, and integrating protection systems with international norms as strategic steps to reinforce legal protection for owners of well-known trademarks in Indonesia.

**Keywords:** Litigation, Protection, Trademark

## 1. Introduction

In the era of globalization and increasingly competitive market dynamics, trademarks not only serve as product or service identities but also as symbols of reputation and consumer trust [1]. Famous trademarks hold significant economic value and become strategic assets for companies. However, amid the complexities of trade, owners of famous trademarks often face legal challenges, especially related to the registration of trademarks by others with bad faith intentions [2].

One case that reflects this issue is the dispute between Hugo Boss TradeMark Management GmbH & Co. KG and Anthony Tan regarding the "Hugo Selection" trademark. In case number 520 K/Pdt.Sus-HKI/2021, the Supreme Court ruled that the use of the word "Hugo" by Anthony Tan bore substantial similarity to the famous "Hugo Boss" trademark, and that the registration was done in bad faith. This decision emphasizes the importance of legal protection for famous trademarks that are widely recognized by the public [3], [4].

Another case highlighting the protection of famous trademarks is the dispute between DC Comics and PT. Marxing Fam Makmur regarding the use of the "Superman" character. In the Central Jakarta Commercial Court decision No. 29/Pdt.Sus/Merek/2019/PN Niaga Jkt.Pst, the court ruled that the "Superman" trademark registration by PT. Marxing Fam Makmur was made in bad faith, considering the global popularity of the character before it was registered in Indonesia [5], [6].

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Although Law No. 20 of 2016 concerning Trademarks and Geographical Indications provides regulations for the protection of famous trademarks, its implementation on the ground still faces various challenges [7]. One of the issues is the "first to file" registration system, which can be exploited by certain parties to register famous trademarks without legitimate rights. This raises debates about the effectiveness of the legal protection provided to the owners of famous trademarks [8].

This article aims to analyze the legal protection of owners of famous trademarks from the perspective of court decisions in Indonesia. By reviewing various cases decided by the courts, it is hoped that a deeper understanding can be gained regarding the challenges and solutions for the protection of famous trademarks in Indonesia. Famous trademarks play a significant role as identifiers and symbols in markets flooded with various products and services [9]. A well-known trademark is not merely a name or symbol, but the result of a long-standing effort to build a strong image and reputation in the eyes of consumers. In an interconnected world, consumer trust in trademarks becomes one of the key factors determining business success. Famous trademarks often serve as a benchmark for quality, which is why their owners hold an essential position in the global economy [10].

For instance, brands such as Apple, Coca-Cola, or Nike have gained international recognition, not just as high-value products but also as symbols of status, lifestyle, and quality. These trademarks reflect not only product quality but also the values and philosophies promoted by the companies behind them. Therefore, these famous trademarks become highly valuable assets that must be protected from various forms of threats, including unauthorized exploitation by third parties who do not hold rights to these trademarks [11].

Along with the rapid development of information and communication technologies, as well as the rise of digital platforms and e-commerce, the challenges in protecting famous trademarks have become more complex. In the digital realm, famous trademarks can easily be exploited by others without permission or legitimate rights, either through registration in other countries or unauthorized use on digital platforms. This practice is often referred to as "brand piracy" or trademark squatting. In this regard, owners of famous trademarks who have previously invested significant resources in building their reputations now face unfair competition and may suffer significant losses due to third parties trying to benefit from the popularity of the trademark [12].

In Indonesia, trademark protection is regulated under Law No. 20 of 2016 on Trademarks and Geographical Indications. Although this law provides better protection for famous trademarks compared to previous legislation, several challenges remain in its practical application. One of the most notable issues is the "first-to-file" trademark registration system, which grants priority to the first party to file a trademark application, even if that party has no prior right to use the trademark. This system often creates an imbalance between the owner of a well-known trademark and a third party attempting to profit by registering a similar trademark, even if they have no affiliation with the original trademark [13].

Another challenge lies in proving the "fame" of a trademark. In trademark disputes, it is not uncommon for the courts to face situations where a trademark is not registered in Indonesia but is widely known abroad. In such cases, there are often legal debates over whether a globally recognized trademark should be afforded protection in Indonesia without official registration. Some argue that protection for famous trademarks should not depend on registration but on global recognition of the trademark's existence and popularity [14].

In various cases decided by the courts, it becomes evident that the role of the judiciary is crucial in upholding justice and ensuring appropriate protection for owners of famous trademarks. One example often referenced is the case of PT. ABC (owner of the XYZ trademark) suing a third party that registered a trademark very similar to XYZ, which had already gained significant recognition in Indonesia. The court decisively annulled the third party's registration and granted full protection to PT. ABC's trademark. Similar cases also occur in global disputes between international brands and local companies attempting to register a trademark with a similar or identical name, even though the trademark was already famous abroad [15].

However, despite the existence of many court rulings that support the protection of famous trademarks, there are still gaps that can be exploited by certain parties looking to profit from the popularity of a trademark without authorization. One of the main reasons for this is the limitations in the enforcement and monitoring mechanisms, especially when dealing with legal challenges related to online platforms. This issue becomes even more relevant in

the digital age, where trademark registration can be easily done online, and trademark infringement can occur quickly and on a large scale through the internet [16].

It is essential to note that the protection of famous trademarks involves not only preventive measures in registration and trademark filings but also active protection through legal actions against parties engaged in trademark squatting, misuse of trademarks, or intellectual property rights violations. Therefore, the role of the courts in delivering fair and appropriate rulings is vital. Court decisions, beyond affecting the parties directly involved in the dispute, also serve to provide guidance for broader legal practices in society and business [17].

This article will further examine the legal protection of famous trademark owners, focusing on court rulings that are central to understanding how Indonesia's legal system offers protection for the rights of famous trademark owners. By reviewing these cases, the article aims to provide readers with a clearer understanding of how Indonesian law addresses the legal challenges facing famous trademark owners, as well as the measures that can be taken to strengthen such protection in the future. Therefore, this study aims to analyze the effectiveness of legal protection for well-known brand owners from the perspective of court decisions in Indonesia.

## **2. Proposed Method**

### **Research Type**

This study uses a qualitative approach with a descriptive analytical method to analyze the legal protection of owners of famous trademarks in Indonesia, specifically from the perspective of court decisions. This approach allows the researcher to deeply explore and describe how the law protects famous trademark owners in trademark infringement disputes and how court decisions can provide solutions or obstacles in this protection.

### **Research Focus**

This research will focus on two main aspects:

1. Legal protection for owners of famous trademarks under the Trademark and Geographical Indications Law and related court decisions.
2. Application of court decisions in famous trademark cases in Indonesia, examining how the courts handle disputes involving famous trademark infringement and how these decisions affect the trademark protection system.

### **Data Sources**

The data sources in this research include:

1. Court Decisions: This research will analyze several court decisions related to famous trademark disputes in Indonesia. The decisions will be taken from the Supreme Court, Commercial Courts, and other competent courts handling trademark and intellectual property rights cases.
2. Legal Documents: Law No. 20 of 2016 concerning Trademarks and Geographical Indications, as well as its implementing regulations, which relate to the protection of famous trademarks.
3. Literature: Books, journal articles, and other scholarly writings discussing famous trademark protection, trademark law, and the implementation of court decisions concerning famous trademarks.

### **Data Collection Techniques**

1. Document Study: Collecting and examining relevant court decisions, including identifying any misspellings or incorrect terms in the documents.
2. In-depth Interviews: Conducting interviews with legal practitioners, intellectual property experts, and academics to gain deeper perspectives on the legal protection of famous trademarks from a legal standpoint.
3. Case Observation and Analysis: Analyzing various cases related to famous trademarks that have been decided by the courts, focusing on the legal protection given to famous trademark owners in the context of court decisions.

### **Data Analysis Techniques**

1. **Content Analysis:** Using content analysis techniques to examine and interpret the content of court decisions, including the terms and language used, as well as whether the decisions align with applicable legal provisions.
2. **Comparative Analysis:** Comparing different court decisions to identify patterns, consistent legal principles, and legal interpretations related to the protection of famous trademarks.
3. **Legal Interpretation:** Applying legal theories to interpret the results of the analysis of court decisions in the context of famous trademark protection in Indonesia.

### **Validity and Reliability**

To ensure the validity and reliability of the data in this study, the researcher will:

1. Use data triangulation by combining different data sources (court decisions, interviews, and literature) to provide a more objective and comprehensive understanding of the research topic.
2. Conduct verification of the legal sources used, ensuring that all referenced court decisions and regulations are up-to-date and relevant.

### **Research Limitations**

This study is limited to court cases decided in Indonesia within the last five years. Therefore, developments that have occurred after this period may not be covered in this research.

## **3. Results and Discussion**

### **Results**

#### **1. Legal Recognition of Famous Trademarks in Court Decisions**

The research shows that although Law No. 20 of 2016 does not explicitly define the criteria for a famous trademark in detail, Indonesian courts have developed this understanding through jurisprudence. Based on the analysis of several rulings, such as Supreme Court Decision No. 520 K/Pdt.Sus-HKI/2021 (Hugo Boss case) and Commercial Court Decision No. 29/Pdt.Sus/Merek/2019/PN Niaga Jkt.Pst (Superman case), there are common legal reasoning patterns by the judges, including:

- a. Recognition of the popularity and reputation of the trademark both at the national and international level.
- b. Emphasis on the trademark's usage history and dissemination of information to the public.
- c. The registration of a trademark by another party is considered bad faith if it is not accompanied by proof of legitimate use and an intention to genuinely develop the product/service.

These decisions explicitly state that legal protection for famous trademarks does not solely rely on formal registration but on the facts of notoriety and public recognition.

#### **2. Judicial Considerations Regarding Bad Faith**

A deep analysis of the judges' considerations reveals that the element of bad faith is crucial in canceling a trademark resembling a famous trademark. In the Hugo Boss case, the Supreme Court stated that the defendant "intentionally" used the word "Hugo" to associate the product with the international brand. A similar finding was made in the Superman case, where the globally recognized fictional character was used as a food product brand without a license. The criteria for bad faith in these rulings include:

- a. Imitating the main elements of the famous trademark (whether name, logo, symbol, or a combination of visual elements).
- b. No historical connection or legitimate business reason for using the name.
- c. Indications of an intention to take advantage of another party's fame.

#### **3. Inconsistency in Preventive Protection by the DJKI**

Although the law provides a strong legal foundation, the research shows that there are still inconsistencies in preventive protection by the Directorate General of Intellectual Property (DJKI). Several trademarks resembling famous trademarks have passed the formal

examination stage and obtained registration certificates. This indicates weaknesses in the verification system and the lack of an integrated global database reference. The weaknesses in this system result in:

- a. Famous trademarks always needing to take legal action after registration (curative measures).
- b. Increased litigation costs for legitimate trademark owners.
- c. The emergence of legal uncertainty in intellectual property protection in Indonesia.

#### **4. Limitations in Proving Trademark Fame in Court**

The research also found that proving the "famous trademark" status in court is still highly dependent on marketing documents, international certificates, and expert witnesses, which not all trademark owners (especially foreign ones) can effectively prepare. The lack of standardized proof guidelines causes litigation processes to be prolonged and prone to multiple interpretations.

Some judges recognize the fame of a trademark in general (e.g., Superman, Hugo Boss), but in other cases especially for trademarks famous in limited sectors or niche markets the courts often demand detailed proof, including:

- a. Market share
- b. Number of consumers
- c. Advertising statistics
- d. Social media presence
- e. Digital footprint in the Indonesian market

#### **5. Consistency in Jurisprudence as a Form of Protection**

Court decisions in commercial courts and the Supreme Court regarding famous trademarks show a trend of consistency in law enforcement. This is a positive signal for business actors that the courts can be a last line of defense if the intellectual property administration system fails to prevent the registration of trademarks violating the principle of good faith.

### **4. Discussion**

#### **1. The Urgency of Protection for Famous Trademarks in the Indonesian Legal System**

Famous trademarks hold a strategic position in global trade because they not only serve as a sign of identification but also as a representation of quality, reputation, and consumer trust. When a trademark becomes famous, its economic value increases and it becomes vulnerable to unauthorized exploitation by parties seeking to profit quickly without building their reputation from scratch. Therefore, the law is required to provide adequate protection for the owners of famous trademarks to prevent harm caused by registrations by unauthorized parties. In the Indonesian context, although the law provides protection for famous trademarks through Article 21 (1) of the Trademark and Geographical Indications Law, its implementation still faces challenges. This research shows that famous trademark owners often only receive protection after filing a lawsuit, not preventively by the registration authority. This creates an imbalance between the norm and practice [18].

#### **2. Legal Construction of Bad Faith in Court Decisions**

An important aspect of protecting famous trademarks is the examination of bad faith in the trademark registration process. In the decisions studied, including the Hugo Boss and Superman cases, it appears that courts tend to reject the registration of trademarks that are similar to famous trademarks if there is evidence of an intention to "ride on" the fame of the original trademark. This evaluation of bad faith is conducted contextually, considering:

- a. The extent to which the applicant is aware of the existence of the trademark.
- b. The commercial motive to gain quick profits.
- c. The absence of rational reasons for using an identical or similar name. However, there is still ambiguity in the standard of evaluating "bad faith" because there is no objective and binding juridical indicator. As a result, in some less well-known cases or in specific sectors, courts still rely on subjective interpretations that are prone to inconsistency across rulings.

### 3. The Role of Jurisprudence in Achieving Legal Certainty and Fairness

In the Indonesian legal system, which does not adopt the principle of *stare decisis*, jurisprudence is not binding but has persuasive power. This research finds that even though jurisprudence has not become a formal source of law, the practices of commercial courts and the Supreme Court show a consistent tendency to protect famous trademarks. This consistency is important to create legal certainty for trademark owners and businesses, as well as fairness in trade. However, without guidelines or implementing regulations from the Directorate General of Intellectual Property (DJKI) referring directly to these decisions, legal protection for famous trademarks will continue to depend on the active role of trademark owners in filing lawsuits. This places a significant burden on the owners, especially foreign owners or small businesses with limited resources.

### 4. Evaluation of the Role of the Directorate General of Intellectual Property (DJKI)

The research findings show that the trademark registration system managed by DJKI is still unable to effectively detect trademark registrations that resemble famous trademarks. This happens because [19]:

- a. DJKI does not have access to or does not comprehensively utilize the international famous trademark databases.
- b. There is no additional verification system to test for potential overlaps with global famous trademarks.
- c. Trademark examiners are not equipped with technical guidelines or in-depth training to holistically recognize phonetic, visual, and conceptual similarities. Therefore, administrative reforms and strengthening DJKI's role in preventing the registration of trademarks that violate the principle of good faith are necessary. This includes using artificial intelligence technology for automated trademark matching and integration with international databases like the WIPO Global Brand Database.

### 5. The Need for Standardization of Famous Trademark Criteria

A key issue in the legal protection of famous trademarks in Indonesia is the lack of definite and standardized criteria. As a result, proving that a trademark is "famous" becomes a heavy burden for the trademark owner, especially when the case occurs in a cross-border context. Clear and technical standards are needed, such as:

- a. Duration of commercial use of the trademark.
- b. The number and reach of advertising and marketing campaigns.
- c. Public and media recognition.
- d. Sales data and market distribution. Without these criteria, courts will continue to face difficulties in taking an objective and consistent stance in deciding cases.

### 6. Preventive vs. Curative Protection

This research also highlights the importance of preventive protection over relying solely on curative protection through the courts. A legal system that only acts after a violation occurs increases the risk of material and reputational damage for the owners of famous trademarks. In the long run, this will diminish Indonesia's competitiveness as a destination for investment and trade. An early detection system in the trademark registration process is needed, including:

- a. The implementation of a watch service system by DJKI.
- b. Collaboration with business associations and trademark owners.
- c. Public outreach and education on the importance of respecting intellectual property.

### 7. Indonesia's Position in the International Famous Trademark Protection System

As a member of the World Trade Organization (WTO) and a signatory to the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights), Indonesia has an obligation to provide effective protection for famous trademarks, as stipulated in Articles 16(2) and (3) of TRIPS. In this context, Indonesia has also ratified the Paris Convention of 1883, which emphasizes the importance of protecting famous trademarks even if they are not registered in the country where the infringement occurs.

However, in practice, the implementation of these international norms in Indonesia faces several challenges, including [20]:

- a. The absence of an automatic mechanism to identify famous trademarks across jurisdictions, as Indonesia's Trademark Law still requires proof of fame in the national courts.
- b. Dependence on physical proof, which makes it difficult for foreign trademark owners without direct activities in Indonesia.
- c. A lack of policy harmonization between Indonesia and trading partner countries, especially in the exchange of famous trademark data, mutual recognition, and the application of the equivalence principle in protection.

The implication of this is the potential for forum shopping by bad-faith parties, who register famous trademarks in countries with weak protection systems, including Indonesia, to gain legal or material advantages.

#### 8. The Concepts of "Dilution" and "Passing Off" that Have Not Been Optimally Accommodated

In international trademark law practice, the concepts of dilution (the weakening of a trademark's distinctiveness) and passing off (the unauthorized use of another's reputation) are important mechanisms in protecting famous trademarks. However, in Indonesia's legal system, these two concepts have not been explicitly accommodated in the laws, even though they often appear in the plaintiff's arguments in trademark cases.

Dilution refers to the harm suffered by the owner of a famous trademark due to its use by another party, which can diminish the image or association of the trademark, even if not in similar products. For example, a famous perfume trademark used for a food product, thereby diluting the meaning or exclusivity of the perfume brand.

Passing off, which developed in common law systems, is also relevant in Indonesia, especially when there is the use of a similar trademark by an unrelated party, causing the public to be deceived into thinking the products come from the same source.

The lack of explicit regulation of these two doctrines limits the ability of judges to provide maximum protection for famous trademark owners in a broader context. Indonesian courts rely more on the principle of good faith, which is essentially narrower in scope compared to the concepts of dilution or passing off [21].

#### 9. The Challenges of Globalization and E-Commerce to Famous Trademark Protection

The digital era and cross-border trade (e-commerce) increasingly challenge the effectiveness of legal protection for famous trademarks. Trademarks can gain wide recognition through the internet without being registered in all countries, and trademark infringements can happen rapidly on a global scale. In this regard, Indonesia faces significant challenges because

- a. The trademark registration system has not been integrated with global digital platforms, making it difficult to verify whether a trademark is already recognized abroad.
- b. Law enforcement against infringements on digital platforms is still weak, especially against perpetrators located outside of Indonesia's jurisdiction.
- c. Online sellers in marketplaces often exploit famous trademarks as keywords or product descriptions to attract consumers, without strict control from platform providers.

In this context, legal protection for famous trademarks must adapt to the digital ecosystem through:

- a. Collaboration between the Directorate General of Intellectual Property (DJKI), the Ministry of Communication and Information (Kominfo), and e-commerce providers to create a responsive trademark infringement reporting system.
- b. Strengthening legal norms concerning cyber trademark infringement, especially for domain names, keywords, and product descriptions.
- c. Establishing a specialized unit within the DJKI focused on monitoring the use of famous trademarks in the digital world.

#### 10. The Need for Policy Reformulation and Revision of Technical Regulations

Given the various issues mentioned above, there is an urgent need to reformulate the policy on famous trademark protection through:

- a. Issuance of a Minister of Law and Human Rights Regulation or DJKI technical guidelines that specifically regulate the procedures for protecting famous trademarks.

- b. Standardizing the indicators of fame used in the examination process and in court, based on international practices and past rulings.
- c. Strengthening the authority of the DJKI to reject trademark applications based on indications of fame, without having to wait for third-party lawsuits.
- d. Enhancing the capacity of DJKI human resources and commercial judges to understand the development of international doctrines in intellectual property law.

## 5. Conclusions

Based on the results of the research and discussion, it can be concluded that the legal protection for the owners of famous trademarks in Indonesia is still reactive and heavily dependent on litigation processes in the courts. Although Law No. 20 of 2016 provides a legal basis for the protection of famous trademarks, in practice, it still faces various challenges:

1. The standard of proof for famous trademarks is not yet standardized and uniform, leading to frequent multiple interpretations and a heavy burden of proof for the trademark owner.
2. The assessment of bad faith by trademark applicants is often subjective and lacks clear indicators, resulting in potential inconsistencies in court rulings.
3. The weakness of the preventive verification system by the Directorate General of Intellectual Property (DJKI) allows trademarks that resemble famous trademarks to be registered legally.
4. The absence of legal recognition of international legal concepts such as dilution and passing off limits the scope of protection that can be provided by the courts.
5. Globalization and e-commerce are expanding the space for infringements, while the law in Indonesia has not fully adapted to the challenges of cross-border digital issues.

In general, although there is positive consistency in some court rulings, legal protection for the owners of famous trademarks still requires strengthening, both in terms of regulations, administration, and law enforcement.

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