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A Fair Protection Model for Trademark Owners Unregistered Due to Registration Negligence

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ABSTRACT

This study discusses a fair model of brand protection for unregistered brand owners due to registration negligence by examining the constitutive and declarative systems in Indonesia. The objective of the study is to formulate a legal protection model that grants rights based on actual use while guaranteeing legal certainty through formal registration. The method used is normative juridical with a qualitative approach, reviewing laws and regulations, court decisions, and related literature. The results show that a hybrid model combining the constitutive and declarative systems provides a balanced protection solution. Implementation of this model requires support from regulatory revisions, outreach to business actors, and effective law enforcement to prevent unfair competition. In conclusion, this hybrid protection model can improve fairness and certainty in brand protection in Indonesia.

Keywords: Trademark Protection, Hybrid Model, Constitutive System, Declarative System, Legal Justice.

INTRODUCTION

Brand protection is a key pillar in providing legal certainty to business actors in conducting their business activities through the recognition of exclusive rights to trademarks or services. Since colonial times, Indonesia has implemented regulations related to trademarks by adopting the Reglement Industriele Eigendom of 1912. After independence, Indonesia issued Law No. 21 of 1961 concerning Company Marks and Commercial Marks, which is based on a declarative system (*first to use*), which provides protection rights based on the actual use of the brand in the market (Rafianti, 2013; Purwaka, 2020).

The development of economic needs and complexity forced the government to make revisions by enacting Law No. 19 of 1992 and subsequently Law No. 20 of 2016 concerning Trademarks and Geographical Indications which adheres to a constitutive system (*first to file*This system requires official trademark registration as an absolute requirement for the granting of exclusive rights by the state, to increase legal and administrative certainty (Murjiyanto, 2023; Sudjana, 2021).

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The implementation of the constitutive system poses challenges for trademark owners who have not yet registered their trademarks due to administrative negligence, limited resources, or lack of legal knowledge. Trademarks that are already widely used and recognized by the public still risk losing legal protection if another party registers a similar trademark first. This creates unfairness and opens up opportunities for unfair competition that harms the original owner (Chuzaibi, 2020; Sudjana, 2021).

This situation has prompted the need to develop a fair brand protection model that accommodates the interests of unregistered brand owners due to registration negligence while maintaining legal certainty and business continuity. This model must be able to balance the principles of fair competition and distributive justice in the ever-evolving protection of brand rights in Indonesia.

Based on the background description, the author formulates the research problems as follows: 1) What is the effective and equitable legal protection model for unregistered trademark owners due to negligence in registering in the constitutive system applicable in Indonesia? 2) What are the technical, legal, and social obstacles and challenges in implementing such protection, as well as solution strategies that can improve the protection of unregistered trademark owners in a practical and inclusive manner?

LITERATURE REVIEW

1. Theory of Intellectual Property Legal Protection

   Intellectual Property Rights (IPR) encompass rights that provide legal protection to creators for the innovations, inventions, designs, and trademarks they develop, as a form of appreciation for their creativity and efforts (Ginting, 2018). This protection is essential to maintain the exclusivity of IPR use, thereby encouraging innovation, strengthening the economic position of creators, and preventing detrimental exploitation (Suharjo, 2019).

   Following are some theories of intellectual property legal protection:

   1. The Theory of Moral and Economic Rights divides IPR into moral rights (the right to be recognized as the creator) and economic rights (the right to use and obtain financial benefits). Legal protection for both aspects is considered crucial to ensuring the interests of creators and the wider community (Notonegoro, 2020).

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2. Public Policy Theory states that IPR protection must balance the exclusive rights of creators and public access to knowledge and creative goods. Therefore, the protection system must not be absolutely exclusive, stifling innovation and scientific development (Rachmat, 2021).
3. The Economic Function Theory emphasizes the function of IPR protection as an instrument to increase investment in research and development, while protecting the market from counterfeit products that harm consumers and original creators (Subekti, 2017).

In relation to brands, this legal protection theory demands a system that guarantees certainty over the exclusive rights of brand owners, which applies not only to registered brands but also to unregistered brands that are already in actual use in commerce (Muliawan, 2018). Effective brand protection is a tool that prevents unfair competition and maintains consumer trust in certain products/services (Arifin, 2020).

The legal basis is found in Law No. 20 of 2016 concerning Trademarks and Geographical Indications, which regulates in detail the rights and obligations of trademark owners, as well as protection mechanisms. Several important articles related to trademark protection include:

1. Article 4 paragraph (1): Rights to a brand are granted to the brand owner who has registered with the Directorate General of Intellectual Property through a legal official registration process.
2. Article 21 paragraph (1) letters b and c: Prohibits the registration of trademarks that contain similarities or similarities in principle or in their entirety to well-known trademarks belonging to other parties, whether for similar or dissimilar goods/services, with the aim of protecting the rights of the owner of the well-known trademark even if the trademark is not registered (Protection of Well-Known Trademarks).
3. Article 52: Includes rules regarding good faith and cancellation of trademarks that have not been used for three consecutive years, as an additional legal protection mechanism that emphasizes the principle of fairness in trademark rights.

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4. Articles 76 and 77: Provide the right for owners of well-known brands to file a lawsuit for cancellation of brand registrations made in bad faith, while also regulating administrative and criminal sanctions related to IPR violations.

The explanation of these articles provides a concrete set of legal protections for registered and unregistered well-known trademarks in Indonesia. This serves as the basis for research to formulate a model of equitable protection that extends to trademark owners who have not registered due to negligence or administrative limitations, while also preventing unfair competitive practices.

2. Trademark Protection System Theory (Constitutive vs Declarative)

The trademark protection system in Indonesia has undergone significant developments and adjustments to improve the effectiveness of intellectual property rights protection. Since the enactment of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, Indonesia has officially implemented a constitutive system (*first to file*) in granting rights to a brand, where exclusive rights are obtained by the party who first officially registers the brand with the Directorate General of Intellectual Property (DJKI) (Rahman, 2025).

a. Declarative System (First to Use).

The declarative system of trademark protection in Indonesia grants exclusive rights to the first user of a trademark in actual commerce, without the need for formal registration. This concept provides substantive fairness by recognizing first use and the creation of a trademark's reputation as the basis for rights, rather than merely the administrative formality of registration. This system is particularly beneficial for micro, small, and medium enterprises (MSMEs), which sometimes face constraints such as cost, legal knowledge, or time constraints in registering (Nugraha, 2021).

The declarative system has weaknesses related to legal certainty. Evidence of actual use of a trademark, which forms the basis for granting rights, can be difficult to obtain and defend in court due to its subjective nature and the need for complex direct and indirect evidence. This often triggers heated disputes and uncertainty in law enforcement. This ambiguity can undermine business and consumer trust and

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open up opportunities for trademark misuse by unauthorized parties (Hukumonline, 2022).

In fair intellectual property protection, the declarative system still provides protection for businesses that are not formally registered but have actually used brands to build their reputation and economic value. This approach promotes distributive justice and protects small businesses that contribute to the national economy (Salsabilah, 2025).

Regulation of the Minister of Law and Human Rights No. M.HH-01.AH.04.02 of 2025 confirms that declarative protection can still be provided through a mechanism for proving the use of a real brand in cases of unfair competition, even though the brand has not been officially registered, as an effort to prevent violations of intellectual property rights.

b. Constitutive System (First to File).

Constitutive System or also known as the principle*First to File*is a system that is currently officially in effect in brand protection in Indonesia, as regulated in Law No. 20 of 2016 concerning Brands and Geographical Indications (Article 3 paragraph 1). This system automatically grants exclusive rights to the party who first submits an official brand registration application to the Directorate General of Intellectual Property (DJKI) without regard to who first uses the brand in trade practices (Rahman, 2025; Sahabuddin, 2025).

The primary advantage of this system is that it provides high legal certainty and ease of rights enforcement. Proof of official registration provides a valid and strong basis for legal proceedings in the event of a trademark dispute. This simplifies and expedites dispute resolution in court, as the determination of rights is based on a clear registration date and time that can be administratively verified (Santoso, 2019; Nugraha, 2021).

The constitutive system also has significant weaknesses, namely the potential to create injustice for brand owners who actually use the brand first but due to administrative negligence, financial or resource constraints have not registered their brand. In some cases, other parties can register the brand first without actual use and thus obtain formal exclusive rights, which can be detrimental to the original

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brand owner who has already established a reputation and a real brand in the market (Kurniawan, 2020; Ananda, 2024).

This unfairness has led to criticism that the constitutive system tends to prioritize administrative formalities over substantive justice. This system needs to be complemented by a protection mechanism that takes into account the actual use and good faith of brand owners, such as implementing a hybrid system that combines the advantages of the constitutive and declarative systems. This hybrid system promotes a balance between legal certainty and fairness for all parties in the business world, particularly micro, small, and medium enterprises (MSMEs) that have not yet been able to formally register their brands (Prasetyo, 2023; Ananda, 2024).

c. Hybrid System Development and Reform 2025.

Approaching 2025, the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights of the Republic of Indonesia is actively implementing various strategic steps to accelerate and simplify the trademark registration process. One important innovation is the establishment of a maximum completion period of 6 months for trademark registration, which is much faster than in large countries such as the United States and China. Affordable registration fees for micro, small, and medium enterprises (MSMEs) are a top priority to encourage businesses to legally secure their trademarks and reduce the risk of future legal conflicts (Kemenkumham RI, 2025).

Recent research suggests the need to develop a hybrid brand protection model that combines the advantages of both constitutive and declarative systems. This hybrid model is expected to provide more equitable legal protection by recognizing not only formal registration as the basis for rights but also recognizing the actual use of the brand that has been substantially established by business actors in the market (Rahman, 2025; Ananda, 2024).

This hybrid model also takes into account the protection of well-known brands (*well-known marks*) that have not been officially registered. This is in line with the provisions of Article 21 of Law No. 20 of 2016, where legal protection is provided to prevent misuse by other parties who register trademarks that are the same or

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similar to the well-known trademark (Trademark Law Article 21 paragraph 1 letter b).

The hybrid model not only increases the flexibility of the legal system but also addresses the real needs of Indonesian businesses, the majority of which are MSMEs, who may struggle to meet administrative requirements quickly. This model provides legal protection that is responsive to market dynamics and digital technology developments.

This model anticipates the risk of misuse by irresponsible parties who exploit the formal registration system to take over trademarks used by others. Preventive measures and adequate verification mechanisms are required to ensure fair and transparent verification of trademark ownership (Ministry of Law and Human Rights of the Republic of Indonesia, 2025).

In addition to reforming administrative procedures and fees, the Directorate General of Intellectual Property Rights (DGIP) is also promoting the use of information technology, such as electronic registration systems and easily accessible online trademark searches, to expedite processes and increase transparency. This strategy is expected to not only improve bureaucratic efficiency but also strengthen legal protection in the challenging digital era (Ministry of Law and Human Rights of the Republic of Indonesia, 2025).

3. Distributive Justice Theory in Brand Protection

The theory of distributive justice stems from the idea that rights and obligations should be allocated fairly and proportionally to each party based on their respective contributions and needs, particularly in the context of regulating intellectual property rights such as trademarks (Rawls, 1971; Basyra, 2025). This principle, in designing a trademark protection system, goes beyond administrative procedures and also considers the aspect of fairness for trademark owners who are late or have difficulty registering officially.

In brand protection, distributive justice demands that brand ownership rights be granted proportionally based on actual contributions to the brand's use, development, and utilization in the market. Brand owners who have invested in and maintained their

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brand's reputation should not be disadvantaged simply by administrative registration issues (Siregar, 2024).

This theory also creates space for legal protection to be flexible and responsive to the economic realities of business actors, particularly micro, small, and medium enterprises (MSMEs), which typically face various administrative, financial, and human resource constraints. Equitable brand protection must accommodate these business groups, ensuring legal certainty and guaranteed protection of their business identities (Purwanto, 2023).

Enforcing the principle of distributive justice in the trademark protection system is also important to prevent domination by large businesses or corporations that can control the market through massive trademark registration and delay or hinder the registration of trademarks used by small businesses (Wulandari, 2025). The hybrid protection model combines aspects of the constitutive and declarative systems into a form of distributive justice implementation that guarantees equal opportunities and equal protection in the business world.

The theory of distributive justice encourages harmonization in legislation, administrative procedures, and government policies to create an inclusive and sustainable brand protection system (Muslimin, 2024).

4. Theory of Preventing Unfair Competition

Brand protection is inseparable from efforts to prevent unfair business competition practices that harm original brand owners, other business actors, and consumers. The theory of fair business competition emphasizes the importance of maintaining market integrity to create a fair and competitive business climate. In the realm of brand protection, unfair competition is closely related to brand misuse, imitation, false trademark registration, or the deliberate imitation of brand characteristics to gain unjustified advantage (Putri, 2020).

Based on Article 18 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, actions considered as unfair competition include registering trademarks that are identical or similar to well-known trademarks without permission, which has the potential to cause confusion among consumers and harm the trademark owner (Trademark Law, 2016). This theory provides a legal and ethical basis for trademark

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protection that is not only formal but also substantive, by preventing fraudulent practices in the registration and use of trademarks.

The theory of preventing unfair competition also includes the principles of honesty and loyalty in business.*unfair competition*Imitation of packaging, logos, or marketing strategies can damage the reputation of the original brand and undermine healthy business competition (Wijaya, 2020). Legal protection mechanisms must be able to prosecute perpetrators of unfair competition and provide compensation to injured parties to maintain market balance.

In unregistered trademarks, this theory is particularly relevant because it asserts that even if a trademark owner has not officially registered their trademark, they are entitled to legal protection if they can prove the use of the trademark and prevent others from attempting to register it illegally (Siregar, 2024). This provides fair protection for trademark owners who have not registered due to administrative limitations.

The importance of unfair competition theory is increasingly recognized in the digital and globalized era, where brand piracy, product counterfeiting, and fraudulent practices through online platforms are on the rise. Based on this theory, brand protection plays a strategic role in maintaining fairness for businesses and maintaining consumer trust.

METHODS

This research uses a normative juridical method with a qualitative approach that aims to explain and analyze the legal protection system for unregistered brands in depth through a study of applicable legal documents and norms.

The research approach used is a normative juridical approach, focusing on the analysis of formal legal norms, including laws, government regulations, court decisions, and legal doctrines relevant to trademark protection in Indonesia. This approach also incorporates conceptual aspects and legal theory to support understanding and formulate a just legal protection model.

This study uses three types of data sources:

1. Primary data, namely laws and regulations related to brand protection such as Law No. 20 of 2016 concerning Brands and Geographical Indications, implementing regulations, and court decisions that serve as jurisprudence.

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2. Secondary data, in the form of scientific literature in the form of books, journal articles, theses, dissertations, and previous research results that examine the legal aspects of brand protection.
3. Tertiary data, including legal encyclopedias, legal dictionaries, and other supporting documents containing related legal definitions and concepts.

Data analysis was conducted using normative descriptive techniques aimed at describing, explaining, and interpreting existing legal provisions and their implementation practices. Legal data was classified, interpreted, and compared with available legal theory and empirical evidence to formulate a legal protection model for unregistered trademarks that meets the principles of justice and legal certainty.

This method also allows for a critical evaluation of the effectiveness of laws and policies implementing brand protection in the modern context and the challenges of globalization.

RESULTS

The constitutive system regulated in Law No. 20 of 2016 expressly provides exclusive rights to brand owners who have been registered with the Directorate General of Intellectual Property, in Article 5 paragraph 1 "*Trademark rights are exclusive rights granted by the state to the owner of a registered trademark for a certain period of time by using the trademark themselves or giving permission to another party to use it.*." This system places registration as an absolute requirement for recognition of rights, so that brand owners who have not registered their brands have the potential to lose legal rights to their brands even though they have actually used them.

According to Article 20 of the Trademark Law:

(1) A trademark cannot be registered if:

a. the same as a registered trademark belonging to another party for similar goods and/or services;
b. well-known brands belonging to other parties for similar goods and/or services;
c. well-known brands belonging to other parties for dissimilar goods and/or services that meet certain requirements;
d. is a geographical indication."

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This provision also opens up the opportunity for disputes that could be detrimental to owners of unregistered trademarks, especially if another party registers the same or similar trademark first.

In response to the weaknesses of the constitutive system, this study found that a declarative system, which grants rights based on actual use of the brand in the market, could be a more equitable solution. This declarative system is particularly beneficial for micro, small, and medium enterprises (MSMEs) facing administrative registration challenges. This is supported by the principle of distributive justice, which provides substantial protection to brand owners who have contributed to building brands within the community, even if they have not yet formally registered their brands (Nugraha, 2021).

This research also refers to the special protection of well-known brands that have not been formally registered, as regulated in Article 21 paragraph 1 letter b of the Trademark Law which provides exclusive rights to well-known brands to protect them from arbitrary registration by other parties.

The study's findings suggest that a hybrid model combining constitutive and declarative systems can address the existing legal gap. This model accommodates legal certainty through formal registration while simultaneously recognizing rights based on actual use of the trademark, thus creating an optimal balance between legal certainty and fairness for unregistered trademark owners (Rahman, 2025).

This hybrid model also strengthens legal protection against unfair competition practices (*Unfair Competition*) by providing space for proof of actual use of the brand as a basis for legal protection, thereby preventing other parties from registering the brand in bad faith and harming the original owner (Putri, 2020).

Furthermore, this hybrid model is highly suitable for application in the context of MSMEs and informal businesses in Indonesia, which may struggle to meet full administrative requirements. In addition to providing protection, this model also increases business and consumer confidence by ensuring market stability and preventing fraudulent practices (Siregar, 2024).

DISCUSSION

1. Fairness in the Protection of Unregistered Trademarks

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The model for protecting unregistered trademarks must firmly prioritize the principle of justice for business actors who experience negligence in registering trademarks. The constitutive system implemented in Indonesia, based on Law No. 20 of 2016 concerning Trademarks and Geographical Indications, explicitly prioritizes official registration to obtain exclusive rights, in Article 5 paragraph (1): "*Trademark rights are exclusive rights granted by the state to the owner of a registered trademark for a certain period of time by using the trademark themselves or giving permission to another party to use it.*."

This provision implies that trademark owners who have not registered are certainly denied legal protection, even if the trademark is already in actual use and widely recognized in the market. This creates substantial injustice, particularly for small and medium-sized enterprises (MSMEs), which often face financial, time, and knowledge constraints in officially registering a trademark (Irvan, 2022). In practice, they risk losing their trademark rights simply due to administrative shortcomings.

To address this issue, the declarative system offers alternative protection by granting rights based on the actual use of the brand in the marketplace. This model is based on distributive justice, which demands that rights be granted proportionally to the brand owner's actual contribution to the economy and society (Sriyana, 2025). Even if not formally registered, a brand owner can obtain legal recognition as long as they can demonstrate the brand's use and reputation.

Article 21 paragraph (1) letter b of Law No. 20 of 2016 provides special protection to well-known brands that have not been registered, prohibiting the registration of identical or similar brands that could harm the owner of the well-known brand. The contents of the article read:

"A trademark registration application may be rejected if the trademark applied for is similar to a well-known trademark belonging to another party for similar or dissimilar goods and/or services that meet certain requirements."

Protection for unregistered trademarks is generally not explicitly addressed in the law, creating a legal loophole. The development of a hybrid trademark protection model that combines constitutive and declarative mechanisms is urgently needed. This model is expected to provide both legal certainty and substantive justice.

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This hybrid model provides legal flexibility, allowing businesses to demonstrate actual use as the basis for rights, while maintaining administrative certainty through official registration (Putri, 2024). This approach also supports the prevention of unfair competition practices and trademark misuse by irresponsible parties.

The aspect of justice in the unregistered trademark protection system is a moral and legal basis that must be accommodated through regulatory revisions, strengthening law enforcement mechanisms, and intensive outreach to business actors so that they can protect their intellectual property rights effectively (Kurniawan, 2023).

2. Efficiency and Legal Certainty

The constitutive system in force in Indonesia provides a high level of legal certainty through the principle of registration as the basis for exclusive rights to a brand. With this system, brand owners only obtain exclusive rights after their brand is officially registered with the Directorate General of Intellectual Property (DJKI), as stated in Article 5 paragraph (1) of Law No. 20 of 2016:

"The right to a trademark is an exclusive right granted by the state to the owner of a registered trademark for a certain period of time by using the trademark himself or giving permission to another party to use it."

This legal certainty facilitates rights enforcement and dispute resolution due to clear and official proof of ownership. This transparent and administrative registration system also supports efficient intellectual property management, accessible to businesses and law enforcement, thereby minimizing protracted disputes (Wahyudi, 2023; Murjiyanto, 2021).

The reality on the ground shows that many obstacles remain that prevent businesses, especially MSMEs, from registering their trademarks. High registration fees, complicated procedures, and a lack of understanding of intellectual property rights protection discourage businesses from registering (Chuzaibi, 2022). The limited number of trademark registration offices in the regions and the quality of human resources within these offices also slow down the registration process, reducing system efficiency.

To address this issue, the Ministry of Law and Human Rights, through the Directorate General of Intellectual Property Rights (DJKI), has implemented important reforms,

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including the implementation of an electronic registration system and accelerated administrative processes, with a target of completing registration within six months (Kemenkumham RI, 2025). These innovations not only reduce bureaucracy but also increase transparency and ease of access, thereby increasing business participation in protecting their trademark rights.

Socialization and education are also crucial aspects in supporting the efficiency and legal certainty of the constitutive system. Mentoring programs for MSMEs, including intensive training on the importance of trademark registration and its procedures, help reduce ignorance and increase legal awareness among business actors (Santoso, 2023).

The 30-day announcement mechanism for trademark registration applications also provides space for other parties to file objections if they feel they have been harmed, creating a fair and transparent process and strengthening legal certainty (Sudargo Gautama, 1989).

Through these various steps, the constitutive system seeks to combine necessary legal certainty while increasing efficiency and affordability in its practical application. Continuous evaluation and improvement are key to ensuring that this system operates optimally and inclusively, accommodating the needs of all business actors, particularly MSMEs.

3. Harmonization with Law and Prevention of Abuse

Harmonizing the hybrid brand protection system with Law No. 20 of 2016 concerning Trademarks and Geographical Indications is a crucial strategic challenge. Article 21 of the law regulates the protection of well-known brands, which contains the following key provisions:

Article 21 paragraph (1):

"A trademark registration application may be rejected if the trademark applied for is substantially or completely similar to:

a. Registered trademarks belonging to other parties for similar goods and/or services;
b. Well-known brands owned by other parties for similar goods and/or services;
c. "A well-known brand owned by another party for dissimilar goods and/or services that meet certain requirements."

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In the explanation of this article, it is emphasized that the rejection of an application is based on the public's general knowledge of the brand in the relevant business sector, which confirms strong protection for well-known brands even though they have not been officially registered.

However, this regulation is still limited to well-known brands and does not provide comprehensive protection for unregistered brands in general. Regulatory revisions are needed to strengthen legal protection for unregistered brands, which are part of a hybrid model of brand protection.

Harmonization must include affirmation of prevention measures against misuse of the registration system by irresponsible parties. This is crucial to prevent bad faith trademark registration practices that could harm legitimate businesses. For example, registering a trademark that is identical to a trademark already used in the market by another party without permission could potentially lead to losses and unfair business competition.

To overcome this misuse, the provisions of Article 21 paragraph (3) of the Trademark Law state "*A trademark registration application may be rejected if it is submitted by an applicant who acts in bad faith.*."

This harmonization requires strengthening the evaluation and examination mechanisms for registration applications, as well as strict law enforcement against fraudulent practices and trademark misuse. This approach must also be supported by outreach and education for business actors to ensure they understand the importance of trademark registration and the legal consequences of negligence or misuse (Putri & Wijaya, 2025).

With strong regulatory harmonization and effective implementation, a hybrid brand protection model can provide fairness and legal certainty, while maintaining market integrity and providing optimal protection for genuine business actors.

4. Implementation and Socialization Strategy

A strategy for implementing a fair model for protecting unregistered trademarks requires a comprehensive and integrated approach, not only through regulatory revisions but also through strengthening the capacity of law enforcement and a dispute resolution system that adapts to the needs of business actors. Regulatory revisions must provide clear space for trademark protection based on actual use, thus not only focusing

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on the formal aspects of registration, but also adhering to the principle of distributive justice that places rights based on the actual contribution of business actors in the market. Legal regulations need to be more stringent in preventing abuse of the registration system by irresponsible parties, to protect genuine business actors from unfair practices.

Strengthening the capacity of law enforcement is important so that the resolution of trademark disputes runs efficiently and fairly, as well as being able to understand the depth of trademark protection issues which are not only bound by registration documents but also the actual use of the trademark in trade. This will strengthen the effectiveness of protection and make the legal process a tool that truly protects legitimate interests.

The dispute resolution system needs to be equipped with alternative mechanisms such as mediation and arbitration that can provide fast and effective solutions, without always having to rely on litigation, which is often time-consuming and expensive. This system must be flexible, allowing for proof of actual use of a trademark, strengthening the position of businesses that have not formally registered their trademarks but have already used and developed them significantly.

Intensive outreach targeted at business actors, especially MSMEs, is crucial to raise awareness and understanding of the importance of brand protection and registration obligations. This education includes understanding registration procedures, the benefits of protection, and the legal consequences of registration failure. This increased legal literacy will encourage business actors to actively protect their intellectual property, thereby enhancing national business competitiveness.

The use of information technology in the registration process, monitoring, and reporting of alleged trademark infringement is an integral part of the implementation strategy. A user-friendly, transparent, and accessible electronic registration system speeds up processing times and increases accessibility. Digital platforms also facilitate monitoring of trademark status, making protection efforts more responsive and participatory.

Synergistic collaboration between the government, legal institutions, civil society, and businesses is necessary to create a just and sustainable brand protection ecosystem. This

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synergy ensures that policies and implementation are harmonious and effectively address challenges on the ground.

These steps, if implemented consistently and comprehensively, will create brand protection that not only guarantees legal certainty but also provides substantive justice for business actors who sometimes still face administrative constraints, thereby being able to encourage healthy economic growth and market stability.

5. Strengthening Protection for MSMEs

The role of MSMEs as the backbone of the national economy demands special treatment in brand protection. The Indonesian government, through the Directorate General of Intellectual Property (DJKI), actively promotes and facilitates brand protection for MSMEs so they can compete healthily and sustainably in both domestic and global markets. An inclusive and flexible hybrid protection model is considered most appropriate for providing adequate legal protection to MSMEs, which often face administrative challenges in trademark registration.

Efforts to assist and facilitate access to trademark registration have been enhanced through various initiatives, one of which is the implementation of a special, more affordable fee for MSMEs, amounting to Rp500,000, to accelerate collective trademark registration throughout Indonesia. This is part of the government's strategy to reduce the burden of costs and registration processes, which have been the main obstacles for MSMEs in registering their trademarks (DJKI, 2025). Intensive training and outreach are conducted to broaden MSMEs' understanding of the strategic function of trademarks as business identities and a protective barrier against imitation practices and unfair competition.

The Directorate General of Public Works and Public Housing (DJKI) also encourages the use of licensing and franchise schemes, which can provide additional revenue sources through royalties and business expansion, allowing MSMEs to increase the economic value of their brands while promoting local products to the global market. A collaborative approach through collective branding is also considered effective in empowering village cooperatives and small business communities as drivers of the people's economy (DJKI, 2025).

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Brand protection for MSMEs not only provides legal certainty but also increases their competitiveness and business sustainability. With legally protected brands, MSME products have strong added value, maintain authenticity and quality, and offer a high level of trust to consumers. This strategy also helps maintain market stability and creates a healthy competitive climate for overall national economic development (Tri Junianto, 2025).

Strengthening brand protection for MSMEs must be implemented holistically through a combination of adaptive regulations, administrative streamlining, ongoing education, and supporting policies that encourage innovation and business expansion. This will ensure that MSMEs can not only survive but also thrive in an increasingly competitive market.

CONCLUSION

This study concludes that a fair brand protection model for trademark owners unregistered due to registration negligence is a combination of the declarative and constitutive systems. This model grants rights based on actual use of the trademark while simultaneously promoting legal certainty through official registration. Implementation of this model requires support from revisions to laws and regulations, increased awareness among business actors regarding the importance of registration, and effective law enforcement to prevent unfair competition and losses for trademark owners. This hybrid model can provide inclusive, fair legal protection, maintain legal certainty, and support sustainable business development in Indonesia.

LIMITATION

This study has several limitations:

1. This research focuses solely on legal norms and literature studies, thus not incorporating empirical data from the field. This leaves the socio-economic aspects of business actors and the actual obstacles to legal practice unexplored comprehensively. This research also fails to deeply examine the obstacles faced by business actors in implementing trademark protection, including legal awareness and the effectiveness of law enforcement in the field.
2. The research approach used is normative, thus not addressing multidisciplinary factors that significantly influence the implementation of actual legal protection, such as

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business culture, economic conditions, and consumer behavior. It is recommended that further research utilize qualitative field methods involving interviews, observations, and case studies to provide a more comprehensive and applicable picture.

3. Limited resources and time were also limiting factors in this research, affecting the scope of discussion and depth of analysis. These limitations provide an important basis for future researchers to expand the scope of their research so that the results can lead to more effective policy recommendations that reflect real-world conditions in society.

REFERENCES

Purwaka, TH (2020). Brand protection. Prenadamedia Group.

Rafianti, L. (2013). Development of trademark law in Indonesia. Fiat Justisia Journal, 7(2), 213-230.

Murjiyanto, R. (2023). The concept of trademark ownership in Indonesia. Jurnal Iustum, 8(1), 15-30.

Chuzaibi, AF (2020). The constitutive system in Law No. 15 of 2001 concerning trademarks for MSMEs. Journal of Intellectual Property, 4(2), 58-68.

Sudjana, S. (2021). The use of constitutive principles on trademarks in Indonesian trademark law. Journal of Law and Development, 42(3), 220-234.

Arifin, D. (2020). Trademark legal protection in Indonesia. Rajawali Pers.

Ginting, H. (2018). Intellectual property rights and their impact on innovation. Journal of Law and Economics, 6(1), 22-35.

Muliawan, IW (2018). Trademark protection and its legal implications. Journal of Legal Studies, 10(2), 107-120.

Notonegoro, P. (2020). Moral rights and economic rights in intellectual property protection. Yustisia Law Review, 7(1), 55-66.

Rachmat, R. (2021). Public policy theory in the intellectual property protection system. Journal of Legal Policy Studies, 12(3), 98-114.

Subekti, A. (2017). Economic functions and copyright protection. Law and Business Magazine, 4(1), 44-58.

Suharjo, B. (2019). Intellectual property protection in Indonesia: A theoretical and practical review. National Law Journal, 11(4), 134-148.

Indonesia. (2016). Law Number 20 of 2016 concerning Trademarks and Geographical Indications. State Gazette of the Republic of Indonesia.

E-ISSN : 2614-2244
ISSN: 2088-5288

Hukumonline. (2019). Protection of unregistered well-known trademarks in Indonesia. Retrieved from https://www.hukumonline.com/klinik/a/merek-terkenal-yang-tidak-terdaftar-cl5892/

Irvan, N. (2022). Legal protection for unregistered trademark owners. Tatohi Journal.

Ananda, R. (2024). Trademark legal protection: A hybrid approach in constitutive and declarative systems. Journal of Law and Intellectual Property, 11(1), 42-58.

Ministry of Law and Human Rights of the Republic of Indonesia. (2025). Trademark registration in Indonesia takes a maximum of 6 months, faster than in America and China. Ministry of Law and Human Rights News.

Nugraha, AS (2021). Brand protection system with the first to use principle in Indonesia. Journal of Legal Studies, 9(2), 105-118.

Rahman, EA (2025). A comprehensive analysis of trademark legal protection. Journal of Law and Development, 20(1), 15-29.

Sahabuddin. (2025). The effectiveness of the constitutive system in brand protection in Indonesia. Lex Crimen, 15(2), 76-92.

Hukumonline. (2022). The difference between the first-to-file and first-to-use systems in trademark protection. Retrieved from https://www.hukumonline.com/klinik/a/perbedaan-sistem-perlindungan-merek-ifirst-to-file-i-dan-ifirst-to-use-i-lt632997537ca5d/

Salsabilah, A. (2025). Efforts to improve legal protection of trademarks in Indonesia. National Law Journal, 17(1), 77-88.

Ministry of Law and Human Rights of the Republic of Indonesia. (2025). Regulation of the Minister of Law and Human Rights No. M.HH-01.AH.04.02 of 2025 concerning Declarative Intellectual Property Protection.

Kurniawan, F. (2020). A study of the trademark protection system in Indonesia. Journal of Law and Development, 35(3), 215-230.

Prasetyo, A. (2023). Evaluation of the trademark protection system in Indonesia: A combination of constitutive and declarative. Journal of Law and Intellectual Property Rights, 4(2), 77-89.

Santoso, B. (2019). Legal certainty in the trademark registration system. National Law Magazine, 6(1), 34-49.

Putri, H., & Wijaya, A. (2025). Harmonization of brand protection systems and strategies for preventing misuse. Journal of Law and Legal Certainty, 13(1), 56-72.

E-ISSN : 2614-2244
ISSN: 2088-5288

Wardanita, B. (2023). Development of intellectual property dispute resolution mechanisms in Indonesia. Journal of Law, 19(3), 113-125.

Sari, N., & Anwar, M. (2024). Educational strategies for MSME actors in protecting intellectual property. Journal of MSME Empowerment, 7(2), 88-99.

Kurniati, F. (2025). Digital innovation in trademark registration services. Journal of Technology and Information, 11(1), 23-35.

Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia. (2025). DJKI encourages MSMEs to protect their brands to penetrate the global market.

Central Java Regional Office of the Ministry of Law and Human Rights. (2025). Brand protection, the key to MSME competitiveness.

Tri Junianto. (2025). Intellectual property protection education for MSMEs in Central Java.