



The Application of the First-to-File Principle in Trademark Protection: A Juridical Analysis

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Abstract. Legal protection of protection in Indonesia follows a constitutive registration system based on the first-to-file principle, but its application may conflict with actual use, good faith, and ownership of similar marks. This study aims to examine the application of the first-to-file principle in Indonesia's trademark protection system through an analysis of Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst. and to evaluate the judicial considerations applied by the panel of judges based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications. This study employs a normative juridical method using statutory and case approaches. Legal materials were obtained through literature studies involving primary, secondary, and tertiary sources and analyzed qualitatively using descriptive-analytical methods. The findings reveal that although the first-to-file principle remains the primary basis for trademark ownership, its application is not limited to formal registration requirements. In the examined case, the Court considered continuous commercial use, evidence of trademark exploitation, and the absence of bad faith in determining the validity of trademark protection. The deletion claim was rejected because the Plaintiff failed to prove five years of non-use under Article 74. This study concludes that, first-to-file must consider actual use and good faith to balance legal certainty and fair trademark protection.

Keywords: First-to-File Principle, Good Faith, Trademark Dispute, Trademark Protection, Trademark Registration.



Abstrak. *Perlindungan hukum atas merek di Indonesia menganut sistem pendaftaran konstitutif yang didasarkan pada prinsip first-to-file (pendaftar pertama), namun penerapannya dapat berbenturan dengan penggunaan nyata, itikad baik, dan kepemilikan merek serupa. Penelitian ini bertujuan untuk mengkaji penerapan prinsip first-to-file dalam sistem perlindungan merek di Indonesia melalui analisis terhadap Putusan Nomor 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst. serta mengevaluasi pertimbangan hukum majelis hakim berdasarkan Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan pendekatan kasus. Bahan hukum diperoleh melalui studi pustaka yang mencakup sumber primer, sekunder, dan tersier, serta dianalisis secara kualitatif menggunakan metode deskriptif-analitis. Hasil penelitian menunjukkan bahwa meskipun prinsip first-to-file tetap menjadi dasar utama kepemilikan merek, penerapannya tidak terbatas pada persyaratan pendaftaran secara formal. Dalam kasus yang diteliti, Pengadilan mempertimbangkan penggunaan komersial secara berkelanjutan, bukti pemanfaatan merek, dan ketiadaan itikad buruk dalam menentukan keabsahan perlindungan merek. Gugatan penghapusan ditolak karena Penggugat gagal membuktikan adanya ketidakgunaan merek selama lima tahun sebagaimana diatur dalam Pasal 74. Penelitian ini menyimpulkan bahwa penerapan prinsip first-to-file harus mempertimbangkan penggunaan nyata dan itikad baik guna menyeimbangkan kepastian hukum dengan perlindungan merek yang adil.*

Kata kunci: *Prinsip first-to-file, Itikad Baik, Sengketa Merek, Perlindungan Merek, Pendaftaran Merek.*

1. Introduction

The rapid development of globalization, digital transformation, and cross-border commerce has significantly reshaped the contemporary business environment. The expansion of e-commerce platforms and digital markets has intensified competition among business actors, where commercial success is no longer determined solely by product quality but also by the strength of brand identity and consumer recognition.¹ In modern economic activities, trademarks function not only as symbols distinguishing goods and services but also as valuable intangible assets that represent reputation, consumer trust, and business competitiveness. A strong trademark provides economic advantages for producers by increasing market recognition, while simultaneously assisting consumers in identifying product origin and ensuring quality assurance.² Consequently, trademarks have become strategic economic instruments whose protection is essential in maintaining fair competition and preventing unauthorized exploitation of brand value.

However, the increasing economic value of trademarks has also contributed to the emergence of complex legal disputes. Trademark imitation, passing off, and bad-faith registration have become significant challenges because certain parties attempt to obtain economic benefits by exploiting the reputation and goodwill developed by other businesses.³ Such practices may cause substantial losses to legitimate trademark owners, including reputational damage, market confusion, and declining consumer confidence.⁴ Therefore, effective trademark protection is

¹ Wahyu Hidayat and Nur Kholik, "Implikasi hukum atas perubahan bisnis UMKM: Strategi adaptasi era digital dan e-commerce di Indonesia," *Jurnal Analisis Hukum* 7, no. 1 (2024): 72. See also, Sudiwana, "The Legal Capital Market Protection: Justice for Minority Stock Investor," *Jurnal Hukum Unissula* 41, no. 3 (2025): 609.

² Indah Sari, "Urgensi Dan Fungsi Merek Dalam Dunia Bisnis Demi Terjaminnya Perlindungan Hak Atas Kekayaan Intelektual (Haki)," *Jurnal Ilmiah M-Progress* 15, no. 1 (2025): 26. See also, Dhaniswara K. Harjono, Hulman Panjaitan, Moermahadi Soerjadijanegara, Suwarno Suwarno, and Abu Hena Mostofa Kamal, "Ensuring Fair Business Practices and Consumer Rights: The Role and Impact of Indonesia's Consumer Dispute Settlement Agency," *Jurnal Hukum Unissula* 40, no. 1 (2024): 261.

³ Yosia Hetharie et al., "Legal Empowerment of Indonesian Micro Small Medium Enterprises in the Digital Era: A Comparing with China," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 2 (2025): 328.

⁴ Vika Husnul Khotimah, and Rani Apriani, "Faktor-faktor penyebab terjadinya pelanggaran hak merek berupa pemboncengan reputasi (passing off) merek terkenal ditinjau dari Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis," *Jurnal Ilmiah Wabana Pendidikan* 8, no. 20 (2022): 399.

required to guarantee legal certainty, safeguard exclusive rights, and establish a competitive business environment based on fairness and good faith.⁵

In Indonesia, trademark protection is regulated under Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which adopts a constitutive registration system. Under this system, exclusive trademark rights arise through registration conducted before the Directorate General of Intellectual Property (*Direktorat Jenderal Kekayaan Intelektual/DJKI*). The implementation of this system is reflected through the first-to-file principle, where the party that first registers a trademark is recognized as the legitimate owner of the trademark rights, regardless of whether another party previously used or developed the mark commercially.⁶ The first-to-file principle provides administrative certainty because ownership can be determined based on objective registration records rather than uncertain claims of prior use.

From a legal certainty perspective, the first-to-file principle offers several advantages. It creates a predictable mechanism for determining trademark ownership, simplifies administrative procedures, and encourages business actors to proactively register their trademarks.⁷ In addition, the principle aligns with international trademark protection practices that emphasize registration as the foundation for exclusive rights. Through this mechanism, trademark disputes can theoretically be reduced because the state provides clear recognition to the registered owner.

Nevertheless, the strict application of the first-to-file principle creates significant debates regarding substantive justice. Although registration provides formal legitimacy, it may disadvantage original creators or prior users who have developed market recognition but failed to register their trademarks earlier.⁸ In such circumstances, a party that genuinely creates and uses a trademark may lose legal protection to another party who files the registration first. This condition demonstrates the tension between formal legal certainty based on registration and

⁵ Zulfikri and Zulkarnaini Umar, "Legal Protection of Intellectual Property Rights: What is Urgency for the Business World," *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 1 (2022): 17.

⁶ Selni Ardian et al., "First to File Principle dan Sengketa Hak Merek Dalam Kajian Perundang-Undangan di Indonesia," *Staatsrecht: Jurnal Hukum Kenegaraan Dan Politik Islam* 5, no. 1 (2025): 431.

⁷ Annette Kur, "Not Prior in Time, But Superior in Right—How Trademark Registrations Can be Affected by Third-Party Interests in a Sign," *IIC-International Review of Intellectual Property and Competition Law* 44, no. 7 (2013): 792.

⁸ Firman Freaddy Busroh et al., "Reevaluating "First-to-File" vs the Legality Principle: Rethinking Justice for Original Rights Holders in Indonesia," *Jambe Law Journal* 8, no. 1 (2025): 422. See also, Yohanes Don Bosco Watu, "Anomali Pergeseran Filsafat Hukum Terhadap Keadilan Korban Pemegang Hak Merek Pada Bisnis Online Shop," *Jurnal Hukum Bisnis Bonum Commune* 5, no. 2 (2023): 72.

substantive justice based on actual contribution, reputation, and commercial use of a trademark.⁹

Previous studies have highlighted several challenges associated with the first-to-file system. Watu¹⁰ emphasized that Indonesia's trademark protection system may produce unfair outcomes because ownership is determined primarily by registration rather than actual use. Similarly, Busroh et al.¹¹ argued that although the principle provides certainty, it creates vulnerabilities for original users who delay registration and may become victims of strategic trademark filings. Furthermore, Torong et al.¹² identified that the implementation of the principle continues to generate tension between formal ownership and substantive legitimacy, particularly when registered rights conflict with broader interests of fairness.

The problem becomes more complex in cases involving well-known trademarks and bad-faith registrations. Although Indonesian trademark law recognizes protection for well-known marks, the implementation of such protection remains limited and may create uncertainty when another party has already obtained registration.¹³ Previous research also shows that trademark disputes involving famous brands often require cancellation mechanisms because the first registration may not always represent legitimate ownership when elements of bad faith are present.¹⁴ Moreover, differences between national trademark systems and the territorial nature of trademark rights create additional challenges in protecting brands operating across jurisdictions.¹⁵

⁹ Muh Ali Masnun et al., "Reconstructing Indonesia's Trademark Registration System through the Lens of General Principles of Good Governance to Realize Substantive Justice," *Journal of Law and Legal Reform* 5, no. 3 (2024): 892.

¹⁰ Watu, "Anomali Pergeseran Filsafat Hukum," 74.

¹¹ Busroh et al., "Reevaluating 'First-to-File'," 423. See also, Denis Croze, "Making a large universe visually perceptible: the development of non-traditional trademarks in WIPO treaties," *The Protection of non-traditional trademarks*, cit 6, no. 3 (2018): 15.

¹² Eddy Ramon Torong et al., "Protecting Eco-Claimed Trademarks against Trademark Squatting through Prior User Rights within Indonesia's First to File System," *Journal of Law, Environmental and Justice* 4, no. 2 (2026): 642. See also, Asmara et al., "Studi Kasus Penerapan Prinsip Pendaftaran First to File Pada Pembatalan Merek Cap Mawar," *Syah Kuala Law Journal* 3, no. 2 (2019): 185.

¹³ Lionita Putri Lobo and Indirani Wauran, "Kedudukan istimewa merek terkenal (asing) dalam hukum merek Indonesia," *Masalah-Masalah Hukum* 50, no. 1 (2021): 71. See also, Viona Talitha Syafira, "Perlindungan Hukum Bagi Pemegang Hak Merek Superman Terhadap Pelanggaran Merek," *Jurnal Suara Hukum* 3, no. 1 (2021): 88.

¹⁴ Jörn H. Block et al., "Why do SMEs file trademarks? Insights from firms in innovative industries," *Research Policy* 44, no. 10 (2015): 1921. See also, Risma Nur Arifah et al., "Trademark cancellation of the PT. Diposin in the principle of legal certainty by Sudikno Mertokusumo," *El-Maslahab* 13, no. 1 (2023): 18.

¹⁵ Irene Calboli and Edward Lee, *Trademark protection and territoriality challenges in a global economy* (New Jersey:Edward Elgar Publishing, 2014), 14. See also, Gabriella F Franco, "Sidestepping

Despite extensive discussion regarding the first-to-file principle, several research gaps remain. First, existing studies predominantly examine the principle from a general normative perspective, focusing on the advantages and disadvantages of registration-based trademark protection.¹⁶ Limited attention has been given to how Indonesian courts interpret and balance the first-to-file principle when facing conflicts between registered ownership, actual trademark use, and allegations of bad faith. Second, previous research regarding trademark disputes often emphasizes well-known international brands or general cancellation mechanisms, while empirical analysis of recent Indonesian commercial court decisions remains relatively limited.¹⁷ Third, existing literature has not sufficiently explored whether judicial reasoning under the first-to-file system prioritizes formal registration alone or incorporates substantive considerations such as continuous commercial use, evidence of good faith, and consumer protection.

This study addresses these gaps by analyzing Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst., involving a dispute between TikTok Ltd. and Fenfiana Saputra regarding the “TIKTOK” and “TIK TOK” trademarks. Unlike previous studies that primarily discuss the first-to-file principle conceptually, this research examines how the principle operates in judicial practice, particularly when registration rights intersect with evidence of actual trademark use and allegations of non-use. The case provides an important perspective on whether trademark protection in Indonesia merely prioritizes administrative registration or also considers substantive legitimacy derived from commercial activities.

Based on this background, this study aims to analyze the implementation of the first-to-file principle in Indonesian trademark dispute resolution. Specifically, this research addresses three research questions:

RQ1: How is the first-to-file principle regulated and implemented within Indonesia’s trademark protection system under Law Number 20 of 2016 concerning Trademarks and Geographical Indications?

RQ2: How does the Commercial Court apply the first-to-file principle in resolving trademark disputes, particularly in Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst.?

RQ3: To what extent does the application of the first-to-file principle balance legal certainty, trademark ownership protection, and substantive justice for trademark users in Indonesia?

Sovereign Trademark Territorialism: The Harmonization and Customization of the Lanham Act,” *S. Cal. L. Rev.* 98, no. 2 (2024): 165.

¹⁶ Busroh et al., “Reevaluating “First-to-File,”” 424. See also, Kur, “Not Prior in Time, But Superior,” 792; Watu, “Anomali Pergeseran Filsafat Hukum,” 75.

¹⁷ Lobo, and Wauran, “Kedudukan istimewa merek terkenal (asing),” 73. See also, Syafira, “Perlindungan Hukum Bagi Pemegang Hak Merek,” 87.

Through normative juridical analysis using statutory and case approaches, this study contributes to the development of trademark law scholarship by providing a deeper understanding of the relationship between registration-based ownership and substantive justice in Indonesian trademark protection.

2. Research Methods

This research employs a normative juridical legal research method that focuses on examining legal norms, principles, and regulatory frameworks governing trademark protection in Indonesia, particularly concerning the implementation of the first-to-file principle. This method is selected because the research aims to analyze the relationship between statutory provisions and their practical application in resolving trademark disputes, especially in determining whether the application of the first-to-file principle provides legal certainty while maintaining substantive justice for trademark owners and users. The research applies two main approaches, namely the statute approach and the case approach.

The statute approach is conducted through an examination of relevant laws and regulations governing trademark protection, particularly Law Number 20 of 2016 concerning Trademarks and Geographical Indications, including provisions related to trademark registration, exclusive rights, cancellation, and protection against bad-faith registration. This approach is used to identify the legal foundation and normative framework of the first-to-file principle within Indonesia's trademark protection system. Meanwhile, the case approach is conducted by analyzing Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst. as the primary object of analysis to examine how the Commercial Court interprets and applies the first-to-file principle in resolving trademark ownership disputes, particularly concerning the relationship between trademark registration, actual use, and allegations of non-use.

The legal materials used in this research were obtained through library research consisting of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations, court decisions, and other official legal documents relevant to trademark protection. Secondary legal materials consist of legal literature, scholarly articles, research findings, and expert opinions related to intellectual property rights and trademark law. Tertiary legal materials include legal dictionaries, encyclopedias, and supporting references that assist in interpreting primary and secondary legal materials.

The collected legal materials were analyzed qualitatively using descriptive-analytical techniques. The materials were systematically classified based on their hierarchy, legal substance, and relevance to the research problems. Furthermore, the analysis was conducted through legal interpretation to examine the judges' legal

reasoning, the application of the first-to-file principle, and the extent to which the principle contributes to legal certainty, protection of trademark rights, and the balance between formal registration and substantive justice in Indonesian trademark dispute resolution.

3. Results and Discussion

3.1. Regulation of the First-to-File Principle under Indonesian Trademark Law

The analysis of Indonesia's trademark protection system indicates that the first-to-file principle constitutes the fundamental basis for determining trademark ownership under Law Number 20 of 2016 concerning Trademarks and Geographical Indications.¹⁸ Unlike the first-to-use system, which recognizes rights based on actual commercial use and market reputation, Indonesia adopts a registration-based approach in which exclusive trademark rights arise after a trademark application has been accepted and registered by the Directorate General of Intellectual Property. Therefore, legal ownership is primarily determined by the priority date of registration rather than the chronological order of trademark creation or commercial utilization.¹⁹

The implementation of this principle reflects Indonesia's effort to provide legal certainty and administrative predictability in trademark protection. Through the registration mechanism, the state establishes a clear reference point for determining ownership, namely the party who first submits a valid trademark application and obtains registration. This approach reduces uncertainty in determining legitimate ownership because trademark rights are attached to formal registration documents issued by the competent authority.²⁰ Consequently, prior use of a trademark without registration does not automatically create exclusive rights under Indonesian trademark law, placing greater responsibility on business actors to register their trademarks at an early stage.²¹

The normative structure of Law Number 20 of 2016 demonstrates that trademark protection is built upon several cumulative requirements before exclusive rights are granted. First, an applicant must submit a trademark application

¹⁸ Hadziqotun Nahdliyah et al., "Legal Protection for the Owner of Brand Rights According to Law Number 20/2016 of Trademark and Geographical Indication (Trademark and Geographical Indication)," *Jurnal Independent* 13, no. 1 (2025): 57. See also, Damar Ramadhanna Tanjung et al., "Penerapan prinsip first to file dalam sengketa merek terkenal," *Development and Justice Review* 6, no. 2 (2023): 111.

¹⁹ Kur, "Not Prior in Time, But Superior," 794. See also, Watu, "Anomali Pergeseran Filsafat Hukum," 76.

²⁰ Torong et al., "Protecting Eco-Claimed Trademarks," 643.

²¹ Busroh et al., "Reevaluating "First-to-File"," 425.

to the DGIP, and the filing date becomes the determining factor for priority over subsequent applicants. Second, the trademark must fulfil substantive requirements, including distinctiveness and eligibility to distinguish goods or services from competitors. Third, the mark must not conflict with prohibited categories, public order, morality, or previously registered trademarks. These requirements illustrate that the first-to-file principle does not operate merely as a chronological mechanism but is combined with substantive examination procedures to ensure that only legally qualified applications obtain protection.²²

The implementation of the first-to-file principle in Indonesia produces two central legal consequences: strengthening legal certainty for registered trademark owners and creating potential conflicts with parties who have prior commercial use but have not obtained registration. The first consequence is that registered trademark holders receive exclusive rights to use, license, and enforce their marks against unauthorized parties. This formal recognition allows businesses to protect their commercial identity and provides a predictable legal framework for resolving ownership disputes.²³

However, the research findings also indicate that the strict application of registration priority creates tension between formal legal certainty and substantive justice. A party that has developed market recognition, invested in branding activities, and used a trademark commercially may lose legal priority when another party registers an identical or similar mark earlier. Thus, the first-to-file mechanism may produce outcomes where the registered owner is legally recognized despite not being the original creator or first commercial user of the trademark.²⁴ This condition demonstrates that Indonesian trademark law places greater emphasis on administrative legitimacy rather than historical use as the primary basis of ownership.

This tension becomes particularly significant for small businesses and entrepreneurs who often develop brands before understanding the importance of intellectual property registration. Previous studies show that the absence of early registration may expose original users to the risk of losing control over their own trademarks when another party files the application first. Therefore, although the

²² Muayad Hassan Al-Tawalbeh, "Using artificial intelligence in trademark registration in light of the UAE trademark Law," *Edelweiss Applied Science and Technology* 8, no. 5 (2024): 538. See also, Ling Zhang, "Public order and morality in China's Trademark Law: a vague scrutiny based on political order and social morals," *Queen Mary Journal of Intellectual Property* 11, no. 2 (2021): 199.

²³ Kur, "Not Prior in Time, But Superior," 796. See also, Watu, "Anomali Pergeseran Filsafat Hukum," 78.

²⁴ Busroh et al., "Reevaluating 'First-to-File'," 426.

system provides certainty, it may create vulnerability for parties with limited knowledge or resources regarding trademark protection procedures.²⁵

Although Law Number 20 of 2016 adopts the first-to-file principle as the primary mechanism of trademark ownership, its application is not absolute. Indonesian trademark protection recognizes exceptions, particularly concerning well-known trademarks and bad faith registration. Well-known marks may receive additional protection despite registration issues because their reputation and international recognition create superior interests that justify legal protection beyond ordinary registration priority.²⁶

Furthermore, the first-to-file principle does not protect applicants who register trademarks in bad faith. Registration conducted with the intention of exploiting another party's reputation, preventing legitimate owners from using their marks, or taking advantage of consumer recognition may become a basis for cancellation proceedings. This demonstrates that Indonesian trademark law attempts to balance formal registration certainty with the prevention of abusive registration practices.²⁷

Nevertheless, the existence of these exceptions does not eliminate the dominant position of registration in Indonesia's trademark system. The burden remains on prior users or affected parties to prove the existence of bad faith, well-known status, or other legally recognized grounds for cancellation. Therefore, in practice, the first-to-file principle continues to function as the primary determinant of trademark ownership, while exceptions operate only as corrective mechanisms in specific circumstances.²⁸

The findings for RQ1 demonstrate that Indonesia's trademark protection system under Law Number 20 of 2016 is fundamentally structured around a strict first-to-file approach. The principle determines ownership through registration priority, provides legal certainty for registered trademark holders, and supports an efficient administrative mechanism for trademark protection. However, the implementation also reveals a continuing tension between formal registration rights and substantive legitimacy derived from actual commercial use.

The Indonesian system therefore represents a balance between certainty and fairness. While registration-based protection is essential for creating predictable trademark ownership, the potential disadvantage faced by prior users indicates that the effectiveness of the system depends on complementary mechanisms, including protection against bad faith registration, recognition of well-known marks, and

²⁵ Masnun et al., "Reconstructing Indonesia's Trademark Registration," 892. See also, Torong et al., "Protecting Eco-Claimed Trademarks," 645.

²⁶ Lobo, and Wauran, "Kedudukan istimewa merek terkenal (asing)," 74.

²⁷ Arifah et al., "Trademark cancellation of the PT. Diposin," 19. See also, Syafira, "Perlindungan Hukum Bagi Pemegang Hak Merek," 88.

²⁸ Kur, "Not Prior in Time, But Superior," 797.

judicial interpretation in trademark disputes.²⁹ These findings provide the normative foundation for analysing how the first-to-file principle operates in judicial practice, particularly in cases where registered ownership conflicts with evidence of prior use and commercial reputation, as examined in Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst.

3.2. Judicial Implementation of the First-to-File Principle in Trademark Dispute Resolution

The analysis of Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst. demonstrates that the dispute reflects the practical tension between the first-to-file principle and the possibility of removing registered trademarks that are considered no longer actively used. The dispute involved TikTok Ltd. as the Plaintiff and Fenfiana Saputra as the Defendant concerning the ownership and validity of the “TIKTOK” and “TIK TOK” trademarks. The Plaintiff had previously registered the “TIKTOK” trademark in several classes, including classes 6, 9, 16, 18, 35, and 42. However, the Plaintiff’s application for class 25 under Application Number DID2022108805 encountered obstacles because the Directorate General of Intellectual Property (DGIP) considered that the application had similarities with the Defendant’s previously registered “TIK TOK” trademark.

This condition illustrates the central function of the first-to-file principle in Indonesia’s trademark system, where ownership priority is determined by the earlier valid registration rather than by the chronological history of commercial use. Under this principle, a registered trademark holder obtains exclusive rights even when another party claims earlier use or commercial association with a similar mark.³⁰ Therefore, the existence of the Defendant’s prior registration created a legal barrier for the Plaintiff’s subsequent registration application, demonstrating how registration priority directly influences trademark ownership disputes in Indonesia.

However, the Plaintiff did not challenge the Defendant’s ownership merely based on prior use claims. Instead, the Plaintiff relied on the legal mechanism of trademark cancellation through deletion based on non-use for five consecutive years as regulated under Article 74 paragraph (1) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications. The Plaintiff argued that although the Defendant possessed formal registration rights, the trademark had lost its legal justification because it was allegedly not used in actual commercial activities for the required period.

²⁹ Busroh et al., “Reevaluating “First-to-File”,” 428. See also, Torong et al., “Protecting Eco-Claimed Trademarks,” 645; Watu, “Anomali Pergeseran Filsafat Hukum,” 79.

³⁰ Kur, “Not Prior in Time, But Superior,” 798.

This argument reflects an important limitation of the first-to-file principle. Although registration creates exclusive rights, such rights are not entirely absolute because Indonesian trademark law requires trademarks to maintain their function as commercial identifiers. Similar approaches recognize that trademark protection should prevent the reservation of marks without genuine commercial activity because unused registrations may obstruct legitimate market participants.³¹

To prove the alleged non-use of the “TIK TOK” trademark, the Plaintiff submitted evidence from an independent market survey conducted by PT Berlian Delta Plansearch in 2024 across five major Indonesian cities: Jakarta, Bandung, Surabaya, Medan, and Makassar. The survey indicated that the Defendant’s trademark was not found in circulation for class 25 products. Additionally, the Plaintiff conducted online searches through several electronic commerce platforms and argued that no products bearing the registered trademark could be identified in the marketplace.³²

The Plaintiff further argued that the absence of SNI certification for baby clothing products associated with the “TIK TOK” trademark demonstrated the lack of genuine commercial activity. From the Plaintiff’s perspective, these facts indicated that the Defendant’s trademark registration functioned merely as a formal administrative claim rather than an actively used commercial identifier.

Nevertheless, the Panel of Judges rejected this argument and concluded that the element of “not being used for five consecutive years” had not been proven. The Court found that the Defendant continued to use the “TIK TOK” trademark through direct sales activities involving partner stores and online trading platforms. Therefore, the evidence presented by the Plaintiff was considered insufficient to eliminate the Defendant’s registered trademark rights.

The Court’s reasoning confirms that the application of the first-to-file principle in Indonesia is not only based on registration documents but also requires judicial evaluation regarding the continued existence of trademark rights. In other words, registration creates initial legal protection, but the continuation of such protection depends on whether the trademark still performs its essential function in trade. This approach reflects the balance between legal certainty and prevention of

³¹ Busroh et al., “Reevaluating “First-to-File”,” 429. See also, Ni Ketut Supasti Dharmawan et al., “Beyond Territoriality: Assessing the Effectiveness of the Madrid System for Trademark Protection in Indonesia,” *Srinijaya Law Review* 8, no. 2 (2026): 11; Watu, “Anomali Pergeseran Filsafat Hukum,” 79.

³² Isradi Maesa et al., “Pelaksanaan Pendaftaran Merek Dagang pada Usaha Mikro Kecil dan Menengah di Bukittinggi,” *UNES Law Review* 6, no. 1 (2023): 604. See also, Risma Fernanda Syafi’iyah et al., “Perlindungan hukum hak cipta terhadap pembajakan karya digital di Indonesia,” *Mahkamah: Jurnal Riset Ilmu Hukum* 3, no. 1 (2026): 107.

trademark warehousing practices, where registered marks are maintained without genuine commercial use.³³

Another significant issue examined in the dispute was the Defendant's allegation that the Plaintiff acted in bad faith. The Defendant argued that before filing the deletion lawsuit, there had been an attempt by a party allegedly connected to the Plaintiff to purchase the registered trademark. Based on this allegation, the Defendant claimed that the lawsuit represented an effort to obtain trademark rights through judicial procedures after unsuccessful negotiation attempts.³⁴

The Court's consideration demonstrates that allegations of bad faith cannot automatically invalidate the application of the first-to-file principle. Bad faith registration constitutes an exception that requires sufficient evidence showing that a party intentionally registered or maintained a trademark for improper purposes, such as exploiting another party's reputation or preventing legitimate use by another entity.³⁵

The decision demonstrates that Indonesian courts continue to prioritize the first-to-file principle while assessing the legal validity of registered rights. In this case, the Court found insufficient evidence of bad faith or improper attempts to obtain trademark ownership, thereby upholding the Defendant's registration. Although the Plaintiff's commercial reputation and global recognition of "TIKTOK" were acknowledged, they could not defeat an earlier valid registration absent legally recognized grounds, such as non-use or bad faith. Thus, trademark disputes reflect a balance between formal ownership and substantive legitimacy, with cancellation and bad-faith mechanisms serving as corrective instruments.³⁶

The decision also reflects the limited protection available for well-known trademarks under Indonesian law. Although internationally recognized marks may receive special protection, such protection generally requires proof of reputation, bad faith, or other legally established grounds. Without satisfying these requirements, even internationally recognized brands may face obstacles when confronted with earlier registrations.³⁷

³³ Busroh et al., "Reevaluating 'First-to-File'," 431. See also, Kur, Kur, "Not Prior in Time, But Superior," 799.

³⁴ Prisca Oktaviani Samosir, and Aida Mustafa, "Legal protection implications on trademark in Indonesia by comparing the first to use and first to file principles," In *International Conference on Law Reform (Inclar 2019)*, (Dordrecht: Atlantis Press, 2020), 144.

³⁵ Arifah et al., "Trademark cancellation of the PT. Diposin," 20. See also, Syafira, "Perlindungan Hukum Bagi Pemegang Hak Merek," 89.

³⁶ Masnun et al., "Reconstructing Indonesia's Trademark Registration," 893.

³⁷ Lobo, and Wauran, "Kedudukan istimewa merek terkenal (asing)," 75. See also, Fadhil Fauzan Rayendra and Fokky Fuad, "Legal Protection for Foreign Trademark Holders in Indonesia (Supreme Court Decision No. 281 K/Pdt. Sus-HKI/2020)," *Daengken: Journal of Humanities and Social Sciences Innovation* 4, no. 6 (2024): 1019.

Based on the analysis of Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst., the operation of the first-to-file principle in Indonesia can be summarized into three main findings.

First, registration priority remains the primary determinant of trademark ownership, as the Defendant's earlier "TIK TOK" registration established enforceable rights. Second, the first-to-file principle is subject to cancellation, particularly for non-use for five consecutive years, although the applicant must provide convincing evidence.³⁸ Third, the decision reflects a balance between formal certainty and substantive fairness, maintaining registration-based ownership while allowing limited correction for non-use, bad faith, or superior interests.³⁹

Overall, Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst. confirms that the first-to-file principle remains dominant in Indonesian trademark dispute resolution. The Court's approach demonstrates that prior reputation or commercial recognition alone cannot override registered rights unless supported by specific legal grounds. Consequently, trademark protection in Indonesia continues to emphasize administrative certainty while allowing limited exceptions to accommodate substantive justice considerations.

3.3. The Application of the First to File Principle in Indonesia's Trademark Protection System

The Indonesian trademark protection system under Law Number 20 of 2016 concerning Trademarks and Geographical Indications is fundamentally based on the first to file principle, where exclusive trademark rights are granted to parties who first submit and obtain registration from the Directorate General of Intellectual Property (DGIP). This principle places registration as the primary legal basis for determining trademark ownership, rather than merely relying on prior use or commercial exploitation of a mark. Consequently, trademark protection in Indonesia emphasizes legal certainty and administrative clarity by recognizing the registered owner as the legitimate rights holder within the registered class and territory.⁴⁰

The implementation of the first to file principle, however, does not operate independently. Indonesian trademark protection also incorporates several substantive requirements, including distinctiveness, absence of prohibited elements, similarity assessment, and the requirement of good faith. These elements

³⁸ I Gede Agus Kurniawan et al., "Reconstructing criminal liability in trademark law: Lessons from Indonesia and Spain," *Indonesian Journal of Criminal Law Studies* 11, no. 1 (2026): 324. See also, Busroh et al., "Reevaluating "First-to-File"," 432; Torong et al., "Protecting Eco-Claimed Trademarks," 647.

³⁹ Kur, "Not Prior in Time, But Superior," 799. See also, Lobo, and Wauran, "Kedudukan istimewa merek terkenal (asing)," 76.

⁴⁰ Watu, "Anomali Pergeseran Filsafat Hukum," 80.

demonstrate that trademark ownership is not determined solely by the chronological order of registration but also by whether the registration complies with legal standards. Article 21 of Law Number 20 of 2016 stipulates that an application must be rejected if the trademark has similarities in principle or in its entirety with a previously registered trademark or an earlier application. Similarity in principle refers not only to identical reproduction but also to dominant similarities that may create confusion among consumers, including similarities in wording, pronunciation, visual appearance, or conceptual meaning.⁴¹

The requirement of similarity in principle is closely related to the assessment of good faith in trademark registration. A trademark application may be considered problematic when the applicant attempts to imitate, exploit, or benefit from the reputation of another party's trademark. Therefore, although the first to file principle provides priority to the earliest applicant, this priority may be limited where registration is proven to be conducted in bad faith. International trademark practice also recognizes that the strict application of first to file cannot completely eliminate exceptions, particularly where superior interests, prior reputation, or bad faith registration are established.⁴²

In the case of *TikTok Ltd. v. Fenfiana Saputra* (Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst.), the application of the first to file principle was tested through a conflict between a globally recognized digital platform trademark "TIKTOK" and the previously registered trademark "TIK TOK" owned by the Defendant for class 25 goods. The Plaintiff argued that the Defendant's trademark registration should be removed because the trademark had allegedly not been used in commercial activities for five consecutive years, as regulated under Article 74 paragraph (1) of Law Number 20 of 2016. The Plaintiff's argument was based on the assumption that non-use of a registered trademark eliminates the justification for continued protection under the first to file system.⁴³

⁴¹ Dwi Atmoko, "Perlindungan Hukum Terhadap Pemegang Hak Merek Menurut Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis," *Jurnal Hukum Sasana* 5, no. 1 (2019): 77. See also, Devica Rully Masrur, "Perlindungan Hukum Indikasi Geografis Yang Telah Didaftarkan Sebagai Merek Berdasarkan Instrumen Hukum Nasional Dan Hukum Internasional," *Lex Jurnalica* 15, no. 2 (2018): 198; Andrew Wijaya, "Analisis Yuridis Terhadap Persamaan Pada Pokoknya Dalam Sengketa Merek Berdasarkan Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis," *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)* 5, no. 6 (2025): 5082.

⁴² Kur, "Not Prior in Time, But Superior," 790. See also, Lobo, and Wauran, "Kedudukan istimewa merek terkenal (asing)," 77.

⁴³ Yusuf Gunawan, "Legal analysis of ambiguity of trademark registration in Indonesia," *Nurani: jurnal kajian syari'ah dan masyarakat* 23, no. 1 (2023): 164. See also, Callista Hans and Christine ST Kansil, "Analisis bentuk perlindungan hukum terhadap penggunaan merek pada kelas barang dan jasa yang sama," *UNES Law Review* 6, no. 2 (2023): 4165.

The Plaintiff supported its argument through market survey evidence conducted by PT Berlian Delta Plansearch in several major Indonesian cities and online marketplace searches, claiming that the Defendant's "TIK TOK" trademark was not found circulating in class 25 products. According to the Plaintiff, the absence of market presence indicated that the registered trademark no longer fulfilled the substantive function of trademark protection. This argument reflects one of the weaknesses frequently associated with registration-based trademark systems, namely the possibility that a party may retain exclusive rights despite limited or absent commercial use.⁴⁴

However, the Panel of Judges adopted a different approach by emphasizing the factual existence of trademark use rather than merely relying on market searches. The Defendant successfully demonstrated continued commercial exploitation of the "TIK TOK" trademark through physical products, invoices, shipping documents, and witness testimony. Based on these evidences, the Court concluded that the element of "non-use for five consecutive years" was not fulfilled. Therefore, the registered trademark could not be removed under Article 74 of Law Number 20 of 2016. The Court's reasoning indicates that although Indonesia adopts a first to file system, the continuation of trademark rights is also connected with the requirement of genuine commercial use.⁴⁵

The Court's reasoning also provides an important interpretation regarding the relationship between registration and actual use. The first to file principle generally grants ownership to the first registrant; however, the legitimacy of such ownership may be strengthened or weakened depending on whether the trademark continues to perform its economic function in the marketplace. In this case, the Defendant's trademark obtained protection not only because it had been registered earlier, but also because the Defendant was able to prove continuous commercial activity. Thus, the Court indirectly balanced formal legality arising from registration with substantive legitimacy arising from actual use.

Furthermore, the chronological aspect of trademark use became an important consideration in assessing bad faith. Although the Plaintiff and Defendant's trademarks share similarities in wording and pronunciation, the facts revealed that the Defendant had used the "TIK TOK" trademark since the early 2000s for baby clothing products, prior to the global popularity of the Plaintiff's digital platform. Therefore, the similarity between the trademarks could not automatically be interpreted as an attempt to exploit the Plaintiff's reputation. The existence of

⁴⁴ Maesa et al., "Pelaksanaan Pendaftaran Merek Dagang," 605. See also, Syafi'iyah et al., "Perlindungan hukum hak cipta terhadap pembajakan," 109.

⁴⁵ Raden Fajar Agung Kusumawardhana, "Efektivitas Prinsip First to File Pada Sistem Pendaftaran Merek Dalam Melindungi Hak Merek," *Jurnal Privat Law* 11, no. 1 (2023): 15.

similarity must be assessed together with other factors, particularly the timeline of use, market activities, and intention behind registration.⁴⁶

This finding demonstrates that the first to file principle in Indonesia does not function as an absolute rule detached from substantive considerations. Although registration remains the primary source of trademark rights, Indonesian trademark law provides corrective mechanisms through cancellation actions, deletion of unused trademarks, and examination of bad faith. These mechanisms are necessary because strict application of first to file may create situations where genuine creators or prior users lose protection simply because they failed to register their trademarks earlier.⁴⁷

From a broader perspective, the Indonesian trademark system reflects a balance between formal legal certainty and substantive justice. The first to file principle provides predictability for businesses by establishing a clear ownership mechanism and encouraging early registration. However, it also creates potential disadvantages for prior users, especially small businesses that have developed market recognition but have not secured formal registration. Therefore, Indonesian trademark law maintains exceptions for specific situations, including well-known trademarks and bad faith registrations, to prevent the misuse of registration rights.⁴⁸

The TikTok trademark dispute illustrates that the application of the first to file principle in Indonesia is not merely determined by who registers first, but through a broader examination involving registration validity, similarity in principle, good faith, and evidence of actual use. The Court's decision confirms that trademark protection under Law Number 20 of 2016 requires a balance between administrative registration and substantive commercial reality. Consequently, the first to file principle remains the foundation of Indonesian trademark protection, but its application must be interpreted together with legal mechanisms designed to prevent unfair monopolization and protect legitimate trademark interests.⁴⁹

⁴⁶ Syifa Sofia Agustin et al., "A Legal Review of the "First to File" Principle in Indonesia's Trademark Registration System," *Anthroposia: Journal of Social and Human Development* 1, no. 2 (2026): 138. See also, Tajuddin Noor et al., "Analisis Itikad Tidak Baik dalam Pendaftaran Merek: Tinjauan Hukum dan Implikasinya," *Verdict: Journal of Law Science* 4, no. 2 (2025): 88.

⁴⁷ Masnun et al., "Reconstructing Indonesia's Trademark Registration," 896. See also, Busroh et al., "Reevaluating "First-to-File"," 434; Watu, "Anomali Pergeseran Filsafat Hukum," 81.

⁴⁸ Lobo, and Wauran, "Kedudukan istimewa merek terkenal (asing)," 78. See also, Syafira, "Perlindungan Hukum Bagi Pemegang Hak Merek," 90.

⁴⁹ Torong et al., "Protecting Eco-Claimed Trademarks," 649. See also, Zulvia Makka and Kholis Roisah, "Reformasi Asas Prioritas Merek Dagang Berlandaskan Protokol Madrid di Era Liberalisasi Perdagangan," *Jurnal Pembangunan Hukum Indonesia* 5, no. 3 (2023): 435.

4. Conclusion

This study concludes that the implementation of the first to file principle in Indonesia's trademark protection system under Law Number 20 of 2016 concerning Trademarks and Geographical Indications provides a fundamental mechanism for determining trademark ownership through registration priority. The principle establishes legal certainty by recognizing the party that first registers a trademark as the legitimate rights holder, regardless of prior use or creation of the mark. However, the findings demonstrate that the application of this principle is not absolute, as trademark protection remains subject to substantive requirements, including distinctiveness, similarity assessment, good faith, and the continuous use of the registered trademark in commercial activities.

The analysis of Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst. reveals that the Court applied a balanced approach between formal registration rights and substantive legitimacy. Although the Plaintiff argued that the Defendant's trademark should be deleted due to non-use for five consecutive years, the Court rejected this argument because the Defendant successfully proved continuous commercial use through documentary and testimonial evidence. The decision confirms that trademark protection under the first to file system is strengthened not only by administrative registration but also by the existence of genuine economic activity associated with the trademark. Furthermore, the Court's consideration indicates that similarity between trademarks cannot automatically establish infringement or bad faith without examining historical use and the intention behind registration.

The findings imply that Indonesia's first to file system successfully promotes predictability and encourages businesses to register trademarks early, but it also creates potential challenges for prior users who fail to obtain registration. Therefore, legal mechanisms such as cancellation actions, deletion of unused trademarks, and examination of bad faith remain essential to maintain a balance between legal certainty and substantive justice.

Based on these findings, several recommendations are proposed. First, businesses, particularly small and medium enterprises, should prioritize early trademark registration to secure legal protection and avoid ownership disputes. Second, the DGIP should strengthen examination procedures by incorporating deeper assessments of trademark reputation, historical use, and potential bad faith registration. Third, judicial interpretation should continue to maintain a balanced approach by considering both formal registration and substantive commercial realities. Such improvements are necessary to ensure that Indonesia's trademark protection system remains responsive to economic development, digital business transformation, and the increasing complexity of trademark disputes in national and international markets.

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