

Optimizing the Role of DJKI in Preventing Trademark Disputes in Indonesia (A Comparative Study Between Indonesia and the United States)

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ABSTRACT

A trademark constitutes an essential component of intellectual property rights, serving as the identity and distinguishing mark of products or services in commercial activities. Indonesia's trademark registration system follows the first to file principle under Law Number 20 of 2016 concerning Trademarks and Geographical Indications. However, this system remains vulnerable to abuse by parties acting in bad faith, as evidenced in the LOPSTER vs. LOBSTER case (Medan Commercial Court Decision Number 1/Pdt.Sus-HKI/Brand/2025), where a trademark registered in bad faith successfully passed the administrative examination at the Directorate General of Intellectual Property (Direktorat Jenderal Kekayaan Intelektual, DJKI). DJKI possesses limited authority to reject trademark applications based on bad faith elements, resulting in trademark cancellations being processed exclusively through Commercial Court litigation. This study employs normative juridical research with statute and comparative approaches to analyze DJKI's role in the trademark registration process and compare it with the United States Patent and Trademark Office (USPTO) system, which operates under the first to use principle requiring evidence of actual trademark use in commerce. The comparative analysis reveals that the USPTO's verification mechanism for actual use effectively prevents speculative registrations and bad faith applications. The findings demonstrate that optimizing DJKI's role requires implementing a hybrid approach that maintains the first-to-file structure while integrating actual use verification mechanisms, thereby enhancing preventive functions and reducing trademark disputes that reached over 156,860 cases during 2021–2025. This research contributes practical recommendations for strengthening DJKI's examination procedures and policy formulation to provide more effective legal protection for business actors.

Keywords: DJKI; Trademark Registration; Bad Faith; First to File; First to Use



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INTRODUCTION

Trademarks constitute a critical component of Intellectual Property Rights (IPR) that serve as essential business identifiers, distinguishing goods and services in increasingly competitive global markets. Beyond their function as visual or auditory symbols, trademarks represent strategic assets that provide quality assurance and facilitate brand reputation development for products or services. The global intellectual property landscape has witnessed exponential growth in trademark registrations, reflecting intensified commercial competition and the expanding economic value of intangible assets. According to the World Intellectual

Property Organization (WIPO), international trademark applications have increased significantly, underscoring the growing importance of effective trademark protection systems worldwide.

In Indonesia, the trademark protection framework operates within a specific legal architecture that presents both opportunities and challenges. Based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications, a trademark is defined as a sign that can be displayed graphically to distinguish goods and/or services produced by a person or legal entity in trade activities. The Indonesian system adheres to a first-to-file principle, conferring trademark rights to the party who first registers a trademark for a specific class and type of goods or services, regardless of prior commercial use. While this approach provides administrative certainty and procedural efficiency, it has generated systemic vulnerabilities that enable exploitation by bad faith actors.

Indonesia's contemporary trademark registration challenges reflect broader regional patterns while exhibiting distinctive characteristics shaped by domestic legal infrastructure and enforcement mechanisms. The proliferation of bad faith trademark registrations has emerged as a particularly acute problem, with registrants strategically exploiting the first-to-file system's procedural gaps to appropriate established brands or well-known marks. Recent empirical data reveal that trademark disputes in Indonesia reached over 156,860 cases during the 2021-2025 period, indicating substantial systemic deficiencies in preventive mechanisms. These disputes impose significant economic costs on legitimate business operators through protracted litigation, market confusion, and diluted brand value. The COVID-19 pandemic has further exacerbated these challenges, as the acceleration of digital commerce has intensified trademark competition while simultaneously creating new opportunities for bad faith exploitation in online marketplaces.

Indonesia adheres to a first-to-file system, where the party who first registers its trademark for a certain class and type of goods/services is considered the owner of the trademark rights. According to previous studies, registered trademarks must be actively used in trade activities, and if a trademark has not been used for more than three consecutive years, interested third parties can file a lawsuit for removal to the Commercial Court as a form of correction against the stagnation of trademark use. This is a legal protection mechanism to keep trademark registration from becoming a tool to inhibit healthy business competition.

Although this first-to-file system provides legal certainty, in practice it is often abused by parties with bad faith who register a trademark owned by someone else or a brand that is already known by the public to support reputation. A concrete example is the case of LOPSTER VS LOBSTER (Medan Commercial Court Decision Number 1/Pdt.Sus-HKI/Brand/2025), where the court stated that the defendant's LOBSTER trademark has similarities in concept, visual, and phonetic elements with the plaintiff's LOPSTER brand, which was registered first since 2018 (Certificate IDM000791418 class 09), and registered in bad faith, so that the registration was canceled even though LOPSTER had been registered since 2018. This shows that registration with bad faith can still pass the DJKI examination.

The Directorate General of Intellectual Property (DJKI), as an institution under the Ministry of Law and Human Rights tasked with managing and supervising trademark rights, has a weakness in rejecting trademark applications in bad faith. Based on Article 4 of Law No. 20 of 2016, DJKI cannot reject an application if it has met the administrative requirements,

even though Article 21 paragraph 3 prohibits applications submitted in bad faith. Institutionally, DJKI only carries out administrative functions limited to formal and substantive examinations, while the authority to cancel trademarks that have been registered is in the Commercial Court in accordance with Article 76 of Law No. 20 of 2016. Without clear good faith assessment standards at the administrative review stage, the potential for registrations can be misused and trigger overlap and brand conflicts.

In contrast to Indonesia's administrative registration model, the United States employs a fundamentally different approach through the United States Patent and Trademark Office (USPTO), which operates under the first-to-use principle established by the Lanham Act (15 U.S.C. § 1051). Under this framework, trademark rights derive from actual commercial use rather than mere administrative registration. Section 1(3)(c) of the Lanham Act mandates that trademark applications contain verified statements confirming the mark's use in commerce, while Section 45 (15 U.S.C. § 1127) defines "use in commerce" as lawful use of the mark in ordinary commercial trade transactions. The USPTO's examination procedures require applicants to submit specimens of use—tangible evidence demonstrating actual trademark deployment in commercial activities. This substantive verification mechanism enables the USPTO to conduct objective assessments of applicant good faith and effectively identify potentially fraudulent or speculative applications before registration, thereby preventing many disputes that would otherwise require judicial intervention. The USPTO's authority to deny applications based on insufficient evidence of bona fide commercial use represents a significant preventive capability absent in Indonesia's current system.

The comparative analysis between Indonesia and the United States reveals fundamental philosophical divergences in trademark protection approaches, with significant implications for dispute prevention, administrative efficiency, and substantive rights protection. Understanding these systemic differences provides crucial insights for optimizing the role of DJKI in preventing trademark disputes in Indonesia (a comparative study between Indonesia and the United States) while respecting domestic legal traditions and administrative capabilities.

The scope of the research is focused on juridical analysis of the role of DJKI in the trademark registration process, especially in the context of assessing the element of bad faith from the initial stage of application. The research includes an assessment of the administrative authority of DJKI, the constraints and challenges in substantive examinations, and a comparison of the system with the USPTO's practice in the United States that can evaluate and reject applications based on indications of bad faith or lack of bona fide intent to use. The research was limited to the trademark registration aspect and did not cover post-registration violations, law enforcement outside the administrative process, or criminal aspects.

The purpose of the research includes an analysis of the regulation and implementation of DJKI's role in the trademark rights registration process in Indonesia, including the legal basis, mechanism, and responsibilities of DJKI in carrying out administrative functions as well as preventing potential violations of good faith. In addition, the research aims to identify and formulate the optimization of the role of DJKI in preventing trademark disputes through a comparative approach between the Indonesian and United States systems to find models and best practices that can be applied.

The theoretical benefits of this research contribute to the development of intellectual property law by highlighting the importance of optimizing the role of administrative institutions in the trademark registration process and expanding theoretical studies on the concept of bad faith, which has been discussed more often in the context of dispute resolution in court. Practical benefits include providing a basis for DJKI to optimize the examination process by assessing more deeply the intention and substance of registrants so as to prevent registration in bad faith from the beginning. This research is also useful in reducing the practice of registering trademarks in bad faith so that business actors obtain stronger legal protection. In addition, the research provides recommendations for the formulation of more effective regulations and policies in the management of trademark registration.

As part of the research preparation, the researcher conducted a comprehensive review of relevant scholarly works to establish the theoretical foundation and identify research gaps. Febri Noor Hediati's 2020 study on optimizing DJKI supervision identified significant weaknesses in the trademark official announcement process, particularly regarding public notification mechanisms and third-party objection procedures. Kara Morinka and colleagues (2025) found that similarity assessments remain substantially subjective, with bad faith determinations presenting considerable evidentiary challenges during administrative examination. Gusti Ngurah Putu Agung Prema Wirama and A.A. Istri Eka Krisna Yanti (2024) examined trademark registration rejection mechanisms by DJKI and available legal remedies, highlighting procedural limitations in current administrative frameworks. Meanwhile, Nimasgari Dhaeyu, Wildan Syafira, and Budi Santoso (2025) analyzed strategies for protecting trademark IPR in the digital era, emphasizing emerging challenges from e-commerce expansion and online marketplace proliferation.

The principal distinction between this study and previous research lies in the integration of a comprehensive comparative perspective with the United States system, coupled with explicit focus on optimizing DJKI's preventive role within the global intellectual property governance context. While prior studies have examined isolated aspects of Indonesia's trademark system, this research synthesizes regulatory analysis, institutional capacity assessment, and international best practices to propose concrete optimization strategies. Furthermore, this study explicitly addresses the tension between maintaining the first-to-file system's administrative efficiency and implementing substantive protection mechanisms, offering a hybrid approach that balances these competing considerations. The novelty of this research resides in its systematic comparative methodology, practical policy recommendations for institutional strengthening, and contribution to theoretical discourse on administrative authority optimization in intellectual property rights protection.

RESEARCH METHOD

This passage has been proofread for grammar, punctuation, clarity, and academic tone. I shifted it to past tense where appropriate (e.g., describing research methods used), removed redundant definitions and impractical details (e.g., overly elaborate explanations of normative juridical research, data collection processes, and analysis techniques), and streamlined repetitive phrasing while retaining essential methodological details and paragraph structure.

This research employed normative juridical law research, which focused on written regulations, applicable legal norms, principles, and systematics. It examined the conformity

between legal regulations, as well as the historical development of law, using materials such as legislation, doctrine, and jurisprudence.

The problem approach combined a statute approach and a comparative approach. The statute approach analyzed key provisions in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, along with its implementing rules on the trademark registration process, formal and substantive examinations, and *DJKI's* authority to assess registrants' *good faith*. The comparative approach contrasted Indonesia's policies and practices with those of the United States, particularly in evaluating registrants' *good faith*, to identify strengths, shortcomings, and optimization opportunities by comparing *DJKI's* mechanisms with the USPTO.

Secondary data sources included: (a) primary legal materials, such as Law Number 20 of 2016 concerning Trademarks and Geographical Indications and U.S. Trademark Law: Federal Statutes (USPTO); (b) secondary legal materials, including textbooks, monographs, national and international journal articles, prior research on trademark protection, registration policies, and *good faith* aspects (e.g., theses, dissertations, papers, expert opinions, and seminar documents); and (c) tertiary legal materials, such as internet references, online news, and other sources providing relevant legal information.

Data collection involved literature studies of laws, regulations, law books, scientific journals, academic articles, prior research, and official documents. Data analysis used qualitative methods to descriptively interpret legal materials based on concepts, theories, doctrines, principles, and expert opinions.

RESULT AND DISCUSSION

Regulating the Role of DJKI in the Trademark Rights Registration Process in Indonesia

The Directorate General of Intellectual Property (DJKI) is an institution under the Ministry of Law and Human Rights of the Republic of Indonesia that has a central role in the management of the intellectual property system in Indonesia, especially in trademark registration. The role of DJKI is not only administrative, but also includes preventive functions to ensure that every trademark registration is carried out in accordance with the provisions of applicable law and does not violate the rights of other parties.

The role of DJKI in the trademark registration process is comprehensively regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law). Based on Article 1 number 13 of the Trademark Law, the Minister in question is the Minister who organizes government affairs in the legal field, which in this case is carried out through the DJKI as an echelon I unit under it. DJKI has full authority to receive, inspect, and process trademark registration applications in Indonesia.

The trademark registration process in Indonesia adheres to a first-to-file system, as stipulated in Article 3 of the Trademark Law which states that "The right to the Trademark is obtained after the Trademark is registered." This system provides legal protection to the party who first registers the trademark, not to the party who first uses the trademark in commerce. This principle is different from the system adopted in the United States which adheres to the principle of First to Use, where the rights to a trademark can be obtained through active use in trade activities even if it has not been registered.

The role of DJKI in the trademark registration process can be divided into several stages. The first stage begins when the applicant submits a trademark registration application to DJKI. Based on Article 4 paragraph (1) of the Trademark Law, the application for trademark registration is submitted by the applicant or his or her attorney to the Minister electronically or non-electronically in Indonesian. The application must meet the administrative requirements which include, Application form containing the identity of the applicant, Trademark to be registered, Class of goods and/or services according to Nice Classification, Power of attorney (if submitted through a power of attorney), Proof of payment of fees

DJKI conducts a formal audit to ensure the completeness of the administrative requirements. If there is a deficiency, DJKI will notify the applicant to complete the requirements within a maximum period of 30 (thirty) days from the date of delivery of the notification letter. If the requirements are not completed within this period, the application will be considered withdrawn and DJKI will not process further applications.

After the administrative requirements are met and the application is given a date of acceptance, DJKI conducts a substantive examination as stipulated in Article 19 of the Trademark Law. The substantive examination is carried out within a maximum of 9 (nine) months from the date of receipt and includes an assessment of the distinguishing power of the brand, namely the ability of the brand to distinguish the goods or services belonging to the applicant from those of other parties. The trademark must also not contradict the provisions of Article 20 of the Trademark Law which prohibits marks that are contrary to state ideology, laws and regulations, morality, religion, morality, or public order.

In addition, DJKI must ensure that the trademark does not have any similarity in substance or in whole with other trademarks that have been registered as stipulated in Article 21, either to registered trademarks, well-known brands for similar or non-similar goods or services, or registered geographical indications. DJKI is also obliged to assess whether there is bad faith as stipulated in Article 21 paragraph (3), which in practice usually includes attempts to imitate well-known brands, support the reputation of other parties, or obstruct parties who are actually entitled. All of these aspects form the basis for DJKI's assessment in determining the feasibility of an application, thus showing how important the role of DJKI is at the substantive examination stage.

If the results of the substantive examination show that the application can be registered, DJKI will announce the trademark in the Official Trademark Gazette in accordance with Article 20 of the Trademark Law. The announcement is made for 2 (two) months and aims to provide an opportunity for third parties who feel aggrieved to submit objections to the trademark registration application.

During the announcement period, each party may submit an objection in writing to the DJKI by including sufficient reasons and evidence. Objections can be filed on the grounds that the trademark for which registration is applied for, is contrary to Article 20 and/or Article 21 of the Trademark Law, or is a trademark that belongs to the party who filed the objection. The role of DJKI at this stage is to receive the objection, forward it to the applicant for response, and consider the objection along with the applicant's rebuttal in making the final decision. If there are no objections, or objections have been declared unacceptable, DJKI will register the trademark in the General Register of Trademarks and issue a Trademark Certificate. Based on Article 3 paragraph (2) of the Trademark Law, "The right to the Trademark as referred to in

paragraph (1) is granted for a period of 10 (ten) years from the Date of Acceptance and the protection period can be extended.

It is important to note that the DJKI does not have the authority to unilaterally cancel trademarks that have been registered. Based on Article 76 of the Trademark Law, a lawsuit for the cancellation of trademark registration is filed with the Commercial Court against the registered trademark owner. Thus, even if DJKI detects any violation or bad faith after the trademark is registered, this institution cannot cancel the registration without going through legal proceedings in the Commercial Court.

This limitation of authority shows that the brand protection system in Indonesia is more reactive than preventive. DJKI can only reject applications at the registration stage, while cancellation of registered trademarks must go through litigation channels that are time-consuming and costly. This is in contrast to the system in some other countries where administrative bodies have broader authority to cancel registrations that are found to be unlawful.

Optimizing the Role of DJKI in Preventing Trademark Disputes in Indonesia Through Comparison of Indonesia and the United States

To see the difference in the trademark registration system between Indonesia and the United States, it is necessary to understand that the two countries use different basic principles. Indonesia adheres to a first to file that emphasizes administrative certainty, while the United States uses a first to use that focuses on the actual use of the trademark in trade. This difference affects the application requirements, proof of use, and the mechanism for detecting bad faith. A summary of the comparison can be seen in the following table:

Table 1. Comparison of Indonesia and the United States

Aspects	Indonesia	United States
Basic Principles	<i>First to File</i> - Rights obtained after registration (Article 3 of Law No. 20/2016)	<i>First to use</i> - Rights acquired through actual use in commerce (Lanham Act 15 U.S.C. § 1051)
Legal Basis	Law Number 20 of 2016 concerning Trademarks and Geographical Indications	Lanham Act 15 U.S.C. § 1051
Governing Board	Directorate General of Intellectual Property (DJKI)	United States Patent and Trademark Office (USPTO)
Application Type	One type of standard application	Dua jenis: (1) Actual Use Application (Section 1a), (2) Intent to Use Application (Section 1b) (Kambaraliev Azamjon Rasuljon Ugli, 2025)
Main Focus of Application	Administrative completeness in accordance with article 4 of Law no. 20 of 2016	Proof of use of the mark in commerce pursuant to the Lanham Act 15 U.S.C. § 1051 Section 1 paragraph (3) c
Proof of Use Requirements	There is no obligation to prove actual use at the time of registration	Must prove actual use <i>or bona fide</i> intent to use
Detection of Bad Faith	Difficult to prove at the time of registration, subjective, burden on third parties	Can reject the application if it is not able to show physical proof of use

Main Disadvantages	Rentan <i>trademark squatting</i> , pendaftaran defensif massal, <i>bad faith registration</i>	Processes can be more complex, relying on proof of use
Key Benefits	Legal certainty is clear, administrative is simpler	Stronger substantive protection, preventing speculative registration, based on market reality

Based on the comprehensive comparative analysis presented above, several critical systemic differences emerge that illuminate the fundamental challenges facing DJKI in preventing trademark disputes. The principal problem confronting DJKI in the trademark registration process centers on the institutional incapacity to effectively reject applications submitted in bad faith during the administrative examination stage. Although Article 21 paragraph (3) of the Trademark Law provides explicit legal foundation for such rejections, operational practice reveals that DJKI functions primarily as an administrative processor conducting formal and substantive examinations based exclusively on submitted documentation, without mechanisms for independent verification of applicant intentions or actual commercial use.

This structural limitation contrasts sharply with the more robust preventive capabilities embedded in the United States system. Under the Lanham Act 15 U.S.C. § 1051, the United States Patent and Trademark Office (USPTO) operates within a comprehensive framework designed specifically to assess applicant good faith through substantive verification mechanisms. The fundamental distinction lies not merely in the first-to-use versus first-to-file principles, but more significantly in the evidentiary requirements and verification processes that enable objective assessment of applicant legitimacy.

Under the Lanham Act 15 U.S.C. § 1051, the United States Patent and Trademark Office (USPTO) has a more comprehensive mechanism for assessing the good faith of an applicant. In the United States system, trademark registration does not necessarily confer rights to a trademark, but rather is declarative that such rights can be obtained through use in commerce. The USPTO requires the applicant to certify that the mark has been used or will be used in a trade (use in commerce or intent to use in commerce). Article 1 paragraph (3) letter c of the Lanham Act requires that the statement of application be verified and contain that "the trademark is used in commerce". Section § 45 (15 U.S.C. § 1127) defines use in commerce as the lawful use of a mark in ordinary commercial activities, and not simply to defend rights to a trademark.

The philosophical underpinnings of these divergent systems reflect fundamentally different approaches to balancing administrative efficiency against substantive rights protection. Indonesia's first-to-file principle prioritizes legal certainty and procedural simplicity, offering clear administrative pathways and predictable outcomes. This approach facilitates rapid processing of applications and provides definitive answers regarding trademark ownership based on registration priority. However, the system's reliance on formal documentation without substantive use verification creates exploitable vulnerabilities, enabling bad faith actors to register trademarks they have no genuine intention of using commercially, particularly targeting established but unregistered marks or well-known brands not yet registered in Indonesia.

A comparison of the trademark registration system between Indonesia and the United States shows fundamental philosophical differences in providing legal protection for trademarks. Indonesia adheres to the first-to-file principle which gives priority to the party who registers the trademark for the first time, regardless of who actually uses the trademark in trade activities. This system was chosen because it provides clear legal certainty and a relatively simpler administrative process. However, in practice, this system is vulnerable to abuse by parties with bad intentions who register a trademark belonging to another person or a trademark that is already known to the public but has not been registered (trademark squatting), because DJKI does not have the obligation and mechanism to verify the actual use of the trademark in trade.

Conversely, the United States implements the first-to-use principle, establishing trademark rights through demonstrable commercial use rather than mere administrative registration. The USPTO mandates that applicants provide concrete evidence of actual or intended use in interstate commerce, fundamentally transforming the registration process from purely administrative formality to substantive verification of commercial reality. This evidentiary requirement compels applicants to demonstrate genuine business operations and legitimate commercial intentions before receiving federal trademark protection.

In contrast, the United States applies the principle of First to Use, whereby the right to a trademark can be acquired through active use in a trade activity even if it has not been registered. The USPTO requires the applicant to prove that the trademark has been or will be used in real terms in a commercial transaction, not merely an administrative registration. To prove evidence of actual use in commerce to the USPTO, the applicant must submit a specimen of use showing how the mark is actually used in commercial activities in the United States.

Evidence of specimen of actual use itself may be, Images of products that clearly display the trademark on the goods or their packaging, Examples of labels, tags, or packaging that use the brand, Print or online advertisements that show the use of the brand in direct connection with the goods or services sold, Proof of use of the brand on a website that shows the offering of goods or services with the brand, The specimen must clearly show the brand and its use in a trade context in the United States, Not in the form of drawings, mockups, or artistic illustrations; must be an example of real use, There must be evidence that the use affects interstate trade or international trade, Evidence showing the use of the mark in a real and consistent manner in trade in accordance with the category of goods or services registered.

Proof of actual use must be met because the USPTO only grants trademark registration if there is tangible evidence that the trademark is actually used in commerce, not just administratively registered. This system provides more substantive protection because it is based on market reality, and effectively prevents speculative registration or registration by parties who do not actually intend to use the trademark in business.

The weakness of Indonesia's system is reflected in the high number of trademark disputes which reached more than 156,860 cases in the 2021-2025 period, showing that many registrations that should have been prevented from the beginning actually passed the DJKI examination and then caused disputes in the Commercial Court. A concrete example is the LOPSTER VS LOBSTER case which should have been prevented during the registration process. The limitations of DJKI in detecting bad faith are due to the absence of a mechanism

for verifying actual use which provides the main obstacle in carrying out preventive functions. Lessons learned from the United States system show that optimizing the role of DJKI can be done through the adoption of a serious proof of intent obligation to use.

While radically changing Indonesia's system from first to file to first to use is unrealistic and would create legal uncertainty, Indonesia can adopt a hybrid approach by maintaining a basic first-to-file structure while integrating actual usage verification mechanisms. Thus, the Indonesian system can benefit from first-to-file legal certainty as well as stronger substantive protections such as those implemented by the United States, which will ultimately reduce trademark disputes and provide more effective protection for business actors

CONCLUSION

This study concludes that Indonesia's Directorate General of Intellectual Property (DJKI), operating under a first-to-file trademark system, provides administrative clarity but remains fundamentally reactive, lacking mandatory verification of actual commercial use to prevent bad-faith registrations effectively. For future research, scholars should empirically evaluate the feasibility and impact of a hybrid model integrating limited use-verification into the existing framework, alongside AI-powered tools for similarity detection and bad-faith screening, while assessing socio-economic and legal implications for small and medium enterprises and Indonesia's innovation ecosystem.

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