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## Legal Analysis of Trademark Protection Against Product Counterfeiting in Indonesia

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### Abstract

*Legal protection of trademarks constitutes an essential aspect of the Intellectual Property Rights (IPR) regime, aimed at ensuring legal certainty, protecting business actors, and preventing unfair competition. However, in practice, product counterfeiting using trademarks without authorization either identical or substantially similar remains prevalent, causing significant losses to trademark owners and consumers. This study aims to analyze the legal regulation of trademarks in Indonesia, the forms of legal protection against trademark counterfeiting, and the effectiveness of its law enforcement. The research employs a normative juridical method with statutory and conceptual approaches. The results indicate that trademark regulation in Indonesia is comprehensively governed under Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which provides both preventive and repressive legal protection. Preventive protection is implemented through the trademark registration system, while repressive protection is carried out through civil, criminal, and administrative sanctions. Nevertheless, the effectiveness of law enforcement still faces several challenges, including low public legal awareness, weak supervision, and technological developments that facilitate the distribution of counterfeit goods. Therefore, it is necessary to optimize law enforcement and enhance legal awareness to achieve effective trademark protection in Indonesia.*

**Keywords:** Counterfeiting, Law, Protection, Trade, Trademark.



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## INTRODUCTION

The global expansion of trade, driven by digitalization and cross-border commerce, has significantly intensified the circulation of goods and simultaneously escalated the proliferation of counterfeit products, positioning trademark protection as a central concern within contemporary intellectual property discourse. In many jurisdictions, trademarks function not merely as identifiers of origin but as strategic economic assets that embody brand reputation, consumer trust, and competitive advantage, thereby necessitating robust legal safeguards against unauthorized use and imitation. The increasing sophistication of counterfeiting networks, often facilitated by e-commerce platforms and global supply chains, has challenged traditional enforcement mechanisms and exposed structural weaknesses in national legal systems, particularly in developing economies where regulatory capacity and enforcement consistency remain uneven (Rahaditya et al., 2023; Kansil et al., 2024).

Existing scholarship has extensively examined the doctrinal foundations of trademark rights and the evolution of legal frameworks governing their protection, emphasizing the role of statutory regulation in defining ownership, duration, and enforceability of trademark rights. Studies highlight that Indonesia has adopted a constitutive registration system under Law No. 20 of 2016, which grants exclusive rights to registered trademark holders while simultaneously establishing procedural mechanisms for renewal and cancellation (Nugraha, 2026; Pujianti, 2024). Empirical analyses further suggest that legal recognition alone does not guarantee effective protection, as enforcement outcomes are often contingent upon institutional coordination, judicial interpretation, and the capacity of rights holders to initiate legal action (Agus et al., 2018; Rahaditya et al., 2023).

Critical examinations of enforcement practices reveal that, despite the formal adequacy of Indonesia's trademark law, the persistence of counterfeit goods indicates a significant gap between normative regulation and practical implementation. Research findings indicate that legal enforcement remains reactive rather than preventive, with authorities often relying on complaints rather than

proactive monitoring systems, thereby allowing counterfeit products to circulate widely before intervention occurs (Ilmi & Hana, 2024; Kaparang, 2024). Judicial decisions in trademark infringement cases further demonstrate inconsistencies in legal reasoning and evidentiary standards, which contribute to uncertainty and undermine the deterrent effect of the law (Mahadewi, 2007; Dwisadewa, 2026).

The literature also exposes conceptual limitations in understanding trademark protection within the broader socio-economic context, as many studies focus predominantly on doctrinal analysis without adequately addressing the interplay between legal norms, market dynamics, and consumer behavior. This narrow analytical scope obscures the structural drivers of counterfeiting, including price disparities, consumer demand for cheaper alternatives, and limited public awareness of intellectual property rights. Furthermore, empirical studies often lack comprehensive methodological approaches that integrate legal analysis with real-world enforcement data, resulting in fragmented insights into the effectiveness of existing legal mechanisms (Ernanda, 2025; Kansil et al., 2024).

The persistence of product counterfeiting in Indonesia presents both an academic and practical urgency, as it not only undermines the rights of trademark owners but also distorts market competition, reduces state revenue, and poses potential risks to consumer safety. The inadequacy of current enforcement mechanisms suggests the need for a more integrated legal approach that aligns statutory provisions with institutional capacity and socio-economic realities. Addressing this issue requires a critical reassessment of how trademark law is conceptualized and implemented, particularly in relation to the effectiveness of legal remedies and the role of state authorities in ensuring compliance (Ilmi & Hana, 2024; Kaparang, 2024).

This research positions itself within the intersection of normative legal analysis and empirical evaluation by critically examining the effectiveness of trademark protection against product counterfeiting in Indonesia, with a specific focus on identifying structural weaknesses in legal enforcement and proposing a more coherent analytical framework that bridges doctrinal and practical dimensions. The study aims to contribute theoretically by refining the conceptual understanding of trademark protection in developing legal systems and methodologically by integrating statutory analysis with evaluative insights into enforcement practices, thereby offering a more comprehensive perspective on how legal systems can respond to the evolving challenges of counterfeiting in the globalized economy.

## **RESEARCH METHODS**

This study employs a non-empirical legal research design grounded in a normative and doctrinal approach, focusing on the systematic examination of positive law governing trademark protection against product counterfeiting in Indonesia. The research relies primarily on secondary data sources, including primary legal materials such as statutory regulations particularly Law No. 20 of 2016 on Trademarks and Geographical Indications judicial decisions related to trademark infringement, and relevant international legal instruments. These are complemented by secondary legal materials comprising scholarly journal articles, legal commentaries, and academic literature that critically discuss intellectual property law and enforcement practices. Tertiary materials, including legal dictionaries and encyclopedic references, are also utilized to clarify conceptual and terminological aspects (Ernanda, 2025).

The data collection technique is conducted through comprehensive library research, involving the identification, classification, and systematic review of legal texts relevant to the research problem. The analytical framework of this study is based on qualitative legal analysis using statutory, conceptual, and case approaches to interpret and evaluate the effectiveness of trademark protection within the Indonesian legal system. The statutory approach is employed to examine the coherence and consistency of existing legal provisions, while the conceptual approach is used to analyze underlying legal doctrines such as exclusive rights, infringement, and liability. The case approach facilitates the assessment of judicial reasoning and its implications for legal certainty and enforcement. Interpretation is conducted through grammatical, systematic, and teleological methods to uncover the normative meaning and objectives of the law. The study further applies a prescriptive analytical model to formulate legal arguments and recommendations aimed at strengthening trademark protection against counterfeiting, ensuring that the findings contribute to both theoretical development and practical legal reform.

## RESULTS AND DISCUSSION

### Normative Structure of Trademark Protection under Indonesian Law

The normative construction of trademark protection in Indonesia is fundamentally rooted in Law No. 20 of 2016 concerning Trademarks and Geographical Indications, which establishes a constitutive system premised upon registration as the basis of legal rights. Article 1 point (5) explicitly defines trademark rights as exclusive rights granted by the state, thereby reinforcing the doctrine of legal certainty within intellectual property regimes. This provision must be interpreted systematically alongside Article 3, which affirms that rights arise only after registration, thereby excluding unregistered marks from formal protection. Such a framework reflects a positivist legal orientation emphasizing formal legality over factual use in commerce. Scholarly interpretations affirm that this system prioritizes administrative certainty while potentially marginalizing substantive justice (RAHADITYA, 2023).

The constitutive principle embedded in Indonesian trademark law must be further analyzed through a teleological interpretation that examines its purpose in ensuring clarity in ownership and preventing overlapping claims. Article 21 of Law No. 20 of 2016 introduces substantive examination criteria, including similarity in principle and bad faith, which serve as safeguards against abusive registrations. This norm is reinforced by Government Regulation No. 22 of 2018, which aligns domestic standards with international frameworks such as TRIPs. However, doctrinal critiques suggest that the reliance on formal registration may inadequately address prior use in global commerce (SOELISTYO, 2014).

The legal system thus reveals a tension between administrative efficiency and equitable protection. The exclusive rights granted to trademark owners include the right to use and license the mark, as stipulated under Article 1 point (5) and further elaborated in licensing provisions. These rights are complemented by enforcement mechanisms under Article 83, which allows civil claims for damages and injunctions. A systematic interpretation of these provisions reveals that the law integrates both proprietary and remedial dimensions of trademark rights. The inclusion of criminal sanctions under Articles 100–102 indicates the legislator's intention to elevate trademark infringement to a matter of public concern. This dual structure reflects a hybrid legal approach combining private and public enforcement.

**Table 1. Normative Structure of Trademark Protection under Indonesian Law**

Provision	Legal Content	Normative Function
Article 1(5)	Definition of trademark rights	Establishes exclusivity
Article 3	Registration requirement	Constitutive principle
Article 21	Grounds for refusal	Preventive protection
Article 83	Civil remedies	Compensatory function
Articles 100–102	Criminal sanctions	Deterrence mechanism

The duration of trademark protection, as regulated under Article 35, provides a ten-year term with the possibility of renewal, which ensures continuity of rights while maintaining regulatory oversight. This provision has been further interpreted in light of Constitutional Court developments extending non-use periods from three to five years, reflecting a dynamic evolution of legal norms (PUJIANTI, 2024). A historical interpretation reveals that this extension aims to accommodate business realities while preventing opportunistic cancellations. Nonetheless, such flexibility may also create loopholes for speculative registrations. The balance between protection and competition remains a central issue. Territoriality constitutes another foundational principle, limiting the enforceability of trademark rights to national jurisdiction. This principle is consistent with international intellectual property law but creates challenges in cross-border enforcement. Presidential Regulation frameworks supporting international registration attempt to mitigate these limitations.

Comparative legal analysis indicates that Indonesia's integration into global systems remains partial. The normative framework thus requires further harmonization with international standards. Preventive protection mechanisms operate primarily through the registration system administered by the Directorate General of Intellectual Property. Ministerial regulations governing administrative procedures ensure transparency and procedural fairness. These mechanisms are designed to filter out

conflicting trademarks before registration. Yet, doctrinal analysis suggests that administrative review may not fully capture market realities. The gap between formal examination and actual use persists as a structural limitation. Repressive protection is realized through civil, criminal, and administrative sanctions, each serving distinct legal functions.

Civil remedies focus on compensation, criminal sanctions emphasize deterrence, and administrative measures ensure system integrity. This tripartite structure reflects a comprehensive enforcement model. However, the coexistence of multiple enforcement pathways may create procedural complexity. Legal certainty depends on coherent application across these mechanisms. Judicial interpretation plays a crucial role in shaping the practical meaning of statutory provisions. Decisions of the Commercial Court and Supreme Court contribute to the development of jurisprudence. A systematic analysis of case law reveals variations in interpreting “similarity in principle.” Such inconsistencies undermine predictability in legal outcomes.

The need for doctrinal coherence becomes evident. The normative framework of trademark protection in Indonesia demonstrates a sophisticated legal architecture grounded in statutory regulation and doctrinal principles. However, internal tensions between formalism and substantive justice remain unresolved. The effectiveness of the system depends on harmonizing legal interpretation with economic realities. A refined doctrinal approach is necessary to strengthen legal certainty. This analysis establishes the foundation for examining counterfeiting practices within the same legal framework.

**Legal Qualification of Product Counterfeiting and Normative Liability**

Product counterfeiting constitutes a direct violation of trademark rights as defined under Indonesian law, particularly when it involves unauthorized use of identical or similar marks. Article 100 of Law No. 20 of 2016 criminalizes such conduct, establishing liability irrespective of contractual relationships. This provision must be interpreted grammatically to encompass both direct imitation and deceptive similarity. The legal qualification of counterfeiting thus extends beyond literal duplication to include functional equivalence. Scholarly analysis confirms that this broad interpretation is necessary to protect consumer interests (RAMADHAN, 2023).

The doctrine of “similarity in principle” serves as the central in determining infringement. Article 21 provides the normative basis for rejecting or invalidating marks that create confusion. A systematic interpretation links this provision with enforcement articles, creating a unified standard. However, the absence of precise statutory criteria leads to interpretative variability. This ambiguity complicates legal enforcement and judicial consistency.

**Table 2. Legal Classification of Product Counterfeiting under Indonesian Trademark Law**

Type	Legal Characteristic	Normative Basis
Identical imitation	Exact duplication	Article 100
Substantial similarity	Visual/phonetic resemblance	Article 21
Passing off	Misrepresentation of origin	Doctrine
Free riding	Exploitation of reputation	Case law

Civil liability for counterfeiting arises under Article 83, allowing trademark owners to seek damages and injunctions. This provision operates alongside Article 1365 of the Civil Code, which governs unlawful acts. A systematic interpretation integrates intellectual property law with general tort principles. This dual framework enhances legal protection. However, overlapping norms may create interpretative conflicts. Criminal liability under Articles 100–102 introduces punitive measures aimed at deterrence. The inclusion of imprisonment and fines reflects the seriousness of trademark violations. A teleological interpretation suggests that these sanctions aim to protect market integrity. Nonetheless, empirical observations indicate limited deterrent effects.

The gap between normative severity and practical enforcement persists. Administrative sanctions, including cancellation and deletion of trademarks, serve as corrective mechanisms within the registration system. Articles 76 and 77 regulate these processes, ensuring that invalid marks do not remain in circulation. Ministerial regulations further specify procedural requirements. This framework maintains the integrity of the trademark registry. However, procedural delays may reduce effectiveness. The role of bad faith in counterfeiting cases is explicitly recognized in Article 21. A historical

interpretation reveals that this concept was introduced to prevent opportunistic registrations. Judicial interpretation often relies on circumstantial evidence to establish bad faith. This approach enhances flexibility but may reduce predictability.

The balance between discretion and certainty remains delicate. International legal principles, particularly under TRIPs, influence the interpretation of counterfeiting norms in Indonesia. Comparative analysis shows alignment in defining infringement and remedies. However, enforcement mechanisms differ significantly. Indonesia’s reliance on complaint-based enforcement contrasts with proactive systems elsewhere. This difference affects overall effectiveness. The socio-economic impact of counterfeiting reinforces the need for robust legal frameworks. Counterfeit goods distort competition and harm consumer trust.

Legal norms must therefore address both economic and ethical dimensions. The integration of these considerations strengthens normative legitimacy. A purely formal approach is insufficient. The legal qualification of counterfeiting in Indonesia demonstrates a comprehensive but complex normative structure. Multiple legal doctrines converge to address diverse forms of infringement. However, interpretative inconsistencies and enforcement challenges limit effectiveness. A more coherent doctrinal framework. This analysis underscores the need for integrated legal reform.

**Effectiveness of Legal Enforcement and Doctrinal Implications**

The effectiveness of trademark law enforcement in Indonesia must be evaluated through a normative lens that examines the coherence between statutory provisions and their implementation. Law No. 20 of 2016 provides a comprehensive enforcement framework, yet its practical realization depends on institutional coordination. Article 83, Articles 100-102, and administrative provisions collectively establish enforcement mechanisms. A systematic interpretation reveals that these mechanisms are designed to operate complementarily. However, fragmentation in application undermines their effectiveness (WIJANARKO, 2022).

Institutional actors involved in enforcement include the Directorate General of Intellectual Property, Commercial Courts, and law enforcement agencies. Each institution operates within its mandate, creating a multi-layered enforcement system. Ministerial and governmental regulations further define procedural aspects. This institutional plurality reflects a complex governance structure. Coordination challenges remain a significant issue.

**Table 3. Legal Enforcement Mechanisms for Trademark Protection in Indonesia**

<b>Mechanism</b>	<b>Institution</b>	<b>Legal Basis</b>	<b>Function</b>
Civil	Commercial Court	Article 83	Compensation
Criminal	Police/Prosecutor	Articles 100–102	Deterrence
Administrative	DGIP	Articles 76–77	Regulation

Judicial decisions play a central role in interpreting and applying trademark law. Case law demonstrates varying approaches to similarity and bad faith. A doctrinal analysis reveals inconsistencies in reasoning. These inconsistencies reduce legal predictability. Harmonization of jurisprudence. The extension of non-use periods by the Constitutional Court reflects an evolving legal framework (PUJIANTI, 2024). This development illustrates the dynamic interaction between statutory law and constitutional interpretation. A teleological analysis suggests that such changes aim to balance protection and competition. However, extended periods may delay corrective action against unused marks. The implications require further evaluation. Preventive enforcement mechanisms, including registration and opposition procedures, aim to reduce infringement risks.

Government regulations and ministerial guidelines structure these processes. A systematic interpretation shows that preventive measures are integral to the legal framework. However, their effectiveness depends on accurate examination. Administrative limitations may reduce reliability. Repressive enforcement mechanisms face challenges related to cost, duration, and evidentiary complexity. Civil litigation often requires substantial resources. Criminal enforcement depends on proactive investigation. Administrative remedies may be slow. These factors collectively affect accessibility. Comparative analysis with international systems reveals that Indonesia’s enforcement model remains reactive. Proactive monitoring and digital enforcement tools are limited.

This contrasts with jurisdictions that employ advanced surveillance. The gap affects enforcement outcomes. Reform is necessary. Doctrinally, the effectiveness of enforcement reflects the interplay between law and society. Legal norms must align with economic behavior and institutional capacity. A purely normative framework is insufficient without practical. Integration of socio-legal insights enhances analysis. This approach strengthens theoretical contributions. The overall effectiveness of trademark protection in Indonesia remains constrained by structural and doctrinal limitations. While the legal framework is comprehensive, its implementation is uneven. Harmonization of norms, institutions, and practices is essential. A refined doctrinal synthesis can improve legal certainty. This analysis contributes to the development of a more coherent intellectual property regime.

## CONCLUSION

This study demonstrates that the legal framework governing trademark protection against product counterfeiting in Indonesia is normatively comprehensive, grounded in Law No. 20 of 2016 concerning Trademarks and Geographical Indications. The system adopts a constitutive registration principle that ensures legal certainty through formal recognition of rights, supported by preventive and repressive mechanisms, including administrative examination, civil remedies, and criminal sanctions. However, the analysis reveals an inherent tension between formal legal certainty and substantive justice, particularly in addressing prior use, bad faith registration, and the evolving dynamics of global trade. While the statutory provisions are structurally coherent, their interpretative application often lacks consistency, especially in determining “similarity in principle” and assessing counterfeiting practices.

The effectiveness of trademark protection is constrained by institutional fragmentation, procedural complexity, and limited enforcement capacity. Although multiple enforcement pathways exist civil, criminal, and administrative their implementation remains reactive and insufficiently integrated. Doctrinal inconsistencies in judicial reasoning and gaps between normative regulation and practical enforcement reduce legal predictability and deterrence. Therefore, strengthening trademark protection in Indonesia requires not only normative refinement but also institutional harmonization, enhanced interpretative coherence, and adaptive enforcement strategies aligned with socio-economic realities. Such reforms are essential to ensure that the legal system provides both certainty and justice in combating product counterfeiting.

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