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by Charles Nasution

Reforming Trademark Rights Protection In Indonesia Through Progressive Legal Theory: A Comparative Study Of Poland And South Africa

Mereformasi Perlindungan Hak Merek Dagang di Indonesia Melalui Teori Hukum Progresif: Studi Perbandingan Polandia dan Afrika Selatan

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53 ABSTRACT

This research examines the urgency of trademark protection in Indonesia through the perspective of progressive law and legal system theory, and compares it with practices in Poland and South Africa. This research is a normative legal study emphasizing conceptual, comparative, and legislative approaches. The research results show that trademark protection in Indonesia not only requires normative legal certainty but also an approach that can realize substantive justice, protect business actors, and encourage economic innovation. In the framework of legal system theory, the effectiveness of trademark protection is determined by the synergy between legal substance, institutional structure, and the legal culture of society. Comparatively, Indonesia has a sufficient legal foundation, but still faces challenges in the interpretation of norms, institutional coordination, and low public legal awareness. Polandia demonstrates a more advanced system integrated with European Union standards, while South Africa has adopted international principles but still faces implementation challenges. Therefore, comprehensive reforms are needed in Indonesia through regulatory strengthening, institutional capacity building, and the development of a legal culture that is aware and compliant. These efforts are important to create an effective, just brand protection system that can support national economic competitiveness on a global scale.

Keywords: Intellectual Property Rights; Progressive Law; Trademark.

ABSTRAK

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Penelitian ini mengkaji urgensi perlindungan hak merek dagang di Indonesia melalui perspektif hukum progresif dan teori sistem hukum, serta membandingkannya dengan praktik di Polandia dan Afrika Selatan. Penelitian ini merupakan penelitian hukum normatif dengan menekankan pendekatan konseptual, perbandingan, dan perundang-undangan. Hasil penelitian menunjukkan bahwa perlindungan merek di Indonesia tidak hanya membutuhkan kepastian hukum secara normatif, tetapi juga pendekatan yang mampu mewujudkan keadilan substantif, melindungi pelaku usaha, serta mendorong inovasi ekonomi. Dalam kerangka teori sistem hukum, efektivitas perlindungan merek ditentukan oleh sinergi antara substansi hukum, struktur kelembagaan, dan budaya hukum masyarakat. Secara komparatif, Indonesia telah memiliki dasar hukum yang memadai, namun masih menghadapi kendala dalam interpretasi norma, koordinasi kelembagaan, serta rendahnya kesadaran hukum masyarakat. Polandia menunjukkan sistem yang lebih maju dan terintegrasi dengan standar Uni Eropa, sementara Afrika Selatan telah mengadopsi prinsip internasional namun masih menghadapi tantangan implementasi. Oleh karena itu, diperlukan reformasi menyeluruh di Indonesia melalui penguatan regulasi, peningkatan kapasitas kelembagaan, dan pembangunan budaya hukum yang sadar dan patuh. Upaya ini penting untuk menciptakan sistem perlindungan merek yang efektif, berkeadilan, dan mampu mendukung daya saing ekonomi nasional di tingkat global.

Kata Kunci: Hak Kekayaan Intelektual; Hukum Progresif; Merek Dagang.

1. Research Articles

A. INTRODUCTION

Trademark rights in Indonesia are comprehensively regulated under Law Number 20 of 2016 concerning Marks and Geographical Indications (Trademark Law), which serves as a response to the demands of trade globalization and consumer protection (Widiatmika et al., 2023). This regulation is in line with Indonesia's international obligations as a member of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) since 1994, as well as the Madrid Protocol, which was ratified through Presidential Decree Number 32 of 1995, enabling international trademark registration via the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights (Çapar, 2023). Nevertheless, there are three main issues regarding trademark rights in Indonesia, namely: first, the high rate of trademark counterfeiting, which reached 1.7 million cases in 2023 according to Customs data, driven by e-commerce platforms that are difficult to supervise, as regulated under Minister of Trade Regulation Number 31 of 2023 concerning Trade Through Electronic Systems (Haiti, 2023). Second, there is a backlog of trademark applications at the DJKI, accumulating up to 500,000 filings per year due to limited resources, resulting in approval delays of up to 24 months (Febriyanti & Bintoro, 2023). Third, conflicts between well-known marks and local brands frequently trigger disputes, exacerbated by weak enforcement due to the lack of a national well-known marks database. Furthermore, digitalization challenges following the COVID-19 pandemic have worsened trademark infringement on platforms such as Shopee and Tokopedia, while law enforcement still relies heavily on the initiative of the trademark owners (Ratih Agustin Wulandari, 2020). These issues not only harm business actors but also weaken Indonesia's competitiveness at both the regional and global levels.

The aforementioned problems indicate that there are shortcomings in terms of legislation and its implementation regarding trademark rights in Indonesia, necessitating reform or updates. Essentially, efforts to update trademark rights in Indonesia align with the concept of progressive law. The fundamental values of progressive law and the renewal of trademark rights are inherently compatible, as both are oriented towards justice, social dynamics, and the needs of people's economic development, rather than merely regulatory formalism. According to the thoughts of Satjipto Rahardjo, progressive law departs from the assumption that "law is made for humans," not the other way around, and that the law must be pro-people, pro-justice, and constantly evolve to follow societal changes (Rahardjo, 2008). In this perspective, law is not understood as a set of static norms, but rather as a process that is responsive to social, economic, and cultural needs; thus, the implementation of law must prioritize a sense of justice and public welfare (Dicki Eko Prasetyo Adam Ilyas Felix Ferdin Bakker, 2021). The updating of trademark provisions in Indonesia, particularly the discourse on revisions to expedite registration and strengthen protection for MSMEs, can be seen as the realization of the spirit of progressive law. Trademark regulations are being improved not only to meet TRIPS standards and international trade agreements but also to provide fair legal certainty, encourage innovation, and protect small business owners who are vulnerable to trademark infringement. Consequently, designing a trademark rights system that is more responsive to digital dynamics, an MSME-based economy, and global competition essentially reflects the fundamental values of progressive law:

law as an instrument of social transformation that sides with the people, guarantees justice, and promotes economic welfare.

Robert C. Sherwood explains that there are several theories which can serve as the basis or rationale for why Intellectual Property Rights (IPR) protection is necessary within the modern legal system. These theories do not exist in a normative vacuum, but are instead grounded in economic, ethical, and social arguments regarding the necessity of recognition, incentives, and certainty for creators and inventors (Ni Made Ayu Sukma Rindiyartini, Bagus Gede Ari Rama, I Gede Agus Kurniawan, 2025). According to Sherwood, one of the main theories is the Reward Theory, which posits that any individual who has invested time, expense, and effort into creating an intellectual work is entitled to receive recognition in the form of exclusive rights to their creative output, as an appreciation for their endeavor and hard work (Ni Made Ayu Sukma Rindiyartini, Bagus Gede Ari Rama, I Gede Agus Kurniawan, 2025). Furthermore, there is the Recovery Theory, which asserts that IPR protection is necessary to enable creators or inventors to recoup part or all of the costs and investments incurred during the creation process, thereby preventing an imbalance between the burdens borne and the benefits gained (Dubey, 2026). Furthermore, the Incentive Theory emphasizes that the IPR system serves as a driving force, as the existence of exclusive rights and legal protection motivates creative individuals to continue innovating and producing new works that benefit society (Harnowo, 2022). Equally important, the Risk Theory highlights that creative or inventive activities always entail risks, ranging from the possibility of failure to the potential for the work to be appropriated or copied by others. Therefore, legal protection is necessary to mitigate these risks and provide certainty to creators. Lastly, the Economic Growth Stimulus Theory argues that IPR protection is a vital instrument for a nation's economic development, as a strong intellectual property system facilitates innovation, encourages technology transfer, and creates a more conducive investment climate, ultimately driving economic growth and public welfare (Mazé, 2023).

Efforts to reform trademark law in Indonesia essentially refer to Lawrence M. Friedman's legal system theory, which is a holistic and systemic approach emphasizing the need for comprehensive reform of three main components of the legal system. These include legal substance, which comprises written laws, court decisions, and legal doctrines as normative guidelines; and legal structure, which encompasses law enforcement institutions such as the police, public prosecutor's office, courts, and administrative judicial bodies, along with their human resources and infrastructure (et. al. Dicky Eko Prasetyo, 2021). Legal culture, which refers to the attitudes, values, perceptions, and behavior of both society and legal officials toward the law itself. An imbalance among these three components is often the root cause of chronic issues in law enforcement; therefore, reform must not be partial or focused on just one element, but should instead create dynamic synergy, enabling the legal system to effectively adapt to social, economic, and political changes (Čehulić, 2021). Efforts to optimize the reform of trademark law in Indonesia refer to various aspects or indicators of progressive law, emphasizing that law is not merely a set of static norms but a dynamic instrument adaptable to social, economic, and technological advancements. This aims to achieve substantive justice, public welfare, and protection for creative innovation amidst the digital era and trade globalization. This aligns with the spirit of progressive law as put forward by Satjipto Rahardjo, who asserts that law must move proactively to accommodate the needs of modern society, playing a vital role in responding to socio-economic dynamics through the strengthening of trademark protection.

In general, research regarding the reform of trademark protection law in Indonesia

has primarily focused on amendments to legislation or regulations, without sufficiently addressing the dimensions of legal structure and culture. Grounded in progressive legal theory, this study offers a novel perspective by proposing that reforms to trademark protection law in Indonesia should be based on Lawrence M. Friedman's legal system theory, which encompasses the aspects of legal substance, structure, and culture. The general objective of this research is to reform trademark rights protection in Indonesia through the lens of progressive legal theory, employing a comparative study between Poland and South Africa. The comparison with these countries is intended to examine trademark regulation in Poland (a European nation) and South Africa (a prominent country in Africa). There are two legal issues analyzed in this study, namely: (i) the urgency of protecting trademark rights in Indonesia based on progressive legal theory and legal system theory; and (ii) a comparison of trademark protection laws regarding the aspects of substance, structure, and legal culture in Indonesia, Poland, and South Africa.

B. RESEARCH METHOD

This research, which focuses on the reform of trademark rights protection in Indonesia through the lens of progressive legal theory and employs a comparative study between Poland and South Africa, is categorized as normative legal research. Although it is normative in nature, this study also incorporates non-legal aspects to examine the dimensions of legal structure and culture, thereby complementing the normative analysis based on doctrines, theories, and legal principles (Masnun, Muh. Ali, Prasetyo, Dicky Eko, 2025). The primary legal materials used include Law Number 20 of 2016 concerning Marks and Geographical Indications (Trademark Law), international conventions, as well as legislation regarding trademarks from Poland and South Africa. The secondary legal materials consist of journal articles, books, and research studies discussing intellectual property and trademark rights. Non-legal materials include legal dictionaries. The analysis in this study is conducted prescriptively, focusing on formulating recommendations in the form of proposed improvements, normative updates, or conceptual solutions that are applicable and transformative (Hamzani et al., 2023).

C. RESULTS AND DISCUSSION

1. The urgency of protecting trademark rights in Indonesia through progressive legal theory and legal system theory

Intellectual property rights refer to a set of exclusive legal rights granted to creators, inventors, or owners over the results of intellectual work, technological innovations, or commercial signs (Calboli, 2024). This is intended to protect the expression of original ideas from unauthorized exploitation, as universally recognized through international conventions such as the Berne Convention for the Protection of Literary and Artistic Works of 1886, the Paris Convention for the Protection of Industrial Property (1883), and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization (WTO) since 1995 (Syafrinaldi & Hardiango, 2021). Intellectual property rights encompass various main forms, such as copyright, which protects literary, artistic, musical, and cinematic works as well as software; patents, which grant a temporary monopoly (generally 20 years) over industrial inventions or new technological processes that are novel, involve an inventive step, and are industrially applicable; trademarks, which distinguish the goods or services of specific producers to prevent consumer confusion; industrial designs, which protect the aesthetic appearance of products; trade secrets, which safeguard confidential information with commercial value; and geographical indications, which guarantee the origin and distinctive quality associated with a specific territory (Keliat & Tanjung, 2022).

Intellectual property rights aim to balance the interests of individual creators with those of the wider community through the principle of limited monopoly. This framework allows owners to economically exploit their works during a temporary period of protection while also encouraging the dissemination of knowledge once the protection period expires (P. A. Samsithawati, N. K. S. Dharmawan, M. A. P. Putra, 2024). Intellectual property rights serve as a pillar of sustainable development, as they encourage investment in research and development (R&D) within the pharmaceutical, information technology, and creative industries. Simultaneously, they significantly contribute to achieving several of the United Nations' Sustainable Development Goals (SDGs), particularly SDG 9 (Industry, Innovation, and Infrastructure), which explicitly targets improved access to information and communication technology and quality infrastructure as a foundation for innovation. (Wang, 2025). The Sustainable Development Goals (SDGs) represent a crucial aspect in the utilization of intellectual property rights. As a global agenda adopted by 193 member states of the United Nations (UN) in September 2015 through UN Resolution A/RES/70/1, also known as the 2030 Agenda for Sustainable Development, it comprises 17 main goals with 169 specific targets and 231

indicators designed to be achieved universally by 2030. The framework aims to address multidimensional challenges such as extreme poverty, hunger, gender inequality, access to education and health, climate change, environmental degradation, as well as peace and lasting justice, serving as the successor to the Millennium Development Goals (MDGs) for 2000–2015 (Dharma et al., 2025).

Philosophically, intellectual property rights originate from Jeremy Bentham's utilitarian theory, which views IPRs as an instrument to maximize social welfare through innovation incentives. Robert C. Sherwood further asserts that the protection of Intellectual Property Rights (IPRs) in modern law is grounded in economic, ethical, and social theories that emphasize recognition, incentives, and legal certainty for creators (Ni Made Ayu Sukma Rindyartini, Bagus Gede Ari Rama, I Gede Agus Kurniawan, 2025). Its core theories include the Reward Theory (exclusive rights as recompense for time, cost, and creative effort), the Recovery Theory (recouping creation costs to maintain a balance between burden and benefit), the Incentive Theory (exclusive rights motivating continuous innovation), the Risk Theory (protection against risks of failure or imitation), as well as the Economic Growth Stimulus Theory (IPRs facilitate innovation, technology transfer, and a conducive investment climate to drive national economic growth) (Ni Made Ayu Sukma Rindyartini, Bagus Gede Ari Rama, I Gede Agus Kurniawan, 2025).

Trademark rights constitute one of the main pillars of the intellectual property rights system, designed to protect commercial signs such as names, logos, slogans, symbols, colors, or combinations of sounds and scents used to distinguish the goods or services of one business actor from another. This prevents consumer confusion, safeguards the owner's reputation, and facilitates fair competition in the marketplace (Rembonita et al., 2024). According to Black's Law Dictionary, a trademark right is defined as the exclusive right inherent in a sign to prevent similar use by others that could cause likelihood of confusion in the market. Its primary function is to serve as a source identifier, guaranteeing consistency in quality and the origin of goods or services (Bryan A. Garner, 2019). This is comprehensively regulated in Indonesia through Law Number 20 of 2016 concerning Marks and Geographical Indications, which aligns with the Paris Convention (1883) and Articles 15–21 of the TRIPS Agreement (1994). These mandate a minimum protection period of 7 years, with the possibility of unlimited renewal provided the mark remains in active use. Trademark rights are territorial in nature and are obtained through registration with the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights of the Republic of Indonesia. The process involves formal and substantive examination, followed by a two-month publication period. A mark must be distinctive, non-descriptive, non-deceptive, and not contrary to public order or morality. The protection period is 10 years per registration, renewable every 10 years upon payment of the required fees.

The trademark registration system in Indonesia firmly adheres to the first to file principle, as stipulated in Law Number 20 of 2016 concerning Marks and Geographical Indications. Under this principle, exclusive rights to a mark are granted to the party who first legally submits an application for registration to the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights. (Nurani et al., 2025). Substantive examination is conducted by examiners to ensure the mark is distinctive, non-descriptive, does not resemble previously registered marks, and does not violate Article 21 of the Trademark Law regarding registration prohibitions, such as the use of the Pancasila ideology or state names. This first to file principle creates high legal certainty, as registration serves as absolute proof of legitimate ownership pursuant to Article 3 paragraph (1), which states that "a registered mark grants exclusive rights to its owner." This differs from the first to use

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system predominant in common law countries such as the United States (Lanham Act 1946), the United Kingdom, or Australia, where priority is determined by evidence of actual commercial use. This must be proven through witnesses, sales documents, or advertising, or established through common law rights via the action of passing off, without requiring formal registration (Muh. Ali Masnun, Dicky Eko Prasetyo, Mohd Badrol Awang, 2024).

The reason Indonesia does not adopt the first to use system is due to the nature of its civil law framework, which emphasizes written formalities and public registration as a constitutive principle (rights arise from registration, not merely declaration). This ensures administrative efficiency and prevents subjective conflicts that are difficult to prove, such as claims of good faith and prior use within Indonesia's informal MSME sector, where activities are often not properly documented. Essentially, the first to file system prioritizes ease of public verification through the DJKI database, which has been integrated with the Madrid Protocol since 2018 for international registration. This reduces search costs for consumers and facilitates law enforcement. (Artija & Purwaningsih, 2024).

The first to file registration system for trademarks has significant advantages compared to the first to use system, particularly within Indonesia's civil law tradition, namely: first, absolute legal certainty since registration with the Directorate General of Intellectual Property (DJKI) serves as proof of legitimate ownership pursuant to Article 3 paragraph (1) of Law No. 20 of 2016. This eliminates the need for subjective proof of years of commercial use, which is often controversial in court, such as collecting invoices, merchant witnesses, or old advertisements that are prone to manipulation, thereby reducing litigation costs which can reach hundreds of millions of rupiah per case. Second, state administrative efficiency through an integrated public database via the DJKI IP Online Portal that facilitates examination. Third, encouraging business actors to proactively register their marks immediately after market research, protecting long-term promotional investments. Fourth, ease of law enforcement for authorities such as Customs and the National Police through verification of registered trademark certificates during raids on counterfeit goods. Fifth, international harmonization in line with the Paris Convention 1883 (6-month priority right) and the Madrid Protocol 1891 ratified by Indonesia since 2018. Sixth, reduced search costs for consumers as registered marks guarantee quality consistency (quality signaling) according to the economic function of trademark, minimizing likelihood of confusion, which is a requirement for infringement as stipulated in Article 95 of the Trademark Law. (Elcott, 2024). Seventh, preventing market anarchy in developing countries with informal trading cultures, where the first to use system risks benefiting small actors without documentation while disadvantaging large corporations that are newly expanding. Although generally effective, the regulation of trademark rights in Indonesia still faces various issues, such as the high rate of counterfeiting, administrative problems including a backlog of applications at the DJKI due to limited resources causing approval delays of up to 24 months, as well as frequent disputes arising from conflicts between well-known marks and local brands (Ossai, 2025).

The urgency of protecting trademark rights in Indonesia, based on Satjipto Rahardjo's theory of progressive law, is becoming increasingly crucial amidst the dynamics of the digital economy and globalization. Progressive law, according to Satjipto Rahardjo, serves as a response to rigid and formalistic legal positivism. It emphasizes law as a living and creative instrument for substantive justice, featuring several key elements in relation to the protection of intellectual property rights, namely (Prasetyo, 2024): First, humanity with compassion, where the law must side with social weaknesses to uphold human dignity, rather than merely adhering to

procedures. Second, substantive justice by balancing the individual rights of IPR creators with public interests through flexible interpretation, such as fair use in the Copyright Law. Third, law as social engineering, functioning proactively to encourage trademark innovation for MSMEs through registration incentives provided by the DJKI. Fourth, judicial creativity and flexibility, enabling dynamic interpretation of the first to file principle in the interest of justice (Prasetio et al., 2025). Fifth, orientation towards public welfare, preventing abusive monopolies through compulsory licensing and benefit-sharing for geographical indications. Sixth, moving law, which is adaptive to digital realities and modern developments. This reinforces that law must be "living, creative, and oriented towards substantive justice" through a holistic-integrative approach that integrates national cultural values, public interests, and the dynamics of the creative economy as the foundation of national development. Consequently, trademark protection is not merely administrative registration of the DJKI pursuant to Law No. 20 of 2016, but a progressive instrument to realize social justice for all Indonesian people (5th Principle of Pancasila) (Prasetio, 2023).

The protection of trademark rights in Indonesia based on Satjipto Rahardjo's progressive legal theory will be more optimal if grounded in Lawrence Friedman's legal system theory. This is because, within Friedman's framework, legal reform is not merely an effort to update rules, but requires comprehensive renewal through both regulatory and non-regulatory elements that form a legal system. Lawrence Friedman's legal system theory analyzes law as a dynamic social system comprising three main interacting components: legal substance, legal structure, and legal culture. These components shape the effectiveness of a nation's legal system in addressing socio-economic challenges (Is et al., 2022). The urgency of legal protection for trademarks can be addressed by improving the legal substance through amendments to Law No. 20 of 2016 concerning Marks. Regarding the legal structure aspect, it is necessary to enhance quality, as well as facilities and infrastructure for implementing institutions such as the DJKI Ministry of Law and Human Rights with its IP Online Portal, Customs, and the National Board of Patents and Trademarks (BAMN).

2. A Comparison of Trademark Rights Protection Laws in Substance, Structure, and Legal Culture in Indonesia, Poland, and South Africa

The comparative law approach in legal research is a method used to understand, analyze, and evaluate legal systems by comparing norms, principles, institutions, and legal practices across two or more countries or distinct legal systems (H. W. Dicky Eko Prasetio, 2022). Through this approach, researchers not only identify similarities and differences between legal systems but also explore the philosophical, historical, social, and cultural background that influence the formation of legal rules. Comparative law serves as a means to gain a more comprehensive understanding of the characteristics of a legal system, while also acting as a tool to assess its strengths and weaknesses (Lukito, 2022).

In the context of legal research, this approach is often used to find solutions to national legal issues by referring to best practices from other countries. The results of such comparisons can serve as a basis for conducting legal reform, harmonizing legislation, and developing legal concepts that are more responsive to societal dynamics (Yunus et al., 2022). Furthermore, the comparative law approach also helps avoid legal ethnocentrism the assumption that one's own legal system is inherently superior by creating space to learn from the experiences of other legal systems.

Comparative law regarding the regulation of intellectual property rights, particularly trademarks, holds strategic importance for Indonesia as a developing nation integrated within ASEAN, the RCEP, and the Madrid Protocol, as it enables the harmonization of norms between civil law and common law systems. The comparison with Poland and South Africa is intended to examine trademark regulations in Poland (a European country) and South Africa (a country in Africa). Trademark protection in Indonesia can be comprehensively analyzed through three main dimensions of the legal system: substance, structure, and legal culture, which interact to determine the effectiveness of enforcement and legal protection. Regarding the substantive aspect, trademark protection in Indonesia is normatively regulated under Law Number 20 of 2016 concerning Marks and Geographical Indications (Trademark Law). This legislation adopts international principles, such as the constitutive registration system (first to file), protection for registered marks, and recognition of well-known marks, demonstrating efforts toward harmonization with global legal regimes (Mardianto & Rahaditya, 2024). This legal substance also encompasses regulations regarding the exclusive rights of trademark owners, registration mechanisms, refusal, cancellation, and sanctions against infringements, both in civil and criminal matters. However, in practice, various normative issues still exist, such as ambiguity in the criteria for essential similarity, inadequate protection for non-traditional marks, and limitations in addressing infringements in the digital realm.

Regarding the legal structure aspect, trademark protection involves various law enforcement agencies and related institutions, such as the Directorate General of Intellectual Property as the administrative authority, commercial courts as dispute resolution bodies, as well as law enforcement officials such as the police and public prosecutor's office in handling trademark crimes. The effectiveness of this structure highly depends on inter-agency coordination, human resource capacity, and the integrity of officials in exercising their authority. Common challenges include slow law enforcement processes, inconsistent court decisions, and limited technical understanding of intellectual property among enforcement officials, which ultimately can reduce legal certainty for trademark owners. Furthermore, there are still obstacles in monitoring the circulation of counterfeit goods in both conventional and digital markets, indicating that the legal structure is not yet fully adaptive to technological advancements and modern trade patterns.

Regarding the legal culture aspect, trademark rights protection is heavily influenced by the level of public awareness and compliance with intellectual property laws. In Indonesia, the legal culture concerning trademarks still faces challenges, such as the low awareness among business actors, particularly Micro, Small, and Medium Enterprises (MSMEs), to register their marks, as well as the high level of public tolerance toward the use and purchase of counterfeit goods (Irawati & Prasetyo, 2021). This permissive culture toward trademark infringements not only harms rights owners but also hinders the creation of a healthy and innovative business competition climate. On the other hand, government efforts to improve legal culture through outreach, education, and awareness campaigns have started to show progress, although not yet evenly distributed. Therefore, the synergy between robust legal substance, effective institutional structure, and a legal culture of public awareness and compliance is the key to realizing optimal trademark protection in Indonesia, capable of supporting sustainable economic growth based on creativity and innovation.

Trademark protection in Poland can be comprehensively analyzed through the three dimensions of the legal system: substance, structure, and legal culture, which collectively shape the effectiveness of intellectual property protection in the country.

Regarding the substantive aspect, trademark regulations in Poland are based on the Polish Industrial Property Law (Ustawa – Prawo własności przemysłowej) enacted in 2000 and subsequently amended. This law details the definition of marks, registration requirements, exclusive rights of owners, and legal protection mechanisms. The definition and scope of trademarks are specified in Article 120, which states that a trademark is any sign capable of being represented graphically and of distinguishing the goods or services of one undertaking from those of other undertakings (Marciniuk-Kluska & Kluska, 2025). The right to protection for a registered mark is stipulated in Article 153, which grants the owner the exclusive right to use the mark commercially and to prohibit others from using it without permission. Additionally, Article 296 governs trademark infringement and provides the legal basis for owners to claim damages and demand the cessation of unauthorized use. Furthermore, Poland adopts European Union legislation such as the EU Trade Mark Regulation and Directive (EU) 2015/2436, which strengthen the harmonization of protection standards. This includes the recognition of non-traditional marks and the expansion of acceptable forms of sign representation, which are no longer required to be strictly conventional graphical representations (Golasa et al., 2024).

Regarding the legal structure aspect, trademark protection in Poland is implemented by several institutions with specific authorities, including the Patent Office of the Republic of Poland as the administrative body responsible for registration, examination, and management of trademark rights. Furthermore, specialized courts, such as intellectual property courts within the general judicial system, have jurisdiction to resolve trademark disputes civilly, while law enforcement agencies such as the police and public prosecutor's office handle criminal enforcement against trademark infringements, including counterfeiting and the distribution of illegal goods. This structure is reinforced by cross-border enforcement mechanisms through cooperation with European Union authorities, such as the European Union Intellectual Property Office (EUIPO), enabling trademark protection not only at the national level but also regionally within the EU. Nevertheless, the effectiveness of this structure still faces challenges such as procedural complexity, the need to enhance the technical capacity of officials, and the demand to adapt to digital technological advancements that expand the scope of trademark infringements (Brzyska, 2023). Regarding the legal culture aspect, Poland demonstrates a relatively high level of legal awareness compared to many developing countries, primarily due to its integration into the European Union legal system, which requires compliance with strict intellectual property protection standards. Business actors generally recognize the importance of registering marks as strategic business assets, and society tends to value originality and authenticity. Nonetheless, challenges remain, such as trademark infringements in specific sectors like low-cost consumer goods and e-commerce, indicating that legal culture still requires strengthening through public education and consistent enforcement. Therefore, the synergy between internationally standardized legal substance, institutionally integrated structures at national and regional levels, and a relatively compliant public legal culture serves as the main foundation for realizing effective trademark protection in Poland, establishing it as one of the more advanced legal systems regarding intellectual property protection in Europe.

Trademark protection in South Africa can be comprehensively analyzed through the three main dimensions of the legal system: substance, structure, and legal culture, which collectively determine the effectiveness of intellectual property protection in the country. Regarding the substantive aspect, trademark regulations are based on the Trade Marks Act 194 of 1993, which serves as the primary

legislation governing the definition, registration, exclusive rights, and enforcement mechanisms for trademarks (Upreti, 2023). Section 2 of the Trade Marks Act 194 of 1993 defines a trademark as any sign capable of being represented graphically and of distinguishing the goods or services of one undertaking from those of others. The exclusive rights of a registered owner are stipulated in Section 34, which grants the authority to prevent others from using identical or confusingly similar marks in the course of trade. Specifically, Section 34(1)(a), (b), and (c) detail the forms of infringement, including unauthorized use, deceptive imitation, and exploitation of a well-known mark's reputation. Furthermore, provisions regarding registration, opposition, and cancellation are comprehensively regulated in other parts of the Act, indicating that South Africa possesses a substantial legal framework that is largely comprehensive and aligned with international standards such as the TRIPS Agreement (Kirsten, 2025).

Regarding the legal structure aspect, trademark protection in South Africa is implemented by several institutions with strategic roles, including the Companies and Intellectual Property Commission as the administrative authority responsible for the registration and management of trademark rights, as well as the courts, particularly the High Court, which has jurisdiction to resolve trademark disputes both civilly and in relation to more serious legal offenses (Kirsten, 2025). Law enforcement agencies such as the police also have the authority to take action against criminal trademark infringements, including the distribution of counterfeit goods. In the context of cross-border enforcement, South Africa also cooperates with customs authorities to prevent the entry of goods that violate trademark rights. However, the effectiveness of this structure still faces several challenges, such as limited resources, lengthy court proceedings, and the complexity of proving cases, particularly those involving digital transactions and the growing e-commerce sector.

Regarding the legal culture aspect, trademark protection in South Africa is heavily influenced by the level of legal awareness among the public and business actors regarding the importance of intellectual property. While the formal business sector generally demonstrates good awareness to register and protect their marks, significant challenges remain, notably the high circulation of counterfeit goods in informal markets. This reflects a permissive culture toward infringements within certain segments of society. Socio-economic factors such as poverty and inequality also influence consumer preferences for cheaper imitation products, consequently weakening social pressure against illegal activities. Therefore, the South African government continues to make efforts to improve legal culture through public education, intellectual property awareness campaigns, and consistent law enforcement. Ultimately, the synergy between adequate legal substance, functional institutional structures, and an evolving legal culture is expected to enable effective trademark protection in South Africa, supporting innovation-driven economic growth, fair trade, and stronger integration into the global economic system.

The following is a comparative table of the substance, structure and legal culture of trademark protection in Indonesia, Poland and South Africa.

Table 1. Comparison of the Substantive, Structural, and Cultural Aspects of Trademark Rights Protection Law in Indonesia, Poland, and South Africa.

Aspect	Indonesia	Poland	South Africa
Legal Substance	Regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications with a first-to-file system, regulating exclusive rights,	Regulated in the Polish Industrial Property Law (Articles 120, 153, 296) and harmonized with the EU Trade Mark Regulation; the legal	Regulated in the Trade Marks Act 194 of 1993 (Articles 2 and 34); has adopted international standards such as the TRIPS Agreement but

	registration, and sanctions; there are still weaknesses such as multiple interpretations of "similarity in essence" and limited protection for non-traditional brands ³	substance is more comprehensive and adaptive to European Union standards ¹⁴	still faces challenges in implementation ²¹
Legal Structure	Implemented by the Directorate General of Intellectual Property, the Commercial Court, and law enforcement officials; challenges include coordination, inconsistent decisions, and enforcement in the digital realm	Managed by the Patent Office of the Republic of Poland and supported by the court system and integration with the European Union Intellectual Property Office; a more integrated and efficient structure	Administered by the Companies and Intellectual Property Commission and the High Court; there are constraints on resources, case duration, and enforcement in the informal market
Legal Culture	Public and business awareness is still relatively low, with high tolerance for counterfeit goods, especially in the MSME and traditional market sectors	The level of legal awareness is high due to the influence of the European Union system; business actors are more compliant in registering and protecting brands	Legal awareness is quite good in the formal sector, but there is still a permissive culture towards counterfeit goods in the informal market due to socio-economic factors.
General Character	The legal system evolves with implementation and enforcement challenges.	Advanced legal system, regionally integrated and harmonized with international standards	The legal system is quite strong normatively, but faces structural and social challenges in implementation.

(Source: Author's Analysis)

The table shows that the main differences lie in the level of legal harmonization, institutional effectiveness, and public awareness. Poland tends to be more advanced due to its integration with the European Union system, while Indonesia and South Africa still face challenges regarding implementation and legal culture.

The differences in trademark protection among Indonesia, Poland, and South Africa, as illustrated in the previous table, essentially reflect variations in the maturity level of the legal system, institutional effectiveness, and public legal awareness in each country. This can be analyzed through three main aspects: substance, structure, and legal culture. Regarding the legal substance, Indonesia possesses a strong normative foundation through Law Number 20 of 2016 concerning Marks and Geographical Indications, which comprehensively regulates registration and protection. However, it still faces interpretive challenges such as determining "essential similarity" and limitations in addressing the development of non-traditional marks. Meanwhile, Poland demonstrates a higher level of advancement because, in addition to relying on the Polish Industrial Property Law, the country is integrated with

the European Union legal regime via the EU Trade Mark Regulation. Consequently, its legal substance is more adaptive, uniform, and aligned with the latest international standards. On the other hand, South Africa, through the Trade Marks Act 194 of 1993, has also adopted international principles as stipulated in the TRIPS Agreement. Nevertheless, it still encounters challenges in practical implementation, particularly in addressing evolving infringements in the digital era and global trade.

Regarding the legal structure aspect, the differences become more apparent in terms of effectiveness and institutional integration. Indonesia relies on the Directorate General of Intellectual Property, Commercial Courts, and law enforcement agencies, yet still faces issues regarding inter-agency coordination, inconsistent decisions, and limitations in enforcing laws in the digital space. Conversely, Poland possesses a more established and integrated structure through the Patent Office of the Republic of Poland, which operates synergistically with the national judicial system and regional bodies such as the European Union Intellectual Property Office, enabling more efficient and cross-border enforcement. Meanwhile, South Africa, through the Companies and Intellectual Property Commission and the High Court, has a fairly clear structure, but still encounters obstacles such as limited resources, lengthy litigation processes, and difficulties in monitoring the circulation of counterfeit goods, particularly in the informal sector.

Regarding the legal culture aspect, the three countries demonstrate distinct characteristics. Indonesia still faces challenges such as low awareness among the public and business actors regarding the importance of trademark protection, as well as high tolerance for counterfeit goods in the market. Conversely, Poland exhibits a higher level of legal awareness as a consequence of its integration into the European Union system, which encourages business compliance with registration requirements and fosters greater respect for intellectual property rights. Meanwhile, South Africa occupies a middle position: legal awareness is relatively good in the formal sector, but there remains a permissive culture toward infringements in the informal sector, influenced by socio-economic factors such as income levels and access to genuine products. Overall, it can be concluded that Poland possesses a more advanced and integrated protection system, whereas Indonesia and South Africa face relatively similar challenges, particularly regarding implementation and the establishment of a strong legal culture. Therefore, continuous efforts in legal reform, institutional strengthening, and public awareness campaigns are necessary to achieve optimal trademark protection.

The orientation of reforms for trademark protection in Indonesia should focus on a comprehensive strengthening of legal substance, structure, and culture to effectively address the challenges of globalization, digitalization, and creative-based economic competition. Regarding the substantive aspect, Indonesia needs to refine the norms within Law Number 20 of 2016 concerning Marks and Geographical Indications. This includes clarifying the criteria for "essential similarity" to prevent ambiguous interpretations in judicial practice, and expanding the recognition of non-traditional marks such as sounds, holograms, and three-dimensional shapes, as already accommodated in the EU Trade Mark Regulation. Furthermore, it is crucial to strengthen regulations concerning trademark infringements in the digital space, including mechanisms to enforce actions against the sale of counterfeit goods on e-commerce platforms. Additionally, the provisions regarding the protection of well-known marks should be clarified to more effectively prevent practices of reputation exploitation or passing off.

Regarding the legal structure aspect, reforms should be directed toward enhancing institutional capacity and integration, particularly within the Directorate General of Intellectual Property, Commercial Courts, and law enforcement agencies. This can be achieved by emulating the effective inter-agency coordination seen in Poland, which is connected to the European Union Intellectual Property Office. Indonesia can develop an integrated digital system for trademark registration, monitoring, and enforcement that connects various institutions, including the involvement of customs authorities and digital platforms in supervising the distribution of goods. Furthermore, improving the competence of judges and law enforcement officials in intellectual property matters is essential to ensure consistent and high-quality decisions, as well as to expedite dispute resolution processes. Establishing specialized, professional, and dedicated intellectual property courts can also serve as a strategic step to enhance legal certainty.

Regarding the legal culture aspect, Indonesia needs to undergo transformation by raising public and business awareness regarding the importance of trademark protection as a high-value economic asset. This can be achieved through extensive education, particularly for MSME actors, regarding the importance of registration and the legal risks of infringement, as well as public campaigns to reduce the consumption of counterfeit goods. The government can also foster a business ecosystem that values originality and innovation by providing incentives for businesses compliant with intellectual property laws. Learning from the situation in South Africa, socio-economic approaches must also be considered, as improving public purchasing power and access to genuine products can help reduce the circulation of imitation goods. Therefore, the reform of Indonesia's trademark protection system must be carried out holistically by integrating regulatory updates, institutional strengthening, and the development of a progressive legal culture. This will not only create legal certainty and justice but also enhance national economic competitiveness on the global stage.

D. CONCLUSION

The urgency of trademark protection in Indonesia can be understood as an imperative need to build a legal system that is not only oriented toward normative certainty but also responsive to social dynamics and economic development, as emphasized in the perspectives of progressive law and legal system theory. Within the framework of progressive law, trademark protection should not merely be interpreted as the application of formal rules, but must also be capable of delivering substantive justice, protecting business actors from unfair practices, and fostering innovation and creativity in economic activities. Meanwhile, through the lens of legal system theory, the effectiveness of protection is highly dependent on the synergy between clear and adaptive legal substance, a professional and coordinated institutional structure, as well as an aware and compliant legal culture within society. Therefore, strengthening trademark protection is a strategic necessity to create a legal system that is just, effective, and capable of supporting sustainable national economic growth.

The comparison of trademark protection in Indonesia, Poland, and South Africa reveals differences in the level of legal system development, influenced by regulatory quality, institutional effectiveness, and public legal awareness, which can be analyzed through the aspects of substance, structure, and legal culture. Regarding substance, Indonesia possesses a comprehensive legal foundation through Law Number 20 of 2016 concerning Marks and Geographical Indications, yet still faces issues regarding norm interpretation and limitations in accommodating modern mark developments. Poland is more advanced because, in addition to the Polish Industrial Property Law, it is integrated with the EU Trade

Mark Regulation, resulting in a system that is more adaptive and internationally uniform. Meanwhile, South Africa, through the Trade Marks Act 194 of 1993, has adopted global principles such as the TRIPS Agreement but still ⁷³ counters obstacles in practical implementation, particularly in the digital era. In terms of structure and legal culture, the differences are evident in the effectiveness of enforcement and public awareness. Indonesia still ⁴ faces challenges regarding inter-agency coordination, decision consistency, and low public awareness regarding the importance of protection. In contrast, Poland has a more integrated structure supported by high legal awareness due to its connection with the European Union system. South Africa occupies a middle position with a clear institutional structure but is hindered by resource limitations and a permissive culture in the informal sector. Therefore, this comparison indicates that Indonesia requires comprehensive reform by strengthening legal substance, enhancing institutional capacity and integration, and building a more aware and compliant legal culture, ensuring that trademark protection functions optimally and enables global competitiveness.

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