

The position of Trademark Appeal Commission decisions in the constitutive system registration under Indonesian Law

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Abstract

Article 3 of the Act Number 20 of 2016 concerning Trademarks and Geographical Indications adopts a constitutive system, which normatively places registration as the sole source of the birth of exclusive rights to a trademark. However, in reality, a significant gap is found because the Directorate General of Intellectual Property (DJKI) often issues rejection decisions that are formalistic in nature, as evidenced by the high number of appeal applications granted by the Trademark Appeal Commission (KBM). This indicates legal uncertainty for good-faith trademark applicants. The method used is normative juridical legal research with a statutory approach, a case approach (20 KBM decisions in 2025), and a normative comparative approach. The research is also supported by interviews with senior KBM examiners and IP practitioners as supplementary material. This research aims to explain the position of KBM within the constitutional system, the application of its authority, and the comparison of DJKI and KBM decisions in legal efforts for trademark registration in Indonesia. The research results show that KBM is positioned as a quasi-judicial institution with a secondary constitutive function authorized to correct DJKI's decisions. This is evidenced in Decision Number 158/KBM/HKI/2025 (trademark "Citra Warna Abadi") where KBM annulled DJKI's rejection because the applicant and the owner of the compared trademark are the same party, and in Decision Number 180/KBM/HKI/2025 (trademark "ULTRA") where KBM partially granted the appeal because not all goods are of the same type. The comparison of decisions reveals three patterns of DJKI's rejections and three patterns of KBM's corrections. KBM conducts a thorough re-examination (*meritum* review). The comparison of decisions uncovers three patterns of DJKI's rejections (class similarity without a similarity test, superficial identification of dominant elements, assumption of bad faith without evidence) and three patterns of KBM's corrections (contextual correction of goods/services similarity, holistic correction of the interpretation of similarity in essence, and correction of factual/legal errors).

Keywords: Intellectual property rights, trademark registration, trademark appeal commission, constitutive system

Introduction

Trademark registration is an important step in obtaining legal protection for a sign used in commercial activities. In the Indonesian legal system, the substantive examination requirements are the initial part of the evaluation of a trademark's eligibility for protection. These requirements are substantive, meaning they pertain to the content or essence of the mark being applied for, not the administrative or procedural aspects^[1].

The Trademark Appeal Commission (*Komisi Banding Merek*) (KBM) is established based on the provisions of Article 28 paragraph (1) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law), which states that an appeal can be filed against the rejection of an application based on the reasons as referred to in Article 20 and/or Article 21. This provision grants the applicant the right to appeal against the rejection of trademark registration based on substantive reasons as referred to in Article 20 and/or Article 21 of the Trademark Law^[2]. This provision is then reinforced in Article 33, paragraph (1) of the Trademark Law, which explicitly states that the Trademark Appeal Commission is a special independent body within the ministry that handles government affairs in the legal field^[3].

As an implementing regulation, the Government issued Government Regulation Number 90 of 2019 concerning the Procedures for Application, Examination, and Resolution of Appeals at the Trademark Appeal Board (PP KBM), which revokes and replaces Government Regulation Number 7 of

2005 and Government Regulation Number 51 of 2007. PP KBM details the procedures for filing appeals, administrative requirements, and examination mechanisms by the panel, and the form of appeal decisions.

The main duties of the KBM are regulated in Article 8 of the KBM Regulation, which include administering, examining, reviewing, and evaluating appeal applications. To carry out these duties, the KBM performs functions as outlined in Article 9 of the KBM Regulation. In the trademark legal system in Indonesia, an applicant who feels aggrieved by the rejection of a trademark registration application by the Directorate General of Intellectual Property has the right to appeal. This right is part of administrative legal protection and indicates that the trademark registration process is not absolute, but opens up space for correction if there are objections to the DGIP's decision.

Appeals against the rejection of trademark registration are explicitly regulated in Articles 30 to 34 of the MIG Law. These provisions are a concrete manifestation of the principle of protecting administrative rights and the right to legal correction within the intellectual property protection system in Indonesia. These articles provide a legal foundation for applicants who are dissatisfied with the rejection decision from DJKI, ensuring they still have a legitimate legal opportunity to defend their trademark application through the appeal mechanism to KBM. Based on a review of 20 KBM decisions in 2025, it was found that the majority of appeal applications were granted, while a small

portion were rejected either entirely or partially. KBM tends to exercise its authority by conducting a new analysis of the similarity of goods and "substantial similarity," even considering evidence that was not presented at the first level. This shows that, in fact, the substantive authority of the KBM is broader than merely reviewing the legality of DJKI's decisions, even tho the boundaries of that authority are not explicitly regulated in the legislation.

Furthermore, normatively, the MIG Law, which adopts a first-to-file system, still leaves a number of significant legal gaps. First, the Law and its implementing regulations do not provide a standardized and measurable assessment criterion for the "substantial similarity" standard, leading to differing interpretations between the DJKI, which tends to be formal, the KBM, which is more contextual, and the Commercial Court, which uses a different approach. Second, there is no clear legal guideline on how to determine whether goods/services are of the same type, causing the DJKI to often categorize all goods into the same class, while the KBM, in practice, conducts a more in-depth analysis based on function, nature, origin, target consumers, and distribution channels. This normative gap results in legal uncertainty for trademark applicants, as the fate of the registration application depends on the examining institution and the approach used.

Research Method

This research uses a normative juridical method, which is legal research that places law as a system/norm structure ^[4]. The data in this research is sourced from library research with data collection techniques conducted thru the examination of written documents related to the research focus, such as journals, books, articles, and news from electronic or print media. Legal analysis in this research is conducted descriptively-qualitatively using a dogmatic-structural approach to analyze the position of KBM, a teleological and casuistic approach to analyze the application of KBM's authority, and a normative comparative approach to compare DJKI and KBM decisions. All analyses are based on primary, secondary, and tertiary legal materials and supported by interviews with relevant sources.

Results and Discussions

1. The Position of the Trademark Appeal Commission in Trademark Registration under the Constitutive System Based on Indonesian Law

The constitutive system in trademark registration in Indonesia, as regulated by the MIG Law, places the state, in this case, the DJKI, as the sole authority with the power to create trademark rights thru the issuance of trademark certificates. The legal implications of this system's construction are that each stage and institution in the constitutive process bears significant legal burdens and responsibilities. KBM, as one of the institutions in the chain of the registration process, occupies a strategic and determinative position. The decision produced by KBM is not merely an ordinary administrative appeal decision, but rather a decision that directly determines the existence or non-existence of trademark creation. The function of the KBM is of a secondary constitutive nature, authorized to correct or reinforce the will of the state as manifested in the decision of the Trademark Officer, which ultimately has implications for the birth or rejection of the birth of a private right with strong legal force ^[5]. Therefore, the analysis of

the position of the Trademark Appeal Board (KBM) cannot be separated from the essence of the constitutive system itself, considering that the legitimacy and impact of each of its decisions directly stem from the character of the system that grants the state a monopoly on the creation of rights ^[6]. The construction of the constitutive system necessitates a reconceptualization of the substantive meaning of a "trademark registration." In this legal regime, the registration action approved by the state cannot be reduced merely to an administrative recording activity. Moreover, the issuance of a registration number and ultimately a trademark certificate constitutes a binding official declaration of the state's will. This declaration of intent contains an acknowledgment and a legal guaranty that the registered mark meets the requirements of novelty, distinctiveness and does not contravene public order, thus deserving a monopoly on its use in trade. Thus, trademark registration is a public legal act of a constitutive nature, where new subjective rights are created as a direct result of the actions of the public authority.

The logical implication of this understanding on the function of the Trademark Appeal Commission is very fundamental. When an applicant appeals a registration refusal by the Trademark Officer, the essence of the appeal is not merely an objection to the technical assessment of an officer. More substantively, the appeal is a legal effort against the trademark registration refusal. The Trademark Officer in this case acts not as an individual, but as a state organ authorized to represent and express the will of the state at the initial examination stage. Therefore, the appeal process before the KBM should be viewed as a mechanism for re-evaluating the correctness and validity of the trademark rejection decision.

The KBM Regulation stipulates that the KBM has the task of administering, examining, reviewing, and evaluating Appeal Applications. Trademark appeals in Indonesia have a clear and strong legal basis. These provisions are regulated under the MIG Law. The law grants applicants the right to appeal if they disagree with the DJKI's rejection decision. In addition to the law, the trademark appeal mechanism is also regulated in implementing regulations that explain the procedures, requirements, and authority of the Trademark Appeal Commission. This institution functions as a quasi-judicial body that re-evaluates DJKI's administrative decisions based on legal arguments and evidence submitted by the applicant ^[7]. This legal basis provides certainty that an appeal is not an unfounded resistance, but rather a part of the trademark legal protection system in Indonesia. However, due to its formal and legalistic nature, trademark appeals must be structured systematically and in accordance with regulations ^[8].

2. The Application of the Authority of the Trademark Appeal Commission in the Constitutive System of Trademark Registration Based on Indonesian Law

One of the most important forms of substantive authority realization by the KBM is the implementation of a thorough re-examination of the rejection decision issued by the DJKI. This concept implies that the KBM, in carrying out its quasi-judicial function, is not absolutely bound by the factual construction and legal considerations established by the Trademark Officer at the first examination stage at the DJKI. Instead, the KBM is authorized, and in practice often conducts a new and comprehensive examination of the substance of the rejected trademark application. This

authority includes the right to assess and consider new evidence submitted for the first time at the appeal level, which was not included in the application file at the first level. This shows the nature of appeals before the KBM, which are substantive in nature, not merely a review of the procedures followed by the DJKI. The application of this principle can be identified in various KBM decisions. For example, in Decision KBM 65/KBM/HKI/2025, the Trademark Officer rejected the trademark application because it lacked distinctiveness or had "similarity in principle" or overall, as regulated in Article 21 of the MIG Law. However, in the appeal examination, visually, the impression formed by the trademarks did not have "similarity in principle," and both trademarks protected non-similar goods and provided sufficient evidence to prove that the trademark had acquired distinctive character through use, thus overturning the DJKI's rejection and ordering the registration of the trademark.

The application of KBM's substantive authority within the constitutive system is clearly reflected in its decisions, where KBM does not hesitate to make in-depth corrections to DJKI's assessments. In Decision Number 158/KBM/HKI/2025, KBM overturned DJKI's rejection of the "Citra Warna Abadi" (DID2023007620) trademark in Class 2. DJKI rejected the application on the grounds of "substantial similarity" with the registered trademark "Citra Warna" (IDM000952643) in Class 35, which was considered similar. However, in the appeal examination, the KBM found a fundamental legal fact that the Appellant (PT. Citra Warna Jaya Abadi) and the owner of the comparative mark are the same legal entity. On this basis, KBM stated that the application of Article 21 paragraph (1) letter a of the MIG Law by DJKI was incorrect because the provision was designed to protect the rights of other parties, not to prevent the same trademark owner from expanding the protection of their class. This decision grants the appeal in its entirety, overturns the rejection, and orders the registration of the trademark for all types of goods requested.

From the perspective of the constitutive system of trademark registration theory, exclusive rights are granted to the first registrant with the assumption that registration protects the trademark owner from third parties with bad faith. DJKI applied Article 21 paragraph (1) letter a of the MIG Law in a formalistic manner by rejecting the trademark 'Citra Warna Abadi' (DID2023007620) because it was considered to have 'substantial similarity' with the registered trademark 'Citra Warna' (IDM000952643). However, from the perspective of legal protection theory, the KBM in Decision Number 158/KBM/HKI/2025 found that the appellant and the owner of the comparative mark are the same legal entity (PT. Citra Warna Jaya Abadi). Thus, the application of Article 21 paragraph (1) letter a by DJKI is incorrect because the provision is designed to protect the rights of other parties, not to prevent the same trademark owner from expanding the protection of their class. This KBM decision aligns with the goal of repressive legal protection, which is to restore the rights of the good-faith applicant. Similarly, in Decision Number 180/KBM/HKI/2025, KBM demonstrated a more contextual application of its authority. DJKI rejected the trademark "ULTRA" (DID2023057136) in Class 9 because it was deemed to have "substantial similarity" with five different comparative trademarks that also use the word "ULTRA." Based on the perspective of the theory of legal certainty as proposed by Gustav Radbruch, legal certainty does not only

mean the existence of a final decision but also a materially accurate decision. DJKI rejected the 'ULTRA' trademark (DID2023057136) in Class 9 because it was deemed to have 'substantial similarity' with five comparison trademarks. Within the framework of that theory, the DJKI's decision reflects procedural certainty (because it is based on class similarity and dominant elements), but neglects material certainty because it does not conduct a thorough analysis of the similarity of goods. On the other hand, by using the trademark protection theory, KBM in Decision Number 180/KBM/HKI/2025 conducted a contextual analysis of the similarity of goods and revoked the rejection for certain types of goods that were proven to be dissimilar. This KBM approach is more in line with the protection of applicants acting in good faith.

KBM agrees that in concept and dominant impression, there is a fundamental similarity. However, KBM did not stop there; by exercising the authority of a substantive review, KBM conducted an in-depth analysis of the similarity of the goods. As a result, KBM concluded that the comprehensive rejection by DJKI was incorrect because most of the types of goods requested by the Appellant were not similar to the goods protected by the five comparison trademarks. Thus, KBM partially granted the appeal, annulled DJKI's rejection only for the items that were proven to be dissimilar, and ordered the registration of those items (such as time clock machines, laser detection devices, educational materials, and personal protective equipment).

These two decisions clearly demonstrate that in carrying out its quasi-judicial functions, KBM is not absolutely bound by DJKI's considerations and is authorized to conduct new examinations, either based on new legal facts (similarity of legal subjects) or more in-depth substantive analysis (homogeneity of goods), thus KBM's authority plays a crucial role as a corrective mechanism to achieve substantive justice within the constitutional system. In the context of the constitutive system, the application of the review principle by the KBM holds very significant meaning. A system that places the state as the sole creator of rights through its administrative actions bears the obligation to ensure that the decision to create or deny the creation of such rights is based on the most accurate and comprehensive material assessment. The constitutive function of the state should not be halted or constrained by the possibility of an error in the initial assessment by the Trademark Officer. By applying this principle, the KBM serves as the final correction mechanism in the constitutive chain, ensuring that the final assessment before a right is granted, state legitimacy through a certificate is the result of the most thorough examination and consideration of all relevant evidence. Thus, this principle is not merely an ordinary appeal procedure, but a material guaranty inherent in the constitutive system to prevent the emergence of rights from factually or legally flawed processes, while also preventing the rejection of rights that have actually met substantive requirements.

3. Comparison of Decisions by the Directorate General of Intellectual Property and the Trademark Appeal Commission in Trademark Registration Legal Efforts

Regarding the trademark registration decisions by DJKI and KBM, DJKI tends to assess based on the similarity of the class of goods/services and the dominant elements of the trademark in general, whereas KBM conducts a more in-

depth and contextual analysis, considering the details of the type of goods/services (function, nature, origin, consumers), the overall visual/phonetic/conceptual similarity, and the potential for consumer confusion in the market. KBM can overturn DJKI's rejection if it is proven that not all goods are similar or the overall similarity is not significant. Using the framework of the theory of material legal certainty (Radbruch), KBM conducts a more in-depth and contextual analysis compared to DJKI. In each of its decisions, KBM holistically considers: (a) the details of the type of goods/services (function, nature, origin, target consumers, distribution channels); (b) the overall level of visual, phonetic, and conceptual similarity; and (c) the actual potential for consumer confusion in the market. This approach reflects that for KBM, legal certainty is not only procedural (who registered first) but must also be material (whether the brand truly confuses consumers). This is in line with Radbruch's teaching that law must fulfill three basic values: certainty, justice, and utility.

The results of the interview with Ms. Sarah, Senior Trademark Examiner at the Trademark Appeal Commission, explain that the examination by the Trademark Bureau in the constitutive system of trademark registration in Indonesia does not merely look at who registered first, but delves deeper into whether the trademark is eligible for registration, both in terms of good faith use of the trademark and whether the registered class has "substantial similarity" and whether the registration of the trademark could cause confusion for consumers^[9]. The results of an interview with Mr. Abraham, an intellectual property lawyer, explain that the constitutive system (First to file) has essentially been effective in addressing trademark issues in Indonesia. Regarding the meaning of "substantial similarity" in the rejection decision of a trademark application by DJKI, it is limited to the logo and the brand name, but does not elaborate in detail, making it difficult for clients to determine the next steps. The source also stated that the meaning of "substantial similarity" between the Directorate General of Intellectual Property and the Trademark Appeal Board is fundamentally different and there is no barometer regulated in the regulations, so it ultimately returns subjectively to the DJKI, TAB, and ultimately to the commercial court^[10]. Based on the analysis of 20 (twenty) Trademark Appeal Commission decisions in 2025, this study systematically identifies and categorizes three main patterns of trademark registration rejections by the Directorate General of Intellectual Property, namely, first, rejections based on class similarity without examining the substantive similarity of goods/services. The DJKI tends to generalize all goods in the same class as similar goods, without conducting an in-depth analysis of the function, nature, origin, target consumers, and distribution channels of those goods. Secondly, rejections are based on a superficial identification of the dominant element without a holistic analysis of the entire brand. The DJKI often focuses solely on one word or element considered dominant in a brand, without fully considering all the brand elements (visual, phonetic, conceptual, and the context of its use). Third, rejection based on the assumption of bad faith without adequate evidence. In several cases, DJKI bases its rejections on the presumption of bad faith as per Article 21 paragraph (3) of the Law, without strong evidence showing elements of imitation, riding on reputation, or misuse of a well-known trademark.

Conversely, this research also identifies three correction patterns made by the Trademark Appeal Commission against DJKI's rejection decisions. First, corrections to the assessment of the similarity of goods/services thru a more contextual and substantive analysis, considering the function, nature, origin, target consumers, and distribution channels of the goods/services. Second, corrections to the interpretation of "substantial similarity" thru a holistic approach that considers all aspects of the trademark (visual, phonetic, conceptual), evidence of coexistence in the market, and the actual potential for consumer confusion, not just based on one dominant element. Third, corrections to factual errors and the application of the law.

This research fills the gap in the literature regarding the "adjudicative behavior" of the Trademark Appeal Board as a quasi-judicial body in the constitutive trademark registration system in Indonesia, while also providing an analytical framework that can serve as a reference for future studies in the same field. This research also found that KBM's decisions are not final and absolutely binding, as they can be contested in the Commercial Court. This provision is explicitly regulated in Article 31 paragraph (2) of the Law, which grants the applicant whose appeal is rejected the right to file a lawsuit within a maximum of 3 (three) months from the receipt of the KBM decision. Thus, the trademark dispute resolution system in Indonesia follows a tiered mechanism (administrative → quasi-judicial → judicial), where the state provides increasingly broader correctional space as the level of legal efforts rises.

This research found that there is a potential normative conflict between KBM decisions and Commercial Court decisions. This conflict can occur because both institutions have different authorities and standards of proof. KBM, as a quasi-judicial institution within the executive branch, reviews administrative appeals with a lighter burden of proof and is only authorized to annul or uphold DJKI's rejection. Meanwhile, the Commercial Court, as part of the judicial power, examines civil disputes with a heavier burden of proof and is authorized to annul issued trademark certificates and order their removal from the General Trademark Register.

Although there is potential for conflict and a lengthy trademark dispute resolution process up to the Commercial Court, this does not contradict the first-to-file principle adopted by the MIG Law. On the contrary, the tiered process from DJKI to KBM and then to the Commercial Court is a logical consequence of the constitutive system itself. The first to file system places the state as the sole creator of exclusive rights over trademarks thru the registration mechanism. Because the state's authority is very significant and grants monopoly rights to registered trademark owners, the state is also obligated to provide a layered correction mechanism.

Conclusion

To sum up, Article 3 of the Act Number 20 of 2016 on Trademarks and Geographical Indications implements a constitutive system (first to file), which establishes registration as the exclusive origin of the rights to a trademark. Nonetheless, a substantial disparity exists, since the Directorate General of Intellectual Property frequently renders rejection conclusions that are predominantly formalistic, as demonstrated by the considerable number of appeal applications approved by the Trademark Appeal Commission. This signifies legal ambiguity for bona fide

trademark applicants. The employed methodology is normative juridical legal study utilising a statutory approach, a case approach (20 KBM decisions in 2025), and a normative comparative approach. The research is further corroborated by conversations with senior KBM examiners.

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