

REGISTRATION-BASED WELL-KNOWN MARKS: INDONESIAN PRACTICE AND NORM UNDER PARIS CONVENTION AND TRIPS

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Abstrak. Pengakuan merek terkenal oleh pengadilan di Indonesia telah memiliki sejarah panjang secara perundang-undangan dan yurisprudensi. Praktik saat ini menunjukkan bahwa pengakuan merek terkenal kerap kali didasarkan pada pendaftaran di beberapa negara. Meski praktik ini diperbolehkan oleh peraturan perundang-undangan di Indonesia, namun tidak ditemukan dalam ketentuan Konvensi Paris dan TRIPS sebagai standar internasional untuk perlindungan merek terkenal. Untuk itu, penelitian doktrinal/normatif ini akan menganalisis praktik-praktik pengakuan merek terkenal berdasarkan pendaftaran di beberapa negara, baik menurut kerangka hukum di Indonesia, Konvensi Paris dan TRIPS. Hasil penelitian menunjukkan bahwa yurisprudensi dan perkembangan awal hukum merek di Indonesia memberikan pengaruh signifikan terhadap praktik-praktik pengakuan merek terkenal berdasarkan pendaftaran di beberapa negara. Akan tetapi, praktik-praktik ini ditemukan kurang sesuai dengan ketentuan merek terkenal dalam Konvensi Paris dan TRIPS. Oleh karena itu, pengadilan sebaiknya lebih memerhatikan ketentuan Konvensi Paris dan TRIPS untuk membangun praktik-praktik pengakuan merek terkenal yang lebih sesuai dengan standar internasional.

Kata Kunci: merek terkenal, putusan pengadilan, Paris Convention, TRIPS, WIPO

Abstract. The recognition of well-known marks by Indonesian courts has a long history in both legislation and jurisprudence. Current practice indicates that such recognition is often based on the registrations of the mark in several countries. Although this approach is permissible under Indonesian law, it is not explicitly provided for in the Paris Convention or TRIPS which serve as international standards for the protection of well-known marks. Hence, this doctrinal or normative legal research will analyze the practices of recognizing well-known marks based on registrations in several countries within the legal framework of Indonesia, the Paris Convention, and the TRIPS Agreement. The findings reveal that early developments in Indonesian marks law and judicial precedents have greatly influenced the practices of recognizing well-known marks based on registrations in several countries. However, these practices are found to be inconsistent with the provisions concerning well-known marks under the Paris Convention and TRIPS. Therefore, Indonesian courts are encouraged to give greater consideration to Paris Convention and TRIPS to develop recognition practices that align more closely with international standards.

Keywords: well-known marks, court decisions, Paris Convention, TRIPS, WIPO

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INTRODUCTION

Indonesia has ratified the Paris Convention for the Protection of Industrial Property ("Paris Convention") through Presidential Decision No. 24 of 1979 and Presidential Decision No. 15 of 1997. One of the important provisions of Paris Convention is the protection of well-known marks. However, Indonesia's commitment to protecting well-known marks was only truly implemented with the enactment of Law No. 19 of 1992 concerning Marks ("Marks Law 1992"). The Marks Law 1992 provides broader protection than the previous implementation of Minister of Justice Decision No. M. 03-HC.02.01 of 1991, which only protect well-known marks against bad-faith applicant in the registration process. This was later followed by the ratification of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") through Law No. 7 of 1994, which also contains provisions on the protection of well-known marks that complement those in the Paris Convention. The Marks Law 1992 was subsequently amended by Law No. 14 of 1997 ("Marks Law 1997") and later repealed by Law No. 15 of 2001 concerning Marks, which was repealed in 2016.

Currently, the protection of well-known marks in Indonesia is regulated under Article 21(1)(b) and (c) of Law No. 20 of 2016 concerning Marks and Geographical Indications ("Marks Law 2016"). In its explanatory note, Article 21(1)(b) of the Marks Law 2016 provides that the protection of well-known marks for similar goods/services should take into account the knowledge of the general public in the relevant business sector, reputation achieved through intensive and massive promotions, investment in several countries, as well as registrations in several countries. This explanation can be traced to a similar provision in Article 16(2) of TRIPS, which states that the determination of the well-known status of a mark must take into account public knowledge in the relevant sector, including knowledge in Member countries due to promotion.

The enforcement of well-known marks protection according to Article 6*bis*(1) of the Paris Convention should be given if the mark is considered "well-known" by the competent authority in the country where the protection is claimed. This "competent authority" is explained in a World Intellectual Property Organization (WIPO) joint

recommendation as open to adoption by members, whether by an administrative, judicial, or quasi-judicial body.¹ Administratively, the minister in the law sector has the authority to reject mark applications based on well-known mark protection.² Judicially, the commercial court has the authority to cancel registered marks based on cancellation lawsuits filed by well-known mark owners.³

Administrative and judicial protection of well-known marks has been known to take different approaches in providing protection to well-known marks. The Research and Development Center of the Indonesian Supreme Court noted that the court has the authority of legal discovery in well-known mark cases, while the Directorate General of Intellectual Property under the Ministry of Law does not.⁴ Moreover, while Indonesia does not follow the *stare decisis* principle, the Supreme Court has noted that judges are expected to be consistent in similar cases to avoid injustice, irregularities, and provide legal certainty.⁵ In light of this, one jurisprudence stands out for being referred to by scholars and practitioners as the standard for acknowledging well-known marks. The Supreme Court Decision No. 1486 K/Pdt/1991 considers a mark as well-known if it has been used outside its country of origin and proven by registrations in several countries.⁶ Standard set by this decision is still in line to the current criteria of well-known marks stipulated in Article 18(3)(g) of the Minister of Law and Human Rights Regulation No. 67 of 2016 concerning Marks Registrations. This research has found that at least 43 (forty-three) decisions support the standard of acknowledging well-known marks based on registrations in several countries, which will be discussed further below.

However, this kind of standard for the acknowledgment of well-known marks is not found in international context such as the Paris Convention and TRIPS, where

¹ World Intellectual Property Organization, *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* (Geneva: WIPO Publication, 1999), 8 and 20.

² Law No. 20 of 2016 Concerning Marks and Geographical Indications, Article 21(1)(b)(c).

³ Law No. 20 of 2016 concerning Marks and Geographical Indications, Article 76 *jo.* Article 21(1)(b)(c).

⁴ Ismail Rumadan, *Kriteria Itikad Tidak Baik Dalam Penyelesaian Sengketa Merek Terkenal Melalui Putusan Pengadilan* (Jakarta: Puslitbang Hukum dan Peradilan Mahkamah Agung RI, 2018), 363.

⁵ Syarifuddin, *Himpunan Yurisprudensi Mahkamah Agung Sampai Dengan Tahun 2018* (Jakarta: Mahkamah Agung RI, 2020), iv.

⁶ Rumadan, *Kriteria Itikad Tidak Baik Dalam Penyelesaian Sengketa Merek Terkenal Melalui Putusan Pengadilan*, 362.

the status of well-known marks is derived from public knowledge in the relevant sector and reputation achieved through promotion. Therefore, a study of Indonesian judicial practices and the legal framework on well-known mark recognition is needed to explain this discrepancy. Several prior studies have examined judicial practices through various court decisions. Irtiyah (2021) observes Supreme Court decisions from 2018–2020 and found that several judges misapplied the law and failed to use the criteria for determining well-known marks.⁷ Wijaya and Cahyaningsih (2024) found that Indonesian courts handle well-known mark cases inconsistently, largely due to unclear legal definition of well-known marks.⁸ As such, this study offers a novel legal analysis of well-known mark recognition based on registrations in several countries, which has not been discussed in similar research before. This study will be limited to decisions found in the Indonesian Supreme Court Directory until 14 September 2025 under the keyword “Merek Terkenal”. The aim is to examine judicial practices and legal framework for recognizing well-known marks, particularly in relation to the fundamental principles of the Paris Convention and TRIPS.

RESEARCH METHOD

Doctrinal research method is used to observe and analyze the application of existing legal text in judicial institutions (i.e Commercial and Supreme Court), especially with regard to well-known marks recognition.⁹ Accordingly this research will approach its problem using statute, case, and historical approach.¹⁰ A historical approach will help to observe the development of legal practices and norms over time.¹¹ As such, research material used will be statutory text alongside more than 43

⁷ Ridha Faulika Irtiyah, ‘Analisis Yuridis Pertimbangan Hakim Atas Sengketa Kepemilikan Merek Asing Terkenal Berdasarkan Putusan Mahkamah Agung 2018-2020’, *Jurnal Ilmiah Abdi Ilmu* 14, no. 2 (2021): 148, <https://jurnal.pancabudi.ac.id/index.php/abdiilmu/article/view/4046>.

⁸ Antonius Ivananda Dias Wijaya and Diana Tantri Cahyaningsih, ‘Inkonsistensi Mahkamah Agung Dalam Menerapkan Perlindungan Hukum Terhadap Merek Terkenal Dalam Sengketa Merek’, *Jurnal Ilmiah Wahana Pendidikan* 10, no. 22 (November 2024): 191, <https://doi.org/10.62383/aliansi.v1i5.381>.

⁹ Adji Samekto, *Penelitian Hukum Dalam Aliran Legal Positivisme* (Depok: Rajawali Pers, 2023), 50.

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum*, 13th ed. (Jakarta: Kencana, 2017), 133–135.

¹¹ Peter Mahmudz Marzuki, ‘The Essence of Legal Research Is to Resolve Legal Problems’, *Yuridika* 36, no. 2 (2021): 57, <https://doi.org/10.20473/ydk.v37i1.34597>.

(forty-three) court cases as primary source, and supporting literature as secondary source.¹² Materials will be collected from physical books and reputable online sources, including academic journal articles and official government institutions. This limitation is required to preserve the reliability, accuracy, and accountability of the research.¹³ Finally, the research will analyze these materials with the review of the relevant judicial practice, followed by comparing such practice to the primary and secondary source of law, which will subsequently be evaluated, and put through an argumentative process.¹⁴

RESEARCH FINDINGS AND DISCUSSION

Recognition of Well-Known Marks by Registration in Several Countries in Indonesian Court Decisions

The research found 43 (forty-three) decision compiled in the table below sharing similar considerations in recognizing well-known marks protection based on mark registrations in several countries. The data shows these practices were not uncommon decades ago and have developed into accepted practice and norms.

Table 1. Decisions Which Recognize Well-Known Marks Based on Registrations in Several Countries

No.	Case Number	Mark(s)	Considerations
1.	679 K/Pdt.Sus/2010	ABSORTECH	The Plaintiff's mark has been registered in 27 European Union countries since 10 March 2005. ¹⁵
2.	27 K/Pdt.Sus/2011	Lexus and Logo L	The Plaintiff's mark has been registered in various countries around the world. ¹⁶

¹² Marzuki, 181–182.

¹³ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*, 2nd ed. (Jakarta: Kencana, 2017), 148.

¹⁴ Diantha, 152–156.

¹⁵ Indonesian Supreme Court Decision No. 679 K/Pdt.Sus/2010, 16.

¹⁶ Indonesian Supreme Court Decision No. 27 K/Pdt.Sus/2011, 13.

No.	Case Number	Mark(s)	Considerations
3.	28 K/Pdt.Sus/2011 <i>jo.</i> 92 PK/Pdt.Sus/2012	YULIN	The Plaintiff's mark has been registered since 1960 in China and Hong Kong as well as Korea, Thailand, Malaysia, Vietnam, and the United States of America. ¹⁷
4.	400 K/Pdt.Sus/2011 <i>jo.</i> 121 PK/Pdt.Sus/2012	INTER- CONTINENTAL	The Plaintiff's mark has been registered as a hotel name in many countries around the world, including Indonesia, since 1993. ¹⁸
5.	138 PK/Pdt.Sus/2011	MALING	The Plaintiff's mark has been registered in China since 1951 and in various other countries before being registered by the Defendant in 2004. ¹⁹
6.	445 K/Pdt.Sus/2012	TEFLON	The Plaintiff's mark has been produced since 1944, known in Indonesia since 1975, and registered in the United States of America since 1957 and is also registered in approximately 85 other countries. ²⁰

¹⁷ Indonesian Supreme Court Decision No. 28 K/Pdt.Sus/2011, 22.

¹⁸ Indonesian Supreme Court Decision No. 400 K/Pdt.Sus/2011, 13.

¹⁹ Indonesian Supreme Court Decision No. 138 PK/Pdt.Sus/2011, 29.

²⁰ Indonesian Supreme Court Decision No. 445 K/Pdt.Sus/2012, 51.

No.	Case Number	Mark(s)	Considerations
7.	762 K/Pdt.Sus/2012	PIAGET POLO	The Plaintiff's mark has been registered in several countries around the world. ²¹
8.	178 PK/Pdt.Sus/2012	L'EEGS	The Plaintiff's mark has been registered in several countries such as the United States of America, Paraguay, the Republic of Slovenia, Canada, Greece, Thailand, Austria, Colombia, Sweden since 1970 before being registered by the Defendant since 1981. ²²
9.	477 K/Pdt.Sus/2012 <i>jo.</i> 13 PK/Pdt.Sus-HKI /2014	Everlast	The Plaintiff's mark has been registered in several other countries and is used as the name of a legal entity (registered), guaranteed, and promoted in the Plaintiff's country of origin (the United States of America) and several countries before the Defendant registered its mark. ²³
10.	382 K/Pdt.Sus/2012	SOPHIE MARTIN	The Plaintiff's mark has already been registered and is known in Singapore/Worldwide. ²⁴

²¹ Indonesian Supreme Court Decision No. 762 K/Pdt.Sus/2012, 47.

²² Indonesian Supreme Court Decision No. 178 PK/Pdt.Sus/2012, 34.

²³ Indonesian Supreme Court Decision No. 477 K/Pdt.Sus/2012, 14-15.

²⁴ Indonesian Supreme Court Decision No. 382 K/Pdt.Sus/2012, 36.

No.	Case Number	Mark(s)	Considerations
11.	297 K/Pdt.Sus.HaKI/2013 <i>jo.</i> 129 PK/Pdt.Sus- HKI/2014	INDEX	The Plaintiff's mark has proven that its mark is registered in several countries such as Malaysia, Mexico, Oman, Saudi Arabia, and Indonesia. ²⁵
12.	638 K/Pdt.Sus- HKI/2013	MCCULLOCH	The Plaintiff's mark has existed since 1943 or has been used for more than 60 years and is registered in 63 countries. ²⁶
13.	558 K/Pdt.Sus- HKI/2015	Teenie Weenie	The Plaintiff's mark was registered in China and Korea before the Defendant's mark was registered in 2004. ²⁷
14.	720 K/Pdt.Sus- HKI/2015 <i>jo.</i> 139 PK/Pdt.Sus-HKI/2017	MONKI	The Plaintiff's mark has been registered in several countries. ²⁸
15.	968 K/Pdt.Sus- HKI/2016	J. Casanova	The Plaintiff's mark has existed since 1998 and is registered in several countries such as the United Kingdom, France and Saudi Arabia. ²⁹
16.	83 PK/Pdt.Sus- HKI/2017	MIKROZID	The Plaintiff's mark has been registered in several countries and Indonesia. ³⁰

²⁵ Indonesian Supreme Court Decision No. 297 K/Pdt.Sus.HaKI/2013, 39.

²⁶ Indonesian Supreme Court Decision No. 638 K/Pdt.Sus-HKI/2013, 25.

²⁷ Indonesian Supreme Court Decision No. 558 K/Pdt.Sus-HKI/2015, 23.

²⁸ Indonesian Supreme Court Decision No. 720 K/Pdt.Sus-HKI/2015, 14.

²⁹ Indonesian Supreme Court Decision No. 968 K/Pdt.Sus-HKI/2016, 31.

³⁰ Indonesian Supreme Court Decision No. 83 PK/Pdt.Sus-HKI/2017, 38.

No.	Case Number	Mark(s)	Considerations
17.	1300 K/Pdt.Sus-HKI/2017 <i>jo.</i> 90 PK/Pdt.Sus-HKI/2019	EIK	The Plaintiff was the first user since the registration of its mark in Malaysia in 2007 and until 2011 had had registrations in Singapore, the United States of America and Australia before the Defendant registered in 2016. ³¹
18.	1 PK/Pdt.Sus-HKI/2018	WAHL	Plaintiff's mark has been registered for goods in various classes in the United States of America since 1950, in Japan since 1988, in Singapore since 1985, in Mexico since 1980, and in Vietnam since 2006. ³²
19.	111 PK/Pdt.Sus-HKI/2018	BOSSINI	The Plaintiff's mark has been registered in various countries. ³³
20.	217 PK/Pdt.Sus-HKI/2018	HUGO BOSS	The plaintiff's mark has been registered in several countries, including Indonesia. ³⁴
21.	832 K/Pdt.Sus-HKI/2018	Comix	The Plaintiff's mark has been registered in several countries abroad. ³⁵

³¹ Indonesian Supreme Court Decision No. 1300 K/Pdt.Sus-HKI/2017, 51.

³² Indonesian Supreme Court Decision No. 1 PK/Pdt.Sus-HKI/2018, 6.

³³ Indonesian Supreme Court Decision No. 111 PK/Pdt.Sus-HKI/2018, 6.

³⁴ Indonesian Supreme Court Decision No. 217 PK/Pdt.Sus-HKI/2018, 28.

³⁵ Indonesian Supreme Court Decision No. 832 K/Pdt.Sus-HKI/2018, 5.

No.	Case Number	Mark(s)	Considerations
22.	892 K/Pdt.Sus-HKI/2019	FLM	The Plaintiff's mark was registered in Germany (country of origin) in 2014 and was also registered in other countries before the Defendant registered its mark. ³⁶
23.	74 PK/Pdt.Sus-HKI/2019	Crocodile and Crocodile Design + Chillington	The Plaintiff's mark was registered in several countries first (before the Defendant's). ³⁷
24.	114 PK/Pdt.Sus-HKI/2019	NWB	The Plaintiff's mark has been registered in several countries since 1988. ³⁸
25.	160 K/Pdt.Sus-HKI/2019	Novec	The Plaintiff's mark has been in use since 1999 in the United States of America and is registered in several other countries such as China, Japan, and Singapore, including in Indonesia since 2007. ³⁹
26.	511 K/Pdt.Sus-HKI/2019	SAFETY JOGGERS	The Plaintiff's mark has been registered in several countries and has received international certificates. ⁴⁰

³⁶ Indonesian Supreme Court Decision No. 892 K/Pdt.Sus-HKI/2019, 5.

³⁷ Indonesian Supreme Court Decision No. 74 PK/Pdt.Sus-HKI/2019, 5-6.

³⁸ Indonesian Supreme Court Decision No. 114 PK/Pdt.Sus-HKI/2019, 6.

³⁹ Indonesian Supreme Court Decision No. 160 K/Pdt.Sus-HKI/2019, 6.

⁴⁰ Indonesian Supreme Court Decision No. 511 K/Pdt.Sus-HKI/2019, 5.

No.	Case Number	Mark(s)	Considerations
27.	769 K/Pdt.Sus-HKI/2019	COFFEEBERRY	The Plaintiff's mark has been registered in countries in the Americas, Europe, Africa and Asia and is widely promoted in various countries around the world. ⁴¹
28.	868 K/Pdt.Sus-HKI/2019	Hugo Boss	The Plaintiff's mark has been registered in various countries around the world. ⁴²
29.	999 K/Pdt.Sus-HKI/2019	Alstyle	The Plaintiff's mark had been registered in various countries for similar goods long before the Defendant registered its mark in Indonesia. ⁴³
30.	794 K/Pdt.Sus-HKI/2020	VIEGA	Plaintiff's mark based on printed evidence of WIPO Global Brand Database has been registered in several countries including its country of origin, Germany, since 1958. ⁴⁴
31.	8 PK/Pdt.Sus-HKI/2020	PB	The Plaintiff's mark has been registered in various countries, including Sabah, Malaysia in 1972, and Malaysia in 1974. ⁴⁵

⁴¹ Indonesian Supreme Court Decision No. 769 K/Pdt.Sus-HKI/2019, 7.

⁴² Indonesian Supreme Court Decision No. 868 K/Pdt.Sus-HKI/2019, 10.

⁴³ Indonesian Supreme Court Decision No. 999 K/Pdt.Sus-HKI/2019, 8.

⁴⁴ Indonesian Supreme Court Decision No. 794 K/Pdt.Sus-HKI/2020, 7.

⁴⁵ Indonesian Supreme Court Decision No. 8 PK/Pdt.Sus-HKI/2020, 6.

No.	Case Number	Mark(s)	Considerations
32.	600 K/Pdt.Sus-HKI/2020	NILOS	The Plaintiff's mark has been proven to be registered in several countries. ⁴⁶
33.	1365 K/Pdt.Sus-HKI/2020	BRUSH	The Plaintiff's mark has been registered in various countries, including Hong Kong since 2015, the United States of America since 2005, OHIM since 2002, Kuwait since 2008, and Canada since 2013. ⁴⁷
34.	345 K/Pdt.Sus-HKI/2021	CheongKwanJang	The Plaintiff's mark has been registered in Korea since 1986 and various other countries such as the United States of America since 1999 and China since 2003 before the Defendant registered its mark in Indonesia in 2014. ⁴⁸
35.	557 K/Pdt.Sus-HKI/2021	SUPERMAN	The Plaintiff's mark has been registered in several countries, including Indonesia, since 1980. ⁴⁹
36.	650 K/Pdt.Sus-HKI/2021	Super Mario Bros, character Mario and Luigi with their variants	The Plaintiff's mark has been registered to protect various

⁴⁶ Indonesian Supreme Court Decision No. 600 K/Pdt.Sus-HKI/2020, 6.

⁴⁷ Indonesian Supreme Court Decision No. 1365 K/Pdt.Sus-HKI/2020, 4-5.

⁴⁸ Indonesian Supreme Court Decision No. 345 K/Pdt.Sus-HKI/2021, 5.

⁴⁹ Indonesian Supreme Court Decision No. 557 K/Pdt.Sus-HKI/2021, 7.

No.	Case Number	Mark(s)	Considerations
			goods and services in several countries since 1986. ⁵⁰
37.	775 K/Pdt.Sus-HKI/2021	SOLARIA	The Plaintiff's mark had already been registered in Indonesia and other countries before the Defendant filed its mark. ⁵¹
38.	43 PK/Pdt.Sus-HKI/2021	SHARPNESS	The Plaintiff's mark was registered in 24 countries on July 2, 2007 before the Defendant registered it on March 15, 2011. ⁵²
39.	14 PK/Pdt.Sus-HKI/2022	VARIVAS	The Plaintiff's mark had been registered in several countries before being registered by the Defendant in 2014. ⁵³
40.	881 K/Pdt.Sus-HKI/2021 <i>jo.</i> 4 PK/Pdt.Sus-HKI/2023	Timberland	The Plaintiff's mark had been registered in various countries around the world before the Defendant registered its mark. ⁵⁴
41.	15 PK/Pdt.Sus-HKI/2023	BIOSTIME	The plaintiff has registered its mark in several countries such as China in 2005, Taiwan, and France. ⁵⁵

⁵⁰ Indonesian Supreme Court Decision No. 650 K/Pdt.Sus-HKI/2021, 6.

⁵¹ Indonesian Supreme Court Decision No. 775 K/Pdt.Sus-HKI/2021, 4-5.

⁵² Indonesian Supreme Court Decision No. 43 PK/Pdt.Sus-HKI/2021, 9.

⁵³ Indonesian Supreme Court Decision No. 14 PK/Pdt.Sus-HKI/2022, 8.

⁵⁴ Indonesian Supreme Court Decision No. 881 K/Pdt.Sus-HKI/2021, 7.

⁵⁵ Indonesian Supreme Court Decision No. 15 PK/Pdt.Sus-HKI/2023, 7.

No.	Case Number	Mark(s)	Considerations
42.	18 PK/Pdt.Sus-HKI/2023	BON and BON CABE	The Plaintiff has registered its mark in several countries and Indonesia was registered earlier than the Defendant. ⁵⁶
43.	148 K/Pdt.Sus-HKI/2024	JOYKO	The plaintiff has mark registrations in European Union countries, the UK, China, and has been registered in Indonesia since 2001 in various classes. ⁵⁷

Although the decisions similarly relied on registrations in several countries to recognized well-known marks, there are some variables to this consideration. Notably, in the case of the “Teenie Weenie” mark, it was not initially considered well-known by the lower court, as it had only been registered under the plaintiff’s name in South Korea before the defendant registered its mark in 2004.⁵⁸ However, the Supreme Court overturned the decision, finding that “Teenie Weenie” had already been registered in China and South Korea before the defendant applied for it in Indonesia.⁵⁹ Likewise, registrations in two countries (i.e. India and France) were enough to recognize “Electrosteel Castings Limited” as a well-known mark.⁶⁰

On the other hand, several years earlier, the Supreme Court in the “Philip Stein” case concluded that the mark was not well-known because it had only been registered in four countries.⁶¹ A similar threshold was also applied in an earlier decision concerning the “ALADIN” mark, where the court found the mark not to be well-known since it had only been registered in four Asian countries.⁶² These decisions

⁵⁶ Indonesian Supreme Court Decision No. 18 PK/Pdt.Sus-HKI/2023, 6.

⁵⁷ Indonesian Supreme Court Decision No. 148 K/Pdt.Sus-HKI/2024, 7-8.

⁵⁸ Central Jakarta Commercial Court Decision No. 8/Pdt.Sus-Merek/2015/PN.Niaga.Jkt.Pst, 28.

⁵⁹ Indonesian Supreme Court Decision No. 558 K/Pdt.Sus-HKI/2015, 23.

⁶⁰ Indonesian Supreme Court Decision No. 1164 K/Pdt.Sus-HKI/2017, 48.

⁶¹ Indonesian Supreme Court Decision No. 276 K/ Pdt.Sus-HKI/2014, 16.

⁶² Indonesian Supreme Court Decision No. 501 K/ Pdt.Sus-HKI/2013, 32.

demonstrate that, although Indonesia acknowledges well-known marks based on registrations in multiple countries, there remains inconsistencies regarding how many countries a mark should be registered in, before it is recognized as well-known. In light of these findings, it is important to further discuss the approach of judicial well-known marks recognitions under Indonesian legal framework below.

Practices of Well-Known Marks Recognition Based on Registrations in Several Countries in Views of the Indonesian Legal Framework

The “registrations-based” approach can be traced back to the early development of well-known marks protection in Indonesia. Following its independence in 1945, Indonesia nationalized its trademarks law in 1961 in an effort to replace the Dutch *Reglement Industriële Eigendom*.⁶³ The Law No. 21 of 1961 concerning Trademarks (“Trademarks Law 1961”) did not contain any provisions on well-known marks.⁶⁴ During the 31 years before well-known mark protection was introduced under the Marks Law 1992, Indonesia has ratified the Paris Convention through Presidential Decision No. 24/1979. However, at that time, Indonesia opted out of Articles 1–12, including Article 6*bis*, until the reservation was lifted by the Presidential Decision No. 15 of 1997. Nevertheless, the Minister of Justice sought to provide protection for well-known marks by issuing Minister of Justice Decision No. 02-HC.01.01 of 1987 (“MoJ Decision 1987”), which was subsequently repealed by MoJ Decision No. M.03-HC.02.01 of 1991 (“MoJ Decision 1991”). These decisions by the Minister of Justice aimed to prevent bad-faith applicants from registering marks identical or confusingly similar to well-known marks. The term “trademark” is used here because the Trademarks Law 1961 did not cover service marks, which were only recognized under the Marks Law 1992.

⁶³ O. K. Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, 9th ed. (Jakarta: Rajawali Pers, 2015), 426.

⁶⁴ Eko Alamsyah, Yudi Arkara Oktobra, and Susiswo, ‘Perlindungan Hukum Bagi Pemegang Hak Merek Terdaftar Terhadap Pelanggaran Merek Menurut Ketentuan Hukum Merek Indonesia’, *Jurnal De Facto* 9, no. 1 (2022): 20, <https://jurnal.pascasarjana.uniba-bpn.ac.id/index.php/jurnaldefacto/article/view/119>.

Interestingly, the aforementioned MoJ Decisions provide a definition of well-known marks, which remains absent in the current national and international laws.⁶⁵ In MoJ Decision 1987, a well-known mark was defined as one that had been known for a long period and used in Indonesia.⁶⁶ Subsequently, MoJ Decision 1991 expanded the definition to include trademarks that had been used both in Indonesia and abroad. Kaehlig (1993) interpreted MoJ Decision 1991 as acknowledging well-known marks that were traded exclusively abroad.⁶⁷ However, the Indonesian term “maupun” is synonymous with the word “and,” suggesting a cumulative requirement in the legal text.⁶⁸ Therefore, the protection of well-known marks in the context of MoJ Decision 1991 should only apply to marks used not only in Indonesia but also internationally. Nevertheless, Kaehlig noted that MoJ Decision 1991 demonstrated an improvement in the protection of foreign trademarks, while emphasizing that determining if a trademark qualifies as well-known remains difficult at times.⁶⁹

The influence of the definition of well-known marks set by the MoJ Decision of 1991 can be seen in decisions issued after its enactment. Among them, Supreme Court Decision No. 1486 K/Pdt/1991 of 3 November 1995 held that a mark qualifies as a well-known mark if it has reached beyond regional and transnational borders. Thus, registrations in many countries globally would sufficiently qualify a mark as well-known, as it demonstrates recognition beyond its country of origin.⁷⁰ The Supreme Court decision laid the foundation for determining the qualification of a well-known mark based on its international use, which aligns with the criteria established in the

⁶⁵ Alvin Mulia Utama and Devica Rully Masrur, “Perlindungan Merek Terkenal yang Telah Didaftarkan di Indonesia Berdasarkan Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis,” *Jurnal Civitas Academica of Law* 1, no. 1 (2020): 12, <https://jca.esaunggul.ac.id/index.php/law/article/view/2/2>.

⁶⁶ Novianti et al., *Pelindungan Merek*, ed. Tommy Hendra Purwaka (Jakarta: Yayasan Pustaka Obor Indonesia, 2017), 23.

⁶⁷ Carl-Bernd Kaehlig, *Indonesian Intellectual Property Law*, ed. Gregory J. Churchill (Jakarta: Tatanusa, 1993), 6.

⁶⁸ Badan Pengembangan dan Pembinaan Bahasa, “‘maupun,’” KBBI VI Daring, accessed October 25, 2025, <https://kbbi.kemdikbud.go.id/entri/maupun>; A’an Efendi and Dyah Ohtorina Susanti, “Makna dan Problematik Penggunaan Term ‘Dan’, ‘Atau’, ‘Dan/Atau’, ‘Kecuali’, dan ‘Selain’ dalam Undang-Undang,” *Jurnal Legislasi Indonesia* 17, no. 4 (2020): 397, <https://doi.org/10.54629/jli.v17i4.732>.

⁶⁹ Kaehlig, *Indonesian Intellectual Property Law*, 6.

⁷⁰ Rumadan, *Kriteria Itikad Tidak Baik Dalam Penyelesaian Sengketa Merek Terkenal Melalui Putusan Pengadilan*, 362.

MoJ Decision of 1991. However, the Court also set a precedent by using registrations in several countries as a factor in determining the status of a well-known mark.

The emphasis on registrations in several countries as one of the criteria for determining well-known marks did not appear in the Marks Law until the amendment of the explanatory note to Article 6(2) of the Marks Law 1992 by the Marks Law 1997. Since then, the provisions on well-known marks in the Marks Law 2001 and the Marks Law 2016 have also included “proof of registrations in several countries” as a criterion to be considered, alongside public knowledge in the relevant business sector, reputation achieved through intensive and massive promotion, and investment in several countries.⁷¹ These considerations in the Marks Law 2001 and 2016 are placed under the explanatory note for the provision of well-known marks protection for similar goods or services. Moreover, the explanatory note emphasizes that these criteria are not absolute. In cases where the criteria are inconclusive in determining the well-known status of a mark, the Commercial Court may instruct an independent surveyor to further assess the well-known status of the cited mark in connection with the rejection of a mark application.⁷²

It should be noted that the above-mentioned criteria of well-known marks were placed in the explanatory note, which may become a legal issue in and of itself.⁷³ The actual article to the relevant explanatory note only dictates that an application for a mark is rejected if it has similarity in its essential part or entirety to another party’s well-known mark.⁷⁴ By law, the explanatory note cannot be used as legal basis for other regulations, formulate a norm, and should not expand, narrow, or add any norms to the article, and/or formulate a delegation norm.⁷⁵ However, well-known mark criteria in the explanatory note is not an odd phenomenon in the Indonesian

⁷¹ Law No. 15 of 2001 Concerning Marks, Explanatory Note on Article 6(1)(b); Law No. 20 of 2016 concerning Marks and Geographical Indications, Explanatory Note on Article 21(1)(b).

⁷² Law No. 15 of 2001 concerning Marks, Explanatory Note on Article 6(1)(b); Law No. 20 of 2016 concerning Marks and Geographical Indications, Explanatory Note on Article 21(1)(b).

⁷³ Tanto Lailam, “Problem dan Solusi Penataan Checks and Balances System dalam Pembentukan dan Pengujian Undang-Undang di Indonesia,” *Negara Hukum* 12, no. 1 (2021): 133, <http://dx.doi.org/10.22212/jnh.v12i1.1721>.

⁷⁴ Law No. 20 of 2016 concerning Marks and Geographical Indications, Article 21(1)(b).

⁷⁵ Law No. 12 of 2011 concerning Legislation Making, Point No. 177 and 186 of Annex II.

legal framework. Septian and Abdurahman (2021) found that the explanatory note often contain interpretation, namely in forms of definition, limitation, delegation, mandate.⁷⁶ Despite the prohibition on using explanatory notes as legal bases, the criteria in the note to Article 21(1)(b) of the Marks Law 2016 were still carried over into Article 18 of the Minister of Law and Human Rights Regulation No. 67 of 2016 concerning Mark Registrations (“MLHR 67/2016”).

The Minister Regulation is thought to be issued for limited operations within the Minister’s relevant operation, authority, responsibility, and government public services.⁷⁷ The MLHR 67/2016 was issued for the technical regulations of mark registrations and the Marks Law 2016 does not expressly state that the well-known marks criteria may be applied in court proceedings other than mark prosecution. However, several court decisions have been observed to acknowledge the use of the Article 18 MLHR 67/2016 in recognizing a well-known mark status, especially in the dispute of mark cancellation.⁷⁸ Perhaps this is because cancellation lawsuits are also formulated based on Article 20 and/or Article 21 of the Marks Law 2016, which set out the absolute and relative grounds for rejecting a mark application. This formulation may allow judges to apply the relevant provisions of MLHR 67/2016 in mark dispute cases before the court.

Article 18(3) of MLHR 67/2016 further details factors, namely (a) level of public recognition in the relevant sector of the mark, (b) sales volume and profits, (c) market share, (d) geographical scope, (e) period of use, (f) intensity and investment in promotion, (g) registration or application in other countries, (h) enforcement success, and (i) the mark’s reputation and quality assurance of the related goods and/or services. The criteria were intended to help determine the status of a well-known mark by assessing the general public’s knowledge in the relevant business field, including

⁷⁶ Ilham Fajar Septian and Ali Abdurahman, ‘Status Hukum Penjelasan Undang-Undang Berdasarkan Sistem Peraturan Perundang-Undangan Indonesia’, *Jurnal Hukum & Pembangunan* 51, no. 3 (2020): 823, <https://doi.org/10.21143/jhp.vol51.no3.3136>.

⁷⁷ Muhammad Junaidi, *Teori Perancangan Hukum: Telaah Praktis dan Teoretis Penyusunan Peraturan Perundang-Undangan* (Semarang: Universitas Semarang Press, 2021), 67–68.

⁷⁸ Central Jakarta Commercial Court Decision No. 83/Pdt.Sus-HKI/Merek/2023/PN Niaga Jkt.Pst, 99-101; Central Jakarta Commercial Court Decision No. 56/Pdt. Sus-Merek/2021/PN.Niaga.Jkt.Pst, 103 and 107.

consumers and parties involved in the production, promotion, distribution, or sales of the goods or services protected by the mark.⁷⁹ The use of “or” constitute an alternative requirement for fulfilling the criteria in Article 18(3) MLHR 67/2016.⁸⁰ Therefore, recognizing a well-known mark based on registrations on several countries is technically permissible under the Indonesia current legal frame. In light of the above findings, it is necessary to further review the Paris Convention and TRIPS provisions on well-known mark recognition below.

Paris Convention and TRIPS: Well-Known Through Marks Registrations or Use?

The Paris Convention provides no criteria or definition for well-known marks.⁸¹ By design, Article 6*bis*(1) leaves such considerations to the competent authority in the country of registrations or use. However, Bodenhausen (1968) provides much needed historical context that majority of the member of Paris Convention reject the revision to exempt the well-known mark to be used in the country where protection is claimed, thus it is not mandatory for member states to protect well-known marks that have not been used in its country.⁸² Article 16(2) of TRIPS further clarifies that the protection of well-known marks under Article 6*bis* of the Paris Convention should consider the knowledge among the relevant sector of the public, including knowledge acquired from promotion in the country where protection is sought. These provisions suggest that drafting of well-known marks protection in Paris Convention and TRIPS relies on similar principle of acquiring marks rights through use, also known as first to use doctrine. Kingston (2009) said that common law traditions give a mark rights to the user/maker based on the reputation of mark has been built (first to use), differs to a

⁷⁹ Minister of Law and Human Rights Regulation No. 67 of 2016 Concerning Mark Registrations, Article 18(2).

⁸⁰ Efendi and Susanti, “Makna dan Problematik Penggunaan Term ‘Dan’, ‘Atau’, ‘Dan/Atau’, ‘Kecuali’, dan ‘Selain’ dalam Undang-Undang,” 398.

⁸¹ P.M. Arun dan P.M. Shanmuka Priya, “Unveiling Trademarks and, m Well-Known Marks: Exploring their Impact in the Intellectual Property Landscape,” *International Journal of Legal Science and Innovation* 6, no. 4 (2024): 10, <https://doi.org/https://doi.org/10.10000/IJLSI.112061>.

⁸² G. H. C. Bodenhausen, *Guide to the Application of the Paris Convention for the Protection of Industrial Property as Revised as Stockholm in 1967* (Geneva: United International Bureaux for the Protection of Intellectual Property, 1968), 91.

civil law approach which establish a mark right through registration (first to file).⁸³ Either of the mark protection system give mark rights that are limited to each country jurisdictions where a mark is used or registered (principle of territoriality). This territorial limitation is derived from the stipulation of Article 6(3) Paris Convention and general principle of sovereignty under international law.⁸⁴ However, well-known mark status grant exception to the rule of territoriality, allowing protection beyond the jurisdictions where the mark is registered or used.⁸⁵ This exception for well-known mark is consistent within international law (i.e. Paris Convention and TRIPS), as well as national law (i.e. Marks Law 2016).⁸⁶

In light of the above, the Paris Convention and TRIPS do not support using registrations in several countries to determine a mark's well-known status. However, the practice of considering registrations may stem from the WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks issued in 2000 ("WIPO Recommendations"). Article 2(1)(b)(4) of said Recommendation provides that the competent authority may consider, among other factors, the duration and geographical area of a mark's registration and/or application, as long as they reflect the use or recognition of the relevant mark. The Article further clarifies that such factors should not be treated as preconditions for determining a well-known mark, as the factors listed in Article 2(1)(b) may be applied (all, some, or none) depending on their relevance in case-by-case determination the competent authority.⁸⁷ The Article clarifies that registrations, within or outside the jurisdiction where protection is claimed, should not be a prerequisite for well-known mark

⁸³ William Kingston, 'Trademark Registration Is Not a Right', *Journal of Macromarketing* 26, no. 1 (2006): 20, <https://doi.org/10.1177/0276146705285683>.

⁸⁴ Ni Ketut Supasti Dharmawan et al., 'Beyond Territoriality: Assessing the Effectiveness of the Madrid System for Trademark Protection in Indonesia', *Sriwijaya Law Review*, January 2026, 8, <https://doi.org/10.28946/slrev.v10i1.5208>; Chitra B.T. and Anshul Sajit, 'Territoriality Challenges for Trademark Protection in a World Without Borders', *International Journal of Legal Studies (IJLS)* 1, no. 2 (2024): 20-21, https://iaeme.com/Home/article_id/IJLS_01_02_003.

⁸⁵ World Trade Organization, *A Handbook on the WTO TRIPS Agreement*, ed. Anthony Taubman, Hannu Wager, and Jayashree Watal, 2nd ed. (Cambridge: Cambridge University Press, 2020), 60.

⁸⁶ Ni Ketut Supasti Dharmawan et al., 'Protecting Well-Known Marks Related to Territorial Principle: From Substantive Similarity to the Distinctiveness Theory', *Journal Equity of Law and Governance* 7, no. 1 (2025): 8, <https://doi.org/10.22225/elg.7.1.11436.1-9>.

⁸⁷ WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, Article 2(1)(c).

protection.⁸⁸ Therefore, registrations in several countries should only be considered if they reflect use or recognition in the relevant sector of the public and should not prevent a mark from being recognized as well-known.

WIPO Recommendations above have not explained the appearance of “registrations in several countries” as one of the criteria for a well-known mark, first mentioned in Marks Law 1997. Though it helps to see that the first appearance of such criterion in Marks Law 1997 is accompanied with the note “if any”, making it a supporting and not primary evidence. During the regime, one jurisprudence stands out for reiterating that besides public knowledge, the well-known mark status is also determined through reputation acquired by promotion, as well as registrations in several countries if there is any.⁸⁹ The court decision makes reference to Gautama and Winata (1997) work, which offers an observation on judicial practice at the time, indicating that registrations across multiple jurisdictions was considered one of the most effective forms of evidence for establishing a well-known mark in court.⁹⁰ The note to “if any” next to the registrations in several country was subsequently omitted in both the 2001 and 2016 revisions of Marks Law, alongside replacement of the general public knowledge standard with a lower standard of public knowledge in the relevant sector.

Furthermore, several court decisions did not follow the provisions prohibiting the requirement of registration in local and/or international jurisdictions as a precondition to determine a well-known mark. In 2015, the Commercial Court did not recognize “Teenie Weenie” as a well-known mark until the Supreme Court found that the mark had been registered in at least two countries before the filing of the disputed mark.⁹¹ Several years later, the Supreme Court recognized “Biostime” as a well-known mark only after the judicial review found that the mark had been registered in

⁸⁸ WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, Article 2(1)(3)(a)(i) and (ii).

⁸⁹ Indonesian Supreme Court Decision No. 022K/N/HaKI/2002, 40.

⁹⁰ Sudargo Gautama and Rizawanto Winata, *Pembaharuan Hukum Merek Indonesia (Dalam Rangka WTO, TRIPS) 1997* (Bandung: Citra Aditya Bakti, 1997), 57.

⁹¹ Central Jakarta Commercial Court Decision No. 8/Pdt.Sus-Merek/2015/PN.Niaga.Jkt.Pst, 28; Indonesian Supreme Court Decision No. 558 K/Pdt.Sus-HKI/2015, 23.

several countries before the defendant applied for their mark.⁹² Notably, as discussed in the first subchapter, the courts have demonstrated inconsistency in determining the number of registrations required for a mark to be considered well-known. Nevertheless, these decisions indicate that registrations in multiple jurisdictions remain an important factor in determining well-known mark status by Indonesian courts. The failure to satisfy this criterion has been found to be fatal in establishing a mark as well-known, contrary to what is recommended by WIPO or provided under the Paris Convention and TRIPS.

Reformulating Well-Known Mark Recognition Based on Use that Reflects Public Knowledge and Recognition in the Relevant Sector

Mertokusumo (2001) states that despite the non-binding principle of prior decisions in Indonesia, many judges have been observed to adopt a more “heteronomous” approach by using convincingly similar precedents to guide their decisions.⁹³ This may help explain why Supreme Court Decision No. 1486 K/Pdt/1991 continues to be used as a reference in court decisions decades later.⁹⁴ Contrary to its use, the Supreme Court’s consideration in Decision No. 1486 K/Pdt/1991 was not based on registration. Rather, the consideration first stated that a well-known mark is a mark that has been used beyond its country of origin and across regional or international borders. This aligns with Article 1 of the 1991 MoJ Decision, which defines well-known marks by their use in Indonesia and abroad. The Court then further noted that such a degree of use is evidenced by registration in several countries. This arguably put an emphasis registration that reflect “use” as also provided in Article 2(1)(b)(4) of the WIPO Recommendations. However, registration alone cannot and should not be used as proof of use. The Paris Convention and TRIPS

⁹² Indonesian Supreme Court Decision No. 781 K/Pdt. Sus-HKI/2022, 6-8; Indonesian Supreme Court Decision No. 15 PK/Pdt.Sus-HKI/2023, 7.

⁹³ Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar*, 2nd ed. (Yogyakarta: Liberty Yogyakarta, 2001), 45.

⁹⁴ Central Jakarta Commercial Court Decision No. 56/Pdt. Sus-Merek/2021/PN.Niaga.Jkt.Pst, 108; Central Jakarta Commercial Court Decision No. 83/Pdt.Sus-HKI/Merek/2023/PN Niaga Jkt.Pst., 99; Central Jakarta Commercial Court Decision No. 28/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst., 27.

recognize this since a registered mark can be invalidated if not continuously for at least three years.⁹⁵ This logic also explains why WIPO Recommendations prohibit registration (local or international) as a requirement for recognizing well-known marks.⁹⁶

References to Supreme Court Decision No. 1486 K/Pdt/1991 are often made in conjunction with the criteria for well-known marks in the explanatory note of Article 21(1)(b) of Marks Law 2016 and Article 18(3)(g) of MLHR 67/2016.⁹⁷ The “registration in several countries” criterion originates from the 1997 revision of explanatory note to Article 6(2) of Marks Law 1992 and has been retained through the 2001 and 2016 Marks Laws. During the revision, Minister of Justice Oetoyo Oesman explained that the addition of criteria were needed to ensure uniformity in defining well-known marks.⁹⁸ The Minister later noted that the criteria resulted from debates on whether well-known marks should be measured by registration abroad or trade volume.⁹⁹ However, in an earlier hearing, the Minister stated that the addition is based on the idea that a mark’s reputation can be established through promotion, long-term use, and registrations in several countries.¹⁰⁰ The later adoption of this explanatory note by

⁹⁵ Paris Convention for the Protection of Industrial Property, Article 5(C)(1); Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 19(1).

⁹⁶ WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, Article 2(1)(3)(a)(i) and (ii).

⁹⁷ Central Jakarta Commercial Court Decision No. 56/Pdt. Sus-Merek/2021/PN.Niaga.Jkt.Pst at 107–108; Central Jakarta Commercial Court Decision No. 83/Pdt.Sus-HKI/Merek/2023/PN Niaga Jkt.Pst., 99.

⁹⁸ “Keterangan Pemerintah di Hadapan Rapat Paripurna Dewan Perwakilan Rakyat Republik Indonesia Mengenai Rancangan Undang-Undang Tentang Perubahan atas Undang-Undang Nomor 6 Tahun 1982 tentang Hak Cipta Sebagaimana Telah Diubah dengan Undang-Undang Nomor 7 Tahun 1987, Rancangan Undang-Undang Tentang Perubahan atas Undang-Undang Nomor 6 Tahun 1989 tentang Paten, dan Rancangan Undang-Undang Tentang Perubahan atas Undang-Undang Nomor 19 Tahun 1992 tentang Merek” (Sistem Informasi Arsip (SIAR) DPR RI, December 12, 1996), 22, https://berkas.dpr.go.id/arsip/file/Lampiran/leg_1-20190918-113209-3600.pdf.

⁹⁹ “Risalah Rapat Kerja Komisi III DPR-RI Dalam Rangka Pembicaraan Tingkat III Rancangan Undang-Undang Tentang Hak Cipta, Paten, dan Merek Dengan Menteri Kehakiman R.I. (Raker Ke-5, 5 Maret 1997)” (Sistem Informasi Arsip (SIAR) DPR RI, March 5, 1997), 18, https://berkas.dpr.go.id/arsip/file/Lampiran/leg_1-20190918-113709-1109.pdf.

¹⁰⁰ “Keterangan Pemerintah di Hadapan Rapat Paripurna Dewan Perwakilan Rakyat Republik Indonesia Mengenai Rancangan Undang-Undang Tentang Perubahan atas Undang-Undang Nomor 6 Tahun 1982 tentang Hak Cipta Sebagaimana Telah Diubah dengan Undang-Undang Nomor 7 Tahun 1987, Rancangan Undang-Undang Tentang Perubahan atas Undang-Undang Nomor 6 Tahun 1989 tentang Paten, dan Rancangan Undang-Undang Tentang Perubahan atas Undang-Undang Nomor 19 Tahun 1992 tentang Merek,” 22.

Article 18 of MLHR 67/2016, the formulation emphasizes that the criteria of well-known should be considered with regard to the public knowledge in the relevant sector, while further allowing the determination of such element through registrations in several countries.¹⁰¹

The practice of requiring registrations in several countries to establish well-known mark and the norm that allows it undermine the standard of public knowledge in the relevant which may be resulted from promotions/use, as set in TRIPS and further recommended by WIPO. Furthermore, this requirement could result in more dispute between parties in capital disparities since the wealthier party can afford to register their mark in many jurisdictions.¹⁰² Fortunately, there are several decisions that have tried to establish well-known mark with emphasis on public knowledge through use. In the case of the PRADA mark, the court noted that PRADA S.A. had used the mark since 1913, established a PRADA store in each country of registration, and that the mark was known among Indonesian consumers as a well-known mark from Italy.¹⁰³ The mark does not need be traded in Indonesia, as demonstrated in the case of the CREED and MILLESIME marks, the court determined that their presence in Malaysia and Singapore as the closest country to Indonesia is sufficient.¹⁰⁴ On the other hand, the court failed to find GALPERTI as a well-known mark due to the lack of massive promotion and public knowledge in Indonesia.¹⁰⁵ Notably, in these decisions, the court does not make a distinction between knowledge or recognition among the general public and that among the public in the relevant sector. This may be important, since the Marks Law 2016, MLHR 67/2016, TRIPS, WIPO Recommendations all provide that the threshold for knowledge or recognition of a well-known mark is at least that of the public in the relevant sector, rather than the

¹⁰¹ Minister of Law and Human Rights Regulation No. 67 of 2016 concerning Mark Registrations, Article 18(1) and 18(3)(g).

¹⁰² Insan Budi Maulana, "Merek Terkenal Menurut TRIPS Agreement dan Penerapan dalam Sistem Merek Indonesia," *Jurnal Hukum* 7, no. 13 (April 2000): 126, <https://doi.org/10.20885/iustum.vol7.iss13.art9>.

¹⁰³ Indonesian Supreme Court Decision No. 274 PK/Pdt/2003, 41-42.

¹⁰⁴ Indonesian Supreme Court Decision No. 289 K/Pdt.Sus-HKI/2023, 8.

¹⁰⁵ Indonesian Supreme Court Decision No. 49 PK/Pdt.Sus-HKI/2020, 7.

public at large.¹⁰⁶ Regardless, geographical presence in Indonesia is certainly an important factor to consider when claiming well-known mark protection.

In addition to recognition and use in Indonesia, the criteria for determining a well-known mark also encompass the requirement of massive promotion to establish well-known mark status.¹⁰⁷ The court, in this context, has considered evidence of massive promotion in several cases. In the *Bloomingdale's* case, the court held that promotion through various media such as brochures, catalogues, newspapers, and magazines was sufficient to satisfy the element of massive promotion.¹⁰⁸ Similarly, in the *CABERG* case, the court found evidence of massive promotion through magazines and online publications, which demonstrated a broad geographical scope of trade.¹⁰⁹ These cases help identify evidence relating to the criteria of massive promotion, which can assist in establishing public knowledge and recognition of a mark within the relevant sector.

The court has also recognized several other well-known marks based on their wide geographical coverage of promotion and trade. For instance, the *DIESEL* mark was acknowledged as a well-known mark even though it was registered only in Italy in 1982 for Classes 18 and 25, but it had been promoted in several other countries.¹¹⁰ A comparable decision was made in the *SAMGONG* case, which was only registered by the plaintiff in South Korea in 2008 before the defendant registered it in Indonesia in 2010, but was already considered well-known through widespread promotion in United States of America, Italy, England, China, Canada, the Philippines, Taiwan and Indonesia since 2008.¹¹¹ Likewise, the *LEGEND* mark was recognized as a well-known mark based on promotional activities carried out in various countries, including Indonesia, through international beauty exhibition events, thereby demonstrating that

¹⁰⁶ Law No. 20 of 2016 concerning Marks and Geographical Indications, Explanatory Note on Article 21(1)(b); Minister of Law and Human Rights Regulation No. 67 of 2016 concerning Mark Registrations, Article 18; Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 16(2); WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, Article 2(3)(iii).

¹⁰⁷ Law No. 20 of 2016 concerning Marks and Geographical Indications, Explanatory Note on Article 21(1)(b).

¹⁰⁸ Indonesian Supreme Court Decision No. 1059 K/Pdt.Sus-HKI/2016, 23.

¹⁰⁹ Indonesian Supreme Court Decision No. 18 PK/Pdt.Sus-HKI/2021, 6.

¹¹⁰ Indonesian Supreme Court Decision No. 280 K/Pdt.Sus-HKI/2020, 7.

¹¹¹ Indonesian Supreme Court Decision No. 640 K/Pdt.Sus-HKI/2020, 6.

the mark has transcended national and regional boundaries and satisfies the criteria for a well-known mark in terms of its broad geographical coverage.¹¹² These cases demonstrate that promotional activities conducted across multiple jurisdictions may suffice to establish a mark's well-known status, thus overcoming the necessity of registration in several countries element.

Finally, there are also several decisions that use various criteria to conclude the status of a well-known mark. As can be seen in the recognition of the GS mark, the court relied on previous final and binding court decisions, registrations in multiple countries, promotion and publicity, sales value and annual reports, as well as awards received by the mark.¹¹³ In another case, the Commercial Court acknowledged the EV and ELEKTRO-VOICE marks as well-known through a multi-factor approach that included registration in more than ten countries, long-term use since 1934, a wide market share, investments in technology and promotion, recognition of the mark's fame by foreign authorities, awards for its reputation and quality, and testimony from distributors demonstrating active sales of the mark.¹¹⁴ These cases represent how criteria of well-known mark can comprehensively be considered together to found the public recognition and knowledge in the relevant sector which is outlined in the Marks Law 2016, MHLR No. 67/2016, TRIPS, and WIPO Recommendations.

Moving from the recognizing well-known marks through registration in several countries into actual use that acquire knowledge and recognition by public in the relevant sector will align the practice of well-known mark protection with the core principle laid in Paris Convention, TRIPS, and WIPO Recommendations. On the other hand, the criteria of well-known mark have been criticized for leaving threshold or metrics unclear. For example, studies have suggested while public knowledge in the relevant sector has been defined with parties, the statute remained unclear, among others how much geographical/territorial coverage in relation to consumer and

¹¹² Indonesian Supreme Court Decision No. 532 K/Pdt.Sus-HKI/2024, 8.

¹¹³ Indonesian Supreme Court Decision No. 911 K/Pdt.Sus-HKI/2020, 7.

¹¹⁴ Central Jakarta Commercial Court Decision No. 83/Pdt.Sus-HKI/Merek/2023/PN Niaga Jkt.Pst., 99-101; Indonesian Supreme Court Decision No. 652 K/Pdt.Sus-HKI/2024, 7.

promotion needed to establish such criteria.¹¹⁵ While jurisprudence, such as Supreme Court Decision No. 1486 K/Pdt/1991 continued to be used to determine a mark that has been used beyond its country of origin and across regional/international border are well-known. It remains difficult to deal with criteria using number metrics such as establishing minimum sales volume of goods/services or investment, duration of use, value of associated mark, number of countries.¹¹⁶

The debate over minimum parameters and quantitative metrics for determining well-known mark status is unlikely to be conclusively resolved, particularly in civil-law jurisdictions where precedent is formally non-binding.¹¹⁷ Article 6bis(1) of the Paris Convention leaves the determination of well-known status to the competent authority, thereby granting judges a central interpretative role. In this context, Sudikno's observation that Indonesian judges increasingly rely on jurisprudence remains highly relevant,¹¹⁸ given the current well-known mark criteria in Indonesia and the Paris Convention's provisions. From the perspective of a modern legal system, the use of jurisprudence in a civil-law context may be inevitable legal developments.¹¹⁹ The Supreme Court has also encouraged the use of jurisprudence for similar cases to give more legal certainty.¹²⁰ These developments place a responsibility on the court to understand the core principles of well-known mark recognition and to consider each jurisprudence carefully to establish fair judgement.¹²¹

¹¹⁵ Sujana Donandi S. and Pandu Adi Cakranegara, 'The Implementation of Well-Known Trademarks Doctrine in Indonesian Commercial and Supreme Court', *Fiat Justisia: Jurnal Ilmu Hukum* 15, no. 2 (2021): 175, <https://doi.org/10.25041/fiatjustisia.v15no2.2016>; Achmad Arriza et al., 'Legal Protection of Famous Trademarks Under the Principle of Good Faith From a Legal Perspective in Indonesia', *Indonesian Journal of Business Analytics* 5, no. 3 (2025): 2161, <https://doi.org/10.55927/ijba.v5i3.14547>.

¹¹⁶ I Gede Mahatma Yogiswara Winatha et al., 'Comparative Analysis of Legal Protection and Criteria Of Well-Known Marks (Indonesia, United States, India, China, and German)', *Audito Comparative Law Journal* 4, no. 1 (2023): 48, <https://doi.org/10.22219/aclj.v4i1.23768>.

¹¹⁷ Luca Anderlini, Leonardo Felli, and Alessandro Riboni, 'Legal Efficiency and Consistency', *European Economic Review* 121, no. 4 (2020): 25–26, <https://doi.org/10.1016/j.euroecorev.2019.103323>.

¹¹⁸ Mertokusumo, *Penemuan Hukum: Sebuah Pengantar*, 45.

¹¹⁹ Praise Juinta W. S Siregar, 'Perbandingan Sistem Hukum Civil Law Dan Common Law Dalam Penerapan Yurisprudensi Ditinjau Dari Politik Hukum', *Dharmasiswa* 2, no. 2 (2022): 1034, <https://scholarhub.ui.ac.id/dharmasiswa/vol2/iss2/37>.

¹²⁰ Syarifuddin, *Himpunan Yurisprudensi Mahkamah Agung Sampai Dengan Tahun 2018*, iv.

¹²¹ Heru Sugiyono and Robinsar Marbun, 'Disparity of Judges' Decision in Civil Dispute', *International Journal of Business, Economics and Law* 20, no. 5 (2019): 133, https://ijbel.com/wp-content/uploads/2020/02/IJBEL20_215.pdf.

Nevertheless, reliance on jurisprudence presents challenges, particularly when prior decisions contain contradicting consideration. In relation to this issue, Fachreza (2016) argues that the Supreme Court should actively identify and select jurisprudence that promotes uniform solutions to recurring legal issues.¹²² Furthermore, Simanjutak (2019) argues that qualifying jurisprudence outside the Supreme Court (i.e., Cassation or Judicial Review) should also be considered, since not all cases are examined by the Supreme Court judges.¹²³ Further efforts by the Indonesian Supreme Court are shown through a comparative study of the jurisprudence system of the Dutch Supreme Court (Hoge Raad), which uses a computerized index of decisions by keyword to identify relevant jurisprudence when considering a case.¹²⁴ This is not to say that the court has not, in practice, used jurisprudence in recognizing well-known marks, for example by citing the famous Supreme Court Decision No. 1486 K/Pdt/1991 to consider a mark well-known based on registration in several countries.

A more deliberate and systematic engagement with jurisprudence should promote a shift beyond the registration-oriented approach in recognizing well-known marks, as well as establishing metric standard for well-known mark criteria. As such, registration in several countries will be positioned as supporting evidence and not as a mandatory prerequisite for well-known mark recognition. Furthermore, greater emphasis should instead be placed on public knowledge in the relevant sector resulting from promotion and use, especially in the Indonesian market. This reformulation would realign Indonesian practice with the fundamental principles embodied in the Paris Convention and the TRIPS Agreement, ensuring that protection of well-known mark is not based in a formal “registration approach” but proofing well-known mark status mainly based on “use” of the relevant mark in trade.

¹²² Ade Rizky Fachreza, ‘Meluruskan Pemahaman “Konsistensi Putusan” Untuk Mencapai Kesatuan Hukum’, Lembaga Kajian & Advokasi Independensi Peradilan (LeIP), accessed 10 February 2026, <https://leip.or.id/meluruskan-pemahaman-konsistensi-putusan-untuk-mencapai-kesatuan-hukum/>.

¹²³ Enrico Simanjutak, ‘Peran Yurisprudensi Dalam Sistem Hukum Di Indonesia’, *Jurnal Konstitusi* 16, no. 1 (2019): 101, <https://doi.org/10.31078/jk1615>.

¹²⁴ Asep Nursobah, ‘Untuk Menjaga Konsistensi Putusan, Hoge Raad Selalu Memperhatikan Yurisprudensi’, Kepaniteraan Mahkamah Agung, accessed 10 February 2026, <https://kepaniteraan.mahkamahagung.go.id/publikasi/seputar-kunjungan-hoge-raad-2023/2207-untuk-menjaga-konsistensi-putusan-hoge-raad-selalu-memperhatikan-yurisprudensi>.

CONCLUSION

The judicial practice of recognizing well-known marks through registration in several countries remains firmly embedded in Indonesian jurisprudence, particularly following Supreme Court Decision No. 1486 K/Pdt/1991. Since its incorporation into the legal framework through the 1997 amendment to the Marks Law and its continuation under the Marks Law 2016 and MLHR 67/2016, this criterion has consistently influenced judicial reasoning. This is evidently shown in the findings of this research which identifies 43 (forty-three) court decisions that emphasize registrations in several countries as a significant factor in establishing well-known mark status, demonstrating great relevance to “registration-based approach” within the national well-known mark protection system. At the same time, this “registration-based approach” differs fundamentally from the principles reflected in the Paris Convention, TRIPS, and WIPO Joint Recommendation, which based a well-known mark recognition primarily in public knowledge or recognition in the relevant sector arising from criteria such as duration of use, geographical coverage, and promotional activities.

In addressing the issue above, this research is able to identifies 9 (nine) decisions in which courts relied predominantly on evidence of use, promotion, investment, and awards, and in some instances did not treat multi-jurisdictional registration as mandatory prerequisite to determining well-known mark status. However, these findings also highlight an ongoing debate around metrics standard for well-known mark criteria, which remain absent in the Indonesian legal framework. The Paris Convention for the Protection of Industrial Property entrusts the competent authority – mainly done by the courts in Indonesia – with the discretion to determine whether a mark qualifies as well-known within its jurisdiction. Therefore, a broader and active use of jurisprudence could promote the development of the metric standard and further reformulate the norm on well-known mark recognition from a “registration-based approach” into an “use-based approach”, in order to genuinely represent public knowledge within the relevant sector in determining well-known mark status.

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