THE PRINCIPLE OF BURDEN OF PROOF IN TRADEMARK CANCELLATION LAWSUITS FILED BY INTERESTED THIRD PARTIES

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ABSTRACT
The principle of the allocation of the burden of proof in such lawsuits generates complex problems within the intellectual property (IP) evidentiary system, particularly due to the imbalance of legal standing between registered trademark owners and third parties filing cancellation claims on the grounds of non-use for three consecutive years. This study advances new arguments in: (1) the philosophical foundations of intellectual property/trademark law and the principle of equitable evidentiary rules, and (2) the ratio legis and the principle of burden-sharing in such third-party claims. The rigid application of the maxim *actori incumbit probatio* is no longer adequate in the context of modern commerce. Establishing proof of a negative fact—namely, the non-use of a trademark—requires a new paradigm in the form of a limited reverse burden of proof mechanism. The evidentiary burden may be proportionally shifted to the trademark owner, obliging them to demonstrate genuine use. The lack of clarity in the regulation of non-use evidence has resulted in disparities in judicial decisions and legal uncertainty. Accordingly, this study, employing a normative legal research method, concludes that a reconstruction of evidentiary principles that are fair and balanced is necessary.

INTRODUCTION

In the sphere of commerce, trademarks constitute one of the most recognized forms of intellectual property (IP) and exert a significant economic impact. Historically, trademarks have functioned to indicate the origin of goods or services while simultaneously distinguishing their quality from similar products. In the era of modern marketing, trademarks have evolved into symbols of reputation and trust. Frequently, the value of a trademark surpasses the physical value of the product it represents.

In Indonesia, trademarks are regulated under Law No. 20 of 2016 concerning Trademarks and Geographical Indications, which derives from the TRIPs Agreement. Article 1(1) of Law No. 20/2016 defines a trademark as: A sign capable of being represented graphically in the form of images, logos, names, words, letters, numerals, colour arrangements, in two-dimensional and/or three-dimensional form, sound, holograms, or a combination of two or more of these elements, to distinguish goods and/or services produced by persons or legal entities in trade.

According to Rahmi Jened, based on TRIPs and Law No. 20/2016, there are three cumulative elements of a trademark:[1]

1. The existence of a sign;
2. Distinctiveness;
3. Use in trade of goods and/or services.

In practice, the position of third parties is crucial as a mechanism of social control over trademark owners who neglect their rights. Cancellation lawsuits filed by third parties enable the redistribution of economic opportunities and prevent the accumulation of exclusive rights within a single entity. This principle aligns with the broader objective of balancing justice and legal certainty within the national legal system.

In several decisions of the Commercial Court, divergent interpretations have emerged regarding the allocation of the burden of proof. Some panels of judges place the entire burden on the plaintiff, while others apply a proportional model of evidentiary distribution between plaintiff and defendant. Such inconsistency not only creates disparities in judicial decisions but also disrupts the stability of the investment and trade climate in Indonesia. When norms intended to guarantee balance between the protection of rights and public interest instead generate uncertainty, the law ceases to fulfill the values of both certainty and equity simultaneously.

Within the framework of evidentiary theory, a negative fact represents the most complex form of proof, as it concerns the absence of an act. Accordingly, proof of non-use should ideally not be confined to direct evidence such as sales or promotional data, but should also encompass indirect evidence such as tax reports, distribution records, or relevant online activities. Such an evidentiary approach provides judges with the space to assess rationally and proportionally without being constrained by mere administrative formalities.

In the study conducted by Rosiah and colleagues, it was revealed that the position of the plaintiff, including interested third parties, is inherently unequal. They are required to prove something that is essentially invisible, namely, the non-use of a trademark in commerce for three consecutive years. Meanwhile, the defendant, as the trademark owner, need only submit minimal evidence, such as limited promotional activity, small-scale sales, or administrative documentation, to refute the cancellation claim. This imbalance exposes a gap between the legal ideal of promoting productive trademark use and the practical reality that permits the abandonment of rights without effective legal consequences. Based on a normative legal study and grounded in the theory of flexible and balanced evidentiary rules, this research finds that a fair and proportionate allocation of the burden of proof between the parties is necessary.

PROBLEM FORMULATION

To address the issues outlined above, this study highlights several legal questions, there are the concept of balanced and equitable legal protection of intellectual property rights (IPR) and also the characteristics and ideal construction of a fair and balanced principle of burden-sharing in trademark cancellation disputes.

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[1] Rahmi Jened, *Trademark Law in The Era Globalization dan Economic Integration*, Kencana Prenada Media, Jakarta, 2016 (Rahmi Jened VII), p. 6

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RESEARCH METHOD

This study employs normative legal research[2]. The approaches adopted are the statute approach and the case approach. The statute approach entails examining laws and regulations relevant to the legal issues under discussion, serving as the legal foundation for resolving trademark cancellation disputes. Meanwhile, the case approach involves analyzing cases of trademark cancellation lawsuits filed by interested third parties, including several decisions rendered by the Commercial Court at the Central Jakarta District Court and the Surabaya District Court.

In addition to the aforementioned method, this study employs a conceptual approach, which is a method used to analyze legal issues by examining prevailing views, doctrines, and principles within the discipline of law. This approach assists researchers in comprehending fundamental concepts such as rights, obligations, and legal subjects.

DISCUSSION

The Concept of Balanced and Equitable Legal Protection of Intellectual Property Rights

In principle, the enjoyment of exclusive rights over IPR can only be exercised with the assistance of the state (with the exception of copyright). To limit the excessive assertion of individual interests, the law guarantees the preservation of societal interests[3]. Thus, the system of IPR protection must ensure a balance between the interests of IPR holders and those of the general public. These two interests represent two sides of the same coin and must be equally considered within the framework of IPR protection, as reflected in Article 27 of the Universal Declaration of Human Rights:

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Beyond these principles, several theories have been advanced to explain the necessity of IPR protection:[4]

a. Reward Theory: Creators or inventors should be granted recognition and protection as a form of societal appreciation for their efforts and achievements.
b. Recovery Theory: Inventors or creators, having expended time and energy, deserve an opportunity to recover what they have invested.
c. Incentive Theory: Incentives serve to attract effort and resources toward creativity, innovation, and the production of new works.
d. Public Benefit Theory: IPR protection is justified as a means of promoting economic development.
e. Risk Theory: Intellectual property results from research that entails risks, and thus legal protection is warranted to safeguard such risky endeavors.
f. Economic Growth Theory: IPR protection is recognized as an instrument of economic development, forming part of an effective system of growth.[5]

These theories are reinforced by Kartadjoemena, who argues that behind the system of IPR protection lies a series of considerations. Owners invest intellectual effort, energy,

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[2] Peter Mahmud Marzuki. *Introduction to The Science of Law*, Kencana, Jakarta, 2008, p. 47

[3] Kholis Roisah, *The Concept of Intellectual Property Law: History, Definition, and the Philosophy of Intellectual Property Recognition Across Time*, Setara Press, Malang, 2013, p. 26

[4] Nico Kansil, *The Legal Protection of Intellectual Property Rights*, paper presented at the National Seminar on Intellectual Property Crimes, UNDIP, 27 April 1993, h.4-5

[5] Robert M. Sherwood, *Intellectual Property and Economic Development*, Boulder Westview Press, 1990.

and financial resources to acquire such property. When intellectual property is used for commercial purposes, it is deemed reasonable that the owner should receive compensation.[6]

Implicitly, three forms of commercial utilization are recognized: first, direct exploitation by the owner, yielding financial compensation from transactions; second, licensing or transfer to other parties in exchange for remuneration; and third, the owner's ability to prevent others from exploiting the property.

The principles underlying IPR protection vary across jurisdictions, influenced by differences in legal systems, politics, culture, and philosophical foundations.

Ratio Legis and the Principle of Balanced Allocation of the Burden of Proof in Trademark Cancellation Lawsuits Filed by Third Parties

1. **Differences in Evidentiary Principles Between Intellectual Property (IP) and General Civil Law**

a. **Differences Between Oral and Written Evidence**

The evidentiary system in Indonesian civil procedure is fundamentally based on two primary forms: oral evidence (verbal evidence) and written evidence (documentary evidence). In general civil cases, both forms of evidence carry nearly equal weight, as each is regarded as a means of establishing formal truth before the court.[7] However, in intellectual property (IP) disputes, a paradigm shift occurs: written evidence and administrative documentation assume a dominant role, while oral evidence functions merely as a complement.

This distinction arises because the subject matter of IP disputes is immaterial in nature and often originates from formal administrative processes, such as trademark, copyright, or patent registration.[8] By contrast, in general civil cases—such as breach of contract, tort, or inheritance disputes—personal relationships and empirical facts play a stronger role, making oral testimony a primary source of proof. Thus, the nature of the dispute determines the relative weight of oral and written evidence within each legal regime.

In general civil cases, oral evidence holds a crucial position, as judges must assess the honesty, motives, and context of the parties' actions. Subekti explains that oral testimony has the advantage of depicting factual circumstances that written evidence cannot capture, particularly in cases involving intent and personal trust[9]. Nevertheless, the strength of oral evidence depends heavily on the credibility of witnesses and the consistency of their statements, leaving judges with discretion in evaluating its reliability.

Conversely, in IP disputes, written evidence constitutes the foundation of proof. Every intellectual property right essentially originates, is recognized, and is protected through official state documents such as certificates or registration records.[10] Accordingly, the evidentiary system in IP law tends to adopt a document-based system, wherein written evidence, administrative records, and electronic evidence serve as the primary instruments for establishing ownership or infringement.

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[6] HS. Kartadjoemena, GATT, WTO and Result Uruguay Round, Indonesia University (UI Press), 1977, p.24

[7] Subekti, R., *Evidence Law*, Jakarta: Pradnya Paramita, 1983., p. 52.

[8] Article 1 point 5 and 6 Law No. 20 of 2016 on Trademarks and Geographical Indications

[9] Subekti, R., *Evidence Law*,… p.54

[10] Yahya Harahap, *Civil Procedural Law: Lawsuit, Trial, Seizure, Evidence, and Court Judgment*, Jakarta: Sinar Grafika, 2008., p. 857

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In the context of trademark cancellation lawsuits based on non-use, written evidence plays a vital role in demonstrating whether a trademark has been genuinely used in commerce. Documents such as financial reports, invoices, advertisements, or distribution contracts may be employed to prove relevant commercial activity.[11] Oral evidence, in this context, merely supports written proof—for instance, through expert testimony or industry witnesses who can explain market conditions or brand reputation.

Sudikno Mertokusumo characterizes evidentiary principles in IP disputes as a form of "substantive administrative proof," combining the authority of official documents with evidence of actual use in practice.[12] Judges are thus required not only to assess the validity of documents but also to examine whether such documents reflect genuine use consistent with the social function of intellectual property rights.

Meanwhile, in general civil cases, judges adhere to the principle of balance between oral and written evidence, as stipulated in Article 1905 of the Civil Code (*KUHPerdata*) and Article 164 of the *Herzien Inlandsch Reglement* (HIR). Written evidence is employed to enforce formal agreements, while oral evidence serves to fill gaps or clarify circumstances not recorded in writing[13]. Consequently, human testimony remains central to establishing formal truth, with documents functioning as supplementary instruments of juridical trust.

Another significant distinction lies in the recognition of electronic evidence. In IP disputes, particularly those involving digital infringements, electronic evidence such as screenshots, server data, metadata, or online records constitutes primary admissible proof under Article 5 of Law No. 11 of 2008 on Electronic Information and Transactions. In general civil cases, however, electronic evidence is often treated as supplementary and subject to manual verification. Thus, the IP regime is more adaptive to technological developments than conventional civil litigation.

Yahya Harahap observes that the dominance of written evidence in IP disputes reflects the orientation of modern law, which emphasizes efficiency, certainty, and data verifiability[14]. Oral testimony, by contrast, is often subjective and emotional, whereas documents provide stable factual clarity. Nonetheless, excessive reliance on documents carries risks, as it may neglect social context and the true intentions of the parties. Therefore, judges in IP disputes must still combine written and oral evidence proportionally.

In sum, evidentiary principles in IP and general civil law reveal divergent epistemological orientations. IP law emphasizes formal validity, administrative legality, and documentary clarity, while general civil law prioritizes empirical proof through oral testimony. In the context of modern adjudication, both systems must be integrated to ensure that law does not lose its human dimension amid the demands of technology and economic globalization.

b. Differences Between Free and Bound Evidentiary Principles

Evidence constitutes the core of judicial proceedings. In civil procedure, including IP disputes, evidentiary principles determine the scope of judicial discretion in assessing proof and establishing legally acceptable truth. Conceptually, two principal doctrines shape judicial reasoning in evaluating evidence: the principle of free evaluation of evidence (*vrije bewijsleer*) and the principle of bound evaluation of evidence (*wettelijke bewijsleer*).[15] These

[11] World Intellectual Property Organization (WIPO), *Guide on Evidence in IP Litigation*, Geneva, 2020, p. 36
[12] Sudikno Mertokusumo, *Indonesian Civil Procedural Law*. Yogyakarta: Liberty, 2002.,p. 158
[13] Indonesia Civil Code (KUHPerdata), Article 1905; HIR Pasal 164
[14] Yahya Harahap, *Civil Procedural Law: Lawsuit, Trial, Seizure, Evidence, and Court Judgment*,…,p.859
[15] Subekti, R., *Evidence Law*,… p.60

doctrines represent two major perspectives on how legal truth should be attained—either through judicial freedom of assessment or through formal statutory constraints.

The principle of free evaluation of evidence rests on the view that judges are seekers of truth endowed with integrity and wisdom to assess evidence rationally, independently, and contextually[16]. Under this principle, no rigid rules limit the probative value of evidence; judges are free to employ reason and experience to determine its weight. This system facilitates substantive justice by allowing moral and social considerations that cannot be codified textually.

By contrast, the principle of bound evaluation of evidence holds that the probative value of evidence must be determined strictly according to statutory provisions.[17] Judges may only evaluate evidence insofar as it is recognized by law. This approach aims to guarantee legal certainty and uniformity in judicial practice. Subekti emphasizes that this system prevents excessively subjective judgments by restraining judges from evaluating beyond the normative framework established by legislation.

In Indonesian civil procedure, these two principles do not operate in isolation but converge into a model of limited free evaluation of evidence.[18] Judges are granted discretion to assess the strength of evidence, but only with respect to evidentiary instruments recognized by law. This model is considered ideal, as it balances certainty and justice—two fundamental values that often stand in tension within the enforcement of law.

The application of these two principles is markedly different in IP disputes compared to general civil cases. In IP cases—particularly those involving trademarks, patents, or copyrights—judges are often more constrained, as registration certificates carry exceptionally strong evidentiary weight.[19] Such certificates constitute formal proof of ownership that can only be rebutted through counter-evidence. Conversely, in general civil cases, judges tend to exercise greater freedom, since factual truth relies more heavily on testimony and interpersonal conduct.

Sudikno Mertokusumo explains that judicial freedom in evaluating evidence in general civil cases is a consequence of the nature of civil relationships, which arise from agreements and human behavior.[20] Judges must therefore assess moral aspects, intent, and conduct in their entirety, not merely through formal documentation. In IP disputes, however, the subject matter consists of rights created by an administrative legal system, making the legality of documents the primary binding measure.

Nevertheless, technological developments and globalization challenge the boundaries of both principles. In IP cases, for instance, judges cannot rely solely on certificates if evidence of use demonstrates infringement or abandonment of rights.[21] Here, the principle of free evaluation plays a role: judges exercise discretion to assess substantive trademark use, good faith, or public deception. In other words, documents no longer serve as absolute proof but rather as part of a broader factual construction.

Retnowulan Sutantio emphasizes that the application of free evaluation should not be understood as unlimited freedom, but as responsible freedom (*verantwoorde vrijheid*).[22] In the IP context, judges employing free evaluation must still ground their assessments in positive

[16] Subekti, R., *Evidence Law*,… p.63
[17] Sudikno Mertokusumo, *Indonesian Civil Procedural Law*,…p.159
[18] Yahya Harahap, *Civil Procedural Law: Lawsuit, Trial, Seizure, Evidence, and Court Judgment*,…,p.860
[19] Article 1 point 5 juncto Article 3 Law No. 20 of 2016 on Trademarks and Geographical Indications
[20] Sudikno Mertokusumo, *Indonesian Civil Procedural Law*,…p.161
[21] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Article 19(1)
[22] Retnowulan Sutantio & Iskandar Oeripkartawinata, *Civil Procedural Law in Theory and Practice,* Mandar Maju, 1989, p. 142

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law and principles of prudence. Such discretion is not intended to contravene the law, but to realize justice in cases that cannot be resolved solely through textual approaches.

From an international perspective, the World Intellectual Property Organization (WIPO) advocates a hybrid evidentiary system in IP disputes, combining judicial discretion with formal evidentiary standards. This system enables judges to evaluate economic and social contexts without sacrificing administrative legal certainty. Such a model has been widely applied in common law jurisdictions and is gradually being adapted within Indonesian commercial court practice.

Thus, the distinction between free and bound evidentiary principles in IP and general civil cases lies not only in procedural aspects but also in the fundamental values they seek to achieve. Free evaluation emphasizes substantive truth and legal morality, while bound evaluation underscores formal certainty and procedural justice. In practice, judges are required to harmonize both approaches, ensuring that law does not remain confined to textual interpretation but functions as a living instrument of truth within the dynamics of modern society and economy.

c. Differences Between Direct and Indirect Evidence

Evidence in civil procedure, including IP disputes, may be classified into direct evidence and indirect evidence.[23] Direct evidence explicitly demonstrates the truth of a legal event without requiring additional inference, whereas indirect evidence necessitates deductive reasoning from other facts to reach a legal conclusion. This distinction is fundamental, as it determines the extent to which judges may employ logic and intuition in uncovering substantive truth.

According to Subekti, direct evidence typically takes the form of independent instruments such as authentic deeds, admissions, or eyewitness testimony of legal events[24]. Such evidence provides immediate certainty to judges, as it possesses conclusive probative value. Indirect evidence, by contrast, consists of proof that merely points to a strong presumption of truth, such as legal presumptions, economic facts, or recurring behavioral patterns. In practice, both forms complement one another, since not all facts can be proven directly.

In general civil cases, judges rely more heavily on direct evidence, as most disputes concern concrete acts such as contract signing, financial transactions, or performance of obligations[25]. In IP disputes, however—particularly in trademark cancellation lawsuits based on non-use—indirect evidence often becomes the only available method for interested third parties. This is because the fact to be proven is the absence of activity (non-use), a negative fact that is inherently difficult to establish empirically. Yahya Harahap explains that indirect evidence depends on the logical correlation between indications and legal conclusions. In IP disputes, for example, plaintiffs may demonstrate the absence of products in the market, lack of advertising, or stagnant promotional data as indirect proof of non-use. Judges then assess the logical strength of the connection between such evidence and the claims advanced. Thus, indirect evidence requires analytical capacity on the part of judges to interpret the meaning behind indicative data.

Suyud Margono describes indirect evidence as a form of inferential proof that is particularly significant in IP disputes due to their abstract and complex nature[26]. In many cases, intellectual property cannot be proven through physical existence but rather through

[23] Sudikno Mertokusumo, *Indonesian Civil Procedural Law*,…p.162
[24] Subekti, R., *Evidence Law*,… p.66
[25] Yahya Harahap, *Civil Procedural Law*:…p.867
[26] Suyud Margono, *Indonesian Intellectual Property Law*, Jakarta: Sinar Grafika, 2018, p. 110

administrative records, economic activity, or digital traces. Judges must therefore remain open to new forms of evidence, such as digital footprints, online search results, or records of rights usage in electronic systems.

The World Intellectual Property Organization (WIPO) further underscores that indirect evidence is an essential instrument for achieving substantive justice in IP disputes, given the limitations of formal proof. For instance, in international trademark cases, corporate inactivity in using a mark may be demonstrated through public data such as global sales reports, trade publications, or cross-border promotional records. Such evidentiary models expand the horizon of proof toward a more rational system adaptive to technological developments.

Accordingly, the distinction between direct and indirect evidence lies not only in the form of proof but also in judicial reasoning in evaluating truth. Direct evidence affirms formal clarity, while indirect evidence emphasizes analytical precision and deductive logic. In IP disputes, both principles operate in tandem: direct evidence provides administrative legitimacy, while indirect evidence ensures that protected rights are genuinely exercised and not misused[27]. In the context of trademark cancellation lawsuits, the balance between the two demonstrates that law serves not only to uphold ownership but also to demand accountability in its use.

d. Differences in the Proof of Negative Facts

One of the most complex issues in modern evidentiary law is the proof of negative facts, namely circumstances that must be established precisely because they did not occur. In the context of intellectual property (IP), this issue arises concretely in trademark cancellation lawsuits based on non-use. Unlike infringement cases, which require proof of unauthorized use, non-use cancellation demands proof that a trademark has not been used for a specified period.

Subekti notes that proving a negative fact is the most difficult form of proof in civil procedure, since logically, absence cannot be directly demonstrated. Consequently, the principle of negative proof places judges in a more active role, requiring them to evaluate indications and contextual factors that lead to the conclusion that the alleged event never occurred. In non-use cancellation cases, this difficulty is compounded by the legal requirement to prove the absence of trademark use for three consecutive years without valid justification.

The principle of negative proof substantively requires a combination of indirect evidence and reversal of legal inference. In practice, interested third parties are not obliged to prove absolutely that a trademark has not been used, but rather to present strong indications of non-use based on empirical data, such as the absence of promotion, stagnant financial reports, or the lack of products in the market. The burden then shifts to the trademark owner to demonstrate that use has occurred or that valid reasons prevented such use.

Sudikno Mertokusumo emphasizes that in such cases, the maxim *actori incumbit probatio*—he who alleges must prove—applies[28]. However, in negative proof cases, this principle cannot be applied rigidly. Judges must interpret it proportionally, so that parties alleging absence are not burdened with impossible proof. Accordingly, negative proof in IP disputes tends toward a burden-shifting model.

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[27] Subekti, R., *Evidence Law*,… p.70
[28] Sudikno Mertokusumo, *Indonesian Civil Procedural Law*,…p.164

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Yahya Harahap argues that limited reversal of the burden of proof is permissible where there exists a *presumptio iustae causa* (reasonable legal presumption)[29]. In non-use cancellation cases, once the plaintiff has presented strong indications of the absence of relevant economic activity, judges may treat this as a prima facie presumption. The trademark owner is then required to prove the contrary. This pattern reinforces procedural fairness, ensuring that both parties have equal opportunity to defend their interests.

In international law, the principle of negative proof is reflected in Article 19 of the TRIPs Agreement, which provides that trademark registration may be canceled if the mark has not been used for three consecutive years, unless the owner demonstrates valid reasons for non-use[30]. This formulation indicates that the primary burden of proof rests with the trademark owner, while third parties need only present rational presumptions of non-use. TRIPs thus adopts a more realistic approach to enforcing legal responsibility for unused rights.

Suyud Margono contends that negative proof in IP disputes cannot be separated from the philosophy of the social function of intellectual property[31]. Exclusive rights are not static entitlements but dynamic instruments intended to foster innovation and economic activity. Accordingly, if such rights are not used, they lose their social significance. Cancellation through negative proof serves as a corrective mechanism against the abandonment of rights that could otherwise hinder fair competition.

In Indonesian commercial court practice, negative proof often generates divergent judicial interpretations. Some panels place the full burden on third parties to prove non-use concretely, while others adopt a proportional evidentiary model[32]. This inconsistency produces disparities in judgments, undermining legal certainty. Therefore, clearer guidelines are needed, whether through jurisprudence or Supreme Court regulations, to standardize approaches to negative proof in IP disputes.

The World Intellectual Property Organization (WIPO) stresses that negative proof requires interpretive methods based on circumstantial evidence rather than mere administrative formalities[33]. By recognizing the probative value of indirect evidence, judges can objectively assess economic contexts and market behavior. This approach enables the legal system to balance exclusive rights with the moral obligation of trademark owners to use them productively.

Thus, negative proof in trademark cancellation lawsuits is not an exception to general evidentiary principles but an adaptation to the unique characteristics of intellectual property rights. Negative proof functions as a corrective mechanism ensuring that trademark law does not become a passive instrument of monopoly but remains aligned with the principle of public utility. In an ideal legal system, this principle must be understood as a manifestation of justice.

2. Differences in Evidentiary Strength

a. Differences in the Evidentiary Strength of Authentic Deeds

Within civil law, authentic deeds occupy the highest position among written evidence, as they provide formal guarantees of the truth of the legal events recorded therein[34]. Article

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[29] Yahya Harahap, *Civil Procedural Law:*…p.872

[30] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Article 19(1)

[31] Suyud Margono, *Indonesian Intellectual*…p.113

[32] Abstracted from the jurisprudential analysis of the Central Jakarta Commercial Court, 2018–2023.

[33] World Intellectual Property Organization (WIPO), Guide on Evidence in IP Litigation, Geneva, 2020, p. 50

[34] Article 1868 Indonesian Civil Code

1868 of the Indonesian Civil Code (*KUHPerdata*) defines an authentic deed as "a deed made in the form prescribed by law, by or before a public official authorized to do so at the place where the deed is made." This definition underscores that the evidentiary strength of authentic deeds derives from the function of public officials as guarantors of legal validity.

Subekti emphasizes that the evidentiary strength of authentic deeds is both perfect and binding, meaning that the statements contained therein must be accepted as true by the court unless proven otherwise[35]. Thus, authentic deeds not only reflect the will of the parties but also serve as instruments of the state guaranteeing legal certainty. Judges cannot reject the formal truth of such deeds unless the opposing party proves that the deed is fraudulent or legally defective.

In practice, the evidentiary strength of authentic deeds encompasses three dimensions: external strength (*uiterlijke bewijskracht*), formal strength (*formele bewijskracht*), and material strength (*materiele bewijskracht*)[36]. External strength concerns the validity of form and official signatures; formal strength guarantees that the deed was executed before a competent public official; and material strength affirms that the contents of the deed are presumed true until proven otherwise. These three layers render authentic deeds virtually irrefutable in judicial proceedings.

Sudikno Mertokusumo further adds that the strength of authentic deeds is not merely formal but also carries moral evidentiary value, as they are issued by public officials who bear official responsibility[37]. Consequently, falsification of authentic deeds is regarded not only as a civil violation but also as a criminal offense, since it undermines state authority. This perspective illustrates that the authenticity of deeds embodies both public and private legal dimensions.

However, legal systems across jurisdictions differentiate the evidentiary strength of authentic deeds according to their legal traditions. In civil law systems such as those of the Netherlands and Indonesia, authentic deeds possess absolute evidential value. Judges have no discretion to question their contents unless the deed is lawfully annulled. By contrast, in common law systems such as England and the United States, notarial documents do not carry binding evidentiary force; they function merely as prima facie evidence, the truth of which remains subject to judicial evaluation.

In Dutch legal practice, the *Burgerlijk Wetboek* (BW) and the *Wet op het Notarisambt* (Wna) confer strong legitimacy upon notaries as *openbaar ambtenaar*[38]. Deeds executed before a notary possess absolute evidentiary strength regarding their content and date. Annulment of such deeds may only be pursued through a special procedure, *actio in falsum*, which requires equivalent proof. This principle underscores that the authenticity of deeds represents public trust in the notarial profession.

Conversely, in common law systems, the truth of notarial documents is not binding. Judges retain discretion to assess and interpret their contents in light of other evidence presented in court[39]. This system emphasizes factual substance over documentary formalism. Deeds executed before a notary public in the United States or a commissioner of oaths in England serve as presumptive proof, not conclusive evidence.

In the context of international civil law, the World Intellectual Property Organization (WIPO) affirms that in cross-border IP disputes, the evidentiary strength of authentic

[35] Subekti, R., *Evidence Law*,… p.75.
[36] R. Subekti Joenoes, *Evidence and Judicial Decisions in Civil Cases*, Alumni, 1985, p. 91
[37] Sudikno Mertokusumo, *Indonesian Civil Procedural Law*,…p.174
[38] Retnowulan Sutantio & Iskandar Oeripkartawinata, *Civil Procedural* … p. 142
[39] WIPO, *Comparative Study on Documentary Evidence in IP Disputes*, Geneva, 2020, p. 62

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deeds depends on the legal system of the jurisdiction in which the deed was executed[40]. This principle is known as lex loci actus, meaning that the law of the place of execution determines its evidentiary value. Thus, a notarial deed from a civil law jurisdiction does not automatically carry absolute evidentiary force in a common law country.

Wahyono Darmabrata observes that the divergence in evidentiary strength between the two systems stems from epistemological differences in the pursuit of legal truth. Civil law emphasizes legal certainty through formalism and legality, whereas common law emphasizes substantive justice through empirical fact-finding. These differences are not contradictory but complementary: formalism ensures stability, while flexibility ensures fairness.

From this analysis, it may be concluded that authentic deeds serve as the principal instrument of legal certainty, though their evidentiary strength varies across legal traditions. In civil law systems, they occupy the apex of the evidentiary hierarchy, virtually irrefutable; in common law systems, they constitute one piece of evidence among many, subject to judicial scrutiny. In modern legal contexts, the challenge lies in integrating the formal strength of authentic deeds with digital and electronic evidence, without diminishing their integrity as symbols of public trust in law.

b. Differences in the Evidentiary Strength of Private Deeds

Unlike authentic deeds, which derive legitimacy from public officials, private deeds (*onderhands akte*) are instruments created by the parties themselves without the involvement of authorized officials. Article 1874 of the Indonesian Civil Code (*KUHPerdata*) defines private deeds as writings signed privately, made to prove an agreement or statement between interested parties. Thus, their evidentiary strength depends on the authenticity of signatures and the acknowledgment of the parties.

According to Subekti, private deeds possess conditional evidentiary strength, attaining full validity only when the signatures therein are acknowledged by the signatories[41]. If a party denies the authenticity of a signature, the judge must order supplementary proof, such as graphological examination or witness testimony. Accordingly, private deeds are not automatically binding but await formal validation by the parties.

Sudikno Mertokusumo adds that the evidentiary strength of private deeds is relative and limited, binding only upon the signatories[42]. Such deeds do not bind third parties until their authenticity is established. Therefore, their evidentiary value is lower than that of authentic deeds. Nonetheless, private deeds offer advantages of flexibility, affordability, and expediency in everyday transactions.

In Dutch law, private deeds are regulated under Articles 156–159 of the *Burgerlijk Wetboek* (BW), which affirm similar principles: their evidentiary strength arises only after acknowledgment of signatures by the parties concerned. However, Dutch practice introduces the concept of *akte met vaste dagtekening* (deeds with a fixed date), which may be strengthened legally if registered or legalized. This mechanism creates a middle ground between the flexibility of private deeds and the certainty of authentic deeds.

In common law systems such as England and the United States, similar instruments are known as private instruments or contracts under hand[43]. These documents do not carry absolute evidentiary force but may be admitted as prima facie evidence, valid until rebutted

[40] Wahyono Darmabrata, *Law of Evidence in the Perspective of Civil Law Modernization*, Jakarta: UI Press, 2019, p. 128

[41] Subekti, R., *Evidence Law*,… p.82

[42] Sudikno Mertokusumo, *Indonesian Civil Procedural Law*,…p.178

[43] WIPO, Comparative Study… p.34

by the opposing party. Judges retain discretion to assess their truth based on circumstantial evidence or supplementary testimony. This approach reflects the common law's prioritization of substantive truth over formal certainty.

Retnowulan Sutantio highlights that in Indonesian civil litigation practice, private deeds often serve as primary evidence in simple civil disputes, particularly in loan agreements, sales contracts, or business cooperation arrangements[44]. In such contexts, judges assess not only the formal authenticity of signatures but also interpret the parties' intentions and the consistency of the deed's contents with their legal conduct. Thus, private deeds function dually: as evidentiary instruments and as reflections of good faith.

Conceptually, the difference in evidentiary strength between authentic deeds and private deeds lies in the source of legitimacy and the degree of trust they command. Authentic deeds derive their evidentiary force from the authority of public officials, whereas private deeds obtain their strength from the acknowledgment of personal intent.

In the development of modern law, particularly in the digital era, the boundary between the two has begun to blur with the emergence of electronic documents signed using certified digital signatures. This phenomenon necessitates a reconstruction of evidentiary values so that law remains adaptive to technological realities while preserving the principles of authenticity and legal accountability of the parties.

c. Differences in the Evidentiary Strength of Witness Testimony

Witness testimony constitutes one of the oldest and most fundamental forms of evidence in civil law systems. In many cases, particularly when written evidence is unavailable, testimony becomes the primary source for judges to assess the truth of a legal event[45]. Nevertheless, the evidentiary weight of witness testimony varies across jurisdictions, depending on the legal tradition and the relative value accorded to personal versus documentary evidence.

In civil law systems such as those of the Netherlands and Indonesia, witness testimony occupies a subordinate position relative to written evidence. Subekti observes that testimony serves as supplementary proof, used only when other evidentiary instruments are insufficient. This is because civil law emphasizes legal certainty through objective and formal evidence, whereas testimony is often considered subjective and vulnerable to memory or personal perception.

Sudikno Mertokusumo stresses that the evidentiary strength of witness testimony in civil cases is free but limited[46]. Judges have discretion to assess the credibility of witnesses, but must remain attentive to principles of proportionality and consistency across statements. Testimony standing alone, without corroboration, is generally insufficient to establish a legal right or obligation.

By contrast, common law systems place witness testimony in a far more central position. In English and American law, oral evidence is a primary element of proof, believed to reveal substantive truth through cross-examination[47]. This mechanism allows the credibility of witnesses to be tested directly by the parties, with judges evaluating spontaneous responses and consistency of answers in court.

Yahya Harahap explains that the fundamental difference between the two systems lies in the epistemological value of testimony[48]. In civil law, truth is considered to derive from

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44 Retnowulan Sutantio & Iskandar Oeripkartawinata, *Civil Procedural* … p. 147
45 Subekti, R., *Evidence Law*,… p.88
46 Sudikno Mertokusumo, *Indonesian Civil Procedural Law*,…p.184
47 WIPO, *Comparative Study on Oral Testimony in Civil and IP Litigation*, Geneva, 2020, p. 23
48 Yahya Harahap, *Civil Procedural Law*:…p.877

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form (documents), whereas in common law, truth emerges from verbal interaction (testimony). Consequently, common law courts accord greater weight to direct observation of witness demeanor, expression, and speech style as psychological indicators of honesty.

In Dutch practice, Articles 163–179 of the *Wetboek van Burgerlijke Rechtsvordering* (Rv) stipulate that witness testimony must be given under oath and recorded in an official court transcript. Even so, Dutch judges generally assign limited weight to testimony unsupported by written evidence, particularly in commercial civil disputes. Conversely, in the United States and England, courts may render judgments based solely on credible, uncontested testimony.

The World Intellectual Property Organization (WIPO), in its comparative reports, notes a modern trend toward greater recognition of expert and technical witness testimony in intellectual property disputes. In trademark or copyright infringement cases, expert testimony often proves crucial in explaining technical aspects not captured in legal documents. This development reflects a shift from formalism to rationalism: the value of testimony is no longer judged by its form but by its relevance and reliability in assisting judges to uncover substantive truth.

Characteristics and the Ideal Construction of a Balanced and Equitable Principle of Burden of Proof in Trademark Cancellation Lawsuits

Supreme Court Decision No. 48 PK/Pdt.Sus-HKI/2024 involved Exxon Mobil Corporation of the United States as the petitioner for judicial review, against Lie Wie Tjung and Lie Ndo Hendra Rochilly as respondents, with the Ministry of Law and Human Rights, represented by the Directorate General of Intellectual Property, as co-respondent.

The dispute concerned the trademark "TRICO and Flying Horse Painting" (No. IDM000262193, Class 1), registered under the defendant's name. Exxon Mobil filed a lawsuit before the Jakarta Commercial Court on the grounds that the mark had not been used for three consecutive years for several types of goods, including additive oil, oil treatment, hydraulic fluid, brake fluid, and chemical additives for fuel. The lawsuit was based on Article 74(1) of Law No. 20 of 2016 on Trademarks and Geographical Indications, which enshrines the principle of use it or lose it as the basis for trademark cancellation.

At first instance, the Commercial Court, through Decision No. 120/Pdt.Sus/Merek/2022/PN.Niaga.Jkt.Pst., partially granted Exxon Mobil's claim, recognizing the plaintiff as an interested party entitled to seek partial cancellation of the mark. However, at the cassation level, the Supreme Court, through Decision No. 905 K/Pdt.Sus-HKI/2023, annulled the lower court's ruling and declared Exxon Mobil's lawsuit inadmissible (*niet ontvankelijk verklaard*). This cassation decision prompted Exxon Mobil to file a petition for judicial review.

The petition was based on the existence of a manifest error in the cassation ruling, which allegedly disregarded evidence of non-use and the plaintiff's legal standing as the legitimate international owner of the "Flying Horse" mark. Exxon Mobil submitted additional evidence, including international documentation and independent market surveys, demonstrating that the defendant's "TRICO and Flying Horse Painting" mark had not been used for more than three years.

In its judicial review, the Supreme Court found the petition justified, noting manifest error in the reasoning of both the trial and cassation courts. The panel concluded that the lower courts had erred in interpreting the legal facts and the causal relationship between the defendant's trademark registration and the plaintiff's legal interests.

The Court established several key findings. First, Exxon Mobil is the legitimate successor to the "Flying Horse" trademark, used since 1911 and registered in multiple countries including Denmark, Australia, Belgium, Germany, Cyprus, and Estonia. Following the merger between Exxon Corporation and Mobil Oil Corporation, Exxon Mobil transferred the entire trademark portfolio, including the legendary "Flying Horse" design. Second, Exxon Mobil applied to register the "Flying Horse" mark in Indonesia in 2016 for transmission fluids, brake fluids, and chemical additives for lubricants. However, the application was rejected by the Trademark Office due to the prior registration of "TRICO and Flying Horse Painting" under Lie Wie Tjung.

Accordingly, the Court held that Exxon Mobil possessed legitimate legal standing as an interested party, since its rejection was directly based on the defendant's registration. Under the principle of interest to sue, Exxon Mobil's standing was not hypothetical but actual, as there was a concrete legal impediment to its commercial rights.

The Court then assessed the evidence of non-use. Based on independent market surveys conducted in five major cities—Jakarta, Surabaya, Bandung, Medan, and Semarang—it was established that the "TRICO and Flying Horse Painting" mark had not appeared in commerce between 2010 and 2020. This evidence was corroborated by documents (Exhibits P-11 to P-76) showing the absence of advertising, promotion, distribution, or active licensing.

The Supreme Court noted that the trial court had previously rejected this evidence on the grounds that it did not establish the precise date of last use. However, in its judicial review, the Court reasoned that the absence of evidence of use over ten years constituted strong indication of non-use, and proof should not require exact determination of the last date of use. Since non-use involves a negative fact, the burden of proof cannot be imposed absolutely.

This reasoning reflects the Court's departure from a formalistic approach toward a substantive approach grounded in legal probability. In the context of non-use cancellation, evidence of the absence of commercial activity over a defined period is sufficient to indicate non-use.

The Supreme Court also emphasized the importance of distinguishing between trademark cancellation and trademark invalidation. Cancellation is based on the objective fact of non-use, whereas invalidation concerns violations of other trademark rights or bad faith. In this case, the Court clarified that cancellation is an administrative legal action that may be requested by third parties to preserve the integrity of the registration system.

Furthermore, the Court reinforced the principle of the social function of trademark rights, affirming that exclusive rights are not absolute but conditional, dependent upon genuine use in the marketplace. By cancelling unused trademarks, the Court safeguards the integrity of the public trademark register so that it contains only active marks genuinely employed in commerce. This aligns with the widely accepted doctrine of "use it or lose it" in international legal systems.

This decision also reflects the convergence of Indonesian law with international standards. Under the EU Trade Mark Regulation (Article 58) and the U.S. Lanham Act (Section 45), cancellation for non-use after five years is a standard mechanism to prevent trademark warehousing. By adopting a similar spirit, the Supreme Court affirmed that the national trademark system must reflect real economic activity and foster a healthy business climate.

Theoretically, this ruling may be linked to Gustav Radbruch's theory of justice, which prioritizes substantive justice over mere legal certainty. Whereas in other cases the Court has rejected non-use claims due to the perceived lack of formal evidence (such as in Hilton

v. Herman Sudarta), in this case the Court chose to uphold substantive justice by materially assessing that trademark rights should not be maintained without use.

The cancellation of the "TRICO and Flying Horse Painting" mark also prevents market inefficiency arising from registrations intended merely to block competitors from entering the same sector. By eliminating passive registrations, the Court indirectly stimulates healthy competition and innovation in the domestic lubricant market.

Accordingly, Supreme Court Decision No. 48 PK/Pdt.Sus-HKI/2024 may be viewed as a manifestation of balance between the protection of individual rights and the public interest. The Court enforced the use-it-or-lose-it principle through a contextual and equitable approach, whereby genuine use serves as proof of commitment to the social function of intellectual property rights.

Ultimately, by granting Exxon Mobil Corporation's petition for judicial review and ordering partial cancellation of the "TRICO and Flying Horse Painting" trademark registration, the Supreme Court not only corrected a juridical error but also strengthened the legitimacy of the national trademark system. This ruling constitutes progressive jurisprudence that expands the interpretation of Article 74 of the Trademark Law, confirming that trademark rights are dynamic and must remain aligned with the principles of justice, legal certainty, and economic utility.

In the landscape of modern trademark law, the shift from a formalistic paradigm toward a teleological approach marks a serious judicial effort to enforce justice as a living practice rather than a rigid textual rule. Judges now operate in the gray area between certainty and utility, interpreting law with new social sensibilities: exclusive rights are instruments, not ends in themselves. In non-use cases, market rationality and the social responsibility of trademark owners become the primary benchmarks. In this way, courts cease to be mere conduits of rules and instead act as interpreters of values, ensuring that law remains responsive to the pulse of economic life.

This development ensures that the first-to-file principle does not devolve into "first-to-freeze." Registration priority provides certainty at the outset, but retention of rights is tied to actual use. Such a design rejects the stockpiling of rights that blocks new entrants, while granting trademark owners a reasonable window to enter the market. This represents a realistic balance: administratively firm enough to guide behavior, substantively flexible enough to prevent injustice.

This normative construction rests upon the constitutional guarantee of judicial independence. Article 24 of the 1945 Constitution and Law No. 48/2009 mandate judges to uphold justice, certainty, and utility, while also uncovering living legal values within society. Article 10 of the Judicial Power Law closes the door to denial of justice: judges may not refuse to adjudicate on the grounds of legal ambiguity. In non-use cases, this mandate is operationalized through proportional legal discovery—limited burden-shifting when strong indications exist, recognition of auditable digital evidence, and acceptance of valid reasons for non-use when public policy obstructs use.

Empirically, the TRICO case demonstrates how courts assess the right of third parties to file cancellation suits under Article 74(1). Research indicates that judges should not stop at the similarity of signs or goods, but must examine whether the mark is still used in commerce.

Normative literature also stresses that cancellation by the Directorate General of Intellectual Property (DGIP) entails administrative consequences in the form of removal from the public trademark register. In contrast, invalidation by the courts renders the certificate legally void. These are two distinct regimes with different consequences that must not be conflated in analysis.[49]

Methodologically, these studies reinforce the evidentiary architecture: establish prima facie cases with traceable market indicators; apply limited burden-shifting; strictly evaluate proper reasons; and maintain discipline between *posita* and *petitum* to avoid conflating regimes. With these four pillars, proceedings become efficient and outcomes accountable.

In practice, digital footprints are now inseparable: click-through rates, conversion logs, stock lists, electronic invoices, advertising campaign archives, and marketplace dashboards. Provided authenticity and chain of custody are clear, such evidence satisfies the best evidence principle in modern commerce; judges must possess technical competence to assess its reliability. Comparative frameworks also offer lessons on false positives and false negatives in non-use analysis: the U.S. avoids false negatives by examining intent to resume use; Singapore avoids false positives by assessing the rationality of non-use reasons. Indonesia adopts a middle path with use-conditioned exclusivity combined with strict evaluation of proper reasons.

From a public policy perspective, non-use cancellation prevents the hoarding of trademark portfolios that "freeze" markets and obstruct SMEs from entry. Annual registration data reveal high market dynamism; thus, maintaining the hygiene of the public trademark register through targeted cancellation is a prerequisite for fair competition.
In the context of consumer protection, "dormant" trademarks risk confusing the public when invoked as a shield against bona fide registrations. Cancellation provides clarity of origin and quality, since only trademarks genuinely circulating in commerce can function as indicators of origin and guarantees of quality.

Courts must also remain vigilant against abuse of process: non-use actions filed merely as tactical weapons against legitimate competitors. In this regard, prima facie standards and methodological verification of investigative reports (scope, sampling, response rate, data traceability) serve as crucial filters to prevent cancellation from degenerating into destructive trade warfare. At the implementation level, the Directorate General of Intellectual Property (DGIP) and the judiciary may adopt an evidentiary checklist for use verification: continuity of transactions; distribution reach; promotional intensity; consistency of trademark use in documents; relevance to the pertinent market; and independent third-party verification. Such a checklist enhances predictability without constraining evidentiary creativity.

Theoretically, this framework realizes Radbruch's triangulation: justice (eliminating passive rights), certainty (clear temporal limits, disciplined claims), and utility (opening space for innovation and new entrants). When these values conflict, substantive justice remains the guiding star, yet always within the bounds of clean procedure. The ultimate outcome is a healthy trademark ecosystem: exclusive rights retain dignity insofar as they serve the public through genuine use; when they cease to function, they are returned to the market for appropriation by parties ready and acting in good faith.

Accordingly, reform of Indonesian trademark law rests upon synergy between normative renewal, jurisprudential consistency, and digital evidentiary competence. Judges, as guardians of justice, bridge written norms and lived justice, ensuring that trademark law truly operates as a living instrument—aligned with social utility and rooted in civilized legal certainty.

The relationship between trademark cancellation and competition law requires a sharp demarcation. Cancellation for non-use is a mechanism within the trademark regime to

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[49] Putusan MA RI No. 396 K/Pdt.Sus-HKI/2024 (Trek Bicycle Corporation v. PT Astra Honda Motor)

maintain register hygiene and prevent stockpiling, whereas competition enforcement—such as market foreclosure—is addressed under competition law. Synchronization of the two regimes is essential to prevent misuse of cancellation for exclusionary purposes; prima facie non-use standards and independent verification constitute adequate ethical-procedural safeguards.

Looking forward, digital evidentiary standards should be reinforced with technical guidelines encompassing document hashing, trusted timestamping, and audit trails of online data collection. These measures preserve evidentiary integrity and facilitate judicial assessment of the authenticity and integrity of electronic evidence without imposing high forensic costs. The principle is: high verifiability at reasonable cost.

To reduce information asymmetry, a light obligation may be considered for trademark holders to maintain a minimal portfolio of use evidence, such as selected annual invoices, promotional and distribution records, to be produced in case of dispute. This is not a formal use declaration as in certain jurisdictions, but rather a good practice that expedites evidentiary processes and mitigates risks of spoliation.

In cases of excusable non-use, proof of compelling external causes must be supported by regulatory documents, authoritative correspondence, and realistic market recovery plans. Thus, excusable non-use does not become an elastic "emergency exit," but operates strictly for unavoidable impediments accompanied by genuine intent to resume use once obstacles are removed.

For cross-case consistency, both DGIP and commercial courts may develop a concise benchbook on non-use cancellation: issue mapping, *posita-petitum* issue trees, lists of weak-evidence red flags, and examples of robust digital evidence. Such a benchbook is non-binding but serves as epistemic scaffolding to minimize decision disparities and strengthen perceptions of the rule of law among economic actors.

CONCLUSION

Findings

The characteristics and ideal construction of a balanced and equitable burden of proof in trademark cancellation suits within digital commerce require accommodation of electronic evidence such as audit trails, timestamps, online promotional data, and digital transaction records. The ideal model is a Proportional Digital Burden of Proof, wherein evidentiary systems integrate forensic technological approaches with judicial flexibility. Comparative analysis with other jurisdictions indicates that Indonesia is moving toward a hybrid system combining temporal certainty (three years), limited tolerance for excusable non-use, and recognition of digital evidence. Implementation of this principle through a Supreme Court Regulation (Perma) will fill procedural gaps, reduce decision disparities, and integrate principles of social justice into modern commercial adjudication.

Recommendations

1. The Supreme Court should prepare a Benchbook of Trademark Non-Use Adjudication as a judicial technical guide complementing the PERMA. This benchbook should contain standardized indicators for judges in assessing non-use evidence, including: (i) continuity of use, (ii) distribution reach, (iii) promotional intensity, (iv) traceability of digital evidence, (v) legitimate grounds for non-use, and (vi) the social function of trademarks. The guide should be supplemented with technical training modules for commercial judges, clerks, and DGIP officers to ensure comprehensive understanding of proportional evidentiary application in the digital era.

2. Normative adjustments or supplementary explanations in related legislation are necessary to support effective implementation of the Perma. These adjustments include: (i) affirming the doctrine of use-conditioned exclusivity as the foundational principle of trademark protection; (ii) explicitly regulating the mechanism of burden-shifting (reverse burden) once a prima facie case is established; (iii) detailing legitimate categories of excusable non-use along with evidentiary standards; and (iv) clarifying the legal consequences of trademark cancellation on licensing agreements and commercial contracts. Thus, the Perma not only fills procedural gaps in commercial litigation but also strengthens integration between administrative legal certainty (DGIP) and procedural justice in the courts.

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