

Legal Reconstruction of the Cancellation of Unused Trademarks: A Study of Commercial Court Judgments and Supreme Court Decisions

Sofyan Sauri ¹, Suherman ², Iwan Erar Joesoef ³

^{1,2,3} Faculty of Law, University Pembangunan Nasional “Veteran” Jakarta, Indonesia

Article Information

Article History

Received, 14 June, 2026

Revised, 25 June, 2026

Accepted, 27 June, 2026

Published, 28 June, 2026

Corresponding Author:

Sofyan Sauri, Faculty of Law,
University Pembangunan
Nasional “Veteran” Jakarta,
Indonesia

Email:

2410622034@mahasiswa.upnvi.ac.id

ABSTRACT

The cancellation of unused trade marks is a key instrument within the trade mark legal system for preventing the hoarding of trade marks and safeguarding the function of trade marks as active commercial identities in trade. Although Pasal 74 UU No. 20 Tahun 2016 on Trade Marks and Geographical Indications sets out the mechanism for cancelling trade marks on the grounds of non-use, this provision does not provide clear parameters regarding the standard of use required for a trade mark to be legally maintained. Consequently, there is inconsistency in interpretation within judicial practice, as reflected in the differing legal reasoning between the Decision of the Central Jakarta Commercial Court No. 45/Pdt.Sus-HKI/Merek/2023/PN.Niaga.Jkt.Pst and the Decision of the Supreme Court No. 76 K/Pdt.Sus-HKI/2024. This study analyses the mechanisms for the cancellation of unused trade marks in Indonesia in comparison with those in the United States and China, and formulates a legal reconstruction to achieve legal certainty using normative legal methods and legislative, case-law, conceptual and comparative legal approaches. The research findings indicate that the lack of clarity regarding the concept of ‘genuine use’ in Indonesian trade mark law leads to legal uncertainty in the assessment of trade mark use. The United States has developed a more measurable standard of ‘use in commerce’ through the ‘Affidavit of Use’ mechanism, whilst China has implemented an efficient administrative cancellation system through the China National Intellectual Property Administration (CNIPA). Based on Gustav Radbruch’s theory of legal certainty, this study recommends the revision of Pasal 74 UU No. 20 Tahun 2016 Trade Marks and Geographical Indications Act by regulating the parameters of ‘genuine use’ and implementing a mechanism for the periodic reporting of trade mark use, with a view to enhancing legal certainty, procedural efficiency and the effectiveness of trade mark protection in Indonesia.

Keywords: trade mark cancellation, genuine use, legal certainty, affidavit of use, unused trade marks.

1. INTRODUCTION

The development of global trade and the digital economy has enhanced the role of trade marks as legal and economic instruments of strategic value in business activities. Trade marks not only serve as a distinguishing identity for goods and services, but also represent a company’s reputation, quality and goodwill. Under the Indonesian legal system, trade mark protection is granted through the ‘first to file’ principle, whereby exclusive rights are granted to the party who first validly registers their trade mark.

Nevertheless, exclusive rights to a trade mark are not absolute. Legal protection for trade marks is granted on the assumption that the trade mark is actually used in trade. Consequently, various countries have established mechanisms for the cancellation of unused trade marks as a

means of preventing trade mark hoarding and maintaining a balance between the rights of trade mark owners and the public interest.

In Indonesia, the cancellation of unused trade marks is governed by Pasal 74 UU No. 20 Tahun 2016 on Trade Marks and Geographical Indications. However, this provision does not set out clear parameters regarding the form of trade mark use that may be deemed to satisfy the elements of valid use. The absence of such standards has led to differing interpretations amongst judges when assessing evidence of trade mark use.

This issue was evident in the WIN trademark dispute between Hongyunhonghe Tobacco (Group) Co. Ltd. and PT Sumatra Tobacco Trading Company. In the Judgment of the Central Jakarta Commercial Court No. 45/Pdt.Sus-HKI/Merek/2023/PN.Niaga. Jkt.Pst, the claim for cancellation of the trade mark filed by the Plaintiff was dismissed; however, the Supreme Court, in its Judgment No. 76 K/Pdt.Sus-HKI/2024, granted the appeal and ordered the cancellation of the same trade mark. The discrepancy in the rulings regarding identical facts and the subject matter of the dispute indicates legal uncertainty in the application of Pasal 74 of UU Merek dan Indikasi Geografis.

Based on the above, this article examines two main issues: (1) how the mechanisms for the cancellation of unused trade marks compare in Indonesia, the United States and China; and (2) what legal reforms are required to ensure legal certainty within the system for the cancellation of unused trade marks in Indonesia.

2. RESEARCH METHOD

This study is a normative legal study, or a doctrinal legal study, which aims to analyse the applicable legal norms and provide recommendations for legal reform through conceptual and comparative approaches. A normative legal study was chosen because the issues under examination relate to the ambiguity of legal norms and inconsistencies in the application of the law within judicial practice.

The approaches used in this study comprise four methods. Firstly, the case approach, which is used to analyse the Judgment of the Central Jakarta Commercial Court No. 45/Pdt.Sus-HKI/Merek/2023/PN.Niaga. Jkt.Pst. and the Supreme Court Judgment No. 76 K/Pdt.Sus-HKI/2024 to identify inconsistencies in the legal reasoning regarding the cancellation of unused trade marks.

Secondly, the conceptual approach, which is used to examine Gustav Radbruch's theory of legal certainty, the concept of 'genuine use', the 'first-to-file' principle, and various legal doctrines relevant to the cancellation of unused trade marks.

Thirdly, the comparative approach, which involves comparing the legal systems of Indonesia with those of the United States and China. The United States is used as a point of comparison because it applies the concepts of 'use in commerce' and the 'affidavit of use' as standards of proof for trademark use. Meanwhile, China was chosen because it employs an administrative mechanism that is considered more efficient in resolving trademark cancellation cases.

Fourthly, the statutory approach, which is used to examine various legal provisions relating to the cancellation of trade marks, in particular Pasal 74 UU No. 20 Tahun 2016 on Trade Marks and Geographical Indications, as well as Constitutional Court Decision No. 144/PUU-XXI/2023.

The legal materials used in this study consist of primary legal materials, secondary legal materials, and non-legal materials. Primary legal materials include legislation, court decisions, and relevant international legal instruments. Secondary legal materials consist of books, academic journals, theses, and previous research findings relating to trademark law. Meanwhile, non-legal materials include dictionaries, economic reports, and other sources that support the research analysis.

The analysis of legal materials was carried out qualitatively using a descriptive-analytical method. All the legal materials that had been collected were classified, interpreted and analysed systematically in order to address the research questions and formulate recommendations for an ideal legal framework for the system of cancelling unused trade marks in Indonesia.

3. RESULTS AND ANALYSIS

A Comparison of Mechanisms for the Cancellation of Unused Trade Marks in Indonesia, the United States and China

a. The System for the Cancellation of Unused Trade Marks in Indonesia

The cancellation of trade marks under Indonesian law is governed by Law No. 20 of 2016 on Trade Marks and Geographical Indications, specifically Articles 72 to 79. Under these provisions, the cancellation of a trade mark may be effected through three mechanisms: at the request of the trade mark owner, on the Minister's own initiative, and following a claim by an interested third party.

Cancellation by a third party is governed by Article 74 of the Law on Trade Marks and Geographical Indications. This provision grants an interested third party the right to bring an action for cancellation against a trade mark that has not been used in the trade of goods and/or services for a specified period. Following Constitutional Court Ruling No. 144/PUU-XXI/2023, this period was extended from three years to five consecutive years.

Conceptually, this provision aims to prevent the practice of trademark hoarding and to ensure that legal protection is granted only to trademarks that are actually used in economic activities. However, the provisions of Article 74 still give rise to a number of issues, particularly regarding the definition of an interested third party and the standard of proof required to demonstrate that a trademark is not in use.

The absence of clear parameters means that the application of the provision is heavily dependent on the judge's interpretation. Consequently, the resulting judgements may differ even when based on relatively similar legal facts. Such a situation runs counter to the principle of legal certainty, which requires rules that are clear, consistent and predictable.

b. The System for the Cancellation of Unused Trade Marks in United States of America

Unlike in Indonesia, US trademark law is based on the principle of 'use in commerce'. Trademark rights are not acquired solely through registration, but must be demonstrated through actual use in trade. Trademark owners are required to file a Declaration of Use or an Affidavit of Use at regular intervals as evidence that the trademark is still being used in trade. Failure to fulfil this obligation may result in the cancellation of the trademark registration.

This model demonstrates that legal protection for trade marks is not based solely on the formal aspect of registration, but also on the substantive aspect of actual use. Consequently, the standard of proof becomes more objective and helps to reduce the potential for disputes.

c. The System for the Cancellation of Unused Trade Marks in China

China has adopted a system that places greater emphasis on administrative mechanisms. Under Chinese trade mark law, interested parties may file an application for the cancellation of a trade mark that has not been used for three consecutive years. Such applications are first examined by the intellectual property administrative authorities before proceeding to the judicial stage. The trademark owner is given the opportunity to provide evidence of use or valid reasons for the non-use of the trademark.

This administrative approach has a number of advantages, including a faster process, lower costs, and a reduced burden of dispute resolution in the courts. Furthermore, this mechanism allows for more uniform standards of examination

Analysis of Commercial Court Judgment No. 45/Pdt.Sus-HKI/Merek/2023/PN.Niaga.Jkt.Pst.

This case involves Hongyunnonghe Tobacco (Group) Co. Ltd. as the claimant against PT Sumatra Tobacco Trading Company as the defendant. The claimant argued that the defendant's WIN trade mark had not been used in trade for the period specified by law, and was therefore eligible for cancellation.

However, the Panel of Judges at the Commercial Court dismissed the claim on several grounds. Firstly, the judges found that the defendant was the party that had registered the 'WIN' trade mark in Indonesia first. Secondly, the judges held that the claimant had failed to clearly prove the period during which the defendant had not used the trade mark.

Thirdly, the judges held that the claimant was not an interested third party as it had no genuine legal interest. These considerations indicate that the court adopted a highly formalistic approach in interpreting Pasal 74 UU No. 20 Tahun 2016 Trade Marks Act. The main issue lies in the absence of a normative definition of an interested third party.

Analysis of Supreme Court Judgment No. 76 K/Pdt.Sus-HKI/2024

At the cassation stage, the Supreme Court adopted a different approach, holding that the claimant had a legal interest as they intended to make an investment and use the WIN trade mark lawfully in Indonesia. Furthermore, the Supreme Court also considered that the purpose of cancelling unused trade marks is to prevent the monopolisation of trade mark rights that are not actively utilised. The difference in reasoning between the Commercial Court and the Supreme Court highlights a disparity in the interpretation of the same legal provision. According to Gustav Radbruch's perspective, this situation reflects a failure to fulfil the principle of legal certainty, as the applicable legal provision does not provide sufficiently clear guidance for law enforcement officials.

According to Gustav Radbruch, the law must be capable of realising three fundamental values: justice, utility and legal certainty. Legal certainty requires clear rules and consistent application. In the context of Pasal 74 UU No. 20 Tahun 2016 Trade Marks Act, the lack of clarity regarding the criteria for interested third parties and the standard of proof for trade mark use makes it difficult to achieve the objective of legal certainty.

Businesses cannot predict with certainty whether a cancellation action they file will be accepted or rejected. Such a situation has the potential to hinder investment and undermine confidence in the trade mark protection system.

Legal Reform Concerning the Cancellation of Unused Trade Marks in Indonesia

Based on the results of analysis and comparative studies, legal reform needs to be implemented through several strategic steps.

Reconstruction of Criteria for Interested Third Parties

a. Reconstruction of Criteria for Interested Third Parties.

The law needs to provide a restrictive definition of interested third parties; such criteria may include:

- parties who have filed an application for trade mark registration that has been blocked by a registered trade mark.
- parties who have actually used the trade mark in trade.
- owners of well-known trade marks that have not yet been registered in Indonesia.

- b. Standard Rules on Proof of Trade Mark Use.
The law needs to establish objective indicators of trade mark use, Evidence of use may include:
- sales invoices
 - evidence of the distribution of goods or services promotional materials;
 - tax documents;
 - evidence of electronic transactions.
- c. Regulations on Valid Reasons for Non-Use of a Trade Mark.
The non-use of a trade mark is not always due to bad faith, therefore, justifiable grounds should be regulated, such as:
- Force majeure.
 - government import restrictions.
 - pending licensing procedures.
 - ongoing legal disputes. Implementation of a Declaration of Trade Mark Use
- d. Indonesia could adopt the ‘affidavit of use’ mechanism as applied in the United States.
Trademark owners are required to report the use of their trademarks periodically to the Directorate General of Intellectual Property, this policy can improve data accuracy and prevent the accumulation of unused trademarks.
- e. Establishment of an Administrative Cancellation Mechanism
Before resorting to litigation, trademark cancellation should be carried out through an administrative mechanism under the Directorate General of Intellectual Property. This model adopts Chinese practices, which have proven to be more efficient in resolving trademark cancellation disputes, as they have the advantage of reducing the burden on the courts; the administrative mechanism is also capable of providing faster legal certainty for business operators.

5. CONCLUSION

Reforming the legal framework governing the cancellation of unused trademarks should aim to establish a system that not only protects the exclusive rights of trademark owners but also ensures that such protection is granted to trademarks that are genuinely and actively used in commercial activities. Through this reform, it is expected that Indonesia's trademark legal system will achieve legal certainty, utility, and fairness, in alignment with legal aspirations.

REFERENCES

- Afifah, Fatma, and Sri Warjiyati. "Tujuan, Fungsi Dan Kedudukan Hukum." *Jurnal Ilmu Hukum Wijaya Putra* 2, no. 2 (2024): 142–52. <https://doi.org/10.38156/jihwp.v2i2.206>
- Agus Sardjono, *Hukum Merek: Teori dan Praktik*, (Bandung: CV. Mandar Maju, 2018)
- Anitia Emalia Fallonne dan Selamat Widodo, "Implikasi Perubahan Kebijakan Merek Yang tidak digunakan Terhadap Penghapusan Merek Terdaftar," *Al-Muamalat: Jurnal Ilmu Hukum & Ekonomi Syariah*, Vol. 10 No. 1
- Azizah Arfah, Angel Evelin, Hendra Parulian, et al. "Penghapusan Merek WIN Terdaftar yang Tidak Digunakan dalam Kegiatan Perdagangan Berdasarkan Kepentingan Pihak Ketiga: Studi Kasus Putusan Pengadilan Niaga Jakarta Pusat Nomor

- 45/Pdt.Sus-HKI/Merek/2023/PN.Niaga.Jkt.Pst.” *Intellektika : Jurnal Ilmiah Mahasiswa* 3, no. 1 (2024): 67–84. <https://doi.org/10.59841/intellektika.v3i1.2034>.
- Barton Beebe, “The Semiotic Analysis of Trademark Law,” *UCLA Law Review* Vol. 51 (2004).
- Bebeto Ardyo and Peter Jeremiah Setiawan. “Penafsiran Restriktif Dan Pembuktian Unsur Digunakan Dalam Gugatan Penghapusan Merek.” *Jurnal Interpretasi Hukum* 5, no. 1 (2024): 776–85. <https://doi.org/10.22225/juinhum.5.1.8380.776-785>.
- Carnabuci, Connie, and Richard Bird. “Cancelling Registered Trademarks in China for Non-Use.” *Freshfields Bruckhaus Deringer LLP (Tiongkok)*, n.d., 1–4.
- David J. Llewelyn, *Intellectual Property: Patents, Copyrights, Trademarks & Allied Rights*, (London: Sweet & Maxwell, 2014)
- Edmon Makarim, “Problematika Penggunaan Merek dalam Hukum Indonesia,” *Jurnal Hukum dan Pembangunan* Vol. 50 No. 3 (2020).
- Gunawan, Yusuf. “Penyelesaian Sengketa Merek Terdaftar dan Merek Terkenal dalam Mewujudkan Perlindungan Hukum.” *Iblam Law Review* 2, no. 2 (2022): 141–64. <https://doi.org/10.52249/ilr.v2i2.80>.
- Hasya, Shofiyah Mardiyah, Muhamad Amirulloh, and Tasya Safiranita. “Pelindungan Hukum Bagi Pemilik Merek Terkenal Asing Belum Terdaftar Sebagai Pihak Ketiga yang Berkepentingan Dalam Penghapusan Merek Non Use Berdasarkan Undang-Undang Nomor 20 Tahun 2016 Tentang Merek dan Indikasi Geografis.” *Media Hukum Indonesia (MHI)* 3, no. 3 (2025). <https://doi.org/10.5281/zenodo.15573767>
- Ika Ristia Andini Putri, *Perlindungan Hukum Merek Terkenal Terkait Dengan Persaingan Usaha Tidak Sehat*, Universitas Lampung, 2018.
- Imayanti, Neni Sri, Asep Hakim Zakiran, dkk. (2024). *Hukum Kekayaan Intelektual*. Jakarta: Kencana.
- Intellectual Property Rights Indonesia – Timor Leste (AFFA), *Regulasi Pembatalan Merek Tidak Digunakan di Tiongkok Diperketat*. Diakses 23 Februari 2026 dalam <https://affa.co.id/regulasi-pembatalan-merek-tidak-digunakan-di-tiongkok>.
- Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta: Sinar Grafika, 2018)
- Kurniawan, Cicelly Chiesa, and Ariawan Gunadi. A Juridical Analysis of the Cancellation of Registered Trademarks Due to Non-Use: A Comparative Study of Indonesian and UK Law: Analisis Yuridis Terhadap Penghapusan Merek Terdaftar Akibat Tidak Digunakan: Perbandingan Hukum Indonesia Dan Inggris. 13, no. 2 (2025): 1–17. <https://doi.org/10.21070/jihr.v13i2.1099>.
- Llewelyn, D. J. (2014). *The law of intellectual property*. Sweet & Maxwell.
- Manan, Abdul. “Penemuan Hukum Oleh Hakim Dalam Praktek Hukum Acara Di Peradilan Agama.” *Jurnal Hukum Dan Peradilan* 2, no. 2 (2013): 189–202. <https://doi.org/10.25216/jhp.2.2.2013.189-202>.
- Mardianto, Agus. “Penghapusan Pendaftaran Merek Berdasarkan Gugatan Pihak Ketiga.” *Jurnal Dinamika Hukum* 10, no. 1 (2010). <https://doi.org/10.20884/1.jdh.2010.10.1.137>.
- Masfufah, Masfufah, Afifah Kusumadara, and Yenny Eta Widyanti. “Evaluasi Pengaturan Penghapusan Merek Terdaftar Yang Tidak Aktif di Indonesia.” *Jurnal Ilmiah Kebijakan Hukum* 18, no. 2 (2024): 173–90. <https://doi.org/10.30641/kebijakan.2024.V18.173-190>.
- Natakusuma Essau, *Legal Review Of The First To File Principle In Mark Registration In Indonesia*, Fakultas Hukum Universitas Hasanuddin, Makassar 2024.
- Nirwana, Rena Putri, and Kayus K. Lewoleba. “Peranan Hukum Dalam Mencapai Keadilan dan Kesejahteraan Terhadap Kehidupan Masyarakat.” *Media Hukum Indonesia (MHI)* 2, no. 3 (2024): 386–91. <https://doi.org/10.5281/ZENODO.12189122>.
- Nova Rizky Hidayati, *Perlindungan Hukum Hak Merek Berdasarkan Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis Dan Berdasarkan Fatwa Mui Nomor: 1/Munasvii/Mui/5/2005 (Studi Pada Pelaku Industri Kecil Menengah Di Kabupate Banyumas)*, Universitas Islam Negeri Profesor Kiai Haji Saifuddin Zuhri, 2024.

- Nurhayati, Inna, and Agustina Merdekawati. "Relevansi Keikutsertaan Indonesia Dalam International Registration of Marks Madrid System Melalui Ratifikasi Madrid Protocol Terhadap Potensi Peningkatan Daya Saing Bangsa Indonesia Di Bidang Perdagangan Internasional." *Mimbar Hukum* 20, no. 3 (2008): 495–512.
- Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2016)
- Pratiwi, Endang, Theo Negoro, and Hassanain Haykal. "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?" *Jurnal Konstitusi* 19, no. 2 (2022): 268. <https://doi.org/10.31078/jk1922>.
- Putri Ayu Clarita dan M. Hawin, "Penghapusan Merek yang Tidak Digunakan Antara Indonesia dan Tiongkok: Pengaturan dan Makna Pihak Ketiga yang Berkepentingan," Universitas Gadjah Mada, 2025.
- Rachmadi Usman, *Hukum Hak Kekayaan Intelektual*, (Jakarta: Sinar Grafika, 2019),
- Radbruch, G. (1973). *Rechtsphilosophie*. Vandenhoeck & Ruprecht.
- Rizki, Muhammad dan Dety Mulyanti. "Pentingnya Strategi Pemasaran Melalui Penguatan Citra Merek" *Jurnal Ekonomi Bisnis dan Manajemen*, vol. 2, no. 1 (2023): 243. <https://journal.unimar-amni.ac.id/index.php/EBISMEN/article/view/680>
- Rizkia, Nanda Dwi, and Hardi Fardiansyah. *Hak Kekayaan Intelektual: Suatu Pengantar*. Bandung. Widina Bhakti Persada, 2022.
- Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri* (Jakarta: Ghalia Indonesia, 1990).
- Tulus, *Efisiensi Prosedural dalam Penyelesaian Sengketa Hak Kekayaan Intelektual*, (Jakarta: Kencana, 2024)
- Yulianto, S.H., *Perlindungan Hukum Atas Merek Berdasarkan Undang-undang Nomor 20 Tahun 2016 Tentang Merek dan Indikasi Geografis*, Universitas Darul Ulum Islamic Centre Sudirman GUPPI, 2023, hlm. 126.