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Review of the Doctrine of Dilution Based on the Perspective of Corrective Justice for Trademark Owners

Sukma Hidayatun Nahdliyin[1*], Emmy Latifah[2]
[1,2] Faculty of Law, Universitas Sebelas Maret, Indonesia
*correspondence email : sukma.hidayatun06@student.uns.ac.id

Abstract

The study aims to analyze whether the doctrine of trademark dilution has provided corrective justice or otherwise, so that the balance of rights for trademark owners can be fulfilled.
The methods used in this study are normative or doctrinal legal research methods. The research approaches used are legislative, conceptual, case-based, and comparative approaches.
The novelty of this research lies in the perspective of corrective justice in analyzing court decisions related to dilution actions. This research is expected to contribute to further research and policy recommendations for the government and judges to produce regulations and decisions that are fair to trademark owners.
The results of the comparative law study show that anti-dilution regulations in the United States are comprehensively regulated, but there are shortcomings in the courts. Court decisions regarding well-known trademarks are considered detrimental and do not restore the rights that have been violated. In fact, the main purpose of dilution is to provide legal protection for well-known trademarks. Indonesia itself has not yet fully regulated anti-dilution regulations.
The concluded findings of this comparative legal study serve as a lesson for Indonesia so that future regulations can take into account the balance of rights between well-known trademarks and other trademarks in order to avoid market monopoly.
Keywords: Dilution Doctrine; Corrective Justice; Balance of Rights; Well-known Trademarks.

Abstrak

Tujuan penelitian *ini yakni menganalisis apakah doktrin dilusi merek telah memberikan keadilan korektif atau justru sebaliknya, sehingga keseimbangan hak bagi pemilik merek dapat terpenuhi.*
Metode penelitian *ini berupa metode penelitian hukum normatif atau doktrinal. Pendekatan penelitiannya berupa pendekatan perundang-undangan, pendekatan konseptual, pendekatan kasus dan pendekatan komparatif.*
Kebaruan penelitian *ini terdapat pada perspektif keadilan korektif dalam menganalisis putusan pengadilan terkait tindakan dilusi. Penelitian ini diharapkan memberikan sumbangsih bagi penelitian selanjutnya dan rekomendasi kebijakan bagi pemerintah serta hakim agar melahirkan regulasi dan putusan yang berkeadilan terhadap pemilik merek.*
Hasil penelitian *pada kajian perbandingan hukum menunjukan bahwa regulasi anti dilusi Amerika Serikat telah diatur secara lengkap, namun terdapat kekurangan di pengadilan. Putusan hakim menurut merek terkenal dianggap merugikan dan tidak memulihkan hak yang telah dilanggar. Padahal, tujuan utama dari dilusi yaitu sebagai perlindungan hukum bagi*

merek terkenal. Indonesia sendiri belum sepenuhnya mengatur regulasi anti dilusi. Kesimpulan penelitian ini dengan adanya kajian perbandingan hukum menjadi pembelajaran bagi Indonesia agar penerapan regulasi kedepannya dapat memperhatikan keseimbangan hak antara merek terkenal dan selain merek terkenal, guna terhindar dari monopoli pasar.
Kata Kunci: *Doktrin Dilusi; Keadilan Korektif; Keseimbangan Hak; Merek Terkenal.*

1. INTRODUCTION

Brands have become one of the main requirements for business continuity. Building a brand to the point where it has a reputation and is well-known certainly requires a long time and high costs. Brand reputation is a key asset that supports the goodwill of an industry. For this reason, brands need to be protected from all forms of trademark infringement. The more famous a brand is, the more often it is threatened by trademark piracy. Trademark infringement occurs due to several empirical facts and factors, including economic factors, cultural factors, regulations, and supervision.[1]

Indonesia currently needs to be serious about intellectual property rights (IPR), including brand protection. Data released by the United States Trade Representative (USTR) in 2024 shows that Indonesia is on the Priority Watch List (PWL), which means that Indonesia has a high rate of intellectual property (IP) violations. Sadly, Indonesia has remained on the PWL for 12 consecutive years, which is quite bad when compared to several neighboring countries such as Singapore, Thailand, the Philippines, Brunei Darussalam, and others that have successfully removed themselves from the PWL.[2]

Trademark infringement in legal studies is categorized into five forms, including:[3] Infringements that give rise to a *likelihood of confusion* regarding the source, sponsorship, affiliation, or connection; Counterfeiting that uses a trademark that is substantially indistinguishable; dilution that reduces the capacity of a well-known trademark to identify and distinguish goods or services without considering competition or the likelihood of confusion; registration and use of well-known trademarks on the internet (cybersquatting); and use of characters in marketing (character merchandising).

The establishment of anti-dilution regulations originally stemmed from international trademark law, namely Article 16 paragraph 3 of the *Trade Related Aspects Of Intellectual Property Rights* (TRIPs). This article contains provisions on protection in Article 6bis of the Paris Convention, which applies equally in the application of rules to registered trademarks or service marks of different types, such that even trademarks of different types are protected from similarities with other trademarks that cause harm to the registered trademark. The

[1] Khotimah, Vika Husnul dan Rani Apriani. Faktor-Faktor Penyebab Terjadinya Pelanggaran Hak Merek Berupa Pemboncengan Reputasi (Passing Off) Merek Terkenal Ditinjau dari Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis, *Jurnal Ilmiah Wahana Pendidikan,* 8(2), 2022. 414. DOI: https://doi.org/10.5281/zenodo.7243144.

[2] Indonesia Masih Bertahan Di Priority Watch List, Diakses dari https://www.kk-advocates.com/news/read/indonesia-masih-bertahan-di-priority-watch-list. (16 Juli 2025).

[3] Mamarimbing, Johanes Chandra. Kajian Yuridis Terhadap Pelanggaran Merek dan Pemulihan Hak. *Lex Privatum*, 7(2), 2019. 54-56.

content of Article 6bis paragraph 1 of the Paris Convention explains the policy of refusing or canceling the registration and prohibiting the use of trademarks that are reproductions, imitations, or translations that may cause confusion. Such action is taken when there are trademarks that are identical or similar to registered trademarks, as this will cause confusion.

One form of legal protection for well-known trademarks is protection from dilution under Article 6 bis of the Paris Convention. The court judge will request evidence proving the trademark's fame based on the provisions of the *World Intellectual Property Organization* (WIPO). The content relates to the extent of public knowledge, the geographical scope and duration of trademark use, the geographical scope and duration of trademark promotion, the geographical scope and duration of trademark registration, as well as the success of legal enforcement and the value associated with the trademark.[4] The provisions governing well-known trademarks in Indonesia are set forth in Article 18(3) of Regulation of the Minister of Law and Human Rights No. 67 of 2016 concerning Trademark Registration.

The dilution doctrine has been around in the United States since 1927. It originally came from Germany in 1924, developed by Frank I. Schecter. The dilution doctrine protects the uniqueness of a well-known brand from unauthorized use that benefits other parties without permission. Concerns about the use of other trademarks that are similar to well-known trademarks can reduce the uniqueness of a trademark and damage the reputation of well-known trademarks. Basically, trademark law only protects consumers, but with its development, trademark law now also protects the investments made by trademark owners in building the reputation of their trademarks so that the trademarks can be widely recognized by continuously promoting their existence.[5]

Traditionally, trademark protection is granted when there is a junior trademark selling products or services similar to those of a senior trademark, thereby causing confusion among consumers and harming the senior trademark. However, trademark protection is now being expanded to include protection from the threat of dilution. Dilution relates to competition between dissimilar trademarks even though it does not cause confusion among consumers. According to Simmons, as cited by Macias and Cevino, dilution is divided into two types: dilution due to blurring and tarnishment.[6] As stipulated in the United States Anti-Dilution Regulation, namely the *Trademark Dilution Revision Act of 2006*, which regulates that dilution can be used as the legal basis for trademark infringement cases in addition to using the general legal basis for trademark infringement.[7]

The implementation of the dilution doctrine in the United States continues to receive criticism from legal experts. The dilution doctrine is considered to have failed to protect the

[4] Lobo, Lionita Putri dan Indirani Wauran. Kedudukan Istimewa Merek Terkenal (Asing) dalam Hukum Merek Indonesia. *Masalah-Masalah Hukum*,50 (1), 2021. 75. DOI: https://doi.org/10.14710/mmh.50.1.2021.70-83.

[5] Bhaskar, Brajendu. Trademark Dilution Doctrine: The Scenario Post TDRA. *NUJS Law Review*, 1 (4), 2008. 637.

[6] Macias, Washington dan Julio Cervino. Trademark Dilution: Comparing The Effects of Blurring and Tarnishment Cases Over Brand Equity. *Management & Marketing*, 12 (3), 2017. 346. DOI: https://doi.org/10.1515/mmcks-2017-0021.

[7] Dwisvimiar, Inge. Pengaturan Doktrin Dilusi Merek Sebagai Upaya Perlindungan Hukum Merek Terkenal di Indonesia. *Mimbar Hukum,* 28 (2), 2016. 233. DOI: https://doi.org/10.22146/jmh.16720.

rights of well-known trademark owners due to the difficulty judges have in assessing the possibility of dilution. The judges' interpretation, which is also considered to be very restrictive of the concept of the dilution doctrine, is very different from the concept of the dilution doctrine as proposed by its creators. The first case decided by the judge in 2010 after the amendment of the anti-dilution regulation was the dispute between Secret Catalogue, Inc. v. Moseley. Secret Catalogue, Inc., as the plaintiff, owned a trademark called VICTORIA'S SECRET as a well-known trademark, while Moseley, as the defendant, owned a trademark called VICTOR'S LITTLE SECRET, which sold sex toys. The plaintiff objected to the defendant's actions and reported the defendant on charges of dilution due to tarnishment or defamation. The plaintiff considered that the presence of the defendant's trademark would result in negative associations attached to the plaintiff's trademark. Differences in the judges' interpretations led to inconsistent court decisions, both in the district court and on appeal.[8] This has led to criticism from legal experts, including Rebecca Tushnet, a professor of law at Harvard University. Rebecca argues that judges are not focusing on the protection of well-known brands, but rather on the possibility of unproven dilution. According to her, there is a semantic connection even though there is no empirical evidence of dilution, but it is possible that consumers will associate the plaintiff's brand with the well-known brand, which could result in negative associations due to defamation.[9]

Reflecting on several cases where well-known brands mostly lost in trademark disputes due to dilution, the application of dilution needs to be questioned. Does it provide protection to well-known brands, thereby providing corrective justice to brand owners, or does it create trade monopolies and limit the creativity of junior brands? In addition, it is difficult to prove before a judge that dilution has occurred or is likely to occur. This burden of proof is even more difficult because dilution is not related to consumer confusion, so there is no apparent empirical loss. Therefore, restoring the balance of rights for well-known brand owners is currently the main focus of this study. The theory of corrective justice is used as a form of restoration of the rights of well-known brand owners that have been violated, because the purpose of corrective justice is to rebuild equality. Corrective justice seeks to provide appropriate compensation to the injured party for the consequences of something wrong and the consequences of the violation committed.[10] In this context, namely well-known brand owners who suffer losses due to dilution and always lose in court disputes.

The study of the doctrine of dilution is not a new discourse in trademark law, especially for developed countries that have a high level of intellectual property rights awareness. In several publications on the doctrine of dilution, many have linked the opportunity to apply the

[8] Petersen, Lauren. "V Secret Catalogue, Inc. v. Moseley, 605 F.3d 382 (2010): Case Brief Summary. Diakses dari https://www.quimbee.com/cases/v-secret-catalogue-inc-v-moseley. (30 Juni 2025).

[9] Tushnet, Rebecca. Victor's Little Secret's Last Stand?. Diakses dari https://tushnet.blogspot.com/2010/05/victors-little-secrets-last-stand.html. (30 Juni 2025).

[10] Kasanda, Muhammad dan Widhi Handoko. Perlindungan Hukum Yang Berkeadilan Korektif Kepada Mitra Usaha Lainnya Dalam Penggabungan Perseroan Terbatas. *Notarius,* 15 (1), 2022. 342. DOI: https://doi.org/10.14710/nts.v15i1.46045

doctrine of dilution in Indonesia. The novelty element in this study is the analysis of the doctrine of dilution using the perspective of corrective justice theory. This theory is used to analyze whether the judge's decision related to disputes resulting from dilution has restored the rights of the victims that have been violated and achieved a balance of trademark owner rights. Next are several relevant studies. First, a study entitled "Legal Protection of Well-Known Brands against Brand Dilution on E-Commerce Platforms" by Shabrina Ummi Fitria, which focuses on normative and comparative studies of countries and analyzes legal liability in electronic systems. The method used is normative legal research. The results of this study show that trademark dilution regulations in e-commerce in Indonesia are still not as specific as those in the United States. Second, "Trademark Protection on E-Commerce Platforms in Indonesia from a Human Rights Perspective" by Alexander Kennedy and Franciscus Xaverius Wartoyo discusses the effectiveness of trademark protection in e-commerce from a human rights perspective. The research method used is normative juridical. The results of the study mention the importance of collaboration between all parties in order to realize trademark protection that can fulfill the economic rights of trademark owners and fair business competition. *Third*, "The Application of the Principles of Legal Certainty and Justice in the Semarang Commercial Court Decision Number 3/Pdt.Sus-HKI-Merek/2024/PN Niaga Sm," by Tiara Putri Basyra, et al. This study focuses on a case study based on a court decision on trademark infringement from a justice perspective. The method used is normative juridical, and the results presented are court decisions that do not yet reflect the principles of justice and legal certainty. It can be concluded that the novelty in this study lies in the research variables, as there are no other studies that analyze the doctrine of dilution from a corrective justice perspective.

The main urgency of this research is to restore the balance of trademark owners' rights that have been violated due to dilution. The objectives of the research are to analyze the doctrine of dilution based on corrective justice theory and to assess whether the doctrine of dilution fulfills the balance between trademark owners, thereby creating a healthy business competition climate and promoting freedom in business. Based on the above description of the problem, two problems are formulated. First, how is the principle of corrective justice implemented in the doctrine of trademark dilution? Second, does trademark dilution provide a balance between the rights of trademark owners and freedom of business?

2. METHOD

This research method uses normative or doctrinal legal research. According to Soerjono Soekanto and Sri Mamudji, normative legal research is research that focuses on the study of legal norms or rules that already exist in society and serve as guidelines for behavior. Normative legal research is conducted by examining library materials, known as secondary data.[11] The approaches used in this study are: first, the legislative approach, including: the Paris Convention for the Protection of Industrial Property, Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement), the Trademark Dilution Revision Act of 2006, and Law

[11] Soekanto, Soerjono dan Sri Mamudji. *Penelitian Hukum Normatif*. Jakarta: Rajawali Pers, 2009. p.13-14.

Number 20 of 2016 concerning Trademarks and Geographical Indications. Second, a case approach in the form of court decisions on the Victoria Secret and Victor's Little Secret trademark dispute in the United States. Third, a conceptual approach in the form of trademark dilution doctrine and corrective justice theory. Fourth, a comparative approach with countries that have comprehensive regulations, such as the United States. Data collection was carried out through a literature study by analyzing primary legal materials in the form of relevant regulations and secondary legal materials in the form of books, journals, articles, official information, and court decisions. The normative research method was used to assess that the doctrine of dilution must accommodate corrective justice for trademark owners. It also assessed that court decisions should be able to restore the rights of victims who have been violated, in this case the rights of well-known trademark owners. Several approaches were taken to produce research that answers the problems described above.

3. DISCUSSION

3.1. The Relevance of Corrective Justice Theory and Trademark Owner Rights

Justice is a value that is aspired to in law. Justice, according to Noah Webster as quoted by Munir Fuady, is a fundamental value that is abstract in nature, so that it can have many different meanings and connotations.[12] Justice is a concept that will always be associated with honesty, truth, or fairness in accordance with each person's rights. In the Big Indonesian Dictionary (KBBI), fair means impartial, unbiased, siding with what is right, appropriate, and not arbitrary. It is understandable that justice encompasses all forms of attitudes and actions in every human relationship. It is an impartial attitude, where every human being is treated equally in accordance with their rights and obligations. Justice requires that everyone treat others based on their rights and obligations.[13]

Thoughts on the theory of justice have been discussed since the time of the Greek philosophers. Two of the main figures, Plato and Aristotle, are considered to represent classical thinking on the basis of justice. However, Thomas Aquinas came up with ideas that were contrary to the basic ideas of Aristotelian philosophy. Later, John Rawls was considered to represent modern thought by mapping these two main thinkers. Plato, with his concept that justice comes from inspiration, while Aristotle, who was Plato's student, developed the concept of justice with scientific analysis or rational principles based on life in society, politics, and existing laws. Thus, one of Aristotle's main contributions was to propose a division of justice into distributive and correlative justice.[14] Both are equally vulnerable to problems of similarity or equality that can only be understood within their respective frameworks.

In Aristotle's view, justice must be understood in relation to the concept of equality. Aristotle argues that there is an important difference between numerical and proportional equality. Numerical equality means that people are treated equally as a single entity. This

[12] Fuady, Munir. *Dinamika Teori Hukum*. Bogor: Ghalia Indonesia, 2007. p.91

[13] Sembiring, Riky. Keadilan Pancasila dalam Persepektif Teori Keadilan Aristoteles. *Jurnal Aktual Justice*, 3 (2), 2018. 143. DOI: https://doi.org/10.47329/aktualjustice.v3i2.539.

[14] Sumaryono, E. *Etika dan Hukum: Relevansi Teori Hukum Kodrat Thomas Aquinas*. Yogyakarta: Kanisius, 2006. p.7.

concept leads to the understanding that all humans are equal before the law (equality before the law). Meanwhile, proportional equality means that everyone receives their rights according to their abilities, achievements, and so on. Furthermore, according to Aristotle, there are two types of justice: distributive justice and corrective justice. Distributive justice is related to public law, and its key point is the equal distribution of rewards for equal achievements. It focuses on the distribution of honor, wealth, and other goods that can be obtained equally in society. Distributive justice disregards mathematical proof. Fair distribution must be in accordance with the values of goodness believed by society.[15]

Corrective justice, or remedial justice according to Aristotle, is justice in the realm of civil and criminal law. It also focuses on issues of inequality caused by breaches of agreement, which are corrected and eliminated. In essence, corrective justice serves to right what is wrong. If a violation or wrongdoing has been committed, corrective justice serves to provide compensation to the injured party. If a crime has been committed, appropriate punishment is also given to the perpetrator. Corrective justice serves to restore lost equality.[16] This type of justice must have technical measures and principles to regulate the application of the law. To regulate legal relationships, there must be general standards to remedy the consequences of every action, without distinguishing between the perpetrator and the purpose of the behavior.[17] The purpose of corrective justice, according to Yusni as quoted by Herman, is to restore the lost equality between two entities. It also seeks to return things to their original state.[18] This means that corrective justice seeks to restore the rights that have been violated and should have been received by the subject of law.

The theory of corrective justice can also be used in trademark law, such as in trademark disputes resulting from dilution. Well-known trademarks are always victims of the use of other trademarks that appear to be similar to them. This action aims to make it easier for the trademark to gain public reach and attention, so that sales become easier and faster without the need for lengthy research and expensive advertising. Trademark disputes in court, such as the Victoria's Secret and Victor's Little Secret case, are very detrimental to the well-known trademark, Victoria's Secret. Victor's Little Secret violated the rights of the well-known brand. The theory of corrective justice is used to analyze whether the judge's decision has restored the rights of the victim and to assess how the doctrine of trademark dilution can be implemented fairly so that the rights of trademark owners are not violated as a result of the application of the doctrine of dilution.

3.2. Implementation of Corrective Justice Theory in Trademark Dilution Doctrine

Distributive and corrective justice have different areas of application. Distributive justice

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[15] Sumaryono. *Ibid.* p.10.
[16] Sumaryono. *Ibid.*
[17] Dwisvimiar, Inge. Keadilan dalam Perspektif Filsafat Ilmu Hukum. *Jurnal Dinamika Hukum*, 11 (3). 2011. 527. DOI: https://doi.org/10.20884/1.jdh.2011.11.3.179.
[18] Herman, Herman, *et al.* Analisis Hukum Pidana Masa Tunggu Pidana Mati Dalam Kitab Undang-Undang Hukum Pidana Nasional Dalam Perspektif Keadilan Korektif. *Halu Oleo Legal Research* 6, (2), 2024. 528. DOI: https://doi.org/10.33772/holresch.v6i2.798.

is more appropriate in the government sphere, while corrective justice is more appropriate in the criminal and civil courts. This is because each has a different purpose, but both are used to seek justice. In other words, injustice can destroy the equality that has been established. As is the goal of corrective justice, which is to rebuild the equality that has been lost due to harmful actions. Therefore, the most appropriate domain for achieving corrective justice should be provided by the courts.

Corrective justice adheres to the principle that the purpose of law is to create a balance between justice and legal certainty as the purpose of law itself. In addition, every subject of law must protect each other's rights, and if those rights are violated, they must be restored. This principle ultimately led to the provision in the Civil Code regarding unlawful acts, whereby anyone who commits an act that causes harm to another person is obliged to compensate for that harm.[19] Article 1365 of the Civil Code, which reads "Every act that violates the law and causes harm to another person obligates the person who caused the harm due to his fault to compensate for the harm," regulates the principle of fault liability. This article is often used as a basis for lawsuits against unlawful acts, with the burden of proof falling on the victim as the plaintiff, based on Article 1865 of the Civil Code, which states that "Any person who claims to have a right, or to assert their own right or refute the right of another person, referring to an event, is obliged to prove the existence of that right or event."

The court is the last bastion in the pursuit of justice. The integrity of judges is essential to ensure public trust in the judicial system. In addition, high-quality court decisions reflect the competence of judges. High-quality court decisions not only provide a resolution between the parties in a case, but also contribute to the development of national law. Both are prerequisites for law enforcement and justice.[20] Judicial decisions must be accountable and based on accurate and correct legal considerations that form the basis of each decision.[21]

Examine several rulings related to dilution actions that may not yet exist in Indonesia, but already exist in other countries such as the United States. Trademark dispute between Secret Catalogue, Inc. v. Moseley. [22] It began when Moseley, as the defendant, sold sex toys in Elizabethtown, Kentucky, United States, under the brand name "Victor's Little Secret." On the other hand, there was a well-known brand called "Victoria's Secret" that sold women's underwear and was produced by Secret Catalogue, Inc. as the plaintiff. The plaintiff strongly

[19] Sudiro, Ahmad. Konsep Keadilan dan Sistem Tanggung Jawab Keperdataan dalam Hukum Udara. *Jurnal Hukum Ius Quia Iustum* 19, (3). 2012. 445. DOI; https://doi.org/10.20885/iustum.vol19.iss3.art6.

[20] Syariffudin. *Pidato pada Seminar Penguatan Integritas dan Kompetensi Hakim untuk mewujudkan visi Badan Peradilan yang Agung*. 21 Agustus 2018. Jakarta. Diakses dari https://www.mahkamahagung.go.id/id/berita/3154/penguatan-integritas-dan-kompetensi-hakim-untuk-mewujudkan-visi-badan-peradilan-yang-agung#:~:text=Sebagai%20benteng%20terakhir%20bagi%20pencari,yang%20dihadapi%20oleh%20para%20piha k. (23 Juli 2025).

[21] Alfarabi, Muhammadi dan Rumainur. Peran Filsafat Hukum dalam Membangun Rasa Keadilan. *Rampai Jurnal Hukum (RJH)*, 2(1), 2023. 36. DOI: https://doi.org/10.35473/rjh.v2i1.2257.

[22] Lihat Findlaw. "Victoria's Secret Stores, Inc., Plaintiff, v. MOSELEY (2010). Diakses dari https://caselaw.findlaw.com/court/us-6th-circuit/1524546.html (24 Juli 2025).

objected to the existence of a junior brand, namely the defendant's brand, which produced sex toys and used a brand name that it considered to be imitating the plaintiff's brand. The plaintiff believes that the defendant's brand dilutes or weakens the plaintiff's brand, which will create a negative perception due to the alleged association between the two brands. There is concern that the slogan that has been built by the plaintiff's brand, "sexy and playful," will create an association with the products sold by the defendant's brand. Meanwhile, the meaning and purpose of the plaintiff's brand slogan are not at all related to disgusting pornographic products. Therefore, the plaintiff reported the alleged dilution due to tarnishment and defamation..[23]

The plaintiff, Victoria's Secret, lost in district court and appealed to the United States Court of Appeals, Sixth Circuit. However, the judge ruled that the plaintiff could not prove dilution or the likelihood of dilution, and the plaintiff lost the case. The judge's ruling was the subject of criticism by legal experts in the United States. In a discussion posted on a website, it was argued that the new brand (the defendant) used to sell sex-related products would likely tarnish the well-known brand because there is a clear semantic connection between the two. This statement also reflected on the judge's previous jurisprudence, where in a similar case, "Polo Ralph Lauren LP v. Schuman," the judge's jurisprudence stated that dilution might occur if the Polo Ralph Lauren brand was associated with Schuman's "adult entertainment business" brand. In addition, in the case of Express Co. v. Vibra Approved Labs. Corp., there is a possibility of defamation if American Express billing cards are associated with condoms and sex toy stores.

During the court proceedings, the plaintiff is required to prove that dilution has occurred, not merely the possibility of dilution, and must present data showing actual damages. However, the latest law, namely the Trademark Dilution Revision Act of 2006 (TDRA 2006), allows for the proof of dilution to be only "the possibility of dilution" rather than "actual losses." Some critics of this ruling also argue that there is a strong semantic connection due to the similarity in word order, making it highly likely that the plaintiff's trademark will be tarnished. In addition, the products sold by the defendant's trademark are products that are prone to tarnishing the plaintiff's trademark products.[24] Another reason is that there are differences in content between pre-amendment and post-amendment regulations, resulting in the judge's decision being deemed inconsistent with the latest regulations.

This analysis highlights the material and immaterial losses suffered by Victoria's Secret as a well-known brand. The efforts made to build a good reputation certainly require a long time and high costs, so it is very important to protect it from all forms of trademark infringement, one of which is dilution. The rights that should have been obtained as a registered and well-known brand have been taken away due to the presence of a junior brand that resembles it. However, the court, as the last bastion of justice, did not restore the rights

[23] Petersen. *Loc. Cit.*

[24] Schwarz, Michael J.. Demonstrating the Requisite Level of Proof for a Federal Trademark Dilution Claim: Establishing Actual Dilution Following Moseley v. Victoria's Secret. *Pace Law Review*, 25 (1), 2004. 173. DOI: https://doi.org/10.58948/2331-3528.1169.

that should have been obtained. The semantic similarity in the brand names is a form of dilution, compounded by the fact that the junior brand is a product that sells pornography, which disturbs the well-known brand because it will lead consumers to assume that there is an association between the two brands. The doctrine of dilution should be used as a form of protection for well-known brands from unfair business competition.

At the court stage, the doctrine of dilution can be used as a legal basis for the judge's consideration in restoring the plaintiff's trademark rights that have been violated, as in the United States anti-dilution regulation, namely Article 43 of the TDRA 2006, which regulates dilution due to blurring and tarnishment. In addition, Article 43 paragraph 2 of the TDRA 2006 also regulates several provisions regarding dilution, namely: 1. The degree of similarity between the trademark or trade name and the well-known trademark; 2. The degree of inherent or acquired distinctiveness of the well-known trademark; 3. The extent to which the owner of the well-known trademark has made substantial exclusive use of the trademark; 4. The degree of recognition of the well-known trademark; 5. Whether the user of the trademark or trade name intends to create an association with the well-known trademark; and 6. The actual association between the trademark or trade name and the well-known trademark.

The opposite is true in Indonesia's trademark legal system. Dilution cannot yet be used as grounds for trademark infringement claims, because Law No. 20 of 2016 on Trademarks and Geographical Indications (MIG Law) does not yet fully regulate trademark infringement due to dilution. Although Article 21 Paragraph 1(c) of the TMIG provides legal protection for dissimilar trademarks, there are no regulations that clearly govern dilution. This has led to uncertainty in practical terms, both in its application by the DJKI and in court. In accordance with trademark regulations in Indonesia, which prioritize the doctrine of distinctiveness and bad faith, this is in accordance with Article 20 (e) of the MIG Law. This is because, in principle, trademark registration is accepted if it has distinctiveness.[25] In addition, the DJKI Module states that distinctiveness is divided into two levels, namely high and low. This will result in a decision to accept or reject the trademark registration.[26] Therefore, court rulings in Indonesia still revolve around decisions caused by violations on the grounds of bad faith and the lack of distinguishing features between the two trademarks in question.

Article 21 paragraph 1 (c) of the MIG Law, which reads "Well-known trademarks belonging to other parties for dissimilar goods and/or services that meet certain requirements; or". This article discusses that trademark applications can be rejected if they are similar to well-known trademarks even though they are of a different type, but must be accompanied by certain conditions. The phrase "certain requirements" has not yet been clearly and comprehensively regulated, either in regulations that are hierarchically below the Law or in

[25] Utama, Yuliana, *et al*. Pelindungan Merek Berbasis Tingkat Daya Pembeda Ditinjau Dari Doktrin Dilusi Merek Di Indonesia. *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan*, 5 (1), 202. 140. DOI: https://doi.org/10.23920/acta.v5i1.486.

[26] Direktorat Jenderal Kekayaan Intelektual, Kementerian Hukum dan Hak Asasi Manusia, *Modul Kekayaan Intelektual Lanjutan Merek dan Indikasi Geografis Tentang Pendaftaran Permohonan Merek dan Indikasi Geografis serta Perlindungannya.* Jakarta. 2020. p.11.

equivalent regulations. This legal vacuum is the reason for the need to update the regulations. Clearer and more comprehensive regulations are needed regarding the establishment of provisions on acts that constitute trademark dilution. In addition, it is important to analyze the possible impact of the application of dilution. Apart from the importance of regulating the provisions or criteria for an act to be considered dilution, it is also important to regulate in detail the burden of proof of dilution in court. This will ensure that the evidence in court is clear and measurable. Given that dilution cannot be proven through actual losses, this means that losses due to dilution will never be visible and can only be felt over a long period of time. Therefore, the establishment of provisions for proving dilution is important. This way, corrective justice can be provided and the exclusive rights of well-known trademarks that have been infringed upon by other trademarks can be restored. The form of restoration of well-known trademark rights in civil law may include compensation determined by a judge.

3.3. Analysis of Trademark Dilution Doctrine Based on the Balance Between Trademark Owner Rights and Freedom of Business

Trademark registration is not only a form of legality for a person's intellectual property (IP), but also ensures that IP owners obtain their rights. Intellectual property rights (IPR) essentially have historical value as a legacy of ideas from the capitalist economy. The purpose of establishing IPR law was initially based on the belief in ownership rights derived from capitalist ideas as an effort to maintain the accumulation of capital or wealth that had been acquired. The philosophical basis for this is liberalism, which is the belief in maintaining a free market in order to develop the values of freedom and protection for individuals as a basis for ethics.[27] However, upon deeper examination and when compared with the reality of social life in Indonesia, IPR actually contradicts the distinctive characteristics of the Indonesian people. The Indonesian people are fond of mutual cooperation, gugur gunung (working together) and sambat sinambat (sharing) in carrying out their daily activities.[28] However, on the one hand, innovation and creativity, which are a person's intellectual assets, also need to be protected, so that IPR law does not fully adopt the teachings of capitalism, but needs to be adjusted to the applicable laws in accordance with a set of principles, values, morals, and norms in a country.

The IPR regime was established in Indonesia based on Indonesia's obligation as a member state of the World Trade Organization (WTO) founding convention. The establishment of the regime was ratified through Law No. 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization. All members are required to ratify the provisions set forth in the convention, particularly Annex 1b of the Convention, namely the TRIPS Agreement (Agreement on Trade Related Aspects of Intellectual Property Rights).[29] IP plays an important role in encouraging innovation and creativity. The

[27] Kusumaatmadja, Mochtar. *Konsep-Konsep Hukum dalam Pembangunan.* Bandung: PT. Alumni, 2006. p.10.
[28] Sahindra, Roni. Pelaksanaan Hak Kekayaan Intelektual dalam Kerangka Pembangunan Budaya Hukum (Diskursus Filosofis Keberadaan Hak Kekayaan Intelektual di Indonesia). *Journal Equitable*, 7 (2), 2022. 274. DOI: https://doi.org/10.37859/jeq.v7i2.4320.
[29] Wicaksono, Imam. Politik Hukum Pelindungan Hak Kekayaan Intelektual di Indonesia Pasca Di Ratifikasinya Trips

development of IP is not always about law and economics, but also relates to moral aspects as an ethical basis for IP protection. The moral aspects of IP include fairness, respect for owners or creators, and social responsibility in using IP.[30]

According to Ramli, as quoted by Muhammad Japar, one of the moral aspects of intellectual property rights is fairness for creators or owners of intellectual property. With that, owners or creators of intellectual property should be entitled to compensation commensurate with their work. The phenomenon of trademark infringement, such as piracy, plagiarism, and unauthorized use, is guaranteed to continue to increase if there is no strong moral value and collaboration to strengthen the law. IPR protection must be based on morality as a means of preventing unauthorized use by other parties and providing appreciation for creators or IPR owners.[31] It cannot be denied that the main principle underlying IPR protection is economic rights, so that in fact the purpose of enforcing these rights is similar to the original purpose of IPR as conceived by capitalist thinking.

As mentioned earlier, morality underpins the thinking behind the IPR regime in Indonesia, which serves to protect individuals who own or create intellectual property so that their rights are not violated by anyone. Furthermore, regarding the economic principle that also underlies the establishment of the IPR regime, the economic principle is upheld on the basis of investments that have been made, including the sacrifice of energy, time, thought, and costs to produce intellectual work.[32] Its implementation must also be accompanied by the granting of exclusivity rights in relation to trademark law.

Brand ownership is characterized by the possession of exclusive brand rights. Without these rights, brands have no value or worth. The absence of exclusive rights results in the freedom to use brands, which can harm businesses and the wider community that is deceived. In addition, brand law was also established to protect against unfair business competition. Article 1 paragraph 5 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications (MIG Law) states that trademark rights are exclusive rights. These rights are granted by the state, represented by the Directorate General of Intellectual Property (DJKI), to the first registrant who is deemed eligible and passes administrative and substantive requirements. There is a period of exclusive rights, but it can be extended for 10 years and can be renewed. Business actors who have exclusive trademark rights must be protected from all forms of trademark infringement.The MIG Law adopts a constitutive registration system (first to file) that is closely related to trademark registration. The constitutive system is a system based on the first applicant for registration, so that exclusive rights are granted to the applicant who is first registered with the DJKI.

Agreement. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 18 (1), 2020. 38. DOI: https://doi.org/10.31941/pj.v18i1.1088.

[30] Miladiyanto, Sulthon dan Ariyanti. Prinsip moralitas merek dalam undang-undang nomor 20 tahun 2016 tentang Merek dan Indikasi Geografis. *Jurnal Cakrawala Hukum*, 11 (3), 2020. 246. DOI: https://doi.org/10.26905/idjch.v11i3.5022.

[31] Japar, Muhammad, *et al.* Analisis Aspek Moral dan Budaya dalam Pemajuan Hak Kekayaan Intelektual di Indonesia. *Iblam Law Review,* 5 (2), 2025. 25. DOI: https://doi.org/10.52249/ilr.v5i2.606.

[32] Sahindra. *Op. Cit.* p.276.

The MIG Law adopts a registration system in the form of a constitutive system (first to file) which is closely related to trademark registration. A constitutive system is a system based on the first applicant for registration, so that exclusive rights are granted to the applicant who is first registered with the DJKI.[33] The implementation of a constitutional system in trademark law guarantees legal certainty. Legal certainty entitles trademark owners to protection in the form of civil compensation and criminal prosecution.

Analyzing Article 21 paragraph 1 of the MIG Law, which provides protection for registered trademarks and well-known trademarks, namely: a. Registered trademarks or prior applicants must be protected from the registration of other trademarks that are substantially or wholly similar and from trademarks with similar types of goods or services. Meanwhile, protection for well-known trademarks in Article 21 paragraph 1 of the MIG Law includes: a. Protection for trademarks with similar types of goods or services that have similarities in essence or in their entirety; and b. Protection for other trademarks with dissimilar types of goods or services that have similarities in essence or in their entirety.

This privilege is based on the provisions of Article 6bis of the Paris Convention, whereby a country is required to reject or cancel trademarks of goods that are imitations, reproductions, or translations of well-known trademarks that cause confusion among consumers. Furthermore, the protection of well-known service marks is explained in Article 16 paragraph 2 of TRIPS mutatis mutandis based on the provisions of Article 6bis of the Paris Convention.

This right must be implemented in providing protection for well-known brands. In court proceedings, a logical approach is taken in determining the grounds for trademark infringement claims. Judges must at least consider several grounds, including:[34] a. The level of recognition of the plaintiff's trademark; b. The level of similarity between the trademarks in question; and c. The level of uniqueness of the plaintiff's trademark. This basis provides protection for well-known trademarks against dilution, but does not preclude the use of other grounds.

Essentially, IP protection provides benefits to the relevant community. From a normative perspective, exclusive rights are a form of legal protection for the use of trademarks, which serve to protect brands from unauthorized use and protect them from actions that damage their reputation and unique value. The party authorized to grant exclusive rights is the DJKI. The DJKI is also the authority responsible for examining trademark registrations. Trademarks whose applications are accepted are entitled to exclusive rights. The benefit received by these trademarks is the right to be protected from all acts of trademark infringement, including dilution. However, Indonesia does not yet explicitly protect trademarks from dilution, and trademark law needs to be updated.

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[33] Perdana, Karlina dan Pujiyono. Kelemahan Undang-Undang Merek dalam Hal Pendaftaran Merek (Studi atas Putusan Sengketa Merek Pierre Cardin). *Jurnal Privat Law* 5 (2), 2017. 85. DOI: https://doi.org/10.20961/privat.v5i2.19398.

[34] Saputra, Bayu dan Widhi Handoko. Perlindungan Hukum Merek Terkenal Yang Didaftarkan (Studi Kasus Putusan Nomor: 206/G/2020/PTUN.JKT). *Notarius,* 16 (1), 2023. 203. DOI: https://doi.org/10.14710/nts.v16i1.41238.

An intellectual work that has been registered will provide a sense of security for its owner, as well as foster a desire to develop creativity due to the benefits of legal protection. In addition, this IP protection also has an impact on consumers because it can prevent the circulation of counterfeit or pirated brands.[35] The state must firmly eradicate the production of brands that have the potential to plagiarize registered brands. This step can begin with stricter brand registration requirements, resulting in the acceptance of brands that are proven to be authentic and in good faith without piggybacking on other registered brands. The state also continuously strives to raise public awareness regarding intellectual property rights violations and the importance of registering intellectual property for businesses. The biggest challenge faced is the communal nature of the culture, which tends to prioritize the common good, so that intellectual property rights, which are individualistic in nature, are considered to be at odds with the philosophy of life of the Indonesian people.[36] The social and cultural characteristics of Indonesian society also have an impact on the analysis of the formation of anti-dilution regulations, which require adjustments so that they can benefit society.

The enforcement of IP protection laws should prioritize the interests of the relevant community, so as not to cause harm to either party. There is a need for cooperation between law enforcement agencies and the economic value of IP for economic rights holders as the subject of dispute.[37] However, protection for intellectual property should not be excessive, as this can create market monopolies and restrict freedom of business. This is especially true when applying protection for well-known brands against dilution. It is important to analyze the impact and legal consequences that may arise in the future. Anti-dilution regulations should be created that accommodate a balance of rights between well-known brands and other brands. The dilution doctrine, which is known to favor well-known trademarks, can minimize conflicts of interest between the two parties if the regulations are formulated by considering the respective rights of both parties. This will prevent the formation of regulations that support market monopolies by powerful parties, as well as restrict freedom of business and the realization of equal market access for all parties.

Excessive protection is feared to create market monopolies, according to some experts who argue that monopolies on intellectual property rights can weaken the development of science and human civilization.[38] Market monopolies are formed due to an unbalanced market mechanism, where a business entity or group controls more than 50% of the market share. This results in price domination and limited distribution, which restricts access for all business

[35] Alfian, Alfian, dkk.. Pengaruh Perlindungan Hukum Terhadap Hak Cipta dan Merek dalam Aspek Sosial di Provinsi Sulawesi Selatan. *Innovative: Journal of Social Science Research,* 5 (1), 2025. 355, DOI: https://doi.org/10.31004/innovative.v5i1.17497.

[36] Disemadi, Hari Sutra dan Cindy Kang. Tantangan Penegakan Hukum Hak Kekayaan Intelektual dalam Pengembangan Ekonomi Kreatif di Era Revolusi Industri 4.0. *Jurnal Komunikasi Hukum (JKH)*, 7 (1). 2021. 68. DOI: https://doi.org/10.23887/jkh.v7i1.31457.

[37] Pratama, Revie Rachmansyah dan Kholis Roisah. Hubungan Hukum Terhadap Kepemilikan Hak Cipta Yang Dijadikan Merek Bagi Pencipta Dan Pemegang Merek. *Jurnal USM Law Review,* 8 (1), 2025. 71. DOI: https://doi.org/10.26623/julr.v8i1.10363.

[38] Sahindra. *Op. Cit*. p.278.

entities. Another impact is on new or small businesses, in this context junior brands, which find it difficult to penetrate the market due to their inferior production scale and promotional capabilities.[39] Market monopolies also weaken local economic independence and narrow employment opportunities. While seeking maximum profit is permissible in the business world, it is necessary to behave reasonably so as not to cause monopolistic practices and unfair business competition. This imbalance weakens motivation or efforts to improve productivity, innovation, and product quality.[40]

This statement will also result in excessive protection for well-known brands. The doctrine of dilution is indeed a privilege enjoyed by well-known brands. However, if it is given excessively to well-known brands, it will lead to restrictions on innovation and creativity as well as freedom of business for junior brands. Therefore, if a dispute arises and reaches the court stage, the judge will usually request evidence of actual damages, as stipulated in the US anti-dilution regulation, TDRA 2006. The granting of protection to well-known brands, which is considered preferential treatment, is basically given on the basis of the efforts they have made in maintaining and building their brands until they are widely known by the public. Building a reputation is not done in a short time, but requires a long time and high costs. Therefore, it is unfair if there are junior brands that imitate well-known brands with the aim of piggybacking on their popularity so that their brands can quickly become known to the public.

The application of the dilution doctrine still requires further research before it can be implemented in Indonesia. The dilution doctrine, which is considered to always favor well-known brands, also has benefits and serves as a deterrent to trademark infringement. One dispute in Indonesia related to dilution is the dispute between the German brand PUMA SE and the Indonesian brand PUMA. The dispute was decided by the Supreme Court judge with decision number 16/Pdt.Sus-HKI/Merek/2023/PN Niaga Jkt.Pst.[41] PUMA SE is a well-known brand and has proven itself as such in court. The brand produces a range of sports products, from fashion to sports equipment. PUMA SE has been registered since 1948 in its country of origin, Germany. However, when it attempted to register in Indonesia, PUMA SE encountered difficulties because there was already an Indonesian brand called PT. PUMA CAT INDONESIA. The Indonesian PUMA brand has been officially registered with the DJKI since 2009 under the name Reno Mustopoh. This brand produces goods that tend to be different in type from the PUMA SE brand, namely mosquito repellent. This difference in the type of goods will later be used by PUMA Indonesia as a defense in court. The basis for the lawsuit filed by PUMA SE is the name "PUMA & kucing melompat" (PUMA & jumping cat), which it considers to be imitating and piggybacking on the reputation of the well-known PUMA SE brand.[42] Although

[39] Putri, Dhea Aulia, *et al.* Monopoli Perdagangan Dan Dampaknya Terhadap Persaingan Usaha Yang Sehat," *Al-Zayn : Jurnal Ilmu Sosial & Hukum*, 3 (3), 2025. 1847-1849. DOI: https://doi.org/10.61104/alz.v3i3.1446.

[40] Mantili, Rai, *et al.* Problematika Penegakan Hukum Persaingan Usaha di Indonesia dalam Rangka Menciptakan Kepastian Hukum. *PJIH: Padjajaran Jurnal Ilmu Hukum*, 3 (1), 2016. 119. DOI: https://doi.org/10.22304/pjih.v3n1.a7.

[41] Lihat putusan Nomor 16/Pdt.Sus-HKI/Merek/2023/PN Niaga Jkt.Pst.,

[42] Kholifa, Fajar Fivi, et al., Analisa Pembatalan Merek Dagang PUMA : (Studi Putusan Nomor 16/Pdt.Sus-HKI/Merek/2023/PN_Niaga_Jkt.Pst). *Jurnal Strategi Dan Bisnis*, 13 (1), 2025. 76. DOI; https://doi.org/10.19184/jsb.v13i1.53706.

the plaintiff ultimately won this dispute and the defendant was found to have violated the principle of good faith, disputes such as this should have been prevented through the use of the dilution doctrine at the substantive examination stage. Examiners should act more protectively in deciding on trademark registrations. In addition, Article 21 paragraph 1 of the MIG Law also stipulates that trademarks that are similar to well-known trademarks can be rejected for registration. This article should also be supplemented with regulations containing provisions on trademark infringement due to dilution so that there are no more legal loopholes. This would enable the doctrine of dilution to be applied by examiners at the DJKI and used as grounds for lawsuits in court, as is the case in the United States.

Several failures in past cases can be used as a basis for reforming the written law and its application. First, in the PUMA case, trademark law reform is necessary. This includes the formulation of follow-up regulations to Article 21 paragraph 1 (c) of the MIG Law by formulating the provisions under which an act can be considered an infringement due to dilution, as well as how dilution can be applied both as preventive protection at the substantive examination stage and as repressive protection at the court stage. This will prevent trademark cases due to dilution and reduce the backlog of cases in court. Second, the Victoria's Secret case in the United States, which failed to prove dilution, can be used as a lesson on how to draft regulations that include provisions on the burden of proof in court. This will ensure that the doctrine of dilution is truly used as repressive legal protection and that corrective justice is achieved to restore the rights of well-known trademarks that have been infringed upon. It is important to remember that the doctrine of dilution should provide protection for well-known trademarks from the threat of infringement by other trademarks and not to restrict the freedom of business for junior trademarks. Both require balance in their application so that both benefit from the doctrine of dilution. The plaintiff obtains their rights, namely receiving appropriate compensation, while the defendant pays compensation and even faces criminal sanctions, with the defendant receiving sanctions commensurate with their actions.

Indonesia is a country that has not yet implemented dilution, but the rules are already explicitly in place. Therefore, it is necessary to review and learn from countries that have been implementing it for a long time. It is hoped that with these learning efforts, Indonesia can implement the dilution doctrine with great care. The application of dilution as the basis for a judge's decision can provide corrective justice for both parties to the case, allowing both parties to obtain their rights and fulfill their obligations appropriately. Although the doctrine of dilution was essentially created because of the many instances of fraud experienced by well-known brands, which can only be used as an excuse by well-known brands, this has led to the perception that there is excessive privilege. The balance between well-known brands as brands that have long dominated the market should not be overly privileged, causing junior or new brands to feel market discrimination and hindering innovation, creativity, and freedom of business. If this balance does not exist, the worst-case scenario is the occurrence of an undesirable market monopoly. If protection is prioritized for well-known brands, the result will be a market monopoly. Conversely, if protection is focused only on junior or new brands, the

country will lose the trust of well-known brands and the long-term consequence will be that many investors will flee due to the poor legal protection system in Indonesia.

4. CONCLUSION

The idea behind the dilution doctrine is to provide legal protection for well-known trademarks. In addition, the application of the dilution doctrine is expected to bring about corrective justice in trademark disputes in court. Corrective justice aims to restore the rights of well-known trademarks that have been infringed upon as a result of dilution. Several trademark disputes can be used as a basis for legal reform. The drafting of regulations must take many aspects into account before being applied to Indonesian trademark law. In substance, anti-dilution regulations must include preventive legal protection, such as provisions on actions that constitute infringement due to dilution. In addition, the application of dilution at the substantive examination stage is also necessary. Repressive protection, such as the burden of proof in court, is necessary to achieve corrective justice for victims of dilution. Indonesia does not yet have comprehensive anti-dilution regulations, as Article 21 paragraph 1 (c) of the MIG Law is not yet able to accommodate this, so legal reform is necessary. However, without disregarding well-known trademarks, the doctrine of dilution should not be applied excessively. The ideal regulations should incorporate the interests of all parties and continue to uphold freedom of business as an economic right for all entities. This will ensure that small brands never experience market monopoly, market access gaps, or restrictions on creativity.

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