

# The Effectiveness of Brand Substantive Checks Essential Standards in Online Registration

*Alifkha Herlyanda Putra* 

Universitas Negeri Semarang, Semarang, Indonesia  
*Herlyandaalif@students.unnes.ac.id*

*Indah Sri Utari*  ORCID Link:

Universitas Negeri Semarang, Semarang, Indonesia  
*indahsuji@mail.unnes.ac.id*

## Abstract

This study examines the effectiveness of the essential standards of brand substantive examination in the online registration system in Indonesia. A sociological juridical approach is used to analyze the gap between legal norms and implementation practices. Hans Kelsen's theory of validity and Lawrence Friedman's theory of legal effectiveness became the main framework of analysis. The findings of the study show that Article 20 and Article 21 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications have formulated adequate parameters regarding discriminating power, similarity in essence, and bad faith. However, the effectiveness of its implementation is constrained by three fundamental problems. First, the abstract character of the norm of equations basically opens up a wide space for interpretation and creates inuniformity of judgment. Second, the capacity of human resources for inspectors has not been optimal, characterized by weak compliance with registration guidelines and the lack of quality assurance mechanisms. Third, the technical limitations of digital systems in detecting non-textual similarities such as phonetic and conceptual aspects. The accumulation of these obstacles has implications for the inconsistency of examination results, the high rejection rate with a ratio of one to four, and an increase in appeals. This study recommends the simultaneous strengthening



of the three Friedman elements through the improvement of interpretation guidelines, systematic enhancement of the capacity of examiners, and the development of a system algorithm capable of detecting non-textual similarities in order to realize a trademark registration system that is not only procedurally efficient, but also able to ensure legal certainty and fair protection of trademark rights.

### **KEYWORDS**

Legal Effectiveness, Substantive Examination, Online Trademark Registration, Equality in Essence.

## **Introduction**

The protection of trademark rights is one of the fundamental aspects of the intellectual property legal system that cannot be ignored in the midst of global trade dynamics.<sup>1</sup> A brand not only functions as a distinguishing identity that signifies the origin of a good or service, but also transforms as a strategic instrument in healthy and fair business competition. In the context of the modern economy, brands have transformed into high-value business assets that represent the reputation, quality, and trust of consumers in a product. Along with the rapid development of digital technology, the brand registration system in Indonesia has undergone a significant transformation with the shift from conventional mechanisms to online-based systems. This shift is motivated by the need to improve administrative efficiency, strengthen process transparency, and expand accessibility for the wider community without being constrained by convoluted geographical and bureaucratic constraints.<sup>2</sup>

The procedural convenience offered by the online registration system cannot necessarily be interpreted as a guarantee of the quality of adequate legal protection. The effectiveness of legal protection of trademark rights is

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<sup>1</sup> Atika Sunarto et al., "Legal Implementation of Trademarks as a Concept of Intellectual Property Rights" 4, no. 3 (2023): 389–95.

<sup>2</sup> DJKI, "Trademark Examination in the Trademark Registration Process," DJKI, 2023, <https://www.dgip.go.id/artikel/detail-artikel-berita/pemeriksaan-merek-dalam-proses-pendaftaran-merek>.

highly dependent on the sharpness and precision of the implementation of substantive examinations.<sup>3</sup> Substantive checks are at the forefront of ensuring that each registered trademark truly meets the material requirements as mandated by laws and regulations. Substantive examinations that are not carried out effectively and comprehensively risk giving birth to new legal problems in the midst of the ease of the online registration system. These problems include overlapping brand ownership, prolonged disputes, unfair business competition practices, to losses in the investment climate and public trust in the national legal system.<sup>4</sup>

Substantive trademark examination has essential standards that must be met, including discriminating power, not causing confusion, and not contradicting public order and laws and regulations.<sup>5</sup> This standard is the main filter to prevent brand overlap, legal disputes, and unfair business competition practices. In practice, the application of the essential standard of substantive checks in the online registration system still faces various obstacles, both from normative, technical, and institutional aspects.<sup>6</sup>

## Methods

This study uses a sociological juridical approach, which examines the effectiveness of the essential standard of substantive trademark examination not only from the normative aspect of laws and regulations, but also from the social reality in the practice of online registration. A normative approach is used in order to examine relevant regulations, such as the Trademark and Geographical Indications Act, as well as technical policies related to the

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<sup>3</sup> Muh Akbar, "Substantive Examination of Trademarks: Meaning, Stages and Time Frame," ILS law firm, 2025, <https://www.ilslawfirm.co.id/pemeriksaan-substantif-merek-arti-tahapan-waktu/>.

<sup>4</sup> Zihan Oktaviani and Universitas Pasundan, "Trademark Protection Reviewed from Trademark Law and Geographical Indications in the Era," no. 2023 (2024): 1–14, <https://doi.org/10.11111/dassollen.xxxxxxx>.

<sup>5</sup> Affa, "Substantive Examination of Trademarks in Indonesia," Affa.co.id, 2026, <https://affa.co.id/pemeriksaan-substantif-merek-di-indonesia/>.

<sup>6</sup> Journal of Law and I U S Quia, "Designing the Standard Concept of Brand Substantive Examination: Learning from the Case of the Brand of M&G Inge Dwisvimiar \* Faculty of Law, Sultan Ageng Tirtayasa University, Email: Inge@untirta.Ac.Id, ORCID ID: 0000-0003-4676-2521 Deshinta Elfira Faculty of Law, Unvers" 31, no. November 2023 (2024): 151–78.

online registration system. This analysis aims to identify the consistency and adequacy of legal norms in ensuring legal certainty and protection of trademark rights. The sociological approach was carried out by looking at the implementation of the online registration system in the field, including technical constraints, human resource capacity, and the experience of brand applicants. Data was obtained through document studies, official reports, as well as interviews or observations on online registration practices. The analysis is carried out qualitatively, by comparing legal norms and social practices, so that it can be measured to what extent the essential standards of substantive brand examination are effectively applied in the online registration system. With this method, the research is expected to be able to provide a comprehensive picture of the gap between regulation and implementation, as well as offer relevant recommendations for improvement.

## **Result and Discussion**

### **1. Online Registration System and Brand Overlap Prevention through Essential standards of substantive checks**

The online trademark registration system in Indonesia is implemented based on the provisions of Law Number 20 of 2016 concerning Trademarks and Geographical Indications which regulates the examination mechanism and substantive parameters in the trademark registration process.<sup>7</sup> In Article 23, it is emphasized that after the announcement period ends and there are no objections, or objections have been resolved, the Minister conducts a

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<sup>7</sup> "A Complete Explanation of Brand Substantive Checks," [jasamerek.com](https://jasamerek.com), 2025, <https://jasamerek.com/blog/pemeriksaan-substantif-merek/>.

substantive examination of the trademark registration application.<sup>8</sup> This examination is a decisive stage before the rights to the trademark are granted. The criteria used in substantive examination refer to Article 20 and also Article 21 which regulates the prohibitions on trademark registration and the reasons for rejection of the application.<sup>9</sup>

The implementation of the electronic trademark registration system has gained normative legitimacy through the Regulation of the Minister of Law and Human Rights Number 42 of 2016 concerning Electronic Intellectual Property Application Services.<sup>10</sup> This regulation emphasizes that all intellectual property applications, including trademarks, are submitted, processed, and managed through an electronic-based information system under the authority of the Directorate General of Intellectual Property (DJKI). These provisions do not only regulate the procedure for online submission

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The authors think that in the context of the prevention of trademark overlap, the integration of the online system with the registered trademark database forms a preventive administrative control mechanism. Through this system, the examiner has direct access to the application data and the trademark that has

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<sup>8</sup> "Law No. 20 of 2016 concerning Trademarks and Geographical Indications," Pub. L. No. 20 of 2016 (2016).

<sup>9</sup> Fiona Amara Syifa, "DISPUTE SETTLEMENT OF TRADEMARK RIGHTS CASES ON THE BRAND ' I AM GEPREK BENSU ' WITH ' GEPREK BENSU '" 1, no. 2 (2024): 274–80.

<sup>10</sup> "Regulation of the Minister of Law and Human Rights Number 42 of 2016" (2020).

<sup>11</sup> DJKI, "Trademark Examination in the Trademark Registration Process."

obtained protection, so that the search process no longer depends on physical archives or manual searches that have the potential to cause delays or misidentification.<sup>12</sup> Database digitization allows matching based on word elements, letter order, and classification of goods and/or services, so that the potential for similarities can be detected from the initial stage of examination.<sup>13</sup>

The existence of a centralized database also serves as a means of information, as all application history, legal status, and brand classification are stored in one integrated system. This consolidation is not just a technical efficiency, but an administrative foundation that ensures that every relevant data – from the date of receipt of the application, the class of goods or services, to the change in registration status is consistently accessible to all parties involved in the examination process. When information is scattered in an integrated system, the risk of inconsistency between examiners becomes significant; Instead, a centralized system minimizes the potential for disparities in assessment caused by inequality in data access.<sup>14</sup>

This supports consistency in the search process, as reviewers can refer to the same data in assessing potential conflicts with other brands. Consistency includes the uniformity of references used as a benchmark for comparison, so that the assessment of the equation in its principal or entirety does not depend on the completeness of the data that happens to be owned by each individual examiner, but on an identical and systematically updated corpus of information. The digital search system not only speeds up the identification process, but also strengthens the aspect of administrative accuracy in the early stages of the examination before a more in-depth legal assessment of the elements of the

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<sup>12</sup> Vincent Anderson, "SETTLEMENT OF TRADEMARK DISPUTES THROUGH CIVIL LAWSUITS: THE EFFECTIVENESS OF COMMERCIAL COURTS IN THE PROTECTION OF INTELLECTUAL PROPERTY IN INDONESIA" 5, no. 2 (2025): 331–38.

<sup>13</sup> Andrew Wijaya, "Juridical Analysis of Equality in Essence in Trademark Disputes Based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications" 5, no. 6 (2025): 5081–94.

<sup>14</sup> Simona Bustani, "Encyclopedia of Journal REVIEW OF CONFLICT OF TRADEMARK REGISTRATION VERIFICATION PROCEDURES AT THE DIRECTORATE GENERAL OF INTELLECTUAL PROPERTY KARA MORINKA, ELFRIDA RATNAWATI," 7, no. 2 (2025): 224–33.

equation as stipulated in Article 21.<sup>15</sup> Such acceleration and accuracy work synergistically: search speed allows examiners to examine more comparable brands in the same time frame, while data accuracy ensures that search results reflect actual registration conditions, not outdated data. The effectiveness of online registration systems in avoiding brand overlap is not merely measured or incomplete. In the end, the integrity of this initial stage of the examination is an important prerequisite for the quality of the subsequent legal assessment, since appropriate juridical conclusions can only be reached if they are based on accurate and thorough administrative facts.

Efforts to prevent brand overlap cannot be completely left to the technological superiority of search systems, because technology essentially only serves as an administrative instrument to detect possible similarities between brands. The final decision is still determined by the application of substantive examination standards based on applicable legal norms. In this context, the main benchmark of the feasibility of a trademark refers to Law Number 20 of 2016 concerning Trademarks and Geographical Indications, especially Article 20 and Article 21, which form **an essential standard in the substantive examination of trademarks**.<sup>16</sup>

Article 20 stipulates that a mark is prohibited from being registered if it is contrary to state ideology, provisions of laws and regulations, moral values, religion, morality, or public order, or if the mark does not have discriminating power or is generic. This provision emphasizes that substantive checks are not solely directed at inter-brand conflicts, but also include an assessment of the suitability of the mark itself to serve as a distinguishing identity of products in trade activities.<sup>17</sup> In other words, before examining the possible similarities with

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<sup>15</sup> Rahmadia Maudy et al., "Legal Protection for Ikea Trademark Rights Holders for Trademark Removal" 1 (2019).

<sup>16</sup> Law and Quia, "Designing the Standard Concept of Brand Substantive Examination: Learning from the Case of the M&G Inge Dwisvimiar Brand \* Faculty of Law, Sultan Ageng Tirtayasa University, Email: Inge@untirta.Ac.Id, ORCID ID: 0000-0003-4676-2521 Deshinta Elfira Faculty of Law, Univers."

<sup>17</sup> Hukum and Quia.

a registered mark, the examiner must first verify that the mark applied for fundamentally qualifies as a trademark.

Article 21 prohibits the registration of trademarks that are essentially or as a whole similar to trademarks belonging to other parties that have been registered for similar goods and/or services, as well as providing a basis for rejection of applications submitted in bad faith. This norm requires an interpretive legal assessment, especially in interpreting the phrase "equality in essence" which cannot be measured mechanically through mere text matching.

The consistency and precision of the examiner in implementing these parameters is a decisive factor in preventing the granting of overlapping trademark rights. Thus, Article 20 and Article 21 not only serve as normative filters, but also are essential **standards in the substantive examination of a mark** that determines whether or not a mark is worthy of legal protection.<sup>18</sup> These essential standards must be applied consistently within the framework of the online registration system. Electronic systems are indeed able to accelerate the process of identifying and tracing data, but the validity of the audit results still depends on the capacity of the examiner to translate these essential standards into objective and professional assessment practices.

The effectiveness of the online registration system in avoiding brand overlap is not solely measured in terms of process speed or ease of access to services, but also in the ability of the system to consistently implement substantive examination standards in the digital environment.<sup>19</sup> The synergy between technological capabilities and the quality of implementation of legal norms is the main key, given that electronic systems essentially only provide an initial detection mechanism, while the essence of brand protection remains dependent on the accuracy of judicial judgment. In this case, effectiveness does not only refer to procedural efficiency, but to the achievement of normative goals, namely

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<sup>18</sup> Faculty of Law et al., "WITH THE ESSENTIAL EQUATIONS OF TRUNOJOYO MADURA UNIVERSITY OF TRUNOJOYO MADURA" 6, no. November (2025): 31–48.

<sup>19</sup> Syarifah Khasna et al., "Digital Transformation of Brand Registration: Assessing the Quality, Efficiency, and Service Challenges for MSMEs in Yogyakarta" 14, no. 2024 (2025): 473–88.

the prevention of granting rights that are not in accordance with the provisions of Article 20 and Article 21.<sup>20</sup> If such normative standards are carried out carefully, objectively, and consistently, the potential for brand conflicts can be reduced from the registration stage; however, if the application is not uniform, the online system will only function as an administrative accelerator without guaranteeing the quality of the substance of the examination.

From the point of view of the business climate, the application of normative standards in the online registration system has implications for legal certainty. The norm-based selection process serves as a preventive mechanism against potential brand conflicts in the early stages.<sup>21</sup> The effectiveness of prevention is still relative. The success of the system depends not only on the availability of regulations and digital infrastructure, but also on the uniformity of the examiner's interpretation, the accuracy of the database, and the system's capacity to handle the complexity of the "equality at the core" assessment that requires legal interpretation. The online registration system has provided an adequate normative and administrative foundation. Strengthening substantive examination standards is still needed so that the goals of legal certainty and protection of exclusive rights can be achieved more optimally.<sup>22</sup>

## **2. Main Obstacles in the Implementation of Substantive Brand Examination Online**

The main obstacle in the implementation of online substantive brand checks is mainly the application of normative standards in practice. The provisions regarding the prohibition of registration and substantive

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<sup>20</sup> "Trademark Registration Trends in Indonesia: Increasing Use of AI Technology to Simplify the Search Process," Ministry of Law of the Republic of Indonesia, 2025, <https://kepri.kemenkum.go.id/berita-utama/tren-pendaftaran-merek-di-indonesia-peningkatan-penggunaan-teknologi-ai-untuk-mempermudah-proses-penelusuran>.

<sup>21</sup> Najwa Aulia, Mirda Andraini, and Aliya Padiya, "BRAND PROTECTION CHALLENGES FOR MSME PRODUCTS WITH GENERIC NAMES: A CASE STUDY," 2025, 3982–92.

<sup>22</sup> Aulia, Andraini, and Padiya.

parameters have been explicitly regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, especially regarding similarity in essence, discriminatory, and bad faith.<sup>23</sup> The existence of these norms does not automatically make the inspection process mechanical. The online system only provides a means of data tracing and classification.

Substantive assessment still requires legal consideration by the examiner. The concept of equations basically does not have a quantitative benchmark. The assessment is based on a comparison of dominant elements, phonetic aspects, word structure, and the potential to cause confusion among consumers. Two visually different brands can be considered to have similarities in principle if they cause a similar impression in consumer perception. On the other hand, a brand that has identical word elements is not necessarily considered to have similarities if the context of use is different. The determination of the boundary between difference and similarity depends on a concrete analysis of each application.<sup>24</sup>

This situation puts the examiner in a position that has discretion. Differences in experience, understanding, and analytical approaches can result in variations in the assessment of similar objects. These variations have the potential to cause differences in examination results in cases that have similar characteristics. The main obstacle lies in efforts to maintain consistency in the application of normative standards that are abstract when faced with concrete facts in the online registration system.<sup>25</sup>

The second obstacle relates to the dependence of the effectiveness of essential standards on the capacity and professionalism of the trademark examiner as a technical implementer at the Directorate General of Intellectual Property. The electronic system enacted through the Regulation

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<sup>23</sup> Affa, "Substantive Examination of Trademarks in Indonesia."

<sup>24</sup> Dwi Fidayanti, "THE APPLICATION OF DECLARATIVE PRINCIPLES IN COPYRIGHT REGISTRATION BY THE DIRECTORATE GENERAL OF INTELLECTUAL PROPERTY (STUDY AT THE REGIONAL OFFICE OF THE MINISTRY OF LAW AND HUMAN RIGHTS OF EAST JAVA)," *Perspective*, 2023.

<sup>25</sup> DJKI, "Online Substantive Examination to Accelerate Geographic Indication Services," DJKI, 2025, [https://www.dgip.go.id/artikel/detail-artikel-berita/pemeriksaan-substantif-secara-daring-untuk-percepat-layanan-indikasi-geografis?utm\\_](https://www.dgip.go.id/artikel/detail-artikel-berita/pemeriksaan-substantif-secara-daring-untuk-percepat-layanan-indikasi-geografis?utm_).

of the Minister of Law and Human Rights Number 42 of 2016 accelerates the administrative process and facilitates data access. The system does not replace the substantive analysis function. A fixed examination requires a comprehensive legal assessment of the brand elements and the context in which they are used. The examiner not only compares textual similarities in the database, but also assesses phonetic aspects, word structure, dominant elements, and the potential for consumer confusion. The assessment requires analytical skills and an understanding of trading practices. The increasing number of applications due to the online system can create a high workload. Such workloads can affect the accuracy and consistency of assessments.<sup>26</sup> Differences in the level of experience and mastery of the substance between examiners can also result in variations in the application of the same standard. This state of affairs shows that the effectiveness of essential standards is determined not only by the clarity of the norm, but by the quality of the human resources that implement them.<sup>27</sup> The standards that have been formulated in the regulations will only function optimally if applied consistently. The obstacles that arise in practice have more to do with the aspects of institutional capacity and audit management than the weaknesses of normative arrangements.

The third obstacle is the limitations of the online system in supporting comprehensive substantive analysis. The electronic registration system implemented based on the Regulation of the Minister of Law and Human Rights Number 42 of 2016 is designed to facilitate the submission, recording, and tracing of data in a structured manner. This mechanism is effective in identifying brands that are identical or have textual similarities based on keywords and classification. The scope of substantive examination as stipulated in Law Number 20 of 2016 concerning Trademarks and

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<sup>26</sup> DJKI.

<sup>27</sup> Fidhayanti, "THE APPLICATION OF DECLARATIVE PRINCIPLES IN COPYRIGHT REGISTRATION BY THE DIRECTORATE GENERAL OF INTELLECTUAL PROPERTY (STUDY AT THE REGIONAL OFFICE OF THE MINISTRY OF LAW AND HUMAN RIGHTS OF EAST JAVA)."

Geographical Indications is not limited to textual similarities.<sup>28</sup> Brand similarities often appear in the form of similarities in sounds, phonetic arrangements, or similarities in concepts that give rise to certain associations in consumers. Data-driven search systems are not always able to detect phonetic similarities of different writings but similar pronunciations. The system cannot judge the similarity of meanings if two brands use different terms with identical concepts.<sup>29</sup> The assessment of potential consumer confusion cannot be calculated automatically because it depends on the context of use, the type of goods or services, and market segmentation. These limitations suggest that digital systems function as administrative aids, rather than as determinants of substantive analysis.<sup>30</sup>

The online system works based on the data available in the official information base. If there are spelling variations, the use of certain graphic elements, or word combinations that are not detected by the search parameters, potential similarities may be missed in the early stages.<sup>31</sup> This requires the examiner to perform advanced analysis manually to ensure that the standard equation is essentially applied appropriately. The effectiveness of a system is not only determined by the speed of data access, but by the ability to integrate between technology and legal judgment. Digital transformation improves procedural efficiency and expands enrollment access.<sup>32</sup> Efficiency is not synonymous with substantive precision. Substantive examination still requires professional consideration that takes into account legal elements and market realities. Although online registration

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<sup>28</sup> Natasha Pritama and R Rahaditya, "The Urgency of Substantive Examination of KasoMax Trademark Disputes with the Kaso Brand in the Context of Legal Protection of Trademarks" 6, no. 1 (2023): 3172–78.

<sup>29</sup> "Conceptual Similarity – When Is 'Well Known' Enough?," HGF, 2022, <https://www.hgf.com/knowledge-hub/conceptual-similarity-when-is-well-known-enough/>.

<sup>30</sup> PUBLIC RELATIONS AND COOPERATION, "BPHN Encourages Improvement of Brand Regulation Through Public Test of Law Monitoring Results," BPHN, 2025, <https://bphn.go.id/berita-utama/bphn-dorong-penyempurnaan-regulasi-merek-lewat-uji-publik-hasil-pemantauan-uu>.

<sup>31</sup> Tarumanagara University, "Responsibility of the Directorate General of Intellectual Property Against Lawsuits in Trademark Registration Disputes of Toyo Co., Ltd," 2025, 7789–98.

<sup>32</sup> Thomas Vandamme and Olivier Debeir, "A  $\mathbb{R}$  Antitative Evaluation of Trademark Search Engines' Performances through Large-Scale Statistical Analysis" 1, no. December 2015 (2023): 343–50.

strengthens the administrative aspect, the effectiveness of the standard is essential in preventing brand overlap still faces challenges at the analytical stage that requires in-depth evaluation. Overall, the main obstacle in the implementation of substantive brand checks online lies in the quality of integration between digital systems and the application of essential standards, not in the emptiness or ambiguity of the norms that govern them.

According to the author; These three obstacles show that the main challenge in the substantive examination of brands online does not lie in the weakness of the norm formulation, but in the dynamics of its application in digital systems. The essential standards stipulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications still have a function as clear assessment parameters. However, its effectiveness is largely determined by the consistency of interpretation, the capacity of the examiner, and the integration between the technology and legal analysis. Thus, the obstacles that arise do not eliminate the effectiveness of essential standards, but limit the degree of their optimization in practice. Therefore, strengthening the implementation aspect and improving the quality of implementation are key factors in ensuring that the online registration system is able to carry out the function of preventing brand overlap more consistently.<sup>33</sup>

This construction shows that the constraints of substantive examination in the online system cannot be separated from the basic character of the norm on which it is based. Abstract essential standards are designed to be adaptive to trade dynamics, but at the same time open up a wide space for concretization in administrative practice. This situation demands a deeper understanding of the relationship between norms, examiner discretion, and the design of digital systems that accommodate their implementation. Therefore, the following discussion is directed at the analysis of the structural and normative dimensions that make up the framework for the substantive examination of brands online.

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<sup>33</sup> DJKI, "Trademark Examination in the Trademark Registration Process."

The structural dimension in the substantive examination of the brand online has to do with the mechanism of translating norms into organized administrative procedures. Law Number 20 of 2016 concerning Trademarks and Geographical Indications has set clear parameters regarding equality in essence, discriminatory, and bad faith. The norm is at the level of abstraction necessary to be able to reach various forms of brand variation in trade practices.<sup>34</sup> In its implementation, the abstract must be concretized through procedures, internal guidelines, and coordination patterns between examiners at the Directorate General of Intellectual Property. The absence of detailed operational standards in measuring dominant elements, the level of consumer confusion, and the relevance of the market context has the potential to over-expand the scope of interpretation. Administrative structures that are not completely uniform can result in different approaches in assessing objects that have similar characteristics, thus implicating the consistency of the application of the essential standards of substantive examination.

The normative dimension concerns not only the existence of written rules, but also the consistency of their interpretation in practice. Hans Kelsen stated that legal certainty requires the consistent application of norms in similar cases. This principle has the consequence that substantive examination must be able to maintain uniformity of consideration without ignoring the individual character of each application. In the online system, these challenges are increasingly complex as the volume of applications increases and the administrative process takes place faster. Procedural speed should not reduce the accuracy of assessing phonetic, conceptual, and potential elements for confusion among consumers. If the same standard results in different judgments without a clear distinguishing basis, then the integrity of the examination system is questionable, given that the normative

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<sup>34</sup> Fauzan F., "Examining the Provisions of Brand Equality in the MIG Law," M. Guntur Hamzah | mguntur.id, 2023, <https://mguntur.id/berita?id=19880>.

parameters in Article 20 and Article 21 of the Trademark Law have been explicitly formulated.<sup>35</sup>

The relationship between norms and the discretion of the examiner needs to be placed proportionately. Discretion is a logical consequence of norms that are open and require concretization in every application. Discretion is not synonymous with unlimited freedom, but rather a space of judgment that must be rationally accounted for based on legal arguments. In the context of brand examination, discretion is used to assess the overall impression, the dominance of certain elements, as well as the relevance of the trade context. Problems arise when there are no internal parameters that can direct the use of discretion uniformly among examiners.<sup>36</sup> Differences in experience, understanding, and analytical approach can affect the final outcome of the examination. This condition shows that the main problem is not the expansion of norms, but in strengthening the implementation framework that controls the use of discretion so that it remains within the corridor of the essential standards that have been set.

The design of digital systems also has normative implications for the implementation of substantive examinations. The electronic registration system implemented based on the Regulation of the Minister of Law and Human Rights Number 42 of 2016 is designed to improve administrative efficiency, strengthen data transparency, and expand the accessibility of registration. Its function is facilitative, not substitutive for legal analysis that requires professional consideration. Keyword-based search systems and the classification of goods or services have not been able to capture all phonetic and conceptual aspects of similarity. Over-reliance on automated search results can lead to the assumption that a brand is safe to register because no textual similarities are found in the database. In fact, the examiner is still obliged to carry out further verification of possible similarities in sounds, word arrangements, or associations of meanings that have the potential to

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<sup>35</sup> Wijaya, "Juridical Analysis of Equality in Principle in Trademark Disputes Based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications."

<sup>36</sup> Akbar, "Substantive Examination of Brands: Meaning, Stages and Time Frame."

cause consumer confusion. Integration between digital systems and manual analysis is a prerequisite so that the standard equation can basically be applied in a complete and comprehensive manner.<sup>37</sup>

Another structural aspect that is no less important is related to workload management and case distribution within the Directorate General of Intellectual Property. The increase in the number of applications due to the ease of the online system requires proportionate arrangements so that each application obtains adequate analysis time. Substantive examination is not just a formal administrative stage, but a legal evaluation process that requires concentration, precision, and a deep understanding of trading practices.<sup>38</sup> An unbalanced workload has the potential to affect the depth of analysis of elements of differentiating power, bad faith, and potential conflicts with other brands that have been registered. Institutional capacity is part of the structure that determines the quality of the implementation of norms. The essential standards set out in the law will function optimally if supported by a human resource management and case distribution system that allows the auditor to carry out his duties carefully and professionally.

These normative and structural dimensions show that the substantive examination of the brand online is at the meeting point between legal texts, professional discretion, and administrative technology. Law Number 20 of 2016 concerning Trademarks and Geographical Indications has provided sufficient parameters to assess the feasibility of a trademark through essential standards as stipulated in Article 20 and Article 21. The main challenge lies in how those parameters are implemented consistently within the organizational framework and digital systems that support comprehensive analysis. Strengthening the aspects of interpretation guidelines, discretionary control, and system design improvement are part of

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<sup>37</sup> M Yusuf Habiby, Lalu Muhammad, and Hayyanul Haq, "Systematic Settlement of Trademark Disputes Containing Similarities in Principle in Creating Business Certainty Based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications," 2023.

<sup>38</sup> Journal of Rural Government Administration, "The Effectiveness of the Implementation of Online Trademark Registration Applications at the Regional Office of the Ministry of Law and Human Rights of West Sumatra" 05, no. 02 (2024): 1–9.

the structural needs in maintaining the quality of the implementation of essential standards. This discussion remains in the realm of implementation dynamics, so that it does not enter the area of final effectiveness measurement which is the focus of the formulation of the problem regarding the effectiveness of the essential standard of brand substantive examination in the online registration system.

Based on the discussion of interpretive constraints, human resource capacity, and technical limitations in the online registration system, the measurement of the effectiveness of the implementation of the essential standards of substantive brand examination is important to be studied. Effectiveness in this context cannot be separated from the character of the online system as an administrative instrument that facilitates the submission and search of data, but still depends on the consistency of the application of the essential standards of Article 20 and Article 21 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Online systems only provide an initial detection mechanism, while the quality of legal protection of trademark rights is largely determined by the extent to which the examiner is able to consistently apply essential standards in the digital environment.

Effectiveness measurement needs to be based on benchmarks that reflect the synergy of legal and technological norms, including the consistency of the examination results in assessing the underlying similarity and differentiating power, the accuracy of the online system in detecting potential brand conflicts both textually and phonetically, and the system's ability to prevent brand overlap and disputes in the future. With these benchmarks, it can be assessed to what extent the essential standards of substantive trademark examination have functioned optimally in the online registration system to ensure legal certainty and protection of trademark rights in Indonesia.

### **3. Effectiveness of the implementation of the essential standards of substantive trademark checks in the**

## **online registration system to ensure legal certainty and protection of trademark rights**

The discussion of the effectiveness of the application of essential standards in the online registration system cannot be separated from Hans Kelsen's thoughts on the validity and effectiveness of legal norms. Deep Kelsen *Pure Theory of Law* distinguish between the validity of formal norms and the effectiveness of norms related to real application in social practice. A legal norm may be juridically valid, but its effectiveness can only be measured by the extent to which it is actually applied and adhered to in reality.<sup>39</sup> In the context of trademark examination, Article 20 and Article 21 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications have met the requirements for validity as a legal norm. Its effectiveness is determined by how the norm is operationalized in the online registration system by auditors at the Directorate General of Intellectual Property.

Lawrence M. Friedman in his theory of *legal effectiveness* offers a more comprehensive framework of analysis. Friedman argues that the effectiveness of a law is determined by three main elements: the structure of the law, the substance of the law, and the culture of the law. In the context of online trademark checking, the legal structure is reflected in the digital systems and administrative procedures available.<sup>40</sup> Legal substance refers to the essential standards set forth in the law. Legal culture is related to the attitude and behavior of examiners in applying these norms. Friedman asserts that **"laws and regulations are ubiquitous, touching on many aspects of individual and corporate behavior. But under what conditions are laws and rules actually effective?"** <sup>41</sup> This question

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<sup>39</sup> Phil Edwards and Phil Edwards, "Hans Kelsen , International Law and the ' Primitive ' Legal Order Hans Kelsen , International Law and the ' Primitive ' Legal Order ABSTRACT," *Case law 0*, no. 0 (2025): 1–30, <https://doi.org/10.1080/20403313.2025.2457805>.

<sup>40</sup> "Impact: How Law Affects Behavior," THELIVINGLIBRARY, 2022, <https://thelivinglib.org/impact-how-law-affects-behavior/#brx-content>.

<sup>41</sup> Kjell A Modeer, ed., *LEGAL HISTORY "Reflecting the Past and the Present Current Perspectives for the Future"* (Institute for Legal History Research, 2021).

becomes very relevant when examining the extent to which the online registration system is able to realize legal certainty and protection of trademark rights.

The three main constraints identified in the previous section are interpretive constraints, human resource capacity constraints, and technical constraints of direct systems with three Friedman elements. Interpretive constraints are related to legal substance that is abstract and requires concretization. The constraints of human resource capacity are related to the legal culture of the auditors in exercising their discretion. The technical constraints of the system relate to the legal structure available to support the examination process. Findings from various studies in Indonesia show that differences in perceptions in the assessment of "equality at the core" are still an obstacle that hinders the effectiveness of trademark registration and dispute resolution.<sup>42</sup> On the other hand, data from the Directorate General of Intellectual Property shows that the rejection rate of trademark applications is still quite high with a one-to-four ratio between rejected and registered applications.<sup>43</sup> This condition indicates that the effectiveness of essential standards has not been achieved optimally in Indonesia.

Within the framework of Friedman's theory, the legal structure of the online registration system in Indonesia has undergone significant progress. The Directorate General of Intellectual Property recorded success in accelerating the completion of substantive examinations with the application period reaching 7 months, which is the fastest in the last 3 years and faster than the average of ASEAN countries which is 9.5 months. The program to accelerate the completion of substantive examinations has successfully exceeded the target with a total of 60,168 applications.<sup>44</sup> The progress of this legal structure shows that the institutional and procedural aspects have

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<sup>42</sup> COOPERATION, "BPHN Encourages Improvement of Brand Regulation Through Public Testing of Law Monitoring Results."

<sup>43</sup> Aulia, Andraini, and Padiya, "BRAND PROTECTION CHALLENGES FOR MSME PRODUCTS WITH GENERIC NAMES: A CASE STUDY."

<sup>44</sup> HARIYANTI Nabilla rahmadina, "LEGAL PROTECTION FOR FAMOUS BRANDS THAT ARE PLAGIARIZED (Study of Decision Number 4/Pdt.Sus-HKI/Brands/2021/PN Niaga Sby)," n.d.

improved in terms of efficiency. However, the Directorate General of Intellectual Property itself admits that time efficiency has not been fully balanced with substantive quality, considering the still high rate of rejections and appeals. Friedman reminds that a good legal structure does not automatically guarantee effectiveness without being supported by adequate legal substance and culture.<sup>45</sup>

The legal substance in the form of the essential standards of Article 20 and Article 21 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications has basically been adequately formulated. The law provides clear parameters regarding similarity in essence, discriminating power, and bad faith. However, problems arise when these parameters have to be applied to concrete cases. Research from the University of Indonesia found that the elements of similarity are often interpreted differently by various parties, causing uncertainty in trademark registration.<sup>46</sup> In practice, a study from the University of Mataram shows that there are still challenges in applying the equation criteria in essence, especially in the case of brands that have similar visual elements. This is due to the subjective nature of the visual similarity assessment, which can give rise to different interpretations among examiners. This inconsistency of interpretation has implications for the consistency of the results of the examination between applications that have similar characteristics within the Directorate General of Intellectual Property.<sup>47</sup>

The legal culture of the examiners is a key factor in bridging the abstraction of norms with the concretization of cases. Substantive examination in Indonesia is not just an administrative match, but a comprehensive legal assessment.<sup>48</sup> The examiner not only compares textual

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<sup>45</sup> "A full explanation of the substantive examination of the brand."

<sup>46</sup> Rendy Alexander et al., "APPLICATION OF THE PRINCIPLE OF 'FIRST TO FILE' TO THE CONCEPT OF TRADEMARK REGISTRATION IN INDONESIA" 10, no. 9 (2022): 2110–21.

<sup>47</sup> Pritama and Rahaditya, "The Urgency of Substantive Examination of KasoMax Trademark Disputes with Kaso Trademarks in the Context of Legal Protection of Trademarks."

<sup>48</sup> Affa, "Frequently Asked Questions Regarding Trademark Registration and Use in Indonesia," Affa.co.id, 2024, <https://affa.co.id/pertanyaan-yang-sering-diajukan-terkait-pendaftaran-dan-penggunaan-merek-di-indonesia/>.

similarities in the database, but also assesses phonetic aspects, word structure, dominant elements, and the potential for consumer confusion. The assessment requires analytical skills and an understanding of trade practices in Indonesia. The brand inspection team at the Directorate General of Intellectual Property is considered to have paid less attention to the trademark registration guidelines, so that trademarks that have similarities in principle can still be registered.<sup>49</sup> These findings confirm that the legal culture of auditors has not fully supported the effectiveness of implementing essential standards in Indonesia.

The inability of digital systems to detect non-textual similarities further reinforces the importance of the role of the examiner. Brand similarities often appear in the form of similarities in sounds, phonetic arrangements, or similarities in concepts that give rise to certain associations in Indonesian consumers. Data-based search systems are not always able to detect phonetic similarities that are different in writing but similar pronunciation in the context of Indonesian. The system also cannot assess the similarity of meaning if two brands use different terms with identical concepts. The assessment of potential consumer confusion cannot be calculated automatically because it depends on the context of use, the type of goods or services, and market segmentation in Indonesia. These limitations suggest that digital systems function as administrative aids, rather than as determinants of substantive analysis. If the legal culture of the examiner does not develop in line with technological advancements, then the technical limitations of the system will further widen the gap between normative expectations and the reality of implementation within the Directorate General of Intellectual Property.<sup>50</sup>

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<sup>49</sup> "Law (Law) No. 28 of 2014 concerning Copyright," Pub. L. No. 28 (2014), <https://peraturan.bpk.go.id/details/38690>.

<sup>50</sup> Habiby, Muhammad, and Haq, "A Systematics of Trademark Dispute Resolution That Contains Similarities in Principle in Creating Business Certainty Based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications."

Based on Friedman's analysis of the three elements, the effectiveness of implementing essential standards in the online registration system in Indonesia can be measured through four interrelated benchmarks. First, the consistency of the audit results in assessing the similarities in principle and the differentiating power within the Directorate General of Intellectual Property.<sup>51</sup> Research from the University of Indonesia found that the elements of similarity are often interpreted differently by various parties, causing uncertainty in trademark registration. Second, the accuracy of the online system in detecting potential brand conflicts both textually, phonetically and conceptually in the Indonesian context. Data-driven search systems in Indonesia have indeed included the assessment of sound and concept equations, but this capability is still limited and requires manual verification by the examiner. Third, the system's preventive ability to prevent brand overlap and disputes in the future. The high rejection rate with a ratio of one to four and the increase in appeals in the last two years indicate that the preventive function of the system has not been running optimally. Fourth, the level of legal certainty for trademark applicants in Indonesia is not only measured by the speed of the process, but also by the predictability of the examination results based on clear parameters and consistently applied by the examiners.

From the perspective of trademark rights protection in Indonesia, the effectiveness of implementing essential standards still faces a significant gap between normative achievements and implementation realities. Research from Pakuan University proves that trademark disputes occur due to a lack of thorough and strict checks at the administrative and substantive stages, where the audit team is considered to be less attentive to the trademark registration guidelines.<sup>52</sup> The case of the Gudang Baru brand which has similarities with Gudang Garam is a concrete example of how problematic

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<sup>51</sup> Alexander et al., "THE APPLICATION OF THE PRINCIPLE OF 'FIRST TO FILE' TO THE CONCEPT OF TRADEMARK REGISTRATION IN INDONESIA."

<sup>52</sup> Ida Ayu Sukihana, Faculty of Law, and Udayana University, "SUBSTANTIVELY ON TRADEMARK REGISTRATION" 10, no. 6 (2021).

brands can still be registered in the DJKI online system. Furthermore, research from Syiah Kuala University confirms that substantive checks at DJKI have not run optimally so that it allows the registration of brands that have similarities to well-known brands (Tarumanagara, 2025). This condition is exacerbated by the subjective nature of the equality assessment in principle which causes the dissimilarity of legal concepts between examiners (Pratama Putra, 2024), as well as the fact that there are still differences of opinion in the commercial court decision regarding equality in essence. As a result, legal certainty for trademark holders is disrupted and has the potential to cause losses for trademark applicants who have paid the registration fee but are rejected at a later date.

Recommendations for strengthening effectiveness should be directed at the simultaneous improvement of the three Friedman elements in the DJKI institution. First, strengthening the substance of the law through the improvement of interpretation guidelines and more detailed inspection operational standards to narrow the space of excessive discretion among examiners. This includes clarity of substantive examination procedures, consistency of time in the examination stage, and restrictions on applications that do not respond to proposed rejections. Second, strengthening the legal culture through systematically increasing the capacity of human resources in developing the competence of brand inspectors, including continuous training, discussion forums between inspectors, and quality assurance mechanisms for inspection results. Third, strengthening the legal structure through improving system design to detect non-textual similarities relevant to brand characteristics in Indonesia, as well as strengthening the integration between digital systems and manual analysis by. The legal arguments that are appropriately prepared by the examiner remain the determining factor in determining whether there is an equality or not, as long as it is adjusted to the legal and cultural context of Indonesia. The simultaneous strengthening of these three elements will determine the extent to which the essential

standards of substantive trademark examination can be effectively applied in the online registration system in Indonesia in the future.

## Conclusion

Based on a comprehensive analysis of the effectiveness of the essential standards of substantive trademark examination in the online registration system in Indonesia, it is concluded that the implementation of trademark law norms faces structural challenges stemming from the dynamics of implementation, not from the weaknesses of the substance of the norm itself. The main findings show that Article 20 and Article 21 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications have formulated adequate parameters regarding discriminatory, similarity in essence, and bad faith. However, the effectiveness of these norms is constrained by three fundamental interrelated problems: first, the abstract character of the norm of equality in essence which opens up a wide space for interpretation; second, the capacity and consistency of human resources of the examiners who have not been fully optimal; and third, the technical limitations of digital systems in detecting non-textual similarities such as phonetic and conceptual aspects. The accumulation of these obstacles has implications for the inconsistency of examination results, the high rejection rate with a one-to-four ratio, and the increase in appeal applications which reflects the weak preventive function of the system.

More deeply, the failure to optimize essential standards reflects the synergistic dysfunction between elements of the legal system as stated by Lawrence Friedman. The legal structure in the form of an online registration system has indeed shown significant progress with the acceleration of the waiting period for the first examination to 7 months, exceeding the ASEAN average. However, this procedural progress has not been offset by the strengthening of legal substance through detailed interpretation guidelines, nor the legal culture of examiners which is characterized by weak compliance

with registration guidelines and the lack of quality assurance mechanisms. This inequality creates a gap between administrative efficiency and substantive quality, where digital systems only serve as procedural accelerators without guaranteeing the accuracy of juridical judgments. This practice risks perpetuating trademark disputes at the appellate and court levels, ultimately eroding legal certainty and public trust in the national intellectual property system.

Therefore, as an urgent corrective step, it is recommended that the Directorate General of Intellectual Property immediately refine the substantive examination technical guidelines with more operational parameters to measure the dominant elements, the level of consumer confusion, and the relevance of the market context, in order to narrow the space for excessive discretion among examiners. In parallel, it is necessary to systematically increase the capacity of human resources through continuous training, discussion forums between inspectors, and strengthening the quality assurance mechanism for inspection results. In the technological aspect, the improvement of system design should be directed towards the development of algorithms that are able to detect phonetic and conceptual similarities, as well as strengthen the integration between system findings and manual analysis. In the long term, institutional reform that simultaneously balances the structure, substance, and legal culture is an absolute prerequisite for realizing a trademark registration system that is not only procedurally efficient, but also able to ensure legal certainty and fair protection of trademark rights in accordance with the mandate of the Trademark Law.

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