Reconstructing the Authority of the Ministry of Law in Trademark Protection Based on the Rule of Law Principles

Tessa Usallimy (1)
Fakultas Hukum, Universitas Islam Riau, Pekanbaru, Indonesia
Abd Thalib (2)
Fakultas Hukum, Universitas Islam Riau, Pekanbaru, Indonesia
Suparto (3)
Fakultas Hukum, Universitas Islam Riau, Pekanbaru, Indonesia
Surizki Febrianto (4)
Fakultas Hukum, Universitas Islam Riau, Pekanbaru, Indonesia
Email: usallimytesa@gmail.com

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Abstract

Trademark protection reflects the state's role in ensuring legal certainty in intellectual property and safeguarding business actors' interests. The Ministry of Law, through the Directorate General of Intellectual Property, may examine and approve trademark registration applications, issue certificates, record changes in rights, and handle objections and appeals. However, the exercise of this authority gives rise to legal issues, including the rejection of applications after the payment of Non-Tax State Revenue (PNBP), the cancellation of certified trademarks via court rulings, a lack of uniformity in the parameters for assessing "essential similarity," and unclear state liability for administrative examination errors, alongside transparency and accountability issues stemming from service digitalization. This research aims to analyze the structure and shortcomings of the Ministry of Law's authority over trademark protection and to propose a reconstruction of this authority that ensures legal certainty, fairness, rights protection, and governmental accountability. The research uses a normative legal method with statutory, conceptual, philosophical, historical, case, and comparative approaches, analyzing primary, secondary, and tertiary legal materials prescriptively, grounded in theories of the rule of law, authority, legal protection, state liability, and good governance. This research is expected to produce an authority model integrating examination, decision-making, certificate issuance, supervision, correction of decisions, refund of state revenue, and state liability within a single constitutional law framework, with clearer substantive examination standards and effective error-correction mechanisms. In conclusion, this reconstruction is expected to realize trademark protection grounded in legality, legal certainty, justice, transparency, and accountability as a manifestation of the rule of law.

1. Introduction

A brand is an intangible asset that is closely integrated into everyday economic life. It indicates the origin of goods or services, serves as a quality guarantee for consumers, and acts as a repository for the reputation a business has built over time. Under the Indonesian legal system, trademark rights do not arise automatically through use; they are acquired only once the trademark is registered. Article 3 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law) stipulates that rights to a trademark are acquired only after the trademark has been registered; thus, Indonesia adheres to a constitutive system, or a "first-to-file" system (Undang-Undang Nomor 20 Tahun 2016, 2016, Pasal 3). Consequently, the state, through the ministry responsible for legal affairs, holds a decisive position: the state's administrative action transforms a sign into an exclusive right protected by law (Abrillia et al., 2025; Iswantoro & Luthviati, n.d.; Soeharto & Victoria, n.d.). This central role now resides within the Ministry of Law.

Following the restructuring of the ministries at the end of 2024, the Directorate General of Intellectual Property (DGIP) under the Ministry of Law handles intellectual property matters, as stipulated in Presidential Regulation Number 155 of 2024 (Firmansa et al., 2020; Mariconda, 2025; News, 2026; V. E. P. Sari et al., 2022). Through the Directorate General of Intellectual Property (DJKI), the Ministry of Law is authorized to examine the completeness and substance of applications, publish applications, determine whether an application is accepted or rejected, issue certificates, record changes and transfers of rights, and facilitate the resolution of objections and appeals via the Trademark Appeals Commission. This authority is derived directly from the law, making it an attributive power, and any decision resulting from it constitutes an administrative government decision, which is subject to the principle of legality and the general principles of good governance (AUPB) (Undang-Undang Nomor 30 Tahun 2014, 2014). Problems arise because this broad authority is not fully balanced by clear standards, corrective mechanisms, or accountability (Barokah & Erliyana, 2021). For instance, applicants are required to pay Non-Tax State Revenue (PNBP) fees when submitting an application; yet, an application can still be rejected without any refund of these fees, a situation that raises questions regarding the balance between the

obligations of citizens and the quality of state services (Daniati et al., 2024). This issue has become increasingly relevant following the issuance of Government Regulation Number 30 of 2026, which raised the trademark registration fee for general applicants from IDR 1,800,000 to IDR 2,800,000 per class, effective August 1, 2026 (Peraturan Pemerintah Nomor 30 Tahun 2026, 2026).

Second, the Commercial Court can still cancel a registered trademark if it bears a fundamental resemblance to another mark or was registered in bad faith. Such a cancellation implies that the state's registration decision was erroneous; however, the certificate holder who may have made investments based on that decision must bear the resulting losses (Divina et al., 2023).The most recent case involves the cancellation of three trademark registrations for "Tamba Waras Bali Kutus Kutus," a decision upheld by the Supreme Court through Judicial Review Ruling Number 29 PK/Pdt.Sus-HKI/2026, which has subsequently been followed up on administratively by the Ministry of Law (Antara News, 2026).

Third, the criteria for assessing "substantial similarity" are not yet uniform. Various studies indicate that evaluating similarities in names, shapes, or images relies heavily on the examiner's discretion; consequently, an application's outcome may vary depending on who conducts the examination (Dwisvimiar & Elfira, 2024). Fourth, state liability for errors in administrative examination remains unclear. While the Law on Government Administration stipulates that losses resulting from the annulment of a decision are the responsibility of the concerned government body or official, this provision has not yet been incorporated into the trademark regime (Undang-Undang Nomor 30 Tahun 2014, 2014, Pasal 71).

Fifth, the increasingly comprehensive digitalization of services facilitated by the Minister of Law Regulation Number 5 of 2026 concerning Trademark Registration accelerates the process; however, it simultaneously necessitates guarantees regarding the transparency of search algorithms, the disclosure of reasons for rejection, and accountability for system errors (Ernanda, 2025). Previous studies generally address these issues separately. Dwisvimiar and Elfira (2024) propose a standard for substantive examination based on lessons from the M&G trademark case, but emphasize that this proposal serves as a guideline rather than a legal basis.

Putra and Utari (2026) found that the effectiveness of substantive

examination in online registration is limited by the abstract nature of the "substantial similarity" standard, the uneven capacity among examiners, and the limitations of digital systems in detecting phonetic and conceptual similarities. Other research focuses on bad faith in lawsuits for annulment (Ginting & Azhari, 2022), comparison between the first-to-file and first-to-use systems (Faadhilah & Santoso, 2024; Murdiana et al., 2026; Sa'ban et al., 2024), as well as state liability for unlawful acts committed by public autho(Aua et al., 2025; Prematura, 2021) rities in general (Aditya, 2021) .

There are not yet many studies that situate the entire spectrum of the Ministry of Law's authority, ranging from examination, determination, certificate issuance, and the correction of decisions to the management of non-tax state revenue (PNBP) and state accountability, within a single constitutional and administrative legal framework grounded in the principles of a state governed by the rule of law. It is where the novelty of this article lies. Rather than merely criticizing trademark examination practices, this article reconstructs the Ministry of Law's authority as a cohesive cycle of administrative power in which every stage of administrative action is governed by clear standards, correction mechanisms, and defined accountability (Gunawan, 2023). Against this backdrop, this research aims to: (1) analyze the structure and shortcomings of the Ministry of Law's authority in the administration of trademark protection in Indonesia; and (2) formulate a reconstruction of the Ministry of Law's authority that ensures legal certainty, fairness, the protection of rights, and governmental accountability, in accordance with the principles of a state governed by the rule of law (Gusman et al., 2021; Saadah et al., 2026; Zahra et al., 2026).

2. Method

This study is a form of normative legal research, an approach that treats law as a set of norms and aims to provide prescriptive answers to the legal issues raised (Hartono et al., 2023). The choice of this research type is based on the nature of the issue under examination: the question of the Ministry of Law's authority regarding trademark protection is fundamentally a matter of normative consistency, the clarity of the legal basis for such authority, and the adequacy of legal mechanisms; therefore, it is best addressed through an

analysis of legal materials rather than through empirical measurement of the conduct of officials. This research employs six approaches (Hendrawan & Andersen, 2025).

The statutory approach is used to examine the 1945 Constitution of the Republic of Indonesia, the Trademark Law (as amended by Law Number 6 of 2023 on Job Creation), Law Number 30 of 2014 on Government Administration, Presidential Regulation Number 155 of 2024, Government Regulation Number 30 of 2026, and the Regulation of the Minister of Law Number 5 of 2026. The conceptual approach is utilized to analyze the concepts of the rule of law, authority, legal protection, state liability, and good governance (Hidayat & Guntur, 2025).

The philosophical approach is applied to explore the values of legal certainty, justice, and utility that should underpin the exercise of authority. The historical approach is used to trace the institutional transition from the Ministry of Law and Human Rights to the Ministry of Law, as well as the evolution of trademark registration regulations.

The case approach is employed to analyze court rulings on the cancellation and removal of trademarks that reveal shortcomings in the examination process, including cases such as Bensu, M&G, VANS, Zhe Nung Zhu, KASOMAX, and Kutus Kutus. Finally, a comparative approach is used on a limited basis to contrast Indonesia's trademark protection model with systems that recognize prior use, such as Malaysia's. Primary legal materials consist of relevant legislation and court rulings. Secondary legal materials include scholarly journal articles, particularly those published within the last ten years, as well as legal textbooks (Jazuli, 2018). Tertiary legal materials, such as legal dictionaries and official news sources, are used to track the latest policy developments. These materials were gathered through literature reviews and searches of regulatory databases and online journals, then inventoried and classified by issues concerning authority, examination, correction of decisions, non-tax state revenue (PNBP), and state liability (Ikram & Santoso, 2025).

The analysis is qualitative and prescriptive. The identified norms are interpreted through grammatical, systematic, and teleological approaches, and subsequently examined using five analytical frameworks: the theory of the rule of law, the theory of authority, the theory of legal protection, the theory of state

liability, and the principles of good governance (Kurdi et al., 2026). To ensure the credibility of the analysis, each normative finding is cross-referenced with court rulings and prior research, ensuring that the formulated recommendations are not only theoretically coherent but also relevant to the issues encountered in practice (Juliani, 2020).

3. Results And Discussion

Structure and Limitations of the Ministry of Law's Authority in the Administration of Trademark Protection

Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a state based on the rule of law, and Article 28D, paragraph (1) guarantees every person the right to recognition, assurance, protection, and fair legal certainty (*Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945, Pasal 1 ayat (3), Pasal 28D ayat* (1)). These two provisions serve as a starting point for assessing the Ministry of Law's authority. Within the Rechtsstaat (rule of law) tradition, which has influenced the Indonesian constitution, the concept of a state governed by law is not merely a philosophical principle; rather, it must manifest through operational elements: the subjection of public institutions to the law, the requirement for a statutory basis (*Gesetzesvorbehalt*), effective legal protection, proportionality, and state responsibility (Lestari et al., 2025).

Wijayawati (2023) points out that these elements, particularly state responsibility, remain underdeveloped in Indonesian practice. This assessment is relevant to trademark registration, as administrative actions in this field directly create private rights with economic value. From the perspective of the theory of authority, the authority of the Ministry of Law in the field of trademarks is derived through attribution from the Trademark Law, which designates the "Minister" as the authority holder; this authority is subsequently exercised by the Directorate General of Intellectual Property (DJKI) in accordance with the Ministry's organizational structure. The Law on Government Administration distinguishes between the concepts of attribution, delegation, and mandate, and stipulates that any decision is valid only if it is issued by an authorized official, follows the prescribed procedures, and adheres to the appropriate substantive requirements (Undang-Undang Nomor 30

Tahun 2014, 2014, Pasal 11–14, 52).

Zamroni (2024) notes that attribution, delegation, and mandate are specific to public law and should not be conflated with authority in private law (Mahardika & Santoso, 2023). This clarification matters because, while the decision to register a trademark is inherently public, its consequences are private. When such a public decision is erroneous, the resulting losses fall within the private sphere. Yet, the resolution of the matter is left to be handled through disputes between business entities in the Commercial Court. Normatively, the Ministry of Law's authority cycle can be mapped into six stages. The first stage involves receiving an application and examining its formal completeness. The second stage consists of a two-month public announcement of the application, allowing third parties to raise objections (Undang-Undang Nomor 20 Tahun 2016, 2016, Pasal 14, 16). The third stage is a substantive examination regarding absolute grounds under Article 20 and relative grounds under Article 21, including any resemblance in essential parts or in their entirety to registered trademarks, well-known trademarks, and geographical indications, as well as applications filed in bad faith (Undang-Undang Nomor 20 Tahun 2016, 2016, Pasal 20, 21, 23).

The Job Creation Law (Undang-Undang Nomor 6 Tahun 2023, 2023) subsequently shortened the substantive examination process through amendments to the Trademark Law. The fourth stage is the issuance of a decision to accept or reject an application; in the event of a rejection, the applicant has the right to file an appeal with the Trademark Appeals Commission, followed by the option to initiate a lawsuit in the Commercial Court (Undang-Undang Nomor 20 Tahun 2016, 2016). The fifth stage is the issuance of a certificate and its entry into the General Register of Trademarks. The sixth stage involves administrative follow-up on trademark removal and cancellation, including implementing court rulings and publishing them in the Official Trademark Gazette (Undang-Undang Nomor 20 Tahun 2016, 2016, Pasal 72–74, 91).

Historically, this authority has developed gradually. Post-independence trademark legislation has been replaced several times, culminating in Law Number 20 of 2016, which superseded Law Number 15 of 2001 and consolidated trademark regulation with that of geographical indications. A

significant change in Law Number 20 of 2016 is that it moves the publication stage to precede substantive examination, allowing examiners to consider third-party objections from the outset. Institutionally, intellectual property matters previously under the Ministry of Law and Human Rights have, as of 2024, moved to the Ministry of Law, following the former ministry's division into several separate ministries. This shift has significant implications: the Ministry of Law now consolidates regulatory drafting, general legal administration, and intellectual property, placing it in a strategic position to reorganize trademark protection authority more coherently (Manurung et al., 2025).

However, this strategic position also places regulation-making, auditing, and management of non-tax state revenue (PNBP) within a single ministerial environment, increasing the need for internal and external accountability mechanisms. Minister of Law Regulation Number 5 of 2026 updates these stages. This regulation, in effect since February 23, 2026, replaces Regulation of the Minister of Law and Human Rights Number 67 of 2016. It renders the entire process up to the issuance of the certificate fully electronic, shortens administrative processing time from up to 150 days to between 30 and 90 calendar days, and simplifies the verification process for micro and small business categories to qualify for special rates (Peraturan Menteri Hukum Nomor 5 Tahun 2026, 2026) (Marzuki, 2008). From a public service perspective, this change is commendable. However, increased speed does not automatically guarantee accuracy.

The faster and more automated the examination process becomes, the greater the need for measurable standards and effective correction mechanisms ensuring that speed is not achieved at the cost of erroneous decisions. An analysis of this framework reveals five fundamental weaknesses. The first lies in the imbalance between the obligation to pay non-tax state revenue (PNBP) and the certainty of the service provided. Trademark registration fees (a form of PNBP) must be paid in advance as a prerequisite for processing an application. In practice, these fees are non-refundable even if an application is ultimately rejected, because they constitute payment for the examination service (Masnun & Pratama, 2020). This rationale is justifiable only if a rejection is based on a thorough examination and clear, valid reasons.

Conversely, if a rejection stems from an examiner's error, or if an application

that should have been rejected is instead approved, thereby harming third parties, the fee loses its character as a legitimate payment for a proper service. A study by Divina et al. (Nabil et al., 2026) regarding patent-related PNBP indicates that the absence of clear implementing regulations covering the amounts, requirements, and procedures for determining such fees undermines legal certainty. A similar issue arises within the trademark regime: Government Regulation (PP) Number 30 of 2016 significantly increases fees, including the fee for filing an objection now set at IDR 1,500,000 and the fee for filing an appeal, which is now IDR 4,500,000 (Peraturan Pemerintah Nomor 30 Tahun 2026, 2026), however, there are no provisions for the refund of Non-Tax State Revenue (PNBP) in cases where the rejection or approval of an application is subsequently found to be erroneous due to an administrative error. A study on the Non-Tax State Revenue of the Directorate General of General Law Administration also indicates that digitalization contributes to increased state revenue (Perkasa et al., 2026). Therefore, this fiscal orientation must be balanced with guarantees of service quality, so that non-tax state revenue (PNBP) does not merely serve as an instrument for generating income. The second weakness is the absence of binding standards for substantive examination. The Trademark Law does not provide a detailed definition of what constitutes essential similarity (Nasution et al., 2025).

The explanatory notes to the law merely mention the presence of dominant elements that create an impression of similarity, whether in terms of shape, placement, manner of writing, combination of elements, or phonetic resemblance (Undang-Undang Nomor 20 Tahun 2016, 2016, Penjelasan Pasal 21 ayat (1)). Consequently, the examination process relies heavily on discretion. Putri and Sukihana (2021) found that assessments of similarities in names, shapes, or images often depend on the examiner's subjective judgment; thus, an application may be accepted or rejected depending on who conducts the review. This is confirmed by the M&G case, in which two nearly identical brands were both registered, even though administrative and substantive examination procedures had been carried out (Peraturan Menteri Hukum Nomor 5 Tahun 2026 Tentang Pendaftaran Merek [Regulation of the Minister of Law Number 5 of 2026 Concerning Trademark Registration], 2026). Gunawan (2023) even pointed to brands that are essentially similar yet coexist under different owners,

creating legal uncertainty and public confusion.

Inconsistencies also occur in the courts; Manurung et al. (2025) note that in the case of “Kargo” versus “CARGO,” the judge compared all elements rather than the dominant ones, highlighting the need for clearer, more definitive guidelines. In online registration, this issue becomes increasingly complex because digital search systems are not yet capable of adequately detecting phonetic and conceptual similarities (Putra & Utari, 2026). A third weakness is the cancellation of a registered trademark without any accompanying internal corrective mechanism or state accountability. A series of cases reveals a recurring pattern (Peraturan Pemerintah Nomor 30 Tahun 2026 Tentang Jenis Dan Tarif Atas Jenis Penerimaan Negara Bukan Pajak Yang Berlaku Pada Kementerian Hukum [Government Regulation Number 30 of 2026 Concerning Types and Tariffs of Non-Tax State Revenue Applicable to the Ministry of Law], 2026). In the "Bensu" dispute, the registration of the "Bensu" trademark owned by Ruben Onsu was canceled because the "I Am Geprek Bensu" trademark had been registered earlier, even though both marks had successfully passed the examination process conducted by the Directorate General of Intellectual Property (DJKI) (A. P. Sari, 2025). In the VANS case, the Supreme Court canceled the registration of OTOVANSCLASSIC because it substantially resembled the well-known VANS trademark and was filed in bad faith (Lestari et al., 2025). A similar pattern is seen in the cancellation of “Zhe Nung Zhu & Paintings” (Y. P. Sari et al., 2025), “KASOMAX” (Abrillia et al., 2025), striking off of the “Samgong” trademark (Ginting & Azhari, 2022), as well as the case concerning a well-known foreign trademark in Decision Number 1164 K/Pdt.Sus-HKI/2017 (Mahardika & Santoso, 2023).

Researchers examining these cases have reached the same conclusion: the Directorate General of Intellectual Property (DJKI) needs to tighten its substantive examination process (Peraturan Presiden Nomor 155 Tahun 2024 Tentang Kementerian Hukum [Presidential Regulation Number 155 of 2024 Concerning the Ministry of Law], 2024). However, the legal consequences for the state are rarely addressed. Any cancellation of a trademark based on its essential similarity to a previously registered mark is, in effect, an admission that the initial registration decision was substantively flawed from the outset. Under the framework of the Law on Government Administration, a decision

containing a substantive flaw may be annulled, and any losses resulting from such an annulled decision become the responsibility of the government agency or official concerned (Undang-Undang Nomor 30 Tahun 2014, 2014, Pasal 66, 71). However, under the trademark regime, the Ministry of Law's role after a cancellation ruling is purely administrative: to strike the registration from the record and announce the cancellation (Perkasa et al., 2026).

In the Kutus Kutus case, for instance, the Director General of Intellectual Property emphasized that his office acted in an administrative capacity, without usurping the court's authority over the dispute's substantive merits (Antara News, 2026). This stance is correct from a separation-of-powers perspective. Yet it reveals the absence of a mechanism linking trademark cancellation to an evaluation of the quality of administrative decisions and state accountability. The fourth weakness lies in the ambiguity surrounding state liability for errors in administrative review (Putra & Utari, 2026). The doctrine of onrechtmatige overheidsdaad (unlawful government act) has shifted from a standard of propriety rooted in civil law toward a public law framework that emphasizes violations of the General Principles of Good Governance (AUPB) and the prohibition against the abuse of authority, with jurisdiction now vested in the Administrative Court, pursuant to the Law on Government Administration and Supreme Court Regulation Number 2 of 2019 (Putri & Sukihana, 2021).

Barokah and Erliyana (2021) note that this shift in jurisdiction raises concerns about inconsistent assessment standards and shorter filing deadlines, even though the harm from government action often becomes apparent only later. Time limits are especially relevant in trademark registration, as the harm from an erroneous registration decision often comes to light years later, when a judgment on a cancellation lawsuit is handed down. Furthermore, enforcement of judgments requiring the government to pay damages remains weak, as such payments depend on the following year's budget and lack clear, compulsory enforcement mechanisms (Rusmadina et al., 2023).

Meanwhile, the literature on public-official liability distinguishes between personal liability, where losses arise from an abuse of authority, and official liability, where losses arise without any abuse of authority (Sabila & Fadhilah, 2026).In cases of errors during trademark examination, which generally constitute misjudgment rather than an abuse of authority, responsibility should

properly lie with the office itself, namely the Ministry of Law, as the governing body. However, no specific provisions currently define the nature, limits, and procedures for such responsibility. The fifth weakness is transparency and accountability in digital services. Digitalization of public services has been shown to increase efficiency, transparency, and accountability, but its success also depends on bureaucratic reform, apparatus competency, public participation, and cross-sector coordination (Hidayat & Guntur, 2025).

Within the context of the Directorate General of Intellectual Property (DJKI), Jazuli (2018) has long noted that issues regarding intellectual property services are largely internal in nature, such as the reliability of databases, a backlog of applications, and the fact that examination guidelines and standard operating procedures have yet to be published. Daniati et al. (2024) also found that the Directorate General of Intellectual Property (DJKI) 's implementation of the Madrid Protocol remains hindered by vague performance targets, uneven staff competence, and a lack of robust evaluation and transparency. As the examination process increasingly relies on electronic systems, the public needs to understand how these systems conduct similarity searches, how examiners utilize the search results, and how the reasoning for a rejection is formulated. Without such transparency, the principles of openness, due care, and quality service as mandated by the General Principles of Good Governance (AUPB) are difficult to uphold (A. P. Sari, 2025). These five weaknesses directly affect the legal protection of business operators, particularly micro, small, and medium-sized enterprises (MSMEs).

Research conducted in Mataram indicates that a lack of awareness and high registration costs are the primary obstacles preventing MSMEs from registering their trademarks (Rusmadina et al., 2023). Poor oversight and slow law enforcement also weaken the effectiveness of registered trademark protection (Y. P. Sari et al., 2025). For small business owners, the cancellation of a registered trademark represents more than the loss of a legal right; it signifies the loss of an investment in reputation, built on trust in the state's decisions. Ikram and Santoso (2025) emphasize that equal access to the registration process, including online registration options for MSMEs, is essential to ensure that legal protection does not exclusively benefit well-established enterprises. Thus, from the perspective of legal protection theory, both preventive protection through

careful examination and repressive protection through corrective mechanisms and compensation have not yet functioned optimally.

Reconstructing the Authority of the Ministry of Law Based on the Principles of a Rule of Law State

The reconstruction proposed in this article is not intended to diminish the authority of the Ministry of Law; rather, it seeks to reorganize that authority into a coherent and accountable cycle. The underlying premise is that any authority which gives rise to rights must be accompanied by an obligation to ensure the quality of decisions, the power to rectify errors, and accountability for the consequences of such errors. This principle aligns with the tenets of a state governed by the rule of law, namely, the requirement that the government is subject to the law, the provision of effective legal protection, and the existence of state responsibility (Solechan, 2019) The reconstruction focuses on five components, as summarized in Table 1.

Table 1. Model for Reconstructing the Authority of the Ministry of Law in the Implementation of Trademark Protection

Component	Condition	Direction of Reconstruction
Substantive examination standards	The equation is, in principle, open-ended and subject to the examiner's discretion.	Binding and published examination guidelines, which include tests for dominant elements, as well as visual, phonetic, and conceptual similarities.
Determination and reasoning for the decision	Reasons for rejection are often brief, and the system's audit trail is not transparent.	The requirement for adequate written reasoning and the disclosure of search results as part of a decision.
Correction of a decision	Corrections to trademarks that have been registered erroneously are, in practice, left to be resolved through litigation between the parties.	Administrative review mechanism initiated by the Minister or upon the request of an interested party.
PNBP	Paid in advance, non-refundable, even in the event of an	Refund of non-tax state revenue (PNBP) or a waiver of

	administrative error.	resubmission fees if a decision is proven to be incorrect due to an error in the examination process.
State responsibility	State responsibility for errors in the examination process has not yet been defined.	Provisions regarding professional liability, claims procedures, limits of indemnity, and performance evaluation of examiners.

Source: Processed by the author, 2026

The first component is standardizing substantive audit standards as binding norms. Dwisvimiar and Elfira's (2024) proposal regarding inspection standards needs to be upgraded from just internal guidelines to published legal norms, for example, through a Minister of Law Regulation that contains test parameters for dominant elements, visual similarities, sound similarities, similar meanings, relatedness of types of goods or services, as well as well-known brand indicators (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 [The 1945 Constitution of the Republic of Indonesia], 1945).

Binding and transparent standards serve a dual purpose. For examiners, they limit discretion and ensure consistent decision-making. For applicants, they provide predictability, allowing them to assess the prospects of their applications before paying non-tax state revenue (PNBP) fees. Such standards should also incorporate parameters for identifying "bad faith." Nabil et al. (2026) propose five operational parameters: the level of a trademark's renown, the applicant's prior knowledge, registration patterns, commercial intent, and post-registration conduct, complemented by a contextual model for the burden of proof. These parameters should not be reserved solely for judges in cancellation proceedings; examiners should also apply them during substantive examination, enabling early rejection of trademark applications filed in bad faith, as demonstrated in the INSA case (Faadhilah & Santoso, 2024).

The second component strengthens the obligation to provide reasons and the requirement for procedural transparency. The General Principles of Proper Governance (AUPB) require that decisions be made with due care and transparency (Undang-Undang Nomor 30 Tahun 2014, 2014, Pasal 10). In

electronic services, transparency entails more than providing notifications on an application's status; it must also include the specific grounds for any refusal, a list of the reference marks used as the basis for the decision, and an audit trail of the system processes used. Such a record of decision-making facilitates applicants' responses, improves the quality of appeal examinations, and serves as a tool for internal evaluation. In a welfare state, the "General Principles of Proper Governance" (AUPB) transcend mere bureaucratic ethics; they function as binding legal norms for service providers, empowering citizens to challenge administrative actions that deviate from these standards (Solechan, 2019). To that end, Regulation of the Minister of Law Number 5 of 2026 should be supplemented with technical provisions on the minimum content required to justify a refusal, as well as the applicant's access to the search results. The third component involves establishing an administrative mechanism for correcting decisions. Currently, a trademark that has been registered erroneously can practically only be corrected through a cancellation lawsuit filed by an interested party in the Commercial Court. This process is both costly and time-consuming for the parties involved. While the Trademark Law provides for trademark removal at the Minister's initiative, Masnun and Pratama (2020) note that this authority still raises conceptual problems, including ambiguity about the distinction between removal and cancellation. On the other hand, the Law on Government Administration provides a general basis for officials to amend, revoke, or annul decisions that contain flaws regarding authority, procedure, or substance (Undang-Undang Nomor 30 Tahun 2014, 2014, Pasal 63–66). The proposed reconstruction focuses on establishing an administrative review mechanism within the trademark regime, which the Minister could initiate or an interested party could request within a specified period after registration. This mechanism would not replace the Commercial Court's authority; rather, it would serve as a more cost-effective and expeditious initial filter for clear errors, such as registering a trademark identical to an earlier registered mark for similar goods. Lessons from systems that recognize prior use suggest that effective opposition and cancellation mechanisms can rectify the inequities inherent in a "first to file" system without requiring its abandonment altogether (Hendrawan & Andersen, 2025).

The fourth component involves reformulating the regulations on Non-Tax

State Revenue (PNBP) to align with the principle of reciprocity in service provision. PNBP derived from trademark services constitutes payment for state-provided services; therefore, there should be a clear correlation between the obligation to pay and the right to receive diligent service. The proposed reconstruction entails adjustments within Government Regulation (PP) Number 30 of 2026 or its implementing regulations concerning: (a) the refund of non-tax state revenue (PNBP) in cases where a rejection is overturned during an appeal or by a court due to an error by the examiner; (b) an exemption from re-filing fees for applicants whose applications were rejected due to administrative errors; and (c) a requirement to provide sufficient pre-application information, enabling applicants to assess the risk of rejection before making any payments. This proposal aligns with the need for legal certainty in regulating non-tax state revenue (PNBP) concerning intellectual property (Divina et al., 2023), and with MSMEs' need for affordable costs (Rusmadina et al., 2023). The significant tariff increases in 2026 only reinforce the urgency of ensuring that every rupiah of non-tax state revenue (PNBP) is matched by accountable services (Undang-Undang Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja Menjadi Undang-Undang [Law Number 6 of 2023 Concerning the Enactment of Government Regulation in Lieu of Law Number 2 of 2022 Concerning Job Creation into Law], 2023).

The fifth component concerns regulating state liability for errors in administrative examination. Pursuant to Article 71 of the Law on Government Administration, losses resulting from a decision that is subsequently overturned are the responsibility of the government body or official (Undang-Undang Nomor 30 Tahun 2014, 2014, Pasal 71). This general norm needs to be articulated within the trademark regime by incorporating several elements. First, a distinction must be made between official liability for errors in judgment and personal liability for the abuse of authority (Juliani, 2020). Second, a clear claims procedure including a time limit calculated from the date a cancellation judgment becomes final and binding, rather than from the date the registration decision was issued, thereby addressing the issue regarding the ninety-day time limit that has been criticized in the literature (Barokah & Erliyana, 2021). Third, compensation should be proportional in form and scope, for instance, by

including reimbursement of non-tax state revenue (PNBP), trademark transfer costs, and proven actual losses. Fourth, an effective implementation mechanism must be established through budget earmarking to ensure compensation rulings are not hindered by funding constraints (Gusman et al., 2021). Fifth, linking claims for damages to examiners' performance evaluations ensures that accountability serves a corrective, rather than merely compensatory, function. With this arrangement, the cancellation of a certified trademark no longer places a one-sided burden on a certificate holder who has acted in good faith. These five components must be integrated into a single constitutional and legal framework.

Institutionally, this reconstruction could be incorporated into future amendments to the Trademark Law by adding a dedicated chapter covering examination standards, the correction of decisions, and state liability. Pending such revisions, the Ministry of Law could use its regulatory authority to refine Regulation of the Minister of Law Number 5 of 2026, while the Ministry of Finance, in coordination with the Ministry of Law, could adjust provisions on the refund of non-tax state revenue (PNBP). Furthermore, the Trademark Appeal Commission's position needs strengthening to ensure greater independence from the examination unit; an appellate body within the same organizational environment as the examiners risks evaluating decisions from the same perspective. This strengthening is crucial, as the appeal process serves as the primary mechanism for correction before a dispute reaches the courts.

The Trademark Appeal Commission's independence can be strengthened through three measures: ensuring a membership that includes experts from outside the examination unit; mandating the systematic publication of appeal decisions and their underlying rationales; and using these decisions to develop examination guidelines. Consequently, any appeal decision that overturns an examiner’s rejection would not merely resolve a specific case, but would instead serve as feedback for improving examination standards as a whole. The reconstruction process must also account for the nature of electronic services, which now serve as the backbone of trademark registration. While automated search systems can enhance speed, they should not replace an examiner's legal judgment (Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis [Law Number 20 of 2016 Concerning Trademarks and Geographical

Indications], 2016).

Therefore, it must be stated explicitly that the results generated by such systems serve only as an aid; the final decision to accept or reject an application remains the responsibility of an official, whose decision must include legal reasoning. This clarification is essential to establish clear accountability: in the event of an error, the government body that issued the decision, not the system itself, is responsible. Furthermore, the system's capacity to detect similarities in sound and meaning should be evaluated periodically, with the findings made public, allowing the public to assess the reliability of the services they pay for through non-tax state revenue (PNBP) (Hidayat & Guntur, 2025; Putra & Utari, 2026). This reconstruction must also account for the dynamics of trademark use after registration (Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan [Law Number 30 of 2014 Concerning Government Administration], 2014).

Constitutional Court Decision Number 144/PUU-XXI/2023 extends the period of non-use, which serves as grounds for the cancellation of a trademark, from three years to five years (Sabila & Fadhilah, 2026). The ruling, along with the practice of canceling trademarks that are not in use, as seen in the WIN trademark case (Nasution et al., 2025), indicates that the authority of the Ministry of Law does not cease upon the issuance of a certificate; rather, it extends to the oversight of a trademark's ongoing function in the marketplace.

Consequently, the reconstructed model of authority is not linear and does not end with certificate issuance; instead, it is cyclical and encompasses examination, determination, certification, supervision, correction, the refund of non-tax state revenue (PNBP), and state accountability. From the perspective of rule of law theory, this cycle model embodies three basic values at once (Jundana et al., 2026; Rosari et al., 2026; Zamroni, 2024). Legal certainty is realized through binding and open audit standards. Justice is realized through correction and compensation mechanisms that protect certificate holders in good faith, as well as previous brand owners. The beneficial value is realized through fast, affordable, and trustworthy services, so that trademark registration truly becomes an instrument of business protection, not a source of dispute. In this way, the Ministry of Law can exercise its authority in the field of brands based on legality, legal certainty, justice, transparency, and

accountability, embodying the principles of the rule of law (Wijayawati, 2023).

4. Conclusion

The Ministry of Law's authority to administer trademark protection is both attributive and decisive; under a constitutive system, trademark rights come into existence only upon the state's issuance of a registration decision. However, the framework for this authority still harbors five weaknesses: an imbalance between the obligation to pay non-tax state revenue (PNBP) and the certainty of service delivery; the absence of binding standards for substantive examination; the lack of an internal corrective mechanism following the cancellation of a registered trademark; ambiguous state liability for errors in administrative examination; and issues concerning transparency and accountability in digital services. These shortcomings hinder the effective functioning of both preventive and repressive legal protections for business entities, particularly micro, small, and medium enterprises (MSMEs), even though service reforms introduced via the Minister of Law Regulation Number 5 of 2026 have successfully accelerated the registration process.

The reconstruction of the Ministry of Law's authority should be directed toward a cyclical model that integrates examination, decision-making, certificate issuance, supervision, the correction of decisions, the refund of non-tax state revenue (PNBP), and state accountability, all within a single constitutional and administrative legal framework.

Specifically, this entails the standardization of binding and publicly accessible substantive examination criteria, a requirement for providing adequate justifications for decisions, an administrative review mechanism for erroneously registered trademarks, provisions for refunding PNBP in cases of examination errors, and the delineation of official liability pursuant to Article 71 of the Law on Government Administration. It is recommended that the legislature incorporate these components into a revision of the Trademark Law, while the Ministry of Law should promptly refine its implementing regulations. Future research could empirically test this model, particularly by measuring the rate of examination errors and the extent of losses incurred by trademark holders resulting from the cancellation of their registrations

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