

Efforts to Handle and Prevent Trademark Infringement in E-Commerce Business in Indonesia

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ABSTRACT

The development of technology, especially the presence of e-commerce platforms, has facilitated the interaction between sellers and buyers. This raises challenges, one of which is the potential for trademark infringement in e-commerce platforms. This can harm the owner/holder of the rights to the trademark economically because of the potential damage to the product image represented by the trademark used by other parties without rights. This research aims to identify efforts to handle and prevent trademark infringement in e-commerce businesses in Indonesia. The method used in this research is normative juridical and is supported by interviews with resource persons. The data used in this research is secondary data consisting of primary legal materials in the form of statutory instruments, and secondary legal materials consisting of scientific papers and other research results. The analysis in this research is done qualitatively. The results of the research conclude that efforts can be made to face the challenges of trademark infringement in e-commerce business in Indonesia to protect the exclusive rights of trademark owners/holders.

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1. INTRODUCTION

Based on data published by the Data Center and Information System of the Secretariat General of the Ministry of Trade, the number of *e-commerce* users in Indonesia experienced significant growth throughout 2020-2024. An increase of 62% was recorded, with the number of users initially reaching 38.72 million in 2020 and increasing to 65.65 million in 2024 (Databoks.katadata.co.id, *Jumlah Pengguna e-commerce di Indonesia Meningkat 2020-2024: Databoks*, 2024). In line with the growth in the number of users, the growth trend of *Gross Merchandise Value* (GMV) or gross trade value in Indonesia has

increased in 2024. Indonesia's GMV in the digital economy reached US\$90 billion, up from US\$80 in 2023 (CNN Indonesia, *Ekonomi Digital RI Tumbuh 2 Kali Lipat, Tembus RPL.400 T di 2024*, 2024).

This potential growth is not accompanied by awareness of trademark protection. A release by the Office of the United States Trade Representative identified three major *e-commerce* platforms in Indonesia as listing markets that sell or facilitate counterfeit goods. The three platforms are Shopee, Tokopedia, and Bukalapak (Wawan Novianto, et al, 2021).

This phenomenon has the potential to infringe on the exclusive rights of both

registered trademark owners in Indonesia and *well-known mark* owners. In this case, the trademark not only functions as a differentiator between products but also represents *goodwill* that must be protected to ensure business continuity. The emergence of counterfeit products that violate the trademark has the potential to reduce the goodwill of the trademark owner due to the false assumption of a product (Endang Purwaningsih, 2020: 118-119). Trademark infringement in *e-commerce* businesses can also have an impact on declining consumer confidence, which leads to the inhibition of sustainable digital economic growth.

Trademark Law has comprehensively protected trademark owners, namely related to trademark registration, exclusive rights, and sanctions for infringement, but implementation in preventing and handling trademark infringement in *e-commerce* businesses that occur in Indonesia still faces challenges. Research on efforts to handle and prevent trademark infringement in *e-commerce* business in Indonesia in this case becomes important to identify concrete solutions that can be implemented to create a healthy business competition climate in Indonesia and to protect registered trademark owners.

2. LITERATURE REVIEW

Trademark is a part of Intellectual Property Rights (IPR) that has strategic value in the context of the business world. Trademark protection not only protects the identity of the product but also its reputation and economic value. In Indonesia, the legal protection of trademarks is regulated in Law Number 20 of 2016 on Trademarks and Geographical Indications (Trademark Law), the contents of which apply several principles of protection efforts, such as the constitutive registration system and also the protection of well-known trademarks. The provisions of Article 1 number 1 of the Trademark Law explain that a trademark is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color

arrangements, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by persons or legal entities in the activities of trading goods and/or services.

Philosophically, several justifying theories justify the protection of trademarks. Taufik H. Simatupang (2021:117) citing the opinion of John Locke, explains that in essence the right to trademark as part of IPR departs from the understanding of the right to *property* or ownership that is inherent in humans, which essence is part of human rights. In this case, John Locke argues that the protection of *property* rights departs from the fact that humans must make efforts in terms of utilizing natural goods for personal goods. Protection then emerges as a form of appreciation for these human efforts.

Based on the business view, Endang Purwaningsih (2020:61) argues that the protection of trademark rights is important in business because the trademark has a distinctive function in a product. These functions include 4 things, namely: 1) The function of differentiation, that the trademark becomes an element of differentiation from one product to another; 2) The function of guaranteeing reputation, that the trademark has a function as a marker of product origin that connects the reputation of the product and its manufacturer, as well as guaranteeing the quality of a product; 3) Promotion function, that the trademark plays a role in maintaining the reputation of existing products while facilitating the introduction of new products to the market; 4) The function of investment stimulation, that the trademark can support investment both from within and outside the country. In this case, the protection of trademark rights becomes very important to maintain the continuity of business circulation.

The legal system in Indonesia has regulated the protection of trademark rights through the Trademark Law, but trademark infringement continues to occur in the

dynamics of business in Indonesia. In an analysis of the Trademark Law by Andreyana Nata Gintama and Munawar Kholil (2020: 21-27), it was found that there are three forms of trademark infringement known in the wording of the Trademark Law. By the provisions of Article 100 of the Trademark Law, these forms of infringement include: 1) Using a mark that is identical in its entirety; 2) Using a mark that is similar in certain elements of another mark; 3) Using a mark that is similar in part or in whole, which type of goods can cause negative impacts such as health problems, environmental problems, and/or human death. This is in line with the opinion of OK Saidin (2013: 357-358), namely that in trade practice, there are three forms of dishonest trade related to trademarks, which include: 1) Trademark impersonation; 2) Trademark counterfeiting; 3) Acts that cause public confusion as to the nature and origin of the mark.

With the development of technology and information, the potential for trademark infringement is getting bigger. One of them is the presence of online trade in the form of e-commerce. Andreyana Nata Gintama and Munawar Kholil (2020: 21-27) argue that the application of User Generated Content that allows users to fill their content on a site and the e-commerce model that uses a consumer-to-consumer model that brings together sellers and buyers directly as users of *e-commerce* services has opened space for the potential for increased trademark infringement.

In line with Roscoe Pound's view that the law should be forward-oriented in terms of carrying out the function of social control, the Trademark Law and related laws and regulations have provided several norms to protect the rights to trademarks. In his research, Fathur Roji (2023:318) analyzed that currently the legal protection of trademarks in *e-commerce* business has not been regulated in Indonesian law. The Trademark Law and other regulations already contain arrangements that protect trademarks and prevent trademark infringement, including

Article 83, Article 84, Article 93, and Article 100 paragraph (2) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications; Article 15, Article 15 paragraph (2), Article 25, Article 28 paragraph (1), Article 45 paragraph (1) and Article 45A paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions; Article 4 letter a of Law Number 8 of 1999 concerning Consumer Protection; Article 26 and Article 80 of Government Regulation Number 80 of 2019 concerning Trade Through Electronic Systems.

Research by Natasha Nathalie Ratulangi, et al (2024: 181) states that electronic system organizers also have a role in protecting trademarks and preventing trademark infringement in their e-commerce business. Regulation of the Minister of Communication and Information Technology Number 5 of 2020 concerning Electronic System Operator in the Private Sphere regulates the provision that every Electronic System Operator in the Private Sphere of User Generated Content must provide a means of reporting. The reporting tool must be accessible to the public and used to submit complaints, including complaints about counterfeit goods. Counterfeit goods are goods that are made or sold illegally by imitating the original product, often using the same trademark or logo as the original product to deceive consumers.

Based on this literature review, there are various research findings that show variations of trademark infringement in e-commerce business. In this case, it is important to conduct a more in-depth and detailed analysis of the efforts made to deal with and prevent trademark infringement in e-commerce business in Indonesia.

3. METHODS

3.1 Nature and Type of Research

The type of research used is normative legal research supplemented by interviews as supporting data. This research is literature, where the main data is obtained through literature studies from legal sources such as

legislation, doctrine, and court decisions. Interviews were conducted to support the secondary data, with the main resource person from the Directorate of Trademarks of the Directorate General of Intellectual Property (DGIP).

3.2 Research Materials

Research materials used in this research use secondary data obtained through a literature review related to the material and problems in the research (Sigit S. Nugroho, et al, 2020: 66). The legal materials used in this research consist of:

- a) Primary legal materials are legal materials that are binding and become the main basis of research, such as laws and regulations, court decisions, and other official documents that are authoritative and directly related to the object of research (Peter Mahmud Marzuki, 2005: 139).
- b) Secondary legal materials are legal materials that serve to explain primary legal materials. This legal material can be in the form of research results, textbooks, scientific journals, and draft legislation (Sigit S. Nugroho, et al, 2020: 66).

The data collection method in this research uses the literature study method using interviews and literature. The applied literature study is used to review legal materials, both primary and secondary (Sigit S. Nugroho, et al, 2020: 70). Interviews are used as a data collection technique to obtain specific information through face-to-face interaction with respondents conducted with an interview guide (Maria SW. Sumardjono, 2014). The main purpose of this interview is to obtain information relevant to the research problem so that the data obtained becomes more comprehensive.

The data obtained through literature studies using literature and interviews will then be analyzed with qualitative analysis. Qualitative analysis is carried out by categorizing data by the problems studied. The data analysis technique used is *content analysis* or content study, which is an integrative and conceptual analysis method to

classify, define, and analyze documents to understand their meaning in depth (Burhan Bungin, 2015).

The steps of qualitative analysis in this research include, first, data identification, namely the process of recognizing and reviewing data that has been collected through documentation and interviews; second, data classification, namely grouping data based on categories of research problems; third, data analysis is carried out by deductive thinking, namely starting from general things to specific things to then draw conclusions that answer the problems in the research (Izhar, 2016: 63-73). Thus, this analysis process aims to produce a systematic and structured understanding of the data so that it can provide the right answers to the issues studied.

4. RESULTS AND DISCUSSION

4.1 Impact of Trademark Infringement on Business

The trademark function today can no longer be defined as just the name of a product or service offered to the market. In this modern world, trademarks have become a type of universal language that represents various attributes of a product or service. With a trademark, a product or service can communicate its product to the market where it not only narrates the differentiation of the product from other similar products, but the trademark also narrates the quality offered, trust to buyers, the special meaning offered by the producer to buyers such as social status. This causes the protection of trademark rights to be an important element for the survival of a business both micro and macro (Zaichlowsky, 2006: 8).

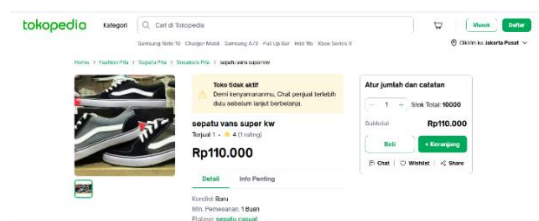
Trademark infringement is still a problem faced by every trademark owner in Indonesia. Counterfeit goods that have similarities in principle or their entirety are still often found in the market. This causes often the owner of the rights to the trademark who is entitled to economic rights to the trademark has suffer economic losses. Some even had to experience bankruptcy as

experienced by PT Gagan Indonesia in 2017 because the shoes with the Vans trademark that were distributed were less competitive with other shoes that used the Vans trademark without permission from PT Gagan Indonesia as the official license owner (CNN Indonesia, *Ketika Bisnis Barang Bermerk Tergerus Produk Jiplakan*: CNN Indonesia, 2017).

The massive development of *e-commerce* in Indonesia has expanded buying and selling activities from conventional offline markets to online digital realms. Unfortunately, this expansion has not only shifted buying and selling activities from offline to online markets. But it also shifts the potential for trademark infringement online. The application of user-generated content allows e-commerce users to easily upload product content, including descriptions or images of counterfeit goods, which increases the complexity of handling trademark infringement due to the difficulty of thoroughly monitoring the content.

Several e-commerce service providers have implemented proactive measures to prevent the circulation of counterfeit trademarked goods on their platforms, such as censoring words related to trademark infringement, e.g. "KW", "replica", and "grade ori", but the practice of infringing trademark rights can still be easily found on e-commerce platforms. This can be seen from samples taken through screenshots on some of the following e-commerce platforms:

- 1) Vans shoes are called "super KW" which indicates that the shoes are counterfeits.



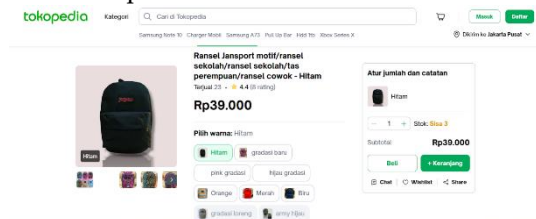
- 2) Socks of various trademarks sold at below-market prices on e-commerce Shopee



- 3) A sling bag using the Supreme trademark that is sold at a below-market price on Lazada e-commerce.



- 4) A backpack using the Jansport trademark that is also sold at a below-market price on the e-commerce Tokopedia



Based on some of these screenshots, it is known that the four items have the same pattern in terms of offering trademark-infringing products. The pattern is offering a price that is much lower than the official market price of the official distributor or the original trademarked product. This indicates that trademark infringement that occurs in *e-commerce* is no longer only in the form of overt offers that the goods offered are "kw" goods or "grade ori" goods but also exists in an implied form.

The offering of goods in business with trademark infringement especially by implication may cause harm to the trademark owner. Consumers who purchase such goods may experience confusion i.e. consumers do not realize that they are buying goods that are not "original" due to lack of knowledge about the product being purchased. This causes the image of the trademark to shift which causes economic loss to the owner of the trademark rights (Zaichlowsky, 2006: 8).

4.2 Trademark Infringement in E-Commerce Business and its Handling in Indonesia

According to the Trademark Act, the form of trademark infringement is juridically described in two forms, namely the similarity in essence and/or similarity in its entirety. Where the similarity in essence is explained in Article 21 paragraph (1) of the Trademark Law which states "similarity caused by the existence of a dominant element between one Trademark and another Trademark to create the impression of similarity, both regarding the form, the way of placement, the way of writing or the combination of elements, as well as the similarity of pronunciation sounds, contained in the Trademark".

In this case in the jurisprudence of the Indonesia Supreme Court through Decision No. 789 K/PDT.SUS-HKI/2016 and Decision No. 279 PK/Pdt/1992, explained in more detail the definition of trademark infringement both substantially and as a whole. Where a trademark is declared to have similarities in essence or as a whole if it has:

- 1) *similarity of form;*
- 2) *the similarity of composition;*
- 3) *similarity of combination;*
- 4) *the similarity of elements;*
- 5) *sound similarity;*
- 6) *phonetic similarity or;*
- 7) *similarity of appearance.*

Based on the Supreme Court's Jurisprudence, according to Sidharta there are three major groups of trademark infringement, both substantially and wholly similar, which include:

- 1) Similarities in visual aspects that confuse appearance;
- 2) It is the similarity in the sound aspect that confuses when spoken;
- 3) Similarities in concepts that show a high level of similarity are referred to as concept similarities (Shidarta, et al, 2014: 439).

Based on interviews with sources from the Directorate General of Intellectual Property (DGIP), trademark infringement in *e-commerce* platforms does not have a specific form that is different from trademark

infringement that has been regulated in the Trademark Law which recognizes two forms of trademark infringement, namely similarity in essence or as a whole (Ahmad Rifadi, 2025). This causes in terms of handling trademark infringement in *e-commerce*, the existing handling has no significant difference with trademark infringement in general. The only difference is the level of complexity due to the lack of validation of the merchant's identity on *e-commerce* platforms which in some cases use fictitious identities during registration.

The Trademark Act recognizes two streams of handling trademark infringement in Indonesia, namely civil and criminal. Civilly, the handling of trademark infringement is regulated in Article 83 paragraph (1) of the Trademark Law which states:

Article 83 paragraph (1) of the Trademark Law

"The owner of a registered Trademark and/or the licensee of a registered Trademark may file a lawsuit against other parties who unlawfully use Trademarks that are substantially or wholly similar for similar goods and/or services in the form of:

- a. lawsuit for compensation; and/or
- b. cessation of all acts related to the use of the Trademark"

Article 83 paragraph (1) of the Trademark and Geographical Indications Act (Trademark Act) stipulates that *legal standing* is only granted to the registered trademark owner and/or the licensee of the registered trademark. Article 83 paragraph (2) of the Trademark Law extends the granting of legal standing to owners of rights to well-known trademarks that have not been registered, on the condition that there is a court decision recognizing that the person concerned is indeed the owner of the rights to the trademark, so they are also entitled to file a civil lawsuit.

Criminally, the regulation of trademark infringement is regulated in Article 100 and Article 102 of the Trademark Law:

Article 100 of the Trademark Law

- (1) Any person who unlawfully uses the same Trademark in its entirety as a registered Trademark owned by another party for similar goods and/or services produced and/or traded, shall be punished with imprisonment of 5 (five) years and/or a maximum fine of Rp 2,000,000,000.00 (two billion rupiah);
- (2) Any person who unlawfully uses a Trademark that is substantially similar to a registered Trademark owned by another party for similar goods and/or services produced and/or traded, shall be punished with imprisonment of 4 (four) years and/or a maximum fine of Rp 2,000,000,000.00 (two billion rupiah);
- (3) Any person who violates the provisions as referred to in paragraph (1) and paragraph (2), and whose goods cause health problems, environmental disturbances, and/or human death, shall be punished with imprisonment for a maximum of 10 (ten) years and/or a maximum fine of Rp5,000,000,000.00 (five billion rupiah).

Article 102 of the Trademark Law

"Any person who trades goods and/or services and/or products which he/she knows or reasonably suspects that the goods and/or services and/or products are the result of a criminal offense as referred to in Article 100 and Article 101 shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of Rp 200,000,000.00 (two hundred million rupiah)."

About criminal handling of trademark infringement, Article 103 of the Trademark Law expressly states:

Article 103 of the Trademark Law

"The criminal offenses as referred to in Article 100 through Article 102 are **complaints**."

The complaint offense contained in Article 103 of the Trademark Law shows that the criminal offense of trademark infringement in Article 100 to Article 102 of the Trademark Law can only be prosecuted if there is a complaint from the owner of the trademark whose rights are violated, which in

this case is the owner of the rights to a registered trademark (Kumendong, 2017: 53). The procedure for complaints of trademark infringement has been regulated in the Minister of Law and Human Rights Regulation No. 1 of 2023 concerning Management of Criminal Investigation in the Field of Intellectual Property (Permenkumham No.1 of 2023) in article 9 which:

Article 9 Permenkumham No.1 of 2023

- (1) The reporter submits allegations of intellectual property crime to the Investigator or designated officer by attaching a complaint letter and including supporting evidence.
- (2) Supporting evidence as referred to in paragraph (1) at least consists of: a. proof of ownership of intellectual property; b. identity of the reporter or complainant; c. identity of witnesses; and d. goods suspected of originating or being the result of criminal acts or intellectual property violations.
- (3) The allegation submitted by the reporter as referred to in paragraph (1) is made in the form of a Complaint Report.
- (4) The Complaint Report as referred to in paragraph (3) at least contains: a. the party providing the report; b. the event that occurred or the alleged occurrence of a criminal offense; c. a brief description of the incident containing the reported party; and d. the action taken.
- (5) Supporting evidence as referred to in paragraph (2) shall be made a receipt of goods.
- (6) The report submitted by the reporter as referred to in paragraph (1) is recorded in the registration of receipt of the Complaint Report and given a receipt letter for the complaint report.

Based on this complaint offense mechanism, the owner of the infringing trademark is placed as an active party in the context of prosecution. However, to maintain law enforcement on trademark infringement, DGIP has made several efforts to conduct active law enforcement. The first is to conduct

an Intellectual Property-Based Shopping Center Certification in which DGIP *surveys merchants* to determine their knowledge and understanding of intellectual property. When the survey has been conducted, in addition to obtaining data on the knowledge and understanding of the merchants, DGIP will also obtain data on goods that often experience trademark infringement. Data on goods that experience trademark infringement will then be submitted to the Intellectual Property Consultant or the Intellectual Property Association for a report to law enforcement (Ahmad Rifadi, 2025).

Currently, DGIP is also processing a code of conduct for e-commerce platforms to conduct more effective law enforcement. Although this code of conduct cannot be legally enforced, it can be taken into consideration to also enforce the law against e-commerce service providers who are considered to have neglected the trademark infringement in their platform (Ahmad Rifadi, 2025).

4.3 Prevention of Trademark Infringement in E-commerce Business

Friedman in legal system theory suggests that three elements need to be considered in the legal system. These three elements include legal substance, legal structure, and legal culture (Mochtar & Hiariej, 2021: 381). Legal substance refers to the content or material of the rule of law itself. The legal structure relates to institutions or institutions that implement and enforce the law. Meanwhile, legal culture includes the values, thoughts, and behavior of the community in applying the law in everyday life (Pahlevi, 2022: 32).

Trademark Act has substantially provided some form of legal protection for the owner of the rights to the trademark. One of them is the application of the first-to-file principle as stipulated in Article 3 of the Trademark Law. In principle, the first to file is a trademark registration system that provides exclusive rights when there is registration (Kamila, 2022: 301). The application of the first-to-file system provides legal protection

for the owner of the rights to the trademark, where other parties cannot use or register similar trademarks without permission. This registration provides a legal basis for the trademark owner to take proactive measures, for example, to object to the registration of a trademark that has the potential to cause conflict during the substantive examination process. In addition, the existence of a registered mark in the DGIP database creates a deterrent effect, as businesses can verify the registration status of the mark before using it, thereby minimizing the risk of ownership disputes and trademark infringement.

Based on interviews with the interviewees, it is known that in terms of enforcing compliance with the legal use of trademarks, at least the main focus should be on how to create a legal culture related to respect for intellectual property rights, which is currently not well implemented in society. Philosophically, there is indeed a difference between the legal culture of Indonesian society and the spirit of intellectual property regulation, especially trademark regulation in Indonesia. On the one hand, intellectual property regulation is present to protect the private property rights owned by the trademark owner, while in Indonesian society a communal culture has been formed that does not place private rights in a special place. In addition, economic motives in committing trademark infringement are also still a habit practiced by the Indonesian people. (Ahmad Rifadi, 2025).

To foster a legal culture in terms of trademark compliance for the community, DGIP has made a Cooperation Agreement with several *e-commerce* service providers in the form between DGIP and *e-commerce* service providers to provide understanding to the public regarding the mechanism of marketing and selling products through e-commerce. These activities include guidance on things that are allowed and prohibited in e-commerce, to prevent violations including trademark infringement (Nova Susanti, 2025).

E-commerce service providers also have a role in preventing trademark

infringement that occurs on e-commerce platforms. Based on an interview with a resource person from the DGIP, one of the *e-commerce* service providers' contributions in preventing the use of its platform as a means of spreading infringing goods is through internal regulation and supervision. The share of e-commerce service providers in preventing trademark infringement is in the form of providing algorithms that close the space for the spread of infringing goods and ensuring that every merchant trading on its platform has intellectual property validity for the goods sold by the merchant (Ahmad Rifadi, 2025).

5. CONCLUSION

Based on the research results, it can be concluded that:

- 1) The handling of trademark infringement that occurs in e-commerce business has no special difference from the handling of trademark infringement that occurs offline. The form of trademark infringement that occurs offline and online is the same, namely the similarity in essence or its entirety. The handling of trademark infringement in an e-commerce business is the same as the handling of trademark infringement in a conventional business. There are two paths taken in handling trademark infringement, namely civilly as stipulated in Article 83 of the Trademark Law, and also criminally as stipulated in Article 100 and Article 102 of the Trademark Law. In

the handling of criminal trademark infringement, the nature of the criminal offense of trademark infringement is a complaint offense (as stipulated in Article 103 of the Trademark Law).

- 2) Efforts to prevent trademark infringement in e-commerce business have been substantially recognized in the Trademark Law through trademark registration with the first-to-file system, which gives exclusive rights to registered trademark owners so that other parties cannot use or register similar marks without permission while creating a preventive effect through the registration database. In addition, in building a legal culture regarding trademark compliance, DGIP has made cooperation agreements with several e-commerce service providers to provide understanding to the public regarding the mechanism of marketing and selling products through e-commerce. These activities include guidance on what is allowed and prohibited in e-commerce, to prevent violations including trademark infringement.

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