



Legal Position of Marketplaces Regarding Counterfeit Product Disputes from a Positive Law Perspective in Indonesia

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Abstract

The purpose of this study is to analyze the legal standing of *Marketplaces* regarding counterfeit product disputes from the perspective of Indonesian positive law, examine the forms of legal responsibility, and examine the dispute resolution mechanism through *Online Dispute Resolution* (ODR). The development of *Marketplaces* in Indonesia has given rise to new challenges in the form of the rampant circulation of counterfeit products that are detrimental to consumers. This study uses a normative juridical approach with an analysis of laws and regulations such as the Consumer Protection Law (UUPK), the ITE Law, and the PP PMSE (Emergency Business Entity Regulation), and is supported by case studies and legal protection theories by Philipus M. Hadjon, the legal certainty theory by Gustav Radbruch, and the justice theory by John Rawls. The results of the study indicate that *Marketplaces* as business actors providing electronic systems have legal responsibilities that can include civil, administrative, and criminal aspects, although there is still a lack of clarity in norms that create legal uncertainty. On the other hand, *Online Dispute Resolution* (ODR) has proven effective as a fast and easily accessible non-litigation dispute resolution mechanism, but still requires special arrangements to ensure standardization and enforceability. Therefore, this study recommends affirming legal norms, strengthening supervision of *Marketplace platforms*, and developing a national ODR system to achieve optimal consumer protection.

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1. Introduction

The rapid development of technology has impacted humans in various sectors, particularly the economy and business. Various efficiencies are the result of innovation over time. One of the most rapidly developing is *the internet* and *e-commerce*. ^[1] The growth of *e-commerce* has not only expanded access to trade but also given rise to various digital business models that facilitate transactions between sellers and buyers. One of the most significantly developing forms of *e-commerce* is *the marketplace*, a digital platform that provides an electronic means for third parties to conduct trade transactions.

In the Indonesian legal context, the existence of *marketplaces* can be understood through the provisions of Government Regulation Number 80 of 2019 concerning Electronic Commerce (PMSE). This regulation defines Electronic Commerce

¹ Emmy F. Thalib & Ni Putu Suci Meinarti, "A Legal Review of Marketplaces Based on Statutory Regulations in Indonesia," *Jurnal Ius Kajian Hukum dan Keadilan*, Vol. 7 No. 2 (August 2019): pp. 194-195.

Providers (PPMSE) as business actors that provide electronic communication facilities for trade transactions. The development of marketplaces also presents new challenges, one of which is the increasing circulation of counterfeit products through digital platforms.

On the other hand, the ITE Law provides a legal basis for the validity of electronic transactions and regulates the responsibilities of electronic system administrators, including marketplaces. Marketplaces no longer merely act as passive intermediaries, but function as providers of transaction infrastructure, managers of information traffic, and recipients of economic benefits from every transaction that occurs within the platform. In the Indonesian legal system, trademark protection is regulated by Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which grants exclusive rights to trademark owners to use and protect their trademarks from all forms of infringement. However, this law does not specifically regulate the responsibilities or obligations of digital platforms in preventing and addressing trademark infringement that occurs online. This creates legal uncertainty for both brand owners, consumers, and the marketplace itself. This is where the issue of normative obscurity arises.

The ambiguity in norms arises from the lack of clear regulations regarding the status and responsibilities of marketplaces in cases of counterfeit product distribution. The Consumer Protection Law (UUPK) focuses on the relationship between consumers and businesses, while the Electronic Information and Transactions (ITE) Law focuses on the management of electronic systems, not specifically on responsibility for the quality of goods sold within them.

The problems discussed in this study are how the legal position of the marketplace towards counterfeit product disputes in the perspective of positive law in Indonesia, how the marketplace's legal responsibility towards counterfeit product disputes in the perspective of positive law in Indonesia and how to resolve counterfeit product disputes in consumer protection law in Indonesia using the Online Dispute Resolution mechanism.

2. Research Methods

This research uses a normative juridical approach with an analysis of laws and regulations such as the UUPK, UU ITE, and PP PMSE, and the theory of legal protection by Philipus M. Hadjon, the theory of legal certainty by Gustav Radbruch, and the theory of justice by John Rawls.

3. Discussion

3.1. The Legal Status of Marketplaces Regarding Counterfeit Product Disputes from a Positive Legal Perspective in Indonesia

A. Overview and Characteristics of Marketplaces in Indonesia

Marketplaces in Indonesia are e-commerce platforms that connect sellers and buyers directly through apps or websites, and have grown rapidly since the digitalization of e-commerce. Their main characteristics include a wide variety of products across various categories, such as fashion, electronics, beauty, food, and even secondhand goods. They allow consumers to compare prices, read reviews, and take advantage of promotions like flash sales, free shipping, and

cashback, for a safe and economical shopping experience.

Popular platforms such as Shopee, Tokopedia, Lazada, Blibli, and Bukalapak dominate the market, with Shopee leading with millions of active users thanks to its live streaming and digital payment features like ShopeePay, while the shopping culture tends to be "*Marketplace* -centric" due to the ease of access from MSMEs to large brands in one application. In addition, the Indonesian *Marketplace* is divided into general (multi-category), C2C (such as OLX for used goods), and B2C, supported by fast logistics infrastructure and fierce competition that drives customer service innovation.

B. Legal Relationship between Marketplaces, Business Actors and Consumers

The legal relationship between Marketplaces, sellers, and consumers in e-commerce in Indonesia is regulated by a positive legal framework such as Government Regulation No. 80 of 2019 concerning Trading Through Electronic Systems (PMSE) and Law No. 8 of 1999 concerning Consumer Protection (UUPK).

1. Legal Relationship Between *Marketplaces* and Business Actors

The legal relationship between the *Marketplace* and business actors is basically a contractual relationship that arises from a service usage agreement (*terms and conditions*) that is agreed electronically.

2. Legal Relationship Between *Marketplaces* and Consumers

The legal relationship between *the Marketplace* and the consumer is also a contractual relationship arising from the consumer's agreement to the terms and conditions of use of the platform.

3. Legal Relationship Between Business Actors and Consumers

The legal relationship between business actors and consumers is a primary legal relationship of a buying and selling nature, where the business actor is in the position of seller and the consumer as buyer.

C. Regulation of Counterfeit Products in Indonesian Positive Law

Counterfeit products are defined in Law Number 20 of 2016 concerning Trademarks and Geographical Indications (MIG Law) as goods or services that intentionally use the same brand mark in its entirety or resemble a registered brand belonging to another party without the right to similar goods/services that are produced, distributed, or traded, as regulated in Article 1 paragraph (9) and Article 100 of the MIG Law. This definition emphasizes the element of imitation that misleads consumers, including violations of the exclusive rights of registered brand owners granted by the state for a certain period, so that counterfeit products are often called KW or imitation goods that are detrimental to IPR owners, consumers, and the national economy.^[2]

D. Legal Status of *Marketplaces* Regarding Counterfeit Product Disputes

The position of *the Marketplace* in the UUPK liability structure is as the main business actor who bears tiered responsibility (preventive, contractual, and repressive) for consumer losses, even though it acts as an intermediary,

² Sabili Carba, Tajul Arifin, "Trading in Imitation Products Based on the Perspective of Law No. 5 of 2001 and the Hadith Narrated by Ahmad", Journal of Law and Public Administration, Vol. 2 No. 3 2024, p. 396

because it has control over the transaction platform, seller verification, and supervisory mechanisms in accordance with Article 19 of the UUPK which requires compensation without proof of fault (*strict liability*).

E. Analysis of the Legal Status of the Marketplace with the Legal Protection Theory of Philipus M Hadjjon

Overall, through the approach of Philipus M. Hadjjon's legal protection theory, it can be understood that legal protection in the Marketplace not only functions as a dispute resolution tool, but also as a prevention mechanism designed to create a fair, safe, and equitable trading system for all parties. The Marketplace plays a role in providing protection at the system level, business actors at the level of the substance of goods and transactions, and consumers as parties whose rights are protected, so that a proportional legal balance is created in the practice of electronic commerce in Indonesia.

4. Marketplace Legal Responsibility for Counterfeit Product Disputes from a Positive Legal Perspective in Indonesia

Marketplaces in Indonesia frequently experience platform management errors, such as inaccurate product data and misleading descriptions due to a lack of rigorous seller verification. Consumers often receive items that don't meet expectations or are even counterfeit. Furthermore, slow delivery or logistics defects are common complaints due to reliance on external courier partners without optimal coordination, coupled with hidden costs like high commission deductions and paid advertising that burden small sellers.

Marketplaces also frequently fail to protect consumers, for example, through slow complaint handling, misuse of personal data, and aggressive, deceptive promotions such as fake flash sales or rating manipulation to boost sales. A lack of transparency in search algorithms often prioritizes large sellers, harming MSMEs and creating unfair competition. In the legal dictionary, responsibility is an obligation for someone to carry out what is required of them. According to law, responsibility is a consequence of a person's freedom of action related to ethics or morals in carrying out an action.^[3] According to civil law, liability is divided into two basic types: fault and risk. Thus, liability based on fault (*liability without fault*) and liability without known fault (*liability without fault*), also known as risk liability or strict liability.

Civil liability arises from breach of contract, Article 1234 of the Civil Code, or unlawful acts (*onrechtmatige daad*). This concept aims to protect subjective rights by requiring compensation for material and immaterial damages. The primary legal basis is Article 1365 of the Civil Code, which binds the perpetrator for losses resulting from their mistake.^[4]

The definition of business actors in the UUPK, which includes every individual or business entity that carries out economic activities in the territory of Indonesia, either independently or through an agreement, is the main

foundation for fulfilling obligations and complying with the prohibitions stipulated in Articles 7 to 19 of the law. A broad understanding of who business actors are, from producers to distributors, ensures that these entities are not only bound by their legal status, but are also obliged to act in good faith, provide honest information, guarantee the quality of goods and services, and provide compensation in the event of violations, as a form of direct responsibility for their position in the supply chain that is in contact with consumers. The obligations of business actors in Law Number 8 of 1999 concerning Consumer Protection (UUPK) are regulated in detail in Article 7, which requires business actors to act in good faith in all their business activities, provide correct, clear and honest information regarding the condition and guarantee of goods and/or services, including explanations regarding use, repair and maintenance, treat or serve consumers correctly, honestly and non-discriminatory, guarantee the quality of goods and/or services produced or traded, provide consumers with the opportunity to choose goods and/or services and appropriate after-sales services, provide compensation, indemnity and/or replacement if the goods and/or services produced or traded do not comply with the agreement and bear the costs of consumer disputes outside the court in accordance with the provisions of laws and regulations.^[5]

The forms of accountability in electronic commerce are regulated in Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law) and Government Regulation No. 80 of 2019 concerning Commerce Through Electronic Systems (PP PMSE), including civil, administrative, and criminal responsibilities that are applied in stages to PMSE business actors, platform providers, and electronic system organizers to protect consumers, traders, and digital market order.^[6]

Civil liability focuses on compensation for consumer default or loss, where business actors are required to pay material and immaterial compensation based on Article 65 of the ITE Law in conjunction with Article 28 of the Consumer Protection Law, including the reversal of the burden of proof (strict liability) for defective goods or misleading transactions according to Articles 53-55 of the PMSE PP, so that consumers can file civil lawsuits through the commercial court or BPSK mediation.^[7]

Administrative responsibilities are regulated in Articles 56-61 of the PMSE PP and Permendag No. 31/2023, in the form of strict sanctions such as written warnings, fines of up to IDR 100 billion, suspension of business permits, temporary suspension of services, revocation of PMSE permits, or withdrawal of goods from circulation for violations such as false information, late reporting, or inconsistencies in product data, which are implemented by the Ministry of Trade or related agencies to enforce operational compliance.

Meanwhile, criminal liability in the ITE Law Articles 115-116 threatens business actors with a maximum prison sentence of 12 years or a fine of IDR 12 billion for trading

³ Ustina Dhian Novita and Budi Santoso, "The Urgency of Updating Consumer Protection Regulations in the Digital Business Era," Indonesian Journal of Legal Development, Master of Law Study Program 3, No. 1 (2021), p. 45

⁴ Husnul Khatimah, "Legal Protection for Consumers in Online Buying and Selling Transactions on the Lazada and Shopee Applications," Lex Lata 4, No. 3 (2023), p. 17

⁵ Kelik Wardiono, *Consumer Protection Law*, Ombak, Yogyakarta, 2014 p. 20.

⁶ Resna Maharani Pratiwi, "The Responsibility of Electronic Transaction Organizers in Protecting Consumer Rights" Supremacy Journal of Law, Vol 1. No 1, 2018, p. 18

⁷ Ella Alvina, Paramita, "Business Actors' Responsibilities Towards Consumers in E-Commerce Transactions," Jurnal Notarius, Vol. 17 No. 1 2024, p. 17

goods and services that do not comply with information (Article 65 paragraph 2), electronic fraud, or illegal access, which is processed through police investigations and general criminal courts, complementing civil/administrative sanctions with a deterrent effect.

5. Settlement of Counterfeit Product Disputes Under Indonesian Consumer Protection Law Using the Online Dispute Resolution (ODR) Mechanism

The concept of *Online Dispute Resolution* (ODR) in consumer disputes is a development of the *Alternative Dispute Resolution* (ADR) mechanism that utilizes digital technology to resolve disputes online, offering an efficient solution for consumers in the *E-Commerce era*. ODR is designed to overcome the weaknesses of conventional litigation methods that are slow, expensive, and require physical presence, with processes such as negotiation, mediation, conciliation, or arbitration online that are fast and cost-effective.^[8]

Methods in ODR ODR adopts methods from conventional ADR but adapted to the digital realm:

1. Online Negotiation

The initial stage where consumers and businesses communicate directly via app chat or encrypted email, often assisted by AI algorithms for automated compromise suggestions based on uploaded evidence such as photos, videos, agreements are reached voluntarily without third-party intervention.

2. Online Mediation

If negotiations fail, a neutral mediator (the platform's internal team, a certified professional, or a BPSK) is appointed to facilitate discussions via video call, virtual chat room, or integrated platform such as Zoom, with the aim of reaching a win-win agreement without a binding decision. This process is flexible and can be scheduled asynchronously.

3. Online Arbitration

The final method for complex cases, where an independent arbitrator (panel of experts) reviews the digital evidence as a whole and issues a binding decision similar to conventional arbitration according to Law Number 30 of 1999, which is executed through an escrow mechanism or court order is rarely used for small disputes because it is final.

In practice, ODR is implemented through an integrated resolution feature in the *Marketplace application*, where the process starts automatically when consumers file a post-purchase complaint by uploading digital evidence such as photos, videos, or chat history on the platform and then initiates online negotiations between buyers and sellers via internal chat, where the AI system often provides automatic recommendations such as partial *refunds* or replacements based on previous claim patterns, so that resolutions can be completed within 1-3 days without human intervention for simple cases.^[9]

If negotiations fail, the platform appoints an internal mediator, usually a trained compliance team, or an external partner such as a certified mediation agency for online

mediation sessions via video call or encrypted virtual room, with a flexible schedule determined by an algorithm based on the parties' time zones, ensuring 24/7 accessibility, which is a key advantage of ODR compared to conventional BPSK agreements are reached voluntarily and executed directly via escrow funds held by the platform until final resolution.

For complex cases such as disputes over high-value counterfeit products, ODR can be escalated to online arbitration where a panel of independent arbitrators (often from the Ministry of Trade or provincial BPSK) comprehensively reviews digital evidence and issues a binding decision that is executed similarly to traditional arbitration under Law No. 30 of 1999, although in practice Indonesian *Marketplaces* rely more on internal mediation to maintain user retention.^[10]

The dispute resolution mechanism through *Online Dispute Resolution* (ODR) basically offers convenience, time efficiency, and lower costs compared to conventional dispute resolution, but in practice it still faces various fairly complex obstacles, both from legal, technical, and social aspects.

One of the main obstacles is the lack of comprehensive and specific regulations in the Indonesian legal system that explicitly regulate ODR as a legally binding dispute resolution mechanism. This often creates legal uncertainty for the parties, particularly regarding the enforceability of the resulting decisions. Furthermore, the low level of digital literacy in the community is also a significant obstacle, as not all disputing parties have the ability or adequate understanding to use digital platforms, potentially leading to unequal access to justice. Another obstacle lies in the aspect of data security and information confidentiality, where concerns persist about the protection of personal data and the risk of information leaks during the online dispute resolution process. From a technical perspective, limitations in technological infrastructure, such as unequal internet access, can also hinder the effectiveness of ODR implementation, especially for communities in remote areas.

Suggestions to address this include establishing a specific legal framework for ODR through a revision of the Consumer Protection Law, and developing the National ODR Network as an integrated platform connecting public institutions, ADR, and neutral mediators. Improving digital education for consumers, training qualified mediators, and integrating with government systems such as SP4N-LAPOR are also recommended to build trust, efficiency, and equitable access to justice.

6. Conclusion

1. Marketplaces act as intermediaries or electronic system providers, providing digital transaction channels between sellers and consumers. While not the primary sellers, marketplaces still play a strategic role in protecting consumers from the circulation of counterfeit products.
2. The primary responsibility for the distribution of counterfeit products rests with the business owner as the seller, but marketplaces can also be held liable for negligence in their oversight. This liability includes civil liability in the form of compensation, administrative

⁸Ahmad Habib Al Fikry And Nurul Fibrianti, "Online Alternative Dispute Resolution For Consumer Dispute Settlement In The Digital World" Indonesian Journal Of Law And Policy Studies, No.1 2022. p 48

⁹Gagah Satria Utama, "Online Dispute Resolution: A Revolution in Modern Law Practice", Business Law Review, Vol. 1, No. 3, 2017, p. 3.

¹⁰Rno Lodder And John Zeleznikow, *Online Dispute Resolution: Theory And Practice*, The Hague: Eleven Publisher, 2012, p. 88

liability in the form of warnings, fines, or license revocation, and criminal liability in the form of imprisonment, fines, confiscation of goods, and even termination of business activities if proven to have allowed or facilitated the distribution of counterfeit products.

3. Counterfeit product disputes can be resolved through litigation or non-litigation, but the Online Dispute Resolution (ODR) mechanism is more effective because it is fast and efficient. This mechanism involves submitting a complaint on a marketplace platform, mediating or negotiating online, and ultimately issuing a decision or securing compensation for the consumer.

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