

## **Legal Liability of Marketplaces for the Circulation of Counterfeit Goods**

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**Abstrak:** Penelitian ini bertujuan untuk menganalisis pengaturan tanggung jawab *marketplace* terhadap peredaran produk palsu serta bentuk perlindungan konsumen dalam transaksi perdagangan melalui sistem elektronik. Menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan dan konseptual, serta menganalisis bahan hukum primer, sekunder, dan tersier secara kualitatif, penelitian ini menemukan bahwa Peraturan Pemerintah Nomor 80 Tahun 2019 tentang Perdagangan Melalui Sistem Elektronik menempatkan *marketplace* sebagai Penyelenggara Perdagangan Melalui Sistem Elektronik (PPMSE) yang bertanggung jawab memastikan sistemnya tidak digunakan untuk kegiatan ilegal. Pasal 22 PP No. 80 Tahun 2019 menegaskan tanggung jawab PPMSE atas konten ilegal dalam sistemnya, namun tanggung jawab ini bersifat terbatas dan bersyarat melalui penerapan prinsip *notice and takedown*. Meskipun demikian, regulasi ini masih bersifat umum dan belum mengatur standar kehati-hatian *marketplace* secara tegas dalam mencegah produk palsu, sehingga efektivitas perlindungan konsumen sangat bergantung pada kebijakan internal masing-masing *marketplace*. Diharapkan pemerintah dapat memperkuat regulasi dengan standar kehati-hatian yang lebih spesifik, sementara *marketplace* perlu meningkatkan sistem pengawasan internal dan mekanisme pelaporan. Konsumen juga diimbau untuk lebih berhati-hati dalam bertransaksi.

**Kata Kunci :** *Marketplace*, Produk Palsu, Perlindungan Konsumen, Perdagangan Melalui Sistem Elektronik

**Abstract :** *This research aims to analyze the regulatory framework for the responsibility of marketplaces concerning the circulation of counterfeit products, as well as the forms of consumer protection in electronic commerce transactions. Employing a normative legal research method with legislative and conceptual approaches, and qualitatively analyzing primary, secondary, and tertiary legal materials, this study finds that Government Regulation Number 80 of 2019 concerning Electronic Commerce places marketplaces as Electronic Commerce Organizers (PPMSE) responsible for ensuring their systems are not used for illegal activities. Article 22 of PP No. 80 of 2019 affirms the PPMSE's responsibility for illegal content within its system, however, this responsibility is limited and conditional through the application of the \*notice and takedown\* principle. Nevertheless, the regulation remains general and does not strictly stipulate specific due diligence standards for marketplaces in preventing counterfeit products, thus the effectiveness of consumer protection heavily relies on the internal policies of each marketplace. It is expected that the government will strengthen regulations with more specific due diligence standards, while marketplaces need to enhance their internal supervision systems and reporting mechanisms. Consumers are also urged to exercise greater caution in transactions.*

**Keywords:** *marketplace, counterfeit products, consumer protection, electronic commerce.*

## **INTRODUCTION**

The rapid development of information and communication technology has fundamentally transformed patterns of social interaction and the mechanisms of economic transactions in modern society. One of the most significant transformations is the emergence of trade conducted through electronic systems, or e-commerce, which has now become integrated into everyday life. Marketplaces, as the primary platforms within e-commerce, offer remarkable convenience for consumers to engage in the buying and selling of goods and services online, providing broad access to a wide range of products as well as temporal flexibility. This business model enables sellers and buyers to conduct transactions without the need for physical interaction, which in turn promotes economic efficiency and creates new business opportunities. [1]

However, behind the convenience it offers, the development of e-commerce has also given rise to significant new challenges, particularly concerning the circulation of counterfeit and illegal products. The ease and speed of online transactions are often exploited by unscrupulous sellers who offer unlawful goods, such as counterfeit items, products without proper distribution permits, goods that do not conform to their advertised descriptions, and items that infringe intellectual property rights. This phenomenon not only promotes economic efficiency but also generates new legal risks, especially in the context of consumer protection. [2]

In the legal context, the presence and growing influence of online marketplaces introduce a complex and pressing dilemma concerning civil liability, particularly when consumers incur financial losses as a result of purchasing illegal, counterfeit, or otherwise unauthorized goods through these platforms. Determining which party bears responsibility for fraudulent activities associated with the circulation of counterfeit products in online commerce has become increasingly intricate, due to the involvement of multiple actors—including the direct sellers, third-party vendors, and the platform operators themselves. While statutory regulations exist to protect intellectual property rights and to govern the conduct of online trading activities, their practical implementation often raises significant debate and legal ambiguity. One of the most contentious issues is the scope of accountability attributed to platform providers, who may act as intermediaries facilitating transactions without being directly involved in the production or sale of infringing goods.

Questions remain regarding whether marketplaces should be considered merely as passive conduits of trade or whether they bear active legal responsibility for monitoring, preventing, and remedying the circulation of products that violate trademarks or other intellectual property rights. The uncertainty surrounding these responsibilities highlights the need for a more precise legal framework that clearly delineates the obligations of all parties involved, addresses the evolving nature of e-commerce, and ensures that consumer rights are effectively safeguarded in the digital marketplace. In many cases, marketplaces position themselves merely as technological

intermediaries in order to avoid legal liability, while consumers often face difficulty in distinguishing between direct sellers and third-party vendors.

This situation is further exacerbated by consumer complaint data, which indicates a high incidence of issues related to electronic transactions. The Ministry of Trade has recorded thousands of consumer complaints concerning e-commerce, the majority of which involve various forms of fraud and the circulation of counterfeit goods. Although the government has sought to address these issues through Government Regulation No. 80 of 2019 on Trade Through Electronic Systems (PP PMSE), which obliges business actors to provide accurate, clear, and honest information, online fraud practices that violate these provisions remain widespread and often meet the elements of criminal fraud under Article 378 of the Indonesian Criminal Code (KUHP). [3]

Therefore, the urgency of discussing the legal responsibility of marketplaces cannot be overstated. Digital platforms can no longer be regarded merely as passive intermediaries; instead, they play a strategic role in ensuring the safety, authenticity, and reliability of the products traded through their systems. Government Regulation No. 80 of 2019 on Trade Through Electronic Systems (PP PMSE) establishes a range of obligations for Electronic System Trade Organizers (Penyelenggara Perdagangan Melalui Sistem Elektronik, PPMSE), including the duty to verify business actors, implement monitoring mechanisms, and provide effective channels for handling consumer complaints. Despite these regulatory provisions, a thorough legal analysis is necessary to evaluate the adequacy of existing regulations, the degree of legal certainty afforded to all parties involved, and the extent to which these rules support a safe, trustworthy, and sustainable digital trading ecosystem. Such an in-depth examination is essential not only to clarify the responsibilities and liabilities of marketplace operators but also to strengthen consumer protection, uphold fair commercial practices, and foster public confidence in the rapidly evolving e-commerce landscape.

## **RESEARCH METHOD**

This study employs a normative juridical legal research method, focusing on the examination of legal norms contained in legislation and relevant legal literature [4]. The approaches used in this research include the statutory approach, the conceptual approach, and the case approach, aimed at analyzing various legal provisions related to the responsibility of marketplaces for the circulation of counterfeit products, as well as consumer protection in electronic commerce (e-commerce) activities.[5]

The legal materials used in this study consist of primary legal materials, including legislation such as the Consumer Protection Law, the Trademark and Geographical Indications Law, and the Government Regulation on Trade Through Electronic Systems (PP PMSE), as well as secondary legal materials, such as scholarly books, journals, and other literature relevant to the

research topic.[3]. The collection of legal materials was conducted through library research by reviewing various regulations, documents, and literature related to the research subject.

Furthermore, the collected legal materials were analyzed qualitatively using legal interpretation methods, including grammatical, systematic, and teleological interpretation, to understand the meaning and purpose of the legal provisions under study. The results of the analysis were then presented in a descriptive-analytical manner to address the research questions and to provide normative recommendations regarding the responsibility of marketplaces in protecting consumers from the circulation of counterfeit products in e-commerce transactions.

## **RESULT AND DISCUSSION**

### **1. Regulation of Marketplace Liability for the Distribution of Counterfeit Products under Government Regulation No. 80 of 2019 on Trade Through Electronic Systems**

The advancement of information technology has driven significant changes in the trading system, particularly through the utilization of digital platforms or marketplaces. A marketplace serves as a platform that connects sellers and buyers within an electronic system, thereby facilitating commercial transactions without the need for direct, face-to-face interaction. Under Indonesian law, the position of marketplaces is regulated in Government Regulation No. 80 of 2019 on Trade Through Electronic Systems (PMSE), which designates marketplaces as Electronic System Trade Organizers (Penyelenggara Perdagangan Melalui Sistem Elektronik, PPMSE) [6]. With this status, a marketplace functions not only as a provider of transaction facilities but also bears a legal obligation to ensure that the system it provides is not used for commercial activities that violate the law.

One of the issues that frequently arises in the practice of electronic commerce is the circulation of counterfeit goods. Counterfeit products are items that use a trademark identical or substantially similar to a registered trademark owned by another party without the permission of the legitimate trademark owner. The distribution of counterfeit products through marketplace platforms not only violates legal provisions in the field of intellectual property rights but also has the potential to harm consumers, as such products often fail to meet the quality, safety, and legality standards established under applicable regulations.

In the context of electronic commerce, the presence of counterfeit products on marketplaces can be classified as illegal electronic information content. This is reinforced in Article 22(1) of Government Regulation No. 80 of 2019, which states that Electronic System Trade Organizers (PPMSE) as well as intermediary service providers are responsible for the legal consequences arising from the presence of illegal electronic information content within the electronic trading system. This provision indicates that marketplaces have a legal obligation

to ensure that the systems they manage are not used for commercial activities that contravene the law.

However, the legal liability of marketplaces under Government Regulation No. 80 of 2019 is both limited and conditional, reflecting the nuanced approach the regulation takes toward the responsibilities of digital platforms. Specifically, Article 22(2) stipulates that Electronic System Trade Organizers (PPMSE) cannot be held legally accountable for illegal content circulating on their platforms, provided that they have taken prompt action to remove such content after becoming aware of, or receiving information regarding, the violation. This provision effectively places marketplace liability within a framework that balances regulatory oversight with the practical realities of operating large digital platforms, where it may be difficult to monitor every transaction or piece of content proactively. As such, the responsibility of marketplaces is grounded in the principle of knowledge and action, meaning that the extent of their liability is contingent upon two key factors: first, the degree to which the platform operator becomes aware of any unlawful activity or content on their system, and second, the timeliness and effectiveness of the measures they take in response to that awareness. This principle underscores a conditional form of accountability that incentivizes marketplaces to implement monitoring and reporting mechanisms while recognizing the inherent limitations of passive intermediary roles in a complex digital trading environment.

This regulation reflects the application of the notice and takedown principle, a mechanism that requires platform providers to remove content that violates the law after receiving a notice or becoming aware of the infringement. This principle aims to create a balance between consumer protection and the continuity of digital commerce, considering that marketplaces fundamentally function as intermediaries or facilitators in electronic transactions.

Beyond its relevance to electronic commerce law, the circulation of counterfeit products also implicates consumer protection aspects. Under Law No. 8 of 1999 on Consumer Protection, consumers have the right to obtain comfort, safety, and security in the consumption of goods and/or services, as stipulated in Article 4 [7]. Furthermore, Article 19(1) of the Consumer Protection Law establishes that business actors are responsible for providing compensation for losses suffered by consumers due to the use of goods or services traded. Therefore, if consumers incur losses from the use of counterfeit products purchased through a marketplace, the business actors who trade these products can be held legally liable.

In addition, product counterfeiting also constitutes a violation of trademark rights as regulated under Law No. 20 of 2016 on Trademarks and Geographical Indications. This law grants exclusive rights to registered trademark owners to use their marks in commercial activities. Any party that uses a trademark identical or substantially similar to a registered

trademark without permission may be subject to criminal sanctions as stipulated in Articles 100 and 102 of the Trademark Law.[7]

One example of a case involving the circulation of counterfeit products through a marketplace can be seen in the West Jakarta District Court Decision No. 537/Pid.B/2022/PN Jkt.Br, which concerned the sale of fake Scarlett-branded skincare products through the Shopee platform. In this case, the defendant sold Scarlett serum products at a lower price than the genuine items—Rp50,500.00 compared to approximately Rp75,000.00 for the authentic product. Upon examination, it was found that the products did not have marketing authorization from the Food and Drug Supervisory Agency (BPOM) and exhibited differences in packaging and hologram labels compared to the genuine products.

Based on the trial facts, a total of 1,542 counterfeit Scarlett cosmetic products were seized as evidence, consisting of various types of serum ready for sale. These actions were deemed to violate the provisions of Article 100(1) and Article 102 of the Trademark Law, as well as Article 62(1) in conjunction with Article 8(1)(f) of the Consumer Protection Law. Consequently, the West Jakarta District Court sentenced the defendant to nine months of imprisonment and imposed a fine of Rp500,000,000.00, with the provision that if the fine is not paid, it will be replaced by one month of imprisonment.

This case illustrates that the circulation of counterfeit products through marketplaces can produce a range of negative impacts for both consumers and legitimate trademark owners. For consumers, the use of counterfeit products—especially skincare items—can pose health risks, as such products have not undergone adequate safety oversight or testing. Meanwhile, for trademark owners, counterfeiting practices can damage the brand's reputation and undermine public trust in products marketed officially and legitimately.[8]

Thus, it can be concluded that Government Regulation No. 80 of 2019 provides a legal basis for the liability of marketplaces regarding the circulation of counterfeit products; however, its provisions remain general and do not yet detail the specific mechanisms for prevention or the standards of due diligence that marketplaces must implement. Therefore, there is a need to strengthen regulations and enhance effective oversight so that marketplaces can play an active role in preventing the distribution of counterfeit products while simultaneously providing optimal legal protection for consumers in electronic commerce.

## **2. Forms of Marketplace Responsibility in Protecting Consumers and Preventing the Circulation of Counterfeit Products on Marketplace Platforms**

The principle of legal protection serves as an essential foundation for safeguarding the rights and freedoms of individuals, realized through equal access to the judicial system, fair treatment, transparent legal processes, and clear and proportionate sanctions. This creates a

secure environment for individuals to express opinions, pursue well-being, and live without fear of oppression or injustice. In the context of consumer protection, Law No. 8 of 1999 on Consumer Protection (UUPK) outlines fundamental consumer rights, including the right to comfort, safety, and security; the right to choose products according to the promised value; the right to accurate and honest information; the right to be heard; the right to advocacy and consumer education; the right to fair treatment; the right to compensation for losses; and other rights as stipulated in applicable regulations.[9] These rights are designed to protect consumers from unscrupulous sellers who offer counterfeit products, even though consumers intend to purchase genuine items.

Legal protection for victims of counterfeit goods transactions in Indonesia serves as a crucial foundation for safeguarding consumers from harmful practices. A strong basis for addressing this issue is provided by the Consumer Protection Law (UUPK), provisions regulating intellectual property rights such as the Trademark Law, as well as regulations governing electronic transactions. The core of this legal protection lies in providing legal certainty for victims, imposing strict sanctions on perpetrators of counterfeit goods trade, and rigorously enforcing the rules. Cooperation among government agencies, law enforcement, and private sector actors also plays a vital role in strengthening law enforcement, enhancing monitoring, and raising public awareness regarding the risks associated with counterfeit products.

The theory of legal positivism views law as a system of rules derived from the formal authority of the state, emphasizing compliance with valid laws to ensure legal certainty. In the context of consumer protection, this theory supports the existence of clear written regulations, law enforcement through formal institutions (such as the National Consumer Protection Agency [BPKN], Consumer Dispute Settlement Institutions [BPSK], and courts), and legal certainty for all parties involved. Law is seen as a tool to regulate the behavior of business actors to prevent harm to consumers, and consumer protection regulations rely not on morality but on the very existence and enforcement of the law itself.[10]

For example, a violation of Article 8 of the Consumer Protection Law (UUPK) regarding the prohibition of misleading information can be sanctioned regardless of the good intentions of the business actor. Legal positivism emphasizes law as a regulatory tool, viewing law as it exists (law as it is) and as universal and neutral, applicable to all parties without discrimination. However, the rigidity of this theory necessitates integration with other legal theories, such as the theory of responsive law, to accommodate non-litigation dispute resolution through Consumer Dispute Settlement Institutions (BPSK), as mandated by Article 45 of the UUPK.[11] The strengths of legal positivism in consumer protection include legal certainty, impartiality, and effective law enforcement. However, its weaknesses lie in its rigidity, the lack of a moral approach, and limited access for certain consumers.

Unlike legal positivism, the theory of responsive law views law as a tool that adapts to social, political, economic, and technological changes. In the context of consumer protection, this theory emphasizes a consumer-oriented, flexible legal framework capable of providing practical solutions. Its principles include active participation of consumers and business actors, adaptation of the law to social dynamics, effective and timely problem-solving, and the integration of moral and social values.[12] In addition, Government Regulation No. 80 of 2019 on Trade Through Electronic Systems (PP PMSE) demonstrates a responsive legal approach by requiring easily accessible consumer complaint mechanisms, ensuring data security, providing transparent product information, and implementing escrow systems to prevent fraud. The role of the Financial Services Authority (OJK) in addressing issues within the financial services sector, including online lending, through consumer service systems and alternative dispute resolution institutions, also reflects the application of responsive law.[13]

The responsibility of marketplaces in protecting consumers and preventing the circulation of counterfeit products, as regulated in Government Regulation No. 80 of 2019, is not yet fully optimal because it remains largely reactive; enforcement generally occurs only after consumer complaints or losses have been reported. The regulation does not explicitly set clear standards of due diligence for marketplaces in preventing counterfeit products, meaning preventive efforts heavily depend on internal policies.

However, PP No. 80 of 2019 mandates that marketplaces, as Electronic System Trade Organizers (PPMSE), ensure that their systems are not used as channels for distributing illegal content, including counterfeit products. This responsibility is operationalized through the provision of complaint mechanisms, procedures for removing unlawful content, and dispute resolution systems. Article 22 of PP No. 80 of 2019 affirms the PPMSE's liability for the legal consequences arising from illegal content, but this liability is limited and conditional, allowing marketplaces to be exempt if they have acted actively and responsively in addressing such content. This framework reflects a balance between consumer protection and the development of e-commerce, where marketplaces are obligated to supervise their electronic systems while adhering to the principle of liability based on knowledge and action.[14]

## **CONCLUSION**

Government Regulation No. 80 of 2019 on Trade Through Electronic Systems (PP PMSE) positions marketplaces as Electronic System Trade Organizers (PPMSE) with a legal obligation to ensure that their electronic systems are not used for illegal activities, including the distribution of counterfeit products. Article 22 of PP No. 80 of 2019 stipulates that PPMSE and intermediary service providers are responsible for the legal consequences arising from the presence of illegal electronic information content within their systems. However, this responsibility is limited and

conditional, as marketplaces may be exempt from liability if they have removed illegal content after becoming aware of the violation.

Furthermore, the provisions of PP No. 80 of 2019 reflect the implementation of the notice and takedown principle, requiring marketplaces to act proactively once they receive reports or become aware of violations. Marketplaces are also mandated to provide consumer complaint mechanisms, monitoring systems, and dispute resolution facilities as forms of consumer protection. Nevertheless, the regulation remains general in scope and does not explicitly establish due diligence standards for marketplaces in preventing the circulation of counterfeit products. As a result, the effectiveness of consumer protection in this context heavily depends on the internal policies of each marketplace.

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