



Civil Liability of E-Commerce Platforms for the Sale of Counterfeit Industrial Design Products (A Study on the Protection of Rights Holders in the Digital Economic Ecosystem)

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Abstract

This study aims to analyze the civil liability of e-commerce platforms for the rampant sale of counterfeit industrial design products in the digital economy ecosystem. Although platforms act as intermediaries, their presence often becomes a means of industrial design rights violations that harm legitimate rights holders. The research method used is normative juridical with a statutory and conceptual approach. The results of the study indicate that the legal standing of e-commerce platforms in civil law can be classified as electronic means providers who have subjective supervision obligations. Forms of industrial design violations in the marketplace generally take the form of imitation of the configuration, shape, and composition of products sold by third parties. The analysis of the platform's civil liability refers to the Safe Harbor Policy principle, but platforms can be held accountable through the doctrine of Unlawful Acts (PMH) if proven negligent or allowing infringing content to remain available after a report (notice and take down). Legal protection for rights holders includes preventive protection through the platform's IPR verification system and repressive protection in the form of civil compensation claims.

I. INTRODUCTION

The rapid transformation of the digital economy has shifted the paradigm of conventional commerce to one based on electronic platforms, through e-commerce. In Indonesia, this growth is supported by the widespread use of marketplaces as intermediaries between sellers and buyers. However, on the other hand, this ease of digital transactions has brought negative consequences in the form of increased Intellectual Property Rights (IPR) violations, particularly within the Industrial Design regime.

Many products are found to be visually identical to registered industrial designs, being marketed freely without permission from the legitimate rights holder.

Legally, Law Number 31 of 2000 concerning Industrial Design grants the rights holder the exclusive right to prohibit others from making,

using, or selling products containing the design. However, law enforcement in the digital space faces complex challenges due to the involvement of e-commerce platforms as electronic system providers.

There is debate about the extent to which platforms can be held civilly liable for losses suffered by rights holders due to the sale of counterfeit products by third parties (sellers).

The main problem lies in the legal standing of platforms, which often seek refuge behind Safe Harbor policies (protection for platform organizers over user-uploaded content). However, under civil law, platforms have an obligation to act with due care.

The platform's failure to provide a monitoring mechanism or slow response to reports of violations can be categorized as an Unlawful Act

(PMH) as regulated in Article 1365 of the Civil Code (KUHPerdata).

Furthermore, legal protection for industrial design rights holders in the digital economy ecosystem is still not optimal. Self-reporting mechanisms are often considered complicated and lack legal certainty regarding compensation.

Based on this background, this study will examine in depth the legal status of platforms, the forms of violations that occur, an analysis of civil liability based on relevant legal theories, and legal protection efforts that can be undertaken by rights holders to maintain the integrity of the creative economy in Indonesia.

II. RESULTS AND DISCUSSION

A. Legal Position of E-Commerce Platforms in the Civil Law Regime

Transactions on e-commerce platforms in Indonesia are legally subject to the contract provisions in Book III of the Civil Code. The primary principle underlying this legal relationship lies in Article 1313 of the Civil Code, which defines an agreement as a legal act that creates a binding relationship between one or more parties. In the context of the digital economy, this article serves as the foundation for establishing obligations and rights between platform providers, sellers, and buyers.

Furthermore, the Civil Code regulates basic contract principles, such as agreement, freedom of contract, validity of contract, and the responsibilities of the parties involved. In sales contracts through e-commerce platforms, the platform acts as an intermediary or liaison between the seller and the buyer.

Although e-commerce platforms are not directly involved in the contract, they play a crucial role in providing the means and infrastructure for conducting sales transactions. The e-commerce platform's responsibility in this regard is to ensure that these transactions proceed smoothly and comply with applicable regulations.

Under Indonesian civil contract law, both e-commerce and conventional transactions are treated equally. The principles of contract law

stipulated in the Civil Code apply to both types of transactions. The Civil Code regulates the basic principles of contracts, including sales and purchase contracts.

These principles include consent, freedom of contract, fulfillment of obligations, responsibility, equality, and due care. These principles apply regardless of whether the transaction is conducted through e-commerce or conventional transactions.

B. Forms of Industrial Design Violations in the Marketplace

Along with technological developments and globalization, legal protection for industrial designs must be aligned with international standards. One international agreement that serves as a reference for industrial design protection is TRIPs (Trade-Related Aspects of Intellectual Property Rights), which regulates various aspects of IPR, including industrial designs (Badung 2019).

As a member of the World Trade Organization (WTO), Indonesia is obligated to align its legal system with global standards. Therefore, revising and updating Law No. 31 of 2000 is crucial to ensure Indonesian law remains relevant and provides stronger protection for industrial design rights holders (Handoko, 2022). In practice, industrial design infringements are common. One common form of infringement is slavish imitation, which involves copying an existing industrial design with minor changes to create a distinctive appearance.

This phenomenon creates confusion among consumers and harms legitimate industrial design rights holders. To address this issue, Law No. 31 of 2000 provides two forms of legal protection: preventive (through design registration) and repressive (through sanctions).

Article 9 paragraph (1) of Law No. 31 of 2000 states that the holder of industrial design rights has exclusive rights to use his design and prohibits other parties who do not have permission from making, using, selling, importing, exporting or distributing the design.

In fact, counterfeit goods are not the only potential for Intellectual Property violations in e-commerce, there are at least 5 modes of violation that we can describe as follows:

1) Sale of Counterfeit Goods

Even in selling counterfeit goods, the methods have become more sophisticated, not openly using names or products with very different quality.

a. Photo taken from the official website

If the seller is not an official store but uses official photos, you should immediately be suspicious and exercise your right to request original photos before making a transaction.

b. Preloved complete with receipt

If from the start the seller has displayed a note on the product photo that seems to show that the product was actually purchased at the original store, you are still advised to ask for a photo of the original product before making a transaction.

c. Original price, but fake product

If you're a brand enthusiast, you're likely familiar with the shape, color, and logo placement of the product. You might also know how many variants are available this season, including limited editions. So, when you find a different color, even if it's the same price as the original, you won't be fooled.

d. Using the word ORI

The term "ori," meaning "original," should only be used for genuine products. However, recently, this term has been used by sellers of counterfeit goods to attract buyers. Especially when the word "ori" is used alongside a significantly lower price, you should be suspicious of its authenticity.

e. Cheap products directly from the factory

You should also be wary of this description when finding cheaper items on e-commerce sites. If the product originates from Indonesia, only authorized stores or distributors with

wholesale pricing can do so. Another possibility is that the item is stolen, with questionable quality and completeness.

2) Product Promotion Without Verification

This mode is the same as the first category, the difference is that it offers a big discount which results in the price being much cheaper than the market, but is not sold by official stores or distributors (who are not currently providing the same promotion).

Apart from the possibility that what is being sold is not an original product, it could be that the product is smuggled and has not paid official import taxes, of course with questionable completeness and quality.

3) Selling Through E-Commerce Irresponsibly

Sometimes, some health and beauty products are sold under a "direct selling" scheme, prohibiting sales through e-commerce. This is because they prioritize product exclusivity, which is only sold directly through downlines/registered members.

So direct sales to the public (non-members) is a form of violation, because it damages the business scheme and membership system that has been agreed upon.

4) Unequal Standard Operating Procedures for IP Violations in E-Commerce

Even though e-commerce acts as an intermediary that will hold funds from buyers and will return them if the goods are problematic, in reality there are still loopholes that allow transactions to be completed, even though the goods are not as described.

For example, a buyer might forget to video unbox or fail to verify the item's authenticity before the deadline. If this happens, the complaint process will be inconsistent. This is further complicated by the lack of customer service that truly understands the issue, especially if the

customer service is completely automated without human intervention.

5) An Open, Limitless E-Commerce Platform

With the increasing openness of international trade through e-commerce, you need to understand the risks of purchasing goods from outside Indonesia. If you find a lower price for an item, even though it's shipped from abroad, and you know there's an official distributor in Indonesia, you need to be even more vigilant.

Because it could be that there has been a violation of IP in the form of distribution without permission or breaking the law or not paying import taxes, which is not impossible, within the time span of the ordering process, the seller in the country of origin is arrested by the police, and you will not get the goods you want.

C. Platform Civil Liability Analysis

The marketplace's existence has shifted from merely providing digital platforms to becoming a crucial element in the modern trade distribution chain. As entities that bridge thousands of vendors, marketplaces play a strategic role in mitigating the circulation of illegal goods.

Therefore, the claim of being merely a platform hosting provider is no longer relevant, the platform has a legal obligation to verify the legitimacy of the products marketed on it.

Based on a legal review of Article 1, paragraph 3 of Law Number 8 of 1999 concerning Consumer Protection, marketplaces qualify as business actors. Given that platforms derive financial benefits from each transaction, they bear the legal responsibilities inherent in that status.

This is reinforced by findings (Rahayu, 2021) which highlight the existence of implied trust from consumers, the public tends to assume that products appearing on large platforms have been verified for safety.

In the realm of civil law, marketplace liability can be reviewed through two main doctrines:

1) Negligence: This occurs when the platform fails to provide a competent

filtration system or is slow in responding to reports of illegal content (Fatkhurohman, 2019).

2) Strict Liability: Emphasizing that losses arising from business operations must be borne by the platform manager.

A clear precedent is evident in the South Jakarta District Court's Decision No. 672/Pdt.G/2021/PN.JKT.SEL. The judge in the case ordered a marketplace to pay compensation for negligence in overseeing the distribution permits of third-party cosmetic products. This ruling affirms that the duty of care principle requires businesses to proactively prevent consumer harm. (Rachmawati, 2021).

Going forward, marketplaces should not rely solely on user-reporting mechanisms, but should instead integrate compliance mechanisms through collaboration with regulatory bodies such as the Food and Drug Authority (BPOM) or the Directorate General of Consumer Protection (DJKI) (Wahyuni, 2020). Referring to European Union practice, the effectiveness of consumer protection depends on platforms' obligations to promptly remove illegal content.

Ethically, economic gain should not negate consumers' right to security (Sutedi, 2008). Regulatory reform in Indonesia is urgently needed to strengthen the obligation to verify administrative and transparent seller identities. This step is not merely a technical matter, but a fundamental effort to achieve legal justice and maintain the integrity of the national digital economic ecosystem.

D. Legal Protection for Industrial Design Rights Holders

Legal protection for industrial design rights holders in Indonesia is regulated in Law No. 31 of 2000 concerning Industrial Design, which provides exclusive rights to registrants to use their designs for 10 years, preventing others from using them without permission, and allowing for dispute resolution (litigation/non-litigation) with claims for compensation or termination of infringement, as well as

criminal/civil sanctions for violators, in order to encourage innovation and justice for creators.

This regulation specifically addresses the rights and obligations of designers, registration procedures, and sanctions for violators. To support the technical implementation of this law, the government has also issued Government Regulation No. 1 of 2005.

Through this legal framework, the state grants exclusive rights to designers over their intellectual works that have aesthetic value and can be applied to industrial products and handicrafts.

If these exclusive rights are violated by another party, the rights holder has the authority to take legal action through two main channels:

1) Civil Path

These efforts are focused on recovering economic losses of rights holders through:

- **Claim for Damages:** Legal proceedings are officially filed through the Commercial Court against the party committing the violation.
- **Temporary Determination:** An application to the court to issue an order to immediately stop the production and distribution of goods suspected of being counterfeit in order to prevent wider losses.

2) Criminal Path

Considering that industrial design infringement is a complaint offense, rights holders can take the following steps:

- **Police Report:** Initiate legal proceedings by reporting the violation to the authorities.
- **Legal Sanctions:** Based on the applicable provisions, perpetrators of violations can be threatened with a maximum prison sentence of 4 (four) years and/or a maximum fine of IDR 300,000,000 (three hundred million rupiah).

III. CONCLUSION AND SUGGESTIONS

A. Conclusion

E-commerce platforms are not merely passive intermediaries, but rather business actors who have a contractual legal relationship with users based on Book III of the Civil Code. Platforms have a duty of care to ensure transactions comply with applicable laws.

Industrial design infringement in the marketplace often occurs in the form of slavish imitation (imitation of designs with minimal changes). The modus operandi of the violations included the unauthorized use of official photos, the sale of counterfeit goods labeled "original," and the distribution of smuggled goods.

Despite the Safe Harbor policy, platforms can be held civilly liable through the doctrine of Unlawful Acts (PMH) in accordance with Article 1365 of the Civil Code if they are proven to be negligent in carrying out supervision or slow in responding to reports of violations (notice and take down). Industrial design rights holders have preventive protection through registration and repressive protection through civil channels (compensation lawsuits and temporary injunctions) or criminal channels (complaint-based offenses).

B. Suggestion

1. The government needs to immediately revise Law No. 31 of 2000 concerning Industrial Design to make it more relevant to international standards (TRIPs) and the dynamics of digital trade, particularly regarding the specific responsibilities of platform organizers..
2. E-commerce platforms are advised not to rely solely on user reports (user report-based), but must integrate a proactive IPR verification system through technical collaboration with DJKI (Directorate General of Intellectual Property)..
3. There is a need for standardization of uniform Standard Operating Procedures

(SOPs) across all e-commerce platforms in handling complaints of IPR infringement to provide legal certainty for rights holders and consumers..

4. Increasing literacy regarding the importance of respecting exclusive industrial design rights in order to reduce the circulation of counterfeit products that are detrimental to the national creative economy ecosystem..

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