



# Trademarks Via E-Commerce Media and Their Protection

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**Abstract.** The increase in fraud in electronic transactions such as copyright infringement and trademark counterfeiting is one of the excesses of e-commerce development in addition to the positive impact of legal regulations. brand. The positive and negative impacts of brand rights on e-commerce media need to be addressed carefully to provide legal protection to brand rights owners. The purpose of this research is to analyze trademark rights regulations and Trips in e-commerce systems, as well as a comparison of the legal protection of brand rights in the United States and Australia. The methodology used is a form of normative law with a comparative and case approach using data available thanks to Open Source, both from literature, scientific journals, and recognized media. The results of this research indicate that domestic regulations on brand rights - in Indonesia, the United States, and Australia - as well as trips provide adequate legal protection for brand owners who buy and sell e-commerce goods.

**Keywords:** Brand, Legal Protection, E-Commerce

## 1. Introduction

In the current era of globalization, both in Indonesia and around the world, a person or group of modern people tends to make transactions online more often than conventional (offline) including in buying and selling transactions or other needs through e-commerce. The behavior of actions by doing online buying and selling transactions was chosen because it was considered more practical, easy, and could be done at any time as long as it was connected to the internet than having to do conventionally (offline) which had to spend energy until the goods were not available in the store.[1]

Online shopping transactions are not only part of the current globalization trend, but are a necessity for modern life. Where today's modern lifestyle is very dependent on e-commerce when it requires a service or goods. E-Commerce itself can be analogous to a traditional market which can meet various kinds of needs from consumers, but it is done digitally or online, be it the store, the goods to the process of buying and selling transactions. E-commerce or marketplace is a virtual market where sellers and buyers can make various transactions digitally or online such as Tokopedia, Lazada, Shoope, Blibli, Traveloka and other e-commerce. It functions the

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same as a conventional marketplace, but the marketplace as a computerized e-commerce is more efficient by providing up-to-date information and diverse support services to buyers and sellers. Therefore, e-commerce sets requirements for sellers in order to access the services provided. This requirement is a condition for sellers in carrying out buying and selling transactions.[2]

Keep in mind that e-commerce has similarities with a conventional market that can provide various kinds of needs from consumers or needs from the community, but e-commerce can be packaged digitally or online. E-commerce as part of a virtual market where sellers and buyers can meet and can carry out various types of buying and selling transactions. Where the function of e-commerce is the same as the conventional market both sell goods needed by consumers or needed by the community, but the difference is e-commerce with a computerized system that is more efficient than conventional markets in general, e-commerce or marketplace seems can provide up-to-date information that is more relevant and diverse support services to buyers and sellers. Therefore, setting requirements for sellers to be able to access services that have been provided to be regulated in Indonesian law is very important to be able to avoid legal problems in the future. This requirement is a provision for sellers in carrying out online buying and selling transactions in e-commerce.[3]

One of the things sold by e-commerce is inseparable from the protection of intellectual property rights in the form of brands. We need to know that Intellectual Property or often referred to as IPR is a right that can be given to be able to protect an individual or a group of legal entities that can arise as a result of a mind that can be processed from a creativity that can produce processes or products that are beneficial to humans. IPR also gives the right to obtain economic benefits from the results of intellectual creativity where individuals can freely develop their talents in order to create a work that can be useful for the progress of the world, one of which is progress in the field of brands. The work will then be registered in Intellectual Property Rights or better known by the abbreviation of Intellectual Property Rights. [4]

Brand is one of the intellectual assets that has a fairly high economic value, where the brand can be used by entrepreneurs or sellers in carrying out their trading activities in the form of emblems, writing, images and others that are still in unity with the definition of the brand. Brands that are bought and sold in e-commerce serve as markers of a product and service that will or can be produced by being distributed by entrepreneurs, so that entrepreneurs always register their names so as to give the entrepreneur the right to use his name exclusively in e-commerce to benefit from the brand. Protection of brand regulation in e-commerce has been protected through Law Number 20 of 2016 concerning Brands and Geographical Indications, which is in accordance with Article 31 which states that brand owners get legal protection within a period of ten years since the mark is registered at the Directorate of Intellectual Property. The existence of a marketplace or e-commerce in electronic commerce can not only produce a beneficial impact both in terms of sellers and in terms of buyers, but also can produce a negative or detrimental impact for brand rights holders, where one of the impacts is the supervision of goods sold to be less effective or falsified.

Therefore, with the existence of an electronic-based commerce in e-commerce, it can cause the potential for the entry of intellectual property rights violations such as infringement of brand rights, which is the act of buying and selling in e-commerce can occur indirectly either intentionally or unintentionally.[5]

The act of counterfeiting over time is increasingly widespread and complicated, especially added to the development of e-commerce. This is due to the ease of accessing or creating an account in e-commerce sellers with anonymous names in selling products that seem genuine even though the goods sold are fake sold through e-commerce on the internet.

Syawali, Husni dan Neni Sri Imaniyati said that the counterfeiting of the brand can be seen in the data of the International Trademark Association (INTA), where the Indonesian state ranks fourth in the consumption of counterfeit products or counterfeit products. Brand infringement is becoming a global problem for many industries according to reports by INTA and The International Chamber of Commerce, which have estimated that the global economic value of counterfeiting and piracy will reach \$2.3 trillion by 2022 brand rights owners or more broadly can harm the Indonesian economy.[6]

As for some violations of brand rights that are often misused and we can see in One example of products sold in e-commerce is the existence of imitation products, for example which are often counterfeited are foreign brands branded Adidas, Hermes, Nike, Puma and others which are often imitated brand rights and traded freely in e-commerce such as Blibli, Tokopedia, Shopee, Lazada and so on. With the imitation of brand rights products in the country, there should be a law for legal protection in protecting consumers from the sale of intellectual property rights in the form of imitation marks, so that they can provide benefits -positive benefits for consumers, businesses, law enforcement, and government to be able to minimize, prevent and act on the occurrence of problems with the same imitation brand rights products related to the sale of counterfeit products online in e-commerce.[7]

Similar to Indonesia, the protection of intellectual property rights in the form of brands in trade monopolies abroad such as the United States and Australia, also provides legal protection so that trademark rights owners are not inclined to theft of rights by the mode of counterfeiting brand things on an item that will or has been traded in online media through e-commerce.[8]

Both countries such as the United States and Australia have adopted into their respective national laws the inclusion of TRIPs agreements in which the contents of the agreement allude to a spec of intellectual engineering rights including trademark rights which will relate to commerce national and international as part of an agreement on the establishment of the World Trade Organization (WTO) adoption by these countries, including Indonesia, shows the importance of the role of intellectual engineering itself in trade Buy and sell both conventionally and e-commerce. The TRIPs agreement was made by WTO members to reduce trade barriers and increase the protection of intellectual property rights in the form of trademark rights, without hampering the enforcement procedures of the IPR itself. Australia and the United States have ratified TRIPs and the Paris Convention on the Protection of Industrial

Property, an international treaty on intellectual property that was jointly signed in Paris, France on March 20, 1883.[9] The existence of brand protection in Indonesia that is vulnerable to counterfeiting in e-commerce illustrates that it is important to carry out tighter regulations so that brand counterfeiters do not trade brands falsely again. The formulation of the problem that the author raises based on the background above is: How is the regulation of legal protection of intellectual property rights such as brands in the e-commerce system? How do the United States and Australia protect brand rights against legal intellectual property counterfeiting? The purpose of this study is to look deeper into legal protection from violations of counterfeiting goods or services on the internet or e-commerce system. The above questions will be examined by the author based on the existence of literature materials by open source in various national and international media.

## **2. Problems**

Specific research problems:

- a. How Legal Protection of Intellectual Property Rights in the Form of Brands Traded in the Indonesian E-commerce Market?
- b. How The role of the United States and Australia in protecting brand rights against legal intellectual property counterfeiting?

## **3. Method**

The perspective of Soerjono Soekanto, said that the research method is a form of technique of a scientific activity where the technique relies on a scientific approach by following a systematization of thought that has been predetermined by the author to be able to examine the existence of legal problems that have been predetermined before. This research method can involve the use of analytical tools that can be said to be careful research to be able to solve the problems to be studied.[10] Therefore, research in the form of scientific journal articles can be used methods using a normative juridical legal approach by using existing data through Open Source both from book literature, scientific journals, accredited media, and reports that all literature comes from national and international. After all information data has been collected, the author in conducting this research will conduct legal analysis and qualitative evaluation by breaking down information into structured, sequential, reasonable, consistent, and effective sentences which will later be explained descriptively analytically in legal form with the aim to facilitate the interpretation of information and understand the results of a legal analysis from the author about a system of legal This legal protection is carried out to ensure that all Indonesians can enjoy a right that has been mandated by the law that has been enacted.[10] According to Kansil's view in Rahardjo said that a legal protection can include various efforts that have been made by law enforcement officials to provide a sense of security, both physically and psychologically from all forms of disorders or threats originating from any party.[11] Protection of Intellectual Rights to be able to protect brand rights owners from counterfeiting in e-commerce.

#### 4. Discussion

Trading and buying and selling by electronic means, is considered a new and more practical way of buying and selling goods or services in e-commerce. However, it is also necessary to explore in terms of buying and selling electronically, of course there is an item that can be an object of transaction which of course can be closely related to a trademark, which is the Intellectual Property Rights of store owners in e-commerce. Electronic commerce transactions are directly related to Intellectual Property Rights, which can be seen in every regulation governing an electronic transaction. As for the rules regarding Intellectual Property Rights such as Law Number 20 of 2016 concerning Marks and Geographical Indications, they are always mentioned because there is often fraud in electronic transactions, such as piracy and brand forgery. This kind of misappropriation can cause a big loss to the brand owner and cause legal problems in a trade that is carried out electronically so that it needs protection of brand rights in e-commerce. Legal protection is an action that can provide security to the rights of a person or group of people who have been disturbed or unfairly usurped by other parties.

So it is necessary to enforce legal protection as an action to be able to protect or provide assistance to people who feel aggrieved, including legal protection to brand holders who are traded in the online market or often called e-commerce. Legal protection applied in Indonesia is a very universal concept in a country that can uphold a law. Legal protection of intellectual property rights such as trade mark is basic, there are two forms of legal protection, namely preventive legal protection and settlement legal protection. Legal protection of prevention, which basically refers to preventive measures, is essential for government action based on freedom of action because with the protection of preventive law, the government is directed to be cautious in making decisions. A form of preventive legal protection is contained in the law to prevent violations and provide limitations in carrying out obligations. Legal protection of settlement serves to resolve disputes arising from violations. This protection is a final form of protection that involves sanctioning violations that have occurred.[12] Legal protection can be applied to intellectual property rights in the form of trademark rights traded in e-commerce. Brands that are part of an Intellectual Property Right that is closely related to trade, where its use is related to products that are marketed and have economic value. The right to a mark is an exclusive right granted by the state to its owner. With these rights, the brand owner can use his own mark and give permission to others to use his mark through a license agreement. Sujatmiko said that to obtain this right, the trademark owner must register his trademark with the state, this is also given legal protection in the form of prevention and recognition given by the state to the owner of the right to the mark that has been registered and traded in e-commerce.[13]

Ensuring the protection of trade law security that occurs in cyberspace, it is important to pay attention to the existence of cyber legal aspects. Therefore, as a means of carrying out legal development, the community can encourage the birth of the implementation of Law Number 11 of 2008 concerning Electronic Information and Transactions which was later amended by Law No. 19 of 2016 to be fully applied to the e-commerce system. The goal is to ensure that the public, be it sellers or buyers,

can maintain order in activities in e-commerce, especially in electronic transactions of goods or services that have registered brands. One type of electronic commerce is e-commerce, which includes digital platforms in e-commerce where a consumer is able to make transactions directly with other consumers on the marketplace platform site. In this transaction, it is important to pay attention to the legal aspects of intellectual property, which are protected by Article 25 of the UU ITE. It can aim to provide protection of all intellectual property in information systems, taking into account regulations related to intellectual property.[14]

The treatment of the Indonesian government in providing protection for a brand is carried out with a regulation that specifically regulates the protection of marks in Law Number 20 of 2016 concerning Marks and Geographical Indications, or often is called the MIG Law and is also regulated in Government Regulation in Lieu of Law (PERPU) Number 2 of 2022 concerning Job Creation. However, this law does not regulate the classification of brands that classify a reputation, although experts have generally distinguished a brand based on the level of fame it can have. The classification consists of three levels, namely regular brands, famous brands, and very famous brands. In buying and selling branded goods or services in e-commerce, often where business actors violate the law in good faith by forging well-known brands such as Adidas, Puma, Gucci and others to Can trade the sale and purchase of goods or services as products that are not actually part of the brand. This is done by business actors in e-commerce in order to achieve the maximum profit without the need to spend a large effort to be able to build a new brand reputation.[15] Actions that are often taken by entrepreneurs are brand reputation forgery, which is a common practice in the common law system and is carried out by imitating or imitating other people's brands that already have a good reputation. The existence of a legal regulation related to the legal protection of this brand does not automatically become a settlement in electronic buying and selling activities in e-commerce.

Given where a rapid technological development is currently very fast, the trade sector through transactions where buying and selling electronically in e-commerce has a potential to be able to grow in Indonesia. Therefore, Indonesia needs to prepare special regulations regarding electronic trade transactions in e-commerce, which not only pay attention to consumer rights but also relate to products that are the object of transactions from e-commerce sales. The e-commerce market has a very important role in an electronic trading activity, as regulated by the legal basis of Government Regulation Number 80 of 2019 which always states that an online market is based e-commerce is responsible for the goods or services that are informed in the e-commerce store. Legal anticipatory steps that can be taken by brand owners whose brands are traded in e-commerce are to be able to avoid reporting their brands that are traded in ecommerce markets such as Tokopedia, Shoppe, Lazada, Blibli and other online stores that use The e-commerce system is described in the Circular Letter from Ministry of Information Number 5 of 2016 which gives a right to brand owners to be able to take action against brand counterfeiting practices that occur in the e-commerce market Certain by submitting a complaint to the platform provider in order to block or remove content that violates its intellectual property rights. Or more clearly it can be explained in detail in the section that must be complied with as a requirement of all providers for e-commerce platform including the following:

- a. Stores in the marketplace on an e-commerce system that can provide suggestions in the form of reporting tools that can be used in submitting from a complaint forum about a brand that has been deceived and banned in an e-commerce-based store.
- b. E-commerce-based platforms can take action against the reporting of brand complaints that have been falsified for counterfeit goods or services that harm the owner of the ownership rights holder of the mark.
- c. Pay attention to a period of time for removal and or a blocking of the brand that is committing counterfeiting and will certainly be prohibited, namely in the event that the brand benefits in the form of fraud.

Legal protection provided to brand owners who in this case are considered detrimental due to the act of seeking profits in a fraudulent way, the fraud can be acted upon. Because legal trademark rights holders can aim to grant an exclusive right to one or a group of brand owners so that no other party will use the mark, be it a brand of goods or a service mark as a mark that is the same or similar to the mark as a product that is the same or similar to the original mark. This exclusive right can be monopolistic, so it is only granted to the rightful owner of the mark and can use it exclusively. Brand owners who have been granted exclusive rights can use their marks as long as they do not violate applicable rules and prohibit other parties from using the mark or grant permission in accordance with Law Number 20 of 2016 concerning Marks and Geographical Indications. The use of forged brand names in e-commerce by using well-known brand names without a consent according to the author will be detrimental and will have a very bad impact on losses in the form of income for owners or holders of brands that have been legally registered by the directorate general of intellectual property rights, as well as damaging the brand image that has been painstakingly built by the owner or holder of the mark. This action clearly violates applicable regulations in accordance with the rules of Law Number 20 of 2016 concerning Brands and Geographic Indications and can also violate Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

## **5. Conclusion**

Based on the background, problem formulation and research results that the author is looking for in legal analysis literature, the author concludes that buying and selling trade by electronic means is considered a new and more practical way of buying and selling goods or services in e-commerce. The rules regarding Intellectual Property Rights such as Law Number 20 of 2016 concerning Brands and Geographical Indications are always mentioned because there is often fraud in electronic transactions, such as piracy and brand forgery. This legal protection is carried out to ensure that all Indonesian people can enjoy a right that has been mandated by the law that has been enacted. Brands that are part of an Intellectual Property Right that is closely related to trade, where its use is related to products that are marketed and have economic value. The right to a mark is an exclusive right granted by the state to its owner. With these rights, the brand owner can use his own mark and give permission to others to use his mark through a license agreement.

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