

Counterfeiting Products That Harm Business Brand Owners and Consumers

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Abstract

Counterfeiting of goods and brands is very detrimental to entrepreneurs, thus in this case it is very necessary to protect economic rights. This research uses a normative juridical approach, namely legal research carried out through material research or library data which becomes secondary data in the form of tertiary legal materials, primary legal materials, or secondary legal materials, namely analysing regulations to enforce the law. Counterfeit goods are very easy to obtain in the market; in the case of Decision No: 67/Pid.B/2013/PN.Pwk. the defendant is subject to criminal sanctions and a relatively light fine of Rp. 5,000,000-, this causes the defendant to counterfeit the brand or product not to be deterred. The distribution of local and imported counterfeit products that are very easy to obtain makes fake products increasingly prevalent in the market. Based on the Law of the Republic of Indonesia Number 20 of 2016 concerning trademarks and geographical indications, the relevant policy for criminal acts related to trademarks is a complaint offense as stated in Article 103, which means that the police have the nature of only accepting complaints by individuals who suffer the loss. So that if there is no complaint, the police cannot carry out the legal process.

Keywords: Product Counterfeiting, Harming Brand Owners, Consumers

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INTRODUCTION

Law of the Republic of Indonesia Number 20 in 2016, it concerns Marks and Geographical Indications. Global trade at this time, it is in line with international conventions that have been ratified by Indonesia, the role of Marks and Geographical Indications is an indispensable thing, it is especially to maintain business competitiveness effectively, consumer protection, fairness, and protection of MSMEs and domestic industries (Law of the Republic of Indonesia, 2016).

Globalization from a cultural, social and economic perspective has an effect on encouraging the flow of community economic development. The information technology and activities in the field of trade, they are services or goods, are developing rapidly, so it is possible that developments in the level of sales of services and goods will occur continuously in accordance with the increasing development of the national economy.

Market developments have resulted the need for more adequate trademark laws for the establishment of strong legal protection and certainty. Some countries are increasingly using their trade and economic activities for goods produced based on human intelligence. Brand is as a human work that has a strong relationship in trade and economic activities plays an important role (Law of the Republic of Indonesia, 2016).

The low income of consumers is also an obstacle in obtaining original products which tend to be expensive. Research from Eugenia *et.al.*, regarding the economic impact of counterfeiting, this activity does not only exist in Indonesia, but has become a global event. The income from the sale of counterfeit goods globally is very large, the profits are often used in acts of terrorism or criminal acts.

The Indonesia's losses economic due to an almost threefold increase in sales of counterfeit products over the five years (2005 to 2010). In 2010, it was predicted by LPEM (Institute for Economic and Community Research) Faculty of Economics, University of Indonesia that "the loss of GDP (Gross Domestic Product) in 2005 reached 43.2 trillion rupiahs, then using the same measurement method, the study predicts in 2013 the GDP loss due to sales of counterfeit products is 65.1 trillion rupiahs". The decrease in demand causes employees to lose salaries and wages of approximately 3.4 trillion rupiahs and the state has reduced its revenue from indirect taxes to 424 billion rupiahs for a year. The losses are very large, because Indonesia is a country that buys counterfeit products purchased from abroad (Eugenia, et.al, 2013).

Research on the effects of counterfeiting on the Indonesian economy seeks to find information based on the company's side with counterfeit products. The company is a party that has various information representing every field of industry, they are electronics and office equipment, glasses, apparel, body supplements, energy drinks, software, non-alcoholic beverages, pharmaceuticals, beverages, food, oil, cosmetics, and leather luxury goods. Based on information from Kuala Lumpur, that the circulation of counterfeit goods in the Southeast Asian region is troubling, the counterfeit goods result in a loss of state revenue, said Piotr Strykowski, senior economist at the OECD (Organization for Economic Cooperation and Development). Strykowski has studied the problem in various developed countries for ten years, stating that the problem of counterfeiting goods in Southeast Asia is constantly increasing. Product counterfeiting has become a concern both in scope and scale, lately all branded products have become targets for counterfeiting (www.kompas.com, 2019).

Strykowski said "Economic losses due to product counterfeiting reached 65.1 trillion Rupiahs, until now counterfeit goods could include ordinary consumer goods (e.g. food, toothpaste, and food), business-to-business goods, batteries, spare parts, and branded consumer goods.". A product can be targeted by perpetrators if the existence of the item makes consumers willing to pay more for the brand name. The sale of counterfeit products hinders economic development and innovation. Counterfeiting is a prohibited act, meaning the loss of

tax revenue. Asian countries are the main targets for the manufacture and marketing of counterfeits.

In today's brands are a very important resource for distributors, manufacturers, and at the lowest level of salespeople. David Haigh mentions that the single largest source of intangible value in a company is the brand. A brand is a very large asset, even if it uses conservative financial calculations, so legal protection for brands is required (Indriyanto and Yusnita, 2017).

Counterfeiting of goods and brands is very detrimental to entrepreneurs, thus in this case it is very necessary to protect economic rights. The law that discusses matters related to trademarks is the 2016 Law No. 20 on Brands and Geographical Indications (Indriyanto and Yusnita, 2017).

A mark should have a function as an identity in distinguishing goods produced by a person or group collectively or by a legal institution that produces marks belonging to other people or other legal institutions, as a marketing tool that markets goods only by mentioning the brand and guaranteeing the quality of the product. In the era of free trade as it is today, the brand is a foundation of modern commerce. It is called the basis because the brand can be the basis for developing modern trade that can be used as a means, quality standards, symbols, and *Goodwill* enter all kinds of markets and are sold through guarantees for high profits. Brands can make it easier for consumers to get the goods that consumers want to get on other goods related to pride, satisfaction, and quality (Firmansyah, 2016).

Counterfeiting a trademark is considered a violation of the rights of the creator, because Article 27 of the Universal Declaration of Human Rights states that, *"everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author"* each individual has the right to obtain material and moral protection rights for the results of the goods created, because they are the creators of the goods." The Indonesian state discusses trademarks against special laws. Regarding the sale of counterfeit goods or products or generally called "KW" goods (counterfeit goods/counterfeit goods).

In accordance with its historical development, trademark law is a legal element that discusses *unfair competition* (cheat competition) and product counterfeiting. The most important principle to protect a brand is that no one has the right to sell goods to consumers as if the product were their own business actor, they are using a similar sign that is already known to the public as a sign of belonging to a party. Over time, protection is given as an acknowledgment that the symbol belongs to someone who has used it and is a symbol of differentiation from other products that do not use the *brand* (Indriyanto and Yusnita, 2017). In today's brands are a very important resource for distributors, manufacturers, and at the lowest level of salespeople. David Haigh mentions that the single largest source of intangible value to the company is the brand. A brand is a very large asset, even if it uses *conservative* financial calculations, so legal protection for brands is required.

The impact of globalization on all aspects of social life they are in terms of culture, social, and economy which increasingly supports the flow of community economic growth. In addition to this, there has been an increase in transportation facilities and information technology, which has made activities in the trade sector, namely services or goods, develop rapidly. The possibility of market developments has resulted in the need for a more adequate trademark law for the establishment of strong legal protection and certainty. Some countries are increasingly using their trade and economic activities for goods produced based on human intelligence. Brand as a human work that has a strong relationship to trade and economic activity plays an important role.

Based on the various things that have been stated, the authors are interested in researching about product counterfeiting that is still detrimental to business actors, brand owners and consumers.

LITERATURE REVIEW

Businessmen

Businessmen are defined according to the law as follows:

In the Law No. 8 of 1999, it is regarding consumer protection, Article 1 paragraph (3). Business actors are individuals or business institutions, it is in the form of legal institutions or non-legal institutions that are built and have positions or activities in the legal area of the Republic of Indonesia, they are individually or in groups from an agreement, carrying out various business activities in terms of the economy.

Law No. 7 of 2014 Article 3, it is each individual Indonesian citizen or business institution in the form of a legal institution or non-legal institution domiciled and established in the territory of the Republic of Indonesia that carries out business activities in the trade sector (Undang-Undang Republik Indonesia, 2014).

In the Law No. 8 of 1999, it is regarding Consumer protection, what is meant by the rights of business actors are: the right to obtain payment based on an agreement on the price or condition of the services or goods sold, the right to obtain legal protection based on the actions of consumers who have bad faith, the right to self-defense appropriately to resolve consumer legal issues, the right to recover one's good name if it is proven by legal means that the consumer's loss is not caused by the services or goods being sold, rights discussed in other statutory policies (Law of the Republic of Indonesia, 1999).

Business actors are obliged to: a. have good intentions to carry out business operations; b. provide honest, correct, and clear information about the guarantee and condition of services or goods and provide information on maintenance, use, and repair; c. provide services to consumers in an honest and correct manner and non-discriminatory; d. ensure the quality of services or goods produced or sold in accordance with the standardization of the quality of services or goods sold; e. provide opportunities for consumers to try or test a service or goods and provide guarantees or guarantees for products sold; f. provide compensation or compensation due to losses in using, using, and utilizing the services or goods sold; g. provide compensation or compensation if the services or goods obtained are not as agreed.

According to Law No. 5 of 1999, it is concerning the Prohibition of Monopolistic Practices and Unfair Business Competition stipulates the meaning of "Business actors are individuals or business institutions, namely in the form of legal institutions or non-legal institutions that are built and have positions or activities in the legal area of the Republic of Indonesia, namely individuals or groups from an agreement, it carries out various business activities in terms of the economy. Based on the two definitions, there are similarities from the definition of entrepreneur (Law of the Republic of Indonesia, 1999).

In the explanation of the Constitutions, business actors are distributors, traders, importers, cooperatives, BUMN, corporations, and companies. The study of consumer protection is closely related to the obligations and rights of business actors. In accordance with the Directive, the definition of "manufacturer" includes: 1. The party who produces the final goods in the form of such manufactured products is liable for losses arising from the product being circulated to the public, for example if the losses incurred because of a defective product become part of the production stage. Business actors' raw materials or parts of an item or often also called raw materials. The producer of an item is anyone who uses a sign, name, or brand on an item (Kristiyanti, 2018)

Consumer

Based on the Law No 8 of 1999 that concerns about Consumer Protection Article 1 number 2, Consumers are individual users or services available in the community, namely for the benefit of other people, family, own interests, or other living creatures and are not used for sale. We must be aware that there are some consumers who sometimes do not want to know about the problems at the company, where some consumers think that something that is needed must be fulfilled.

The term consumer is sourced and translated based on the term *consumer* (Dutch) or *consumer* (English - American). The definition of consumer or consumer depends on the position where you are (Nasution, 2011)

The definition of Consumer : according to Nasution, the meaning of the word consumer is literally the opposite of business actors or everyone who uses goods, consumers can also be interpreted as each individual who gets services or goods that are used for a purpose, Intermediate consumers are everyone who obtains services or goods that are used and aims to become services or other goods for sale, the final consumer is every individual who obtains and uses services or goods to fulfill household, personal, or family life and is non-commercial (not sold), based on the 1999 Law No. 5 regarding the prohibition of monopolistic practices and unfair business services or capital goods, in the form of components, raw materials, or auxiliary materials by other goods to be produced (producers). Traders or distributors are people who sell finished goods or semi-finished goods. Intermediate consumers generally get services or goods in industrial markets or producer markets (Kristiyanti, 2011)

According to Ceilina, what is meant by intermediate consumers are entrepreneurs or business actors. In carrying out the interests of business actors, it is hoped that they will be "undisturbed" from acts of unfair competition, either by means of oligopoly or monopoly. Business actors need legal rules that avoid fraudulent actions in business, the market is dominated by a number of business practices that prevent new companies from entering or cause unfair losses to other companies (Kristiyanti, 2011). Product counterfeiting is an unreasonable act.

For final consumers (consumers), require services or goods that are safe for mental and physical health, and in general for the prosperity of their household or family. It requires general rules that can ensure the safety criteria of each item for consumers on responsible, correct, and honest information. Consumers in general consumers know about raw materials and how to make them and do not know the distribution market strategy. Bearing this in mind, there is a need for legal regulations that can protect consumers. Consumer protection has a function as a balance between business actors and consumers, where consumers and business actors are interconnected and need each other. A balanced situation for business actors and consumers can create harmony and harmony in human life as in accordance with the philosophy of the Indonesian nation and state (Kristiyanti, 2011).

Product Counterfeit

Counterfeiting is the stage of imitation, adaptation, and manufacture of goods, documents, or statistics with the aim of committing fraud. The same crime as fraud is the act of deceiving others, one of which is using counterfeit goods. Producing, copying, and duplicating is not considered forgery, if it is not willing to be published. It can also be a forgery if it wishes not to be published. The creation of currency is generally called counterfeiting. The objects that are produced or produced from manufacturers or manufactures are branded or labeled with a symbol marked.

In Indonesia, the sale of counterfeit goods is not something new, counterfeiting the copyright of branded products is an event of selling counterfeit products. The Counterfeit goods or counterfeit goods are always a problem that cannot be solved completely. The circulation of trade in counterfeit products has increased the desire of many consumers to buy counterfeit

products. The low level of consumer income is one of the obstacles for customers in obtaining genuine products. Genuine goods are generally more expensive than counterfeit goods.

METHOD

The method is a way or a path, in science, especially in law, which is in contact with the real life of society, there are always many ways to achieve the goals of its existence and application in society (Irianto and Sidharta, 2017).

Research is a basic forum for developing technology or science. It is because research has a goal in revealing facts in a consistent, systematic, and methodological way. With this research stage, analysis and construction are carried out on the information that has been processed and collected (Soekanto and Mamudji, 2015). Research is a scientific means to develop technology and science, thus the research methodology used must always be in harmony with the science which is the parent of it.

This study uses a *normative juridical* approach, it is legal research carried out through research materials or library data which becomes secondary data in the form of tertiary legal materials, primary legal materials, or secondary legal materials, it is analyzing regulations to enforce the law. The secondary data used are primary legal materials that are binding, namely the 1945 Constitution, the Civil Code, Law no. 8 of 1999, it is concerning Consumer Protection, Law no. 15 of 2001 concerning Marks, Law Number 20 of 2016 concerning Marks and Geographical Indications, Law No. 18 of 2012, it concerns about Food. In addition to the statutory approach (*Statue Approach*), it is carried out using a case approach (*Case Approach*).

RESULT AND DISCUSSION

Result

The theory of the rule of law (*rechstaat*), the state provides protection for the rights of the people, as the rule of law, that is stated in Article 1 paragraph (3) of the 1945 Constitution which stipulates that Indonesia is a state of law. This is based on the principle of equality before the law for every Indonesian to get recognition before the law. The human rights of everyone receive protection from the rule of law in ensuring all rights of citizens along with their position before the law and government is a characteristic of the rule of law (Constitution of the Republic of Indonesia, 1945)

The characteristics of the rule of law are as follows (Soemantri, 1992) are the government in carrying out its obligations and duties must comply with the laws and regulations or laws, there is a guarantee on the human rights of the community, there is a division of power in the state, supervised by judicial institutions. Based on the theory of the rule of law, thus the state or government that guarantees all the rights of citizens and their position before the law and government is a characteristic of the rule of law. In accordance with secondary data, namely the results of research conducted in 2010 from the previous institution, which was previously carried out by Eugenia *et. all.* which states that counterfeiting activities tend to increase, namely abroad or in Indonesia. Based on the results of the study, it was concluded that the increase in counterfeiting in Indonesia has almost reached 1.5 times over the past five years (Eugenia, et.al, 2013).

Through it, there is a loss for consumers or producers. In counterfeiting finished goods from leather and clothing, if consumers know it is fake, it causes losses to producers, it is especially in terms of *market share* and economic rights. For counterfeit goods of good quality and in accordance with the original goods only cause a loss to economic rights, but if the counterfeit goods are goods of poor quality, it can affect the decline in the brand. Indeed, on the other hand, good counterfeit goods can increase consumer *brand awareness*, because it makes the brand more recognizable. But even so, it still causes losses to the brand owner.

Table 1. The Number of Counterfeit Products

Researcher	Years researched	in Period	Rp	Lost salary	the Tax (Rp)
LPEM	2010	2005	43,2 T	-	-
LPEM	2013	2010	65,1 T	3,4 T	424 M

Source: The Institute of Economic and Social Research (2021)

Research from LPEM (Institute for Economic and Community Research) can be seen based on table 1, based on the table, counterfeit products can reduce people's work, because generally fake products imported from abroad can reduce employee absorption. The state's official tax revenue is also reduced, this is because counterfeit products generally do not pay taxes. Based on the results of research by Eudenia *et.al* (2013), that the increase in counterfeiting is quite high in general due to three things, namely High rate of high inflation, Offers of counterfeit goods are increasingly widespread in the community, The demand for counterfeit goods is increasing.

High inflation (every year during 2005-2010 8.41%) made the nominal value (in rupiah) of counterfeit products increase. High inflation (annual average throughout 2005-2010 8.41%) increased the nominal value of counterfeit products. With inflation, the nominal value has increased even though it has not increased in terms of quantity. Inflation has an impact on reducing people's purchasing power in making purchases of genuine products, thereby increasing the demand for counterfeit products.

The increase in demand for counterfeit goods is not only caused by inflation, it is also supported by the ease of trade and circulation of counterfeit products in the community, increasingly developing information technology, and online *lifestyles* also support the increasing circulation of counterfeit products in the community, it is especially leather and cosmetic goods. Indonesia is considered a country that buys a lot of counterfeit goods, it is not producing counterfeit goods. The desire to make purchases on well-known products with low income is a consumer attitude that makes counterfeit goods increase.

Based on the results of the analysis and previous studies, it can be concluded that the inflation rate shapes consumer buying interest, which can make it easier to sell counterfeit goods, so socialization must be carried out on the consequences of using counterfeit goods, especially those that are harmful to health.

In some countries, they already have a high concern for counterfeiting products, thus consumers are no longer willing to use counterfeit goods, so that new counterfeit traders will automatically disappear.

The difference between trademark protection in Indonesia and Singapore. Singapore protects well-known trademarks from counterfeiting even though the trademark has not been registered. Buying counterfeit goods intending to resell is illegal. Sellers and buyers of counterfeit products will be subject to legal sanctions.

In Indonesia, there are insights about counterfeit goods, the bad influence on health or on economic rights that arise because the sale of counterfeit products is realized by the public or consumers. However, consumers make purchases of counterfeit goods, and this is something that is common nowadays and is generally called *KW*. But in food products, consumers certainly don't want to use fake ones.

Counterfeiting of products and / brands will have an impact on brand owner manufacturers, distributors, sellers or intermediate consumers and end consumers or user consumers. Food

products will have an impact on the health of consumers or end consumers will have an impact because it is related to product quality and assurance.

With the increasing of counterfeiting in products and their circulation in the market, it is especially in Indonesia, it will disturb the brand owner manufacturers. There is a possibility that if law enforcement is carried out more firmly, it will have the effect of suppressing the increase in sales of counterfeit products. More intensive education and socialization regarding the dangers and sanctions of using counterfeit products needs to be carried out for all types of products. So, we need a program that makes people aware that it is better to buy unbranded but genuine products, rather than branded but fake goods (including special fashion products, bags, and others).

With various government parties collaborating to prevent counterfeiting, it should show a decrease in the number of counterfeiting. For example, BPOM formed Deputy IV, although BPOM does not handle counterfeiting, but with more intensive handling of illegal products, the possibility of product counterfeiting can also be reduced.

Discussion

The National Standardization Body declares the War on Counterfeit Products and urges consumers not to buy counterfeit products because they harm others and hurt the economy. Even though it's against the law, counterfeiting is a lucrative business. Counterfeit products exist in almost every area, from food, beverages, clothing, shoes, pharmaceuticals, electronics, auto parts, toys, currency, cigarettes, building materials and many more. "Counters often prey on consumers' desire for low prices, but consumers must recognize that there is a real difference between low and low prices. While counterfeiters continue to reap significant profits, millions of consumers are at risk from unsafe and ineffective products."

Director of the Institute of Crime Science at Yongin University, Republic of Korea, Prof Hyeonho Park, said that the health risks associated with counterfeiting vary widely. On November 15, 2010, an Anti-Counterfeit Trade agreement was signed, which was formally published on April 15, 2011, in Tokyo. The signing was carried out by the United States, the European Union and 22 Member States, Australia, Canada, Japan, Morocco, New Zealand, Singapore, and South Korea. This agreement is kept by the government of Japan, the languages used are English, French, and Spanish.

The *Anti-Counterfeiting Trade Agreement* (ACTA) is a proposed plurilateral agreement with the aim of establishing international standardization regarding law enforcement on intellectual property rights. The agreement establishes an international legal framework for countries that join voluntarily and can form institutions outside of international bodies such as the United Nations, WTO (*World Trade Organization*), and WIPO (*World Intellectual Property Organization*). The negotiating countries described the agreement as a response "to the increasing global trade in counterfeit and pirated goods of copyrighted works." The scope of the *Anti-Counterfeiting Trade Agreement* covers copyright infringement on the internet, counterfeit products, and generic drugs.

Reporting from INTA (International Trademark Association) and The International Chamber of Commerce stated that the economic value of piracy and counterfeiting is predicted to reach US\$2.3 trillion by 2022 internationally. In addition to this, the MIAP (Indonesian Society Against Counterfeiting) survey revealed that economic losses due to counterfeiting of goods continued to increase, from Rp. 4.41 trillion in 2005 to 65.1 trillion rupiahs in 2014 (kabar24.bisnis.com, 2019)

In the case of product and/or brand counterfeiting is not above BPOM, because BPOM as a non-ministerial institution does not have the authority to carry out investigations on counterfeiting goods. The authority of BPOM is the case regarding the presence of illegal food and drugs. Product counterfeiting is an element of the *modus operandi* of some cosmetic, food and drug cases in counterfeiting goods, for example the contents are true, but not true, which

BPOM focuses on is the production or distribution of drugs, cosmetics, and food that do not have a distribution permit, thus it's not a counterfeit (Teguh, 2019).

On April 12, 2018, BPOM inaugurated Deputy IV officials in accordance with Presidential Decree Number 80 of 2017 where Deputy IV has the authority and duties listed in Articles 23 to 26 which oversees 3 Directorates, namely: The Directorate of Drug and Food Investigation is held by the Attorney General's Office of the Republic of Indonesia. Indonesia; The Directorate of Security is held by an element of the police; and the Directorate of Drug and Food Intelligence is held by an element of BIN; as a result of counterfeiting the product is that it can cause harm to all of the things mentioned above, the consumer is at a loss because as a victim, the company is harmed due to unhealthy competitors, thus producers who have good faith must fulfil an administrative requirement starting with manufacture until the goods are sold in a broad scope, while state losses are experienced due to not paying taxes, and for legal food and drug producers making payments against taxes.

In the case of counterfeiting Bango soy sauce, no further cases were found, namely finding the dealer of counterfeit goods, and bringing them to court. This may be because the company did not report it to the authorities, while in accordance with Law Number 20 of 2016 concerning marks and geographical indications, the article relating to criminal acts related to trademarks is a complaint offense as stated in Article 103.

Complaint offenses mean that the police are only waiting for complaints from those who feel aggrieved. Thus, if there is no complaint, the police will not carry out the legal process, so it is hoped that the active role of the brand owner is expected.

CONCLUSION

Counterfeit goods are very easy to obtain in the market; in the case of Decision No: 67/Pid.B/2013/PN.Pwk. the defendant is subject to criminal sanctions and a relatively light fine of Rp. 5,000,000-, this causes the defendant to counterfeit the brand or product not to be deterred. The distribution of local and imported counterfeit products that are very easy to obtain makes fake products more prevalent in the market.

Based on the Law of the Republic of Indonesia Number 20 of 2016 concerning trademarks and geographical indications, the relevant policy for criminal acts related to trademarks is a complaint offense as stated in Article 103, which means that the police have the nature of only accepting complaints by individuals who suffer the loss. So, if there is no complaint, then the police cannot carry out the legal process.

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