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Strengthening Legal Protection Against Trademark Counterfeiting on Online Marketplace Platforms in Indonesia Through Regulatory Accountability

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Abstract: This study analyzes legal protection against trademark counterfeiting on online marketplace platforms under Law Number 20 of 2026 concerning Trademarks and Geographical Indications in Indonesia. The rapid growth of e-commerce has increased the risk of intellectual property violations, particularly in digital trade. Using a normative juridical method with statutory, conceptual, and comparative approaches, this research examines forms of legal protection, enforcement challenges, and comparisons with regulations in the European Union and China. The findings show that Indonesian law provides preventive protection through trademark registration and repressive protection through civil and criminal mechanisms; however, enforcement remains ineffective due to seller anonymity, reactive platform liability under the safe harbor principle, and the classification of trademark infringement as a complaint-based offense. In contrast, the European Union and China apply more proactive regulatory frameworks by imposing greater responsibilities on digital platforms. This study concludes that Indonesia needs regulatory reform to strengthen platform accountability and improve legal protection in digital marketplaces.

Keywords: *Trademark counterfeiting, Online marketplace, Legal protection, Platform liability.*

Introduction

Advances in information and communication technology in the digital age have brought about fundamental changes to the structure and dynamics of global trade, including in Indonesia. This transformation is reflected in the emergence of various online marketplace platforms, such as Tokopedia, Shopee, Lazada, Bukalapak, and Blibli, which have significantly shifted people's transaction patterns from conventional methods to digital systems. According to a report by Mordor Intelligence Research & Advisory (2025), the e-commerce sector in Indonesia has experienced sustained growth, marked by a year-over-year increase in transaction value. This has positioned Indonesia as one of the largest digital markets in Southeast Asia.[1]

The ease of conducting transactions through these digital platforms, on the one hand, makes a significant economic contribution to both businesses and consumers.

[1] "Mordor Intelligence Research & Advisory. Indonesia E-Commerce Market Report 2025," n.d., https://www.mordorintelligence.com/industry-reports/indonesia-ecommerce-market.

However, on the other hand, this situation also creates opportunities for intellectual property rights violations, particularly in the form of trademark counterfeiting. Trademark counterfeiting in the digital environment has characteristics that are fundamentally different from those of conventional counterfeiting, primarily due to its broader reach, the anonymity of the perpetrators, and the limited physical interaction between sellers and buyers, which ultimately complicates the processes of detection and legal proof.

Trademarks are an important element of the intellectual property rights system, serving as a distinguishing mark for goods and/or services. From a legal perspective, regulations regarding trademark protection in Indonesia have undergone several revisions, culminating in the enactment of Law No. 20 of 2016 on Trademarks and Geographical Indications (hereinafter referred to as the 2016 Trademark Law) as the primary legal basis. This law replaces Law No. 15 of 2001[2] on Trademarks by introducing various improvements, including expanding coverage to non-traditional trademarks, implementing an electronic registration system, and strengthening criminal penalties for trademark infringements.

The phenomenon of trademark counterfeiting on online marketplaces is a legal issue that increasingly calls for comprehensive action. The practice of counterfeiting products on online marketplaces not only causes economic losses and damages the reputation of registered trademark owners, but also harms consumers who unwittingly purchase counterfeit products under the assumption that they are genuine branded goods.[3] Furthermore, such practices have the potential to disrupt the investment climate and erode public confidence in Indonesia's digital commerce ecosystem.

The fundamental issue that arises in this context concerns the extent to which Law No. 20 of 2016 on Trademarks and Geographical Indications is capable of providing effective legal protection for owners of registered trademarks against acts of counterfeiting occurring in the digital realm, particularly through online marketplace platforms. In addition, there is a significant legal loophole regarding the regulation of the legal liability of marketplace platform providers as transaction facilitators.[4]

A comparative law approach is a relevant method for enriching the analysis of this issue. At the international level, the European Union has regulated the responsibilities of digital platforms through the Digital Services Act (DSA) and the

[2] "Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis" (2016), %0AJDIH DJKI – UU No. 20/2016.
[3] Taufan Syahyudha Aziz, Terubus Sudjai, "Perlindungan Dan Penegakan Hukum Terhadap Pemalsuan Merek Terkenal Yang Terjadi Di Marketplace," *Jurnal Hukum Adigama* 3 (2020).
[4] Andreyan Nata Giantama dan Munawar Kholil, "Pertanggungjawaban Hukum Penyedia Platform Terhadap Barang Yang Melanggar Merek Dalam Marketplace," *Jurnal Privat Law* 8 (n.d.).

Digital Markets Act (DMA), which require platform providers to actively prevent the circulation of counterfeit products.[5] Similarly, in China, the Trademark Law of the People's Republic of China (revised in 2019) and the E-commerce Law (2019),[6] Stricter obligations have been imposed on e-commerce platform operators in the fight against trademark counterfeiting. Thus, a comparison of these two legal systems is expected to provide a more comprehensive perspective for identifying weaknesses and potential areas for regulatory development in Indonesia.

The urgency of this research is further underscored by the fact that Indonesia has consistently been included on the Priority Watch List released by the United States Trade Representative (USTR)[7] For several consecutive years, one of the causes of which has been weak enforcement of intellectual property laws, particularly in the digital realm. This situation not only affects international trade relations but also highlights the urgent need for a comprehensive evaluation of the current regulatory framework and enforcement mechanisms.

This study aims to: (1) analyze the forms of legal protection provided by Law No. 20 of 2016 on Trademarks and Geographical Indications against trademark counterfeiting on online marketplace platforms; (2) examine the legal obstacles to enforcing the law against trademark counterfeiting on online marketplace platforms based on the applicable normative framework; as well as (3) conducting a legal comparison with regulations in the European Union and China to identify a more optimal protection model for Indonesia. Thus, this study is expected to make an academic contribution while also generating constructive policy recommendations aimed at reforming intellectual property law in Indonesia to address the challenges of the digital age.

Methods

This study employs a normative legal research method (juridical-normative), which is an approach conducted through a review of literature or secondary data, including primary, secondary, and tertiary legal sources. The approaches applied include: (1) the statutory approach, which involves examining various relevant laws and regulations, particularly Law No. 20 of 2016 on Trademarks and Geographical Indications, The Law on Electronic Information and Transactions, as well as Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions; (2) a conceptual approach used to understand the concepts of legal protection, intellectual property rights, and the responsibilities of digital

[5] "European Commission. Digital Services Act (Regulation (EU) 2022/2065)" (2022), https://digital-strategy.ec.europa.eu/en/policies/dsa-impact-platforms.
[6] "E-Commerce Law of the People's Republic of China" (n.d.), https://www.worldtrademarkreview.com/global-guide/anti-counterfeiting-and-online-brand-enforcement/2020-obe/article/chinas-new-e-commerce-law-tools-in-the-fight-against-ip-rights-infringement.
[7] "United States Trade Representative (USTR). Special 301 Report," n.d.

platforms; and (3) a comparative legal approach to compare legal regulations in Indonesia with those in effect in the European Union and China.

Legal materials were collected through library research by examining laws and regulations, court decisions, legal journals, textbooks, and official documents from relevant institutions. Subsequently, data analysis was conducted qualitatively using systematic, grammatical, and teleological interpretation methods to identify the meaning of applicable legal norms and assess their alignment with the objectives of intellectual property rights protection in the context of the digital age.

Results and Discussion

Legal Protection and Liability of Online Marketplace Platform Providers Regarding Trademark Counterfeiting from the Perspective of Law No. 20 of 2016 on Trademarks and Geographical Indications

1. Preventive Legal Protection and Repressive Legal Protection

Law No. 20 of 2016 on Trademarks and Geographical Indications establishes two forms of legal protection: preventive and repressive, which together aim to create a comprehensive and sustainable trademark protection system. The difference between these two forms of protection is not merely theoretical; it has significant practical implications, particularly in the context of trade via digital platforms, which is characterized by large-scale cross-border transactions that are difficult to control through conventional means.

Preventive protection is primarily achieved through a trademark registration mechanism based on the "first-to-file" principle or a constitutive system, in which exclusive rights to a trademark are obtained not through use, but through official registration with the Directorate General of Intellectual Property (DJKI), as stipulated in Article 3 of the 2016 Trademark Law.[8] The trademark registration process is a fundamental step in establishing a foundation of legal protection for trademark owners, including in the context of digital commerce. Through registration, trademark owners obtain exclusive rights as provided for in Article 6, which includes the right to use the trademark independently, to grant licenses to third parties, and to prohibit others from using the same mark or a mark that is substantially similar for goods and/or services in the same class. In addition to registration, the preventive aspect of the 2016 Trademark Law also includes the provisions of Article 21, which governs the rejection of trademark applications that are similar to previously registered trademarks, thereby normatively closing the

[8] Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis.

door to trademark registrations made in bad faith. For well-known marks, preventive protection is even extended beyond the scope of similar classes of goods and services, namely, when the use of such a mark has the potential to mislead consumers or cause harm to the owner of the well-known mark, as provided for in Article 21(1)(b) and (c).

Nevertheless, the effectiveness of preventive safeguards in the digital market ecosystem faces several structural obstacles that cannot be ignored.9 The "first-to-file" system adopted by the 2016 Trademark Law effectively benefits those who officially register their trademarks first, meaning that small and medium-sized enterprises (SME) that have not yet registered their trademarks even though they have been using them for a long time do not have a sufficient legal basis to sue parties who counterfeit their products on digital platforms. Furthermore, the sectoral nature of trademark registration mechanisms, which are limited to national jurisdictions, cannot automatically protect against trademark infringements committed by overseas sellers through cross-border e-commerce platforms, a phenomenon that has become increasingly prevalent in recent years.

Meanwhile, the 2016 Trademark Law provides for repressive protection through two enforcement channels that differ procedurally but are functionally complementary. First, the civil channel, which allows owners of registered trademarks to file a lawsuit seeking damages and/or an injunction against acts that infringe trademark rights with the Commercial Court, as provided for in Article 83.10

In theory, this civil lawsuit may be brought not only against sellers who directly sell counterfeit products, but also against other parties involved in the distribution chain of those products. Second, the criminal proceedings as provided for in Article 100, which prescribes a maximum prison term of five years and/or a fine of up to Rp2,000,000,000.00 for offenders proven to have counterfeited another party's registered trademark, as well as a maximum prison term of four years and/or a fine of the same amount for offenders who use a substantially similar trademark. Article 101 provides that anyone who trades in or distributes goods bearing counterfeit trademarks is subject to imprisonment for a maximum of one year and/or a fine of up to Rp200,000,000.00.

Nevertheless, the implementation of these two enforcement mechanisms in the context of online markets still faces various technical and legal obstacles. In civil proceedings, the main obstacles faced by trademark owners include difficulties in identifying defendants, who often hide behind the anonymity of digital seller

[9] dan Desak Gde Dwi Arini. Putri, Anak Agung Rosiana Dewi, I Nyoman Putu Budiartha, "Analisis Yuridis Pelanggaran Merek Terhadap Pemegang Hak Merek Pendahuluan," *Jurnal Prevensi Hukum* 1 (2026).
[10] Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis.

accounts, the length of the case review process in the Commercial Court, which is out of step with the speed at which counterfeit products are distributed on the platform, as well as the burden of proof, which is placed entirely on the plaintiff without any obligation on the platform to proactively provide seller data. In the criminal justice system, the most fundamental weakness lies like trademark offenses, which are classified as complaint-based offenses (klacht delict) under Article 103 of the 2016 Trademark Law; this means that criminal proceedings can only be initiated if there is a formal complaint from the aggrieved party. These complaint-based offenses are structurally incompatible with the characteristics of trademark infringements on marketplaces, which are massive and anonymous, spread across multiple platforms simultaneously, and are often only discovered by brand owners after significant economic losses have already occurred. Furthermore, the lack of a binding legal obligation for platforms to report indications of trademark infringement to law enforcement agencies further limits the scope of criminal enforcement in the rapidly evolving digital commerce environment.

Table 1. Distribution of Research Respondents by Country

Types of Protection	Legal Basis	Forms of Protection
Preventif	Sections 3, 6, and 21 of the 2016 Trademark Law	Trademark registration is based on the first-to-file principle; exclusive rights are granted to the owner of a registered trademark, as well as the rejection of trademark applications that are similar to registered trademarks.
Represif (Perdata)	Article 83 of the 2016 Trademark Law	A lawsuit seeking damages and/or an injunction against acts that infringe trademark rights filed with the Commercial Court.
Represif (Pidana)	Sections 100 and 101 of the 2016 Trademark Law	A maximum prison term of five years and/or a fine of up to Rp2,000,000,000.00 for trademark counterfeiters; a maximum prison term of one year for distributors of goods bearing counterfeit trademarks.

2. **Legal Liability of Marketplace Platforms as Electronic System Operators**

The issue of legal liability for online marketplace providers is one of the most complex and crucial issues in the study of trademark protection in the digital space. This complexity stems from the dual role inherent in online marketplaces: On the one hand, the platform acts as an electronic system operator that provides the technical infrastructure for transactions to take place; on the other hand, the platform also derives direct economic benefits from every transaction that occurs on it, including transactions involving products that infringe on registered trademarks. It is this dual role that is at the heart of the debate over the extent to which legal liability can be imposed on a platform for trademark infringements committed by third-party sellers on its platform.

Pursuant to Article 10 of Law No. 19 of 2016 Amending Law No. 11 of 2008 on Electronic Information and Transactions, platform providers cannot, in principle, be held liable for content uploaded by users, provided that the provider is unaware of any violation and takes immediate preventive action upon receiving information regarding such a violation. This provision is consistent with the safe harbor doctrine, which is widely recognized in the international legal system, as reflected in Section 512 of the United States Digital Millennium Copyright Act (DMCA)11 as well as the European Union's 2000 E-Commerce Directive before it was replaced by the DSA. The rationale behind the safe harbor doctrine is to encourage innovation and growth in the digital ecosystem by exempting platforms from the obligation to actively monitor all content uploaded by its users, given that the volume of content circulating on large-scale platforms makes comprehensive monitoring practically impossible without advanced automation technology. Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions (PP PSTE)12 further reinforces this position by requiring Electronic System Operators (ESO) to have complaint mechanisms in place and to handle reports of illegal content, without explicitly requiring proactive measures that go beyond responding to incoming reports.

Nevertheless, a more comprehensive and contextual approach shows that the absolute application of the safe harbor doctrine without exceptions in the context of digital markets raises serious normative issues. Market platforms cannot be entirely equated with content-neutral internet service providers, because the platform actively designs product recommendation algorithms, sets pricing structures, manages seller review and rating systems, and provides payment and logistics

[11] "American Bar Association, "The Digital Services Act and Transatlantic IP Enforcement," n.d., https://www.americanbar.org/groups/business_law/resources/business-law-today/2026-may/digital-services-act-transatlantic-ip-enforcement/.

[12] "Peraturan Pemerintah Nomor 71 Tahun 2019 Tentang Penyelenggaraan Sistem Dan Transaksi Elektronik" (2019).

services that directly facilitate and expedite the distribution of products, including counterfeit goods, to end consumers.13 In other words, platforms do not merely provide a passive space, but actively create an environment conducive to transactions, making it increasingly difficult to legally defend the argument that platforms are unaware of or unable to prevent the circulation of counterfeit products.

The tension between the principle of legal protection (safe harbor) and the duty of care creates a normative gap in the Indonesian legal system.14 On the one hand, the ITE Law provides broad legal protection to platforms as long as they meet the requirements of having no knowledge of any violations and taking immediate action upon being notified. On the other hand, there are no provisions that explicitly define the minimum level of effort platforms must exert to be considered to have met the appropriate standard of due diligence. As a result, platforms have broad discretion to set their own internal standards without adequate legal accountability. The lack of binding minimum due diligence standards ultimately creates a situation in which brand protection in the digital marketplace depends entirely on the platforms' voluntary policies, rather than on enforceable legal obligations.

Legal Protection and Liability of Online Marketplace Platform Providers Regarding Trademark Counterfeiting from the Perspective of Law No. 20 of 2016 on Trademarks and Geographical Indications

1. Regulations Governing Online Marketplaces Under Indonesian Law and Their Protection in the European Union and China

Trademark protection regulations on online marketplaces in Indonesia and other countries differ in nature and approach, but both aim to provide optimal protection for trademark holders in the digital age. In Indonesia, the regulatory framework for trademark protection in the context of digital commerce is multi-layered. The first and most fundamental layer is Law No. 20 of 2016 on Trademarks and Geographical Indications (the 2016 Trademark Law),15 which governs the creation of trademark rights, registration mechanisms, and enforcement measures. The second layer is Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law),16 which governs the responsibilities of

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[13] dan Nurhayani. Ersella, H., "Tanggung Jawab Penyedia Platform (Marketplace) Dalam Perdagangan Melalui Sistem Elektronik Yang Berbentuk User Generated Content.," *Arus Jurnal Sosial Dan Humaniora*, 2025, 65–78.

[14] Muhammad Arkan and R. Rahaditya, "Pertanggungjawaban Hukum Penyedia Platform Terhadap Fenomena Pelanggaran Merek Di Marketplace," *Jurnal Ilmiah Indonesia*, n.d., https://doi.org/https://doi.org/10.36418/syntax-literate.v8i1.11258.

[15] Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis.

[16] "Undang-Undang (UU) Nomor 1 Tahun 2024 Tentang Perubahan Kedua Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik" (n.d.), https://peraturan.bpk.go.id/details/274494/uu-no-1-tahun-2024.

marketplace platforms as Electronic System Operators (PSE), followed by Government Regulation No. 71 of 2019 (PP PSTE)17 and Minister of Trade Regulation No. 31 of 2023.18

The 2016 Trademark Law adopts the “first-to-file” principle, meaning that trademark rights are obtained through official registration with the Directorate General of Intellectual Property Rights (DJKI); therefore, trademark owners who have not registered their trademarks have no legal basis to sue for trademark infringement. Once registered, trademark owners are granted exclusive rights, including the right to prevent others from using identical or similar trademarks, as well as the right to prohibit the distribution of counterfeit products. However, enforcing these exclusive rights faces structural challenges, such as the anonymity of perpetrators on digital platforms and the heavy burden of proof placed on the plaintiff. In addition, trademark protection: the term “well-known” is applied more broadly, even to goods or services that are not of the same kind, as provided for in Article 21(1)(b) and (c) of the 2016 Trademark Law.

From a law enforcement perspective, both civil and criminal avenues are available but have not yet proven effective in the context of online marketplaces. The civil route is hampered by difficulties in identifying defendants and the length of the process, while the criminal route is hindered by the nature of complaint-based offenses (klacht delict), which require a formal complaint from the trademark owner and are not aligned with the scale of massive infringements on digital platforms. In addition, regulations regarding marketplace platforms remain reactive (safe harbor), meaning that platforms are only required to take action after receiving reports of violations, with no proactive obligation to prevent the circulation of counterfeit products.

In contrast, at the international level, the European Union and China have adopted a more progressive approach. The European Union, through the Digital Services Act (DSA) 2022/2065, explicitly requires very large online platforms (VLOP)19 to conduct systemic risk assessments, implement mitigation measures, operate a transparent and measurable “notice-and-action” mechanism, and face proportionate administrative fines in the event of noncompliance. Meanwhile, in China, the 2018 E-commerce Law and the Trademark Law (2019 revision)20 It mandates that platforms promptly follow up on reports of trademark infringement and may even hold them jointly liable with the perpetrators if they fail to do so.

[17] Peraturan Pemerintah Nomor 71 Tahun 2019 tentang Penyelenggaraan Sistem dan Transaksi Elektronik.
[18] “Peraturan Menteri Perdagangan Nomor 31 Tahun 2023 Tentang Ketentuan Perizinan Berusaha, Periklanan, Pembinaan, Dan Pengawasan Pelaku Usaha Dalam Perdagangan Melalui Sistem Elektronik” (2023).
[19] European Commission. Digital Services Act (Regulation (EU) 2022/2065).
[20] “Trademark Lawyer Magazine. ‘Marketplace Liability 2.0: When Does an e-Commerce Platform Become a Trademark Infringer?,’” n.d., https://trademarklawyermagazine.com/marketplace-liability-2-0-when-does-an-e-commerce-platform-become-a-trademark-infringer/.

China also requires strict verification of sellers' identities as a preventive measure against perpetrator anonymity.

This comparison shows that Indonesia still faces significant regulatory gaps, including the lack of a proactive obligation for platforms to filter content before it is uploaded, the absence of a standardized notice-and-takedown mechanism, and the lack of direct sanctions against negligent platforms, s...and the nature of complaint-based offenses, which is incompatible with massive, cross-jurisdictional violations in the digital marketplace. Learning from the European Union and China, Indonesia needs to reform its legal framework toward a more proactive and comprehensive system of platform liability to address the challenge of trademark counterfeiting in online marketplaces.

Table 2. Distribution of Research Respondents by Country

Aspect	Indonesia	Uni Eropa	Tiongkok
Primary legal basis	Law No. 20 of 2016 (Trademarks) & the ITE Law	Digital Services Act (Regulation (EU) 2022/2065)	E-Commerce Law of 2018 & Trademark Law (2019 Amendment)
Principles of Platform Responsibility	Reactive, safe harbor-based	Proactive, based on systemic risk assessment	Co-regulation with conditional joint liability
Notice-and-takedown mechanism	Yes, but it has not yet been standardized nationwide	Standardized, transparent, with processing deadlines	Strictly regulated in Articles 41–45 of the E-commerce Law
Verification of the seller's identity	It is not yet strictly required	Regulated under the platform liability framework	Strict requirements, including financial guarantees
Penalties for platforms	Access Blocking (PP PSTE)	Administrative fines of up to 6% of global revenuel	Joint and several liability with the seller
Classification of Offenses	Complaint-based offenses (Article 103 of the 2016 Trademark Law)	Systemic liability, not a complaint-based offense	A proactive obligation, not a complaint-based offense

Sumber: Diolah dari UU No. 20/2016, UU ITE, PP PSTE, Digital Services Act (EU) 2022/2065, E-commerce Law of the People's Republic of China 2018, dan Trademark Law of the People's Republic of China (revisi 2019).

2. The Implications of Comparative Law for Legal Reform in Indonesia

Comparative studies of the legal systems of Indonesia, the European Union, and China consistently show that a fundamental weakness in Indonesia's regulatory framework lies in the absence of a proactive obligation for online marketplace platforms to actively prevent the circulation of counterfeit products. The current system is entirely reactive, requiring platforms to act only after receiving a report, with no minimum standards requiring them to independently detect and prevent violations. This stands in stark contrast to the European Union's DSA model, which requires periodic systemic risk assessments, and China's model, which mandates immediate action upon receipt of a valid notification. The most significant implication of this comparison is the need for Indonesia to shift its regulatory paradigm from a passive intermediary model to an active platform accountability model, This can be achieved in concrete terms through an amendment to the ITE Law or the issuance of a specific Government Regulation that requires platforms with a user base above a certain threshold to implement AI-based detection systems, establish a dedicated unit to handle intellectual property rights violations, and periodically report statistics on the handling of trademark violations to the Directorate General of Intellectual Property (DJKI). This approach is in line with an academic trend that recommends a shift from a passive "notice and takedown" system to an active and ongoing "notice and stay down" system.

In addition to a paradigm shift, Indonesia is also urging the establishment of a nationally standardized notice-and-takedown mechanism. The current situation, in which each platform unilaterally and voluntarily sets its own reporting procedures, creates legal uncertainty that is detrimental to trademark owners, as the effectiveness of the protection they receive depends entirely on the internal policies of each platform. The necessary regulations must at least establish three binding requirements: a standard format for trademark infringement notices applicable to all platforms; a maximum response and follow-up time frame for example, 48 to 72 hours for blatant counterfeiting of well-known trademarks; and a fair counter-notification mechanism for sellers who believe they have been reported without valid grounds.21

At the same time, provisions regarding joint liability between sellers and platforms must also be formulated, as developed in the Chinese legal system.22 The most proportionate model is not absolute liability, but conditional liability: platforms can only be held liable if it is proven that they ignored a valid notice within the specified time frame, or if it is proven that they have allowed a systematic pattern of counterfeit product distribution to continue without adequate mitigation efforts. This approach strikes a balance between the interests of brand owners, sellers acting in good faith, and the sustainability of the digital platform business

[21] "Trademark Lawyer Magazine. 'Marketplace Liability 2.0: When Does an e-Commerce Platform Become a Trademark Infringer?'"
[22] E-Commerce Law of the People's Republic of China.

ecosystem, while eliminating the absolute and disproportionate safe harbor provisions that have been in effect until now.

Another equally urgent aspect of reform is a paradigm shift in sanctions from blocking access to imposing proportionate financial fines. Blocking measures, which currently serve as the government's primary tool under the PSTE Regulation, has proven to have a very limited deterrent effect, as its application to large-scale platforms would have massive negative consequences for millions of users, prompting the government to avoid full implementation a situation known in regulatory theory as the "too-big-to-block" paradox. The EU' DSA Model23 offers a more effective solution through administrative fines based on a percentage of global revenue, which are commensurate with the platforms' financial capacity and thus have a tangible deterrent effect.

By adopting a similar model, Indonesia can send a clear signal to the industry that compliance with trademark protection regulations is a legal obligation with real financial consequences, not merely an ethical appeal. Overall, legal reform in Indonesia should ideally be implemented in stages: in the short term, through the issuance of a Minister of Trade Regulation establishing standards for notification and recall (notice-and-takedown) as well as requirements for seller identity verification; in the medium term, through a revision of the ITE Law to incorporate conditional joint liability, proportional financial penalties, and a serious review of the shift to a complaint-based system for violations under Article 100 of the 2016 Trademark Law to address widespread and organized counterfeiting; and, in the long term, through the drafting of a comprehensive Digital Commerce Act capable of coherently integrating aspects of consumer protection, intellectual property rights enforcement, fair competition, and platform liability into a single legal instrument that is responsive to the dynamics of technological development.

Conclusion

Based on the results of this study, it can be concluded that legal protection against trademark counterfeiting on online marketplace platforms in Indonesia is normatively regulated by Law No. 20 of 2016 on Trademarks and Geographical Indications, which provides for preventive protection through trademark registration and repressive protection through both civil and criminal proceedings. However, in practice, the effectiveness of such protections still faces various obstacles, including the anonymity of perpetrators on digital platforms, the limited liability of platforms, which remains reactive under the safe harbor principle and the classification of violations as complaint-based offenses, which is inconsistent with the massive and cross-border nature of violations in the digital space.

[23] "TRINITI Law Firm, 'Fighting Counterfeits Online: How the EU Digital Services Act Helps,'" 2025.

Furthermore, the lack of proactive obligations, the lack of uniform standards for handling violations, as well as the absence of strict sanctions against platforms, further weakens law enforcement. A comparison with the European Union and China shows that both legal systems have adopted a more progressive approach by imposing active responsibility on platforms to prevent and take action against the distribution of counterfeit goods. Therefore, legal reform is needed in Indonesia that includes strengthening platform liability, implementing standardized mechanisms for handling violations, and updating law enforcement policies to ensure more effective trademark protection in the digital age.

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