

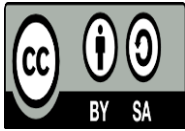
Trademark Counterfeiting: A Legal Review and Its Implications for Consumer Protection

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| Abstrak (Indonesia) | <p>Pemalsuan merek dagang merupakan salah satu bentuk pelanggaran hak kekayaan intelektual yang memberikan dampak signifikan terhadap perlindungan konsumen. Dalam konteks Indonesia, fenomena ini kian marak seiring dengan pertumbuhan perdagangan dan lemahnya pengawasan hukum, yang menyebabkan konsumen kerap menjadi korban produk-produk palsu yang tidak sesuai dengan standar mutu, keamanan, dan informasi sebagaimana mestinya. Metode Penelitian ini menggunakan pendekatan yuridis normatif dengan mengkaji peraturan perundang-undangan terkait, seperti Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis serta Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen. Hasil penelitian menunjukkan bahwa pemalsuan merek tidak hanya merugikan pemilik merek sah, tetapi juga menciptakan ketidakpastian hukum dan pelanggaran terhadap hak-hak konsumen. Selain berdampak pada kerugian ekonomi dan kesehatan masyarakat, pemalsuan merek juga mengikis kepercayaan publik terhadap sistem pasar dan perlindungan hukum. Temuan penelitian diperlukan upaya terpadu dalam penegakan hukum, edukasi konsumen, serta penguatan koordinasi antar-lembaga guna menciptakan sistem perlindungan konsumen yang efektif dan berkeadilan.</p> |
| Abstrack | <p><i>Trademark counterfeiting is a form of intellectual property rights infringement that has a significant impact on consumer protection. In the Indonesian context, this phenomenon is increasingly prevalent along with the growth of trade and weak legal supervision, which causes consumers to often fall victim to counterfeit products that do not comply with quality, safety, and information standards as they should. This research method uses a normative juridical approach by examining related laws and regulations, such as Law Number 20 of 2016 concerning Trademarks and Geographical Indications and Law Number 8 of 1999 concerning Consumer Protection. The results of the study show that trademark counterfeiting not only harms legitimate trademark owners, but also creates legal uncertainty and violations of consumer rights. In addition to impacting economic losses and public health, trademark counterfeiting also erodes public trust in the market system and legal protection. The researchers' findings require integrated efforts in law enforcement, consumer education, and strengthening inter-agency coordination to create an effective and fair consumer protection system.</i></p> |



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I. INTRODUCTION

Indonesia is one of the developing countries with a fairly rapid economic growth rate¹. This development is inseparable from the dynamics of globalization and technological advances that are increasingly sophisticated. In this context, the industrial and trade sectors in Indonesia have also experienced significant progress, along with the birth of various products from business actors. However, this progress will not be optimal without regulations that are able to provide legal protection for the rights and obligations of every business actor, especially in terms of intellectual property such as trademarks.

Products produced by business actors certainly have certain quality and selling value attached to the name and brand image². A trademark functions as an identity for a good or service produced and marketed by a business owner³. Behind a brand, there are business values, company reputation, and consumer trust⁴. Therefore, a trademark is not just a symbol, but also a valuable asset that is legally protected⁵.

In practice, the protection of trademarks is regulated through the Intellectual Property Rights (IPR) system, which gives the creator or owner of the trademark exclusive right to use and control the use of the trademark⁶. Trademarks that have been registered and legalized by the state have strong legal

¹ Anggun Purnamasari Amir Salim, Fadilla, "The Effect of Inflation on Economic Growth in Indonesia," *Ekonomika Sharia: Journal of Sharia Economic Thought and Development* 7, no. 1 (2021): 17, <https://doi.org/10.35508/jom.v13i3.3311>.

² Sulasno and Inge Dwisvimiari, "The Implications of Business Competition Policy for Micro, Small and Medium Enterprises (MSMEs) to Improve the Economy in Serang Regency," *Journal of Business Sketches*, 09, no. 2 (2022): 165–85.

³ Yuliana Yuli W Sulastri, Satino, "Legal Protection of Trademarks (Review of Tupperware Versus Tulipware Trademarks)," *Jurnal Juridis* 5, no. 1 (2018): 160, <https://doi.org/10.1016/j.mfglet.2017.12.003> <http://dx.doi.org/10.1016/j.cirpj.2011.06.007> <http://dx.doi.org/10.1016/j.procir.2016.02.316> <http://dx.doi.org/10.1016/j.procir.2016.02.310> <https://doi.org/10.1016/j.jmapro.2018.03.033> <http://dx.doi.org/10.1016/j.jmapro.2018.03.033>

⁴ Novita Sari et al., "Measuring Consumer Loyalty Based on the Perception of Value and Trust of the Geprek Benu Brand," *Soetomo Communication and Humanities* 2, no. 2 (2021): 75–85, <https://doi.org/10.25139/sch.v2i2.4078>.

⁵ Hadi Muhammad Tajuddin and Romi Faslah, "The Urgency of Brand Protection Reform in the Dynamics of Indonesian Business Law," *Journal of Digital Economics and Business* 02, no. 04 (2025): 2515.

⁶ Revie Rachmansyah and P M I H Undip, "Legal Standing to Ownership of Copyrights Made into Trademark for Creators and Trademark Holders," *Jurnal Usm Law Review* 8, no. 1 (2025): 85.

protection in accordance with the provisions of Law Number 20 of 2016 concerning Trademarks and Geographical Indications⁷. However, in reality, trademark infringement is still common, especially in the form of counterfeiting and unauthorized use by irresponsible parties.

Trademark counterfeiting has become an alarming phenomenon in the world of commerce. Business actors who do not have good faith often take advantage of the popularity of a brand to make a profit by selling counterfeit goods. These counterfeit products are usually produced without regard to quality standards, thus greatly detrimental to consumers and owners of the original brand. Consumers can be easily deceived because the packaging and appearance of the counterfeit goods are very similar to the original product, although the quality is very different.

According to a well-known legal expert, Sudargo Gautama, every owner of goods or services has exclusive rights in the form of a license or patent in the name of their brand and design. A brand is an identity symbol that reflects the reputation and quality of the products produced⁸. Trademark infringement not only violates proprietary rights, but also tarnishes the reputation of the brand owner, as well as causing financial and moral losses⁹.

In Indonesia, infringement of well-known trademarks often occurs in the form of unauthorized use¹⁰. Based on observations made by the author in Gorontalo Province, it was found that there are still many business actors in Gorontalo City who use well-known brands without official permission from their owners and illegal cosmetic trafficking. This shows weak legal awareness and low compliance with IPR protection rules among local business actors¹¹.

This phenomenon is exacerbated by the low purchasing power of the public, which encourages consumers to choose products at lower prices, even though they know that the products are fake. The tendency of people to consume

⁷ Devica Rully Masrur, "Legal Protection of Geographical Indications That Have Been Registered as Trademarks Based on National Legal Instruments and International Law," *Lex Jurnalica* 15, no. 2 (2018): 197.

⁸ Sudargo Gautama & Rizawanto Winata, "Intellectual Property Rights: New Regulations on Industrial Design" (Bandung: (Citra Aditya Bakti), 2004).

⁹ M. Soewarsono, J. I., & SE, "Uncovering Financial Crime: An Investigation into Tax Manipulation and Money Laundering in the Corporate World." (MEGA PRESS NUSANTARA., 2024).

¹⁰ Meli Hertati Gultom, "Legal Protection for Trademark Rights Holders Against Trademark Infringement," *Jurnal Warta* 56, no. April (2018): 57.

¹¹ KompasTV Gorontalo., "The Rise of Illegal Cosmetics, BPOM Gorontalo Encourages Cosmetic MSME Actors to Register Their Products,," 2024, <https://www.kompas.tv/regional/554812/maraknya-kosmetik-ilegal-bpom-gorontalo-dorong-pelaku-umkm-kosmetik-daftarkan-produknya>.

branded goods, especially foreign brands that have become well-known, has become a gap for irresponsible individuals to produce and trade counterfeit goods. This is where the contradiction occurs: people know the item is fake, but still buy it for economic reasons.

Trademark infringement is not only a violation of national law, but it has also become a global issue. In various countries, including Indonesia, trademark counterfeiting has become a cross-border problem that harms many parties. In Indonesia itself, this violation can occur in several forms, such as trademark registration without rights, registration accompanied by unauthorized use, to the use of trademarks without rights at all, which is currently the most prevalent¹².

In the case of trademark registration without rights, the perpetrator registers a brand name that is already well-known and has a global reputation, but has not been officially registered in Indonesia. After that, the business actor claims ownership of the trademark and uses it for business activities. As a result, the original owners from abroad cannot market their products in Indonesia without the risk of infringement, and can even lose legally because administratively, the local actor has already registered the trademark.

The use of trademarks without rights, especially in products that are massively marketed, also causes serious losses to society. In addition to unguaranteed product quality, consumers may experience health, safety, or financial losses due to consuming counterfeit products. People as consumers fall victim to this misleading practice, where they buy an item assuming that it is a genuine product, when it is the opposite.

The Ministry of Law and Human Rights as a state institution responsible for the management and protection of intellectual property rights has an important role in reducing the number of trademark infringements. One of the strategies carried out is to increase socialization to business actors, so that they are aware of the importance of registering trademarks officially. In addition, the government is also encouraged to strengthen law enforcement against IPR violations, especially in the trade and creative industries sectors.

¹² University of North Sumatra, "Trademark Infringement in Indonesia," 2016, <https://text-id.123dok.com/document/6zkgpm8qx-pelanggaran-merek-di-indonesia.html>.

Intellectual property rights, especially trademarks, not only provide legal protection to their owners, but also create legal certainty in the business world¹³. With the guarantee of exclusive rights to a brand, business actors can safely develop their business without fear of their brand being stolen or counterfeited by other parties. This legal certainty will have a positive impact on the investment climate and encourage the growth of a healthy and competitive creative industry.

However, the challenges in trademark protection are still enormous. Law enforcement against trademark infringement often encounters obstacles, both in terms of administration, lack of evidence, and the difficulty of taking action against small business actors spread across various regions. On the other hand, the distribution system of counterfeit goods is now increasingly complex, involving online sales and cross-regional delivery, requiring stronger coordination between law enforcement officials, related agencies, and the public.

Efforts to eradicate trademark counterfeiting must also involve the active participation of the public. Education to consumers to be more critical in choosing products and avoiding counterfeit goods is an important step in suppressing the circulation of illegal products. In addition, there is a need for incentives and support for small and medium enterprises (MSMEs) to be able to register their trademarks officially and obtain adequate legal protection¹⁴.

The government also needs to strengthen the digitization system for trademark registration and speed up the verification process to prevent trademark registration by unauthorized parties¹⁵. In the era of globalization, international cooperation in IPR protection is also important, especially in overseeing the import of counterfeit goods and preventing infringement of global brands that have a high reputation¹⁶.

Trademark counterfeiting is a serious problem that not only harms brand owners, but also has a negative impact on consumers and national economic stability. Legal protection of trademarks should be a top priority in intellectual property rights protection policies in Indonesia. Therefore, the synergy between

¹³ Jisia Mamahit, "Legal Protection of Trademarks in Trade in Goods and Services," *Lex Privatum* 1, no. 3 (2013): accessed July 8, 2024.

¹⁴ Nury Effendi et al., "Increasing Understanding of Assistance and Incentive Programs for MSME Business Actors, as well as the Role of Digitalization in the Era of the Covid-19 Pandemic and Beyond," *JMM (Journal of Independent Society)* 6, no. 1 (2022): 236, <https://doi.org/10.31764/jmm.v6i1.6291>.

¹⁵ Roza Gustika et al., "Journal of S Ocial and Economics Research," *Journal of Social and Economic* 3(2), no. 1 (2021): 123–38.

¹⁶ Agus Wibowo, "Law in the Era of Digital Globalization," *Prima Agus Teknik Foundation Publisher*, 2023, 192.

the government, law enforcement officials, business actors, and the community needs to be strengthened to create a fair and effective brand protection system in facing the challenges of the times.

II. METHODOLOGY

This research uses a normative juridical approach¹⁷, which is a legal research method that focuses on library research by examining legal principles¹⁸, legal theory, legal norms, and relevant laws and regulations¹⁹. This method was chosen because the main purpose of the research is to analyze legal products related to trademark infringement, as well as how law enforcement applies those rules in practice. The object of the study is focused on trademark infringement actions, which are studied in depth as the main variable in the study. Referring to Arikunto's opinion, the object of research is the focal point of scientific attention that is closely related to the formulation of the problem²⁰. This research lasted for approximately two months, following the standard time requirements in writing academic scientific papers. During this period, the researcher will conduct literature search, legal data collection, and analysis of supporting legal documents.

The sources of legal materials in this study are divided into two types, namely primary legal materials and secondary legal materials²¹. Primary legal materials include laws and regulations, legal principles, legal theories, and official documents that are the basis for positive legal norms in Indonesia. Meanwhile, secondary legal materials include scientific journals, law books, results of previous research, and draft laws that support the understanding of primary legal materials²². The analysis method used in this study is a normative analysis method, namely by interpreting and discussing legal materials systematically,

¹⁷ Saharuddin Saharuddin Hijrah Lahaling, Arhjayati Rahim, Sumiyati Beddu, Dzikra Ridha Dwi Aribah, "Legal Pluralism in the Tayade System: Reconciling Land and Plant Ownership Laws in Gorontalo," *Al-Syir 'Ab Scientific Journal* 23, no. 1 (2025): 1–17, <https://doi.org/http://dx.doi.org/10.30984/jis.v23i1.3325>.

¹⁸ Ilham, "Law Enforcement Against Gorontalo City Police Area Gambling Crime In," *Indonesian Civil Law Review (ICLR)* 1, no. 1 (2025): 1–17, <https://ejurnal.mgpublishing.co.id/index.php/iclr/article/view/1/4>.

¹⁹ Nurul Fadhillah, "Perspectives on Criminal Law and Its Enforcement Against the Crime of Cockfighting Gambling in Pohuwato Regency," *Indonesian Civil Law Review (ICLR)* 1, no. 1 (2025): 18–36.

²⁰ Suharsimi Arikunto, "Research Procedures of a Practical Approach" (Jakarta: Rineka cipta jaya, 2012), 126.

²¹ Saharuddin Sahar al., "Transfer of Land Rights in the Tayade System," *Petita: Journal of Legal and Sharia Studies* 10, no. 1 (2025): 195–210, <https://doi.org/10.22373/petita.v10i1.412>.

²² Irmawati Nasadi and Suhartin I Akdaji, "The Dynamics of Marriage in the Modern Era : Between Tradition and State Law," *Indonesian Civil Law Review (ICLR)* 1, no. 1 (2025): 69–83.

logically, and argumentatively²³. Through this method, researchers seek to find legal conclusions that can comprehensively explain how trademark infringement occurs, as well as how legal protection of the trademark can be effectively enforced.

III. LEGAL ASPECTS OF TRADEMARK COUNTERFEITING IN INDONESIA

Trademark forgery is a form of infringement of the exclusive rights granted by the state to the trademark owner on the basis of valid registration. In the context of Indonesia's positive law, the existence of a trademark is not only seen as a distinguishing mark of a good or service, but also as part of the intellectual property rights protected by law. The protection aims to create legal certainty, encourage innovation, and ensure fairness in business competition. Therefore, trademark counterfeiting is an unlawful act that cannot be tolerated because it harms many parties, both producers, consumers, and the state.

Law Number 20 of 2016 concerning Trademarks²⁴ and Geographical Indications is the main legal basis that regulates substantive and procedural aspects regarding trademark protection in Indonesia. In Article 83 of the law, it is expressly stated that the owner of a registered trademark can file a civil lawsuit against another party who without the right to use the same or similar trademark for similar goods and/or services. Not only that, this law also provides space to take criminal action against the perpetrators of trademark counterfeiting, as stipulated in Article 100 which states that any party who deliberately uses a trademark that has a similarity in principle to a registered trademark belonging to another party, can be subject to criminal sanctions of imprisonment and/or fines.

In the normative approach, law is understood as a system of norms that govern people's behavior and determine what is and is not allowed to be done. Trademark counterfeiting in this case is clearly an act that violates legal norms because it deprives the owner of the trademark of exclusive rights and abuses the reputation or economic value of the brand for personal gain. Not only that,

²³ andi azizah Hastia, "From Clicks to Contracts: Legal Considerations in Online Sale and Purchase Agreements," *Indonesian Civil Law Review (ICLR)* 1, no. 1 (2025): 37–52.

²⁴ Article 83 of Law Number 20 of 2016 concerning Trademarks

counterfeiting can also be categorized as a form of fraud, because the perpetrator knowingly deceives the public through the use of unauthorized trademarks²⁵.

Legal protection of trademarks also cannot be separated from the principle of legal certainty and justice as contained in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia²⁶, which states that Indonesia is a state of law. In a state of law, all actions, including in trade and industrial practices, must be based on the prevailing legal norms²⁷. Therefore, trademark counterfeiting is a form of violation of the principles of legality and justice in economic practice.

Furthermore, the normative approach also sees that sanctions against trademark counterfeiting are not only repressive, but also preventive. By providing strong legal protection to brand owners, the state seeks to prevent counterfeiting from occurring from an early stage. In this case, the available legal instruments must be able to provide a deterrent effect on the perpetrator, as well as be a protector for law-abiding business actors. However, the reality on the ground shows that law enforcement against trademark counterfeiting is still not optimal. Many cases of counterfeiting are not followed up seriously, either due to limited resources, lack of understanding of law enforcement officials, and weak coordination between agencies.

The legal aspect of trademark counterfeiting also touches on the dimension of the state's responsibility in guaranteeing intellectual property rights. From a normative perspective, intellectual property rights are constitutional rights that must be protected, on a par with other property rights. Therefore, the legal system must provide equal and non-discriminatory protection for all business actors, both large and small businesses²⁸. Trademark registration is legally the main tool in obtaining exclusive rights, and the state is obliged to guarantee that these rights are not unlawfully usurped by other parties.

From the results of this normative research, it can be concluded that juridically, trademark counterfeiting in Indonesia has been comprehensively

²⁵ Syukri Kurniawan, Hari Sutra Disemadi, and Ani Purwanti, "The Urgency of Preventing Fraud in Insurance Claims," *Halu Oleo Law Review* 4, no. 1 (2020): 39, <https://doi.org/10.33561/holrev.v4i1.10863>.

²⁶ Article 1 paragraph (3) of the Constitution of the Republic of Indonesia of 1945

²⁷ Taufik H. Simatupang, "Human Rights and Intellectual Property Protection in the Perspective of the State of Law," *Journal of Human Rights* 12, no. 1 (2021): 111, <https://doi.org/10.30641/ham.2021.12.111-122>.

²⁸ Nabilah Apriani and Ridwan Wijayanto said, "Legal Protection Efforts for the Micro, Small and Medium Enterprises (MSMEs) Industry in Indonesia," *Al Azhar Indonesia Journal Social Science Series* 3, no. 1 (2022): 28, <https://doi.org/10.36722/jaiss.v3i1.1069>.

regulated through special laws that provide civil and criminal protection. However, the main challenge lies not in the substance of the law, but in the effectiveness of implementation and consistency of law enforcement in the field. Legal protection will not be effective if it is not accompanied by firm, fast, and fair law enforcement. Therefore, synergy is needed between legislative, judicial, and executive institutions to ensure that trademark protection is not only limited to the norm in the text of the law, but also becomes a reality felt by brand owners and the wider community.

Table 1. Number of Trademark Counterfeiting Cases Handled in Indonesia (2019–2023)

| Year | Number of Reported Cases | Legal Process | Case | The Most Counterfeit Product Sectors |
|------|--------------------------|---------------|------|--------------------------------------|
| 2019 | 147 | 103 | 85 | Clothing & Accessories |
| 2020 | 198 | 144 | 112 | Cosmetics & Pharmaceuticals |
| 2021 | 223 | 167 | 130 | Electronics |
| 2022 | 265 | 195 | 149 | Food & Beverage |
| 2023 | 289 | 218 | 167 | Shoes & Fashion Products |

Source: Developed from the annual report of the Directorate General of Intellectual Property (DJKI), Ministry of Law and Human Rights of the Republic of Indonesia, 2019–2023; national legal media reports.

The table above illustrates the increasing trend in the number of trademark counterfeiting cases reported and handled in Indonesia over the past five-year period, from 2019 to 2023. This data shows that trademark counterfeiting is a growing problem along with the increase in trade activities and public consumption. From year to year, both the number of reports and cases processed legally have increased significantly.

In 2019, there were 147 cases reported, and 103 of them were included in legal proceedings, with 85 cases being resolved. Five years later, in 2023, the number of reports rose to 289 cases, with 218 cases processed and 167 of them successfully resolved. This shows that although legal mechanisms have worked, there is still a gap between the number of reports and the resolution of cases, which indicates challenges in the effectiveness of law enforcement.

In addition, the pattern of brand counterfeiting also shifts from year to year. If in 2019 the clothing and accessories sector was the most counterfeited, then in 2023 the most affected will be the shoe and fashion products sector. This data can be an important reference for stakeholders to formulate stricter legal

protection and supervision strategies, especially in sectors that are prone to counterfeiting.

Table 2. Summary of Counterfeit Trademarks & Counterfeit Products Data (2020–2024)

| Indicator | Period | Quantity/Condition |
|---|---------------|---|
| Estimated state losses due to counterfeit products (IPR) | Year 2020 | IDR 291 trillion |
| The most investigated counterfeit products (MIAP–UI, 2010–2015): printer inks, clothing, leather, etc.. | 2010–2015 | Printer ink 49.4%, clothing 38.9%, leather 37.2%, etc. |
| Number of registered trademarks for DJBC import supervision | 2018–Sep 2024 | 54 brands |
| Number of IPR actions by DJBC | 2018–Sep 2024 | 17 cases; 9 Taken to Court |
| Examples of goods confiscated in the enforcement of the DJBC | 2018–Sep 2024 | 4.6 million razors, 1.1 million pens, 72 thousand cosmetics, etc. |
| Trademark infringement complaint to DJKI | Year 2019 | 34 trademark complaints (out of a total of 47 IPR complaints) |
| Percentage of pirated software usage in Indonesia | Year 2017 | 83 % |
| Indonesia's Ranking in Special 301 Report, USTR | 2025 | Still in <i>Priority Watch List</i> |

Source: official reports of the Directorate General of Intellectual Property (DKI), the Directorate General of Customs and Excise (DJBC), as well as other credible studies (such as MIAP and USTR) Processed by researchers.

This table presents various key indicators that reflect the condition of trademark counterfeiting in Indonesia in the last five years. The data compiled includes aspects of economic losses, the types of products most vulnerable to counterfeiting, government efforts in supervision and enforcement, and Indonesia's position in international monitoring of intellectual property rights (IPR) protection.

In the first line, it is shown that the estimated state losses due to the circulation of counterfeit products in 2020 reached around IDR 291 trillion. This figure reflects the magnitude of the economic impact of IPR infringements, especially in the form of counterfeit brands, which not only harm rights owners, but also lead to a loss of potential state revenue from the tax sector and reduce the competitiveness of local industries.

Furthermore, the data shows that the most frequently counterfeited products include printer ink (49.4%), clothing (38.9%), leather goods (37.2%), and software (33.5%). This illustrates that brand counterfeiting is not limited to one sector, but covers various types of goods that are widely circulated in society. These products have a high market value and a high level of mass consumption, making them a prime target for counterfeiting practices.

In the context of supervision, the Directorate General of Customs and Excise (DJBC) has taken concrete steps in the form of *brand registration*, namely the registration of brands that will be supervised at the import entrance. As of September 2024, a total of 54 brands have been recorded for this purpose. However, the data also shows that only 17 cases of IPR violations were successfully prosecuted during the period 2018-2024, and of these, only 9 cases were proceeded to court proceedings. This shows that the effectiveness of law enforcement against trademark infringement is still limited, both quantitatively and substantively.

In addition, DJBC noted that it has confiscated millions of counterfeit products, including 4.6 million units of razors, 1.1 million pens, and tens of thousands of cosmetics. These figures underscore that brand counterfeiting occurs on an industrial scale and has penetrated the wide distribution chain. These counterfeit products are very likely to be consumed by the general public, thus posing risks to safety, health, and consumer protection in general.

From the aspect of public reports, data shows that public complaints about trademark infringement still dominate compared to other forms of IPR infringement. In 2019, out of a total of 47 complaints received by the Directorate General of Intellectual Property (DJKI), 34 of them were trademark-related complaints, showing that trademarks are the most prone to infringement in Indonesia.

Meanwhile, the last line of the table notes that based on the Special 301 Report from the United States Trade Representative (USTR), Indonesia is still classified as a Priority Watch List until 2024. This is a global indicator that shows that the IPR protection system in Indonesia is still considered inadequate by the international community, especially in the aspect of law enforcement.

Overall, this table presents the empirical reality that trademark counterfeiting in Indonesia is not only a legal issue, but also concerns social, economic, consumer protection, and the country's reputation in the eyes of the country. Therefore, solving this problem requires a comprehensive approach: starting from improving regulations, increasing legal awareness, to optimizing effective enforcement and supervision.

IV. THE IMPACT OF COUNTERFEITING ON CONSUMER PROTECTION

Trademark counterfeiting is a form of infringement of intellectual property rights that directly or indirectly has a major impact on consumer protection²⁹. In the Indonesian legal system, a trademark is not only a commercial symbol, but also an information instrument for consumers to recognize the origin, quality, and reputation of a product or service. Therefore, when trademark counterfeiting occurs, what is threatened is not only the economic rights of the brand owner, but also the right of consumers to obtain correct information, safe products, and quality assurance.

In general, Law Number 8 of 1999 concerning Consumer Protection has stipulated that every consumer has the right to comfort, security, and safety in consuming goods and/or services (Article 4 letter a).³⁰ In addition, consumers also have the right to obtain true, clear, and honest information about the conditions and guarantees of goods/services (Article 4 letter c). However, the practice of trademark counterfeiting directly violates both rights. When a fake product uses a well-known brand without permission, the consumer does not get the product that meets his expectations based on the brand's reputation³¹. For example, consumers who buy counterfeit branded drugs have the potential to suffer fatal impacts because the substance content is not up to standard, and the original manufacturer is not responsible for the consequences caused.

In this context, consumers are the most vulnerable to harm. A study from the Indonesian Anti-Counterfeiting Society (MIAP) and the Faculty of Economics, University of Indonesia estimates that the circulation of counterfeit goods in Indonesia caused state losses of up to IDR 291 trillion in 2020³². Of these losses, most of them arose due to a decline in consumer confidence, loss of jobs in the formal sector, and household losses due to consuming inappropriate goods. The most widely circulated counterfeit products are cosmetics, medicines, food and beverages, and electronic goods are all types of

²⁹ W. Sutra Disemadi, H., & Mustamin, "Trademark Piracy in the Intellectual Property Legal Order in Indonesia Hari Sutra Disemadi, Faculty of Law, Diponegoro University, Semarang," *Journal of Legal Communication (JKH)* 6, no. 1 (2020): 83–94.

³⁰ Article 4 of Law Number 8 of 1999 concerning Consumer Protection

³¹ Ibrahim Nainggolan, "Criminal Liability for the Act of Using the Same Trademark Basically Without Permission (Analysis of the Supreme Court's Decision. RI No. 2037/ Pid.Sus/2015)," *EduTech: Journal of Education and Social Sciences* 5, no. 1 (2019): 21–36, <https://doi.org/10.30596/edutech.v5i1.2759>.

³² Republika, "State Losses Due to the Circulation of Counterfeit Goods Reach Rp 291 Trillion," Republika Online, September 17, 2022., 2022, <https://ekonomi.republika.co.id/berita/riaxa8349/kerugian-negara-akibat-peredaran-barang-palsu-capai-rp-291-triliun>.

products that are consumed directly and are closely related to the right to health and safety.

National regulations governing trademark protection are regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. In Article 83 paragraph (1), the owner of a registered trademark can sue anyone who uses the trademark without permission³³. Criminal sanctions are also regulated in Article 100 paragraph (1), which is a maximum of five years of criminal threats and/or a maximum fine of IDR 2 billion for anyone who deliberately uses the same brand in its entirety as the registered trademark owned by another party. However, despite the fact that there have been quite strict legal instruments, their application in the context of consumer protection still faces great challenges. Legal enforcement generally focuses only on counterfeiters and trademark rights owners, while consumer losses are often not fairly accommodated.

In practice, it is difficult for consumers to distinguish between genuine and fake products, especially if counterfeiting is carried out systematically with packaging quality that resembles the original. Consumers are ultimately deceived into buying goods at high prices, but getting low quality which can be harmful. Concrete examples can be found in many cases of counterfeit cosmetics and medicines circulating in free markets and online stores. Based on data from DJKI and Customs (2023), in the period from 2018 to 2023, more than 4.6 million razors, 1.1 million pens, 72,000 cosmetics, and thousands of counterfeit medicines that violate trademark rights have been confiscated³⁴. This shows that brand counterfeiting is not only sporadic, but has become an organized network of infringements.

Within the framework of consumer protection, the presence of these counterfeit products not only interferes with consumers' rational choices, but also threatens the right to a sense of security. Philosophically, consumers are entitled to the assurance that every product they buy reflects the value and quality as promised by the brand. When a trademark is used without permission and is associated with counterfeit goods, the function of the trademark as a differentiating tool and quality assurance has been lost. This is what causes

³³ Article 83 paragraph (1), Law Number 20 of 2016 concerning Trademarks and Geographical Indications

³⁴ Directorate General of Customs and Excise., "There is a Role of Customs in Maintaining Intellectual Property Rights (IPR) in Indonesia." November 5, 2024, 2024, https://www.beacukai.go.id/berita/ada-peran-bea-cukai-dalam-menjaga-hak-kekayaan-intelektual-hki-di-indonesia.html?utm_source=chatgpt.com.

trademark counterfeiting to not only be a violation of the rights of the trademark owner, but also a violation of the basic rights of consumers.

Furthermore, the consumer protection aspect is also disrupted by the lack of optimal education and market supervision. Many consumers in Indonesia do not fully understand the importance of buying official branded products or do not know how to recognize counterfeit products. This is exacerbated by the rise of online trade which is a medium for the massive circulation of illegal products. Online shopping sites are often places where counterfeit products are sold, and consumers do not have robust verification mechanisms.

The legal implications become even more complicated when it is noted that in the vast majority of cases, consumers harmed by counterfeit products do not have adequate legal access or redress mechanisms. The Consumer Protection Law does provide room for lawsuits, but in practice, consumers do not have the information, time, or legal ability to sue business actors, especially if the actors are unofficial distributors or are abroad. This is a weak point that must be corrected through reform of the consumer protection system, including expanding the responsibility of digital platforms and distributors for the products they market.

Therefore, Indonesia's legal framework needs to firmly integrate brand protection and consumer protection as an inseparable unit. Trademark counterfeiting should be seen as a crime that harms two parties at once: the manufacturer and the consumer. The state needs to expand the scope of legal protection, not only by cracking down on counterfeiters, but also by guaranteeing consumers' rights to compensation, information, and education. Measures such as strengthening cooperation between DJKI, the Ministry of Trade, and the National Consumer Protection Agency (BPKN) must be made a strategic priority in dealing with the massive circulation of counterfeit products.

In the global context, Indonesia's position on the Priority Watch List as reported by the United States Trade Representative (USTR) shows that the IPR protection system, including its impact on consumers, is still seen as weak. This not only affects Indonesia's image in the eyes of the international community, but also has an impact on the confidence of global investors and business actors to invest in Indonesia. One of the reasons Indonesia continues to be included in this list is because of weak enforcement and high rates of brand counterfeiting,

including products that have a direct impact on consumers such as pharmaceuticals, cosmetics, and software.

Taking into account all of the above descriptions, it can be concluded that trademark counterfeiting has a broad and serious impact on consumer protection. Not only economically harmful, brand counterfeiting also threatens health, safety, and the right to information. Therefore, responsive, educational, and consumer-friendly legal policies need to be developed on an ongoing basis so that the circulation of counterfeit products can be suppressed and public trust in the market can be restored.

From the point of view of trademark law, a trademark has a strong legal standing as the exclusive right granted by the state to an individual or legal entity over a mark used in the trade of goods and/or services. This right is juridically inherent after the registration process is carried out and obtains a certificate from the Directorate General of Intellectual Property (DJKI). In this context, brands are a differentiating tool as well as a quality guarantor for consumers. Therefore, if there is a trademark counterfeiting by an unauthorized party, it is a form of violation of the law that not only violates the rights of the trademark owner, but also misleads and harms consumers.

Article 83 of the Trademarks and Geographical Indications Act gives the registered trademark owner the right to file a lawsuit against anyone who unlawfully uses an identical or similar trademark in its entirety. Meanwhile, Article 100 paragraph (1) of the same law states that anyone who deliberately and without the right to use a registered trademark belonging to another party will be subject to a maximum criminal sanction of 5 (five) years in prison and/or a maximum fine of IDR 2 billion. This provision shows that trademark counterfeiting is seen as a criminal offense, not just a civil offense.

However, in practice, the law enforcement approach to trademark counterfeiting is still very dominant in favor of the interests of brand owners. Consumer rights, who are also victims of counterfeit brands, have not received proportionate attention. In fact, in the context of buying and selling transactions, consumers are the parties who are directly deceived by counterfeit branded products. They spend money based on expectations for product quality, even though the goods purchased do not meet the standards and quality promised by the original brand.

In this case, Article 4 of the Consumer Protection Law provides legal guarantees that consumers have the right to: (a) comfort, security, and safety in consuming goods/services; (b) select and obtain goods according to the promised exchange rate and conditions; and (c) true, clear, and honest information about the condition and warranty of the goods. Trademark counterfeiting is clearly contrary to these provisions, because goods marketed under counterfeit brands do not provide correct information and do not guarantee the safety and quality of goods as they should.

The legal problem that arises from this fact is that there is a gap in legal protection between the owner of trademark rights and the consumer. In many cases, a lawsuit against counterfeit trademarks is only filed by the brand owner, while consumers do not have an easy mechanism to claim compensation for losses suffered from consuming counterfeit products. This is due to limited access to the law, low consumer legal literacy, and difficulties in proving that a product is the result of counterfeiting. In the Indonesian legal system, the burden of proof is usually placed on the plaintiff, and this is a major obstacle for consumers who do not have adequate tools or resources to prove that the goods purchased are counterfeit products.

In addition, the circulation of counterfeit products also shows that law enforcement against brand counterfeiting has not been running optimally. Based on data obtained from DJKI and the Directorate General of Customs and Excise (2023), during the 2018–2023 period there were seizures of millions of units of counterfeit products such as razors, pens, cosmetics, and medicines³⁵. However, of the dozens of inspections carried out, only a small part was successfully brought to justice. This low number of prosecutions shows that law enforcement has not been able to keep up with the massive counterfeiting practices that occur in the market.

Further legal analysis shows that the practice of trademark counterfeiting is also a form of unlawful act (*onrechtmatige daad*) as regulated in Article 1365 of the Civil Code (KUHPer).³⁶ In this context, the perpetrator of trademark counterfeiting can be held accountable to compensate for the losses incurred as

³⁵ DetikNews., "Monitor Intellectual Property Rights, Customs Prevent Circulation of Counterfeit Goods." November 5, 2024., 2024, <https://news.detik.com/berita/d-7623598/awasi-hak-kekayaan-intelektual-bea-cukai-cegah-peredaran-barang-palsu.%0A%0A>.

³⁶ Article 1365 of the Civil Code

a result of his actions, both to the brand owner and to consumers. But again, the enforcement of Article 1365 against trademark counterfeiting in practice is more often filed by trademark owners, not by consumers.

From an institutional perspective, institutions such as the National Consumer Protection Agency (BPKN) have a mandate to provide advocacy for consumers. However, this institution is recommendatory and does not have direct authority to take action against brand counterfeiters. On the other hand, law enforcement officials such as the police and prosecutor's office focus more on the criminal aspect and have not reached much to protect the rights of consumers as secondary victims. This underscores the importance of cross-sectoral integration between consumer protection agencies, law enforcement, and the DJKI to create a holistic legal system.

As part of the international legal system, Indonesia is also bound by the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement under the WTO, which requires member states to provide effective legal mechanisms to crack down on infringements of intellectual property rights, including trademark counterfeiting. In the context of consumer protection, TRIPS also implicitly obliges the state to ensure that trademark infringement does not mislead or harm the public. Failure to meet this commitment will have an impact on the international reputation and trust in the Indonesian legal system³⁷.

At the normative level, it is clear that trademark counterfeiting is a form of double infringement: infringement of intellectual property rights and infringement of consumer rights. Therefore, the Indonesian legal system needs to provide firm affirmations against consumer victims by expanding legal protection mechanisms, including through:

1. The establishment of a class action channel by consumers against counterfeiters;
2. Automatic compensation to consumers if proven to be consuming counterfeit goods;
3. The obligation of the e-commerce platform to bear legal responsibility for the circulation of counterfeit products on its platform;

³⁷ Erika Vivin Setyoningsih, "Implementasi Ratifikasi Agreement on Trade Related Aspects of Intellectual Property Right (Trips Agreement) Terhadap Politik Hukum Di Indonesia," *Jurnal Penegakan Hukum Dan Keadilan* 2, no. 2 (2021): 117–29, <https://doi.org/10.18196/jphk.v2i2.11749>.

4. Legal education for the wider community so that consumers are more aware and careful in choosing products.

In concluding this analysis, it can be emphasized that legal protection against trademark counterfeiting in Indonesia does not fully reflect the protection of all aggrieved parties. Consumers as weak parties in the market structure need to be given a strengthened legal position and access to adequate justice. Therefore, regulatory reform, sharpening law enforcement, and inter-agency harmonization are urgent agendas to tackle brand counterfeiting comprehensively and ensure essential consumer protection.

V. CONCLUSION

Based on the results of normative research and analysis of regulations and empirical data that have been presented, it can be concluded that the practice of trademark counterfeiting in Indonesia has a very detrimental impact, both for brand owners and for consumers. Trademark counterfeiting is not only a violation of intellectual property rights protected by Law Number 20 of 2016 concerning Trademarks and Geographical Indications, but also directly violates the basic rights of consumers as guaranteed in Law Number 8 of 1999 concerning Consumer Protection. Consumers as parties who do not know that the products they consume are the result of counterfeits, are the most vulnerable victims of financial losses, health risks, and disappointment due to the non-fulfillment of product quality as expected by a brand they are familiar with. The practice of trademark counterfeiting damages public trust in the market system, hinders the growth of the creative industry, and weakens the legal function in ensuring certainty, justice, and protection.

Data shows that state losses due to product counterfeiting reach hundreds of trillions of rupiah, and most of the counterfeit products are daily consumer goods that directly touch people's lives, such as cosmetics, clothing, food, and medicines. Meanwhile, the number of legal enforcement and supervision in the field is still not proportional to the massive violations that occur, reflecting weak enforcement and low effectiveness of regulations in concrete consumer protection. From a legal perspective, trademark counterfeiting should be seen not only as an infringement of commercial rights, but also as a crime against consumers. Therefore, in the future, legal reform and stronger institutional

integration are needed between DJKI, BPN, law enforcement officials, and industry players, so that legal protection is not only oriented to rights owners, but also reaches consumers as parties who are directly affected in a healthy and fair market ecosystem.

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