

Examining Civil Law Remedies for Consumers Affected by Counterfeit Branded Goods in E-commerce Transactions

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Abstract:

This research aims to find out and explain the forms of legal protection for consumers and dispute resolution efforts related to the sale of counterfeit branded goods through online transactions in Indonesia. The research uses normative methods by reviewing library materials and secondary data and using legal material analysis techniques using a statutory approach. The research results show that consumer protection regarding the sale of counterfeit branded goods through online transactions in Indonesia refers to several statutory regulations, namely: Law Number 11 of 2008 concerning Information and Electronic Transactions, a form of protection for consumers, namely the requirement for business actors to provide correct and clear information regarding goods/services being bought and sold as well as guaranteeing the responsibility of business actors for losses and all legal consequences resulting from violations of obligations in electronic transactions. Based on Law Number 8 of 1999 concerning Consumer Protection, the form of legal protection for consumers is that in 2001 the Government established the National Consumer Protection Agency which then formed the Consumer Dispute Resolution Agency at the regional level. Based on Law Number 20 of 2016 concerning Brands and Geographical Indications, a form of consumer protection is the threat of criminal penalties for business actors who counterfeit brands or buy and

sell products resulting from criminal acts. Consumer dispute resolution can be reached through 3 routes, namely peaceful resolution by the parties to the dispute without involving the court or a neutral third party, and settlement through the court. and Out-of-court settlement through BPSK.

Penelitian ini bertujuan untuk mengetahui dan menjelaskan bentuk-bentuk perlindungan hukum bagi konsumen dan upaya penyelesaian sengketa terkait penjualan barang bermerek palsu melalui transaksi online di Indonesia. Penelitian ini menggunakan metode normatif dengan mengkaji bahan pustaka dan data sekunder serta menggunakan teknik analisis bahan hukum dengan menggunakan pendekatan peraturan perundang-undangan. Hasil riset menunjukkan bahwa perlindungan konsumen terhadap penjualan barang bermerek palsu melalui transaksi online di Indonesia mengacu pada beberapa peraturan perundang-undangan, yaitu: Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, suatu bentuk perlindungan bagi konsumen, yaitu keharusan bagi pelaku usaha untuk memberikan informasi yang benar dan jelas mengenai barang/jasa yang diperjualbelikan serta menjamin tanggung jawab pelaku usaha atas kerugian dan segala akibat hukum yang diakibatkan oleh pelanggaran kewajiban dalam transaksi elektronik. Berdasarkan Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen, bentuk perlindungan hukum bagi konsumen adalah pada tahun 2001 Pemerintah membentuk Badan Perlindungan Konsumen Nasional yang kemudian membentuk Badan Penyelesaian Sengketa Konsumen di tingkat daerah. Berdasarkan Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis, bentuk perlindungan konsumen adalah ancaman hukuman pidana bagi pelaku usaha yang memalsukan merek atau jual beli produk hasil tindak pidana. Penyelesaian sengketa konsumen, dapat ditempuh melalui 3 jalur, yaitu penyelesaian damai oleh para pihak yang bersengketa tanpa melibatkan pengadilan atau pihak ketiga yang netral, dan penyelesaian melalui pengadilan. dan Penyelesaian di luar pengadilan melalui BPSK.

Keywords: *Consumer; counterfeit goods; online transactions.*

Introduction

Information and communication technology has experienced quite rapid development,¹ and everything has mushroomed in human life accompanied by the development of science in life using sophistication so it cannot be denied that the

¹Badan penelitian dan pengembangan SDM kementerian komunikasi dan informatika, "Pemanfaatan Teknologi Informasi dan Komunikasi Pada Industri Kecil dan Menengah di Daerah", (Puslitbang APTIKA IKP, 2011), p. 49.

development of technology and information² is the spearhead of the era of globalization which has now almost hit the whole world.³ The very rapid development of information and communication technology has brought many advances to almost all aspects of human life. both social, cultural, economic, and other fields. One of the technological developments that we are familiar with is the internet. The internet is a technology product that is widely used by society,⁴ provides ease of communication globally, and allows people to obtain information quickly and exchange information with each other. After the internet started to be used by the wider community, the internet also started to be used for trading activities. Information technology⁵ has significantly changed the conventional economic system into a digital economic system. Trading activities using internet media are known as electronic commerce, or e-commerce for short.

E-commerce is a process of buying and selling goods and services carried out via a computer network, namely the Internet. Juridically, e-commerce transactions are regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions contained in Article 1 paragraph (2) which states that electronic transactions are legal acts carried out using computers, computer networks, or media. other electronics. There are also verses in the Al-Qur'an that can be relied upon when carrying out online buying and selling transactions, including Surah An-Nisa verse 29 which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا
أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Translation

O you who believe, do not eat your neighbor's wealth in an unrighteous way, except in the form of business based on mutual consent between you. Do not kill yourselves. Indeed, Allah is Most Merciful to you.

Based on the verse above, it can be understood that Islam strongly recommends that we carry out buying and selling activities based on agreements

²Vlados, Charis, Nikolaos Deniozos, and Dimos Chatzinikolaou. "The possible paths of a new globalization." *International Journal of Development and Sustainability* 7.9 (2018), p. 2310-2333.

³Harahap, Muhammad Ade Kurnia, et al. "Globalization Substance And Industrial Revolution 4.0 And The Role Of Technological Innovation For Economic Development Towards Entrepreneurship." (2023).

⁴Shiefti Dyah Alyusi, "Media Social Interaksi, Identitas dan Modal Social", (Prenadamedia Group, 2018), p. 1.

⁵David Edgerton, *The shock of the old: Technology and global history since 1900* (Oxford University Press, 2007).

and applicable Sharia law, so all buying and selling activities, whether conventional or online, must follow the rules determining what can and/or cannot be done. which aims to control humans from activities that are detrimental to society. All online buying and selling transactions that occur must be based on an agreement, there is no element of coercion, no party is wronged or oppressed, and all transactions must be transparent. to get blessings from Allah swt., and be useful to achieve *falah* (physical and spiritual prosperity) in this world and the afterlife.⁶

In the internet world, many online sales sites accommodate people who specialize in trading certain goods.⁷ One of the sites that are currently popular among the public for online buying and selling activities is social media such as Instagram, Facebook, and Twitter, and several online shopping applications such as Tokopedia, Lazada, Shopee, and also other online shopping applications. which makes it easier for consumers to buy goods. Various products and trademarks are also often found in online transactions. The brand itself has an important role in the development of trade. To trade a product, whether branded or unbranded, to consumers, of course, you must also pay attention to consumer rights which are regulated in Law Number 8 of 1999 concerning Consumer Protection.

Article 4 of Law Number 8 of 1999 itself regulates several rights that consumers can receive after obtaining the goods or services they purchase. various goods from well-known brands such as Nike, Puma, Prada, Hermes, Huda Beauty, Hugo Boss, and others well-known brands have begun to circulate widely in Indonesia with the existence of online ordering facilities which are now very popular among people This makes it very easy for people to buy goods from abroad. Nowadays it is very easy to find sellers who sell fake branded goods without the knowledge of the original brand owner, sellers of fake branded goods sell fake branded goods such as clothes, bags, trousers, shoes, jackets, and cosmetics on the roadside or through social media or online transactions with cheap.⁸

The position of consumers is in a weak position in trading activities and the main factor that is the weakness of consumers is the level of consumer awareness of

⁶Holijah, and M. Rizal. "Islamic compensation concept: The consumer dispute settlement pattern in Indonesia." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6.1 (2022), p. 98-114.

⁷Aswari, Aan, Muhammad Nur Asrul Azis, and Andika Prawira Buana. "Lavering Process Mistakes: An Analysis of Contractual Liability Burdening Marketplace Consumers." *Jurnal Magister Hukum Udayana* 12.3 (2023), p. 1.

⁸Kirana, A. R. A., Abbas, I., & Rustan, M. (2021). Analisis Perlindungan Hukum Terhadap Konsumen Terkait Penjualan Barang Bermerek Palsu Melalui Transaksi Online Ditinjau Berdasarkan Hukum Perdata. *Qawanin Jurnal Ilmu Hukum*, 2(1).

their rights which is still low,⁹ and also when compared with the position of business actors. Consumers who use brands that turn out to be fake will experience disappointment because they mistakenly consume certain goods whose quality is different from what they expected. Goods that use fake brands are certainly circulating without a distribution permit, so their safety is doubtful. It's not just disappointment that consumers get, it can also endanger consumers' health and safety. because the level of consumer awareness and accuracy is still low, causing consumers to be easily deceived by the mode of selling well-known branded goods through online transactions.

Therefore, this research aims to examine in depth the legal protection that consumers have regarding the sale of counterfeit branded goods through online transactions based on civil law. Apart from that, this research will also identify dispute resolution efforts that can be taken by consumers who are disadvantaged by purchasing counterfeit branded goods in online transactions. Thus, the formulation of the problem that will be answered in this research is: What forms of legal protection are available to consumers regarding the sale of counterfeit branded goods through online transactions based on civil law, and what are the dispute resolution efforts that aggrieved consumers can take?

Method

Legal research methods are approaches used to understand, analyze, and evaluate legal problems and find appropriate solutions or answers. In the context of research regarding legal protection for consumers in online transactions of counterfeit branded goods, normative legal research is an appropriate choice. The legal research method used in this research is by normative legal research methods with an approach that refers to the analysis of statutory regulations or written legal materials and other legal literature. This approach allows researchers to understand and interpret the content of legal norms that are relevant to the problem under study. The legal materials used in this research include: Law on Information and Electronic Transactions: This law is the main reference in regulating electronic transactions, including online transactions in e-commerce, Law on Consumer Protection: This law regulates consumer rights and obligations of business actors in consumer protection.

Al-Qur'an: Relevant verses, such as Surah An-Nisa verse 29, are used as moral guidance in carrying out economic transactions, including in the context of online

⁹Kurniawan, *Hukum Perlindungan Konsumen*, Universitas Brawijaya Press (UB Press), 2011, p. 6

transactions. The legal literature in question comes from various books, journals, articles, and related legal documents that discuss the legal protection of consumers in online transactions and the sale of counterfeit branded goods. This research uses analytical techniques, and used in this research is descriptive analysis. Through descriptive analysis, researchers will explain and describe the contents of the legal materials used as well as related legal literature. Researchers will also identify the relationship between relevant legal norms and the problem under study, as well as evaluate the adequacy and suitability of these legal materials in the context of legal protection for consumers in online transactions of counterfeit branded goods.

The sources of legal materials used in this research come from various sources, including Official Documents: Such as Laws, Government Regulations, Regional Regulations, and other regulations related to e-commerce and consumer protection. Academic Publications: Books, journal articles, seminar papers, and theses on topics relevant to research. Legal Literature: Various legal literature that discusses aspects of legal protection for consumers and e-commerce. By using normative legal research methods, researchers can carry out a comprehensive analysis of the problems studied, as well as provide appropriate recommendations or solutions based on the interpretation of relevant legal materials.

Discussion

Legal protection is protection given to legal subjects that are both preventive and repressive, both written and unwritten. Legal protection is the right of every citizen, and on the other hand, legal protection is an obligation for the state itself, therefore the state is obliged to provide legal protection to its citizens.¹⁰ In a buying and selling process, legal protection is very necessary to protect consumers from risks that could harm the consumers themselves. Because in recent years online buying and selling activities have become so widespread, especially in buying and selling transactions of branded goods, there is a dire need for legal regulations that regulate this so that the buying and selling process is orderly and fair for all parties. The electronic transaction mechanism is not like conventional transactions because every electronic transaction begins with an offer stage via the Internet by the business actor, an agreement stage between the parties, a payment stage through

¹⁰Rizka Syafrina, "Perindungan Konsumen dalam Transaksi Online", dalam jurnal *De Lege Lata*, Volume 1 No.2, Desember 2016, p. 20

banking services, and a delivery stage for products ordered through expedition services. and ends with the stage of receiving the goods to the consumer.¹¹

Considering that in buying and selling transactions through electronic media, and e-commerce¹², these trading activities are carried out without meeting face to face and previously consumers and business actors did not know each other, consumer rights in these transactions are very vulnerable to being violated so that consumers have a weak bargaining position.

Electronic buying and selling transactions or e-commerce are inseparable from the concept of buying and selling which is generally regulated in Articles 1457 to 1540 of the Civil Code where an agreement, by which one party binds himself to hand over an object, and the other party pays what has been promised. We cannot deny that buying and selling via electronic media is subject to general buying and selling provisions because the only difference between the two is the media used. An electronic contract is also born when an agreement is reached, namely the acceptance of an offer made by one of the parties. Electronic media sales and purchase agreements cannot be separated from the concept of a fundamental agreement contained in Article 1313 of the Civil Code, namely: "an agreement is an act by which one or more people bind themselves to one or more other people"

Law no. 11 of 2008 concerning Information and Electronic Transactions as amended by Law no. 19 of 2016 concerning amendments to Law no. 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law) is the main legal basis for trade transactions using electronic media. The Information and Electronic Transactions Law has an important meaning in protecting consumers in carrying out electronic media trading activities, namely:¹³ recognition of transactions, information, documents, and electronic signatures within the framework of the law of engagement and the law of evidence, so that the legal certainty of electronic transactions can be guaranteed. The classification of actions that qualify as legal violations related to the misuse of information technology is accompanied by criminal sanctions. The Information and Electronic Transactions Law applies to every person who carries out legal actions, whether they

¹¹Roberto Ranto, "Tinjauan Yuridis Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Jual Beli Melalui Media Elektronik", dalam *jurnal Ilmu Hukum Alethea*, Volume 2 No.2, Februari 2019, p. 152.

¹²Dewi Arnita Sari, "Transaction Agreements Through Internet Media Electronic Systems (E-Commerce) in the Perspective of Civil Law and Islamic Law." *Al-Bayyinah* 6.2 (2022), p. 175-186.

¹³ Rahmanto, T. Y. (2019). Penegakan Hukum terhadap Tindak Pidana Penipuan Berbasis Transaksi Elektronik. *Jurnal Penelitian Hukum De Jure*, 19(1), p. 31-52.

are outside the territory of Indonesia. So the reach of the ITE Law is not only local but also international.

Law Number 11 of 2008 concerning Electronic Information and Transactions. There is a rule in Article 17 paragraph (2) of the Information and Electronic Transactions Law which states "Parties carrying out electronic transactions are required to act in good faith when interacting and/or exchanging electronic information and/or electronic documents during the transaction." Provisions for electronic transactions are regulated in Article 18 of the Information and Electronic Transactions Law, namely "Electronic transactions outlined in electronic contracts are binding on the parties". By Article 18 paragraph (1) of the ITE Law, e-commerce agreements must have the same legal force as a conventional legal force.¹⁴ The form of legal protection for consumers regarding the sale of counterfeit branded goods in online e-commerce buying and selling transactions, according to the provisions of the Information and Electronic Transactions Law, is:

As an electronic system-based transaction, complete and accurate information regarding the subject and object of the transaction is needed by the parties in electronic trade transactions. It can be seen that the form of legal protection provided to consumers regarding the sale of counterfeit branded goods in online transactions with the existence of Law Number 11 of 2008 can be divided into 3, namely: (1) Providing clear and correct information regarding products (goods and/or services), this is a consumer right. (2) There is responsibility for losses and all legal consequences arising from violations of obligations in electronic transactions, and (3) Providing clear and complete information regarding transaction mechanisms and matters relating to transactions.

Legal protection arrangements for consumers regarding the sale of counterfeit branded goods have been regulated in Law Number 8 of 1999 concerning Consumer Protection (UUPK) which is the legal umbrella (umbrella act) for consumer protection in Indonesia. Consumer protection regulations in the Consumer Protection Law are consumer protection for goods and/or services in society. In terms of consumer protection regulations related to the sale of counterfeit branded goods in online transactions circulating in the community, there are consumer rights that must be fulfilled by business actors, regulated in Article 4 of Law Number 8 of 1999 concerning Consumer Protection which states

¹⁴Dahlia, "Perlindungan Konsumen Terhadap Transaksi Jual-Beli Melalui Media Internet", dalam *Jurnal Wacana Hukum*, Volume III No. 1, Agustus 2009, p. 37

that consumer rights are:¹⁵ the right to comfort, security and safety in consuming goods and/or services; the right to choose goods and/or services and obtain said goods and/or services in accordance with the exchange rate and conditions and guarantees promised; the right to correct, clear and honest information regarding the condition and guarantee of goods and/or services; the right to have opinions and complaints heard regarding the goods and/or services used; the right to obtain appropriate advocacy, protection and efforts to resolve consumer protection disputes; the right to receive consumer guidance and education; the right to be treated or served correctly and honestly and non-discriminatory; the right to receive compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or are not as they should be; rights regulated in other statutory provisions.

On the other hand, the obligations for business actors (in this case online sellers), in accordance with Article 7 of the Consumer Protection Law, are: to have good faith in carrying out their business activities; provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as providing explanations of use, repair and maintenance; treating or serving consumers correctly and honestly and not discriminatory; guarantee the quality of goods and/or services produced and/or traded based on the provisions of applicable quality standards for goods and/or services; provide consumers with the opportunity to test, and/or try certain goods and/or services and provide guarantees and/or warranties for goods made and/or traded; provide compensation, compensation and/or reimbursement for losses resulting from the use, use and use of traded goods and/or services; provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.

Legal certainty to guarantee protection for consumers includes, among other things, increasing the dignity of consumers and opening access to information about goods and/or services for them, as well as developing an honest and responsible attitude among business actors. Information about the products or goods that are bought and sold by business actors through online transactions is very necessary before deciding to buy the product or goods. Consumer transactions are intended to establish legal relations (buying and selling) regarding consumer products with the business actor. Therefore, it is hoped that consumers will get their rights by applicable law, and with the existence of laws that regulate consumer

¹⁵Barkatullah, A. H. (2007). Urgensi perlindungan hak-hak konsumen dalam transaksi di e-commerce. *Jurnal Hukum Ius Quia Iustum*, 14(2).

protection, the position of consumers and business actors will be balanced and the needs of each party can be achieved.

In protecting consumers against purchasing goods through online transactions, Article 8 paragraph (1) letter f of the Consumer Protection Law prohibits business actors from trading goods/services that do not comply with the promises stated in labels, labels, information, advertising, or promotions. sale of goods and/or services. Based on this article, a discrepancy between the specifications of the goods that consumers receive and the goods stated in the advertisement/photo of the offer of goods is a form of violation/prohibition for business actors in trading goods. Furthermore, Article 9 paragraph (1) letter b of the Consumer Protection Law states that "business actors are prohibited from offering, promoting, advertising goods/services incorrectly and as if the goods are in good condition or new." to explain this article, business actors usually tell consumers that the brands of products such as bags, make-up, shoes (well-known brands) they sell are genuine, so consumers will be harmed by this false information. As a result, if a business actor violates the prohibition on trading goods/services that do not comply with the promises stated in labels, labels, information, advertisements, or sales promotions for said goods and/or services, then the business actor can be punished based on Article 62 paragraph (1) of the Consumer Protection Law. which reads: Business actors who violate the provisions as intended in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letters a, letter b, letter c, letter e, paragraph (2) and Article 18 is punishable by a maximum imprisonment of 5 (five) years or a maximum fine of IDR 2 billion (two billion rupiah).

Protection for online transaction consumers, if the goods and/or services received do not comply with the agreement or are not as they should be, then the business actor is obliged to provide a replacement/return of the product and is responsible for providing compensation or damage by what has been regulated in Article 19 UUPK. Protection for consumers as regulated in the Consumer Protection Law, Article 19 concerning the Responsibility of Business Actors, states that: Business actors are responsible for providing compensation for pollution damage, and/or consumer losses resulting from consuming goods and/or services produced or traded. Compensation as referred to in number (1) can be in the form of a refund or replacement of goods and/or services of the same or equivalent value, or health care and/or provision of compensation by the provisions of the applicable laws and regulations. Compensation is provided within a period of 7 (seven) days after the transaction date. Providing compensation as intended in

numbers (1) and (2) does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of error. The provisions as intended in numbers (1) and (2) do not apply if the business actor can prove that the error is the consumer's fault.

In Article 19 of the Consumer Protection Law, it is stated that "business actors have the responsibility to provide compensation for consumer losses resulting from consuming goods and/or services produced or traded". This compensation can be in the form of a refund or replacement of similar or equivalent goods and/or services; or health care and/or provision of compensation by the provisions of applicable laws and regulations. Providing compensation does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of error. However, this provision does not apply if the business actor can prove that the error was the consumer's fault. If a business actor refuses and/or does not provide responsibility and/or does not fulfill compensation for consumer demands, then the business actor can be sued.¹⁶ The right to compensation is intended to restore conditions that have become damaged or unbalanced, due to the use of goods and/or services that do not meet consumer expectations. Every dispute that occurs between consumers and business actors can be resolved in at least 2 ways, namely: peaceful dispute resolution, and resolution through authorized institutions or agencies.

According to Happy Susanto, consumer rights include the right to obtain advocacy, protection, and appropriate dispute resolution efforts. Consumers who feel their rights have been violated need to complain to the authorized institution. Consumers can ask for help from the Non-Governmental Consumer Protection Agency (LPKSM) first to ask for legal assistance or can immediately resolve the problem with the Consumer Dispute Resolution Agency (BPSK).¹⁷ According to the Consumer Protection Law Article 1 paragraph (11), BPSK is "a body tasked with handling and resolving disputes between business actors and consumers". Apart from being tasked with resolving consumer disputes, BPSK is also tasked with providing consumer protection consultations, namely: Providing explanations to consumers or business actors about their respective rights and obligations, providing explanations about how to compensate for losses suffered by consumers and business actors, explains how to obtain defense in resolving consumer disputes, explains the forms and procedures for resolving consumer disputes. BPSK was

¹⁶ Arham, H. K. (2022). Potential Legal Risks Arising In Cash On Delivery (Cod) Payment Mechanism In E-Commerce Applications. *Indonesian Journal of Law and Policy Studies*, 3(1), p. 61-74.

¹⁷ Happy Susanto, "Hak-Hak Konsumen Jika Dirugikan", Jakarta: Visimedia, 2008, p. 58

formed by the government to resolve consumer disputes outside of court.¹⁸ The position of this body is in the level II area. The composition of the BPSK management is formed by the governor of each province and inaugurated by the minister of trade.

Apart from that, there is also the Indonesian Consumers Foundation (YLKI), which is a non-governmental organization recognized by the government that can play an active role in realizing consumer protection so that their rights are protected. The main factor that is a weakness for consumers is the low level of understanding and awareness of their rights. Based on this, Article 29 of the Consumer Protection Law states that the government is responsible for fostering the implementation of consumer protection to empower consumers to obtain their rights.¹⁹ Consumer empowerment, by the principles of justice and balance, must not harm the interests of business actors, but on the contrary, through consumer protection, it is hoped that it can encourage a healthy business climate and the birth of companies that are strong in facing competition through the provision of quality goods and/or services.

Brand counterfeiting is an offense, not a crime. The term "KW" arises to indicate imitation or counterfeit goods of products whose brands are registered, including bags, shoes, beauty products, and other products that already have brand names that are well known to the public. In the implementation of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, the term "KW" is not known, but there are regulations in several articles. The behavior of business actors who misuse other people's trademarks in trading through electronic transactions (e-commerce) is a criminal offense.²⁰ If a business actor carries out a complete similarity (identical brand) to someone else's brand, criminal provisions can be applied by Article 100 paragraph (1) of Law Number 20 of 2016 concerning Marks and Geographical Indications, which states that:

"Any person who without right uses a Mark which is completely the same as a registered Mark belonging to another party for similar goods and/or services produced and/or traded shall be punished by a maximum imprisonment of 5

¹⁸Syamsudin, M. (2021). The Failure of the Court to Protect Consumers: A Review of Consumer Dispute Resolution in Indonesia. *Journal of Consumer Policy*, 44(1), 117-130.

¹⁹Santoso, E. (2022). Opportunities and challenges: e-commerce in Indonesia from a legal perspective. *Jurnal Penelitian Hukum De Jure*, 22(3), 395-410.

²⁰Sufriadi, Y. (2021, September). Prevention efforts against e-commerce fraud based on Indonesian cyber law. In *2021 9th International Conference on Cyber and IT service management (CITSM)* (pp. 1-6). IEEE.

(five) years and/or a maximum fine a lot of Rp. 2,000,000,000.00 (two billion rupiah)".

Entrepreneurs run their businesses through electronic transactions (e-commerce) by committing counterfeiting or similarities in essence by using brands by imitating well-known brands (well-known marks) that already exist so that the brands on the goods they produce are essentially the same as those on the goods they produce. already well-known and similar goods to give the impression to the public or consumers, as if the goods or services produced are the same as the well-known products (the goods being traded have similarities), then criminal sanctions can be given by the provisions of Article 100 paragraph (2) Law Number 20 of 2016 concerning Marks and Geographical Indications. that is:

"Any person who without right uses a Mark which is substantially similar to a registered Mark belonging to another party for similar goods and/or services produced and/or traded shall be punished by imprisonment for a maximum of 4 (four) years and/or a fine of up to a lot of Rp. 2,000,000,000.00 (two billion rupiah)."

Furthermore, Article 102 of the Trademark and Geographical Indications Law, namely: "Any person who trades goods and/or services and/or products who knows or is reasonably suspected of knowing that the goods and/or services and/or products are the result of a criminal act as intended in Article 100 and Article 101 shall be punished with imprisonment for a maximum of 1 year or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah)".

If goods similar to registered or well-known brands are sold without rights, or if the goods are purchased and then sold, then there is a clear legal threat to this action. However, the criminal act regulated in the Trademark and Geographical Indications Law is a complaint offense. Therefore, new claims can be processed if there is a report submitted by the owner of the relevant mark or parties who are entitled to the mark. The use of a brand without permission by the business actor/producer requires the brand owner to register the brand with the correct rules by existing regulations to avoid problems with the use of marks without permission which have been rife recently. If a brand is used without permission, the brand owner can file a lawsuit against a party who, without the permission of the brand owner, uses a mark that is similar in essence or its entirety for similar goods and services. This application can be submitted to the Commercial Court, in the form of a claim for compensation or termination of actions related to the use of the

mark without permission as stated in Article 83 paragraph (1) of Law Number 20 of 2016 concerning Marks and Geographical Indications.²¹

The use of well-known brands without permission is still widespread by irresponsible business actors, who are only concerned with the results or profits that will be obtained from selling counterfeit branded goods without thinking about the losses that will be incurred by consumers later.

Based on the descriptions above, it can be seen that violations in online transactions, especially in the sale of counterfeit branded goods, fall within the scope of civil law and criminal law. However, to date, there are no statutory regulations that specifically regulate online e-commerce transactions. Legal protection for online shop consumers on social media must be sought from several existing legal sources or still use conventional consumer legal protection rules.²² Apart from that, even though there are regulations that cover online transactions, there are still many weaknesses in their implementation. This is because existing legal protection has not been specifically designed for the needs of online transactions (e-commerce) with different business classifications.

Resolving disputes between consumers who suffer losses from fake branded goods through online transactions through the problems faced by Indonesian consumers, as well as those experienced by consumers in other developing countries, is not just about how to choose goods, but is much more complex than that, namely involving everyone's awareness. parties, both entrepreneurs, government, and consumers themselves, about the importance of consumer protection. In such conditions, consumers often become the object of business actors, and the weaknesses of these consumers are exploited to obtain maximum profits for business actors. To increase consumer protection from such weaknesses, it is necessary to make efforts to empower consumers through an institution mandated by Law Number 8 of 1999 concerning Consumer Protection, namely the National Consumer Protection Agency (BPKN) which has the function of providing advice and considerations to the Government. to develop consumer protection.

Based on Article 1 paragraph (4) of the Republic of Indonesia Government Regulation Number 57 of 2001 concerning the National Consumer Protection Agency, it states that the government creates a body or institution known as the

²¹ Ni Ketut Supasti Dharmawan, "Harmonisasi Hukum Kekayaan Intelektual Indonesia, Swasta Nulus", Denpasar, 2018, p. 52.

²² Perkasa, R. E., Nyoman Serikat, P., & Turisno, B. E. (2016). Perlindungan Hukum Pidana Terhadap Konsumen Dalam Transaksi Jual/Beli Online (E-Commerce) di Indonesia. *Diponegoro Law Journal*, 5(4), p. 1-13.

National Consumer Protection Agency (BPKN). and non-governmental institutions called Non-Governmental Consumer Protection Institutions whose provisions are in Article 1 paragraph (3) of the 2001 Government Regulation

The National Consumer Protection Agency (BPKN) is an agency formed to assist efforts to develop consumer protection. The National Consumer Protection Agency is located in the National Capital and is responsible to the President. The duties according to Article 3 PP Number 57 of 2001 which are assigned to the National Consumer Protection Agency are: Providing advice and recommendations to the government in the context of formulating policies in the field of consumer protection; Conduct research and study of applicable laws and regulations in the field of consumer protection; Research goods and/or services that concern consumer safety; Encourage the development of non-governmental consumer protection institutions; Disseminate information through the media regarding consumer protection and promote a system of support for consumers; Receive complaints regarding consumer and community protection, non-governmental protection organizations, or business actors; and Conducting surveys regarding consumer needs.

Based on Article 2 paragraph (3) of Government Regulation Number 4 of 2019 concerning the National Consumer Protection Agency, it explains that "If necessary, to improve performance, BPKN can form a representative in the provincial capital", therefore BPKN formed a Consumer Dispute Resolution Agency to become representatives in various regions, BPSK is a non-structural institution based in districts and cities which has the function of resolving consumer disputes outside of court.²³ The formation of BPSK was based on the tendency of people to be reluctant to go to court because the position of consumers was socially and financially unequal to business actors. The presence of BPSK was inaugurated in 2001, namely with Presidential Decree Number 90 of 2001 concerning the Establishment of a Consumer Dispute Resolution Agency.²⁴ In Article 1 point (11) of the Consumer Protection Law, it is stated that the Consumer Dispute Resolution Agency (BPSK) is the body tasked with handling and resolving disputes between business actors and consumers.

Republic of Indonesia Government Regulation Number 57 of 2001 concerning the National Consumer Protection Agency, the government also

²³ Rahman A, "Penyelesaian Sengketa Konsumen Melalui Badan Penyelesaian Sengketa Konsumen (BPSK) Kota Serang". *Jurnal Ilmu Hukum*, 2018, 2(1).

²⁴ Billy Christian Antouw, "Kedudukan badan penyelesaian sengketa konsumen (bpsk) sebagai lembaga penyelesaian perkara pelaku usaha dan konsumen." *Lex Privatum* 3.1 (2015).

recognizes the existence of a non-governmental consumer protection agency known as the Non-Governmental Consumer Protection Agency. This non-governmental institution is registered and recognized by the government which has activities regarding consumer protection. Consumers suffering losses can give rise to consumer disputes. In principle, consumers who suffer losses can sue business actors through institutions tasked with resolving disputes between consumers and business actors or through courts within the general judiciary.²⁵

The mechanism for holding business actors accountable is according to the Consumer Protection Law, Article 45 paragraph (2), "Consumer dispute resolution can be achieved through court or outside court based on the voluntary choice of the parties to the dispute." Based on this provision, it can be said that there are three forms of consumer dispute resolution, namely:²⁶ Peaceful settlement by the parties to the dispute without involving the court or a neutral third party, settlement through the court, and settlement outside the court through the Consumer Dispute Resolution Agency.

Based on the Consumer Protection Law, Article 45 paragraph (4), "If an effort to resolve a dispute outside of court has been chosen, a lawsuit through court can only be pursued if the effort is declared unsuccessful by one of the parties or by the parties to the dispute." Dispute resolution at BPSK is a trial without the assistance of a lawyer. Every dispute that comes to this Institution will be prioritized to be resolved through amicable deliberation. The special advantage that BPSK has is that it does not require a long time for procedures or decisions to be issued and is cheap because the trial fees charged are very low and can be afforded by consumers.

Trials at the Consumer Settlement Agency can be carried out in 3 (three) ways, namely: Trial by arbitration, which is a method of resolving civil disputes that is carried out outside the general court and is based on an arbitration agreement made by the parties to the dispute. Conciliation proceedings have many similarities with arbitration, where the dispute is handed over to our party to give their opinion and then convey it to the parties.²⁷ However, the conciliator's opinion is not binding in the same way as an arbitration award is binding. Trial by mediation Mediation is a dispute resolution process with a third party as an intermediary,

²⁵ Rachmadi Usman, "Hukum Ekonomi dalam Dinamika", (Djambatan, 2000). p. 223-224

²⁶Yuanitasari, D., & Kusmayanti, H. (2019). Eksistensi Bpsk (Badan Penyelesaian Sengketa Konsumen) Dalam Pengawasan Pencantuman Klausula Baku Dalam Sistem Hukum Perlindungan Konsumen Indonesia. *Jurnal IUS Kajian Hukum dan Keadilan*, 7(3), 425-435.

²⁷Sargih, R. R, "Faktor-Faktor di Batalkannya Putusan Badan Penyelesaian Sengketa Konsumen Oleh Pengadilan Negeri (Studi Putusan Nomor : 281/Pdt. Sus BPSK/2017/PN. Mdn), 2019, (Doctoral dissertation, Universitas Medan Area).

namely the party who provides input to the parties to resolve their disputes. In contrast to arbitration, in mediation, there is no obligation for the parties to comply with what the mediator suggests.

The decisions taken by the BPSK panel are final and binding, by the settlement method chosen by the consumer, whether mediation, conciliation, or arbitration.²⁸ This means that every party involved in the trial or dispute case submitted has the right to implement the decision without exception. Based on the description above, to avoid fake branded goods being sold through online transactions (e-commerce), consumers must be careful about the clarity and correctness of information from the seller. If a violation or fraud occurs that harms consumers in the context of selling fake branded goods online, the business actor has the right to compensation for the losses experienced by consumers. Consumers can report and sue the local BPSK by following the procedures previously explained.

Conclusion

Legal protection for online shop consumers on social media must be sought from several existing legal sources or still use conventional consumer legal protection rules. Currently, consumer legal protection can refer to several statutory regulations, namely Law Number 8 of 1999 concerning Consumer Protection, Law Number 11 of 2016 concerning Information and Electronic Transactions, and Law Number 20 of 2016 concerning Brands and Indications. Geographical, PP Number 82 of 2012 concerning Implementation of Electronic Systems and Transactions. Even though there are regulations that cover online transactions, there are still many weaknesses in their implementation. This is because existing laws have not been specifically designed for the needs of online transactions (e-commerce) with different business classifications. Then, the form of consumer dispute resolution can be seen from Presidential Decree Number 90 of 2001 concerning the Establishment of a Consumer Dispute Resolution Body. In Article 1 point (11) of the Consumer Protection Law, it is stated that the Consumer Dispute Resolution Agency (BPSK) is the body tasked with handling and resolving disputes between business actors and consumers. and there are 3 forms of consumer dispute resolution, namely peaceful resolution by the disputing parties, resolution through the courts, and the Consumer Dispute Resolution Agency (BPSK). Regarding the

²⁸Sitepu, R. I., & Muhamad, H. (2021). Efektifitas Badan Penyelesaian Sengketa Konsumen (Bpsk) Sebagai Lembaga Penyelesaian Sengketa Konsumen Di Indonesia. *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia*, 3(2), 7-14.

regulation of legal protection for consumers regarding the sale of counterfeit branded goods through online transactions, in the future the government needs to regulate legislation regarding online transactions (e-commerce) specifically, and the need for strict supervision of online buying and selling business actors. Then consumers need the courage to ask business actors to be responsible for the losses that have befallen consumers as a sense of responsibility so that no more consumers feel disadvantaged, and every sanction can be implemented to have a deterrent effect on business actors.

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