

PERTANGGUNGJAWABAN *MARKETPLACE* TOKOPEDIA ATAS PENJUALAN BARANG HASIL PELANGGARAN HAK KEKAYAAN INTELEKTUAL

INTISARI

Cindy Claudya¹, Hariyanto²

Penelitian ini bertujuan untuk mengetahui dasar hukum pertanggungjawaban *marketplace* Tokopedia atas penjualan barang hasil pelanggaran hak cipta dan atau hak merek dan mengetahui upaya negara dalam menanggulangi penjualan barang hasil pelanggaran hak kekayaan intelektual di *marketplace* Tokopedia.

Penelitian ini menggunakan metode pendekatan hukum normatif yang dilakukan dengan cara meneliti data sekunder sebagai data utama yang terdiri dari bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Selain itu, digunakan data primer sebagai data pelengkap yang diperoleh melalui wawancara. Data yang diperoleh kemudian dianalisis secara deskriptif kualitatif dengan menggunakan metode berpikir secara deduktif.

Hasil penelitian ini menunjukkan bahwa pertanggungjawaban *marketplace* Tokopedia atas penjualan barang hasil pelanggaran hak cipta didasarkan pada Pasal 114 Undang – Undang Nomor 28 Tahun 2014 tentang Hak Cipta sedangkan pertanggungjawaban *marketplace* Tokopedia atas penjualan barang hasil pelanggaran hak cipta dan atau hak merek didasarkan pada Pasal 1365, Pasal 1366, dan atau Pasal 1367 ayat (1) Kitab Undang – Undang Hukum Perdata. Ketentuan dan syarat yang dikeluarkan *marketplace* Tokopedia yang menolak tuntutan tanggung jawab atas pelanggaran hak kekayaan intelektual tidak dapat menghindarkan *marketplace* Tokopedia dari pertanggungjawaban. Upaya negara dalam menanggulangi penjualan barang hasil pelanggaran hak kekayaan intelektual di *marketplace* Tokopedia adalah melakukan sosialisasi, diseminasi, promosi kekayaan intelektual serta mengadakan kerjasama dengan *marketplace* Tokopedia.

Kata Kunci: *Marketplace*, Barang Hasil Pelanggaran Hak Cipta, Barang Hasil Pelanggaran Hak Merek, Pertanggungjawaban

¹ Mahasiswa Program Studi Ilmu Hukum Fakultas Hukum Universitas Gadjah Mada Yogyakarta.

² Dosen Departemen Hukum Bisnis Fakultas Hukum Universitas Gadjah Mada Yogyakarta.

TOKOPEDIA MARKETPLACE'S LIABILITY FOR THE SALE OF PRODUCTS RESULTING FROM INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

ABSTRACT

Cindy Claudya³, Hariyanto⁴

This study aims to find out the legal basis for the Tokopedia marketplace's liability for the sale of products resulting from copyright infringement and or trademark rights infringement and to find out the state's efforts in tackling the sale of products resulting from intellectual property rights infringement in the Tokopedia marketplace.

This study uses a normative legal approach carried out by examining secondary data as the main data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. In addition, primary data is used as complementary data obtained through interviews. The collected data were then analyzed descriptively qualitatively by using deductive thinking methods.

The results of this study indicate that the Tokopedia marketplace's liability for the sale of products resulting from copyright infringement is based on Article 114 of Law Number 28 of 2014 concerning Copyrights while the Tokopedia marketplace's liability for the sale of products resulting from copyright or trademark rights infringement is based on Article 1365, Article 1366, and/or Article 1367 paragraph (1) of the Civil Code. The terms and conditions issued by Tokopedia marketplace that rejects claim for liability of intellectual property rights infringement can not avoid Tokopedia marketplace from being held accountable. The state's efforts in tackling the sale of products resulting from intellectual property rights infringement in the Tokopedia marketplace are conducting socialization, dissemination, promotion of intellectual property, and collaborating with the Tokopedia marketplace.

Keywords: Marketplace, Products Resulting From Copyright Infringement, Products Resulting From Trademark Rights Infringement, Liability

³ Student of the Law Study Program at Faculty of Law Gadjah Mada University, Yogyakarta.

⁴ Lecturer in the Department of Business Law at Faculty of Law Gadjah Mada University, Yogyakarta.