

CRIMINAL LIABILITY OF ONLINE MARKETPLACE IN E-COMMERCE TOWARDS SALES OF COUNTERFEIT PRODUCT

Author:

Satria Hutama¹ and Muhammad Fatahillah Akbar²

ABSTRACT

Counterfeit products or “counterfeit trademark goods” shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the right of the owner of the trademark in question under the law of the country. The issues of various e-commerce platform selling counterfeit products is becoming a big concern since most people in a daily basis access this e-commerce platform. On that note, this legal research is written in order to seek a better understanding about the application of criminal liability theory in the case of sales of counterfeit products specifically in online marketplace.

This legal research is conducted through a normative-empirical type of legal research, because not only it is based on assessment of secondary data and literature, but also relies on field research and observation. Upon analyzing the data, this legal research concluded that, The Online Marketplace can be held liable for selling allegedly trademark infringing products through its platform. The Online Marketplace can be sentenced for participation in criminal offence under chapter V of Criminal Code if the Online Marketplace did not show good faith through the “*notice and takedown*” procedure.

Keywords: Counterfeit Products, Online Marketplace, E-Commerce, Criminal Liability

¹ Student of Faculty of Law Universitas Gadjah Mada, International Undergraduate Program (SI IUP 2015)

² Lecturer at Department of Criminal Law, Faculty of Law Universitas Gadjah Mada

*Pertanggungjawaban Pidana Pasar Online di E-Commerce dalam Penjualan
Barang Palsu*

Oleh:

Satria Hutama³ and Muhammad Fatahillah Akbar⁴

INTISARI

Produk palsu atau "barang merek dagang palsu" adalah barang apa pun, termasuk pengemasan, tanpa otorisasi merek dagang yang identik dengan merek dagang yang terdaftar secara sah sehubungan dengan barang-barang tersebut, atau yang tidak dapat dibedakan dalam aspek-aspek penting dari merek dagang tersebut, dan yang dengan demikian melanggar hak pemilik merek dagang yang dipermasalahkan berdasarkan hukum negara. Masalah berbagai platform e-commerce yang menjual produk palsu menjadi perhatian besar karena kebanyakan orang setiap hari mengakses platform e-commerce ini. Pada catatan itu, penelitian hukum ini ditulis untuk mencari pemahaman yang lebih baik tentang penerapan teori pertanggungjawaban pidana dalam hal penjualan produk palsu khususnya di pasar online.

Penelitian hukum ini dilakukan melalui jenis penelitian hukum normatif-empiris, karena tidak hanya didasarkan pada penilaian data sekunder dan literatur, tetapi juga bergantung pada penelitian lapangan dan observasi. Setelah menganalisis data, penelitian hukum ini menyimpulkan bahwa, The Online Marketplace dapat dimintai tanggung jawab atas penjualan produk yang diduga merek dagang yang dilanggar melalui platformnya. Online Marketplace dapat dihukum karena berpartisipasi dalam pelanggaran pidana berdasarkan Bab V KUHP jika Online Marketplace tidak menunjukkan itikad baik melalui prosedur "pemberitahuan dan pencopotan".

Kata kunci: Produk Palsu, Pasar Online, E-Commerce, Tanggung Jawab Pidana

³ Student of Faculty of Law Universitas Gadjah Mada, International Undergraduate Program (SI IUP 2015)

⁴ Lecturer at Department of Criminal Law, Faculty of Law Universitas Gadjah Mada