

Research Horizon

ISSN: 2808-0696 (p), 2807-9531 (e)

Research Horizon

Volume: 05

Issue: 06

Year: 2025

Page: 2875-2888

Citation:

Susianto, Kurniawan, B., Setiyawan, B., Wibowo, H. K., & Musruroh, A. (2025). Legal responsibility of marketplace platforms for counterfeit products based on civil law and ITE law. *Research Horizon*, 5(6), 2875-2888.

Article History:

Received: October 11, 2025

Revised: November 9, 2025

Accepted: December 7, 2025

Online since: December 31, 2025

Legal Responsibility of Marketplace Platforms for Counterfeit Products Based on Civil Law and ITE Law

Susianto^{1*}, Bayu Kurniawan¹, Budi Setiyawan¹, Hary Kesowo Wibowo¹, Ainul Musruroh¹

¹ Universitas Wahid Hasyim, Semarang, Indonesia

*Corresponding author: Susianto (susianto@gmail.com)

Abstract

This study explores the legal responsibility of marketplace platforms for the circulation of counterfeit products within the context of civil regulations, the Electronic Information and Transactions Law, and the Consumer Protection Law. The analysis focuses on normative and conceptual principles, aiming to understand how the principles of civil law, the ITE Law, and the Consumer Protection Law synergize to provide effective legal protection for consumers and brand owners. The method used is normative juridical with a statutory and conceptual approach, examining Article 1365 of the Civil Code, Law Number 11 of 2008, in conjunction with Law Number 19 of 2016, and Law Number 8 of 1999, through the study of documents, academic literature, and related regulations. The results indicate that marketplaces have significant legal responsibility to prevent the circulation of counterfeit products through active supervision, notice and takedown procedures, product verification, and transparent internal policies. Negligence in supervision can lead to civil liability, while implementing corporate social responsibility principles strengthens public trust and legal compliance. Strict legal implementation and consistent internal mechanisms are key to creating safe, fair, and sustainable e-commerce. This study provides a normative basis for strengthening online transaction oversight and policy recommendations for marketplaces in Indonesia.

Keywords

Consumer Protection, Counterfeit Products, ITE Law, Legal Responsibility, Marketplace.

1. Introduction

The rapid development of e-commerce in Indonesia in recent years has brought significant changes to the way people conduct transactions (Arteja & Kansil, 2020; Aziz et al., 2024). Marketplace platforms such as Tokopedia, Shopee, Bukalapak, and Lazada have become primary channels for consumers to obtain a variety of products quickly and efficiently (Brown, 2025). Ease of access, a wide variety of products, and payment flexibility make these platforms highly sought after by the public (Cakrawibawa & Roisah, 2019). However, with the growth of e-commerce, a significant risk has emerged: the circulation of counterfeit or imitation products, which harm consumers (Dianka, 2021). These counterfeit products not only have the potential to cause economic losses for buyers but can also endanger health and safety, depending on the type of goods being traded (Giantama & Kholil, 2020).

In the Indonesian legal context, the issue of marketplace platform liability for the circulation of counterfeit products is becoming an increasingly important concern (Brown, 2025). As transaction facilitators, marketplaces play a dual role: providing a platform for sellers to market products while protecting consumers from harmful trade practices (Cakrawibawa & Roisah, 2019; Utomo et al., 2021). However, the extent to which platforms are responsible for products sold by third parties remains a matter of debate, particularly when there is negligence in overseeing product authenticity. Analysis of legal responsibility for this platform can be carried out through the perspective of Civil Law and laws and regulations related to electronic transactions. From a civil perspective, Article 1365 of the Civil Code (*Kitab Undang-Undang Hukum Perdata*/KUHPerdata) affirms the principle of unlawful acts, stating that any act that causes harm to another party, whether intentional or negligent, gives rise to an obligation to compensate for the loss. In the marketplace context, if a platform fails to maintain reasonable oversight of the products it sells, this can be categorized as negligence, giving rise to civil liability. A marketplace that is negligent, for example by failing to follow up on consumer reports regarding counterfeit products or by not having adequate seller verification mechanisms, could potentially be held liable for losses suffered by buyers.

In addition to civil law, platform liability is also regulated by the Electronic Information and Transactions Law (*Undang-Undang Informasi dan Transaksi Elektronik*/ITE Law), namely Law Number 11 of 2008, in conjunction with Law Number 19 of 2016, which provides a legal framework for electronic transactions and the dissemination of information through online media. The ITE Law emphasizes the obligation of electronic system operators to maintain the integrity, security, and reliability of the system, including facilitating legitimate transactions and preventing the dissemination of illegal content. Counterfeit products sold on marketplaces can be categorized as misleading content or information, making the ITE Law relevant in determining the limits of platform liability for the distribution of such goods.

Furthermore, the Consumer Protection Law (Law Number 8 of 1999) affirms consumers' rights to obtain safe, high-quality products that align with the information provided. This law also emphasizes the obligation of business actors, including marketplace operators, to provide accurate information and ensure that the products sold do not harm consumers. Thus, marketplaces act not only as intermediaries but also have a proactive responsibility to monitor transactions to protect consumers from fraudulent trade practices, including the sale of counterfeit products.

Several studies have highlighted the legal responsibility of marketplace platforms for the circulation of counterfeit products in Indonesia. However, several shortcomings remain, leaving gaps in research. A study by Silalahi and Soemartono (2024) emphasized the liability of sellers for counterfeit skincare products on Shopee,

but did not explore the platform's role as a transaction facilitator in depth. A study by Maulana (2025) showed that the implementation of consumer protection regulations still faces obstacles, including weak oversight and low consumer literacy, but did not address the integration of the ITE Law and the Consumer Protection Law. Giantama and Kholil (2020) and Saudira (2024) emphasized that platform providers are not normatively responsible for seller errors, although negligence in supervision can lead to legal consequences. A study by Puspitasari et al. (2025) addressed the issue of overclaiming products, which poses a risk of surrogate liability, but specific regulatory recommendations are limited. Furthermore, Utomo et al. (2021) found that there are no specific regulations regarding platform liability for counterfeit products, while Arteja and Kansil (2020) noted the lack of clarity in responsive procedures for intellectual property rights complaints. International studies such as Pokrovskaya (2024) highlight the potential of AI technology for detecting copyright infringement, but its application in Indonesia remains minimal. This demonstrates the need for further research to formulate a legal liability model for marketplace platforms, integrating Civil Law, the ITE Law, and the Consumer Protection Law to effectively protect consumers and brand owners (Marlyna & Sardjono, 2019; Mujianto et al., 2023; Aziz et al., 2024; Setianingrum & Putri, 2025; Rahardjo et al., 2025).

Within the framework of this research, it is important to understand how the provisions of civil law, the ITE Law, and the Consumer Protection Law synergize in determining the liability of marketplace platforms. The legal analysis focuses on the normative and conceptual framework, rather than on specific case studies. This research aims to answer fundamental questions: first, how does the civil law basis establish marketplace liability for counterfeit products, second, how the ITE Law and the Consumer Protection Law regulate platform obligations in online transactions, and third, how these legal principles can be conceptually implemented to provide effective protection for consumers and brand owners.

2. Methods

This research adopts a normative juridical method combined with statutory and conceptual approaches to comprehensively examine the legal framework governing marketplace platforms. The analysis is directed toward relevant laws and regulations in order to assess and clarify the scope of legal responsibility borne by marketplace operators in relation to the distribution of counterfeit products within electronic commerce systems. The primary legal materials analyzed include Article 1365 of the Civil Code, which regulates unlawful acts, Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016, as well as Law Number 8 of 1999 concerning Consumer Protection.

Data collection was conducted through an in-depth document study, drawing upon primary legal sources such as statutes and regulations, supported by secondary materials including academic literature, scholarly journals, and other relevant legal references. The analytical process was carried out qualitatively by systematically examining the coherence, consistency, and practical implementation of legal principles related to platform liability in online marketplaces. Through this approach, the study seeks to identify existing legal mechanisms and the interrelationship between regulatory instruments that function to ensure effective consumer protection and legal certainty for marketplace operators. Ultimately, this research aims to provide a strong normative foundation for policy formulation, offer constructive recommendations for regulatory improvement, and contribute to the strengthening of supervision and governance of online transactions in Indonesia.

3. Results and Discussion

3.1. Civil Legal Basis (Article 1365 of the Civil Code)

In Indonesian civil law, liability for losses arising from unlawful acts is expressly regulated in Article 1365 of the Civil Code (*Kitab Undang Undang Hukum Perdata/KUHPerdata*). This article states: “Every unlawful act that causes harm to another person requires the perpetrator to compensate for such loss.” This provision serves as the primary legal basis for assessing the liability of a marketplace when it fails to prevent the circulation of counterfeit products that could potentially harm consumers (Utomo et al., 2021; Aziz et al., 2024). Unlawful acts, as defined in this article, include not only actions that actively harm another party but also negligence that results in harm. In the context of a marketplace, such negligence can include the lack of an effective mechanism to verify product authenticity, failure to follow up on consumer reports of counterfeit goods, or failure to implement adequate internal control procedures.

Article 1365 of the Civil Code provides the basis for claims for damages against negligent parties, including digital platforms (Nanda, 2022; Aziz et al., 2024). A marketplace can be categorized as having committed an unlawful act if: There is an unlawful act or omission, and the marketplace is obligated to supervise and control the products sold on its platform. When counterfeit products circulate, failure to prevent or address this violation can be considered unlawful negligence. Losses to other parties: Consumers who purchase counterfeit products suffer material or immaterial losses, such as loss of money, health risks, or reputational harm. These losses form the basis for claims under Article 1365.

There is a causal relationship between negligence and loss: marketplace liability arises if the loss suffered by the consumer is directly related to the platform’s negligence in monitoring and taking action against the circulation of counterfeit products (Nanda, 2022; Aziz et al., 2024). This article affirms the general principle in civil law that any party committing an unlawful act that results in loss is obligated to compensate for that loss (Utomo et al., 2021). In its implementation in the marketplace, this principle requires platforms to act proactively, for example, with seller verification systems, counterfeit product reporting mechanisms, and policies to terminate stores or seller accounts that violate the rules (Puspitasari et al., 2025).

Several cases in Indonesia illustrate the practice of marketplace legal liability based on the principle of tort: Over the past decade, e-commerce platforms in Indonesia have faced serious challenges related to the circulation of counterfeit products. Tokopedia, for example, was reported in 2020 to have a high volume of counterfeit goods, including clothing, cosmetics, and accessories. According to a U.S. Trade Representative (USTR) report, most of the branded products sold on Tokopedia were not authentic and were clearly labeled as replicas. In this context, Tokopedia acts as an intermediary between buyers and sellers, and potential action could include closing stores found to be selling counterfeit products to prevent consumer losses (Koran Sindo, 2020). Furthermore, Shopee Indonesia faced similar issues in 2021, particularly regarding the circulation of counterfeit vitamins and medicines. Shopee followed up on these findings by closing stores strongly suspected of selling these illegal products. This action reflects the platform’s obligation to uphold product safety and authenticity standards, while protecting consumers from the health and financial risks that may arise from counterfeit products (Dianka, 2021).

Bukalapak is another example demonstrating the high risk of counterfeit product circulation in marketplaces. In 2022, a USTR report noted that a significant portion of branded products sold on Bukalapak were not authentic and were openly labeled as replicas, including clothing, cosmetics, and accessories. Enforcement measures against violating sellers, such as closing problematic stores, are a mechanism platforms can implement to minimize consumer losses and comply with the principle

of legal responsibility (Naufal, 2022). These cases demonstrate that even though marketplaces do not manufacture goods, they play a crucial role as supervisors of product distribution. This obligation includes prevention, supervision, and firm action against violating sellers, so that consumers can be protected from counterfeit products that cause economic losses and potential health hazards.

This civil law basis emphasizes that marketplace responsibility is not merely administrative or an internal policy, but rather a legal obligation arising from the general principle of torts. In other words, even though a marketplace is not a product manufacturer, negligence in monitoring the circulation of counterfeit products can still give rise to liability for damages to consumers. Furthermore, Article 1365 of the Civil Code provides flexibility in assessing negligence. Civil law emphasizes an objective assessment of the reasonableness of actions or procedures that should be implemented by parties with control over the risk. In the marketplace context, this reasonableness standard may include: (1) Developing and implementing procedures for verifying product authenticity, (2) Prompt response to consumer reports regarding counterfeit products, (3) Imposing internal sanctions on violating sellers, and (4) Active monitoring of product types at high risk of counterfeiting (Utomo et al., 2021; Nanda, 2022).

With this principle, the marketplace's responsibility becomes clear: if the platform fails to meet these reasonableness standards and a loss occurs to consumers, the marketplace can be deemed to have committed an unlawful act and is obligated to compensate for the loss, as stipulated in Article 1365 of the Civil Code. Conceptually, Article 1365 of the Civil Code also emphasizes the relationship between unlawful acts, negligence, and compensatory liability, serving as the primary framework for assessing the legal risks faced by marketplaces. This provides a strong normative basis for regulators, academics, and legal practitioners to understand the civil liability of digital platforms, while also providing consumers with a basis for legal claims if harmed (Aziz et al., 2024; Silalahi & Soemartono, 2024).

Thus, Article 1365 of the Civil Code serves not only as a theoretical foundation but also as a legal principle that can be systematically applied to assess marketplace obligations in preventing and addressing the circulation of counterfeit products. It also serves as a primary reference in developing platform guidelines and internal policies to minimize legal risk and protect consumers. In the context of marketplace liability in the distribution of counterfeit products, various studies demonstrate the consistent application of Article 1365 of the Civil Code as the legal basis for civil liability for platform negligence. Silalahi and Soemartono (2024) emphasize that marketplaces, although not manufacturers, have an obligation to ensure the authenticity of products sold on their platforms, particularly against counterfeit skincare brands. This research confirms the principle that negligence by platform supervisors can be classified as an unlawful act if it results in harm to consumers, including financial losses and health risks.

Maulana (2025) adds that Law Number 8 of 1999 concerning Consumer Protection (*Undang-Undang Perlindungan Konsumen/UUPK*) and its derivative regulations serve as the primary legal framework for assessing marketplace liability. Although norms are in place, their implementation still faces obstacles, such as low consumer literacy and weak internal platform oversight. Saudira (2024) emphasizes the importance of a normative approach in evaluating legal protection mechanisms, including the enforcement of consumer rights and proactive marketplace actions in preventing the distribution of counterfeit products. Aziz et al. (2024) showed that marketplace practices that distribute counterfeit branded products often involve trademark infringement and harm to consumers. This is relevant to the principle of Article 1365 of the Civil Code, which requires a causal relationship between negligence and the resulting loss. Puspitasari et al. (2025) also emphasized the

phenomenon of overclaiming skincare products as a form of immaterial loss to consumers, which gives rise to surrogate liability for platform providers.

Empirical research by Giantama and Kholil (2020), Utomo et al. (2021), and Riqoyani (2021) shows that implementing marketplace liability still requires a clear “notice and takedown” procedure to demonstrate the good faith of platform providers. Nanda (2022) added that the circulation of imitation products is increasingly rampant because consumers are encouraged to buy cheap products, so marketplaces have a crucial role in monitoring transactions to prevent violations of laws and regulations. Arteja and Kansil (2020) compared oversight practices in Indonesia and the United States, emphasizing that while Indonesian law does not explicitly require platforms to be responsible for all products, failure to follow up on consumer reports can lead to civil liability. Hutama (2020) even emphasized the possibility of criminal liability if marketplaces fail to demonstrate good faith in procedures for removing counterfeit products.

Furthermore, Setianingrum and Putri (2025) highlighted consumers’ right to accurate product information as stipulated in Article 4(c) of the Consumer Protection Law. Sellers’ failure to comply with this obligation strengthens the marketplace’s liability for failing to enforce internal oversight mechanisms. Marlyna and Sardjono (2019) emphasized that trademark protection does not always guarantee consumer protection, thus, marketplace liability remains relevant as a public protection instrument. Theoretical and legal aspects, as well as previous research, indicate that the legal basis for Article 1365 of the Civil Code is enriched with regulations on consumer protection, trademark rights, and marketplace oversight procedures. Marketplaces are required to act proactively to prevent and take action against the circulation of counterfeit products, either through product verification, complaint procedures, or internal sanctions against sellers, so as to create legal certainty and effective consumer protection.

3.2. ITE Law and Consumer Protection Law

The Electronic Information and Transactions Law (ITE Law) and the Consumer Protection Law are two crucial legal pillars for regulating digital activities and commerce in Indonesia, particularly in the context of electronic transactions and the provision of online services. The ITE Law, regulated by Law Number 11 of 2008 as amended by Law Number 19 of 2016, emphasizes the responsibility of electronic system operators for content uploaded or transactions occurring on their platforms. Article 40 of the ITE Law states that electronic system operators are obligated to take swift action if they become aware of illegal content or transactions. Failure to take immediate and appropriate action can result in legal liability. This places significant legal pressure on online platforms to continuously monitor and supervise all activities within their systems, including commercial transactions and the dissemination of misleading or detrimental information (Giantama & Kholil, 2020; Saudira, 2024). This responsibility is particularly relevant given the rapid growth of e-commerce in Indonesia. Digital platforms such as Shopee, Tokopedia, Lazada, and Bukalapak have become hubs for the trade of various products, including food, medicines, cosmetics, and vitamins. With the large transaction volume and complexity of the products offered, the risk of illegal content or products increases (Utomo et al., 2021; Hayati & Firmanditya, 2023). In this context, the ITE Law serves as a legal basis to ensure that e-commerce platforms are not merely passive intermediaries, but also active supervisors, maintaining the security and legitimacy of transactions taking place within their systems (Lumbanraja & Khasanah, 2022).

Meanwhile, the Consumer Protection Law (Law Number 8 of 1999) emphasizes the responsibility of service providers or sellers to guarantee the safety, authenticity, and quality of products sold to consumers. The articles in this law regulate consumers’ rights to obtain products that are safe, provide clear information, and meet the promises or advertisements made. In practice, this means that if counterfeit

or dangerous products are circulating in online marketplaces, service providers and platforms must take immediate action to protect consumers from potential losses. This obligation extends beyond individual sellers to platforms as part of the e-commerce ecosystem. A concrete example of the application of this principle in Indonesia can be seen in the Shopee Indonesia case in 2021. At that time, Shopee took action against the circulation of counterfeit vitamins and medicines through its platform. This action was taken after identifying an online store strongly suspected of selling these illegal products (Jasmine et al., 2022). Shopee closed the store in question and collaborated with authorities to pursue the case through legal channels. This step represents a concrete implementation of the combined legal responsibilities stipulated in the Electronic Information and Transactions (ITE) Law and the Consumer Protection Law: the ITE Law requires platforms to act quickly in responding to illegal content, while the Consumer Protection Law requires service providers to guarantee the safety and authenticity of the products sold. This incident also demonstrates the importance of effective monitoring mechanisms and reporting systems on e-commerce platforms to proactively prevent similar violations.

The Shopee case also provides an important lesson for other electronic system providers: negligence in monitoring transactions can potentially lead to significant legal liability (Noviyanti, 2025). In addition to closing suspected stores, platforms need to develop clear internal procedures for handling consumer reports and ensuring compliance with applicable regulations. This includes supplier verification, product quality monitoring, and consumer education about the risks of counterfeit products. A combination of legal obligations and sound risk management practices is key to minimizing consumer losses while protecting the platform's reputation. In the context of e-commerce, the responsibility of electronic system providers to ensure transaction security and protect consumers from illegal and counterfeit products becomes even more crucial. The Electronic Information and Transactions Law, specifically Article 40, stipulates that electronic system providers can be held liable if they fail to promptly respond to information about illegal content or transactions. This becomes relevant when combined with the Consumer Protection Law (Law Number 8 of 1999), which stipulates that service providers must guarantee the safety and authenticity of marketed products, provide accurate information to consumers, and fulfill other legal obligations related to consumer rights.

In a legal context, Silalahi and Soemartono (2024) highlighted the liability of entrepreneurs related to the sale of counterfeit skincare brands, specifically the case of counterfeiting the Scarlett brand on Shopee. This study shows that although the Indonesian legal framework regulates consumer protection and trademark rights, its implementation still faces challenges, including a lack of active oversight by platform operators. Similarly, Maulana (2025) emphasized that although legal protection against the circulation of counterfeit products in the digital market has been regulated normatively, its implementation still faces obstacles such as low consumer literacy, weak law enforcement, and minimal oversight of online seller activities.

Several studies have further examined the legal responsibilities of platform providers. Giantama and Kholil (2020) and Saudira (2024) emphasize that electronic system providers cannot automatically be held liable for errors made by users or sellers. However, they have an obligation to monitor platform activity and take swift action if illegal products are discovered. Utomo et al. (2021) add that this responsibility is crucial to prevent trademark owners' rights from being harmed by the circulation of counterfeit products.

Cases related to overclaiming in skincare products also demonstrate the importance of oversight. Puspitasari et al. (2025) emphasize that excessive product claims can cause material and non-material harm to consumers, including a loss of trust in the product. This study recommends specific regulations governing platform responsibilities, including strict verification and regular inspections of marketed

products, as well as an active role for the Indonesian Food and Drug Authority (*Badan Pengawas Obat dan Makanan*/BPOM) in oversight.

Several other studies highlight aspects of consumer protection and the right to information. Setianingrum and Putri (2025) show that consumers' right to product information on Shopee is often ignored, despite the Consumer Protection Law clearly regulating the right to accurate information (Article 4 letter c). This raises the risk of consumers receiving counterfeit products or receiving misleading information. Nanda (2022) also states that although positive law does not stipulate specific responsibilities for platform operators regarding the circulation of counterfeit products, they still have an obligation to ensure that activities on the platform comply with applicable regulations. Furthermore, international research demonstrates similar practices in e-commerce oversight. Arteja and Kansil (2020) compared Indonesia with the United States and found that platform operators in both countries are not liable unless they directly sell illegal products, provided they have taken steps in accordance with legal procedures, such as the "notice and takedown" mechanism. This underscores the importance of good faith and a swift response from platform operators in addressing counterfeit product cases.

The literature indicates a gap between regulations and practice. While the ITE Law and the Consumer Protection Law provide a legal basis for prosecuting negligent platform operators, significant implementation challenges remain. Consumer protection requires active platform oversight, collaboration with relevant authorities, and adequate consumer literacy to ensure that their rights, such as product safety, authenticity, and accurate information, are fully met (Hutama, 2020; Wilson, 2022; Lumbanraja & Khasanah, 2022). Cases in Indonesia emphasize that legal responsibility lies not only with sellers but also with platforms that facilitate transactions. Therefore, oversight and regulatory strategies need to be continuously strengthened to ensure a safe and fair e-commerce ecosystem for all parties.

3.3. Implementation of the Law and Potential Liability

Indonesia's civil law and the Electronic Information and Transactions Law (UU ITE) provide a legal framework that consumers or brand owners can use to sue marketplaces or electronic platform operators for the distribution of counterfeit products. Civil law provides the basis for lawsuits related to breach of contract, unlawful acts, or losses arising from electronic transactions, while the ITE Law regulates the obligations of Electronic System Operators (ESEs) to facilitate transactions, maintain security, and monitor content circulating on their platforms. In theory, if a marketplace is negligent in supervising sellers or fails to act on consumer reports, it can be held legally liable. However, the application of these principles in practice relies heavily on proving two key elements: platform knowledge and negligence (Giantama & Kholil, 2020; Arteja & Kansil, 2020).

First, "knowledge" relates to the extent to which the platform was aware of the sale of counterfeit products. Marketplaces with effective monitoring mechanisms, seller verification systems, and consumer complaint handling procedures are considered more aware of potential violations. Conversely, if a platform lacks adequate oversight procedures or fails to respond appropriately to consumer reports, it can be presumed to have known, or at least should have known, of the violation. Second, "negligence" emphasizes the platform's actions or inaction in enforcing anti-counterfeit policies and removing violating content. Marketplaces that proactively respond to reports, enforce internal regulations, and implement "notice and takedown" procedures are less likely to be found negligent and held legally liable (Arteja & Kansil, 2020; Utama, 2020).

Examples from overseas demonstrate how the principle of knowledge and negligence is applied in the context of civil law and trademark rights. In 2025, Amazon faced a lawsuit from a consumer who claimed serious allergic reactions and property damage from counterfeit products sold on its platform (Brown, 2025). This

case highlighted the liability risks for marketplaces that allow third-party sellers to offer counterfeit products. The lawsuit emphasized that even though Amazon does not directly manufacture or sell goods, negligence in maintaining oversight and responding to consumer complaints can be grounds for legal liability. In this context, a “notice and takedown” system is crucial; platforms that promptly respond to consumer reports and promptly remove counterfeit products can reduce the risk of legal liability.

Another relevant case is *Tiffany and Co. v. eBay* in 2008 (Sommers & Kilaru 2010). Tiffany sued eBay for selling counterfeit goods using its trademark. The court ruled that eBay was not liable because it lacked specific knowledge of the trademark infringement. This ruling emphasizes the “safe harbor” principle often applied in various jurisdictions: platforms are not held liable for third-party infringement as long as they lack specific knowledge of the infringement and have provided a reasonable complaint mechanism for trademark holders. In other words, platform liability is not absolute; it depends on whether the platform makes adequate efforts to uphold the rights of consumers and trademark owners.

These cases provide important lessons for law enforcement in Indonesia. Marketplaces seeking to minimize the risk of liability need to implement a rigorous seller verification system, develop clear product guidelines, and respond promptly to consumer complaints. The Electronic Information and Transactions (ITE) Law stipulates the obligations of marketplaces (Penyelenggara Sistem Elektronik/PES) to provide a safe platform for users and take action against illegal or harmful content, including counterfeit products. While civil law allows consumers to sue for damages, these rights can only be enforced if it is proven that the marketplace had knowledge of the counterfeit product and was negligent in taking reasonable steps. This is relevant to the principle of surrogate liability, where platform operators can be held liable if their negligence contributed to the loss of consumers or brand owners (Utomo et al., 2021; Puspitasari et al., 2025).

Furthermore, the rapid development of e-commerce and the rise of international platforms in Indonesia require more specific legal adaptations. Best practices from the Amazon and eBay cases demonstrate that marketplace legal liability depends not only on the law but also on the design and implementation of clear internal policies, trademark enforcement mechanisms, and the integration of monitoring technology. For example, platforms can utilize counterfeit product detection algorithms or automated reporting systems to enhance monitoring effectiveness. Such strategies can reduce the risk of negligence and improve compliance with consumer regulations. Empirical and legal studies in Indonesia show that although Law Number 8 of 1999 concerning Consumer Protection and Law No. While Law Number 11 of 2008 concerning Electronic Information and Transactions provides an adequate legal basis, its implementation still faces obstacles, including poor oversight of online sellers, weak law enforcement, and low consumer literacy regarding their rights (Maulana, 2025; Setianingrum & Putri, 2025). Research on skincare products on Shopee, for example, revealed numerous consumer rights violations related to product information, overclaims, and brand counterfeiting, where the platform is obligated to ensure all transactions do not violate applicable regulations (Riqoyani, 2021; Utomo et al., 2021).

Furthermore, studies show that platform providers can be considered negligent if they fail to monitor the distribution of goods, fail to verify the legality of sellers, or fail to follow up on consumer reports regarding counterfeit products (Arteja & Kansil, 2020; Nanda, 2022; Aziz et al., 2024). This concept aligns with international law, where platforms unaware of specific violations can be exempt from liability, but if proven negligent or neglecting counterfeit removal procedures, they can be held liable (Wilson, 2022).

Theoretically, marketplace platform liability can be justified through the principle of surrogate liability, where the party providing the transaction platform also has an obligation to minimize the risk of legal violations by its users (Puspitasari et al., 2025). This also reflects the principle of due diligence in e-commerce, which requires platforms to actively conduct product verification, seller audits, and digital content monitoring to protect consumers (Marlyna & Sardjono, 2019; Lumbanraja & Khasanah, 2022). In addition to consumer protection, this step also aligns with brand owners' interests in preventing economic and reputational losses due to the distribution of counterfeit products (Hayati & Firmanditya, 2023; Saudira, 2024).

International comparative studies, such as the Amazon case above, confirm that marketplace liability models vary, but the general principle is the need for a rapid response and procedures for removing counterfeit goods upon notification. In Indonesia, this regulation still emphasizes the involvement of the rights owner in initiating legal proceedings, which is one of the obstacles to law enforcement against counterfeit cosmetics or health products (Soraya & Marlyna, 2021; Marlyna & Daraini, 2021). Therefore, the literature emphasizes the importance of integrating digital oversight mechanisms, product certification, and active collaboration between the government, platform providers, and the community to create a safe, fair, and transparent e-commerce ecosystem (Ibrahim & Sugiyono, 2023; Pokrovskaya, 2024; Sudirman et al., 2025).

In addition to legal aspects, social dimensions and consumer behavior influence marketplace risk and accountability. Consumer legal awareness, sensitivity to the risks of counterfeit products, and ethical behavior in selecting goods play a crucial role in curbing the circulation of illegal products (Hartono et al., 2018; Mayasari et al., 2022). Therefore, legal protection strategies must be combined with consumer education and strengthened complaint mechanisms to increase seller compliance and the effectiveness of marketplace policies (Lumbanraja & Khasanah, 2022; Setianingrum & Putri, 2025).

This demonstrates that marketplace accountability is not merely a legal mechanism but also an integral part of ethical, transparent, and consumer-protection-oriented digital governance. Implementing the "notice and takedown" principle, product verification, regular monitoring, and collaboration between regulators, marketplaces, and the public can provide a holistic solution to combat the circulation of counterfeit products, while also providing a solid theoretical basis for suing platforms in cases of negligence (Silalahi & Soemartono, 2024; Puspitasari et al., 2025). The combination of civil law and the ITE Law provides a strong basis for consumers and brand owners to sue negligent marketplaces. However, international cases demonstrate that the success of a lawsuit depends heavily on proving that the platform had knowledge or negligence in carrying out its responsibilities. Marketplaces that respond quickly to reports, implement anti-counterfeit policies, and ensure effective oversight systems tend to reduce legal liability, while platforms that fail to implement these measures risk facing significant legal action. Therefore, regulatory adaptation, enhanced oversight mechanisms, and collaboration between the government, brand owners, and platform operators are key to creating a safe, fair, and protected e-commerce ecosystem for consumers.

4. Conclusion

Marketplaces have a significant legal responsibility to prevent the circulation of counterfeit products through active oversight, rapid response mechanisms to consumer reports, and clear and transparent internal policies. Legally, platform negligence in monitoring electronic transactions can give rise to civil liability, as stipulated in Article 1365 of the Civil Code, the Electronic Information and Transactions Law, and Law Number 8 of 1999 concerning Consumer Protection. Empirical and legal studies show that consumers have the right to seek

compensation if platforms fail to fulfill their oversight obligations, while platforms that take proactive measures, for example, conducting product verification, facilitating “notice and takedown” procedures, and conducting regular monitoring, can effectively minimize legal and reputational risks.

Furthermore, marketplace legal responsibility is also related to the application of corporate social responsibility principles in the digital context. By ensuring that marketed products are safe, legal, and meet their claims, platforms not only protect consumers but also strengthen public trust in the e-commerce ecosystem. Strict legal implementation and consistent internal policies demonstrate that digital compliance and active oversight are crucial elements of modern e-commerce. Thus, marketplaces are not merely transaction facilitators but also act as legal risk controllers, consumer rights protectors, and enforcers of digital business ethics standards. This emphasizes that platform legal responsibilities have broad strategic, legal, and social implications, which must be consistently implemented to create fair, safe, and sustainable online commerce. This study is limited to a normative legal analysis and does not incorporate empirical data from specific marketplace platforms or judicial decisions. Future research is recommended to employ empirical or comparative approaches, including case studies or cross-country analysis, to further assess the effectiveness of marketplace compliance mechanisms in preventing counterfeit product circulation.

References

- Arteja, H., & Kansil, C. S. T. (2020). Analisis pengawasan penyelenggara perdagangan melalui sistem elektronik (PPMSE) dalam mengawasi fenomena barang palsu di platform marketplace (studi perbandingan di Indonesia dan Amerika Serikat). *Jurnal Hukum Adigama*, 3(2), 777–800.
- Aziz, T. S., Terubus, T., Sudjai, S., Darmawan, D., & Putra, A. R. (2024). Perlindungan dan penegakan hukum terhadap pemalsuan merek terkenal yang terjadi di marketplace. *Jurnal Ekonomi dan Bisnis*, 14(2), 12–18.
- Brown, D. (2025). *Amazon Sued for Allegedly Allowing Fake Products That Harmed Consumers*. Retrieved on July 15, 2025, from <https://saalawoffice.com/amazon-sued-for-allegedly-allowing-fake-products-that-harmed-consumers>
- Cakrawibawa, R. A., & Roisah, K. (2019). The consumer protection issues toward the trademark circulation of the counterfeit health products. *Law Reform Jurnal Pembaharuan Hukum*, 15(1), 1–11.
- Dianka, A. A. (2021). *Penjual vitamin dan obat palsu marak di e-commerce, Shopee tempuh jalur hukum*. TrenAsia. Retrieved on July 4, 2025, from <https://m.trenasia.id/amp/beredar-penjual-vitamin-dan-obat-palsu-shopee-siap-tempuh-jalur-hukum>
- Giantama, A. N., & Kholil, M. (2020). Pertanggungjawaban hukum penyedia platform terhadap barang yang melanggar merek dalam marketplace. *Jurnal Privat Law*, 8(1), 21–27.
- Hartono, S., Farradia, Y., & Agustinus Hariadi, D. P. (2018). Modeling of determinants’ influence on consumer behavior towards counterfeit products in Indonesia and Malaysia. *Malaysian Journal of Consumer and Family Economics*, 32(3), 412–435.
- Hayati, A. N., & Firmanditya, N. (2023). Ulasan palsu di platform digital: Perlindungan hukum bagi konsumen dan pelaku usaha. *Masyarakat Indonesia*, 49(1), 123–134.
- Hutama, S. (2020). *Criminal liability of online marketplace in e-commerce towards sales of counterfeit product*. Yogyakarta: Universitas Gadjah Mada (Doctoral dissertation).
- Ibrahim, M., & Sugiyono, H. (2023). Law enforcement against business entities that import mobile phones unlawfully: Comparative study in Indonesia, Malaysia, and Japan. *Jurnal Suara Hukum*, 5(2), 225–251.
- Jasmine, A., Amalia, P., & Muchtar, H. N. (2022). Tanggung jawab platform marketplace terhadap penjualan ponsel (mobile phone) ilegal berdasarkan hukum nasional. *Masalah-Masalah Hukum*, 51(4), 378–389.

- Koran Sindo. (2020). *Jangan tergiur produk murah di e-commerce, waspadai barang palsu*. SINDOnews. Retrieved on July 6, 2025, from <https://lifestyle.sindonews.com/berita/1527481/186/jangan-tergiur-produk-murah-di-e-commerce-waspada-barang-palsu>
- Lumbanraja, A. D., & Khasanah, D. R. A. U. (2022). The urgency of product authentication validation features in providing legal protection against copyright infringement in e-commerce. *Review of Economics and Finance*, 20(1), 128–132.
- Margaretan, K. (2023). *Perlindungan hukum bagi konsumen dalam pemberian diskon palsu pada marketplace Shopee Mall*. Yogyakarta: Universitas Atma Jaya Yogyakarta (Doctoral dissertation).
- Marlyna, H., & Daraini, F. (2021). Counterfeit medicine cases in indonesia as trademark infringement cases: analyzing 2011–2016 regulations and court decisions on illegal/counterfeit medicine. In *Challenges of Law and Governance in Indonesia in the Disruptive Era I* (pp. 109–126). New York: Nova Science Publisher Inc.
- Marlyna, H., & Sardjono, A. (2019). Does the trademark protection regulation protect consumers against counterfeit products? Analyzing the theories of trademark and Indonesian trademark law. *Pertanika: Journal of Social Sciences and Humanities*, 27(3), 1865–1877.
- Maulana, I. (2025). Perlindungan hukum terhadap konsumen atas peredaran produk palsu di pasar digital. *JUKAHU: Jurnal Kajian Hukum*, 1(1), 9–16.
- Mayasari, I., Haryanto, H. C., Wiadi, I., Wijanarko, A. A., & Abdillah, W. (2022). Counterfeit purchase intention of fashion brands: The personal values and social aspect of consumers as determinants. *Gadjah Mada International Journal of Business*, 24(1), 56–59.
- Mujianto, M., Sibuea, H. P., & Kuba, S. (2023). Implementation of restorative justice in settlement of hate speech cases through social media in the ITE law. *Research Horizon*, 3(2), 98–107.
- Nanda, W. M. (2022). Tanggung jawab penyelenggara platform atas peredaran produk imitasi pada marketplace. *Jurnal Pamator: Jurnal Ilmiah Universitas Trunojoyo*, 15(2), 456–459.
- Naufal, I. (2022). *Shopee, Tokopedia dan Bukalapak tercatat daftar e-commerce barang palsu*. Inilahnjateng. Retrieved on July 10, 2025, from <https://inilahjateng.com/shopee-tokopedia-dan-bukalapak-tercatat-daftar-e-commerce-barang-palsu>
- Noviyanti, D. (2025). Legal protection analysis of personal data breaches in Shopee Paylater consumer loan transactions. *Journal of Law and Economics*, 4(1), 39–49.
- Pokrovskaya, A. V. (2024). Intellectual property rights infringement on e-commerce marketplaces: Application of AI technologies, new challenges. In *E3S Web of Conferences* (Vol. 522, p. 01057). Prancis: EDP Sciences.
- Puspitasari, H., Adrian, A., Pasha, A. M., Sariwating, B. A., Rayyan, M., & Ihsan, A. E. (2025). Tanggung jawab marketplace terhadap penipuan produk skincare overclaim: Analisis hukum dan implementasi. *Jurnal Legislatif*, 4(3)144–159.
- Rahardjo, T. M. S., Noerdjaja, H., Pambudi, G. E., & Prabowo, M. S. (2025). Consumer protection legal frameworks in indonesia: the challenges of e-commerce and data privacy. *Research Horizon*, 5(2), 119–128.
- Riqoyani, K. A. (2021). *Perlindungan konsumen terhadap pembelian produk skincare palsu melalui marketplace Shopee*. Semarang: Universitas Islam Sultan Agung Semarang (Doctoral dissertation).
- Saudira, R. A. (2024). Pertanggungjawaban hukum penyedia platform terhadap barang yang melanggar merek dalam perdagangan online marketplace (studi kasus: penyelenggara perdagangan online dan isu pemalsuan produk). *Innovative: Journal of Social Science Research*, 4(2), 5195–5210.
- Setianingrum, R. B., & Putri, D. N. (2025). Perlindungan hukum hak konsumen atas informasi produk di marketplace Shopee. *Media of Law and Sharia*, 6(3), 171–190.
- Silalahi, P. H., & Soemartono, G. P. (2024). Pertanggungjawaban pengusaha atas produk skincare merek palsu pada marketplace Shopee. *Ranah Research: Journal of Multidisciplinary Research and Development*, 6(4), 617–628.
- Sommers, M., & Naresh K. *The Second Circuit's Decision in Tiffany v. eBay*. Retrieved on July 9, 2025, from <https://www.finnegan.com/en/insights/articles/the-second-circuit-s-decision-in-tiffany-v-ebay.html>

- Soraya, A. D., & Marlyna, H. (2021). Counterfeit cosmetic cases in indonesia: why not trademark infringements?. In *Challenges of Law and Governance in Indonesia in the Disruptive Era I* (pp. 93-107). New York: Nova Science Publisher Inc.
- Sudirman, L., Sohngeng, N., Agustianto, Agustini, S., & Nurlaily. (2025). Legal protections against unfair competition in e-commerce: Analysis of Indonesian and Thailand framework adequacy. *Jurnal Hukum Novelty*, 16(1), 27–42.
- Syatar, A., Abubakar, A., Fauzan, A., & Kurniati, Hukpar, D. S. (2023). Consequences for counterfeiting and distributing of counterfeit vaccines under Jināyah and criminal law: A comparative study. *Al Manahij Jurnal Kajian Hukum Islam*, 17(1), 45-49.
- Utomo, B. L. P., Sudaryat, S., & Suryamah, A. (2021). Perlindungan hukum bagi pemilik merek dagang atas penjualan barang palsu pada platform marketplace. *Wajah Hukum*, 5(1), 70–76.
- Wilson, J. M. (Ed.). (2022). *Brand protection and the global risk of product counterfeits: a total business solution approach*. London: Edward Elgar Publishing.

Acknowledgment

We gratefully acknowledge the contributions of individuals who supported the completion of this article.

Funding Information

This research did not receive any funding.

Conflict of Interest Statement

The authors declare that there is no conflict of interest.

Ethical Approval and Originality Statement

Ethical approval was obtained for this study. The manuscript represents original work and has not been previously published, nor is it under consideration by another journal.

Data Disclosure Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.



Copyright: © 2025 by the authors.

This work is licensed under the terms and conditions of the Creative Commons Attribution-ShareAlike 4.0 International License

(<https://creativecommons.org/licenses/by-sa/4.0/>).