

LEGAL RESPONSIBILITY OF MARKETPLACES FOR ILLEGAL PRODUCTS: A COMPARATIVE STUDY BETWEEN INDONESIA AND THE EUROPEAN UNION

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Abstract

Advances in information technology have driven the digital transformation of trade through the presence of marketplaces, namely online platforms that facilitate interactions between sellers and buyers without geographical boundaries. However, along with this growth, serious legal challenges have also emerged, namely the increasing circulation of illegal products such as cosmetics without distribution permits, pirated goods, and illegal drugs. This problem raises questions about the legal responsibility of marketplaces for the circulation of illegal products sold by third parties through their platforms. This study aims to analyze and compare the regulation of marketplace legal responsibility for illegal products in Indonesia and the European Union. This study uses a normative method with a legislative approach and a comparative approach. The results of the study show that regulations in Indonesia, such as PP No. 80 of 2019 and Law No. 8 of 1999 concerning Consumer Protection, still positions marketplaces as passive electronic system organizers who do not have full responsibility for the legality of products. This results in weak legal protection for consumers. In contrast, the European Union through the Digital Services Act (2022) has established active responsibility for marketplaces, including the obligation to Know Your Business Customer (KYBC), a notice and action system, and administrative sanctions for violations. According to Cauffman (2022), “The Digital Services Act transforms online platforms from neutral facilitators to duty bearers with concrete responsibilities.” This study concludes that Indonesia needs to reform e-commerce regulations by adopting stronger consumer protection principles as implemented in the European Union. The main recommendation of this study is the establishment of specific regulations that explicitly stipulate the legal responsibility of marketplaces for the circulation of illegal products in the digital space.

Keywords: *Marketplace, Illegal Products, Legal Responsibility, Digital Services Act, Consumer Protection*

INTRODUCTION

The development of information and communication technology has brought about major changes in the global trade landscape, including in Indonesia. Digitalization has given birth to various forms of electronic transactions (e-commerce), one of the most dominant forms of which is the marketplace, a digital platform that brings together sellers and buyers in one integrated system. Marketplaces such as Tokopedia, Shopee, Bukalapak, and Lazada have become the main pillars of online trade in Indonesia. This phenomenon also occurs globally, including in the European Union through platforms such as Amazon, eBay, and AliExpress.

Amidst this rapid development, a major challenge has also emerged, namely the circulation of illegal products through the marketplace. Illegal products can be counterfeit goods, drugs without distribution permits, cosmetics without BPOM certification, products resulting from violations of intellectual property rights (HAKI), to goods that are prohibited by law such as firearms, narcotics, and pornographic products. This problem not only harms consumers, but also damages a fair market and undermines public trust in the e-commerce system.

According to Delgado (2023), the increase in digital transactions has also been accompanied by an increase in the trade in illegal products, most of which are marketed through marketplaces because these platforms are considered “safe” for digital criminals. He said that “the anonymous and decentralized nature of online marketplaces makes them fertile grounds for the circulation of counterfeit and unauthorized goods.”

Legal issues arise when marketplaces as platform providers often disclaim responsibility for illegal products sold by third-party sellers. They hide behind the principle of being a “neutral intermediary” or intermediary who only facilitates transactions, not as a business actor who is legally responsible for the quality and legality of the goods

traded. This view is supported by the legal approach that has been adopted in the Indonesian legal system, which has not expressly regulated the legal responsibility of marketplaces for illegal goods.

In fact, in practice, the marketplace has technical control over the activities taking place on its platform, including the ability to filter, delete, and even prevent the uploading of products that are suspected of being illegal. This shows that the marketplace is no longer just a passive facilitator, but has become an active economic actor that plays an important role in the digital ecosystem. Mahendra (2022) emphasized that "in the context of modern e-commerce, marketplace providers have a moral and legal responsibility to ensure that products traded through their platforms comply with the provisions of laws and regulations."

At the international level, the European Union is one of the regions that is responsive to this problem. Through its latest policy, the Digital Services Act (DSA) which was passed in 2022, the European Union has set stricter regulations on the responsibilities of digital platforms, including marketplaces. The DSA regulates the obligations of marketplaces to verify sellers (Know Your Business Customer – KYBC), provide a reporting system and remove illegal products, and apply the principle of due diligence in managing marketed content and products.

Unlike the legal system in Indonesia which has not explicitly placed legal responsibility on the marketplace in terms of the distribution of illegal products, the European Union through the DSA places significant pressure on the active role of the marketplace in maintaining the legality of traded products. Cauffman (2022) states that "the EU's Digital Services Act marks a paradigm shift by transforming platforms from passive intermediaries into accountable economic actors."

From this comparison, there is an urgency to further examine how marketplace legal liability is regulated in Indonesia and the European Union, and how Indonesia can learn from the European Union's legal practices to create a fairer regulatory system that protects consumers. This comparative study is important to strengthen the consumer protection system, encourage responsible business practices, and address legal challenges in the digital era.

Based on this background, this study will examine in depth how the legal responsibility of the marketplace for illegal products is regulated in Indonesia and the European Union, and analyze the differences and implications for the development of the national legal system.

LITERATURE REVIEW

Literature review is an important theoretical basis in scientific research, because it provides an understanding of basic concepts, relevant legal theories, and a review of existing regulations. In the context of this research, there are several main topics that serve as the main references, namely: (1) the concept of marketplace and its legal character, (2) the definition of illegal products and their legal implications, (3) the theory of legal responsibility, and (4) a review of the legal systems in Indonesia and the European Union related to marketplaces and consumer protection.

1. Marketplace and its Legal Position

Marketplace is a form of digital platform in an e-commerce system that brings together sellers and buyers online without physical intermediaries. According to Kapoor (2021), marketplace can be categorized as an "intermediary service provider", namely a service provider that acts as an intermediary in transactions between business actors and consumers. In Indonesia, the position of the marketplace is regulated in PP No. 80 of 2019 concerning Trading Through Electronic Systems, which states that the marketplace is an organizer of an electronic system that facilitates transactions between business actors and consumers. However, this regulation does not explicitly provide legal responsibility for the content or legality of products sold by third parties.

In contrast, in the international legal literature, there has been a tendency to view marketplaces as active entities. Savin (2021) states that "online platforms are no longer passive channels, but active participants in shaping digital markets," so it is no longer sufficient if their responsibilities are only formal.

2. Illegal Products in Marketplace

Illegal products in this context refer to goods or services that are distributed illegally. Examples include drugs without a distribution permit, counterfeit cosmetics, pirated goods, or goods that are prohibited by the state from being traded. According to Delgado (2023), the distribution of illegal products through the marketplace is becoming increasingly complex due to the digital nature that makes it difficult for supervisory authorities to trace the source and perpetrators.

This phenomenon has become a global concern because illegal products not only harm consumers economically, but also endanger public safety and health. These products often involve violations of intellectual property rights (IPR), which negatively impacts the healthy growth of the digital economy.

3. Theory of Legal Responsibility

Legal liability in the context of the marketplace can be analyzed through several theories, including:

- Contractual liability**, namely obligations arising from agreements between the platform and users.
- Tort liability**, namely responsibility for losses due to negligence or unlawful acts.
- Strict liability**, where responsibility is imposed without the need to prove the element of fault.

Bradshaw, Millard, & Walden (2011) argue that in the digital world, the form of legal responsibility must develop along with the control and power held by the platform: "The more a platform controls its ecosystem, the more it should be held responsible for harms resulting from its use."

In Indonesia, the concept of marketplace responsibility is still weak because the platform is considered only as a "transaction bridge," not a business actor who is directly responsible for the legality of the product (Putra, 2022).

4. Marketplace Regulation in Indonesia

Indonesia's positive law regarding e-commerce is spread across several regulations:

- Law No. 8 of 1999 concerning Consumer Protection
- Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE)
- PP No. 80 of 2019
- Minister of Trade Regulation No. 50 of 2020

However, none of them have explicitly regulated the legal responsibility of the marketplace for illegal products. Supervision and reporting still depend on the initiative of consumers or external parties, not the preventive obligations of the marketplace itself. In this context, Wulandari (2020) noted that "the absence of legal sanctions against marketplaces that allow illegal products to circulate creates a vacuum of legal protection for consumers."

5. Regulation and Policy in the European Union

The European Union has updated its legal framework through the Digital Services Act (DSA) in 2022. This regulation is a response to various legal challenges in the digital world, including the issue of digital platform liability. Some of the key points of the DSA include:

- Marketplaces are required to verify sellers (KYBC - Know Your Business Customer).
- Marketplaces are required to provide a complaint system and rapid removal for illegal products/content.
- The Marketplace is legally liable if it fails to take action after receiving a notification of infringement.

According to Cauffman (2022), "DSA transforms online platforms from neutral facilitators to duty bearers with concrete responsibilities." DSA also introduced a compliance officer system and administrative fines that can be imposed on negligent platforms.

Table 1. Comparison of Legal Models: Indonesia vs. European Union

Aspect	Indonesia	European Union
Main regulations	Consumer Law, ITE Law, PP 80/2019	Digital Services Act (2022)
Legal position of the marketplace	Passive intermediary	Active intermediary
Verification obligation	Not mandatory	Mandatory (KYBC)
Sanctions for negligence	Not yet clear	Strict (administrative and criminal sanctions)
Precautionary principle	Not set yet	Fully implemented

This comparison shows that Indonesia is still lagging behind in regulating marketplace legal responsibility compared to the legal system in the European Union. Therefore, there needs to be a reformulation of national law to adjust to digital developments and international standards.

WRITING METHOD

The writing method or legal research method is a crucial element in a scientific work because it determines the approach, data sources, and analysis techniques used in the process of examining legal problems. This study examines the legal responsibility of the marketplace for illegal products with a comparative legal approach between Indonesia and the European Union, so that the methodological approach used must reflect the legal, systematic, and comparative nature.

1. Types of research

The type of research used in this scientific work is normative legal research (normative legal research). According to Soerjono Soekanto and Sri Mamudji (2013), normative legal research is a research conducted on primary and secondary legal materials, with the approach of legislation and legal theory as the basis for analysis. In this study, the study was not conducted on empirical objects, but on legal norms that regulate the legal responsibility of the marketplace, both in Indonesia and the European Union. The aim is to analyze the conformity between legal norms and practices in consumer protection against illegal products circulating in the marketplace.

2. Research Approach

This research uses two main approaches:

a. Legislative Approach (Statute Approach)

This approach is used to examine and review various regulations in force, both in Indonesia and the European Union, relating to e-commerce, marketplaces, consumer protection, and illegal products. According to Peter Mahmud Marzuki (2005), the legislative approach is the initial step in normative legal research to determine whether a problem has been regulated in positive law.

The regulations analyzed include:

- 1) Law No. 8 of 1999 concerning Consumer Protection
- 2) Law No. 11 of 2008 concerning Electronic Information and Transactions
- 3) PP No. 80 of 2019 concerning Trading Through Electronic Systems
- 4) The European Union's Digital Services Act (DSA) 2022

b. Comparative Legal Approach (Comparative Law Approach)

This approach is used to compare the legal system in Indonesia with the European Union, especially regarding the regulation of marketplace responsibility for illegal goods. Zweigert & Kötz (1998) stated that the comparative legal approach is useful for finding better legal solutions by looking at how other countries resolve similar legal problems. Through this approach, the study identifies differences in legal structure, legal obligations, principles of responsibility, and the effectiveness of legal implementation in two different jurisdictions.

3. Source of Legal Material

In normative legal research, the main sources of data are called legal materials, which are divided into three categories:

a. Primary Legal Materials

It is the main source that has legally binding force, such as:

- 1) Laws and regulations in Indonesia
- 2) European Union Digital Services Act (DSA)
- 3) International legal instruments regarding e-commerce and consumer protection.

b. Secondary Legal Materials

This material includes documents that explain, comment on, or interpret primary legal materials, such as:

- 1) Law textbooks
- 2) Scientific journal articles
- 3) Reports from international institutions (OECD, UNCTAD, European Commission).

c. Tertiary Legal Materials

Includes legal dictionaries, legal encyclopedias, and other references that support the search for primary and secondary legal materials.

4. Legal Material Collection and Analysis Techniques

The technique of collecting legal materials is carried out through library research, namely searching for literature from libraries, electronic legal databases, international journals, and official documents from government and international institutions.

The analysis technique used is descriptive-comparative analysis. Descriptive is used to systematically describe the contents of applicable laws and legal practices. While comparative is used to find gaps and differences between legal systems, as well as draw lessons from best practices that can be adopted by the Indonesian legal system. According to Johnny Ibrahim (2006), legal analysis in normative research must include legal interpretation, legal systematics, and evaluation of the principles and values of justice contained in legal norms.

5. Methodology Objectives

Through this writing method, it is hoped that:

- a. Provides a comprehensive understanding of the legal position of marketplaces in the Indonesian and European Union legal systems.
- b. Analyzing the effectiveness of consumer protection against illegal products circulating through digital platforms.
- c. Providing comparative law-based recommendations for the development of national legal policies that are adaptive to digital developments.

RESULTS AND DISCUSSION

This section presents findings from the results of the legal analysis related to marketplace responsibility for illegal products in Indonesia and the European Union. The discussion is conducted using a descriptive and comparative approach, examining the extent to which marketplaces can be held legally responsible for the circulation of illegal goods by third parties, and how regulations in both jurisdictions regulate this.

1. Marketplace Responsibilities in the Indonesian Legal System

Marketplace in Indonesia is still positioned as a platform provider or neutral intermediary. As regulated in:

- a. **Article 1 number 6 of PP No. 80 of 2019**, the marketplace is included in the electronic system organizers that facilitate trade transactions.
- b. **Article 15 paragraph (1) of Law No. 8 of 1999 concerning Consumer Protection** states that business actors are responsible for damage, pollution and/or losses caused to goods and/or services traded.

However, there is no explicit provision that confirms the legal responsibility of the marketplace for illegal products sold by third-party users/sellers. The marketplace is only required to provide reporting or complaint features from users, without the obligation to proactively verify the legality of uploaded products (Putra, 2022).

In fact, in practice, the marketplace has an internal monitoring system, algorithms, and content management that allows for filtering of goods that violate the law. Therefore, Mahendra (2022) criticized that "legal regulations in Indonesia have not been able to keep up with the development of digital technology and still place the marketplace in a position that is too safe from legal responsibility."

Absence of strict liability against the marketplace makes consumer losses difficult to trace. Even when consumers are harmed by purchasing illegal products, the marketplace's responsibility is often shifted to the seller without an adequate recovery process.

2. Marketplace Responsibilities in the European Union Legal System

In contrast, the European Union has adopted a more progressive legal approach through the enactment of the Digital Services Act (DSA) 2022. This regulation establishes specific legal responsibilities for digital service providers, including marketplaces. The DSA introduces the following mechanisms:

- a. **Know Your Business Customer (KYBC):** Marketplaces are required to verify the identity of sellers before allowing them to market products (Article 22 DSA).
- b. **Notice and Action Mechanism:** If an illegal product is found, the marketplace is obliged to take swift action to remove it (Article 16 DSA).
- c. **Due diligence obligations:** large platforms have an obligation to conduct regular audits and report on the risk of violations of the law (Articles 26–27 DSA).
- d. **Sanctions:** Violation of this obligation is subject to an administrative fine of up to 6% of the platform's total annual revenue.

According to Cauffman (2022), "DSA fundamentally changes the liability regime by requiring platforms to be proactive rather than reactive in preventing the dissemination of illegal content and products." In other words, marketplaces in the European Union cannot hide behind a passive or neutral status. They are responsible not only for actions taken after a report is made, but also for preventive actions before a violation occurs.

3. Case Study: Shopee vs Amazon

A comparison of the responsibility practices between Shopee in Indonesia and Amazon in the European Union shows a sharp regulatory contrast.

- a. In Indonesia, Shopee has a reporting feature for illegal products, but it is not required to carry out systematic verification of every product uploaded by sellers. In some cases, dangerous products such as cosmetics without BPOM still get through and are sold in large quantities.

- b. Amazon, on the other hand, implements strict DSA-based policies, including the use of AI-based filtering, suspension of high-risk seller accounts, and a direct compensation system for consumers harmed by illegal goods (OECD, 2021).

This indicates that legally managed marketplace responsibility will strengthen the position of consumers and increase the digital accountability of platforms.

Comparison Table of Legal Principles: Passive vs Active

Principle	Indonesia	European Union
Marketplace position	Passive intermediary	Active intermediary
Verification obligation	There isn't any	Mandatory (KYBC)
Removal of illegal products	After there was a report	Actively and quickly
Accountability	Limited	Broad and firm
Sanction mechanism	Weak	Administrative fines

According to Zweigert & Kötz (1998), an ideal legal comparison should not only look at the text of the law, but also the social context and the structure of law enforcement. In this case, the European Union legal system provides more protection for the public interest, while Indonesia still emphasizes the principle of freedom of business with loose supervision.

4. Legal Implications and Recommendations

The findings of this study suggest that the Indonesian legal system needs to strengthen the position of consumers and limit the gap in marketplace responsibility. Adoption of the EU DSA principles can be a reference in designing new regulations, including:

- a. Addition of explicit articles regarding the responsibilities of digital platforms in the Consumer Protection Law or the Digital Economy Bill.
- b. Implementation of a seller verification system and risk-based content monitoring.
- c. Strengthening the government's role in setting minimum safety standards for products sold online.

Wulandari (2020) emphasized that "e-commerce regulatory reform in Indonesia must be directed at establishing a safe, responsible, and consumer-friendly digital ecosystem."

CONCLUSION AND SUGGESTIONS

1. Conclusion

The development of information technology has driven the growth of electronic trade transactions through digital platforms or marketplaces, both in Indonesia and in European Union countries. However, this progress is not free from serious legal challenges, especially related to the circulation of illegal products which is increasingly massive and difficult to control. Based on the results of research and comparative analysis between the Indonesian and European Union legal systems, the following conclusions can be drawn:

1. Marketplaces as digital actors have the potential for great legal responsibility in maintaining the legality of goods and services marketed on their platforms. However, in the context of Indonesian law, the position of the marketplace is still considered as an electronic system organizer that only acts as a transaction facilitator. This is as regulated in PP No. 80 of 2019, where the marketplace's responsibility for illegal products has not been explicitly regulated.
2. Regulations in Indonesia still apply the principle of passive liability, where the marketplace is only required to provide a means of reporting or complaints from consumers. There is no requirement to verify the identity of the seller or the legality of the products being marketed proactively. As a result, many illegal products continue to circulate widely and consumers are the most disadvantaged parties.
3. On the other hand, the European Union through the Digital Services Act (DSA) 2022 has implemented an active and progressive legal responsibility approach. Marketplaces are required to verify the identity of sellers (KYBC), respond quickly to reports of illegal products (notice and action mechanism), and establish an audit system and risk reporting for illegal content. This indicates a paradigm shift, where digital platforms are no longer seen as neutral intermediaries, but as entities that have full legal responsibility.
4. A comparison of legal systems shows that there is a regulatory imbalance between Indonesia and the European Union, both in terms of legal structure, monitoring mechanisms, and the existence of legal sanctions. Indonesia does not yet have a legal instrument that specifically regulates marketplace responsibility for illegal products, while the European Union has developed a comprehensive system, based on the principles of caution and consumer protection.

5. Based on these findings, it is clear that Indonesia needs to reformulate the law in the digital trade sector to anticipate misuse of the marketplace by irresponsible business actors, as well as provide maximum legal protection for consumers.

2. Suggestion

Based on the conclusions above, the author provides several suggestions as follows:

1. The Indonesian government needs to draft special regulations that explicitly and firmly regulate marketplace responsibilities. These regulations can be in the form of Government Regulations, Presidential Regulations, or even included in the Personal Data Protection Bill or the Digital Economy Bill. Marketplaces must be recognized as digital business actors who have legal responsibility for products marketed through their platforms, especially in terms of illegal and dangerous products.
2. Adopting the principles in the European Union's Digital Services Act can be a progressive legal reference. Principles such as Know Your Business Customer (KYBC), notice and takedown mechanisms, due diligence obligations, and strict administrative sanctions need to be implemented to increase the accountability of digital platforms. According to Cauffman (2022), "regulatory clarity and platform accountability are fundamental in securing a trustworthy digital economy."
3. Marketplaces must be legally required to verify sellers and products. It is not enough to simply provide a complaint feature; marketplaces need to act as the primary filter in preventing the circulation of illegal goods, such as cosmetics without BPOM permits, pirated products, and illegal drugs.
4. Supervisory institutions such as the Ministry of Trade, Kominfo, and BPOM need to strengthen cooperation with digital platforms in monitoring content and products. This collaboration is important so that the process of detecting and blocking illegal products can be carried out quickly, efficiently, and based on data.
5. Increasing digital literacy for consumers is also needed. Consumers must be equipped with an understanding of their rights in digital transactions, as well as how to report violations through official marketplace channels and legal authorities. As emphasized by Wulandari (2020), "consumer protection in the digital era is not only about regulation, but also about building legal awareness in society."
6. The academic world and legal practitioners are encouraged to continue to develop studies on the legal responsibility of digital actors. This issue will continue to develop along with advances in technology and digital business models, so it needs to be responded to through scientific discourse based on data and cross-legal system analysis.

REFERENCES

- Bradshaw, S., Millard, C., & Walden, I. (2011). "Contracts for Clouds: Comparison and Analysis of the Terms and Conditions of Cloud Computing Services." *International Journal of Law and IT*, 19(3), 187–223.
- Bradshaw, S., Millard, C., & Walden, I. (2011). "Contracts for Clouds." *International Journal of Law and IT*, 19(3), 187–223.
- Cauffman, C. (2022). "The Liability of Online Marketplaces in the EU." *Maastricht Journal of European and Comparative Law*, 29(2), 150–170.
- Delgado, C. (2023). "Tackling Counterfeit Goods on Digital Platforms." *European Consumer Law Journal*, 14(1), 25–41.
- European Commission. (2022). *The Digital Services Act (DSA)*. Brussels: Official Journal of the European Union.
- European Commission. (2022). *The Digital Services Act (DSA)*. Brussels.
- Ibrahim, J. (2006). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia.
- Kapoor, N. (2021). *E-Commerce and the Law*. Oxford University Press.
- Mahendra, F. (2022). "Kajian Hukum Tanggung Jawab Marketplace dalam Menyediakan Produk Ilegal." *Jurnal Hukum Universitas Trisakti*, 42(1), 55–68.
- Marzuki, P. M. (2005). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- OECD. (2021). *Online Marketplaces and Consumer Protection: Emerging Risks and Opportunities*. Paris: OECD Publishing.
- Peraturan Pemerintah No. 80 Tahun 2019 tentang Perdagangan Melalui Sistem Elektronik.
- Putra, R. A. (2022). "Perlindungan Konsumen di Era Marketplace Digital." *Jurnal Hukum Ekonomi*, 9(1), 45–58.
- Savin, A. (2021). *EU Internet Law*. Edward Elgar Publishing.

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Soekanto, S., & Mamudji, S. (2013). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: RajaGrafindo Persada.

Undang-Undang No. 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.

Undang-Undang No. 8 Tahun 1999 tentang Perlindungan Konsumen.

Wulandari, R. (2020). "E-commerce dan Tanggung Jawab Produk Palsu." *Jurnal Hukum & Pembangunan*, 50(3), 323–340.

Zweigert, K., & Kötz, H. (1998). *An Introduction to Comparative Law*. Oxford: Clarendon Press.