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# THE ROLE OF INDONESIAN ONLINE MARKETPLACES IN INTELLECTUAL PROPERTY RIGHTS INFRINGEMENTS: A COMPARATIVE ANALYSIS

*by Lu Sudirman*

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## THE ROLE OF INDONESIAN ONLINE MARKETPLACES IN INTELLECTUAL PROPERTY RIGHTS INFRINGEMENTS: A COMPARATIVE ANALYSIS

<sup>25</sup> Lu Sudirman  
Universitas Internasional Batam, Indonesia  
[lu@uib.ac.id](mailto:lu@uib.ac.id)

<sup>25</sup> Hari Sutra Disemadi  
Universitas Internasional Batam, Indonesia  
[hari@uib.ac.id](mailto:hari@uib.ac.id)

### Abstract

*This research explores the forms of intellectual property rights violations and their causes, which are examined using the Indonesian intellectual property rights legal framework, to then generate an overview of the legal reconstruction needed to protect existing intellectual property in Indonesian online marketplaces. This research used normative legal research method with comparative approach by analyzing the existing Indonesian IP legal framework and compare it with other countries that are more advanced in IPR protections. This research puts a great emphasis on legal problems and the criminal elements of the Indonesian intellectual property rights legal framework to explain the position of online marketplaces and their responsibilities to also support the protection of IP and the growth of e-commerce overall. This research finds that Indonesia is facing normative issues in defining the role of online marketplace in many IP infringement cases. This finding is important in the support for continued legal development in Indonesia, to provide better protection of many forms of intellectual property rights in Indonesian online marketplaces.*

**Keyword:** E-Commerce; Market; Online; Rights.

### A. INTRODUCTION

The integration of technology into everyday life is a current trend of technological development. An online marketplace is a form of technological development that is highly integrated with everyday life.<sup>1</sup> Online marketplaces have contributed a lot to the development and resilience of the national economy in many countries today.<sup>42</sup> The importance of the online marketplace reached its highest stage when the COVID-19 pandemic hit the world, where the online marketplace played a role as a facilitator and problem solver for businesses that are struggling due to the pandemic

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1 Arfian Setiantoro et al., Urgensi Perlindungan Hukum Konsumen Dan Penyelesaian Sengketa E-Commerce Di Era Masyarakat Ekonomi Asean., *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, Vol. 7, No. 1, April 2018, page. 1-17

restrictions.<sup>2</sup> Furthermore, most of the existing online marketplaces also have a policy of opening an online store or seller account on their platform for free, which raises interest in entrepreneurship overall.<sup>3</sup>

Intellectual property plays a very important role in any market because it is proof of ownership of a party to his creation. Protection of intellectual property is the government's effort to encourage the public and business people to appreciate and continue to develop their creativity in existing markets in Indonesia. Through the existing digitalization process, economic actors can have positions of various types and scales, and can have quite significant positions in any market.<sup>4</sup>

The companies that are behind the development of e-commerce in the form of online marketplaces also enjoy the benefits of online marketplace's popularity in Indonesia. These companies have become highly valued, and are still continuing to expand their businesses in the e-commerce form.<sup>5</sup> These fintech companies have started to integrate services, which offer more advantages when used in conjunction with other existing e-commerce services.<sup>6</sup>

The online marketplace is one of the biggest revenue streams for Indonesian fintech companies and is still one of the largest forms of e-commerce in Indonesia, which facilitates other forms of e-commerce.<sup>7</sup> The large profits obtained by fintech companies in Indonesia must be accompanied by good accountability, which unfortunately is still a problem today. Most of the online marketplace services in Indonesia in fact do not put emphasis on the importance of intellectual property rights protection.<sup>8</sup> This study is done to analyze the legal and regulatory framework governing online marketplaces in Indonesia concerning the sale of counterfeit products and identify the extent of responsibility that online marketplaces bear in the sale of counterfeit products.

## B. RESEARCH METHODS

To explore the role of online marketplaces in dealing with intellectual property rights infringements, this research uses normative legal research

- 2 I Putu Yogi Saputra, I Nyoman Putu Budiarta, and Ni Made Puspasutari Ujianti., *Perlindungan Hukum Terhadap Konsumen Akibat Kerugian Yang Ditimbulkan Oleh Pelaku Usaha Toko Online Di Facebook*, *Jurnal Preferensi Hukum*, Vol. 3, No. 1, 2022
- 3 Rahmi Ayunda., *Personal Data Protection to E-Commerce Consumer: What Are the Legal Challenges and Certainties?*, *Law Reform*, Vol. 18, No. 2, August 16, 2022, page. 144–63
- 4 Muflihatul Fauza., *Analisis Peluang Digitalisasi Usaha Dalam Pengembangan UMKM*, *Al-Bughah: Journal of Muslim Societies*, Vol. 3, No. 2, 2021, page.148–62.
- 5 Daniel Gervais., *Exploring the Interfaces between Big Data and Intellectual Property Law*, *Journal of Intellectual Property, Information Technology and E-Commerce Law*, Vol. 10, No. 3 2019;
- 6 Ni Kadek Puspa Pranita and I Wayan Suardana., *Perlindungan Hukum Terhadap Nasabah Pengguna Layanan Fintech (Financial Technology)*, *Kertha Semaya: Jurnal Ilmu Hukum*, Vol. 7, No. 2, 2019
- 7 Fawzi Bhakti Prestama, Muhammad Iqbal, and Selamet Riyadi, *Potensi Finansial Teknologi Syariah Dalam Menjangkau Pembiayaan Non-Bank*, *Al-Masraf: Jurnal Lembaga Keuangan Syariah Perbankan*, Vol. 4, No. 2, December 2019, page.147–58
- 8 Asri Wijayanti, Rizania Kharismasari, and Aditya Ayu Hakiki, *Perlindungan Hukum Bagi Pembeli Dalam Sengketa Jual Beli Online*, *Justitia Jurnal Hukum*, Vol. 1, No. 1, July 2017

method<sup>9</sup> by analyzing relevant positive laws. This research will also use a comparative approach by using other countries and their relevant legal framework as comparisons. For normative analysis, this study uses secondary data in the form of laws and government regulations namely Act No. 7 of 2014 concerning Trade, Act No. 8 of 1999 concerning Consumer Protection; Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions; and Government Regulation No. 80 of 2019 concerning Trading Through Electronic Systems.

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## C. RESULTS AND DISCUSSION

### 1. Legal Politics of E-commerce in Indonesia

E-commerce has become an inseparable part of Indonesian people's lives.<sup>10</sup> This form of technology integration into everyday life can no longer even be said to be a trend, but can already be called a habit that exists in Indonesian society. E-commerce enables Indonesians to develop and speed up various kinds of business processes that were previously more difficult to implement. In addition, e-commerce also spurred the holding of digitalization on a large scale at the government level, which had the effect of reducing opportunities for constitutional malpractice and corruption in long bureaucratic processes.<sup>11</sup>

Online marketplaces as one of the most widely used forms of e-commerce have been able to connect various kinds of business actors from micro to large scale, to fairly compete in a market, with equal opportunities. Having been included in the Negative Investment List in 2014, the development of e-commerce was hampered due to the obstruction of capital from foreign investors who were interested in several e-commerce models that were developing in Indonesia.<sup>12</sup> However, this obstacle did not stop the development of e-commerce in Indonesia, which at that time began to attract the interest of the Indonesian public at large. Indonesia's interest in the development of e-commerce is growing, especially after the Ministry of Communication and Informatics started the "National Movement of 1000 Digital Startups" in 2016, which was inspired by President Joko Widodo's visit to Silicon Valley.<sup>13</sup>

Since 2015, it can be said that the Indonesian government has been quite proactive in supervising and facilitating the development of e-commerce in Indonesia, given Indonesia's long history of legal politics

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- 9 Hari Sutra Disemadi., Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies, *Journal of Judicial Review*, Vol. 24, No. 2, November 30, 2022
- 10 Adis Nur Hayati., Analisis Tantangan Dan Penegakan Hukum Persaingan Usaha Pada Sektor E-Commerce Di Indonesia, *Jurnal Penelitian Hukum De Jure*, Vol. 21, No. 1, February 22, 2021, page.109; Dena Ayu et al., A Sociological Approach to Consumer Protection in E-Commerce Transactions During the Covid-19 Pandemic, *Khazanah Hukum*, Vol. 4, No. 3, September 11, 2022
- 11 Safiranita et al., The Role of E-Commerce in Escalation of Digital Economy in The New Normal Era Based on Law Number 27 of 2022 Concerning Personal Data Protection
- 12 Ibid.
- 13 Viska Yanessa, Kementerian Komunikasi Dan Informatika, *Kementerian Komunikasi Dan Informatika*, June 2016.

which has found it difficult to adapt to global market developments. Until now, there are several Indonesian legal products that regulate e-commerce. The first regulation is Act No. 7 of 2014 concerning Trade (Trade Law). These laws and regulations regulate trading activities in general and specifically regulate online trading or e-commerce in Article 65, namely regarding the correctness of information provided by e-commerce actors. Article 65 paragraph (1) and (2) of the Trade Law explains "(1) Every business actor who trades goods and/or services using an electronic system is required to provide complete and correct data and/or information; and (2) Every business actor is prohibited from trading goods and/or services by using an electronic system that is inconsistent with the data and/or information as referred to in paragraph (1)." Although it does not discuss e-commerce in detail, the government's interest in adapting to the development of the global economic digitization trend is already a very good sign, considering the large obstacles experienced by Indonesian e-commerce industry players in 2014.

Unfortunately, in terms of consumer protection, Indonesia still uses old regulations which are one of Indonesia's reform steps during the post-monetary crisis recovery period in 1998. In protecting the interests of e-commerce consumers in general, Indonesia still adheres to Act No. 8 of 1999 concerning Consumer Protection (Consumer Protection Law). The settings used are also general in nature, which can be applied in both offline and online trading systems. Regulations regarding data correctness are also not much different from those already regulated in Article 65 of the Trade Law, but are not specifically intended for internet-based or online trading systems. General arrangements like this also open up wide harmonization space for other arrangements that are more specific to trade.

Another legal product that regulates e-commerce is Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 Concerning Information and Electronic Transactions (EIT Law), which was created to answer the digitalization challenge which in 2016 increased dramatically. This law regulates all information dissemination and transactions conducted electronically, including online business.<sup>14</sup> With the development of transactions using evidence that was previously only in the form of physical evidence (receipts/bonds/receipts, etc.), now it has changed and adapted to electronic evidence. As an update from the regulation in 2008, the regulation in 2016 only changed several articles and explanations of the articles.

Furthermore, in the elucidation of Article 5 paragraphs (1) and (2) it is stated Paragraph (1) "Whereas the existence of Electronic Information and/or Electronic Documents is binding and recognized as valid evidence to provide legal certainty for Electronic System Operations and Electronic Transactions, especially in evidence and matters relating

<sup>14</sup> Margaretha Rosa Anjani and Budi Santoso, Urgensi Rekonstruksi Hukum E-Commerce Di Indonesia, *Law Reform*, Vol. 14, No. 1, March 28, 2018

48 to legal actions 47 ried out through Electronic Systems". Paragraph (2) "Specifically fo 7 Electronic Information and/or Electronic Documents in the form of intercept 16 or wiretapping or recording as part of wiretapping, it must be carried out in the context of law enforcement at the request of the police, prosecutors, and/or other institutions whose powers are determined by law'. Even though it does not specifically aim to support the development of e-commerce and in this case, online marketplaces, this legal product is a pretty good development because it regulates a lot about the legal aspects of various kinds of digitization processes that are currently taking place in society at the 43 me and are still ongoing today.<sup>15</sup> The explanation regarding evidence as referred to in Article 5 of the ITE Law can help clarify accountability in the event of legal issues between various types of business actors in a market chain as well as consumers.

Fu 14 ermore, arrangements regarding e-commerce are also arranged in Government Regulation No. 80 of 2019 concerning Trading Through Electronic Systems (Government Regulation/PP on E-commerce) which specifically regulates online trading systems. Through Government Regulation on E-commerce, the government is trying to form an economic system that does not discriminate against online-based business actors, both those domiciled in Indonesia and those domiciled outside Indonesia who carry out their activities in Indonesian e-commerce markets. This PP was also formed to ensure equal playing field opportunities between foreign and local business actors, in order to form a competitive market in Indonesia, which can be compared with existing global markets. This Government Regulation provides the first legal definition of e-commerce, through Article 1 number 2 and 3, "2. Tra 31 ng through the Electronic System, hereinafter abbreviated as PMSE, is trading in which transactions are 6 rried out through a series of electronic devices and procedures; 3. Electronic System is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and transmit or disseminate electronic informa 44 n." PP 80/2019 also states that every online-based business actor is required to have a business license from the Ministry or institution that regulates licensing in related fields, including for business actors who run their businesses in various types of online marketplaces in Indonesia. PP 80/2019 also explains the enforcement of other regulations that are still related to online-based trading systems, which legally strengthens the harmonization of existing regulations governing online-based trading (e-commerce), especially online marketplaces.

There are other regulations related to e-commerce, but those regulations do not place as much emphasis on regulating online-based

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15 Ni Putu Indra Nandayani and Marwanto Marwanto, *Perlindungan Hukum Terhadap Konsumen Atas Produk Barang Palsu Yang Dijual Secara -Commerce Dengan Perusahaan Luar Negeri*, *Jurnal Kertha Semaya*, Vol. 8, No. 2, 2020, page.192–206.

trade as the regulations that have been mentioned.<sup>16</sup> An example is the regulation regarding the protection of personal data compiled in the Regulation of the Minister of Communication and Informatics Number 20 of 2016 concerning the Protection of Personal Data in Electronic Systems. The link between e-commerce and this regulation is the responsibility of providers of various online-based services, such as online marketplaces, to protect their users' data.

## 2. The Forms of Intellectual Property Violations in The Online Marketplace

Conceptually, legal culture is very influential on the frequency of violations of the law that occur and the variety of violations. In the economic sphere, broadly speaking, this cannot be separated from legal politics, which is also an important factor in the enforcement of various laws in force in Indonesia. The legal culture of society and government as weak legal product makers like those in the Indonesian economy, in general, are often associated with legal politics Article 33 of the 1945 Constitution, which states "The economy is structured as a joint effort based on the principle of kinship". This article is often interpreted as an article explaining the principle of kinship, which emphasizes that "the economy is structured as a joint venture based on the principle of kinship". The meaning that is often drawn from this article is that the state's goal is to create an economic system that is developed not on the basis of competition and on a very individualistic principle. This is contrary to the intention of intellectual property law itself which is individualistic. Emphasis on communal values as they already exist and are developing in society through customary law, actually cannot be applied in enforcing intellectual property law in Indonesia. Intellectual property law is in fact a collection of regulations that are full of absolute individualist values, which originate from the western world.<sup>17</sup> Intellectual property law is based on the protection of rights owned by individuals as owners of exclusive rights and first moral rights, which can then be passed on to other parties along with other rights arising from the intellectual property.<sup>18</sup> This analysis makes intellectual property rights truly individualistic.

Article 33 of the 1945 Constitution is actually not an article that forbids competition and individualist values but is an arrangement that emphasizes that regulations regarding an economic policy and how it must be able to have a positive impact on all elements of the market, even though these elements cannot be separated from competition which will always exist in that market itself. The principle of kinship should be associated with an emphasis on the importance of cooperation

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16 Ayunda, Personal Data Protection to E-Commerce Consumer: What Are the Legal Challenges and Certainties?

17 Hari Sutra Disemadi., 2023, *Mengenal Perlindungan Kekayaan Intelektual Di Indonesia*, Depok, Rajawali Pres.

18 Anastasia Theresia Puspasari, Tinjauan Konsep Hak Eksklusif Dalam Hak Cipta Berdasarkan Teori Hegel, *Dialogia Iuridica*, Vol. 13, No. 2, 2022, page.140–61



and various kinds of efforts that can maximize the principle of efficiency, which actually will always involve competition as an integral part of the economy.<sup>19</sup>

Weak intellectual property law enforcement and poor business culture in Indonesia have led to widespread IP violations among Indonesian people<sup>20</sup>. The community as producers and consumers are used to the rampant IP violations that exist in various marketplaces in Indonesia, both offline and online. IP violations in Indonesia vary and have affected several markets in Indonesia. In fact, violations of IP in Indonesia can already be said to be cultural, because of the prevalence and extent of these violations.<sup>21</sup> For example, in the case of law enforcement of intellectual property in copyright protection. The system of copyright legal norms for books and other goods protected by copyright in order to eradicate the trade in pirated books and goods in online marketplaces cannot be said to be adequate.<sup>22</sup>

This problem can be seen at the regulation level, where the rules are still contained in the Minister of Communication and Information Circular Letter No.5/2016. Allowing online marketplace businesses to sell books and other pirated goods have a significant impact on the culture of Indonesian consumer behavior which still consists of the habit of buying pirated books and other goods for economic reasons, making the problem of copyright protection in Indonesia even more complicated. A consumerist culture like this, although it continues to increase trade traffic in online marketplaces in the short term, is still unethical and discourages creativity among business actors.

This very bad legal and consumptive culture has a direct impact on the income of copyright holders of books in Indonesia. A report in 2019 even explained that the value of financial losses suffered by some IKAPI member book publishers reached a very high figure, namely IDR 116,050,000,000.00 (One Hundred Sixteen Billion Fifty Million Rupiah).<sup>23</sup> Things that are not much different can also be seen in other forms of intellectual property rights, such as brands. This problem is actually a problem that has existed for a long time (since the offline market), but has gotten worse with the development of online marketplace. In fact, there are several market areas in Indonesia that are known as places where goods with counterfeit brands are traded. It is also found in other Southeast Asian countries, as a study has found.<sup>24</sup>

19 Aly Asshiddiqie, *Konstitusi Ekonomi*, Penerbit Buku Kompas, 2010

20 Defi Arika and Hari Sutra Disemadi, *Perlindungan Pencipta Atas Pembajakan Novel Di Marketplace*, *Jurnal Yustisiabel*, Vol. 6, No. 2, October 28, 2022, page.182–206; Lidia Kando Br Gea and Hari Sutra Disemadi, *Relation Between The Awarenesses of Culinary Msme Actors and Tradem<sup>35</sup> Protection*, *Jurnal Supremasi*, September 1, 2022, page.1–16

21 Putra and Disemadi., *Counterfeit Culture Dalam Perkembangan UMKM: Suatu Kajian Kekayaan<sup>21</sup>elektual*.

22 Arika and Disemadi., *Perlindungan Pencipta Atas<sup>34</sup> Pembajakan Novel Di Marketplace*

23 Fauziah Mursid and Ichsan Emerald Alamsyah, *Ikapi: Pemerintah Harus Turun Tangan Atas<sup>15</sup> mbajakan Buku | Republika Online*, May 2021.

24 James W Gentry, Sanjay Putrevu, and Clifford J Shultz, *The Effects of Counterfeiting on Consumer Search*, *Journal of Consumer Behaviour*, Vol. 5, No. 3, 2006;

This problem does not entirely originate from Indonesia, but also from outside. A great number of counterfeit items that are sold on the online marketplace come from outside, namely from China.<sup>25</sup> The sale of counterfeit goods like this can also develop the influence of brand-<sup>49</sup>nded behavior which encourages consumer consumptive behavior to a decision-making system that is not based on the quality and benefits of the product to be purchased, but wholly based on the reputation of the brand or related brands, regardless of whether the product is genuine or not.<sup>26</sup>

Unfortunately, the form of selling counterfeit products in Indonesia has begun to evolve into a sales system based on fraud. This has started to happen in various online marketplaces in Indonesia, where sellers can easily state in the product description that what they are selling is genuine, even though in reality this is not true.<sup>27</sup> The shipment of goods that do not meet the expectations of the buyer and do not match the information provided by the seller is actually a violation of the law, which is regulated in the Trade Law, the ITE Law, and the e-commerce PP which regulate the correctness of the information.

### 3. The Urgency of Change and Comparative Analysis

Given the digitalization process that is increasingly being accelerated by the government and various types of business actors in the fintech industry, the use of online marketplaces in Indonesia will only continue to increase and become more integrated with the daily lives of Indonesian people. This is also supported by a technology ecosystem within the scope of e-commerce which increasingly supports digitalization <sup>9</sup>rocesses like this. Because of these things, the urgency of protecting intellectual property rights in Indonesia is increasing. The law must not only be able to guarantee that one's rights are not violated <sup>9</sup>but also be able to build good values that must grow in society. Legal protection of intellectual property rights, in addition <sup>45</sup>protecting the interests of holders of intellectual property rights in Indonesia, also plays an important role in spurring the creativity of local business actors to develop their original ideas so that they can compete with other ideas both at the domestic and international levels. All of this also influences the legal culture in society, and how the respect that society has for applicable laws can affect various other aspects of life.

A notable case of related misconduct in the e-commerce space in the United States is Tiffany (NJ) Inc. v. eBay, Inc. Famous jewelry brand, Tiffany, filed a direct and indirect infringement case against the world's

<sup>13</sup>  
25 Edy Santoso., Penegakan Hukum Terhadap Pelanggaran Merek Dagang Terkenal Melalui Peran Kepabeanaan Sebagai Upaya Menjaga Keamanan Dan Kedaulatan Negara, *Jurnal <sup>10</sup>htsvinding*, Vol. 5, No. 1, 2016.

26 Resti Athhardi Wijaya, M. Asâ€TMad Djalali, and Diah Sofiah, Gaya Hidup Brand Minded Dan Intensi Membeli Produk Fashion Tiruan Bermerk Eksklusif Pada Remaja Putri, *Persona: Jurnal Psikologi <sup>4</sup>ndonesia*, Vol. 4, No. 02, 2016;

27 Saputra, Budiarta, and Ujianti, Perlindungan Hukum Terhadap Konsumen Akibat Kerugian Yang Ditimbulkan Oleh Pelaku Usaha Toko Online Di Facebook.

largest online marketplace, eBay, based on the sale of counterfeit Tiffany jewelry products on the online marketplace platform. In absolving eBay from liability for direct infringement, the court ruled that eBay did not directly sell counterfeit goods, nor did it suggest endorsement or sponsorship by Tiffany. Despite the contributive misconduct charge, the court found no liability on eBay's part. The court held that while eBay had control over the sale of counterfeit items, it neither knew nor had reason to know which products were counterfeit. Additionally, eBay's swift action in removing counterfeit products from its site with notice indicates eBay has no intention of creating an online marketplace platform that supports the sale of counterfeit goods. The United States courts here focus on the elements of knowledge and control and are thus clear.

Bearing in mind that regulations regarding brand protection and other forms of intellectual property have not fully kept up with technological advances, so gaps and discrepancies in regulations, online markets and brand owners will always occur. The government must be able to carry out legal constructions that can facilitate various types of online marketplaces in Indonesia to help protect intellectual property rights that are protected by Indonesian law. Online marketplaces must work together to address the rampant trade in infringed goods. Online marketplaces should adopt a robust and defensible set of policies to prevent fraudulent transaction commissions on their platforms. Brand owners, on the other hand, need to realize that instead of just suing online marketplaces, they should take advantage of the precautions provided by the latter.

The term "contributory infringement" is rarely used in Indonesian law which does not explicitly regulate this matter in various arrangements regarding intellectual property law. This doctrine can be developed through the reconstruction of laws governing the protection of various kinds of intellectual property in Indonesia. Even though this doctrine is less popular in the civil law system, theoretically there is nothing that prevents the application of this doctrine in the Indonesian legal system. Pursuant to Article 14 of the European Union e-commerce Guidelines (Directive 2000/31/EC), online marketplaces and internet service providers (ISPs) are required to promptly remove or disable access to any infringing information once they become aware of it. Under this Article, an online marketplace or an ISP can be held liable for the information hosted or stored by them but can escape this responsibility by (i) having no actual knowledge or (ii) removing infringing content immediately after acquiring knowledge. This indirect responsibility to online marketplaces and ISPs has been interpreted over the years in trade mark legal cases of the European Union Court of Justice (CJEU), where online intermediaries are also expected to prevent future brand infringement.<sup>28</sup>

<sup>28</sup> James L. Bikoff et al., Contributory Trade Mark Infringement Liability: A Comparison of US and EU Law, *Journal of Intellectual Property Law and Practice*, Vol. 14, No. 11, 2019.

Rooted in the common law legal system and then moving to the forefront of recent regulations relating to e-commerce services, indirect legal infringement of trademarks or other intellectual property has evolved over the years to hold various intermediaries to account. In the early days, intermediaries only needed to persuade others to infringe on the trademark. In the absence of such activity in the document, the court requires the knowledge underlying the offense and the contribution of the product of the infringement. Over time, these principles served their purpose and were expanded to reach manufacturers, distributors, printers, flea market operators, landlords, and even delivery and packaging services. In addition, the courts have extended the precedent to later apply to ISPs in the online context. From the evolution of trademark contribution capabilities, it appears likely that the US federal courts will continue to implement and expand the indirect trademark infringement doctrine to protect trademark owners.

As illustrated above, in the European Union, those who facilitate the infringement of other people's trademarks can face severe legal consequences. These developments that are already better than the United States need to be emulated if Indonesia wants to continue developing online marketplaces without sacrificing the creativity of local business actors and without having to reduce the quality and business culture of markets for various industries that exist in the midst of the Indonesian economic system.<sup>29</sup>

The concept of indirect trademark infringement for IP infringement is growing in the EU. It is clear that the CJEU, in its role as guardian of EU law and justice, takes into account the imperfections of the internal market where illegal businesses take advantage of loopholes in the legislation. The EU is still actively trying to close these legal loopholes and while doing so, still manages to also actively run many operations to root out piracy from its online marketplace. Consequently, online intermediary services such as Internet Service Providers are also expected to prevent trademark infringement in the future.<sup>30</sup> With the growth of the online e-commerce market, ISPs are becoming increasingly important in fighting trademark infringement online as well. Also in the offline market, the net around contributing offenders is getting tighter.

#### D. CONCLUSION

Although laws and regulations regarding intellectual property and e-commerce in general are able to cover almost all the basic concepts of intellectual property and its types, legal reconstruction regarding these matters still needs to expand the roles of online marketplaces in making sure that IPRs in Indonesia are thoroughly protected. There needs to be a revision on the Trademarks and Geographical Indication Law in regards to the fact that it doesn't have any provision on the liability of parties who manage a trading place of IP-misappropriated objects, such as the one

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29 Ibid.

30 Ibid.

found in Article 114 of the Copyrights Law. This measure can be started by adopting the doctrine of indirect legal infringement, which is already implemented in the European Union. The urgency for doing this is very high, given Indonesia's ambition to become an economic giant amid free trade traffic in the ASEAN region.

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