

LEGAL PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN THE FORM OF FORGIVEN TRADEMARKS IN E-COMMERCE MEDIA

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Abstract

The existence of a marketplace or e-commerce in electronic commerce can not only produce a beneficial impact both in terms of sellers and buyers, but can also produce a negative or detrimental impact on the trademark rights holder, where one of the most often impactful is brand counterfeiting. The problems raised are such as how to regulate the legal protection of intellectual property rights such as trademarks in the e-commerce system? How do the United States and Australia protect trademark rights against intellectual property counterfeiting legally? This research method uses a normative juridical legal approach by using existing data through Open Source, both from book literature, as well as scientific journals, accredited media. Buying and selling in electronic ways is considered a new and more practical way of buying and selling goods or services in e-commerce As for the rules regarding Intellectual Property Rights such as Law Number 20 of 2016 concerning Trademarks and Geographical Indications, they are always mentioned because fraud often occurs in electronic transactions, such as piracy and trademark counterfeiting. This legal protection is carried out to be able to ensure that all Indonesian people can enjoy a right that has been mandated by the law that has been enforced Legal protection can be applied to intellectual property rights in the form of rights to trademarks that are traded in e-commerce. Just like Indonesia, countries such as the United States and Australia also provide legal protection for brand owners who buy and sell in e-commerce articles.

keywords: *Brand, Legal Protection, E-commerce.*

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A. Introduction

In the current era of globalization, both in Indonesia and around the world, a person or a group of modern people tends to make transactions more often *Online* rather than conventionally (*offline*) including in transactions, selling, buying goods or other necessities through *E-commerce*. This behavior of buying and selling transactions online is chosen because it is considered more practical, easy, and can be done at any time while connected to the internet than having to do it conventionally (*offline*) that has to expend energy until the goods are not available in the store¹ Purchase transactions by *Online* Not only is it part of the current trend of globalization, but it is also a necessity for a modern lifestyle. Where the modern lifestyle today is very dependent on *E-commerce* when you need a service or goods. *E-Commerce* It itself can be analogous to a traditional market which can meet various needs of consumers, but it is done digitally or online, be it the store, the goods to the buying and selling transaction process. *E-commerce* or *Marketplace* is a virtual marketplace where sellers and buyers can make various transactions digitally or online such as Tokopedia, Lazada, Shoope, Blibli Traveloka and other e-commerce. It functions the same as a conventional market, but *Marketplace* as *E-commerce* computerized

¹ Indah Prwesti and Suhirman, "Legal Protection for Consumers for the Sale of Counterfeit Branded Goods Online," *Kertha Semaya: Journal of Law* 2, no. 1 (2014), p.8.

ones are more efficient by providing up-to-date information and diverse support services to buyers and sellers. Therefore, *E-commerce* Establish requirements for the seller to be able to access the services provided. This requirement is a provision for sellers in carrying out buying and selling transactions² Also worth remembering *E-commerce* has similarities with a conventional market that can provide various kinds of needs from consumers or needs from the community, but *E-commerce* can be packaged digitally or online. *E-commerce* as part of a virtual marketplace where sellers and buyers can meet and can carry out various types of sell-to-buy transactions. Where is the Function of *E-commerce* The same as conventional markets both sell goods that consumers need or the community needs, but the difference is that *E-commerce* with a computerized system that is more efficient than the conventional market in general, *E-commerce* or marketplaces seem to be able to provide more up-to-date information that is more relevant and diverse support services to buyers and sellers. Therefore, setting requirements for sellers to be able to access services that have been provided to be regulated in Indonesian law is very important to be able to avoid legal problems in the future. This requirement is a

² Bernadetta Lakshita Pradipta Utomo, Sudaryat, and Aam Suryamah, "Legal Protection for Trademark Owners for the Sale of Counterfeit Goods on the Marketplas Platform," *The Face of the Law* 5, no. 1 (2021), p.21.

provision for sellers to carry out online buying and selling transactions in *E-commerce*³

One of the ones on sale *E-commerce* It is inseparable from the protection of intellectual property rights in the form of brands. We need to know that Intellectual Property Rights or often referred to as IPR is a right that can be given to be able to protect an individual or a group of legal entities that can arise as a result of a thought that can be processed from a creativity that can produce a process or product that is beneficial to humans. IPR also provides the right to obtain economic benefits from the results of intellectual creativity where individuals can freely develop their talents in order to create a work that can be beneficial for the progress of the world, one of which is progress in the field of brands. The work will then be registered in Intellectual Property Rights or better known as Intellectual Property Rights⁴. A brand is one of the intellectual assets that has a fairly high economic value, where the brand can be used by entrepreneurs or sellers in carrying out their trade activities in the form of emblems, writings, images and others that are still one unit with the brand definition. Brands sold on *E-commerce* serves as a marker of a product and service that will or can be produced by distributing by

³ Cindy Aulia Khotimah and Jeumpa Crisan Chairunnisa, "Legal Protection for Consumers in ONLINE Buying and Selling Transactions (E-Commerce)," *Business Law Review: Volume One* 1, no. 2 (2016), p.48.

⁴ Roysimon Wangkanusa, "Protection of Human Rights for Prisoners in Correctional Institutions According to the Law on Corrections," *Lex Administratum* v, no. 2 (2017), p.44.

the entrepreneur, so that the entrepreneur always registers his name so as to give the entrepreneur the right to use his name exclusively in the *E-commerce* to profit from the brand. Protection of brand settings in *E-commerce* has been protected through Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which is in accordance with Article 31 which states that the owner of the trademark receives legal protection within a period of ten years from the time the trademark is registered with the Directorate of Intellectual Property.

The existence of the existence of *Marketplace* or *E-commerce* In electronic commerce, it can not only produce a beneficial impact both in terms of sellers and buyers, but it can also produce a negative or detrimental impact on the trademark rights holder, where one of the often impactful is that the supervision of the goods sold becomes less effective or counterfeit. Therefore, with the existence of an electronic-based trade in *E-commerce*, can give rise to the potential for the inclusion of intellectual property rights violations such as trademark rights infringement, which is the act of buying and selling in *E-commerce* can occur indirectly either intentionally or unintentionally.⁵ The act of counterfeiting over time is becoming more prevalent and complicated, especially with the development of the existence of *E-commerce*. This is due to the ease of accessing or creating an account on *E-commerce* An anonymous name seller sells

⁵ Atsar, *Getting to Know the Law of Intellectual Property Rights* (Sleman: Deepublish, 2015), p.47.

products that appear to be genuine when the goods sold are fake and sold through *E-commerce* on the internet. The counterfeiting of the trademark can be seen in the data *International Trademark Association* (INTA), where Indonesia ranks fourth in the consumption of counterfeit products or counterfeit products. Trademark-infringement-based infringement is a global problem for many industries, according to the INTA report and *The International Chamber of Commerce*, which has estimated that the global economic value of counterfeiting and piracy will reach 2.3 trillion US dollars in 2022 and from that data of course this can harm trademark rights owners or more broadly can harm the Indonesian economy.⁶

There are some trademark rights violations that are often abused and we can see in One example of products sold in *E-commerce* namely the existence of counterfeit products, for example that are often counterfeited, are foreign brands branded Adidas, Hermes, Nike, Puma and others which are often imitated by their brand rights and traded freely in *E-commerce* such as Blibli, Tokopedia, Shopee, Lazada and so on. With the imitation of trademark rights products abroad, there should be efforts for legal protection in protecting consumers from the sale of intellectual property rights products in the form of counterfeit brands, so that it can provide positive benefits for consumers, business people, law enforcement, and the government to be able to minimize, prevent and take action against problems with

⁶ Husni Syawali and Neni Sri Maniyati, *Legal Aspects of Online Transactions* (Bandung: Mandar Maju, 2018), p.39.

counterfeit trademark rights products related to the sale of counterfeit products online in *E-commerce*⁷

Similar to Indonesia, the protection of intellectual property rights in the form of trademarks in foreign trade monopolies such as the United States and Australia, also provides legal protection so that trademark rights owners are not susceptible to theft of rights by counterfeiting trademarks on an item that will or has been traded in online media through *E-commerce*⁸ Both countries such as the United States and Australia have adopted into their respective national laws the inclusion of the TRIPs agreement which deals with aspects of intellectual property rights including trademark rights which will be related to national and international trade as part of an agreement establishing the World Trade Organization (WTO) the adoption by those countries including Indonesia shows that the importance of the role of Intellectual Property Rights itself in trade and purchase both conventionally and professionally *E-commerce*. The TRIPs agreement was created by WTO members to reduce trade barriers and enhance the protection of intellectual property rights in the form of trademark rights, without impeding the enforcement procedures of IP itself. Australia and the United States have ratified TRIPs and the Paris Convention on the Protection of Industrial Property, an

⁷ Shabrina, Santoso, and Njatrijani, "Juridical Analysis of Trademark Law Protection," *Diponegoro Law Journal* 6, no. 2 (2014), p.67.

⁸ Pugh Toko Arisanto and Adi Wibawa, "Implementation of Developmental State in Facing Patent Trips and Ranbaxy Lab's Strategy in Global Competition," *Transborders Journal* 3, no. 1 (2019), p.28.

international treaty on intellectual property that was signed jointly in Paris, France on March 20, 1883⁹ The existence of brand protection in Indonesia that is vulnerable to counterfeiting in *E-commerce* It gives the impression that it is important to have stricter regulations so that the perpetrators of counterfeit trademarks do not trade counterfeit brands again.

This research method can involve the use of analytical tools that can be said to be carefully researched to be able to solve the problems to be studied¹⁰ Therefore, research in the form of scientific journal articles can be used using a normative juridical legal approach by using existing data through *Open Source*, both from book literature, scientific journals, accredited media, and reports whose entire literature comes from national and international sources. After all the information data has been collected, the author in conducting this research will conduct a legal analysis and qualitative evaluation by breaking down the information into structured, sequential, reasonable, consistent, and effective sentences which will later be explained descriptively analytically in legal form. ¹¹ The purpose is to facilitate the interpretation of information and understand the

⁹ Yudh Priyono Amboro and Stevan, "Juridical Review of Trademark Rights Protection in the Perspective of Comparative Indonesian and United States Laws," *Journal Of Judicial Review* 17, no. 2 (2015), p.39.

¹⁰ Ani Purwati, *Legal Research Methods (Practical Theory)* (Surabaya: Jakad Media Publishing, 2020).

¹¹ R Agung, Fajar Sidik A Satria, and Didit Saleh, "Data Analysis," Trade Union Rights Center, 2021, <https://wageindicator-data-academy.org/countries/data-akademi-garmen-indonesia-bahasa/teknis-menganalisa-data-hasil-survei/pentingnya-analisis-data,>

results of a legal analysis from the author about a system of legal protection of Intellectual Property Rights to be able to protect trademark rights owners from counterfeiting in *e-commerce*. The formulation of the problem raised by the author based on the above background is how to arrange the legal protection of intellectual property rights such as trademarks in the *e-commerce system*? How do the United States and Australia protect trademark rights against intellectual property counterfeiting legally? The purpose of this research is to seek more legal protection from the violation of counterfeiting goods or services on the internet or *e-commerce* system. The above questions will be answered by the author based on the existence of literature materials through *open source* in various national and international media.

B. Discussion

1. Legal Protection of Intellectual Property Rights in the Form of Trademarks Traded in the *Indonesian* E-commerce Market

Trading in buying and selling by electronic means is considered a new and more practical way of carrying out buying and selling activities of goods or services in *E-commerce*. However, it is also necessary to explore in terms of buying and selling electronically, of course there is an item that can be an object of transaction which of course can be closely related to a trademark, which is the Intellectual Property Rights of the store owner in *E-commerce*. Electronic

commerce transactions are directly related to Intellectual Property Rights, which can be seen in any regulation that regulates an electronic transaction. The rules regarding Intellectual Property Rights such as Law Number 20 of 2016 concerning Trademarks and Geographical Indications are always mentioned because fraud often occurs in electronic transactions, such as piracy and trademark counterfeiting. This kind of misappropriation can cause a great loss to the trademark owner and cause legal problems in a trade carried out electronically so that it is necessary to protect the trademark rights in the *E-commerce*.

Legal protection is an action that can provide security for the rights of a person or group of people who have been disturbed or unjustly seized by other parties. This legal protection is carried out to ensure that all Indonesian people can enjoy a right that has been mandated by the law that has been enacted. According to the view of Kansil, who explained that legal protection can include various efforts that have been made by law enforcement officials in order to provide a sense of security, both physically and psychologically, from any form of disturbance or threat from any party.¹² Therefore, it is necessary to enforce legal protection as an action to be able to protect or provide assistance to people who feel aggrieved, including legal protection for trademark holders who are traded in the online market or often called *e-commerce*. Legal protection applied in Indonesia is a very universal concept in a country that can uphold a law. Legal

¹² Satjipto Rahardjo, *Legal Sciences* (Bandung: Citra Adithya Bhakti, 2000), p.20.

protection of intellectual property rights such as trademarks Basically, there are two forms of legal protection, namely preventive legal protection and legal protection for settlement. Preventive legal protection, which basically refers to preventive measures, is essential for government actions that are based on freedom of action because with the protection of preventive laws, the government is directed to be cautious in making decisions. The form of preventive legal protection is contained in the law to prevent violations and provide restrictions in carrying out obligations. Legal settlement protection serves to resolve disputes arising from violations. This protection is a form of final protection that involves sanctioning violations that have occurred.¹³

Legal protection can be applied to intellectual property rights in the form of trademark rights traded in *e-commerce*. A trademark that is part of an Intellectual Property Rights that is closely related to trade, where its use is related to the product being marketed and has economic value. Trademark rights are exclusive rights granted by the state to their owners. With these rights, the brand owner can use his own brand and give permission to others to use his brand through a licensing agreement. To obtain these rights, the trademark owner must register his trademark with the state, this is also provided legal protection in the form of preventive and recognition given by the state to the owner of the rights to trademarks that have been registered

¹³ Your Excellency, Your Excellency, *Victim and Witness Protection Victimology* (Jakarta: Sinar Grafika, 2014), p.18.

and traded in *e-commerce*.¹⁴

Ensuring the protection of trade law security that occurs in *cyberspace*, it is important to pay attention to the existence of legal aspects of *cyberspace*. Therefore, as a means of carrying out legal development, the community can encourage the implementation of Law Number 11 of 2008 concerning Information and Electronic Transactions which was later amended by Law Number 19 of 2016 to be fully applied to the e-commerce system. The goal is to ensure that the public, whether it is a seller or a buyer, can maintain order in *e-commerce* activities, especially in electronic transactions for goods or services that have registered trademarks. One type of electronic commerce is *e-commerce*, which includes digital platforms in *e-commerce* where a consumer can make transactions directly with other consumers on the marketplace platform site. In this transaction, it is important to pay attention to the legal aspects of intellectual property, which are protected by Article 25 of the ITE Law. This can aim to provide protection for all intellectual property in information systems, taking into account the regulations related to intellectual property.¹⁵

The Indonesian government's treatment in providing protection for a trademark is carried out with the existence of specific laws and

¹⁴ Agung Sujatmiko, "A Philosophical Review of Trademark Property Protection," *Journal of Legal Media* 18, no. 2 (2011), p.52.

¹⁵ Because Aulia Puti C, Ranti Fauza Mayana, and Tasa Safiranita Ramli, "Legal Protection for Well-Known Marks for Passing Off on the Digita Platform Marketplace," *Kertha Semaya Journal* 8, no. 11 (2020), p.219.

regulations that can regulate the protection of trademarks in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, or often referred to as the MIG Law and also regulated in Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation. However, this legislation does not regulate the classification of a trademark that classifies a reputation, although experts have generally distinguished a trademark based on the level of fame it can have. The classification consists of three levels, namely ordinary brands, well-known brands, and well-known brands. In buying and selling branded goods or services in *e-commerce*, business actors often violate the law in bad faith by counterfeiting well-known brands such as Adidas, Puma, Gucci and others to be able to trade and sell goods or services as products that are actually not part of the brand. This is done by business actors in *e-commerce* in order to achieve the greatest profit without the need to spend a large amount of effort to be able to build a new brand reputation. An action that is often carried out by entrepreneurs is brand reputation falsification, which is a common practice found in the general legal system and is done by imitating or imitating the brand of someone else who already has a good reputation¹⁶

The existence of legal regulations related to the legal protection of trademarks does not automatically constitute a settlement in electronic buying and selling activities in *e-commerce*. Given where

¹⁶ Ahmad Ramli, *Copyright* (Bandung: Alumni, 2018), p.59.

the current technological development is very fast, the trade sector through transactions where electronic buying and selling in *e-commerce* has a potential to be able to further develop in Indonesia. Therefore, Indonesia needs to prepare a special regulation regarding electronic trade transactions in *e-commerce*, which not only pays attention to consumer rights but also relates to the product that is the object of the transaction from *e-commerce* sales. The *e-commerce* market has a very important role in an electronic trade buying and selling activity, as regulated by the legal basis of Government Regulation Number 80 of 2019 which always states that an e-commerce-based online market is responsible for the informed goods or services contained in *the e-commerce store*.¹⁷

Legal anticipatory steps that can be taken by brand owners whose brands are traded in *e-commerce* are to be able to take action by reporting their brands that are traded in *e-commerce* markets such as Tokopedia, Shoppe, Lazada, Blibli and other online stores that use *e-commerce* systems explained in the Circular Letter from Kominfo Number 5 of 2016 which gives a right to brand owners to be able to take action against the practice of trademark counterfeiting that occurs in *certain e-commerce* markets by filing a complaint with the platform provider in order to block or remove content that violates their intellectual property rights. Or more specifically, it can be explained in detail in the section that must be complied with as an

¹⁷ Sri Ahyani, "Legal Protection of Trademarks for Action For Passing Off," *Journal of Legal Insight* 27, no. 02 (2012), p.17.

obligation of all providers for *e-commerce* platforms , including the following:

1. Stores in *the marketplace* in the *e-commerce* system can provide advice in the form of reporting tools that can be used in submitting a complaint forum about a brand that has been deceived and banned in an e-commerce-based store.
2. E-commerce-based platforms can take action against reports of counterfeit trademarks for counterfeit goods or services that are detrimental to the owner of the trademark rights holder.

Pay attention to a period of time for the removal and or a blocking of the brand that commits counterfeiting and of course will be prohibited, namely in the event that the brand gains benefits in the form of fraud. With infringement, an intellectual property will be given no later than 14 (fourteen) calendar days from the date of the complaint from the trademark holder.¹⁸

Legal protection is given to the owner of the trademark which in this case is considered detrimental due to the act of seeking profit in a fraudulent way, the fraud can be followed up. Because the holder of a valid trademark rights can aim to give an exclusive right to a person or a group of trademark owners so that no other party will use the trademark, whether it is a trademark of goods or a service mark, as a mark that is the same or similar to the trademark as a product that is

¹⁸ Muhammad Amirulloh, "Brand Protection in Cyberspace," *IPR Media Journal* 5, no. 6 (2018), p.66.

the same or similar to the original brand. This exclusive right can be monopolistic, so it is only granted to the owner of the legitimate trademark and can use it exclusively. Trademark owners who have been granted exclusive rights can use their trademarks as long as they do not violate the applicable rules and prohibit other parties from using the trademark or granting permission in accordance with Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

The use of counterfeit brand names in *E-commerce* Using a well-known brand name without an agreement, according to the author, will be detrimental and will have a very bad impact in the form of income for the owner or holder of a trademark that has been legally registered by the Directorate General of Intellectual Property Rights, as well as damaging the image of the brand that has been successfully built by the owner or holder of the trademark. This action clearly violates the applicable regulations in accordance with the rules of Law Number 20 of 2016 concerning Trademarks and Geographical Indications and can also violate Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

1. The role of the American and Australian states in protecting trademark rights Legal Counterfeiting of Intellectual Property

In addition to Indonesia with regulations from the Trademark and Geographical Indications Law, several countries also carry out

trademark protection against counterfeiting that is detrimental to the original owner who is already legal and legally registered, some countries such as the United States and Australia. The author will start first from the protection of trademark rights from the United States, where the implementation of the protection of the duties of the United States government in carrying out legal protection of intellectual property is realized through an existence in a special office which focuses on the field of trademark protection of the intellectual property rights section, namely the USTR Office for Intellectual Property and Innovation (IPN). This office has a role as a means to be able to introduce a law related to the protection of counterfeit trademarks in *e-commerce* Intellectual Property Rights that can be enforced worldwide, either through a bilateral agreement or a multilateral agreement. The effort to protect intellectual property rights in the United States shows an interest in the protection of Intellectual Property Rights and an innovation for the future growth of the United States economy while protecting the trademark rights of rightful owners.¹⁹

The legal basis of the United States in protecting counterfeit trademarks in the system *E-commerce* the legal protection of such trademarks is protected in Lanham Act 15 U.S.C. § 1114, it is said that any person who without the consent of the registrant knowingly

¹⁹ Lazuardi Aditya Ramadhan, I Made Anom Wiranato, and Ni Wayan Rainy Priadarsani, "United States Efforts in the Protection of Intellectual Property in China through STR," *Indonesian Justice Law* 3, no. 4 (2021), p.112,

uses in commerce any reproduction, forgery, copy, or color imitation of a previously registered trademark in connection with the sale, offer for sale, distribution, or advertising of goods or services on or in connection with such use that may cause confusion, or cause error, or defraud including trading in *E-commerce*. or reproduce, counterfeit, copy, or imitate in the colors of a registered mark and apply the reproduction, forgery, copying, or imitation of such color on any label, mark, print, package, wrapper, container, or advertisement intended for use in trade on or in connection with the sale, offer for sale, distribution, or advertising of goods or services on or in connection with such use that may cause confusion, or cause error, or to defraud, shall be liable in a civil suit by the registrant for a further relief.²⁰ The use of a well-known brand name without permission can be very detrimental to the owner or holder of a well-known trademark that has been registered, as well as damage the image of the brand that has been successfully built by the owner or holder of the well-known brand. This action clearly violates applicable regulations, both in international regulations and in the national regulations in the United States itself. Based on trademark law in the United States, there are regulations that have guaranteed legal protection for counterfeit trademarks from the original whose imitation is done as or wholly against a well-known trademark for commercial or non-commercial gain. In this case including brand

²⁰ Satino Sulastri, "Trademark Protection "A Review of Tupperware Versus Tulipware Trademarks," *Juridical Journal* 5, no. 1 (2018), 97.

impersonation in the market *E-commerce*, one example is the use of a trademark on shoes that resemble a brand from *Fire* which has violated the provisions of United States law precisely in section 43(c) of the Lanham Act may be considered an equalization of a mark. There are several restrictions that apply to custom brand impersonation products that can be considered trademark rights infringement in the market *E-commerce*. Only a product where there is a reduction in discriminating power or harms and damages the reputation of a well-known brand can be considered as trademark infringement, the author will summarize in general a comparison of brand-based Intellectual Property Rights Law that the author will make in the table as follows:

Table. 1 Comparison of Trademark Intellectual Property Rights in Indonesia and the United States

Information		Indonesia	United States
1	Definition	Symbols that consist of images, names, words, letters, numbers, color arrangements, or a combination of these elements that have a distinguishing function and are used in the buying and selling of products or services.	Any word, name, emblem, or design, or combination thereof, used in commerce to identify and distinguish goods from one maker or seller from another and to indicate the origin of the goods.
2	System	<i>First to File</i>	<i>Firs to File</i>

3	Policy	Using the national legal system.	Using the state or federal legal system.
4	Recognition of Brand Rights	Brand owner authorized by DJKI	Trademark filing date.

Source: Author's analysis through laws and regulations and National Journals based on intellectual property rights in this case Brands.

The table above illustrates the similarities and differences between the brand-based intellectual property legal system in Indonesia and the United States.

A United States law called the Lanham Act provides for the existence of trademark protection in the United States, where trademark protection can include the existence of any name, symbol, word, or a combination of the three, used by an individual or society. If it is used in trade activities, then the trademark must be registered to distinguish the product or service from others and protect it. The principle of use in trade is applied by the United States in commerce, which means that trademark registration is not mandatory in order to acquire rights to a trademark. However, the registration gives the trademark owner the exclusive right to use the trademark in territories outside the United States²¹ No owner of a trademark in the United States has obtained a registration of a trademark without the use of the trademark in the course of trade in goods or services. Trademark rights arise from usurpation and use, and the exclusive rights to a particular trademark belong to the person who first acquires and uses it in relation to a particular business. Registration is merely a declaration of rights to the trademark and therefore does

²¹ Naurah Areta Utami, "Legal Protection of Well-Known Brands Against Trademark Dilution on Custom Shoes Reviewed from Indonesian Trademark Law and United States Trademark," *Student Journal Law* 3, no. 2 (2022), p.72.

not affect the rights of the perfect trademark.

Furthermore, the concept of legal protection of counterfeit trademark-based Intellectual Property Rights on *the e-commerce* system in Australia is governed by the Australian Trade Marks regulations 1995 which states that a trademark for a particular good or service may be challenged on the grounds that it is substantially identical with, or similar to, a trademark that, prior to the priority date of registration of the first mentioned trade mark in respect of the goods or services, have gained a reputation in Australia. Australia follows the *principle of first to use* whereby the use of which has recognised the first use of unregistered trademarks and granted some rights to their owners. According to the Trademarks in Australia *Trade Marks Act* 1995 in section 17 to 3 which explains that a mark is a symbol used, or intended to be used, to distinguish a product or service traded or provided by a person from a product or service that has been traded in trade or has been provided by another person. In Australia, the system of brand protection through *e-commerce* is often referred to as "*first to use*".

Table 2. Comparison of Trademark Intellectual Property Rights in Indonesia and Australia

Ye s	Information	Indonesia	Australia
1	Coverage Period	10 Years	110 Years
2	System	<i>Frist to file</i>	<i>First to use</i>
3	Policy	It was admitted after it was passed.	Recognized after registration.

Source: Author's Analysis through laws and regulations and International Journals

The table above proves that there are similarities and there are also differences that mean that anyone who can prove significant use of a

trademark in the first *e-commerce* in the market will have the right to the trademark being traded, even if it is not legally registered. According to Australian trademark law, the use of a trademark by a merchant or seller in the trade of their branded goods or services is very important to be able to assist in determining the ownership and suitability of the trademark being traded in the *e-commerce* market. Therefore, Australia is known as a country that prioritizes those who are using a particular brand for the first time. If a person can demonstrate the use of the trademark in the trade of goods or services in Australian *e-commerce*, then they are entitled to trademark protection, even if there are other parties who have applied for the registration of the trademark earlier

C. Conclusion

Based on the background, problem formulation and research results that the author is looking for in the legal analysis literature, the author makes a conclusion that the trade of buying and selling in electronic means, is considered a new and more practical way of carrying out buying and selling activities of goods or services in e-commerce. The rules regarding Intellectual Property Rights such as Law Number 20 of 2016 concerning Trademarks and Geographical Indications are always mentioned because they are often mentioned because they are often Fraud occurs in electronic transactions, such as piracy and counterfeiting of brands. This legal protection is carried out to ensure that all Indonesian people can enjoy a right that has been mandated by the law that has been enforced Legal protection can be applied to intellectual property rights in the form of rights to trademarks that are traded in *E-commerce*. A trademark that is part of an Intellectual Property Rights that is closely related to trade, where its use is related to the product being marketed and has economic value. Trademark rights are exclusive rights granted by the state to their owners. With these rights, the brand owner can use his own brand and give permission to others to use his brand through a licensing agreement.

Meanwhile, the protection of trademark rights in the United States and Australia to be able to protect the main brand owners. trademark rights protection of the United States, where the implementation of the protection of the United States government's duty to carry out legal protection of intellectual property is realized through an existence in a special office that focuses on the field of trademark protection of the intellectual property rights section, namely the USTR Office for Intellectual Property and Innovation (IPN). As for the legal basis of the United States in protecting counterfeit trademarks on e-commerce systems the legal protection of such trademarks is protected in the Lanham Act 15 U.S.C. § 1114, it is said that any person who without the consent of the registrant knowingly uses in trade any reproduction, counterfeiting, copying, or color imitation of a previously registered trademark in connection with the sale may be punished. Meanwhile, in Australia, the principle of *first to use* whose use has acknowledged the first use of an unregistered trademark and conferred some rights on its owner. According to the Trademarks Act in Australia Trade Headquarters Act 1995 at section 17 to 3. The suggestion in the future is that Indonesia can pursue several policies from other countries to be applied to regulations related to brands

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