



LAW ENFORCEMENT AGAINST THE SALE OF FAKE BAND MERCHANDISE (*BOOTLEG*) BASED ON COPYRIGHT LAW

¹Zahra Saffanah , Handoyo Prasetyo²

^{1,2)} Faculty of Law, National Development University "Veteran" Jakarta

Article Info

Received : 02/08/2024
Accepted : 29/11/2024

Keywords:

Law Enforcement, Counterfeit
Merchandise, Copyright

Abstract

The trade of counterfeit merchandise in the music industry continues to grow in Indonesia, resulting in financial losses and loss of exclusivity of works for copyright holders. Counterfeit merchandise utilizes band logos or designs without permission, which is detrimental to musicians. This research examines the form of law enforcement against the sale of counterfeit merchandise in Indonesia based on Law No. 28 of 2014 concerning Copyright and identifies obstacles in its application. Using a normative legal research method with a statutory and case study approach, this research finds that law enforcement faces various challenges, particularly on digital platforms. Lack of legal awareness in the community, limited law enforcement resources, and difficulty identifying original products in online sales are some of the main obstacles. The government must increase cooperation with digital platforms through automatic detection algorithms, responsive reporting mechanisms, and intensive socialization to overcome this. In addition, musicians can promote official merchandise through social media as an independent effort to fight counterfeit products. Overall, a comprehensive and collaborative approach is needed to curb the circulation of counterfeit merchandise and protect copyright in Indonesia.

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Corresponding Author:

Zahra Saffanah, Handoyo Prasetyo
Email: 2110611008@mahasiswa.upnvj.ac.id

I. INTRODUCTION

The sale of counterfeit or bootleg band merchandise is often a serious problem that harms many parties, be it the copyright holders (bands or artists) or consumers. Bootleg merchandise refers to products that are produced and sold without official permission from the legitimate copyright holder. In Indonesia, this practice can be subject to legal sanctions under copyright regulations, specifically Law Number 28 of 2014 on Copyright (Copyright Law). In this context, law enforcement against the sale of counterfeit band merchandise is essential to protect the rights of copyright holders and prevent the spread of illegal goods in the market.

In the digital age and increasingly advanced global trade, copyright infringement on counterfeit merchandise is becoming more prevalent, especially in the music industry. Counterfeit merchandise is a product that utilizes logos, designs, or elements of a copyrighted work without the copyright owner's permission. This practice is financially detrimental and damages the brand reputation and exclusive value of the original work. According to a report by the *World Intellectual*

Property Organization (WIPO), violations of intellectual property rights, including copyrights, continue to increase every year, with global losses reaching billions of dollars (World et al. Organization (WIPO), 2023). In Indonesia, the Ministry of Trade estimates that around 40% of goods in circulation are counterfeit, driven by the vast territory and easy distribution of counterfeit products. With losses of IDR 4 trillion per year due to copyright infringement and piracy of creative products, including music, movies, and merchandise, reported by the Ministry of Tourism and Creative Economy (Kemenparekraf) around 2020. This estimate covers the broader economic impact, including the loss of potential tax and state revenue due to piracy in various creative industry sectors in Indonesia (Data Center and Information System of the Ministry of Tourism and Creative Economy / Tourism and Creative Economy Agency of RI, 2020).

Indonesian musicians, such as Sammy Bramantyo of the band Seringai, and other bands, such as The Adams and The Panturas, have expressed concern over the existence of counterfeit merchandise that directly impacts the revenue and exclusivity of their works. The presence of online platforms further exacerbates the situation, enabling the rapid and widespread distribution of counterfeit products. Merchandise sales are the primary source of income for bands to support creativity and strengthen relationships with fans, so the loss of this income has serious repercussions. This shows that counterfeit goods, albeit of lower quality, are sold at almost the same price as the real thing. This shows that the band is losing revenue from fans willing to pay almost the same price as the original. If genuine merchandise sells thousands of units annually, the loss could amount to tens of millions of rupiah per band. This figure could be even higher in Indonesia if it includes other affected local bands and musicians.

Law No. 28/2014 on Copyright has provided a legal basis to protect copyright holders, but its implementation in Indonesia needs to be revised. The rampant sale of counterfeit merchandise in physical and digital markets shows that law enforcement still faces various challenges, such as more resources and constraints overseeing online distribution. In addition, legal awareness among the public is still low, and many consider purchasing counterfeit goods as a matter of course. (Arini, S., 2019)

This research aims to examine law enforcement against the sale of counterfeit band merchandise in Indonesia under the Copyright Law and identify weaknesses in its implementation. With a focus on the local context, this research is expected to contribute to copyright literature, offer practical solutions to improve the protection of copyright holders and suggest a more robust regulatory framework and cooperation between the government, industry, and online platforms.

II. RESEARCH METHODS

This research method is normative legal research focusing on the rules and legal rules related to copyright infringement in selling fake band merchandise. The approach used in this research is the *Statute Approach* to examine various regulations, such as Law No. 28 of 2014 concerning Copyright, the Criminal Code, and other relevant regulations, as well as the *Case Approach* to analyze the application of legal norms in practice. However, not all cases used come from court decisions.

The data sources used include Primary Legal Materials such as official laws and regulations related to copyright; Secondary Legal Materials in the form of relevant legal articles and journals supported by interviews with experts; and Tertiary Legal Materials that provide additional information from the internet. Data was collected through literature studies to review relevant literature and structured interviews to obtain direct views from relevant sources. Data analysis was conducted using qualitative descriptive techniques, aiming to describe, explain, and provide detailed answers to the issues raised in this research.

III. RESEARCH RESULTS AND DISCUSSION

3.1. Forms of Law Enforcement Against the Sale of Fake Band Merchandise (Bootleg) Based on Law No. 28 of 2014

Copyright is the exclusive right granted to the creator of a work to regulate the use and distribution of that work, including musical works, logos, and band names. Band merchandise, such as t-shirts, posters, and other accessories that feature the band's logo or image, are part of the copyright owned by the artist or band. In this case, the merchandise products are derivative of the copyright on the musical works and visual elements used in the band's branding. The party owning the copyright, such as the band or their manager, has the right to control the production and distribution of merchandise associated with the band. Therefore, the sale of bootleg merchandise that does not obtain permission from the copyright holder violates the law and can be sanctioned by applicable provisions.

As stipulated in Article 1 Point 1 of the Copyright Law, Copyright is an exclusive right that the Creator automatically owns once his work is realized in tangible form. According to Imam Trijono, Copyright is a form of legal protection that is not only given to the Creator and the results of his work but also to the authorized parties and publishers of translations of works protected through agreements (Sari, 2017).

Copyright is an exclusive right granted to the creator, consisting of moral and economic rights, as stipulated in Article 4 of the Copyright Law. Moral rights under Article 5 allow the Creator to include or not include his name in his work, use a pseudonym, change his work, and defend his rights in the event of an adverse violation. Meanwhile, the economic rights stipulated in Article 9 give Copyright Holders the authority to duplicate, publish, adapt, translate, arrange, distribute, and publish their work (Ratih et al., 2022). Article 113 regulates criminal sanctions for perpetrators who produce and distribute goods that infringe copyright, including goods sold without the copyright holder's

permission, such as bootleg merchandise. Article 72 confirms that the use of copyrighted works without permission or in violation of copyright holders' moral and economic rights may be subject to administrative, criminal, or civil sanctions.

Law enforcement against the sale of counterfeit (bootleg) band merchandise under Law No. 28 of 2014 on Copyright in Indonesia includes several mechanisms that aim to protect the rights of copyright holders comprehensively. The law grants copyright holders the exclusive right to control their works' use, distribution, and utilization, including band logos or designs used in merchandise products. This exclusive right authorizes rights holders to file legal actions in case of infringement that has the potential to harm them financially or morally.

Various forms of law enforcement are applied to protect copyright holders from harmful actions, ranging from preventive to repressive enforcement, with the primary objective of maintaining product authenticity and respecting the economic and moral rights of rights holders. In the preventive aspect, prevention efforts are carried out by encouraging copyright holders to make copyright records. Under Article 64 of Law No. 28 of 2014, copyright registration is a form of protection obtained by registering works with the Ministry of Law and Human Rights, which can serve as proof of legal ownership in court in case of a dispute. This step allows rights holders to claim ownership of the work with formal, solid evidence. In addition, the government conducts copyright socialization to increase public awareness, especially business actors, about respecting intellectual property rights. This socialization is expected to build an understanding that the production and sale of counterfeit merchandise is a violation of the law that affects the creative industry and harms artists and copyright holders. Cooperation between the government and e-commerce platforms or marketplaces is an integral part of this preventive effort, given that most counterfeit merchandise sales are online. Through this cooperation, marketplaces are encouraged to remove products that violate copyright and supervise the products offered by sellers.

On the other hand, repressive law enforcement is carried out when copyright infringement has occurred, aiming to sanction the perpetrators and provide holders. This repressive enforcement can be done through criminal lawsuits by copyright holders; this law also regulates criminal sanctions for copyright infringement committed for commercial purposes, including selling counterfeit merchandise. Article 113 paragraph (3) of Law No. 28 of 2014 states that perpetrators can be imprisoned for up to 10 years or a maximum fine of Rp4 billion. This criminal enforcement aims to provide a deterrent effect for infringers so as not to repeat similar actions in the future.

In addition, as part of the investigation process, the police are authorized to seize evidence in counterfeit merchandise that infringes copyright. This seizure serves two primary purposes: to secure products suspected of infringing copyright from circulation and to strengthen evidence in court proceedings. Evidence seizure can also slow the distribution of counterfeit merchandise, although

complete eradication requires greater coordination, including international cooperation, if the infringement involves cross-border distribution.

3.2. Obstacles and Efforts in Strengthening Law Enforcement in the Face of Counterfeit Merchandise Sales in Physical and Online Markets

Law enforcement against selling counterfeit merchandise in Indonesia faces various obstacles in physical and online markets. Although Law No. 28/2014 on Copyright has provided a relatively straightforward legal framework, in its implementation, significant challenges affect law enforcement's effectiveness. These obstacles relate to public legal awareness, limited law enforcement resources, and difficulties monitoring online platforms. However, various efforts can be made to strengthen law enforcement, including increased cooperation with digital platforms, increased public awareness, and optimization of the role of technology in copyright monitoring.

Although the Copyright Law in Indonesia provides a sound legal basis for the protection of copyrighted works, including in the case of the sale of illegal or bootleg goods that infringe copyright, the implementation and enforcement of such laws often fail to run smoothly. One of the main challenges in dealing with such issues is the issue of jurisdiction. Stages that often complicate the legal process must be carried out in-depth investigations both in terms of finding the source of counterfeit goods and verifying copyright infringement. In the case of trading through *online* platforms, sellers of counterfeit merchandise generally use techniques such as using pseudonyms, conducting business through third parties, or masking their identities, making it difficult for copyright holders to trace the origin of the counterfeit goods. To prove copyright infringement, copyright holders must gather authentic evidence that the design, logo, or other elements used on the marketed product are theirs. This evidence could include copyright registration documents, records of distribution or production of counterfeit goods, and even evidence of online transactions that support the infringement claim. This evidence must be carefully prepared to strengthen the legal argument in court. Gathering this evidence is not only time-consuming but can also be costly, especially if it involves cross-border investigations or cooperation with third parties who are experts in the field of copyright.

In the face of copyright infringement, copyright holders often incur considerable costs. These include legal fees, investigation costs, and gathering evidence. This high-cost burden is often an obstacle for independent bands or artists who may need more financial resources to sue their copyright infringers in court, so their usual efforts are limited to reprimanding, which does not affect the irresponsible sellers of counterfeit merchandise. Therefore, further efforts are needed to improve coordination between government agencies, copyright holders, and the public and to simplify legal procedures so that copyright enforcement can be more effective and efficient and better protect copyrighted works.

One of the main obstacles in dealing with the sale of counterfeit merchandise in Indonesia is the need for public legal awareness. People generally lack the understanding that buying or selling counterfeit merchandise constitutes copyright infringement and harms the original rights holders, such as bands or artists whose work is being sold unlawfully. This keeps the demand for counterfeit products high, fueling the continuation of counterfeit sales activities. In addition, law enforcement often needs more resources, both in terms of personnel and infrastructure, especially in dealing with copyright infringement in various regions, including areas with limited access. This condition is further exacerbated by the difficulty of detecting and distinguishing between original and counterfeit merchandise, as the price difference between original and counterfeit merchandise is only around Rp 20,000 to Rp 30,000, indicating that counterfeit goods are sold at almost the same price as the original ones. This requires an in-depth understanding of intellectual property rights and access to detailed original product data.

In the online marketplace, surveillance challenges are increasingly complex. The circulation of counterfeit merchandise through digital or e-commerce platforms is increasing as these platforms enable large-scale and wide-reaching transactions. The difficulty in identifying online sellers who often use fictitious identities and switch platforms complicates law enforcement efforts. Many individual sellers operating in the marketplace make copyright infringement challenging and require intensive coordination between the government, law enforcement, and digital platforms. Like the seller who sold fake, The Panturas band merchandise through TikTok live streaming. The Panturas Band Group also made a subpoena through social media "X" so that the seller was self-aware and their fans knew not to buy from the seller again. The seller was aware of the subpoena and immediately changed his TikTok account name and continued to sell fake merchandise. This incident reflects the real challenges of dealing with copyright infringement in the digital age. The reporting and takedown mechanisms on digital platforms often need to be more responsive and timely, preventing the immediate spread of counterfeit products.

Figure 1.1 The Panturas band's unrest

(Source: X @thepanturas)



In order to overcome these obstacles, several efforts need to be made to strengthen law enforcement. For example, increased cooperation between the government and digital platforms is essential in curbing counterfeit products' circulation online. This cooperation can include the implementation of specialized algorithms to detect counterfeit goods, faster and more responsive reporting mechanisms, and more efficient removal of copyright-infringing content. In many countries, this kind of cooperation also includes the implementation of *notice and takedown* that allows rights holders to report counterfeit products so that the platform can immediately remove the reported content. Through this cooperation, digital platforms are expected to conduct self-monitoring to detect copyright-infringing goods. More massive socialization of copyright to the public needs to be improved by involving the media, educational institutions, and creative communities. Public education aims to provide an understanding that counterfeit products negatively impact not only copyright holders but also Indonesia's creative economy. The government can collaborate with artists, musicians, and content creators to disseminate this information through various social media channels to reach more audiences, especially the younger generation, who are the primary consumers of digital products.

In order to overcome limited resources, optimizing technology in copyright control can be an effective solution. The government and law enforcement can use technologies such as *automated scanning* on *e-commerce* platforms to detect counterfeit goods or implement a blockchain-based tracking system that allows each original product to have a unique digital identity that is difficult to counterfeit. Blockchain creates a digital mark for each product, which records its journey from the manufacturer to the end consumer, making it difficult for third parties to counterfeit it. This technology will make it easier for law enforcement to distinguish genuine goods from counterfeit goods and follow up on detected offenses. Artificial intelligence (AI)-based software is now widely

used to detect copyright infringement automatically. This technology can analyze visual content, such as logos, images, or designs, and compare them to a database of copyrighted works. Thus, the use of copyright-infringing elements can be identified quickly and accurately. For example, *image recognition* technology is a device that can scan images or logos uploaded on e-commerce websites or social media for similarities to copyrighted works. If any similarity is found with the copyright holder's design or logo, the system will give a warning or mark the content as infringing.

In addition, specialized training for law enforcement officials related to intellectual property rights can help improve their understanding of handling copyright infringement cases more effectively. This training could include digital investigation techniques to detect and address infringement in online marketplaces.

On the other hand, musicians and artists also take a stand against the circulation of counterfeit products by promoting their official merchandise on social media, thereby minimizing the chances of consumers unknowingly purchasing counterfeit products. This step helps clarify the official products and raises consumer awareness of the importance of respecting copyright. Such independent measures help create public support for copyright and positively impact the sales of original products. In addition to law enforcement efforts carried out by the government and related institutions, musicians and artists also play an essential role in combating the circulation of counterfeit products, especially merchandise bearing the name of their work or brand. Using social media platforms and other digital channels, musicians and artists can take strategic independent steps to protect their copyrights, clarify which products are legitimate, and educate fans to be more selective in purchasing merchandise. These efforts help reduce the circulation of counterfeit products and create broader public awareness of the importance of respecting copyright. Musicians and artists often use social media as the leading platform to promote their official merchandise. With millions of followers consisting of loyal fans, social media is an effective tool to reach out to the audience directly. Promotion of official merchandise is usually done by providing official links. Artists or bands often include direct links to their official websites or trusted online stores where fans can purchase original merchandise. These links are usually published through Instagram, Facebook, Twitter, or TikTok posts and embedded in their bio or account description. Showcasing their official products on social media Through photo or video posts, artists showcase their official merchandise, such as t-shirts, hoodies, hats, or other accessories, to help fans recognize the characteristics of authentic products. For example, they may highlight special labels, hologram logos, or unique designs that counterfeit products do not have, allowing them to differentiate between official products and counterfeit goods often sold on black markets or e-commerce platforms.

Musicians and artists often launch exclusive official merchandise to attract fans to keep buying through their official accounts. These products are usually specially designed to provide more value than counterfeit products. For example, selling limited edition products creates a sense of

exclusivity that counterfeit products cannot offer. Artists may also include merchandise as part of a bundle with concert tickets, physical albums, or exclusive access to digital content, such as behind-the-scenes videos or Q&A sessions with the artist. Often, official merchandise comes with a certificate of authenticity or a signature directly from the artist, giving fans sentimental value and authenticity. This strategy increases sales of official merchandise and reduces the appeal of counterfeit products that often cannot offer such added value.

IV. CONCLUSIONS

Law enforcement against the sale of counterfeit merchandise in Indonesia, particularly in the music industry, faces complex challenges despite a clear legal basis through Law No. 28/2014. The rise in copyright infringement, especially in online marketplaces, shows the need for more effective efforts in tackling this issue.

One of the main challenges is the difficulty in identifying online sellers who often use fictitious identities and switch platforms, which complicates enforcement efforts. The large number of individual sellers operating on marketplaces makes copyright infringement challenging to control and requires intensive coordination between the government, law enforcement, and digital platforms. For example, cases of sellers selling counterfeit merchandise on live streaming platforms such as TikTok show that reporting and takedown mechanisms often lack responsiveness and are time-consuming, preventing the immediate spread of counterfeit products.

Cooperation between the government, industry, and online platforms is essential to increase public awareness of copyright and the effectiveness of enforcement. Technology, such as algorithms to detect counterfeit goods and faster reporting mechanisms, can help reduce the circulation of counterfeit merchandise. In addition, the massive socialization of copyrights to the public needs to be improved by involving the media, educational institutions, and creative communities. Public education aims to provide an understanding that counterfeit products negatively impact not only copyright holders but also Indonesia's creative economy as a whole.

Musicians and artists' active role in promoting official merchandise is also very important. They can provide fans with official links to purchase merchandise through social media, thus minimizing the chances of consumers purchasing counterfeit products unknowingly. Such independent measures help create public support for copyright and positively impact the sales of original products.

Overall, a comprehensive and collaborative approach is needed to address the issue of counterfeit merchandise sales and copyright protection in Indonesia. This includes increased cooperation between the government and digital platforms, the implementation of specialized algorithms to detect counterfeit goods, and a more efficient process for removing copyright-infringing

content. With these measures, the circulation of counterfeit merchandise can be reduced, and copyrights can be better protected in Indonesia.

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