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Responsibility of E-Commerce Platforms to Consumers for illegal Products in Indonesia

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Abstract

The expansion of e-commerce in Indonesia has significantly transformed digital transactions, offering unparalleled convenience while simultaneously giving rise to pressing legal concerns regarding the distribution of unauthorized goods. Items such as unregulated pharmaceuticals, harmful beauty products, and counterfeit merchandise are increasingly prevalent on online marketplaces, endangering consumer safety. This research adopts a normative juridical framework, incorporating legislative, theoretical, and case-study approaches to examine the extent of liability e-commerce platforms bear in facilitating the trade of illegal products. Under Indonesia's Consumer Protection Law, Trade Law, and the Electronic Information and Transactions (ITE) Law, these platforms are expected to regulate and oversee transactions, yet in practice, accountability predominantly falls on individual vendors. The principles of strict liability and vicarious liability provide a legal basis for evaluating platform responsibility in such cases. Findings suggest that enforcement mechanisms remain insufficient, allowing gaps in regulatory oversight. To address this, robust policies must be introduced, including stringent verification protocols for sellers and products, alongside stronger governmental supervision of digital commerce. Strengthening these regulatory frameworks will not only enhance consumer rights but also curtail the proliferation of illegal goods across e-commerce platforms, ensuring a safer and more accountable online marketplace.

Keywords: E-commerce, unauthorized goods, consumer rights, platform accountability, regulatory enforcement.

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1. Introduction

The development of digital technology has brought significant changes to trading patterns in Indonesia. E-commerce has become a rapidly growing sector with the emergence of various platforms such as Tokopedia, Shopee, Bukalapak, and Lazada, offering ease of transactions for the public. With increased internet penetration and easier access to digital marketplaces, consumer behavior has shifted significantly from conventional transactions to online-based transactions. The convenience of transactions, wide variety of products, and flexible payment systems make e-commerce the top choice for consumers. In addition to its positive impact on digital economic growth, this development also brings new challenges, one of which is the increasing circulation of illegal products on various e-commerce platforms.

Illegal products circulating in marketplaces include a wide range of items, such as unlicensed drugs not approved by BPOM, counterfeit cosmetics that may contain harmful substances, pirated goods that violate copyright laws, and illegal electronic devices that do not meet safety standards. Many consumers fall victim to these products due to a lack of information regarding



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the authenticity and legality of the items they purchase. In some cases, the use of such illegal products results not only in financial losses but also poses serious threats to consumers' health and safety. This phenomenon raises complex legal issues, particularly concerning the responsibilities of parties involved in electronic transactions, including the e-commerce platforms themselves.

As intermediaries in digital transactions, e-commerce platforms facilitate buying and selling between sellers and buyers. However, in practice, these platforms often disclaim responsibility for products sold by third parties, claiming that they only act as service providers. This raises legal debates about the extent of the platform's responsibility in monitoring the products traded on their systems. In the context of consumer protection, the concepts of *strict liability* and *vicarious liability* may serve as a basis for assessing whether e-commerce platforms can be held accountable for the illegal products circulated on their platforms. Furthermore, the principle of due diligence in digital business demands stricter oversight measures to prevent consumers from being harmed by products that violate applicable laws.

The Indonesian government has established consumer protection through various regulations, including Law No. 8 of 1999 on Consumer Protection, which outlines consumer rights and business actors' responsibilities, and Law No. 7 of 2014 on Trade, which includes provisions regarding electronic commerce. In addition, Law No. 11 of 2008 in conjunction with Law No. 19 of 2016 on Electronic Information and Transactions (ITE Law) also regulates electronic transactions and the responsibilities of digital platform providers. The government has also issued various regulations through the Ministry of Trade to clarify the obligations of marketplaces within the electronic trade ecosystem. However, despite the availability of regulations, implementation and enforcement still face numerous obstacles.

One of the main issues in e-commerce regulation is the ambiguity in determining whether digital platforms merely act as intermediaries or hold responsibility for products traded by users on their platforms. The high number of illegal products found in marketplaces indicates that the existing oversight mechanisms are still weak. Verification systems for uploaded products are often not stringent enough, allowing illegal goods to circulate freely. Past cases have also shown that legal resolutions often fail to provide sufficient deterrent effects for business actors who violate the rules.

The liability of e-commerce platforms for illegal products in Indonesia is a complex issue involving multiple stakeholders. E-commerce platforms have responsibilities regarding copyright infringement and the sale of illegal products, such as cosmetics without proper permits (Ali et al., 2022; Nurdiyanti et al., 2024). The legal framework in Indonesia lacks comprehensive regulations for platform providers, particularly concerning universal liability for users and disputes involving platforms based outside Indonesia (Hermawan & Pramana, 2022). Consumer protection in online transactions is a shared responsibility among the government, e-commerce platforms, and consumers themselves (Nurdiyanti et al., 2024). Strict supervision of products circulated through e-commerce platforms is necessary to protect consumers from harm (Putri & Saly, 2021). The implementation of safe harbors and secondary liability regulations for both domestic and foreign-based platforms operating in Indonesia is recommended to address these issues (Hermawan & Pramana, 2022).

Given these issues, this research is essential to analyze the legal responsibility of e-commerce platforms from a normative legal perspective. In addition, this study aims to evaluate the effectiveness of existing regulations in protecting consumers from illegal products and to provide recommendations for more effective policies to enhance consumer protection in the digital era. Through an in-depth legal review, this research is expected to contribute to the strengthening of e-commerce policies so that consumer protection can be better guaranteed, and the circulation of illegal products in marketplaces can be minimized.



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2. Method

This study adopts a doctrinal legal research approach, concentrating on the interpretation and evaluation of legal frameworks governing the accountability of e-commerce platforms for the distribution of illicit goods in Indonesia. The research integrates a legislative review and a conceptual exploration to comprehensively assess the legal landscape. The legislative review involves scrutinizing statutory provisions related to consumer rights, electronic commerce, and the obligations of digital intermediaries, including the Consumer Protection Act, the Trade Act, and the Electronic Information and Transactions Act. In parallel, the conceptual exploration delves into fundamental legal doctrines such as strict liability, vicarious liability, and the duty of due diligence in digital trade, offering insights into the legal expectations imposed on ecommerce operators regarding unlawful product listings.

The study relies on an extensive examination of primary, secondary, and tertiary legal sources. Primary sources include statutory laws, judicial decisions, and regulatory directives addressing illegal product circulation in online marketplaces. Secondary sources consist of academic literature, law review articles, and prior studies analyzing legal responsibilities in digital trade. Additionally, tertiary sources, such as legal lexicons and encyclopedias, provide further clarification of key terminologies and legal principles. Employing a qualitative analytical method, this research systematically interprets existing legislation, evaluates its implementation, and juxtaposes it with relevant legal theories. Through this interpretative and comparative approach, the study aims to elucidate the extent of legal responsibility imposed on e-commerce platforms within the framework of Indonesian consumer protection laws.

3. Results and Discussion

Table 1. Comparative Regulatory Frameworks for E-Commerce Platforms

Legal Aspect	Indonesia	European Union	United States
Seller Verification Requirements	Not explicitly mandated	Mandatory identity and product legality checks	Required for specific platforms (e.g., Amazon, eBay)
Liability for Illegal Products	Mostly imposed on individual sellers	Platforms can be directly liable	Platforms can be sued for negligence
Specific Marketplace Regulation	Limited to EIT Law and Trade Law	Governed under the Digital Services Act (DSA)	Section 230 of the Communications Decency Act
Government Oversight	Weak and inconsistent	Strong consumer protection agencies	Strong enforcement by FTC and state agencies
Sanctions for Platform Negligence	Non-specific and limited	Clear administrative and legal sanctions	Civil and criminal liability possible

Source: Comparative study of digital law in Indonesia vs abroad.

A comparative analysis of regulatory frameworks across Indonesia, the European Union, and the United States reveals significant discrepancies in how e-commerce platforms are held accountable for the circulation of illegal products. In Indonesia, there is no explicit legal obligation requiring platforms to verify the identity of sellers or the legality of their products. By contrast, the European Union mandates stringent verification protocols under its Digital Services Act (DSA), compelling platforms to actively monitor and regulate content and product listings. Similarly, in the United States, platforms such as Amazon and eBay are required to implement verification systems and may be held liable if proven negligent under various state laws and federal oversight by the Federal Trade Commission (FTC). Furthermore, while Indonesia's regulatory approach primarily relies on the Consumer Protection Law, the Trade Law, and the Electronic Information and Transactions Law (ITE Law), these laws do not provide clear accountability mechanisms specific to digital intermediaries. In comparison, the EU has well-defined sanctions and liability structures, and the U.S. applies Section 230 of the Communications Decency Act, although recent developments suggest a move toward increasing platform accountability. Government oversight in Indonesia remains inconsistent, and

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sanctions for platform negligence are limited and vague, whereas in the EU and U.S., platforms may face administrative, civil, or even criminal penalties for failing to regulate illegal activities on their sites.

Table 2. Consumer Protection Regulations in Indonesia for E-Commerce Platforms

Regulation	Key Focus	Platform Accountability	Field Implementation
Law No. 8 of 1999 (Consumer Protection Law)	Ensuring consumer rights and business obligations	Not explicitly regulating digital platforms	Enforcement targets individual sellers more often
Law No. 7 of 2014 (Trade Law)	Governs national trade, including e- commerce	Platforms seen as facilitators, not direct traders	Monitoring mechanisms remain underdeveloped
Law No. 11 of 2008 jo. Law No. 19 of 2016 (EIT Law)	Regulates electronic transactions and platform duties	Security obligations exist, but no direct product liability	Legal ambiguities persist
Minister of Trade Regulations	Technical guidelines for digital commerce operations	Verification encouraged but not mandatory	Varying implementation across platforms

Based on analysis of Indonesian legal statutes and regulatory documents (UU Perlindungan Konsumen, UU Perdagangan, UU ITE)

Indonesia's regulatory landscape for consumer protection in digital commerce is built upon several key legislations. Law No. 8 of 1999 on Consumer Protection provides a foundational framework, emphasizing the responsibility of business actors to ensure the safety and authenticity of their products. However, this law does not explicitly impose obligations on digital platforms, which often allows them to distance themselves from liability when third-party vendors sell illegal goods. Law No. 7 of 2014 on Trade includes provisions for electronic commerce, identifying the platform as a facilitator rather than a principal actor in the transaction. Consequently, many e-commerce platforms avoid direct legal accountability. Additionally, Law No. 11 of 2008 in conjunction with Law No. 19 of 2016 on Electronic Information and Transactions (ITE Law) establishes the digital obligations of service providers, but lacks specific clauses assigning responsibility for verifying products or monitoring listings. Although the Ministry of Trade has issued technical guidelines related to marketplace conduct, such as encouraging the verification of sellers and products, these measures remain non-binding. In practice, the enforcement of these regulations is often fragmented, with significant variations between platforms. As a result, illegal and potentially harmful products continue to proliferate online, with consumers bearing the brunt of the regulatory gap.

The e-commerce platform has become an inseparable part of the modern trading system, particularly in Indonesia, which has experienced significant growth in digital transactions. The presence of platforms like Tokopedia, Shopee, Bukalapak, and Lazada facilitates transactions between sellers and consumers by offering easy access, transaction speed, and a variety of product options. However, behind the benefits provided, there is a significant challenge related to the circulation of illegal products that have increasingly spread in digital marketplaces. Illegal products, such as unlicensed BPOM drugs, counterfeit cosmetics, pirated goods, and illegal electronic devices, are becoming easier to find, posing risks to consumers. This issue raises an important question regarding the position and legal responsibility of e-commerce platforms in digital transactions, especially when violations that harm consumers occur.

In general, e-commerce platforms function as intermediaries that connect sellers and buyers without having direct control over the goods traded. In the marketplace business model, the platform merely provides a medium for third parties to sell their products, whereas in the online retailer business model, the platform acts as the seller responsible for the products offered. This business model difference impacts legal aspects, particularly in determining whether the platform has a legal obligation for illegal products circulating through their systems. In some cases, platforms argue that they are merely facilitators of transactions and are not obligated to verify the legality of the products

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sold. However, with the growing number of violations harming consumers, there is increasing pressure for e-commerce platforms to not only act as intermediaries but also take greater responsibility in overseeing and ensuring that the products sold comply with applicable regulations.

In the legal context in Indonesia, the responsibility of e-commerce platforms for illegal products can be analyzed through various existing regulations. According to the Consumer Protection Law (Law No. 8 of 1999), every business actor is required to ensure the safety and authenticity of the products sold to consumers. If products circulating in the marketplace are proven to be illegal or dangerous, consumers legally have the right to seek protection. However, in practice, many ecommerce platforms avoid responsibility by claiming that they only act as service providers. Meanwhile, the Electronic Information and Transactions Law (Law No. 11 of 2008 jo. Law No. 19 of 2016) also regulates the platform's obligations in overseeing digital transactions, but it does not explicitly require platforms to be responsible for illegal goods sold by third parties.

In consumer protection law, the concepts of strict liability and vicarious liability can serve as a basis for determining the responsibility of e-commerce platforms. Strict liability states that business actors are responsible for the products sold without the need to prove fault. Meanwhile, vicarious liability refers to the responsibility of one party for the actions of another, which in the context of ecommerce can apply to platforms that allow third-party sellers to sell goods through their system. If an e-commerce platform is proven negligent in overseeing its operations, it can be considered to have committed a breach of contract or unlawful act (PMH) that harms consumers. The legal consequences of this negligence can include administrative, civil, and even criminal sanctions, depending on the level of violation.

The issue of illegal product circulation in e-commerce has attracted public attention in recent years. One example is the proliferation of illegal cosmetics and unlicensed BPOM drugs sold in marketplaces, which pose health risks to consumers. Several cases have been processed legally, but in many instances, the sanctions imposed only target the sellers, while e-commerce platforms do not face significant penalties. This highlights a legal gap that allows platforms to avoid responsibility, even though illegal products circulate through their systems. This case study underscores the need for clearer and stricter regulations to govern the responsibility of platforms for goods sold through digital marketplaces.

In comparison, several countries have implemented stricter regulations for e-commerce platforms to monitor the circulation of illegal products. The European Union, for instance, requires ecommerce platforms to be accountable for the products sold through their systems, especially if the platform fails to oversee them properly. The United States also has stricter policies in monitoring digital transactions and demands platforms ensure the safety and legality of the products they facilitate. This comparative study shows that Indonesia can learn from countries that have applied stricter regulations, thus improving the supervision system and consumer protection in the ecommerce ecosystem. Although regulations in Indonesia have addressed several aspects of electronic transactions, their implementation still faces various challenges. One of the main issues is the lack of an effective mechanism to hold e-commerce platforms accountable for failing to oversee illegal products. Additionally, the limited supervision and law enforcement hinder action against digital marketplaces that do not comply with regulations. Institutions such as the Ministry of Communication and Information (Kominfo), the Ministry of Trade, and the National Consumer Protection Agency (BPKN) continue to tighten regulations, but further steps are needed to establish legal responsibilities for digital platforms.

As a recommendation, there needs to be an expansion of legal responsibilities for e-commerce platforms that fail to oversee the circulation of illegal products. One solution that can be implemented is a stricter due diligence mechanism, where platforms are required to verify products and sellers before they can operate in the marketplace. Platforms can also be required to have proactive monitoring systems that can detect and prevent the circulation of illegal products from the start. Furthermore, the government should strengthen coordination with industry players, academics, and consumers in formulating more comprehensive policies. With more robust regulations and a better monitoring system, it is expected that e-commerce platforms will play a more active role in protecting consumers and preventing the circulation of illegal products in Indonesia.

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The Strategic Role of E-Commerce in the Digital Trade Ecosystem

The rapid development of e-commerce has become a cornerstone of Indonesia's digital economic transformation. Platforms such as Tokopedia, Shopee, and Bukalapak play a strategic role in facilitating transactions between sellers and buyers, offering ease of access, diverse product choices, and fast payment systems. These conveniences have significantly shifted consumer behavior from conventional to online shopping. However, this advancement also opens up new legal and safety challenges, particularly with the increasing circulation of illegal products—including counterfeit cosmetics, unlicensed pharmaceuticals, and pirated goods. The lack of robust verification systems on some platforms has allowed these illicit products to flourish, posing serious risks to consumer protection.

Legal Liability of Platforms: Intermediary or Business Actor?

A fundamental legal issue concerns the position of e-commerce platforms: are they mere intermediaries or de facto business actors? Many platforms claim to be neutral facilitators of transactions, asserting no direct responsibility for the products sold. However, the nature of their business model—whether operating as a marketplace or a retailer—directly influences their legal liability. This ambiguity creates loopholes in enforcement, enabling irresponsible vendors to exploit the system while platforms avoid accountability. As a result, it becomes increasingly important to clarify the legal status and obligations of e-commerce platforms in Indonesia's regulatory framework.

Relevant Legal Frameworks (Consumer Protection Law, Trade Law, ITE Law)

Indonesia has established several legal foundations for consumer protection and electronic transactions, including Law No. 8 of 1999 on Consumer Protection, Law No. 7 of 2014 on Trade, and Law No. 11 of 2008 in conjunction with Law No. 19 of 2016 on Electronic Information and Transactions (ITE Law). These laws provide basic principles regarding consumer rights and business responsibilities in online trade. However, none of them explicitly mandate e-commerce platforms to verify the legality of products or the identity of third-party sellers. This lack of specificity results in a legal vacuum and weak law enforcement, particularly regarding the preventive control of illegal goods and the imposition of liability on digital intermediaries.

Application of Strict Liability and Vicarious Liability Principles

In civil law, the principles of *strict liability* and *vicarious liability* are relevant to determining platform responsibility. *Strict liability* holds business operators accountable for harm caused by their products, regardless of fault. This means that platforms could be liable for facilitating illegal sales even without intentional wrongdoing. *Vicarious liability*, on the other hand, refers to holding one party responsible for the actions of another—in this case, platforms for the actions of third-party vendors operating on their site. These principles offer a strong legal foundation for extending liability to e-commerce platforms, especially when they fail to implement adequate oversight mechanisms.

Weaknesses in Supervision and Law Enforcement

Despite the existing legal framework, oversight and enforcement in Indonesia remain inadequate. There are no specific or enforceable sanctions directed at platforms that fail to supervise sellers or content. In most cases, legal consequences are borne solely by individual sellers, allowing platforms to avoid accountability. Institutions such as the Ministry of Communication and Information (Kominfo), the Ministry of Trade, and the National Consumer Protection Agency (BPKN) still lack an integrated system for monitoring and responding to violations in a timely and consistent manner.

Case Study: The Sale of Unlicensed Cosmetics and Drugs

The widespread sale of unlicensed cosmetics and pharmaceuticals on digital marketplaces illustrates the dangers of weak regulation. Many consumers unknowingly purchase these products due to misleading advertisements and the absence of verification processes. These goods often lack approval from Indonesia's Food and Drug Authority (BPOM), posing serious health risks. Although several legal actions have been taken against sellers, there remains a lack of deterrence because platforms are rarely sanctioned. This reactive approach highlights the need for more proactive and preventive legal strategies.

International Comparison

Globally, other jurisdictions have implemented stricter regulations regarding platform accountability. The European Union, through the *Digital Services Act*, mandates platforms to take responsibility for

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illegal content and products, including obligations to promptly remove harmful listings. In the United States, despite the protection offered under Section 230 of the Communications Decency Act, recent developments show a trend toward increasing platform liability, especially where negligence is proven. These international practices offer valuable insights for Indonesia in formulating more comprehensive and enforceable e-commerce regulations.

Recommendations for Strengthening Regulation

To address the current regulatory gaps, this study recommends expanding the legal obligations of ecommerce platforms through the implementation of stricter *due diligence* mechanisms. Platforms should be legally required to verify both the legality of products and the identity of sellers before allowing them to operate. Technology-based proactive monitoring systems should also be developed to detect and prevent the circulation of illegal goods early on. Furthermore, stronger collaboration between government agencies, industry players, and consumer advocacy groups is essential to formulate more effective and sustainable policies. With stronger regulations and enforcement, consumer protection in the digital economy can be significantly improved.

Conclusions

E-commerce platforms play a crucial role in the digital trade ecosystem, but there is still a lack of clarity regarding their legal responsibility for the circulation of illegal products in Indonesia. Based on normative legal analysis, platforms can be held accountable under the principles of strict liability and vicarious liability, especially if they are proven negligent in overseeing products sold by third parties. Although regulations such as the Consumer Protection Law, the Trade Law, and the Electronic Information and Transactions Law (ITE Law) provide a legal basis for consumer protection and the obligations of business actors, the implementation of these regulations still faces challenges, including weak supervision and the absence of an effective sanction mechanism for platforms that allow the circulation of illegal products. Case studies show that in some situations, legal responsibility is more often imposed on individual sellers than on the platform as the facilitator of transactions. Therefore, there is a need to strengthen regulations that more specifically address the role and obligations of e-commerce platforms in overseeing the products being traded, including the implementation of stricter verification systems and enhanced government oversight. This way, consumer protection in digital transactions can be better guaranteed, and the circulation of illegal products through e-commerce platforms can be minimized.

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