

Research Article

Complaints Regarding Trademark Crimes Against Trademark Holders and Consumer Protection

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ABSTRACT

The background of this paper is the existence of illegal trademark infringement according to the Trademark and Geographical Indications Law on registered trademarks by other parties, especially for the same or similar goods or services that have the potential to mislead consumers. Referring to this, trademark crimes can only be reported as absolute offenses that can only be reported by trademark holders. The purpose of this study is to examine the mechanism of absolute offenses in the enforcement of trademark criminal law in Indonesia based on the Trademark and Geographical Indications Law, as well as its implications for the protection of trademark holders and consumers. This research is normative legal research with a legislative approach. The results of the study state that the initiation of criminal proceedings is entirely through the mechanism of absolute complaint offenses. However, these absolute complaint offenses have the potential to hinder the enforcement of trademark infringement laws, because the provisions of complaint offenses in trademark crimes are also not in line with the objectives of consumer protection as stipulated in the Consumer Protection Law. The conclusion obtained from this study is based on the theory of Roscoe Pound's balance and Pancasila Prisms, it is necessary to re-arrange the absolute complaint offense from trademark crimes to relative complaint offenses. Thus, consumers as parties who are directly harmed by the circulation of counterfeit goods have the legitimacy to file a criminal trademark complaint

Keywords: *Trademark; Criminal Offence; Complaint Offence; Trademark Infringement*

A. INTRODUCTION

Indonesia, as a member state of the World Trade Organisation (WTO), has ratified the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which is part of the WTO agreement on intellectual property rights, including trademarks. This demonstrates Indonesia's commitment to maintaining brand integrity and building a strong and competitive business environment. Indonesia already has regulations on trademarks in a law, namely Law

Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark and Geographical Indications Law) as amended by Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law (Job Creation Law).

The Job Creation Law amends three articles in the Trademark and Geographical Indications Law as stated in Article 108 of Part Four. Article 20 adds a rule that trademarks that

include functional forms can't be registered. Article 23 speeds up the process of examining trademarks in depth, and Article 25 takes away the rule that says there will be legal consequences if a trademark certificate isn't picked up within a certain time frame. The Job Creation Law changed the trademark rules to make them better for consumers and protect trademark owners' rights from infringement and counterfeiting.

The function of a trademark is not only as the identity of a product, but also as a guarantee of quality and trust for consumers. With a trademark, it is easier for the public to recognise the products they buy or the services they use. Trade marks are theorised as having a core function as a “badge of origin” – signalling the source of a product or service (Lai & Williams, 2022). Legal protection of trademarks refers to the ‘first to file’ principle, in which protection is based on the rule that the right to a trademark is granted to the party who first submits the trademark registration application to the competent trademark registration office.

The application of the first to file principle clearly increases legal certainty in the trademark registration system in Indonesia (Kusumawardhana, 2023). This means that whoever first submits a trademark registration application will have exclusive rights to the trademark, regardless of who first used the trademark in trade. The ‘first to file’ principle encourages business actors to immediately

register their trademarks in order to obtain exclusive rights and maximum legal protection. Exclusive rights are very important to protect trademarks from parties who engage in fraudulent behaviour or counterfeiting. Trademark registration is not merely a formality, but an absolute requirement for the rights to the trademark to be recognised and protected by the State (Sujatmiko, 2011).

The first to file principle makes the legal registration of a trademark the goal for trademark owners to obtain legal protection for their registered trademarks. This protection grants legal ownership rights to the party that registers the trademark with the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights. This means that the state grants exclusive rights to trademark owners listed in the General Trademark Register (DUM) for a certain period of time, allowing them to use the trademark privately or grant permission to other parties to use it (Wira, Maulani, & Susanti, 2025).

Data shows that in 2020, state losses due to the circulation of counterfeit products reached Rp291 trillion (Hukumonline.com, 2025). This represents a significant increase compared to 2015, when losses amounted to only 65.1 trillion rupiah. In addition, trademark infringement losses also have an impact on state revenue, both from taxes and other indirect government income. The state suffered a potential loss of 967 billion rupiah in taxes and 424 billion rupiah in other indirect government income (Kontan.co.id, 2021).

In addition to the losses incurred by the state, there are 60 million counterfeit products circulating in the Indonesian market, including 3,900 counterfeit branded goods seized from Mangga Dua and Senen, and 312 branded shoes seized at ITC (Bukit et al., 2022). This puts Indonesia in 8th place out of 20 countries with the highest levels of piracy in the world. Globally, the International Trademark Association (INTA) and The International Chamber of Commerce noted that in 2022, cases of product piracy and counterfeiting contributed an economic value of 2.3 trillion US dollars (Indonesia Private Investigation Agency, 2025).

Trademark infringement according to the Trademark and Geographical Indications Law is the unauthorised use of a registered trademark by another party, particularly for the same or similar goods or services that have the potential to mislead consumers. According to Article 83 of the Trademark and Geographical Indications Law, trademark infringement occurs when anyone without rights uses a trademark that is essentially or entirely similar to goods and/or services of the same type. The owner of a registered trademark has legal protection against infringement of registered trademark rights, both in the form of a claim for damages (and a claim for cancellation of trademark registration) and under criminal law through law enforcement agencies (Muzakki, Roisah, & Prananda, 2018).

The Trademarks and Geographical Indications Law in Indonesia controls these kinds

of violations. Article 83 talks about lawsuits against people who use a trademark without permission, Article 100 talks about criminal penalties for trademark counterfeiting, and Article 102 talks about the distribution and circulation of fake goods. Article 83 talks about trademark infringement that happens when someone uses a trademark that is very similar or exactly the same as a registered trademark for goods and/or services without permission. The main forms of trademark infringement include direct infringement, which is the unauthorised use of a trademark that is identical or very similar to a registered trademark, which can cause confusion among consumers, commonly referred to as trademark counterfeiting. In addition, there are contributory infringements, where a third party knowingly assists the main perpetrator, such as by selling or supplying counterfeit branded products, so that a party has control over the infringement and derives direct benefit from it even though they are not directly involved. Another form is trademark dilution, which is the use of a well-known trademark by another party that reduces its distinctiveness or damages its reputation, either through blurring or tarnishment.

Trademark Criminal Law is regulated in Article 100 of the Trademark and Geographical Indications Law and Article 103 of the Trademark and Geographical Indications Law, which stipulates that criminal offences related to trademarks are complaint offences. With this concept of complaint offences, a report from the

trademark owner or licensee is required to initiate law enforcement proceedings. Law enforcement officials will not take action against counterfeit goods if there is no report from the trademark owner. The consequence of the complaint-based system means that trademark criminal law cannot prosecute perpetrators of crimes or trademark infringements without a complaint from the trademark owner regarding trademark counterfeiting to the authorities, while many consumers have suffered losses due to the use of these counterfeit trademarks (Sinaga et al., 2024).

The provisions governing complaint-based offences in trademark criminal law create the potential for an increase in the number of perpetrators or counterfeiters of registered trademarks. Under this complaint-based law enforcement system, trademark protection is not maximised. This is not only detrimental to trademark rights holders, but also to the public as consumers who are potentially exposed to counterfeit goods.

Article 100 of the Law on Trademarks and Geographical Indications is intended to protect the rights of rightful trademark owners while preventing careless parties from abusing their rights. However, there are often many challenges in putting this article into practice, especially when it comes to the public's comprehension of legal rights and the accessibility of evidence in court. Even though the law offers legal protections, many cases of trademark infringement go

unreported. This is mostly because trademark owners don't report trademark infringement enough, and it can be difficult to prove cases in court. The effectiveness of trademark protection and the legal repercussions of bringing criminal charges in cases of trademark infringement are both called into question by this circumstance.

There have been several previous studies discussing trademarks, such as the study by Kurniawan et al. entitled *Geographical Indications and Trademark Protection: Empowering MSMEs Through Advocacy, Legal Services In Indonesia, Oman and the Philippines*, which discusses the ideal legal framework for the protection of geographical indications and trademarks in Indonesia, the Philippines, and Oman (Kurniawan et al., 2025). This study emphasises the importance of integrating legal services and advocacy to strengthen the empowerment of MSMEs. The difference with this paper is that Kurniawan's research discusses the protection of geographical indications and trademarks in Indonesia in order to adopt practices in the Philippines, namely the integration of advocacy and legal services in the empowerment of MSMEs, while this paper focuses on the imposition of criminal offences on trademark crimes against legal protection for trademark holders and consumers. The issue of legal protection for trademark holders was also discussed in a previous study by Haris et al. in their study entitled *Legal Protection of Trademark Holders Against Imported Goods: A Contextual*

Framework under Islamic Economic Law. Haris' study discusses Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which was reviewed using the principles of Islamic legal principles such as *maqāṣid al-sharī'ah* (objectives of Sharia), *ḥifẓ al-māl* (protection of property), and *maṣlaḥah 'āmmah* (public interest) (Haris et al., 2025). This differs from this paper, which focuses on the legal protection of trademark holders in terms of the effective use of criminal complaints in trademark crimes, rather than from the perspective of Islamic economic law.

Sukania et al. also conducted research into brand protection for MSMEs. Their study was titled *Legal Protection of Intellectual Property Rights in Indonesia for SME Performance*. It concludes that the implementation of legal protection for intellectual capital assets in MSMEs is inadequate. Comparisons with South Korea and Singapore suggest that incorporating intellectual property protection systems could substantially enhance the competitiveness of MSMEs (Sukania et al., 2025). Sukania's research focuses more on how to integrate systems and enforce intellectual property rights in general. This paper, on the other hand, examines the effectiveness of complaint offences in law enforcement for trademark crimes.

In addition to the research on trademark law enforcement and legal protection for trademark holders above, there is also research related to the discussion of the trademark

registration system, namely the research conducted by Masnun et al. entitled *Reconstructing Indonesia's Trademark Registration System through the Lens of General Principles of Good Governance to Realise Substantive Justice*. Masnun's research discusses first-to-file trademark registration, which is assessed using the General Principles of Good Governance, with a focus on the development of trademark registration practices in realising substantive justice (Masnun et al., 2024). The difference with this paper is that this paper does not criticise first-to-file registration, but rather the relationship between complaint offences and legal protection for trademark holders and consumers. The discussion regarding the trademark registration system is also conducted by Gunawan in his research entitled *Legal Analysis of Ambiguity of Trademark Registration in Indonesia*. This study examines legal safeguards for dual identities or trademarks that share analogous principles or are entirely similar for comparable and/or distinct goods and/or services that coexist, where ownership rights are acquired via trademark registration or through a Supreme Court ruling safeguarded by law as the identity of the traded goods and/or services (Gunawan, 2023). Gunawan's material is different from this paper because it doesn't talk about trademark ownership rights. Instead, it talks about trademark infringement in relation to criminal offences that are covered by trademark criminal acts.

Several studies also focus on other issues, such as (1) the increasing motive for trademark infringement in Indonesia from 2015 to 2023 (Etty, 2024), (2) legal protection related to counterfeit goods (Nashir, 2023), (3) legal protection of trademarks that are essentially similar (Narassati, Amirulloh, & Permata, 2024), and (4) consumer protection against counterfeit goods (Rares, 2018). In addition, research on enforcing trademark law includes (1) criminal complaints about trademark counterfeiting (Dewi, 2018a), (2) figuring out what the penalties should be for trademark counterfeiting in China (Cai, 2020), (3) Law enforcement in famous trademark crimes (Azhar & Zahara, 2009), and (4) Counterfeiting of trademarks (Mecinius, Ramasari, & Seftiniara, 2023). There are also studies on topics like (1) the analysis of crimes related to criminal acts under Article 367 of the Criminal Code (Japian, Antow, & Doodoh, 2025) and (2) the protection of economic rights of trademarks in franchise agreements (Hayuningrum & Roisah, 2015).

The difference between previous studies and this article is that this article focuses on discussing the enforcement of criminal trademark law with a complaint-based offence system that can have implications for trademark right holders and consumers. Therefore, this article not only examines the perspective of trademark law in the Trademark and Geographical Indications Law but also Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law). This study focuses on the legal implications of the

application of complaint offences in trademark crimes, which have not been able to combat counterfeit trademarks, resulting in an increase in the circulation of counterfeit trademarks in Indonesia. This not only harms trademark holders but also consumers and the national economy.

B. RESEARCH METHODS

This study uses a normative juridical method, which is a way of looking at laws and rules that apply (Sunggono, 2003). This study looks at trademark infringement laws in Indonesia using both a statute approach and a conceptual approach. It does this by looking at the Trademark and Geographical Indications Law and the legal effects of the complaint-based offence system on the enforcement of trademark crimes based on criminal law. This study used secondary data, which means it used library research. These data sources include primary legal documents that cover laws that are important, like the Trademark and Geographical Indications Law and the Consumer Protection Law.

Legal literature, academic journals, articles, and previous studies on the same topic as this one are all examples of secondary legal sources. The first step in this study was to gather data and find relevant legal sources. Next, an analysis was done that included a thorough and systematic reading of the relevant legal provisions and how they apply to trademark counterfeiting.

C. RESULTS AND DISCUSSION

1. The Complaint System in the Enforcement of Criminal Trademark Law in Indonesia

According to the Trademark and Geographical Indications Law, trademark infringement in Indonesia is categorised into two types, namely infringement in substance and infringement in whole. Such infringements can be prosecuted through civil or criminal law. Substantive similarity means that the trademark used by an unauthorised party is not the same as the registered trademark, but can still mislead consumers because there is a resemblance between the registered trademark and the unauthorised trademark (Miru, 2005). Substantial similarity in the explanation of Article 21 paragraph (1) of the Trademark and Geographical Indications Law is a similarity caused by the existence of dominant elements between one trademark and another, giving the impression of similarity, whether in terms of form, placement, writing, or a combination of these elements, as well as similarity in the pronunciation of the trademark. Meanwhile, overall similarity is the similarity of all elements of the trademark. This type of similarity is in accordance with the doctrine of entire similarity or similarity to the whole elements (Jened, 2015). In this case, it is often referred to as a counterfeit brand, for example, the circulation of counterfeit famous brands in the Klithikan Pakuncen market in Yogyakarta, Indonesia, such as Nike and Adidas shoes (Prasetio & Yunita, 2023).

The criminal law provisions on trademarks are regulated in Articles 100-103 of the Trademark and Geographical Indications Law, which stipulate that the use of a trademark that is identical or similar to a registered trademark without the permission of the trademark owner may cause confusion or mislead consumers. This provision stipulates that anyone who, without authorisation, uses a trademark that is identical in its entirety to a registered trademark belonging to another party for similar goods and/or services may be punished with a maximum imprisonment of 5 years and/or a maximum fine of Rp2 billion. If the unauthorised use only has similarities in essence, the criminal penalty is reduced to a maximum of 4 years' imprisonment and/or a maximum fine of Rp2 billion. However, if the trademark infringement causes harm to health, the environment, or results in death, the criminal penalty increases to a maximum of 10 years' imprisonment and/or a maximum fine of IDR 5 billion (Article 100 of the Trademark and Geographical Indications Law). Trading goods and/or services resulting from trademark counterfeiting and unauthorised use of trademarks is punishable by a maximum of one year's imprisonment or a maximum fine of Rp200,000,000.00 (two hundred million rupiah) (Article 102 of the Trademark and Geographical Indications Law).

Article 103 of the Trademarks and Geographical Indications Act states that 'the criminal offences referred to in Articles 100, 101

and 102 are complaint offences'. Trademark infringements, such as the use of the same or similar trademarks without permission (Article 100), the use of the same or similar geographical indications without permission (Article 101), and the trade of products from trademark and/or geographical indication infringements (Article 102), can only be prosecuted if there is a complaint from the aggrieved party, in this case the registered trademark owner. Law enforcement officials cannot initiate legal proceedings on their own initiative without a formal complaint. The implication of a complaint offence means that the police can only wait for a complaint from the aggrieved party. In other words, if no one files a complaint, even if trademark counterfeiting has occurred, the police may ignore it or allow the perpetrator to go free without being prosecuted (Saiman, 2018).

According to Utrecht in his book *Criminal Law II*, prosecution of complaint offences (*klacht delict*) depends on the consent of the aggrieved party, and the victim of a criminal act can withdraw their report to the authorities if a settlement has been reached between them (Kurnia, 2018). The Trademark and Geographical Indications Law relies on criminal prosecution based on the principle of complaint offences. Through this principle, the aggrieved trademark owner must first report the violation committed by another party before the investigation can be continued by the investigator (Utomo, 2010). A complaint-based offence is a criminal offence that

can only be prosecuted after a formal complaint has been filed, accompanied by a request to prosecute a specific party. In this case, the prosecutor can only take action if the victim who has suffered harm as a result of the crime files a complaint (Gresnews.com, 2015).

In theory, the reason why lawmakers established the type of criminal offence of complaint is that, objectively speaking, the material losses suffered by the party directly affected should be given higher priority than general losses. Then, according to the *Memori van Teolichting (MvT)*, the complaint requirements in several criminal offences are based on the consideration that intervention by the authorities in certain cases can result in greater losses for the aggrieved party than if the authorities did not intervene. Therefore, the decision to prosecute someone who commits this criminal offence is left to the discretion of the aggrieved party (Dewi, 2018b). When linked to the provisions on complaint offences in the Trademark and Geographical Indications Law, this means that the legislators prioritise the interests of trademark holders over the interests of the public, in this case consumers, and the economic interests of the state.

One case that can be used as a reference for the application of complaint offences in trademark crimes is the *Sarung Gajah Duduk* case in 2023, which was decided in 2024. The case of trademark counterfeiting involving the Director of PT Pisma Abadi Jaya (PAJ),

Mohammad Khanif, is a concrete example of how the law is applied in combating trademark crimes, as seen in the Pekalongan District Court Decision No. 107/Pid.Sus/2023/PN Pkl. In this case, the defendant was sentenced by the Pekalongan District Court to 1 year and 6 months in prison and a fine of Rp1 billion, with the provision that if the fine is not paid, it will be replaced with a three-month prison sentence, as he was proven guilty of trademark counterfeiting, violating Article 100 paragraph (1) of Law No. 20 of 2016 concerning Trademarks and Geographical Indications (Info Jateng, 2023). This verdict was upheld in the appeal verdict No. 438/Pid.Sus/2023/PT SMG at the Semarang District Court.

In this case, the legal provision used by the Public Prosecutor and the Judge's Verdict was Article 100 paragraph (1) of Law No. 20 of 2016 concerning Trademarks and Geographical Indications. As stipulated in Article 103 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, the offence under Article 100 is a complaint offence. PT Pisma Abadi Jaya, as the party convicted of violating the trademark rights of PT Gajah Duduk, was reported by PT Gajah Duduk to the police, then processed by the public prosecutor until the court verdict.

The enforcement of trademark law in this case applied the complaint-based offence system, whereby trademark violations can only be processed by law enforcement if there is a complaint from the trademark holder. This means

that without a complaint from PT Gajah Duduk, the criminal proceedings against Gajah Duduk would not have been processed by law enforcement. Without the active participation of the owner or licensee of the trademark in filing a complaint with law enforcement, criminal proceedings cannot be carried out because the complaint is absolute (Sinaga et al., 2024). In complaint offences, prosecution of a criminal act depends on the consent of the aggrieved party (victim). Complaint offences require special attention from trademark owners to continuously monitor the use of their trademarks. Without a complaint from the trademark owner, it will be difficult to prevent the circulation of counterfeit products in the market and among the public (Prasetio & Yunita, 2023).

Trademark infringement is different from a trademark cancellation lawsuit. Arifah et al. state that parties whose trademarks have been registered can file a lawsuit against a registered mark belonging to another party if the mark is considered to violate Law Number 20 of 2016 concerning Trademarks and Geographical Indications Article 20 and/or Article 21. The suit referred to herein is a lawsuit for the cancellation of a registered mark. Cancellation of a registered mark can be done because the law has been regulated in this regard and the cancellation can be done if the criteria specified by the law are met. Cancellation of a registered trademark is the cancellation of a trademark whose certificate has been issued or a trademark that has completed

registration, not against a trademark whose registration is being filed (Arifah, et al., 2023).

Trademark protection is closely related to consumer protection because, on the one hand, it protects the interests of trademark owners and, on the other hand, it protects the interests of consumers. Law No. 8 of 1999 concerning Consumer Protection (Consumer Protection Law) guarantees the right of consumers to obtain goods and/or services that are honest, of good quality and in accordance with the information provided. Thus, trademark infringement can be considered a violation of consumer protection because it creates the potential for consumers to purchase counterfeit goods, goods that do not meet standards and can even endanger the health and safety of consumers.

2. Criminal Offences Related to Trademarks in Indonesian Legal Culture

Indonesia is a country with an integralistic legal culture. Mahfud states that the integralistic concept is a study of the Pancasila ideology in prismatic society theory, which is characterised by four things: (1) Pancasila combines the best elements of individualism and collectivism; (2) integration between the *Rechstaat* and the rule of law; (3) law and society; (4) Pancasila embraces the concept of a religious nation state (MD, 2006). In Indonesia, Pancasila is the legal ideal of the Indonesian state (Herlindah, Qurbani, & Prisilia, 2022), so the emphasis on the concept of prismatic society is important because it distinguishes between private and public

ownership. However, in the prismatic model, these two typologies can be applied and overlap with one another (Riggs, 1964). Looking at the concept of the prismatic society's economic system above, when linked to Pancasila, which is positioned as a fundamental norm in the legal norm system (Kaelan, 2013), prismatic values become a combination or middle ground taken from existing social values.

Prismatic values combine the core of good values from various conflicting values. In this case, Indonesia as a Pancasila country, when linked to the prismatic values above, will form a prismatic theory of Pancasila. Pancasila as a prismatic value is actually crystallised from the values that exist in society and unites them in an Indonesian legal system. In relation to criminal offences involving trademarks, criminal offences make trademark violations individualistic in nature, applying only to trademark holders, while the impact of trademark use extends to consumers, so that trademark violations become collectivist in nature from the consumer's perspective.

The prismatic concept of Pancasila should provide a middle ground between individualism and collectivism. The middle ground that can be used refers to the context of Roscoe Pound's legal principles. Suraji mentions that Roscoe Pound showed the importance of law as a tool to achieve social justice and also the urgency to maintain a balance between individual rights and social interests (Suraji & Prabowo, 2025). Roscoe

Pound's principle becomes an integrator instrument, which in a prismatic society becomes the legal objective to reduce conflict and harmonise various interests.

In the context of trademark regulation, the government has the authority to take the necessary policies to achieve balance and justice between trademark holders and the public interest. The state can intervene to provide restrictive regulations even if they are related to exclusive rights (Atmaja, Santoso, & Irawati, 2021). The balance between individual and public interests in trademarks, according to Sunaryati Hartono, is referred to as the social principle (Irawati & Indrasrani, 2018). This social principle is what Riggs refers to as the middle ground between individualism and collectivism in a prismatic society.

The regulation of criminal offences in trademark crimes has an impact on victims of trademark counterfeiting. On the one hand, victims cannot bring charges against trademark holders because during the trial, trademark owners can prove otherwise if the goods purchased by the victims are counterfeit. On the other hand, victims also cannot report trademark crimes because the complaint offence in trademark crimes limits the reporter to only the trademark holder. In the context of Pound, there should be a shift in the meaning of the material of the complaint offense in trademark crimes.

As is well known, complaint offences are divided into two types, namely absolute complaint

offences and relative complaint offences. Absolute complaint offences, as mentioned by Manopo, are crimes in which the public prosecutor can only bring charges if a complaint has been received from the person entitled to file it (Manopo, 2021). Manopo also mentions in his writing that Pompe argues that absolute complaint offences are offences in which, fundamentally, the existence of a complaint is a *voorwaarde van vervolgbaarheid* or a condition for the perpetrator to be prosecuted (Manopo, 2021). The regulation of complaint offences in trademark crimes refers to these absolute complaint offences. Meanwhile, with reference to Indonesian legal culture and Roscoe Pound's legal principles, the regulation of complaint offences in trademark crimes should be more directed towards relative complaint offences, which, according to Pompe as mentioned in Mukhlis's writing, are criminal offences that can only be reported by individuals with a special relationship to the aggrieved party (Mukhlis, Tarmizi, & Hadi, 2018).

3. Relative Criminal Offences for Trademark Holders and Consumers

Criminal offences relating to trademarks under Article 102 of the Trademark and Geographical Indications Law state that criminal proceedings can only be initiated if there is a complaint from the aggrieved party, in this case the registered trademark owner. The subject matter of the offence under this article only mentions the trademark holder in the process of enforcing trademark violations, which makes the

offence of trademark crime absolute in nature. In the previous discussion, it was mentioned that based on Roscoe Pound's theory and the concept of prismatic society, the interpretation of complaint offences in trademark crimes should shift from absolute complaint offences to relative complaint offences.

The reasons for this are not only philosophical and conceptual at the theoretical level, but are also based on the impact of these trademark crimes. Relative complaint offences allow legal protection not only for the economic rights of trademark holders but also for the differential influence on consumer rights. The protection of economic rights is important because a trademark in investment acts as a symbol of reputation, which can promote products and elevate the company (Muliasari, Santoso, & Irawati, 2021). Thus, the use of relative offences can also prevent the exploitation of the concept of dilution of trademarks to provide protection for the economic rights of the trademark.

Roisah and Setiyono mention that dilution can cause a decrease in the value of a trademark by committing acts such as blurring and tarnishment (Roisah & Setiyono, 2019). Meanwhile, regarding consumer protection, Cakrawibawa and Roisah state that the existence of consumer legal protection in enforcing trademark law is protection so that consumers are not mistaken or deluded in buying products that they really do not want. Therefore, if there is a violation of trademark law, either in the form of

counterfeiting or imitation of the trademark, it not only harms the producer as the trademark owner, but also the consumer as the user of the product concerned (Cakrawibawa & Roisah, 2019).

In addition, the use of complaint offences is also in line with the existence of alternative dispute resolution (ADR) in trademark law enforcement, as mentioned by Purwaningsih in her writing that Delict in Indonesian brand law is a complaint offence, which is also used by other countries in general. Aside from litigation, non-litigation can also be taken, namely Alternative Dispute Resolution. Provisional judgments can also be made to prevent the entry of goods relating to violations of trademark rights and the storage of evidence relating to the violation of the mark (Purwaningsih, 2020).

Legal protection for trademark holders and consumers is stated by Kaur and Asthana that Trademark law is fundamentally linked to consumer protection and serves as an essential mechanism for safeguarding consumers and ensuring market stability. Trademarks enable consumers to identify and trust the origin of products, thereby ensuring their authenticity and quality. This trust is particularly crucial in combating counterfeit goods, which often breach safety standards and pose risks to consumers. By defending their trademark rights, companies can restrict the distribution of potentially hazardous products (Kaur & Asthana, 2025).

The existence of relative criminal offences against trademark crimes is a form of legal

protection for trademark holders and consumers. Relative criminal offences are a middle ground between the individualistic nature of legal protection for trademark holders and the collectivist nature of legal protection for consumers in the prismatic discourse of Pancasila. The existence of relative complaint offences makes criminal law seem to have a private dimension, similar to civil law, where the injured party sues the defendant.

The middle ground that is sought with the regulation of relative complaint offences is, first, the legal interests that are protected. Second, the equal and individual status of the parties. Third, the party that defends the interests. These three things provide space for special regulations regarding trademark crimes that are relative complaint offences. There is a need to update the regulations on trademark criminalisation that govern the requirements for relative complaint offences. These three points are the main considerations because the principle of trademark recognition in Indonesia only recognises registered trademarks, as stated by Samsithawrati et al. that a registered mark provides a legal presumption of ownership (Samsithawrati et al., 2025).

Furthermore, the conditions that may refer to relative offences are related to several matters, such as:

1. Causing a large number of victims;
2. The damage is irreparable.

These two conditions generally cover matters regulated in the Consumer Protection Law, such as losses due to consumers not receiving their rights to clear, honest and accurate information about goods and/or services offered (Article 4 letter c and Article 7 letter b), and discrepancies between the specifications of the goods offered and their actual condition (Article 8 paragraph (1) letter f). The regulation on consumers not obtaining their rights in accordance with the Consumer Protection Law regarding trademark counterfeiting can be used as grounds for filing a complaint regarding trademark crimes, based on several reasons, such as:

1. The tendency for trademark counterfeiting to cause a large number of victims, where the use of trademarks without permission results in certain products being considered to be of the same type and quality as the original brand;
2. Irreparable losses, which are a legal consequence because other laws cannot be applied. This is based on the absence of a civil lawsuit mechanism against counterfeit trademarks, whereby consumers cannot file a lawsuit against the trademark holder because it must be proven that the counterfeit goods were produced by the trademark holder, while filing a lawsuit against the publisher of the counterfeit trademark is also not possible due to the nature of absolute complaint offences regulated in trademark crimes.

The Trade Related Intellectual Property Rights (TRIPs) Agreement does not explicitly mention consumer protection, but the imposition of certain sanctions is intended to reduce the risk of further violations and make the interests of third parties the basis for imposing such sanctions (Miru & Yodo, 2010). This means that consumers are taken into consideration when imposing sanctions on producers who violate Intellectual Property Rights provisions (Wulandari, 2017). On the other hand, the Trademark and Geographical Indications Law, which serves to protect trademark owners from unauthorised use, also plays an indirect role in consumer protection. However, the provisions on criminal complaints in the enforcement of trademark violations are not in line with the objectives of consumer protection. If the trademark owner does not file a report, the legal process will not proceed, and consumers will continue to suffer losses due to the circulation of counterfeit goods.

Consumers have the right to obtain honest information about the goods they purchase, while the circulation of counterfeit brands can mislead consumers. Enforcement of consumer protection laws is necessary because consumers are often in a weaker position than businesses, both in terms of information and economic influence, making them vulnerable to abuse and unfair business practices (Ihwanudin et al., 2025).

Article 102 of the Trademark and Geographical Indications Law, which states that criminal sanctions shall be imposed on any

person who trades in goods and/or services and/or products that are known or reasonably suspected to be trademark offences, is in line with Article 4(c) of the Consumer Protection Law and Article 7(b) of the Consumer Protection Law, which essentially state that consumers have the right to obtain accurate and clear and honest information about the quality of goods, in this case consumer protection from counterfeit goods or other trademark infringements.

The reformulation of the absolute complaint offence in trademark crimes into a relative complaint offence is a middle ground in resolving the issue of criminal trademark cases that are only based on complaints from business actors as trademark owners. Relative offences give consumers the opportunity to file complaints. This is in line with the Consumer Protection Law, which states that consumers whose rights have been violated by counterfeit goods/services can seek compensation for damages based on breach of contract and compensation for damages based on unlawful acts (See, 2022).

The fundamental connection between relative offences and the Consumer Protection Law is that in the event of a trademark infringement, consumers can only pursue civil remedies, either through litigation or non-litigation, and criminal remedies under Article 62 of the Consumer Protection Law. If the criminal requirements against business actors who deceive consumers by imitating and counterfeiting trademarks and selling them to other business

actors are met, then the criminal penalty under Article 62 of the Consumer Protection Law is a maximum fine of Rp 2 billion (two billion rupiah) or a maximum imprisonment of 5 (five) years (Prayuti & Fadhila, 2024).

Relative complaint offences are essentially criminal offences that can only be reported by individuals with a special relationship to the aggrieved party. In relation to trademarks, Schechter states that trademarks are not only commercially viable for their owners but also involve direct contact between the trademark owner and consumers, which is obtained and maintained and referred to as a 'silent salesman' (Roisah & Setiyono, 2019).

Another legal issue regarding the application of absolute complaint offences is the right to prosecute trademark offences, which can only be exercised by trademark owners who feel aggrieved by the imitation of their goods/services, either in part or in whole. Thus, it can be said that the Trademark and Geographical Indications Law allows trademark holders to ignore their obligation to monitor their rights if they are abused by other parties (Kastowo & Christiani, 2024). Therefore, the purpose of trademark protection is, in principle, to protect the interests of producers and consumers in a balanced and impartial manner, both in the business world and in the world of trade.

It was mentioned at the beginning that the middle ground that is sought to be achieved with the regulation of relative offences is, first, the

legal interests that are protected. Second, the equal and individual status of the parties. Third, the party defending the interests. Therefore, the legal safeguards instituted by the government ought to extend beyond the mere protection of trademark proprietors; they must equally encompass the safeguarding of consumers who seek authentic, secure, and dependable products (Hans & Kansil, 2023). Infringements of trademarks, such as the fraudulent registration of a trademark, not only inflict harm upon the rightful owners but also expose consumers to the peril of acquiring counterfeit goods that lack superior quality. Consequently, rigorous enforcement of laws against trademark infringement is crucial for the preservation of consumers' rights. Simultaneously, it is imperative for consumers to be cognizant of their rights in commercial transactions to enable them to shield themselves from unscrupulous business practices (Agustian, Rahmatiar, & Abas, 2024).

In the discussion of consumer protection, there are four principles related to the relationship between business actors (in this case, brand owners) and consumers, namely

1. The principle of let the buyer beware (*caveat emptor*), which assumes that business actors and consumers are two very equal parties, so there is no need for any protection for consumers. This means that consumers must seek information about the products they purchase themselves.

2. The due care theory principle, which states that business actors have an obligation to exercise due care in marketing their products.
3. The privity of contract principle, which regulates the obligation of business actors to protect consumers when involved in a contractual relationship, with the consequence that consumers can only sue on the basis of breach of contract.
4. The principle of contract not being a requirement is a principle that requires a contract to no longer be a requirement for establishing the existence of a legal relationship (Miru, 2000).

When viewed from the perspective of absolute tort in trademark crimes, these four principles of consumer protection mean that consumers do not have the right to prosecute trademark crimes, and manufacturers, in this case trademark owners, also have no obligation to take legal action against trademark crimes. This situation is more in line with the principle of caveat emptor. However, the caveat emptor principle is no longer relevant today, as it harms consumers and violates their rights to clear, correct, and accurate information. Re-regulating absolute complaints into relative complaints in trademark crimes can extend consumer protection against trademark violations. The government needs to adjust trademark regulations and consumer protection so that they are consistent and complementary, thereby

fulfilling the objectives of protecting trademark rights holders and consumers.

D. CONCLUSION

The complaint-based system in the enforcement of criminal trademark law in Indonesia, as regulated in the Trademark and Geographical Indications Law, places the legal process entirely at the initiative of the trademark holder. This mechanism has the potential to hamper the enforcement of trademark infringement law, as the provisions on complaint-based offences in trademark crimes are also not in line with the objectives of consumer protection as regulated in the Consumer Protection Law. Based on Roscoe Pound's theory of balance and the Prismatic Pancasila, it is necessary to rearrange the absolute complaint offense of trademark crimes into a relative complaint offense. Thus, consumers, as the parties directly harmed by the circulation of counterfeit goods, have the legitimacy to file criminal complaints regarding trademarks. In addition, regulatory harmonisation between the Trademark and Geographical Indications Law and the Consumer Protection Law is needed so that legal protection can equally cover the interests of trademark owners, consumers and the state, as well as encourage proactive law enforcement to reduce the number of trademark infringements in Indonesia.

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