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Trademark Counterfeiting of Watches of Famous Brands MUI Fatwa Perspective No. 1/5/2005 and Law No. 20 2016 on Trademarks and Geographical Indications

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Abstract
Trade competition causes the competitive nature of various brands, especially well-known brands. One of them is in the watch trade. However, these conditions also increase the risk of watch circulation with brand counterfeiting that is detrimental to brand owners and consumers. This study aims to determine the indicators of brand counterfeiting in the trading practices of well-known brand watches and analyze brand counterfeiting from the perspective of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, and examine the practice from the perspective of the Fatwa of the Indonesian Ulema Council Number 1/5/2005 concerning the Protection of Intellectual Property Rights. The type of research used is normative juridical with a statutory approach (Statue Approach) and a conceptual approach (Conceptual Approach), data is collected through document studies and analyzed qualitatively. The results of the study show that violations committed by counterfeiting trademarks have the potential to cause great losses for legitimate companies as the first party to introduce or manufacture the trademark. Trademark counterfeiting is an unlawful act that is prohibited according to both positive law and Islamic law. According to the MUI fatwa Number 1/5/2005 concerning the Protection of Intellectual Property Rights, practices such as trading watches with trademark counterfeiting are something that is indicated to be haram because it is categorized as a tyrannical act. In addition, according to Law Number 20 of 2016 any party who permits or facilitates trademark infringement is contrary to the purpose of trademark legal protection. Thus, both according to the MUI fatwa and the Trademark Law, it prohibits trademark counterfeiting against people who also profit from transactions of counterfeit branded goods.

INTRODUCTION

Trademarks are part of intellectual property rights that have a strategic function in trade activities. In addition to distinguishing a product from other products, a brand also reflects the reputation, quality, and trust of consumers in the goods being traded. In practice, branded watches are often the object of counterfeiting due to the high consumer interest in well-known brands, while the price of the original product is relatively high.

According to M. Yahya Harahap, a well-known brand is a brand that has a high reputation, strong appeal, and ability to attract consumers, so that every product under the brand creates an impression of familiarity and is easily recognized by all levels of society. Business practices in Indonesia show the use of well-known brands to gain greater economic benefits through acts of imitation or counterfeiting. This act is classified as a violation of trademark rights because it takes reputation, fame, and public trust in foreign and well-known brands, even though the products marketed do not come from the legitimate trademark owner (Kristiani & Ratnawati, 2023).

The protection of trademarks has been comprehensively regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. The law affirms that registered trademarks receive legal protection in the form of exclusive rights, so any unauthorized use of the trademark, including counterfeiting, is an unlawful act. Brands have an important role in trade activities because they function as product differentiators, quality assurance, and a means of protection for consumers and brand owners. Watches as a product of high economic value are often the object of brand counterfeiting due to the high market demand for well-known brands. Counterfeit watches of well-known brands are often made to resemble real products, both in terms of shape, logo, and packaging, so that they can mislead consumers. The practice of trademark counterfeiting not only harms the owner of the trademark rights economically, but also harms the consumer by receiving goods that do not match the promised quality.

In addition, counterfeiting of well-known watch brands is still widely found, especially in media that provide online shopping facilities. This condition not only harms the brand owner materially, but also causes immaterial losses in the form of reputational damage and decreased consumer trust. In addition, consumers have the potential to suffer losses because they obtain products that do not match the promised quality. This phenomenon shows that supervision and control of the trading activities of well-known brand watches, especially through the marketplace, have not run optimally.

The issue of trademark counterfeiting is not only relevant from a positive legal perspective, but also has implications from the perspective of Islamic law. The Indonesian Ulema Council through Fatwa Number 1/5/2005 on the Protection of Intellectual Property Rights emphasizes that intellectual property rights are rights that are protected according to *sharia'*. Violations of these rights are seen as acts that are contrary to the principles of justice and honesty in muamalah, because they contain elements of fraud and taking the rights of others without permission. Thus, the practice of trademark counterfeiting of well-known brand watches cannot be justified under sharia provisions.

The use of trademarks without permission will be very detrimental to the registered trademark rights holders, as well as detrimental *to the brand image* that has been successfully pioneered, in this case it is clearly contrary to applicable regulations, both in national and international regulations. As a tangible form of trademark counterfeiting practices in Indonesia, it can be seen in the case of counterfeiting the Swiss Army watch brand which was revealed by the Directorate of Special Criminal Investigation of the Metro Jaya Police and the East Java Police in 2015. In the case, police confiscated tens of thousands of watches using the Swiss Army brand without permission from the trademark rights holder. This case shows that the practice of trademark counterfeiting still occurs and causes losses to the owner of the rights to the trademark and has the potential to harm consumers.

The urgency of this research lies in the rampant counterfeiting of well-known brand watches that are marketed openly at unreasonable prices, so that they have the potential to mislead consumers. This condition shows the weak supervision and law enforcement mechanism against sellers who violate trademark rights. If this situation continues, infringement of intellectual property rights will be more massive and difficult to control, as well as cause sustainable economic losses.

A similar study by Andi Ratu Bulqis et al., has analyzed the categories of brand counterfeiting that occur in the city of Makassar that can be criminalized. Then Verlia Kristiani et al. in their research also examined the infringement of trademark rights committed on Tokopedia. In addition, Lucky Ananda through his research that consumer protection in online transactions has not been running optimally. Previous studies have generally addressed trademark counterfeiting with a focus on consumer protection laws. Meanwhile, studies that specifically place Law Number 20 of 2016 concerning Trademarks and Geographical Indications as a research topic are still relatively limited. On the other hand, there have been many studies on trademark counterfeiting related to the MUI Fatwa Number 1/5/2005.

Counterfeiting of watch brands is still a problem that is often found in trade activities in Indonesia. This practice is carried out by using trademarks owned by other parties without permission to obtain economic benefits through the sale of products that resemble real goods. As a result, the owner of the trademark rights suffers losses because the reputation and economic value of his brand are used by unauthorized parties, while consumers have the potential to be deceived because they think the goods they buy are genuine products.

Although the protection of trademark rights has been regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, the practice of counterfeiting watch brands still persists. This condition shows that the existence of adequate legal rules is not necessarily followed by optimal implementation if there are still business actors who easily trade goods with fake brands.

This then raises questions about the extent of the effectiveness of legal protection for trademark rights holders and how law enforcement efforts are carried out to tackle the practice of trademark counterfeiting. Therefore, the study of counterfeiting watch brands is important to find out what form of legal protection is provided to trademark rights holders and the extent to which law enforcement is able to provide legal certainty and prevent the recurrence of similar violations.

This study aims to determine the indicators of brand counterfeiting in the trade practices of well-known brand watches and analyze trademark counterfeiting based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Intellectual Property Rights basically provide economic rights to their owners so that any form of utilization of these rights for commercial purposes must be carried out with the consent of the rights holder (Husna & Permata, 2023). In addition, this study aims to elaborate on the views of the MUI Fatwa No. 1/5/2005 on the practice of counterfeiting the trademark. Therefore, there is a *research gap* related to the analysis of trademark counterfeiting of well-known brand watches that are reviewed simultaneously from the perspective of positive law and Islamic law. Therefore, this research is important to provide a more comprehensive understanding of the practice of trademark counterfeiting of well-known brand watches both legally positive and from Islamic law such as MUI fatwas.

METHODS

The type of research used is normative juridical research, which is research that places law as a norm or rule that applies in the system of laws and regulations (Muhaimin, 2021). The focus of the research is directed at the study of regulations related to trademark counterfeiting of well-known brand watches, reviewed from MUI Fatwa Number 1 of 2005 concerning the Protection of Intellectual Property Rights and Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

The approaches used in this study are the statute *approach* and the *conceptual approach*. The legislative approach is carried out by examining the legal provisions that regulate trademark protection and the prohibition of trademark counterfeiting. Meanwhile, a conceptual approach is used to examine the concept of trademark counterfeiting and the principle of the haram of trademark counterfeiting from the perspective of the MUI Fatwa as a conceptual legal source.

The source of legal materials in this study consists of primary legal materials and secondary legal materials. Primary legal materials include laws and regulations and fatwas that have direct relevance to the object of research, while secondary legal materials are obtained from law books, scientific articles, academic articles, and the results of previous research that discuss trademarks and brand counterfeiting. The technique of collecting legal materials is carried out through library *research* by systematically inventorying and studying related legal materials. The analysis of legal materials was carried out qualitatively (Efendi & Ibrahim, 2016).

RESULTS AND DISCUSSION

A. Indicators of Brand Counterfeiting in the Trade Practices of Well-Known Brand Watches

According to Article 1 number 1 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, a trademark is a sign that can be visualized graphically, which can be in the form of images, logos, names, words, letters, numbers, compositions, colors, either in two-dimensional or three-dimensional form, including sounds, holograms, or a combination of two or more elements, which are used to distinguish goods and/or services produced by natural persons or legal entities in trade activities goods and/or services. Meanwhile, a trademark is a mark used on goods that are traded by an individual, a group of people together, or a legal entity, which serves to distinguish the goods from other similar goods in trade activities (figure 2).

Diyani and Sardjono (2022) stated that there are several factors that can be used to determine a brand, including well-known brands, including:

1. The level of public knowledge and recognition of the brand in the relevant public sector.
2. The length of use of the brand, the scope of use, and the geographic area in which the brand is used.
3. The duration and scope of brand promotion activities, including through advertising, publications, and participation in exhibitions or other promotional activities related to goods and/or services using the brand.
4. The length of time and geographic area of a trademark registration, including the application for registration, to the extent that it reflects the level of use and recognition of the trademark.
5. Track record of enforcement of trademark rights, especially the extent to which the trademark has been recognized and protected by the competent authority.
6. The economic value inherent in a brand, which reflects the brand's reputation and strength in the market.

The following are the effects of product brand counterfeiting on the legitimate owner of the trademark, namely:

1. Declining Consumer Confidence

The circulation of counterfeit products with low quality in the market can cause a negative experience for consumers. This situation often leads consumers to attribute their disappointment to the original brand, resulting in a decrease in loyalty levels and potentially prompting them to switch to competing brands.

2. Economic Losses

Counterfeit products lead to a reduction in the market share of official brands and have an impact on declining sales. In addition, companies must bear additional costs to take legal steps, provide education to consumers, and carry out awareness campaigns on the importance of buying genuine products.

3. Polluted Brand Image

If a brand is unable to control the circulation of counterfeit products, then its positive image in the eyes of the public will be disrupted. Damaged reputations take a long time and a great cost to restore in order for brands to gain public trust.

4. Loss of Business Opportunity

Brands that are often counterfeited will face difficulties in establishing cooperation with trusted business partners and distributors. This happens because there are concerns about the quality and integrity of the products offered, so that business development opportunities are hampered.

A registered trademark, the state has granted the owner exclusive right to use it. On the basis of these rights, the trademark owner has the right to prevent and prohibit others from imitating or using the trademark without permission. If the trademark owner allows the use of the trademark to others, then the permission given by the trademark owner is in the form of a trademark license sourced from the agreement he made (Dewi, 2019).

Similarity is one of the important criteria in determining trademark infringement as stipulated in laws and regulations. This similarity shows that there are similarities that can cause the perception as if a brand comes from the same source, thus potentially misleading consumers. In this case, the registered trademark owner has the right to file a lawsuit to have another trademark that has such similarities revoked or removed, since the similarity theoretically reflects bad faith in the trademark registration.

Erfan and Kemala (2025) stated that the forms of similarity between counterfeit goods and real goods that can be used as indicators of trademark infringement include:

1. Visual similarity or the appearance form of the product.
2. Similarity of writing or letter arrangement on the brand.
3. Similarities in the pronunciation of brand names.
4. Similarity in composition or arrangement of elements in a brand.
5. Similarity of color combinations, symbols, and designs.
6. The commonality of the dominant elements inherent in the brand.
7. The similarity of sounds that create a similar impression when spoken.
8. Similarity in the appearance or overall appearance of the product.
9. Similarity of the class or type of goods traded.

Famous Watch Brands	**Original Price Range**	**Mock Price Range**

Rolex	±IDR 60 million - IDR 1 billion	±IDR 200 thousand - IDR 1 million
Richard Mille	±IDR 5 billion - IDR 34 billion	±IDR 1 million - IDR 10 million
Audemars Piguet	±IDR 260 million - IDR 14 billion	±IDR 500 thousand - IDR 8 million
Patek Phillippe	±IDR 200 million - IDR 20 billion	± 1 million - IDR 16 million
Hublot	± IDR 84 million - IDR 16 billion	±500 thousand – IDR 6 million

Table.1. Watchdog Data of Famous Brands

Figure.1. Forged Watches of Famous Brands

Trademark counterfeiting of well-known watches is a phenomenon that occurs widely and systematically. Swiss luxury watch brands such as Rolex, Richard Mille, Audemars Piguet, Patek Philippe, and Hublot are the main targets of counterfeiting because they have a high reputation, great economic value, and a high level of prestige in society. The popularity of these brands encourages irresponsible business actors to produce and trade counterfeit goods by imitating and almost approaching the original form, so that the potential caused can mislead consumers.

The forms of counterfeiting that are carried out generally include imitation of logos, brand names, dial designs, case shapes, colors, and small details. For example, writing, serial number, and packaging. These counterfeit products are made in such a way that they resemble the real product, both visually and packaging, so that it will be difficult to distinguish by ordinary consumers. In fact, some counterfeit products are produced in various levels of quality, ranging from low quality to super *clones*, which have a great degree of resemblance to the original product. Counterfeiters market their watches using various strategies that mimic the marketing patterns of the original product. Digital media, especially marketplaces, social media, and instant messaging applications, are the main means of distribution. Perpetrators often use photos of original products as a form of promotion, then send counterfeit goods to buyers. In addition, use certain terms such as "KW Super", "*Grade* A+++", "*Original Quality*", or "*Mirror Quality*" to give the impression that the products sold are of equivalent quality to the original product. This strategy has built a perception of exclusivity and convinced consumers that the counterfeit product is worth buying even at a much lower price.

Brand counterfeiters also include counterfeit packaging that resembles official packaging, complete with fake warranty cards, exclusive boxes, and counterfeit manuals. This shows that counterfeiting practices are not only targeting physical products, but also brand identity as a whole.

Infringements committed by counterfeiting trademarks have the potential to cause significant losses to legitimate companies as the first party to introduce or manufacture the trademark. A similar impact is also experienced by consumers, because many of them do not have an adequate understanding of the authenticity of a brand. As a result, consumers are deceived by buying products that look as if they come from well-known brands, when in fact the watches purchased are counterfeit goods or commonly referred to as KW goods (Susanto et al., 2025)

Based on the Online Law website, the case of counterfeiting the Swiss Army watch brand is a form of violation of Intellectual Property Rights (IPR), especially in the field of trademarks. Based on Hukumonline's news published on August 19, 2015, the Directorate of Special Criminal Investigation of the Metro Jaya Police together with the East Java Police conducted raids and seizures of tens of thousands of watches using the Swiss Army brand without ownership. These items were found in a number of shops, wholesale centers, and shopping centers in the Cibubur area, East Jakarta, and Surabaya, East Java.

The disclosure of this case began with a report submitted by Swiss Army Brand, Ltd. based in the United States through its lawyer, Turman M. Panggabean. Before carrying out the confiscation action, the investigator first asked for expert information from the Directorate General of Intellectual Property of the Ministry of Law and Human Rights to ensure that the Swiss Army trademark for the watch category is a trademark that has legal protection.

After obtaining this information, the police officers carried out simultaneous operations and managed to confiscate tens of thousands of watch units that were suspected to be counterfeit goods. Trademark forgery in this case was carried out by using the Swiss Army trademark on watch products without the consent or permission of the legitimate trademark rights holder. The product is then marketed at a much lower price than the original product.

The significant price difference shows that the perpetrator is trying to make a profit by taking advantage of the reputation and economic value that has been built by the brand owner. When legally reviewed, this action is a form of violation of the exclusive rights of the registered trademark holder. Trademarks have a function as an identity and differentiator of a good or service, so the use of a trademark that has similarities in principle or in its entirety without rights is an act prohibited by laws and regulations in the field of trademarks.

Through these confiscation and raids, law enforcement officials have carried out repressive legal protection efforts to prevent the spread of counterfeit goods in the community. In addition to causing losses to trademark rights owners, the circulation of goods with fake brands also has the potential to harm consumers. Consumers can be deceived and think that the goods purchased are genuine products, even though the quality and origin of the goods cannot be accounted for. Therefore, law enforcement against trademark counterfeiting is not only aimed at protecting the interests of trademark rights holders, but also to provide legal certainty and protection for the public as consumers.

B. Trademark Counterfeiting of Well-Known Brand Watches from the Perspective of MUI Fatwa Number 1//5/2005 on the Protection of Intellectual Property Rights

The Indonesian Ulema Council (MUI) issued Fatwa Number 1/5/2005 to regulate Intellectual Property Rights. In the fatwa, it is emphasized that every action that violates copyright is categorized as a tyrannical act and has haram laws, because it causes losses for various parties, especially copyright holders, the state, and society at large. Based on the provisions of the MUI

Fatwa Number 1/5/2005 concerning the Protection of Intellectual Property Rights, there are several legal arrangements related to Intellectual Property Rights (IPR), namely:

1. Intellectual Property Rights are seen as part of *huquq maliyyah* (property rights) that obtain legal protection (*ma'sun*) like property (*mal*). This shows that IPR is equated with property that in Islamic law is obliged to receive protection. With this position, IPR can also become *al-milk* (property). Property rights are interpreted as a person's control over a property, both in the form of goods and services, which gives the authority to use the property in ways justified by the sharia.
2. Intellectual Property Rights that are protected according to Islamic law are IPR that does not conflict with the provisions of Islamic law. This means that as long as the IPR is in line with the principles of Islamic law, then the right is entitled to legal protection.
3. Intellectual Property Rights can be used as the object of an agreement (*al-ma'qud 'alaih*), both in *an exchange or commercial* mu'awadah contract or in a *non-commercial tabarru'at* contract. In addition, IPR can also be used as an object of waqf and can be inherited to heirs in accordance with the provisions of applicable law.
4. Every form of violation of Intellectual Property Rights, including but not limited to the act of using, disclosing it, making, using, selling, importing, exporting, distributing, handing over, providing, announcing , reproducing, plagiarism, counterfeiting, and hijacking IPR belonging to another party without rights, is categorized as an act of tyranny and is unlawful if it is done without the permission of the owner of the Intellectual Property Right.

The rampant circulation of counterfeit watches that use well-known brands without the permission of the rights owner raises legal problems, because it is directly related to the violation of Intellectual Property Rights (IPR) as stipulated in the MUI Fatwa Number 1/5/2005 concerning IPR Protection. Based on the fatwa, IPR is seen as *huquq maliyyah* or property rights whose position is equated with property (*mal*) and obtains legal protection (*ma'sun*). Watches are one of the trademarks that are part of IPR that have economic value and can be legally owned by the brand owner. Therefore, the unauthorized use of watch brands, including in the production and sale of counterfeit watches, is a form of infringement of the property rights of others that should be protected.

Wahbah Az-Zuhaili stated that the act of piracy is a form of violation and crime against the rights of the owner. This action is seen as an act of immorality that causes sin for the perpetrator. Therefore, piracy is equated with the practice of theft, so the perpetrator is obliged to provide compensation for losses experienced by the rights owner, especially for manuscripts or works that are printed and circulated illegally. This view is based on the provisions that have been set by Allah SWT and His Messenger as well as the opinions of the jurists, which are based on the rules of fiqh. These rules state, among others, that every form of danger or loss must be eliminated, prevention of harm must take precedence over efforts to bring benefits, and that everything that arises or results from unlawful acts also has the status of haram law (Rokan & Zulham, 2022).

Allah SWT. says:

وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تَعْثَوْا فِي الْأَرْضِ مُفْسِدِينَ

"And do not harm man by diminishing his rights, and do not cause damage to the earth;". (QS. Ash-Shu'ara' 26: Verse 183).

In a hadith the Prophet PBUH said:

إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ حَرَامٌ عَلَيْكُمْ ,كَحُرْمَةِ يَوْمِكُمْ هَذَا، فِي بَلَدِكُمْ هَذَا

It means: "Indeed, your blood, your property, and your honor are haram (protected) for your neighbors, as it is haram today, in this month, and in this land." (H.R. al-Tirmidhi)

The meaning of this verse is in line with the provisions of the MUI Fatwa Number 1/5/2005 which views Intellectual Property Rights as hu*quq maliyyah* that is protected as property. The above hadith also emphasizes that property (*amwal*) has an unlawful position to be violated, confiscated, or taken without rights. The protection of property is equated with the protection of soul and honor, which shows how serious the prohibition of infringement of property rights is in Islam. This principle is the normative basis that all forms of unlawful taking of other people's property include unjust acts. The meaning of this hadith is in line with the Fatwa which stipulates Intellectual Property Rights as huquq maliyyah whose position is equated with property (*mal)* and obtains legal protection (*ma'sun*). Because IPR is seen as part of property, infringement of IPR has the same legal status as infringement of property physically.

In addition, DSN-MUI Fatwa Number 110/DSN-MUI/IX/2017 concerning Sale and Purchase Contracts can be used as one of the foundations in examining trademark counterfeiting. Although the fatwa does not specifically regulate trademark rights, the substance contained in it is closely related to the principles of legal ownership, honesty, and the protection of the rights of other parties in a transaction. The fatwa explains that the object of buying and selling must be something halal, useful, and within the rights or authority of the party making the transaction. This provision shows that every business actor is obliged to respect the property rights of others, including intangible rights such as trademark rights.

The use of a trademark without permission from the rightful owner is basically a form of exploitation of the rights of others that do not have a justified basis. The act of brand counterfeiting can also be associated with the concept *of tadlis*, which is the act of providing information that is not in accordance with the actual circumstances so as to cause misunderstandings for other parties. To avoid losses for one of the parties, the sale and purchase must be carried out in good faith, without fraud, coercion, mistake or other disputes or disappointments or anything that can cause regret for both parties (Rahmadani et al., 2024).

In addition to containing elements of fraud, trademark counterfeiting is also related to the prohibition of obtaining profits through unauthorized means (*akl al-mal bi al-batil*). This principle is in line with the words of Allah SWT. in QS. An-Nisa' verse 29 which forbids anyone to take the property of others in a wrong way. The profits obtained from the use of trademarks without rights essentially come from the use of the reputation and economic value that has been built by other parties, so that they do not reflect the principles of fairness and good faith in trade activities. The values contained in DSN-MUI Fatwa Number 110/DSN-MUI/IX/2017, such as respect for property rights, honesty in transactions, and prohibition of fraud, can be used as a basis for judging that the use of a trademark without a license is an act that is not in accordance with sharia principles.

Thus, the use, utilization, or taking of Intellectual Property Rights without the owner's permission is a violation of the principle of property protection as affirmed in the hadith. This is the basis for the provisions of the MUI fatwa that any form of violation of Intellectual Property Rights is an act of tyranny and the law is haram, because it is contrary to the basic principles of the protection of life and property in Islam.

The MUI fatwa also emphasizes that the protection of IPR only applies to rights that do not conflict with Islamic sharia principles. Trademarks on watches are essentially legitimate rights because they result from the creativity, reputation, and efforts of their owners. Thus, there is no reason *for sharia to justify trademark counterfeiting. The sale of counterfeit watches that impersonate well-known brands* is clearly contrary to the principles of honesty (*sidq)* and justice (*'adl*) in Islam, and contains elements of fraud (*tadlis)* against consumers.

In addition, Intellectual Property Rights in the MUI fatwa stated that they can be used as the object of contracts, both commercial and non-commercial contracts. Buying and selling transactions should be carried out on goods that are halal and legally legal. Counterfeit watches that use a brand without rights do not qualify as a valid contract object, because the object contains elements of infringement of the rights of other parties. As a result, the contract for the sale and purchase of counterfeit watches can be considered flawed under Islamic law because the object of the contract is not justified. The MUI fatwa states that any form of violation of Intellectual Property Rights, including plagiarism and counterfeiting of brands, is a tyrannical act and is haram if it is done without the permission of the rights owner. Based on these provisions, the practice of trademark counterfeiting of well-known brand watches and their trade is an act that is prohibited by *sharia*, so that the perpetrator is not only responsible according to national regulations, but also morally and religiously.

C. Trademark Enforcement of Well-Known Brand Watches from the Perspective of Law Number 20 of 2016 concerning Trademarks and Geographical Indications

Law Number 20 of 2016 concerning Trademarks and Geographical Indications places trademarks as an object of exclusive legal protection. Article 1 number 1 states that a trademark is a mark that can be displayed graphically to distinguish goods or services produced by a person or legal entity. Article 1 number 5 emphasizes that the right to a trademark is an exclusive right granted by the state to the owner of a registered trademark to use the trademark himself or give permission to another party.

In general, brands are created as a means to attract the attention of consumers to be interested in buying and using a product. Trademarks must comply with the provisions stipulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, especially related to trademark registration requirements. This registration aims to obtain exclusive rights as well as legal protection for trademarks used in trade activities. One of the main requirements for trademark registration as stipulated in Article 21 paragraph (3) of Law Number 20 of 2016 is the existence of good faith. Good faith means that the trademark is created in an authentic manner, does not imitate, and does not plagiarize the trademarks of other parties, especially registered brands.

In addition, the trademark created must not have any similarities, either in principle or as a whole, with any other trademark that has been used in commerce. If there are similarities, whether intentional or not, it has the potential to cause trademark disputes in the future. The explanation of Article 21 paragraph (1) of Law Number 20 of 2016 states that brand similarity can occur due to the presence of dominant elements that cause similar impressions, both in terms of form, composition, writing style, combination of elements, and pronunciation. Therefore, a trademark cannot be registered if it has similarities with registered trademarks belonging to other parties for similar goods and/or services, well-known trademarks for similar goods and/or services, and well-known trademarks for certain goods and/or services that meet special criteria. In accordance with the explanation of Article 21 paragraph (1) letter (b), in assessing the similarity with a well-known brand, it is necessary to pay attention to the level of general knowledge of the public and the reputation of the brand.

Based on Article 1 paragraph (5) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, the right to a trademark is an exclusive right granted by the state to the owner of a registered trademark, either for their own use or to be granted permission to another party. This provision confirms that legal protection is only granted to officially registered trademarks. Thus, unregistered trademarks do not obtain legal protection, even though they have long been used in trading activities.

The trademark law system in Indonesia adheres to the constitutional principle, namely the right to a new trademark after registration. In this basis, there are several main principles, namely:

1. Exclusive rights to a trademark are granted only to registered trademarks;
2. Legal protection does not arise solely due to use, but must go through the registration process;
3. The principle *of prior in tempore*, *melior in jure*, which means that the party who first registers the trademark is entitled to legal protection;
4. And there is an obligation for the brand owner to register as a condition of obtaining exclusive rights.

Although adhering to the *principle of first to file*, the application of this principle is not absolute. In certain circumstances, the principle *of first to use* done in good faith can override trademark registration done in bad faith. This is especially relevant in the context of trademark protection of well-known watches, given the rampant practice of counterfeiting and imitation trademark registration to take advantage of the reputation of a well-known brand for illicit profit (Erfan & Kemala, 2025).

The strict prohibition on the use of trademarks without rights is regulated in Article 83 paragraph (1) of Law Number 20 of 2016, which gives the right to registered trademark owners to file a lawsuit for compensation and/or termination of all acts related to the use of the trademark without rights. This provision applies to any party who commits counterfeiting of brands and the circulation of counterfeit branded goods, including sellers of counterfeit watches. The existence of the "cessation of all acts" lawsuit opens up the interpretation that distribution facilities and trade facilitators can also be held to a civil liability role if it is proven that violations can occur.

Law Number 20 of 2016 qualifies trademark counterfeiting as a criminal offense. Article 100 paragraph (1) states that any person who does not have the right to use the same trademark as a whole with a registered trademark belonging to another party for similar goods produced and/or traded shall be sentenced to imprisonment for a maximum of 5 years and/or a maximum fine of Rp 2,000,000,000 (two billion rupiah). Paragraph (2) expands the scope by including the use of trademarks that have similarities in essence. The context of watches with brand falsification with the use of logos, brand names, or designs that resemble well-known brands fall into this category, even though they are marketed through electronic media or marketplaces. The relevance of the element "Trading" in the element "produced and/or traded" in Article 100 of Law Number 20 of 2016 has a broad meaning and is not limited to conventional trade. Trading through electronic systems remains included in the category of trading goods. Therefore, the sale of counterfeit watch brands in the marketplace also meets the objective elements of brand crime.

Legal protection in Law Number 20 of 2016 concerning Trademarks and Geographical Indications is preventive and repressive. Preventive protection is reflected in the obligation to register a trademark and the exclusive rights of the trademark owner as stipulated in Article 3 of Law Number 20 of 2016. Repressive protection is reflected in criminal sanctions in Articles 100 to 102. Repressive protection becomes relevant when counterfeiters are uncooperative with the brand owner's report on the circulation of counterfeit watches, causing continued losses both economically and reputationally. The norms of prohibitions and sanctions contained in Law Number 20 of 2016 remain applicable to digital transactions. This shows that the Trademark Law is *a substantive lex generalis* in the protection of trademark rights, which is then strengthened by sectoral rules such as the Government Regulation on Trade Through Electronic Systems and the Law on Information and Electronic Transactions in the technical aspects of law enforcement.

Based on the provisions of Article 4 of Law Number 8 of 1999 concerning Consumer Protection, consumers have a number of legally guaranteed rights as an effort to protect them from the potential abuse of dominant positions by business actors. These rights include the right to comfort, security, and safety in using goods or services, which require that the products or services traded do not pose a risk to the health, safety, or property of consumers. In addition, Article 4 of the Consumer Protection Law also gives consumers the right to choose and obtain goods and/or services in accordance with the exchange rates, conditions, and guarantees that have been agreed. This provision affirms the obligation of business actors to meet the specifications, quality, and promises conveyed in the transaction process. In addition, consumers also have the right to obtain true, clear, and honest information about the condition of goods and/or services, the right to express opinions and complaints, and the right to receive compensation if they suffer losses due to the use of these goods or services (Alfatunisah & Sativa, 2025).

The connection of these provisions with the practice of counterfeiting watch brands can be seen from the direct violation of consumer rights. The sale of counterfeit watches using well-known brands misleads consumers because the information provided is not true and dishonest, so that consumers do not get goods according to the promised exchange rate and guarantee. In addition, counterfeit products have the potential to not meet quality and safety standards, which can harm consumers economically as well as non-economically. Therefore, the practice of trademark counterfeiting not only violates the intellectual property rights of the trademark owner, but also contradicts the principle of consumer protection as stipulated in Article 4 of Law Number 8 of 1999.

Trade Through Electronic Systems (PMSE) business actors, including foreign business actors, are required to comply with the applicable licensing requirements. Before obtaining a PMSE Business License, business actors must have an Electronic System Operator Registration Certificate (STTPSE) issued by the Ministry of Communication and Informatics. To obtain STTPSE, business actors are required to complete administrative and technical requirements, such as the identity of the organizer, company data, electronic system information, domain name, and security certification (Hasanah et al., 2023). Then Government Regulation No. 80 of 2019 concerning Trade through Electronic Systems (PP PMSE) is an important implementing regulation that regulates electronic commerce, including marketplaces in Indonesia:

1. Responsibilities of PMSE organizers

Article 22 paragraph (1) of Government Regulation Number 80 of 2019 stipulates that if in PMSE (Trade through Electronic Systems) there is illegal electronic information content, then PPMSE (*marketplace*) both domestic and foreign and intermediary facilities operators are responsible for the impact or legal consequences due to the existence of the content.

2. Removal of illegal content to avoid liability
   Article 22 paragraph (2) states that the provisions of paragraph (1) do not apply if PPMSE immediately acts to remove the electronic link or illegal information content after learning of the existence of illegal content (*notice-and-take-down*).

Trademark forgery of well-known brand watches is a violation of the exclusive rights of the trademark owner which can be subject to civil and criminal sanctions. Article 22 paragraph (2) of Government Regulation Number 80 of 2019 provides an exemption from liability to marketplaces if they immediately remove or remove illegal content after learning of a violation. This provision introduces the legal standard of "know-based *liability*". In this case, if the trademark owner has reported the infringement or the infringement is real (e.g. very low price, description of "KW", or the use of a well-known brand logo without permission), then the trademark infringer is considered to have a legal obligation for the infringement committed.

In addition, Government Regulation Number 80 of 2019 concerning Trade Through Electronic Systems opens up administrative sanctions against perpetrators of trademark counterfeiting. Article 80 paragraph (2) regulates the form of administrative sanctions that can be imposed on Trade Through Electronic Systems in stages, namely:

1. Written reprimands
2. Administrative fines
3. Temporary suspension of business activities
4. Access *blocking*

Regulation of the Minister of Trade No. 31 of 2023 also regulates the obligations of PMSE business actors to ensure that the information and advertising displayed are not misleading and do not violate the law. In accordance with the practice of trading counterfeit watches, violations often occur through:

1. Use of registered trademark names without permission,
2. Listing the logo of a famous brand,
3. A product description that disguises the counterfeit as genuine.

Law No. 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions updates the legal framework for the implementation of electronic systems. This Law does not remove old obligations, but rather reinforces the principle of responsibility and prudence of the Electronic Systems Trade in the management of electronic content and activities under its control. Article 15 paragraph (1) of the ITE Law as amended by Law Number 1 of 2024 still emphasizes that every Electronic System Operator is obliged to operate an electronic system reliably, safely, and responsibly. This obligation is general, but its implications are particularly relevant to counterfeit watch trading on electronic systems trading. An electronic system that is "responsible" means that it must not be used as a recurring means for unlawful acts, including trademark infringement as stipulated in the Trademark Act.

According to Law Number 20 of 2016 concerning Trademarks and Geographical Indications, trademark forgery of well-known watches is a prohibited act because it uses a registered trademark without rights as stipulated in Article 100 paragraph (1) and paragraph (2). Therefore, the responsibility of the perpetrator of trademark infringement according to Law Number 20 of 2016 can be concluded that every party who commits trademark infringement is contrary to the purpose of trademark legal protection. So that legally it is appropriate for perpetrators of trademark counterfeiting to be held accountable, especially in the form of administrative and civil responsibility which is strengthened by implementing regulations in the field of electronic commerce.

CONCLUSION

Trademark infringement of well-known brand watches has the potential to cause significant losses to a legitimate company as the first party to introduce or manufacture the trademark. The rampant circulation of counterfeit watches that use well-known brands without the permission of the rights owner raises legal problems, because it is directly related to the violation of Intellectual Property Rights (IPR) as stipulated in the MUI Fatwa Number 1/MUNAS VII/MUI/5/2005 concerning the Protection of Intellectual Property Rights. Based on the fatwa, IPR is seen as *huquq maliyyah* or property rights whose position is equated with property (*mal*) and obtain legal protection (*ma'sun*), the MUI Fatwa states that any form of violation of Intellectual Property Rights, including plagiarism and counterfeiting of brands, is a tyrannical act and the law is haram if it is done without the permission of the rights owner. Based on these provisions, the practice of trademark counterfeiting of well-known brand watches is an act that is prohibited by *sharia*, so that the perpetrator is not only responsible according to national regulations, but also morally and religiously. The strict prohibition on the use of a trademark without rights is also regulated in Article 83 paragraph (1) of Law Number 20 of 2016, which gives the registered trademark owner the right to file a lawsuit for compensation and/or termination of all acts related to the use of the trademark without rights. This provision applies to any party who commits trademark counterfeiting and the circulation of counterfeit branded goods. Perpetrators of counterfeiting of counterfeit brands and the circulation of counterfeit watches can be considered to not support the protection of brand rights effectively, so legally they should be held accountable, especially in the form of criminal, administrative, and civil liability. This research is expected to contribute to the development of legal studies on the protection of trademark rights, especially against the practice of counterfeiting well-known watch brands that still occur frequently in Indonesia. In addition, the results of this study are expected to be considered for law enforcement officials and business actors in increasing awareness of the importance of protecting trademark rights. Thus, this research is not only limited to academics, but is also expected to provide practical benefits in supporting the creation of legal certainty and a trading system in good faith.

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