

JURIDICAL REVIEW OF LAZADA'S RESPONSIBILITY IN SELLING MONEY NIKE SHOES THROUGH LAZADA'S OFFICIAL SITE

Tommy Leonard

ABSTRACT

A LAZADA customer on behalf of Budi from South Sulawesi experienced an unpleasant incident that an item he had bought was not what he expected, he admitted that he got a fake item he wrote his experience through the letter column of the daily Kompas daily reader and told him that he was interested in the promotion of NIKE shoes advertised on the LAZADA yard. The shoes were initially sold at a price of Rp. 1,200,000, and were later discounted to Rp. 570,000.00. Budi himself also includes LAZADA's order number in the reader's letter column, which is 363398412, according to Budi's admission, the shoes intended are not real NIKE shoes but fake NIKE shoes, which according to him are usually sold at street vendors at a price of IDR 150,000. This research is a normative method, namely through books and journals. This research is also descriptive in nature, namely research aimed at explaining LAZADA's responsibility in selling counterfeit products such as imitation NIKE shoes purchased online through the LAZADA page. The results of this study indicate that LAZADA or the producer is responsible for the payment of compensation based on default. And appropriate compensation is in the form of refunds or substitutes for goods of a similar type or equivalent value in accordance with the provisions of the applicable laws. If adjusted, the Dean of UUPK LAZADA is obliged to replace NIKE shoe products for consumers on behalf of Budi with products in new conditions.

Keywords: Responsibility, fake brand, LAZADA

INTRODUCTION

In this era of globalization, technology is developing rapidly, especially on mobile phones, which are better known as "smartphones", and not forgetting to be equipped with the phenomenal social media for doing business today, namely LAZADA. With the existence of smartphones and business social media, business people are able to create, manage, and develop online businesses, known as e-commerce, and implemented in the form of an online shop (better known as an online shop). Meanwhile, buyers who like to shop don't need to be overwhelmed or busy to go to shopping centers just to shop, where buyers also have to spend a lot of time shopping outside the home. Therefore, currently LAZADA also provides space for loyal customers to shop quickly, safely, and comfortably, in accordance with LAZADA's slogan, namely "Effortless Shopping" or the slang "Shopping is not complicated". LAZADA is also a pioneer of e-commerce (online shopping) in some of the fastest growing countries in the world, which is also the Leading Online Shopping Mall in Indonesia. In doing so, business people need to register an account at LAZADA, which consists of 3 easy steps. First, complete and provide the necessary documents, such as a soft copy of a business license or KTP, accompanied by bank account documents owned, such as a Savings Book or a checking account type, followed by reading and signing the Seller Agreement. Second, activate the seller's account (Seller Center) to easily manage the store. LAZADA also facilitates training sessions for new sellers. Third, upload a product and start selling on LAZADA.

Unlike the case with LAZADA customers, before shopping online at LAZADA, buyers are required to register an account on the LAZADA page first by filling in a form containing a choice of gender, active e-mail, name, date of birth, and password, which can also be registered through an account facebook or Google account that the customer has. After registering online, customers can place an order after selecting the product they want to spend.¹

According to LAZADA, they always take input from consumers seriously, and take firm action if there are special allegations against the seller or products sold through the LAZADA platform, including deleting the seller's name and merchandise. As is well known, LAZADA is only an intermediary between the seller and the buyer. For certain products, LAZADA does not have the goods it sells, but rather takes it from shops that are affiliated with LAZADA

PROBLEM FORMULATION

Based on this background, the problems are:

1. How to regulate trademarks based on Law No. 15 of 2001 concerning Brand
2. What is LAZADA's responsibility in selling counterfeit NIKE shoes through the LAZADA official website?

¹ Muchsin, *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia, Surakarta, Disertasi S2 Fakultas Hukum, Universitas Sebelas Maret*, 2003 hal 6

RESEARCH METHODS

This research is a type of research with a normative method, namely research conducted based on existing sources, including through books and journals. This research is descriptive in nature, namely research aimed at explaining the responsibility of one of the leading shopping malls in Indonesia, LAZADA, in selling counterfeit products, such as counterfeit NIKE shoes ordered or purchased online through the LAZADA page.

This research is based on a collection of library data related to the object of research, which is then called secondary data. The secondary data are as follows:

- a. Primary legal materials, among others:
 - 1) Law Number 8 of 1999 concerning Consumer Protection
 - 2) Law Number 15 Year 2001 regarding Marks
 - 3) Law Number 11 of 2008 concerning Electronic Information and Transactions
 - 4) Law Number 7 of 2014 concerning Trade
 - 5) Law Number 20 of 2016 concerning Marks and Geographical Indications
 - 6) Government Regulation Number 58 of 2001 concerning Guidance and Supervision of the Implementation of Consumer Protection
 - 7) Government Regulation Number 59 of 2001 concerning Non-Governmental Organization for Consumer Protection
- b. Secondary legal material is in the form of articles found in accountable online journals, namely theonline law journal.
- c. Tertiary legal material is the Civil Code (KUHPdt).

RESULT AND DISCUSSION

1. Regulations regarding marks based on Law No. 15 of 2001 concerning Brand

According to Article 1 paragraph 1 of Law Number 15 Year 2001 concerning Marks, the meaning of a Mark is a sign in the form of an image, name, word, letters, numbers, color arrangement, or a combination of these elements which has distinguishing power. and used in trading activities in goods or services.

Business actor is any individual or business entity, whether in the form of a legal entity or non-legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, either individually or collectively through an agreement to carry out business activities in various economic fields. (Article 1 paragraph (3) Law Number 8 Year 1999 regarding Consumer Protection). Also explained in the General Elucidation of Law Number 8 of 1999 concerning Consumer Protection, namely "Business actors included in this definition are corporate companies, state-owned enterprises, cooperatives, importers, traders, distributors and others."

Goods are any objects either tangible or intangible, movable or immovable, consumable or non-consumable, which can be traded, used, used, or utilized by consumers. (Article 1 paragraph (4) Law Number 8 of 1999 concerning Consumer Protection) In Article 1 paragraph (13) of Law Number 8 of 1999 concerning Consumer Protection, the Minister is the minister whose scope of duties and responsibilities covers the trade sector.

A legal relationship (*rechtbetrekkingen*) is a relationship between two or more legal subjects regarding the rights and obligations of one party against the rights and obligations of the other.¹⁸ Legal relations can occur between legal subjects and between legal subjects and objects. Relationships between legal subjects can occur between people, people and legal entities, and between legal entities. Legal relations between legal subjects and objects in the form of what rights are controlled by the legal subject over these objects, whether tangible objects, movable objects, or immovable objects.¹⁹ Legal relations have conditions, namely the existence of a legal basis and the existence of legal events.

The legal relationship between business actors and consumers is based on Article 1320 and Article 1338 of the Civil Code (KUHPer), where the business actor has agreed on what was promised when giving promises on an advertisement, or leaflet or brochure, so that the promise -this promise will act as law for the parties making it. Legal events that occur between business actors and consumers are trade in goods or services. According to Article 1 paragraph (1) of Law Number 7 of 2014 concerning Trade, the meaning of trade is Trade is an order of activities related to transactions of goods and / or services in the country and beyond the territory of the country with the aim of transferring rights to goods and / or Services to obtain compensation or compensation.

According to Article 1 paragraph (20) of Law Number 7 of 2014 concerning Trade, the meaning of Trade Promotion is the activity of showing, demonstrating, introducing, and / or disseminating information on the production of goods and / or services to attract consumer buying interest, both in domestic and abroad, within a certain period of time to increase sales, expand markets, and seek trade relations.

Article 30 paragraph (2) of Law Number 7 of 2014 concerning Trade which reads, "Business Actors are prohibited from manipulating data and / or information regarding supplies of basic necessities and / or important goods." The criminal determination is contained in Article 108 of Law Number 7 of 2014 concerning Trade, namely "Business Actors who manipulate data and / or information regarding the supply of essential goods and / or important goods as referred to in Article

30 paragraph (2) shall be punished with imprisonment of up to 4 (four) years and / or a maximum fine of Rp.10,000,000,000.00 (ten billion rupiah). According to Article 50 paragraph (2) letter b of Law Number 7 of 2014 concerning Trade, the government prohibits the import or export of goods for the national interest on the grounds of protecting intellectual property rights. For businesses, online shops are considered attractive because they don't require large capital, a large market because the internet can be accessed by consumers from all over the world, and others. As for consumers, shopping at an online shop is considered more attractive because the price offered is usually cheaper than shopping physically. To protect electronic users, the Government of the Republic of Indonesia has issued Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE). The ITE Law regulates electronic transactions, for example online shops. According to Article 1 paragraph (2) UU ITE No. 11 of 2008, electronic transactions are legal acts conducted using computers, computer networks, and / or other electronic.

1. In accordance with the above definition, buying and selling activities carried out using computers or communication devices such as mobile phones can be categorized as an electronic transaction. The ITE Law too
2. obliging business actors to provide complete and correct information. This obligation is contained in Article 9 UU ITE No. 11 of 2008, which reads: "Business actors offering products through an electronic system must provide complete and correct information regarding the terms of the contract, the manufacturer, and the products offered." What is meant by "complete and correct information" includes information that contains the identity and status of a legal subject and its competence, either as a producer, supplier, organizer or intermediary; other information that explains certain things that are conditions for the validity of the agreement and explains the goods and / or services offered, such as name, address, and description of goods / services. (General explanation of Article 9 of the ITE Law)
3. According to Article 6 of Law Number 8 of 1999 concerning Consumer Protection, the rights of business actors
4. Article 6 letter b: The right to get legal protection from the actions of consumers with bad intentions;
5. Article 6 letter c: The right to defend oneself properly in the settlement of consumer disputes;
6. Article 6 letter d: The right to rehabilitate the good name if it is legally proven that the consumer's loss was not caused by the goods and / or services being traded;
7. Article 6 letter e: Rights as regulated in other statutory provisions.

According to Article 1 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, what is meant by Consumer Protection is any effort that ensures legal certainty to provide protection to consumers. Meanwhile, consumers are every person using goods and / or services available in society, whether for the benefit of themselves, their families, other people, or other living creatures and not for sale. (Article 1 paragraph (2) Law Number 8 Year 1999 concerning Consumer Protection). In the economic literature the terms end consumer and intermediate consumer are known. End consumers are end users or users of a product, while intermediate consumers are consumers who use a product as part of the production process of another product. The definition of consumer in this law is the final consumer. (Elucidation in Law Number 8 of 1999 concerning Consumer Protection) Also known as the Non-Governmental Organization for Consumer Protection, which means a non-Governmental institution that is registered and recognized by the Government which has activities dealing with consumer protection (Article 1 paragraph (9) of the Law Number 8 of 1999 concerning Consumer Protection). Also explained in the General Elucidation of Law Number 8 of 1999 concerning Consumer Protection, namely "This institution was formed to increase public participation in consumer protection efforts and to show that consumer protection is a shared responsibility between the government and society." Meanwhile, in Article 1 paragraph (10) of Law Number 8 of 1999 concerning Consumer Protection, the Standard Clause is any rules or conditions and conditions that have been prepared and determined unilaterally by a business actor as outlined in a document and / or binding agreements and must be fulfilled by consumers.

Consumer Dispute Settlement Bodies are bodies in charge of handling and resolving disputes between business actors and consumers. (Article 1 paragraph (11) Law Number 8 Year 1999 regarding Consumer Protection). Also explained in the General Explanation, namely "This agency was formed to handle consumer dispute resolution that is efficient, fast, cheap and professional."

2. LAZADA's Responsibilities in Selling Counterfeit NIKE Shoes through the LAZADA Official Site

Regarding the case chosen as the title in this thesis, LAZADA is the business actor and Budi is one of the customers of the leading Online Shopping Mall in Indonesia, namely LAZADA. In terms of selling products on its official website, not all products are products from LAZADA, but there are also products that are the result of cooperation between LAZADA and other business actors, where LAZADA is a third party and other business actors as one of the main parties between Producers and Consumers. Here, the manufacturer intends to sell or entrust their selling products on the LAZADA official website.

From this case, if the NIKE Blue Fins are proven to be artificial shoes, then the case can be adjusted to Article 7 of Law Number 8 of 1999 concerning Consumer Protection which contains a collection of obligations as Business Actors. The following is the sound of Article 7 letter b of Law Number 8 Year 1999, "Providing true, clear and honest information regarding the condition and guarantee of goods and / or services as well as providing an explanation of the use, repair and maintenance." Therefore, LAZADA or the manufacturer is obliged to inform correctly, clearly, and honestly about the condition of the NIKE Blue Fins that are promoted on the LAZADA page at the very beginning prior to the buying and selling process between the Manufacturer and the Consumer. Why is that? Because Consumers have the right to correct, clear, and honest information regarding the conditions and guarantees of goods and / or services (Article 4 letter c Law Number 8 of 1999 concerning Consumer Protection).

If adjusted with Article 7 letter f which reads, "Providing compensation, compensation, and / or replacement if the goods and / or services received or used by consumers are not in accordance with the agreement." Therefore, LAZADA or the manufacturer is obliged to provide compensation, compensation, and / or replacement of NIKE Blue Fins shoes or better known as non-conforming

product returns with the same product but with the same quality as promoted and of course still in new condition. Why is that? Because the consumer has the right to get compensation, compensation and / or replacement, if the goods and / or services received are not in accordance with the agreement or not as they should be (Article 4 letter h of Law Number 8 of 1999 concerning Consumer Protection). This case can also be adjusted to Article 8 of Law Number 8 Year 1999 concerning Consumer Protection, where Article 8 contains actions that are prohibited for Business Actors, precisely contained in paragraph (1) letter f which reads, "Not in accordance with the stated promise. in labels, labels, descriptions, advertisements, or sales promotions of these goods and / or services. " Therefore, LAZADA or the manufacturer is prohibited from selling products that do not comply with the promises stated in the advertisement or promotion of the NIKE Blue Fins, which are half the normal price. Although the NIKE Blue Fins have dropped their price to half the normal price, they must be sold as original and in the same condition. Meanwhile, Article 8 paragraph (4) of Law Number 8 Year 1999 concerning Consumer Protection reads, "Business actors who commit violations in paragraph (1) and paragraph (2) are prohibited from trading these goods and / or services and are required to withdraw them from circulation. " Thus, LAZADA or producers who violate the rules listed in Article 8 paragraph (4) of Law Number 8 of 1999 concerning Consumer Protection, the Minister and the technical minister have the authority to withdraw NIKE Blue Fins shoe products from circulation.

If viewed from Article 19 paragraph (1) of Law Number 8 Year 1999 concerning Consumer Protection which regulates the Responsibilities of Business Actors, which reads, "Business actors are responsible for providing compensation for damage, pollution and / or loss to consumers due to consuming goods. and / or services produced or traded. " In this case, the Business Actor is responsible for compensation for consumer losses. Compensation for damages can be seen in Article 19 paragraph 1.

CONCLUSIONS AND SUGGESTIONS

Conclusions

From the cases and discussion above, it can be concluded that Trademarks are regulated by Law Number 15 of 2001 concerning Trademarks, and legal protection for consumers and business actors is regulated in Law Number 8 of 1999 concerning Consumer Protection.

In this case, the NIKE Blue Fins ordered and received by Budi, are not genuine shoes, but counterfeits, at a discounted price. Therefore, LAZADA or the producer is responsible for the payment of compensation based on default. And appropriate compensation is in the form of a refund or replacement of goods of a similar type or equivalent value in accordance with the provisions of the prevailing laws and regulations. If adjusted to the UUPK, LAZADA is obliged to replace NIKE Blue Fins shoes products to consumers on behalf of Budi, with products in new conditions and of course with the original NIKE brand.

suggestion

To provide a deterrent effect in receiving both civil and criminal sanctions, Law Number 15 of 2001 concerning Marks should be disseminated to business actors and the public, so that each party is able to act wisely in trading transactions both directly and indirect.

To increase the accountability of Business Actors, especially trade transactions through an electronic system, the Government should be able to form a special rule for Business Actors regarding trading through electronic systems, for example licensing which can be carried out more legally and strictly, legally, which means that the obligations of Business Actors apply legally. or the law in force.

REFERENCES

- Adrian Sutendi, *Tanggung Jawab Produk Dalam Hukum Perlindungan Konsumen*, Bogor, Ghalia Indonesia, 2008.
Achmad Zen Umar Purba, *Hak Kekayaan Intelektual Pasca Trips*, Bandung, Alumni, 2005.
Ahmad Zazili, *Perlindungan Hukum Terhadap Penumpang pada Transportasi Udara Niaga Berjadwal Nasional*, Tesis Fakultas Hukum Universitas Diponegoro, 2008.
Elie Yolanda Ekasanti, *Kewenangan YKCI sebagai Kuasa dari Pencipta/Pemegang Hak Cipta dalam Menghitung dan Menagih Royalti*. Tesis. Banjarmasin, Program Magister Ilmu Hukum Universitas Lambung Mangkurat, 2012
Djumhana M. dan R. Djubaedillah, *Hak Milik Intelektual, Sejarah Teori dan Prakteknya di Indonesia*, Bandung, Citra Aditya Bakti, 1997
Gunawan Wijaya, *Hukum tentang Perlindungan Konsumen*, Jakarta, PT. Gramedia Pustaka Utama, 2000.
Nasution Az., *Konsumen dan Konsumen: Tinjauan Sosial, Ekonomi dan Hukum Pada Perlindungan Konsumen Indonesia*, cet. I, Jakarta, Pustaka Sinar, 1995.

Tommy Leonard*
Fakultas Hukum, Universitas Prima Indonesia
Tommy-journal@unprimdn.ac.id