

Reconstruction of Criminal Regulation Toward Victims of Trademark Infringement in Indonesia

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ABSTRACT

This study examines the reconstruction of criminal law provisions governing the protection of victims in trademark infringement cases in Indonesia. The current legal framework, as stipulated in Law No. 20 of 2016 concerning Trademarks and Geographical Indications, still relies on a complaint-based offense (requiring a complaint from the aggrieved party), which limits law enforcement's proactive role and undermines the effectiveness of criminal sanctions. Through a comparative legal approach and a theoretical analysis grounded in legal certainty, proportionality, and restorative justice, this research highlights the need for systemic reform. The proposed reconstruction includes five key elements: (1) reclassifying trademark infringement from a complaint-based offense into a public criminal act, (2) implementing proportional and tiered criminal sanctions, (3) incorporating restitution as a mandatory additional penalty, (4) strengthening institutional capacity and inter-agency coordination, and (5) revising Law No. 20 of 2016 to align with international best practices. A comparative analysis of France, Singapore, and Malaysia demonstrates that integrating restitution and proactive enforcement mechanisms enhances justice for victims and strengthens the deterrent function of criminal law. This reconstruction aims to transform Indonesia's trademark protection system into one that is more effective, fair, and adaptive to the challenges of global and digital trade ensuring both punitive and restorative justice for victims of trademark infringement in Indonesia.

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Introduction

The wave of globalization across all sectors, including trade in goods and services, has effectively erased geographical boundaries between nations (Benabed & Moncea, 2024; Obialor et al., 2022). This phenomenon demands that regulations in the field of Intellectual Property Rights (IPR), particularly trademarks, continually adapt to ensure relevant and effective legal protection (Elpina, 2024; Kumar, 2024; Mbah, 2024). Today, trademarks serve not only as product identifiers but also as strategic assets that determine the reputation and competitiveness of business entities (Cao et al., 2022; Zhang & Qiu, 2021). Therefore, the advancement of globalization requires Indonesia to reform its trademark law policies to remain competitive and fair in the international market (Nasution & Judijanto, 2024; Nursalim et al., 2024; Sudirman et al., 2024).

Trademark infringement can occur in various forms, such as counterfeiting, unauthorized use, or the registration of marks resembling well-known trademarks in bad faith (Bassiouny & Abdin, 2022; Juwaihah et al., 2025). Such acts not only harm trademark owners but also mislead consumers and undermine market integrity (Panjaitan et al., 2025). The impacts are multidimensional—ranging from loss of consumer trust and disruption of fair competition to significant economic losses for the state (Challoumis et al., 2025; Rashied et al., 2024). Consequently, trademark infringement should not be viewed merely as an administrative violation but can also be classified as a criminal offense when elements of intent and unlawful gain are present (Li et al., 2024).

According to Article 1, point 5 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, trademark rights are exclusive rights granted by the state to registered owners for a specific period. These exclusive rights authorize the owner to use the mark or to permit others to use it. This provision affirms that trademark protection forms an integral part of the national IPR system, aligned with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization (WTO) framework. Hence, Indonesia is obliged to build a consistent and effective trademark protection system (Ningsih & Karim, 2025).

Although the legal framework already exists, the implementation of trademark protection in Indonesia still faces numerous challenges (Sudirman et al., 2024). The classification of trademark infringement as a complaint-based offense (*delik aduan*) restricts law enforcement authorities from acting without a formal report from the trademark owner. Many owners are reluctant to report violations due to lengthy procedures and high legal costs, leaving numerous cases unresolved. Furthermore, legal awareness among business actors and consumers remains low (Fibrianti et al., 2023; Setiodjati & Wiwoho, 2021). The intentional purchase of counterfeit goods by consumers reflects a weak understanding of the broader economic implications of trademark infringement.

The circulation of counterfeit products in Indonesia has caused significant economic losses (Liandhajani, 2022; Siahaan et al., 2025). Data from the Indonesian Anti-Counterfeiting Society (MIAP) indicate that, in 2020, economic losses due to product counterfeiting reached IDR 291 trillion, a sharp increase from IDR 65.1 trillion in 2015. Beyond harming producers and the state, counterfeit goods also pose serious threats to consumer health and safety, as they often fail to meet quality standards (Office, 2022). This condition indicates that trademark infringement is not only a legal issue but also a socio-economic problem that requires comprehensive solutions through strict law enforcement and cross-sectoral collaboration, a healthier and more competitive business ecosystem, and the strengthening of international confidence and reputation in Indonesia's legal framework through the consistent and effective enforcement of trademark law.

Globally, several countries have successfully implemented effective trademark protection systems (Abdugopirovich, 2021). France, through its *Code de la Propriété Intellectuelle*, adopts the first-to-file principle with stringent law enforcement against

counterfeiting, including criminal sanctions for consumers of counterfeit goods. Singapore and Malaysia also classify trademark infringement as a criminal offense without requiring a complaint from the rights holder. Such proactive approaches reflect the view that trademark protection serves the public interest, closely tied to consumer protection and national economic stability (Xu, 2025).

In comparison, Indonesia's legal system remains weak at deterring crime (Sundari & Retnowati, 2021). Limited criminal sanctions, restricted authority of law enforcement, and slow judicial processes remain major obstacles (Arsad, 2023). Therefore, reforms to the penal provisions in Articles 100–102 of Law No. 20 of 2016 are necessary through heavier penalties, the inclusion of additional criminal sanctions, and the removal of the complaint-based nature of the offense. These reforms aim to balance the protection of trademark owners' rights, fairness for small enterprises, and the broader public interest (Hapriyanto et al., 2024).

Based on these issues, this research titled “Reconstruction of Criminal Provisions on Trademark Infringement in Indonesia” aims to evaluate the effectiveness of criminal sanctions in addressing trademark violations and formulate new legal norms that enable stricter and fairer enforcement (Muthuswamy & Sureshkumar, 2023). The novelty of this study lies in its evaluative and comparative approach, examining Indonesia's legal practices alongside those of France, Singapore, and Malaysia. Thus, this research is expected to provide comprehensive policy recommendations to strengthen Indonesia's national trademark protection framework and enhance public trust in IPR enforcement in the era of globalization.

This study focuses on several key problems: how the criminal sanctions for trademark infringement are regulated in Indonesia, how the implementation of these sanctions provides legal protection for trademark owners, and how an ideal reconstruction of criminal provisions can be developed to improve enforcement. Based on these research problems, the objectives are to analyze the implementation of criminal regulations in trademark infringement cases in Indonesia, examine their enforcement within the legal protection framework, and formulate an ideal reconstruction model of criminal sanctions to ensure more effective and equitable protection.

The research offers several contributions— theoretical, practical, and social. Theoretically, it contributes to the development of legal scholarship, particularly in Intellectual Property and Criminal Law, by emphasizing the effectiveness of criminal sanctions and trademark protection while serving as an academic reference for future researchers. Practically, it provides insights for policymakers and law enforcement authorities to strengthen legal frameworks, apply proportional sanctions, and enhance trademark owners' understanding of their rights. Socially, the research contributes to fostering a healthier and more competitive business environment while improving international trust and reputation in Indonesia's legal system through consistent and effective trademark law enforcement.

Research Method

This study employs a normative legal approach supported by empirical data. The empirical dimension is derived from actual legal practices and realities, aiming to understand how law operates within society. Several legal approaches are integrated to strengthen the normative analysis. First, the statutory approach critically examines the legal instruments underlying trademark regulation and criminal sanctions, including Law No. 20 of 2016 on Trademarks and Geographical Indications, Government Regulation No. 36 of 2018 on Trademark Registration, and relevant international treaties such as the TRIPs Agreement and the Paris Convention. Second, the case approach analyzes judicial decisions concerning trademark infringement, such as Supreme Court Decisions No. 5251 K/Pid.Sus/2022 (Gillette), No. 65 K/Pid.Sus/2021 (GOSH), and No. 765 K/Pid.Sus/2018 (Eiger). Third, the conceptual approach reviews fundamental legal theories—including the Deterrence Theory, Rule of Law Theory, and Legal Certainty Theory—to provide philosophical justification for reformulating criminal sanction policies. Fourth, the comparative approach contrasts the Indonesian system with those of France and Singapore to identify best practices in enforcing criminal liability for trademark infringement. The integration of these approaches ensures that the study yields not only robust normative insights but also practical legal solutions. To complement secondary data, primary data were collected through interviews with key informants, including commercial court judges, investigators from the Indonesian National Police (Bareskrim Polri), prosecutors from the Attorney General's Office, intellectual property practitioners, and legal scholars.

This research is descriptive-analytical, combining a systematic description of the laws governing trademark infringement with a critical analysis of their implementation in practice. The descriptive aspect provides a detailed account of the legal framework governing criminal sanctions—covering offense classification, sanction types, reporting mechanisms, and judicial jurisdiction. It also examines the legal system comprehensively through Lawrence M. Friedman's tripartite framework: legal substance, legal structure, and legal culture. The analytical aspect, meanwhile, compares what the law prescribes (*das sollen*) with what actually occurs in practice (*das sein*), thereby highlighting the gaps between normative provisions and practical enforcement that weaken the effectiveness of criminal sanctions and undermine trademark protection.

Data were analyzed qualitatively by examining both secondary and primary data. The analysis followed a systematic and transparent procedure, incorporating multiple perspectives to enhance validity. Despite inherent limitations, this research aims to provide a comprehensive and applicable understanding of the effectiveness of criminal sanctions for trademark infringement and to offer a reconstruction of trademark criminal law regulation toward a fairer and more effective protection system for trademark holders in Indonesia.

Results and Discussion

Criminal Sanctions for Trademark Infringement in Indonesia

Trademark infringement in Indonesia remains a complex and evolving issue, closely tied to the nation's economic and technological development. Trademark rights hold substantial economic value and play a vital role in maintaining market competition. However, various forms of infringement such as counterfeiting and unauthorized use—continue to occur. These infringements not only inflict financial losses on trademark owners but also mislead consumers and undermine fair business practices. Trademark protection in Indonesia is governed by Law No. 20 of 2016 on Trademarks and Geographical Indications, which includes criminal sanctions for violators. Yet, the effectiveness of these provisions in ensuring legal protection faces numerous challenges.

One of the main obstacles lies in the weakness of criminal law enforcement, caused by bureaucratic inefficiencies, limited institutional capacity, and the classification of certain offenses as complaint-based (requiring a complaint from the aggrieved party), which restricts investigators' ability to act proactively. Furthermore, existing penalties are often considered insufficient to deter, leading to recurring violations. In the digital era, trademark infringement has become increasingly sophisticated, as counterfeit goods circulate widely through online platforms making surveillance and enforcement more difficult. The current legal framework does not fully accommodate these emerging challenges, underscoring the need for a more adaptive and effective legal system. To address these deficiencies, a reconstruction of the criminal sanction system is essential to establish legal certainty, strengthen protection for trademark holders, and enhance deterrence for offenders. Such reconstruction should not only clarify legal provisions and impose harsher penalties for serious violations but also improve enforcement mechanisms to make them more efficient and accessible. Moreover, a comprehensive approach integrating criminal, administrative, and civil sanctions is required to build a more equitable and effective trademark protection system in Indonesia.

Criminal Sanctions in the Trademark Law

Trademark protection constitutes a fundamental aspect of trademark law in Indonesia, serving not only as an identifier of goods or services but also as an asset with significant economic value for its owner. Consequently, violations such as counterfeiting or unauthorized use may have far-reaching adverse effects causing financial losses to trademark owners, misleading consumers, and disrupting overall economic stability. To address these issues, the government enacted Law No. 20 of 2016 on Trademarks and Geographical Indications, which contains provisions on criminal sanctions for trademark violations. The criminal provisions are designed to ensure more effective protection of registered trademark owners' exclusive rights. In imposing penalties on offenders, the law seeks to reduce counterfeiting, prevent unfair competition, and deter those attempting to gain unlawful profit through imitation whether identical or substantially similar to a registered trademark with the intent to benefit themselves.

Furthermore, criminal sanctions aim to maintain consumer trust by ensuring that products purchased are genuine and reliable. Articles 100 to 103 of the Trademark and Geographical Indications Law specifically regulate various forms of trademark infringement, subjecting them to criminal penalties, with varying levels of punishment depending on the severity and impact of the violation. Under Article 100(1) Law Number 20 of 2016, the use of a trademark that is “*identical in its entirety* to a registered trademark may be punished by imprisonment of up to five years and/or a fine of up to two billion rupiah”. Article 100(2) of Trademark and Geographical Indications Law stipulates slightly lighter penalties imprisonment of up to four years and/or a fine of up to two billion rupiah for using a mark that is *substantially similar* to another’s registered trademark. When a trademark violation causes serious harm to public health, environmental damage, or even results in loss of life, Article 100(3) provides for imprisonment of up to ten years and/or a fine of up to five billion rupiah.

Implementation of Criminal Sanctions as Legal Protection for Trademark Holders

One of the most common forms of trademark infringement in Indonesia involves the use of marks identical or substantially similar to others' registered trademarks. This includes the use of identical or confusingly similar marks for goods or services of the same type. In practice, several cases have illustrated such violations. For instance, in the case of counterfeit olive oil labeled "Perfectolive Oil + Aromatherapy," the defendant was found guilty of using a mark that resembled the registered Engedi Olive Oil trademark. The counterfeit products were sold in retail stores and on online marketplaces, with packaging that closely imitated the original, misleading consumers. The court sentenced the defendant to eight months' imprisonment. It imposed a fine of one hundred million rupiah though many legal experts considered the punishment too lenient to serve as an effective deterrent. Similarly, Article 102 of the Trademark and Geographical Indications Law prescribes criminal sanctions for individuals who trade, import, export, or manufacture goods or services bearing marks similar to registered trademarks without authorization, thereby targeting those involved in the distribution chain of counterfeit products.

Another example is the illegal sale of GOSH-brand sandals, for which the defendant was convicted of selling counterfeit goods without the trademark owner's permission, PT Karyamitra Budisentosa, and fined 50 million rupiah or six months' imprisonment instead of payment. Nevertheless, law-enforcement officers and business actors often remain unaware of the criminal implications of trademark violations. In many cases, even when infringement is proven, court decisions tend to be lighter than expected and fail to reflect the economic harm caused proportionally. Therefore, strengthening legal education, awareness, and enforcement capacity particularly among small-business owners and e-commerce traders is essential to ensure more effective and equitable trademark protection in Indonesia.

In addition to principal penalties such as imprisonment and fines, as provided in Articles 100–102 of the Trademark and Geographical Indications Law, the Indonesian

legal system also recognizes supplementary sanctions for trademark violators. Article 103 explicitly allows additional penalties, including the destruction of counterfeit goods, the suspension or permanent closure of business operations, and the confiscation of production equipment used to manufacture counterfeit products. These measures are intended to enhance deterrence and ensure that trademark-related crimes are eradicated not only at the individual level but also at the structural and systemic levels. However, in practice, enforcement of these supplementary sanctions remains inconsistent. Many court rulings fail to impose additional penalties even when clear evidence of counterfeit goods or illegal production facilities exists. This inconsistency underscores the urgent need for stronger evidentiary standards, technical guidelines for handling trademark cases, and improved enforcement capacity among law-enforcement officials to ensure more comprehensive application of the law. While these provisions aim to prevent offenders from continuing illegal business activities and to curb the circulation of counterfeit products, practical implementation still faces challenges—particularly in investigation and evidence gathering. The effectiveness of the criminal provisions in the Trademark and Geographical Indications Law ultimately depends on stronger oversight and better coordination among law-enforcement agencies, trademark owners, and government bodies. The legal system must also evolve to remain responsive to technological advancements and the growth of digital commerce, which have facilitated the online distribution of counterfeit goods. Strengthening enforcement and raising public legal awareness are crucial to enhancing the overall effectiveness of trademark protection and ensuring greater legal certainty for all stakeholders. Using Legal Certainty Theory (Middle-Class Theory) and Legal System Theory (Applied Theory) as analytical frameworks, it becomes evident that effective trademark enforcement requires clarity and consistency in regulation, adequate institutional capacity, and a supportive legal culture.

Legal certainty ensures that trademark holders have predictable mechanisms of protection. In contrast, legal system theory emphasizes that law's effectiveness depends not only on written norms but also on enforcement structures and public legal consciousness. From this perspective, the challenges in trademark enforcement in Indonesia can be grouped into three main areas: regulatory uncertainty, institutional weakness, and low public legal awareness. Regulatory uncertainty arises from gaps such as the complaint-based nature of certain trademark violations, weak coordination among enforcement institutions (the Directorate General of Intellectual Property, the police, commercial courts, and customs authorities), and a lack of public awareness that perpetuates demand for counterfeit goods and illegal sales by small traders unaware that their actions constitute legal violations.

From the viewpoint of legal certainty theory, one of the key indicators of an effective legal system is the clarity of rules and consistency of their application. Legal certainty is essential to ensure that all stakeholders—including trademark owners, business actors, law-enforcement authorities, and the general public—clearly understand the legal consequences of their actions. Thus, the law must be enforced fairly and consistently. However, within the context of trademark protection in Indonesia, various

forms of legal uncertainty continue to hinder effective enforcement and allow offenders to exploit existing loopholes. This uncertainty primarily arises from two significant constraints: the complaint-based nature of specific trademark infringement cases under Article 103, and the inconsistent imposition of criminal sanctions. Both factors weaken legal protection for trademark holders and negatively affect the business environment by enabling repeated violations without sufficient deterrence. The current system requires law-enforcement agencies to wait for an official complaint from the trademark owner before taking action. Small and medium enterprises often face difficulties due to limited resources and legal knowledge. For instance, in the Perfectolive Oil counterfeiting case (Decision No. 576 K/Pid.Sus/2018), authorities could act only after receiving a formal complaint from the rightful owner. Even though PT Gerizimindo Indonesia widely marketed counterfeit products, investigators could not initiate legal proceedings because the offense was classified as a complaint-based violation.

In contrast, jurisdictions such as the United States and the European Union classify trademark infringement as a significant public offense, allowing prosecutors to act without waiting for complaints. Under the Lanham Act, U.S. authorities can immediately prosecute counterfeiters, ensuring faster and more deterrent enforcement. This system prevents offenders from avoiding prosecution, reduces delays, and strengthens deterrence through consistent enforcement. Conversely, Indonesia's reliance on complaint-based mechanisms limits enforcement efficiency, while lenient and inconsistent sanctions further undermine deterrence. Cases such as Gillette (Decision No. 5251 K/Pid.Sus/2022), GOSH (Decision No. 65 K/Pid.Sus/2021), and Alteco (Decision No. 2366 K/Pid.Sus/2016) illustrate how trademark violations in Indonesia often result in light penalties that fail to reflect the severity of the economic and consumer harm caused by counterfeiting.

From the perspective of legal certainty, such inconsistencies undermine confidence in the legal system and diminish its authority as a protection for trademark holders. To address this weakness, Indonesia should consider reclassifying specific trademark infringements as public offenses and imposing stricter, more consistent penalties. Such reforms would enable more proactive law enforcement, reduce legal uncertainty, and strengthen the overall effectiveness of Indonesia's trademark protection regime in preventing infringements and safeguarding trademark rights.

According to the Legal System Theory, the effectiveness of law in achieving justice depends not only on the written legal substance but also on the proper functioning of the broader law enforcement system. A practical legal framework requires strong institutional coordination, clear procedures, and sufficient capacity to take firm action against violations. However, in the context of trademark law enforcement in Indonesia, inter-agency coordination remains suboptimal, thereby undermining the effectiveness of case handling. One of the main obstacles is the Customs Authority's limited ability to monitor imported goods that may infringe trademark rights. Many counterfeit products enter Indonesia through illegal import channels or document manipulation, making them difficult to detect before distribution. In the case of Gillette razor counterfeiting (Decision

No. 5251 K/Pid.Sus/2022), counterfeit products circulated for years before being discovered following a report from the trademark owner.

In contrast, the European Union has developed an integrated trademark enforcement system supported by the European Union Intellectual Property Office (EUIPO), which efficiently coordinates cross-border enforcement among IP offices, customs authorities, police, and courts. In Indonesia, however, coordination among the Directorate General of Intellectual Property (DGIP), the police, commercial courts, and Customs remains fragmented, with no integrated mechanism to ensure continuity from investigation to prosecution. As a result, many violators—particularly small traders and distributors—escape serious legal consequences, while large-scale counterfeiters continue to operate with impunity. Low public legal awareness further exacerbates this problem: consumers perceive counterfeit goods as harmless, and many micro and small entrepreneurs unknowingly commit criminal acts by using or selling unlicensed trademarks. In the GOSH counterfeit sandal case, for instance, traders were unaware that their actions were illegal.

Therefore, law enforcement must be complemented by systematic legal education and public awareness programs to change societal perceptions regarding trademark violations. Moreover, the Trademark and Geographical Indications Law fails to clearly distinguish between minor, moderate, and severe violations, leading to subjective and inconsistent sentencing. Minor violations such as unintentional misuse by small-scale traders should be addressed through administrative penalties and educational measures. In contrast, moderate violations involving deliberate but limited infringements should merit moderate fines or short-term imprisonment. Severe violations, including systematic counterfeiting for profit, consumer deception, or counterfeiting in high-risk sectors such as pharmaceuticals and electronics, should warrant heavy penalties, including long-term imprisonment, substantial fines, and business license revocation. Currently, criminal sanctions are applied inconsistently as demonstrated in the Gillette case (two years' imprisonment), GOSH case (six months), and Alteco case (six months)—reflecting lenient punishments that fail to deter future offenses. By contrast, trademark laws in the European Union and the United States impose more severe penalties, treating large-scale counterfeiting as a serious economic crime and allowing proactive enforcement without awaiting formal complaints. Weak coordination, reactive enforcement, and low public legal awareness reduce both the repressive and preventive functions of criminal law in Indonesia. To improve the situation, Indonesia must establish an integrated coordination mechanism among law enforcement agencies, strengthen border monitoring, train investigators in trademark enforcement, and enhance public education campaigns. Without systemic reform, trademark violations will continue to erode confidence in the rule of law and undermine the protection of trademark rights, which are essential to economic development.

One of the most significant challenges in trademark law enforcement in Indonesia is regulatory ambiguity, particularly regarding the criteria for violations and the evidentiary standards applied in legal proceedings. This legal uncertainty weakens

protection for trademark holders, as both enforcement agencies and right holders lack clear guidelines for handling infringement cases. Consequently, offenders often evade severe punishment, while trademark owners face long and complex litigation processes that frequently yield unsatisfactory outcomes—undermining deterrence and allowing infringements to persist.

According to the Legal Certainty Theory, a sound legal system must have transparent, predictable, and consistently applied rules. Without such certainty, achieving trademark protection becomes difficult, as ambiguous regulations create loopholes that infringers can exploit. Legal certainty ensures that trademark holders can clearly understand and defend their rights without incurring protracted, costly litigation. It also ensures that violators comprehend the legal consequences of their actions and that law enforcement operates under uniform standards to avoid bias. In practice, inconsistent court rulings reveal the absence of standardized criteria for assessing the severity of trademark violations. For instance, in the Gillette counterfeiting case (Decision No. 5251 K/Pid.Sus/2022), a large-scale infringement resulted in only two years' imprisonment and a fine of Rp500 million, while in the Eiger counterfeit sandal case (Decision No. 765 K/Pid.Sus/2018), a small-scale offender received a relatively harsher penalty—highlighting inconsistencies in judicial reasoning. Such discrepancies erode confidence in the judiciary, increase the rate of violations, and endanger consumers exposed to counterfeit goods.

The lack of uniform evidentiary standards further complicates enforcement, as judges apply varying thresholds of proof—some require extensive documentation, while others accept minimal transactional evidence. To address this, Indonesia's legal system should standardize evidentiary requirements, including official trademark registration documents, counterfeit product samples, trade records, and expert verification reports. Establishing clear evidentiary standards would help judges and investigators determine appropriate sanctions more objectively. Furthermore, the creation of a specialized Intellectual Property Court (IP Court) with exclusive jurisdiction would streamline dispute resolution and ensure consistent jurisprudence by judges trained in intellectual property matters. Aligning national law with international frameworks such as the TRIPs Agreement is equally essential to harmonize Indonesia's system with global intellectual property protection standards.

Integrating technological innovations—such as digital product tracking, QR-code authentication, and electronic trademark databases linked to law enforcement agencies—can further enhance evidentiary reliability and responsiveness. Finally, implementing technical regulations, such as government or ministerial decrees specifying minimum evidentiary standards, penalty classifications, and complaint procedures, is crucial to ensure consistent application. Without such structural and procedural reforms, Indonesia's trademark enforcement will continue to suffer from uncertainty, weak deterrence, and declining public trust. A reconstructed legal framework that is predictive, responsive, and transparent will strengthen the rule of law and uphold legal certainty as the fundamental pillar of trademark protection.

Reconstructing Criminal Sanctions for Trademark Infringement. The reconstruction of criminal sanctions for trademark infringement must rest not only on the principles of justice and legal certainty but also on effectiveness in implementation, as even well-drafted regulations will fail without efficient enforcement. According to Lawrence M. Friedman's Legal System Theory, the effectiveness of law depends on three interrelated components: legal substance, legal structure, and legal culture. In Indonesia, weaknesses across these three elements undermine the enforcement of trademark protection. From a legal perspective, ambiguity in regulations—notably the classification of certain violations as complaint-based offenses (*delik aduan*)—prevents proactive enforcement, as authorities can act only after the trademark owner lodges a formal complaint. This presents significant obstacles for small and medium enterprises (SMEs), which often lack the resources to pursue lengthy legal processes. For example, in the Argeville perfume counterfeiting case (Decision No. 284 K/Pid.Sus/2018), legal action was taken only after the owner filed a complaint, even though counterfeit products had been widely distributed. To enhance effectiveness, certain violations should be reclassified as public offenses (*delik umum*), allowing authorities to act *ex officio* without waiting for formal complaints. From a legal structure perspective, poor coordination among institutions—such as the DGIP, the police, Customs, and Commercial Courts—has led to delayed investigations, weak monitoring of counterfeit imports, and overlapping jurisdictions. Structural reform should include establishing an inter-agency task force, integrating digital monitoring systems, and providing specialized training for investigators in intellectual property law.

Meanwhile, the legal culture also plays a crucial role, as low public awareness of the dangers posed by counterfeit products perpetuates violations. Many consumers perceive purchasing counterfeit goods as harmless, while small traders are often involved in such violations out of ignorance rather than malice. Therefore, large-scale legal awareness campaigns, public education through media, and stricter regulations for e-commerce platforms are essential to foster a culture of compliance. Countries such as Singapore and Japan have demonstrated success through continuous education, collaboration with online marketplaces, and stricter verification systems. In conclusion, the reconstruction of Indonesia's criminal sanction system for trademark protection must integrate simultaneous reforms in substance, structure, and culture. Transforming complaint-based offenses into public offenses, enhancing inter-agency coordination, and strengthening public legal awareness will ensure a more proactive, coordinated, and socially supported law enforcement system—thereby realizing justice, legal certainty, and effectiveness in protecting intellectual property rights.

The Reconstruction of an Ideal Criminal Sanction Framework for Trademark Infringement in Indonesia

The current criminal sanction system for trademark infringement in Indonesia remains ineffective in providing legal protection, ensuring justice, and deterring offenders. The core issue lies in the complaint-based mechanism (*klacht delict*) stipulated

under Article 100(3) of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, which renders criminal law enforcement heavily dependent on trademark owners rather than on the proactive role of the state. This dependency undermines the state's protective function against trademark infringement as an economic crime that harms not only rights holders but also consumers and market stability. In practice, the complaint-based approach has created structural inequality, as small and medium-sized enterprises (SMEs) often lack the legal capacity or resources to report infringements, leaving only large corporations with strong legal support able to pursue justice.

The inequality within the criminal sanction framework of the Trademark and Geographical Indication Law tends to be symbolic. It fails to deter, as demonstrated in the Gillette counterfeiting case (Supreme Court Decision No. 5251 K/Pid.Sus/2022), where the offender received only 2 years' imprisonment and a fine of IDR 500 million despite substantial economic losses. Meanwhile, more minor offenders, as in the GOSH sandal case, faced harsher treatment. This inconsistency reveals the system's inability to distinguish between large-scale organized crimes and minor unintentional violations. The growing complexity of trademark infringement in the digital and global era—such as unauthorized use in e-commerce and cross-border distribution—further exposes the inadequacy of Indonesia's conventional legal framework.

Without adaptive reform, Indonesia risks becoming a hub for counterfeit goods, thereby undermining market integrity, consumer safety, and investment credibility. Therefore, a comprehensive overhaul of the criminal sanction system for trademarks is crucial not only normatively but systemically to strengthen the rule of law, ensure justice, and support sustainable economic development. Such reform should shift from a reactive, victim-driven model to a proactive, public-interest-based approach, replacing symbolic sanctions with substantive, proportional, and preventive measures. The French model offers valuable insights, where trademark infringement is classified as a public offense (*infraction publique*) under Articles L.716-9 to L.716-11 of the Code de la Propriété Intellectuelle, enabling authorities to act *ex officio* without waiting for a complaint. This proactive approach is reinforced by progressive sanctions, including imprisonment of up to 5 years, fines of up to millions of euros, business closure, and public announcement of judgments measures proven effective in deterring trademark violations.

Similarly, Singapore's Trade Marks Act of 1998 enforces strict criminal liability for counterfeiting, with penalties of up to SGD 100,000 or five years' imprisonment, while still allowing fair defenses for unintentional acts. Malaysia's Trade Marks Act of 2019 adopts a comparable approach by granting strong enforcement powers to the Ministry of Domestic Trade and Consumer Affairs (KPDN), including the seizure and confiscation of counterfeit goods without the need for lengthy judicial proceedings. From this comparative perspective, Indonesia can adopt a public-offense model, introduce tiered, proportional penalties based on intent and impact, expand enforcement authority to the police, prosecutors, and customs officials, and incorporate administrative and public sanctions to strengthen social deterrence. By embracing these reforms, Indonesia

can build a more equitable, responsive, and globally aligned trademark protection system that upholds justice, legal certainty, and public confidence in its legal institutions.

In response to the various weaknesses in Indonesia's current criminal sanctions system for trademark infringement, and drawing on the progressive practices of France, Singapore, and Malaysia, it is necessary to formulate an ideal and adaptable reconstruction of the legal framework. This reconstruction, grounded in comparative legal analysis and criminal law theory, emphasizes legal certainty, proportionality, and the protection of public interest, aiming to establish a more just, assertive, and preventive criminal justice system. First, transforming trademark infringement from a complaint-based offense into a public offense is essential, allowing authorities to act without waiting for a report from trademark owners, as implemented in France and Singapore.

This shift enables the state to pursue large-scale or organized offenders while relieving small business owners from procedural burdens. Second, Indonesia should adopt a tiered, proportional sanctions system, distinguishing between deliberate, large-scale infringements and minor, unintentional violations, ensuring corrective or restorative justice for small-scale offenders while maintaining strict punishment for organized crime. Third, a restitution mechanism must be institutionalized to ensure that victims receive compensation for economic losses and reputational damage, following Malaysia's example, where material recovery is integrated into the criminal process.

By implementing these reforms comprehensively, Indonesia can establish a criminal law framework for trademark protection that is just, proportional, and harmonized with international best practices—supporting fairness, deterrence, and the credibility of its legal system in protecting intellectual property rights.

Fourth, institutional strengthening and inter-agency coordination must be prioritized through the establishment of a special task force integrating law enforcement agencies, the Directorate General of Intellectual Property, customs authorities, and trade regulators, supported by a digital database to track counterfeit goods—similar to Malaysia's seizure and confiscation model, which enables swift action without judicial delay. Finally, these reforms must be codified through amendments to Law No. 20 of 2016, incorporating provisions to reclassify offenses, impose indirect liability on digital platforms, require mandatory restitution, and impose additional penalties, such as business license revocation, asset confiscation, and public disclosure of judgments. By institutionalizing progressive administrative sanctions and strengthening restitution as a core component of justice, Indonesia can advance toward a balanced, deterrent, and restorative trademark enforcement system that aligns with global standards while reinforcing its commitment to the rule of law and economic integrity.

The concept of restitution in Indonesia has gained legal recognition through Government Regulation No. 43 of 2017 on the Implementation of Restitution for Victims of Crime, further elaborated in Supreme Court Regulation (PERMA) No. 1 of 2022 concerning procedures for filing and examining restitution claims. Although these mechanisms have primarily been applied in cases involving crimes against individuals—such as human trafficking or sexual violence—the restorative approach should be

extended to intellectual property (IP) violations, including trademark infringement, given that trademark owners suffer tangible economic harm such as loss of market share, reputational damage, and potential loss of commercial contracts due to the circulation of counterfeit goods.

Restitution is also an integral part of the legal systems of countries with advanced trademark protection frameworks. In Singapore, for instance, while the legal focus is on strict criminal penalties for counterfeiting and the unauthorized use of trademarks, the legal system also provides avenues for civil compensation claims to recover economic losses suffered by trademark owners. Similarly, Malaysia explicitly accommodates restitution under the Trade Marks Act 2011, allowing victims of trademark infringement to seek direct compensation from offenders in both criminal and civil proceedings. Several Malaysian court decisions have affirmed the right of trademark holders to claim damages for loss of commercial value, even when not formally framed as restitution. These comparative insights highlight that victim recovery is a vital element of modern, justice-oriented trademark law.

Therefore, in Indonesia, extending the concept of restitution to trademark-related violations is neither excessive nor unnecessary, but rather a necessary enhancement of the protection of citizens' economic rights and legitimate business interests. Incorporating restitution obligations as an additional criminal sanction would enable the state to fulfill not only its retributive function—punishing offenders—but also its restorative function—compelling offenders to compensate victims for their losses. This aligns with the principle of the rule of law, which holds that criminal law must not only deter and punish, but also ensure justice and redress for the aggrieved party. Accordingly, a normative clause may be incorporated into Article 100 paragraph (3) of the Trademark Law, stating: "Any person who violates the provisions referred to in paragraphs (1) and (2), where the goods in question cause health hazards, environmental harm, and/or human death, shall be subject to imprisonment of up to ten (10) years and/or a fine of up to IDR 5,000,000,000 (five billion rupiah), and/or shall be required to pay restitution to the injured trademark owner, in accordance with applicable laws and regulations."

Such an amendment would represent a progressive step toward harmonizing Indonesia's legal system with international standards and best practices, addressing existing gaps in victim protection within trademark criminal enforcement, which has traditionally relied solely on imprisonment and fines without restitution. Consequently, the necessary reconstruction of Article 100, paragraph (3), would not only broaden the scope of legal accountability and enhance proportional sanctions, but also concretely strengthen the protection of victims' economic rights. This approach reinforces the legitimacy of Indonesia's criminal intellectual property framework, positioning criminal law not merely as a punitive instrument but as a mechanism to restore balance in the economic and legal relationships between rights holders and infringers. Ultimately, these reforms are not only reactive to systemic weaknesses but also proactive and forward-looking, embodying the principles of modern legal thought and international practice that emphasize the balance between protection, restorative justice, and deterrence—thus

enabling Indonesia to build a stronger, fairer, and more adaptive trademark legal system in response to the complexities of global trade, digitalization, and cross-border infringement.

Conclusion

The regulation of criminal sanctions for trademark infringement in Indonesia is governed by Law No. 20 of 2016 on Trademarks and Geographical Indications. Article 100 of this Law stipulates that offenders may be subject to imprisonment for up to five years and/or a fine of up to two billion rupiah. However, despite this legal framework, there remain substantive weaknesses—particularly the classification of specific trademark infringements as complaint-based offenses (*delik aduan*), which limits law enforcement authorities' ability to act proactively. Moreover, the absence of clear standards distinguishing between minor and major infringements results in inconsistent application of sanctions. Consequently, the current regulation fails to provide optimal legal protection for trademark owners, allowing infringements to persist across various industrial sectors. The implementation of trademark law enforcement in Indonesia also faces significant challenges, including inter-agency coordination and the application of sanctions. Weak coordination among institutions such as the Directorate General of Intellectual Property (DGIP), the police, the Commercial Court, and Customs often results in slow, fragmented case handling. Additionally, limited capacity among law enforcement officers to identify and prove trademark infringement, combined with low public awareness of the dangers posed by counterfeit products, contributes to the widespread circulation of fake goods before any legal action is taken. This demonstrates that enforcement remains reactive rather than preventive, allowing offenders to evade or repeat violations.

Therefore, the reconstruction of Indonesia's trademark protection system must go beyond merely increasing penalties. One essential reform is the transformation of complaint-based offenses into public offenses for large-scale violations as stipulated in Article 100(4). Furthermore, the maximum penalty under Article 100(1) should be raised to imprisonment of three to ten years and fines of up to ten billion rupiah to create a more substantial deterrent effect. The inclusion of restitution provisions is also crucial to compensate trademark owners for the economic losses they have suffered. Such reconstruction must encompass three key aspects substantive legal reform, institutional strengthening, and enhancement of legal culture to establish a more effective and responsive framework for trademark protection in Indonesia.

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