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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 Marks and Geographical Indications, still relies on a complaint-based offense (*delik aduan*), which limits the proactive role of law enforcement and weakens the effectiveness of criminal sanctions. Through a comparative legal approach and theoretical analysis based on legal certainty, proportionality, and restorative justice, this research highlights the need for systemic reform. The proposed reconstruction of criminal regulation toward victims of trademark infringement in Indonesia includes five key elements: (1) reclassification of trademark offenses from complaint-based to public offenses, (2) adoption of proportional and tiered criminal sanctions, (3) incorporation of restitution as a mandatory additional sanction, (4) institutional strengthening and inter-agency coordination, and (5) normative revision of Law No. 20 of 2016 to align with international best practices. Comparative analysis with France, Singapore, and Malaysia demonstrates that integrating restitution and proactive enforcement mechanisms enhances justice for victims and reinforces the deterrent function of criminal law. This reconstruction of criminal regulation toward victims of trademark infringement in Indonesia aims to transform Indonesia's trademark protection system into one that is more effective, equitable, and adaptive to global trade and digital challenges, ensuring both punitive and restorative justice for victims of trademark infringement.

Introduction

The growing wave of globalization across all sectors, including the trade of 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; Juwaihan 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, the right to a trademark is an exclusive right granted by the state to the registered owner for a specified period. This exclusive right gives the owner the authority to use or authorize others to use the trademark. The regulation affirms that trademark protection is an integral part of the national IPR system, aligned with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) under the framework of the World Trade Organization (WTO). Accordingly, Indonesia is obligated to build a consistent and effective system of trademark protection (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 deliberate purchase of counterfeit goods by consumers reflects a weak understanding of the broader economic consequences of trademark violations.

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 demonstrates that trademark infringement is not merely a legal issue but also a socio-economic concern requiring comprehensive solutions through strict law enforcement and cross-sector collaboration.

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).

Compared to those countries, Indonesia's legal system remains weak in creating deterrent effects (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).

Building upon these issues, this research aims to evaluate the effectiveness of criminal sanctions in addressing trademark violations and to 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

The study employed an empirical approach based on actual legal realities and practices to understand how the law operated within society. Its focus extended beyond written legal norms to include legal behavior, the effectiveness of law enforcement, and responses from legal actors and the public toward the regulation of criminal sanctions for trademark infringement. This approach was chosen to describe and analyze how criminal sanctions for trademark violations were implemented, particularly in identifying structural, cultural, and functional obstacles to their enforcement. Empirical data were gathered through interviews with law enforcement officials, officers from the Directorate General of Intellectual Property (DGIP), trademark owners, and legal scholars specializing in criminal and intellectual property law. A purposive sampling technique was applied to select respondents with relevant expertise and experience concerning the research topic.

In addition to the empirical method, the research incorporated several legal approaches to reinforce its normative analysis. The statutory approach examined key legal instruments forming the basis of 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 instruments such as the TRIPs Agreement and the Paris Convention. The case approach reviewed judicial decisions related to trademark infringement, including 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). The conceptual approach analyzed legal theories such as Deterrence Theory, Rule of Law, and Legal Certainty Theory to provide philosophical justification for reforming criminal sanction policies. Meanwhile, the comparative approach compared Indonesia’s system with those of France and Singapore to identify best practices in trademark enforcement. Integrating these approaches enabled the study to generate both normative insights and practical policy recommendations.

This research was descriptive-analytical in nature, combining systematic description of the existing legal framework with critical analysis of its application in practice. The descriptive element outlined the provisions governing criminal sanctions, including the classification of offenses, types of penalties, and judicial processes, while the analytical element compared the law in theory (*das sollen*) with the law in practice (*das sein*). This comparison highlighted gaps between normative frameworks and practical enforcement that weakened the deterrent effect of criminal sanctions and reduced trademark protection effectiveness.

The study relied on both secondary and primary data. Secondary data were obtained from statutory regulations, academic journals, dissertations, and other scholarly sources, whereas primary data came from in-depth interviews with commercial court judges, investigators from the Criminal Investigation Agency (Bareskrim Polri), prosecutors from the Attorney General’s Office, intellectual property practitioners, and legal academics from Trisakti University and the University of Indonesia. This combination allowed the research to draw a comprehensive understanding of both normative regulation and empirical implementation in Indonesia’s trademark law enforcement.

Data were collected through library research and field interviews. Libraries such as the National Library of Indonesia and Trisakti University Law Library provided key legal materials. Data analysis followed a qualitative interactive model consisting of data reduction, display, and conclusion drawing. This method facilitated the identification of patterns, relationships, and emerging themes concerning the effectiveness of criminal sanctions and the challenges of trademark law enforcement in Indonesia. Descriptive, deductive, and inductive reasoning processes were integrated to ensure the validity and completeness of findings.

Despite its strengths, the study acknowledged several limitations. Restricted access to certain legal data, including confidential court files, posed challenges, while subjectivity in qualitative analysis presented another potential limitation. These issues were mitigated through systematic procedures and triangulation to enhance reliability. Temporal constraints also limited the generalizability of findings. Nevertheless, the research provided valuable insights into the effectiveness of criminal sanctions for trademark infringement and offered reform-oriented recommendations toward a more just and effective trademark protection system in Indonesia.

Results and Discussion

Criminal Sanctions in Trademark Infringement Cases in Indonesia

Trademark infringement in Indonesia remains a complex and evolving issue in line with the nation's economic and technological development. Trademarks hold significant economic value and play a vital role in market competition, yet various forms of infringement—such as counterfeiting and unauthorized use—continue to occur frequently. These violations not only cause financial losses to trademark owners but also mislead consumers and undermine a fair and healthy business ecosystem. Currently, trademark protection is regulated under Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which includes provisions for criminal sanctions against offenders. However, the effectiveness of this regulation in providing legal protection faces multiple challenges.

One of the main obstacles lies in weak law enforcement caused by bureaucratic inefficiencies, limited institutional capacity, and the classification of certain violations as complaint-based offenses (*delik aduan*), which restricts proactive legal action. Moreover, existing penalties are often perceived as insufficient to deter offenders, resulting in persistent violations. In the digital era, trademark infringements have become increasingly complex as counterfeit products circulate widely through online platforms, making monitoring and enforcement more difficult. The current legal framework has yet to fully accommodate these emerging challenges, underscoring the need for a more adaptive and effective legal system. To address these shortcomings, a reconstruction of the criminal sanction system is essential—one that ensures stronger protection for trademark owners and creates a greater deterrent effect for violators. This reconstruction should not only clarify legal provisions and impose harsher penalties for serious offenses but also enhance enforcement mechanisms to make them more efficient and accessible. Furthermore, a comprehensive approach integrating criminal, administrative, and civil sanctions is needed to establish a more effective and equitable system of trademark protection in Indonesia.

Provisions on Criminal Sanctions in the Trademark Law

Trademark protection constitutes a fundamental aspect of the intellectual property law system in Indonesia. A trademark functions not only as an identifier of a product or service but also as an asset of significant economic value to its owner. Consequently, infringements such as counterfeiting or unauthorized use can have extensive negative impacts—financially harming trademark owners, misleading consumers, and disrupting overall economic stability. To address these issues, the government enacted Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which includes provisions on criminal sanctions for trademark violations. The criminal provisions in this law are designed to ensure more effective protection of the exclusive rights of registered trademark owners. By imposing penalties on offenders, the regulation seeks to reduce counterfeiting, prevent unfair competition, and create a deterrent effect for those attempting to gain unlawful profits through imitation or plagiarism of others' trademarks. Moreover, the existence of criminal sanctions aims to maintain consumer confidence by ensuring that the products they purchase are genuine and trustworthy. Articles 100 through 103 of the Trademark Law specifically regulate various forms of trademark infringement that are subject to criminal penalties, with differing levels of punishment depending on the severity of the offense and its resulting impact.

Criminal Sanctions for Trademark Counterfeiting

One of the most common forms of infringement in Indonesia is trademark counterfeiting, which involves the unauthorized use of a mark that is identical or substantially similar to a registered trademark for goods or services of the same kind. Under Article 100(1) of Law No. 20 of 2016 on Trademarks and Geographical Indications, such violations are punishable by imprisonment of up to five years and/or a fine of up to two billion rupiahs. Furthermore, if the infringement causes losses to consumers or the rightful trademark owner, Article 100(2) allows for more severe penalties. In practice, this provision aims to protect trademark owners from those who deliberately imitate or copy well-known marks for commercial gain. For instance, in the case involving the counterfeit olive oil brand "Perfectolive Olive Oil + Aromatherapy," the defendant was found guilty of using a mark similar to the registered brand "Engedi Olive Oil." The counterfeit products were sold in retail stores and online marketplaces with packaging that closely resembled the original, misleading consumers. The court sentenced the defendant to eight months in prison and fined them 100 million rupiahs, though many critics considered the sentence too lenient to deter future offenses. Additionally, Article 102 of the Trademark Law imposes criminal sanctions on individuals who trade, import, export, or produce goods or services bearing marks similar to registered trademarks without authorization, targeting those involved in the distribution chain of counterfeit products. A notable case is the illegal sale of "GOSH" brand sandals, where the defendant was convicted for selling counterfeit goods without permission from the trademark owner, PT Karyamitra Budisentosa, and fined 50 million rupiahs or six months of imprisonment in lieu of payment. The law also establishes minimum penalties—Article 100(2) prescribes imprisonment of one to five years and fines ranging from 200 million to two billion rupiahs for intentional, unauthorized use of a registered mark causing harm to consumers or owners. These minimum sanctions reflect the state's firm stance that trademark violations are serious crimes, not merely administrative offenses, and aim to ensure a stronger deterrent effect while limiting judicial leniency. Nevertheless, the practical enforcement of these provisions remains challenging, as both law enforcement officers and business actors often lack awareness of the criminal implications of trademark infringement. In many cases, even when violations are proven, court rulings tend to be lighter than expected and fail to proportionally reflect the economic damage caused. Therefore, enhancing education, legal awareness, and enforcement capacity—particularly among small business owners and e-commerce traders—is essential to ensure that trademark protection in Indonesia becomes more effective and equitable.

Additional Sanctions and Law Enforcement Efforts

In addition to the main criminal sanctions of imprisonment and fines as stipulated in Articles 100 to 102 of Law Number 20 of 2016 on Trademarks and Geographical Indications, Indonesia's legal system also provides for the imposition of additional sanctions on trademark violators. Article 103 explicitly states that, apart from the principal punishment, offenders may also be subject to supplementary penalties such as the destruction of counterfeit goods, the termination of business operations—either temporarily or permanently—and the confiscation of production tools used to manufacture fake or infringing products. These additional sanctions are designed to strengthen deterrence and ensure that trademark-related crimes are eradicated not only at the individual level but also structurally and systemically. However, in practice, the enforcement of such sanctions remains inconsistent; many court decisions fail to include additional penalties despite clear evidence of counterfeit goods or illegal production equipment.

This inconsistency highlights the urgent need for stronger evidentiary standards, technical guidelines for handling intellectual property cases, and capacity building for law enforcement officers to ensure more comprehensive enforcement. While these measures 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 collection. Although the criminal provisions in the Trademark Law are designed to provide robust legal protection, their effectiveness depends heavily on stronger oversight and better coordination among law enforcement agencies, trademark owners, and government institutions. 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 law enforcement and enhancing public legal awareness are essential to improving the overall effectiveness of trademark protection and ensuring greater legal certainty for all stakeholders. Using the Theory of Legal Certainty (Middle-Range Theory) and the Legal System Theory (Applied Theory) as analytical frameworks, it becomes clear that effective trademark enforcement requires clarity and consistency in regulation, sufficient institutional capacity, and a supportive legal culture.

Legal certainty ensures that trademark owners have predictable protection mechanisms, while the legal system theory emphasizes that the effectiveness of law depends not only on written norms but also on enforcement structures and public legal consciousness. Based on these perspectives, the challenges in trademark law enforcement in Indonesia can be grouped into three main aspects: regulatory uncertainty, institutional weaknesses, and low legal awareness among the public. Regulatory uncertainty arises from loopholes such as the complaint-based offense (*delik aduan*), which limits proactive enforcement; institutional weaknesses include poor coordination among the Directorate General of Intellectual Property, the police, commercial courts, and customs authorities; and low legal awareness contributes to the persistent demand for counterfeit goods and the continued sale of illegal products by small-scale traders who are unaware that their actions constitute legal violations.

Legal Uncertainty in Regulation

From the perspective of Legal Certainty Theory, one of the main indicators of an effective legal system is the clarity of rules and consistency in 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 and have confidence that the law will be enforced fairly and consistently. However, in the context of trademark protection in Indonesia, various forms of legal uncertainty continue to hinder effective enforcement and allow offenders to exploit loopholes. This uncertainty primarily arises from two key issues: the complaint-based nature (*delik aduan*) of certain trademark offenses under Article 103 of the Trademark Law and inconsistencies in the imposition of criminal sanctions.

Both factors weaken the legal protection of trademark owners and negatively affect the business environment by encouraging the recurrence of infringements without meaningful consequences. Under the current system, law enforcement officers cannot act proactively but must wait for an official report from the trademark owner, a requirement that often disadvantages small and medium-sized enterprises (SMEs) lacking the resources or legal knowledge to file complaints. As seen in the Perfectolive Olive Oil counterfeiting case (Decision No. 576 K/Pid.Sus/2018), authorities could only act after a formal complaint from the rightful owner, PT Gerizimindo Indonesia, despite counterfeit products already circulating widely in the market. Comparatively, countries like the United States and the European Union classify large-scale trademark infringements as public offenses, allowing prosecutors to act without waiting for complaints. Under the Lanham Act, U.S. authorities can immediately prosecute counterfeiters, ensuring faster and more deterrent legal action. This system prevents offenders from avoiding prosecution, reduces delays, and enhances deterrence through consistent enforcement. In contrast, Indonesia's reliance on delik aduan 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) demonstrate how light sentences fail to reflect the gravity of economic and consumer harm caused by counterfeiting.

From a legal certainty standpoint, such inconsistencies erode trust in the legal system and diminish its authority as a protective instrument for trademark owners. To address these weaknesses, Indonesia should consider reclassifying certain trademark offenses as public crimes and enforcing stronger, more consistent penalties. This reform would allow for more proactive enforcement, reduce legal uncertainty, and strengthen the overall effectiveness of Indonesia's trademark protection regime in deterring infringement and safeguarding intellectual property rights.

Weaknesses in the Legal Structure

According to the Legal System Theory, the success of law enforcement in achieving justice is not solely determined by the written legal substance but also by how the law functions within the enforcement system. An effective legal framework requires strong institutional coordination, clear procedures, and adequate capacity to act decisively against violations. However, in the context of trademark infringement enforcement in Indonesia, inter-agency coordination remains suboptimal, undermining the effectiveness of handling such cases. One major obstacle lies in the lack of Customs' effectiveness in monitoring imported goods that potentially infringe trademark rights. Many counterfeit products enter Indonesia through illegal imports or document manipulation, making detection difficult before circulation. In the Gillette razor counterfeiting case (Decision No. 5251 K/Pid.Sus/2022), counterfeit products circulated for years before discovery following the trademark owner's report—revealing weak border control.

By contrast, the European Union has developed an integrated trademark enforcement system supported by the European Union Intellectual Property Office (EUIPO), which coordinates cross-border enforcement efficiently among intellectual property offices, customs, police, and courts. In Indonesia, however, coordination between the Directorate General of Intellectual Property (DJKI), the police, the Commercial Court, and Customs remains fragmented, with no integrated mechanism to ensure continuity from investigation to prosecution. As a result, many offenders—especially small traders or distributors—avoid serious legal consequences, while systemic and large-scale counterfeiters continue operating. Low public legal awareness further exacerbates the issue: consumers view counterfeit goods as harmless, and many micro and small entrepreneurs unknowingly commit criminal acts by using or selling unlicensed brands. In the GOSH counterfeit sandal case, for example, the trader did not understand the illegality of her actions.

Therefore, legal enforcement must be complemented by systematic legal education and public awareness programs. Furthermore, Indonesia's Trademark Law fails to clearly distinguish between minor, moderate, and severe violations, causing subjective and inconsistent sentencing. Minor infringements (e.g., unintentional misuse by small traders) should incur administrative penalties and education, while moderate cases involving intentional but limited violations merit moderate fines or short imprisonment. Severe infringements—systematic counterfeiting for profit, deception of consumers, or counterfeiting in high-risk sectors like medicine and electronics—should be subject to heavy penalties including long-term imprisonment, large fines, and business license revocation. Currently, criminal sanctions are inconsistently applied, as shown in Gillette (2 years imprisonment), GOSH (6 months), and Alteco (6 months) cases—reflecting leniency that fails to deter future violations.

Comparatively, the EU and the U.S. impose harsher penalties, treat large-scale counterfeiting as serious economic crime, and enable proactive enforcement without waiting for complaints. Weak coordination, reactive enforcement, and low public legal awareness diminish both the repressive and preventive functions of criminal law in Indonesia. To improve, Indonesia must establish a unified coordination mechanism among law enforcement institutions, strengthen border monitoring, train investigators in intellectual property cases, and enhance public education campaigns. Without systemic reform, trademark infringements will persist, eroding trust in the rule of law and weakening the protection of intellectual property rights vital to economic development.

The Principle of Legal Certainty in the Perspective of Legal Certainty Theory

One of the biggest challenges in enforcing trademark law in Indonesia lies in regulatory ambiguity, particularly regarding the criteria for violations and the standards of proof applied in legal proceedings. This legal uncertainty weakens protection for trademark owners, as both law enforcement agencies and rights holders lack clear guidelines for handling infringement cases. Consequently, offenders often escape harsh punishment, while trademark owners face lengthy and complex legal processes that frequently result in unsatisfactory outcomes, undermining deterrence and allowing infringements to persist.

According to the Theory of Legal Certainty, a sound legal system must have clear, predictable, and consistently applied rules; without such certainty, the protection of intellectual property becomes difficult to achieve, as ambiguous regulations create loopholes that offenders can exploit. Legal certainty in trademark protection ensures that owners clearly understand how to defend their rights without facing prolonged and costly litigation, that violators comprehend the legal consequences of their actions to promote deterrence, and that law enforcement operates under uniform standards to avoid bias. However, in practice, inconsistent court rulings demonstrate the lack of standardized criteria for determining the severity of trademark offenses, as seen in the Gillette counterfeit case (Decision No. 5251 K/Pid.Sus/2022)—where large-scale infringement received only two years of imprisonment and a Rp500 million fine—and the Eiger counterfeit sandal case (Decision No. 765 K/Pid.Sus/2018), where a small-scale offender received a relatively heavier penalty, highlighting the inconsistency in judicial reasoning. Such disparities erode confidence in the justice system, increase infringement rates, and endanger consumers exposed to counterfeit goods.

The absence of uniform evidentiary standards further complicates enforcement, as judges apply varying thresholds of proof—some requiring extensive documentation while others accept minimal transactional evidence. To address this, Indonesia's legal system must standardize evidentiary requirements, including official trademark registration documents, counterfeit product samples, trade records, and expert verification reports. Establishing clear proof standards would help judges and investigators determine appropriate sanctions more objectively. Beyond this, creating specialized intellectual property courts (IP courts) with exclusive jurisdiction would streamline dispute resolution and ensure consistent jurisprudence by judges trained in trademark issues. Harmonizing national laws with international frameworks such as the TRIPs Agreement is equally essential to align Indonesia's system with global intellectual property protection standards.

Technological integration—such as digital product tracking, QR code authentication, and electronic trademark databases linked to enforcement agencies—could further enhance evidence reliability and responsiveness. Finally, technical implementing regulations, such as Government or Ministerial Decrees specifying minimum evidentiary standards, penalty classifications, and complaint procedures, are crucial for ensuring consistent application. Without such structural and procedural reforms, Indonesia's trademark enforcement will continue to suffer from unpredictability, weak deterrence, and diminished public trust. A reconstructed legal framework that is predictive, responsive, and transparent will strengthen the rule of law and uphold legal certainty as a foundational pillar of intellectual property protection.

The Principle of Effectiveness in Law Enforcement from the Perspective of Lawrence M. Friedman's Legal System Theory

The reconstruction of criminal sanctions for trademark infringement must not only be grounded in the principles of justice and legal certainty but also emphasize effectiveness in implementation, as even well-formulated regulations will fail without efficient law enforcement. According to Lawrence M. Friedman's Legal System Theory, the effectiveness of law depends on three interrelated elements: legal substance, legal structure, and legal culture. In Indonesia, weaknesses in all three elements undermine the enforcement of trademark protection. From the perspective of legal substance, ambiguity in regulation—particularly the classification of certain infringements as complaint-based offenses (delik aduan)—prevents proactive enforcement, since authorities can only act after a formal complaint is lodged by the trademark owner.

This limits protection, especially for small and medium enterprises (SMEs) that lack the resources to pursue lengthy legal processes. For instance, in the Argeville perfume counterfeiting case (Decision No. 284 K/Pid.Sus/2018), legal action was only taken after the owner filed a complaint, despite the widespread circulation of counterfeit products. To enhance effectiveness, certain infringements should be reclassified as public offenses (delik umum), allowing authorities to act ex officio. From the standpoint of legal structure, poor coordination among institutions such as the Directorate General of Intellectual Property (DJKI), the police, Customs, and the Commercial Court leads to delayed investigations, weak monitoring of imported counterfeit goods, 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, legal culture also plays a vital role, as the low public awareness of the dangers of counterfeit products perpetuates violations. Many consumers perceive buying fake goods as harmless, while small traders often engage in infringement out of ignorance rather than malice. Therefore, mass legal awareness campaigns, public education through media, and tighter regulation of e-commerce platforms are essential to fostering a culture of compliance. Countries like Singapore and Japan have demonstrated success through sustained education, cooperation with online marketplaces, and stricter verification systems. In conclusion, the reconstruction of Indonesia's criminal sanction system for trademark protection must integrate reforms in substance, structure, and culture simultaneously. Transforming complaint-based offenses into public offenses, improving inter-agency coordination, and strengthening public legal awareness will ensure a more proactive, coordinated, and socially supported enforcement system—thereby realizing justice, legal certainty, and effectiveness in protecting intellectual property rights.

Reconstruction of Ideal Criminal Sanctions for Trademark Infringement in Indonesia

The current system of criminal sanctions for trademark infringement in Indonesia remains ineffective in providing legal protection, ensuring justice, and deterring offenders. The core issue lies in the complaint-based offense (klacht delict) mechanism under Article 100(5) of Law No. 20 of 2016 on Marks and Geographical Indications, which makes criminal enforcement heavily dependent on the initiative of trademark owners rather than the proactive role of the state. This dependence undermines the state's protective function against trademark violations as economic crimes that harm not only the rights holder but also consumers and market stability. In practice, the complaint-based approach has created structural inequality—small and medium enterprises (SMEs) often lack the legal capacity or resources to report violations, leaving only large corporations with strong legal backing able to pursue justice.

Such inequality violates the constitutional principles of equality before the law and substantive justice enshrined in Articles 27(1) and 28D(1) of the 1945 Constitution. Furthermore, criminal sanctions under the current law tend to be symbolic and fail to provide deterrence, as seen in the Gillette counterfeiting case (Decision No. 5251 K/Pid.Sus/2022), where the offender received only two years in prison and a fine of IDR 500 million despite extensive economic damage, while smaller offenders in cases like

GOSH sandals faced harsher treatment. This inconsistency highlights the system's inability to distinguish between large-scale organized crime and minor unintentional offenses. The growing complexity of trademark violations in the digital and global era—such as online counterfeiting, 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, undermining market integrity, consumer safety, and investment credibility. Therefore, comprehensive reform of the trademark criminal sanction system is imperative—not merely normative but systemic—to strengthen the rule of law, ensure justice, and support sustainable economic development. The reform must shift from a reactive, victim-driven model to a proactive, public-interest-based approach, replacing symbolic sanctions with substantial, proportional, and preventive measures. France's model offers valuable insight, where trademark violations are classified as public offenses (infraction publique) under Articles L.716-9 to L.716-11 of the Code de la Propriété Intellectuelle, allowing authorities to act ex officio without waiting for complaints. This proactive approach—supported by progressive sanctions such as imprisonment up to five years, multimillion-euro fines, business closure, and public verdict announcements—has proven effective in deterring counterfeiting.

Similarly, Singapore's Trade Marks Act 1998 enforces strict criminal liability for counterfeiting, false trademark application, and possession of infringement tools, with penalties up to SGD 100,000 or five years' imprisonment, while still allowing fair defense for unintentional acts. Malaysia's Trade Marks Act 2019 adopts a comparable approach, granting the Ministry of Domestic Trade and Consumer Affairs (KPDN) strong enforcement powers, including seizure and forfeiture of counterfeit goods without waiting for lengthy court proceedings. From these comparative perspectives, Indonesia can learn to adopt a public-offense model, introduce tiered and proportional penalties based on intent and impact, expand enforcement powers for the police, prosecutors, and customs, and incorporate administrative and public sanctions to reinforce social deterrence. By embracing these reforms, Indonesia can establish a more just, responsive, and globally aligned system of trademark protection that upholds fairness, legal certainty, and public trust in its legal institutions.

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Furthermore, criminal sanctions under the current law tend to be symbolic and fail to provide deterrence, as seen in the Gillette counterfeiting case (Decision No. 5251 K/Pid.Sus/2022), where the offender received only two years in prison and a fine of IDR 500 million despite extensive economic damage, while smaller offenders in cases like GOSH sandals faced harsher treatment. This inconsistency highlights the system's inability to distinguish between large-scale organized crime and minor unintentional offenses. The growing complexity of trademark violations in the digital and global era—such as online counterfeiting, 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, undermining market integrity, consumer safety, and investment credibility.

Therefore, comprehensive reform of the trademark criminal sanction system is imperative—not merely normative but systemic—to strengthen the rule of law, ensure justice, and support sustainable economic development. The reform must shift from a reactive, victim-driven model to a proactive, public-interest-based approach, replacing symbolic sanctions with substantial, proportional, and preventive measures. France's model offers valuable insight, where trademark violations are classified as public offenses (infraction publique) under Articles L.716-9 to L.716-11 of the Code de la Propriété Intellectuelle, allowing authorities to act ex officio without waiting for complaints. This proactive approach—supported by progressive sanctions such as imprisonment up to five years, multimillion-euro fines, business closure, and public verdict announcements—has proven effective in deterring counterfeiting. Similarly, Singapore's Trade Marks Act 1998 enforces strict criminal liability for counterfeiting, false trademark application, and possession of infringement tools, with penalties up to SGD 100,000or five years' imprisonment, while still allowing fair defense for unintentional acts. Malaysia's Trade Marks Act 2019 adopts a comparable approach, granting the Ministry of Domestic Trade and Consumer Affairs (KPDN) strong enforcement powers, including seizure and forfeiture of counterfeit goods without waiting for lengthy court proceedings.

From these comparative perspectives, Indonesia can learn to adopt a public-offense model, introduce tiered and proportional penalties based on intent and impact, expand enforcement powers for the police, prosecutors, and customs, and incorporate administrative and public sanctions to reinforce social deterrence. By embracing these reforms, Indonesia can establish a more just, responsive, and globally aligned system of trademark protection that upholds fairness, legal certainty, and public trust in its legal institutions.

In response to the various weaknesses in Indonesia's current system of criminal sanctions for trademark infringement—and drawing upon progressive practices from France, Singapore, and Malaysia—it is necessary to formulate an ideal and adaptive 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 interests, aiming to establish a more just, firm, and preventive penal system. First, transforming trademark offenses from complaint-based (*delik aduan*) to public offenses (*delik umum*) is crucial, allowing authorities to act without awaiting reports from trademark owners, as practiced in France and Singapore.

This shift would enable the state to pursue large-scale or organized offenders while relieving small business owners of procedural burdens. Second, Indonesia should adopt a system of graduated and proportional sanctions, distinguishing between intentional large-scale violations and minor, unintentional offenses, ensuring corrective or restorative justice for small offenders while maintaining strict penalties for organized crimes. Third, restitution mechanisms must be formalized to ensure victims receive compensation for economic losses and reputational harm, following Malaysia's example, where material recovery is integrated into criminal proceedings.

Fourth, institutional strengthening and inter-agency coordination must be prioritized through the creation of a specialized task force uniting law enforcement, the Directorate General of Intellectual Property, customs, and trade authorities, supported by digital databases for tracking counterfeit goods—similar to Malaysia's seizure and forfeiture model that enables swift confiscation without court delays. Finally, these reforms should be codified through amendments to Law No. 20 of 2016, incorporating provisions on offense reclassification, indirect liability for digital platforms, mandatory restitution, and additional penalties such as business license revocation, confiscation, and public disclosure of verdicts. By institutionalizing progressive administrative sanctions and strengthening restitution as a core component of justice, Indonesia can move toward a balanced, deterrent, and restorative trademark enforcement system that aligns with global standards and reinforces its commitment to the rule of law and economic integrity.

The regulation of restitution in Indonesia has obtained a legal foundation 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 this mechanism is primarily applied in cases involving crimes against individuals—such as human trafficking or sexual violence—the restorative approach should also be extended to the realm of intellectual property (IP) violations, including trademark infringement, given that trademark owners suffer tangible economic losses such as reduced market share, reputational damage, and potential loss of commercial contracts due to the circulation of counterfeit goods.

The concept of restitution has also become integral to the legal systems of countries with advanced trademark protection frameworks. In Singapore, for instance, while the focus lies on severe criminal penalties for counterfeiting and illegal trademark use, the legal system simultaneously provides avenues for civil compensation claims to restore the economic losses suffered by trademark owners. Similarly, Malaysia explicitly accommodates restitution under the Trade Descriptions Act 2011, allowing victims of trademark violations to seek compensation directly from offenders in both criminal and civil proceedings. Several Malaysian court decisions have affirmed the right of trademark owners to claim damages for loss of commercial value, even when not framed as formal restitution. These comparative insights highlight that victim recovery is a crucial element of modern, justice-oriented trademark law.

Therefore, in Indonesia, extending the restitution concept to trademark-related offenses is not excessive but rather a necessary enhancement of the protection of citizens' and legitimate business owners' economic rights. Incorporating restitution obligations as an additional criminal sanction would allow the state to fulfill not only its retributive function—punishing offenders—but also its restorative function—compelling them to compensate victims' losses. This aligns with the rule of law principle, where criminal law must not only deter and punish but also ensure fairness and recovery for the injured party. A normative clause could thus be inserted into Articles 100–102 of the Trademark Law, stating:

"...and/or shall be obliged to pay restitution to the aggrieved trademark owner, in accordance with the 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 the current gap in victim protection within criminal trademark enforcement, which has traditionally relied solely on imprisonment and fines without restitution. Consequently, the reconstruction of Articles 100–102 would not only expand 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 IP framework, positioning criminal law not merely as a punitive tool but as a mechanism for restoring balance in the economic and legal relationship between rights holders and infringers. Ultimately, this reform is not merely reactive to systemic weaknesses but also proactive and forward-looking, embodying modern legal principles and international practices that emphasize a balance between protection, restorative justice, and deterrence—thereby enabling Indonesia to build a stronger, fairer, and more adaptive trademark law system in response to the complexities of global trade, digitalization, and cross-border infringement.

Conclusion

Indonesia's current framework for criminal sanctions against trademark infringement, governed by Law No. 20 of 2016 on Trademarks and Geographical Indications, has proven insufficient to ensure effective legal protection, as the penalties—up to five years' imprisonment or fines of IDR 2 billion—remain constrained by procedural and institutional shortcomings. The law's classification of most infringement cases as *delik aduan* (complaint-based offenses) limits proactive enforcement, while the lack of differentiation between minor and major violations fosters inconsistency in judicial outcomes. Coordination gaps among the Directorate General of Intellectual Property (DGIP), the police, and the courts, combined with low public awareness and insufficient technical expertise among officials, further hinder implementation.

Comprehensive reform is therefore necessary, involving the conversion of *delik aduan* to *delik umum* for more serious cases, enhancement of institutional coordination, increased penalties to deter violations, and inclusion of restitution for victims. Future research should focus on evaluating the potential integration of Indonesia's reformed Criminal Code (*KUHP*) with trademark law enforcement mechanisms to develop a unified, adaptive, and victim-centered intellectual property protection system.

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