On Behalf of EUROCHAM
INDONESIA – online enforcement
Take down procedure by platforms

• Different from brick and mortar infringement.

• Brick and mortar shopfront –
  • Buy sample -- send warning letter -- demand for promise to stop permanently/not to repeat
  • Promise not to repeat backed by financial penalty in the promise

• With online platform, take down notice is to platform and not to trader

• Merchant may re-post after initial take down by platform.

• Merchant’s masked identity is a problem

• To buy or not to buy sample?
Compare against physical presence infringement

Different levels of permanence – physical presence infringement -
- Shop with permanent Location – Detection - Cease and Desist Letter – Promise with Financial Penalty - - Monitoring
- Stall in a market rented from centre’s landlord – permanent – there is also the landlord liability
- Road side stall – shifting – illusive (similar to online merchants?)

Article 56 Indonesia Criminal Code
As accomplices to a crime shall be punished:
Firstly, the persons who deliberately aid in the commission of the crime;
Secondly, the persons who deliberately provide opportunity, means or information for the commission of the crime.

Compare against online merchants
Biggest problem is the masked identity
Identity completely masked
Use nick names with multiple accounts
Anonymity emboldens infringement – leads to high volume
Takedown procedure Ecommerce Platform

Takedown procedure
• Only targeting against a specific listing and not against the seller.
• Seller may have multiple listing
• Outcome - remove that specific listing but the account no promise from the seller that he will not list the fake again.
• Disable a seller entire account completely???

• Reason - the real identity of seller is not the disclosed
  • The platforms could do more
  • The traders/merchants are illusive (similar to roadside sellers)
Takedown procedure Ecommerce Platform

Sanctions for Goods Violations
a. Blocking and or deletion of goods included in prohibited goods in the XXX Usage Rules.
b. Freezing accounts that sell prohibited goods in the Rules of Use of XXX.
c. Deactivation of accounts that sell prohibited goods in the rules of use of XXX.
d. Deactivating the Chat feature if there are indications of fraud or fraud.
e. Freezing of XXX if there are indications of fraud or fraud.
f. If there are Push or Premium packages in the account that are frozen or deactivated, then the entire package will expire.
g. Reporting to the authorities includes but is not limited to the police, and others.
Cooperation from platforms

• Support has not been consistent
• Taking down fake is a minimum – not effective
• But beyond this, approach is different.
• Need to have three strike rule.
• Problem - the infringer just re-list or adopt new identity
  • But there is already pain – the accumulated reputation is wipe out
Sanctions?

• Can we expect greater policing by the platform?

• What are the sanctions against the platform?

• Are they more than passive host or actively participate in the promotion of the goods.

• Are they aware of the Infringement or ongoing infringement?

• Look to foreign decisions in Europe, USA and China.
Sanctions? – Indonesia Criminal Code

CHAPTER V
Participation in punishable acts

Article 55
(1) As principals of a punishable act shall be punished:
Firstly, those who perpetrate, cause others to perpetrate, or take a direct part in the execution of the act;
Secondly, those who intentionally provoke the execution of the act by gifts, promises, abuse of power or of respect, force, threat or deception or by providing an opportunity, means or information.

(2) In respect to the provoker only those acts which have been deliberately provoked and their consequences shall be considered.

Article 56
As accomplices to a crime shall be punished:
Firstly, the persons who deliberately aid in the commission of the crime;
Secondly, the persons who deliberately provide opportunity, means or information for the commission of the crime.
• Trade Law 2014 – Solving the masked problem?

Every business actor trading goods/services on an electronic system shall provide complete and correct data and/or information. **Trade Law 2014 Article 65 (1)**

Data includes - identity and legality (legalitas) of the business actor as producers or distribution business actors.

**Government Regulation 80/2019 on Commerce through Electronic Systems (Article 15(1))**

E-commerce Business Actors, whether domestic or foreign, must have a business license in order to carry out e-commerce business activities.

**Ministerial regulation - Ministry of Trade Regulation No 50 of 2020 on the Requirements regarding Business Licensing, Advertising, Development, and Supervision of Businesses in Commerce through the Electronic Systems**

Article 4 – (1) **Domestic traders** conducting business activities in the general trading sector are required to have a **Business License** in accordance with the provisions of the legislation concerning Trading Business Licenses.

(3) In the case of Domestic Traders, only carrying out retail trading activities via the internet (online), Business License as referred to in paragraph (1) uses KBLI 4791 (Trade Retail via Post or Internet Orders).
Implications - Trade Law 2014 & Ministerial Regulation 2020

Merchants are required to apply for - Surat Izin Usaha Perdagangan Melalui Sistem Elektronik (SIUPMSE)/ Trading through Electronic System Business Approval

Regulation effective 6 months after 19 May 2020.

Merchants cannot hide behind anonymity anymore?

Cannot use multiple accounts/identities and no point to do so?

Assumption that they have to disclose their identity including their trading license.

Merchants are expected to disclose their registration i.e. their identity.

It MAY be a significant deterrent to list fake products – because it solves the identity problem
## Current Legal Framework

<table>
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<tr>
<th>KOMINFO</th>
<th>Ministry of Trade</th>
<th>Supreme Court (Civil)</th>
<th>DGIP + KOMINFO + Police</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Law</strong></td>
<td>Law Number 11 Year 2008 on Electronic Information and Transactions (ITE Law) and IP laws</td>
<td>Law Number 7 of 2014 concerning Trade</td>
<td>ITE Law – civil law-right to sue Platforms for breach</td>
</tr>
<tr>
<td><strong>ISP</strong></td>
<td>Platforms &amp; Electronic System providers</td>
<td>A. E-commerce operators = marketplaces, platforms B. Intermediary Service Provider = social media, hosting and search</td>
<td>As defined in ITE and Trade law</td>
</tr>
<tr>
<td><strong>Liability</strong></td>
<td>Civil and Criminal Liability– under ITE and also other IP Laws</td>
<td>Administrative remedy, Civil and Criminal – under Trade law Administrative remedy and Civil under the Regulation</td>
<td>Unclear; no orders defined.</td>
</tr>
<tr>
<td><strong>Protected Content</strong></td>
<td>Negative content includes Intellectual Property violations (per Circular) = all kinds of IP</td>
<td>General compliance with all laws – so should include IP</td>
<td>As defined in ITE and Trade law</td>
</tr>
<tr>
<td><strong>Issues</strong></td>
<td>Panel 1, Panel 2</td>
<td>Panel 1</td>
<td>Panel 3</td>
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Recommendations

• Complex collection of Laws and Regulations exist that leads to uncertainty

• Consistent definitions of the legal concepts needed in all Regulations

• Cross Ministry and Industry cooperation

• Industry Code of Conduct to draw issues together

• Detailed process for dealing with serious/aggravated infringements on e-commerce platforms

• System to share infringing trader’s data for enforcement against e-commerce platforms needed

• Legal remedies need to be specified clearly in the Regulations
Thank you!
kchow@rouse.com