

**RESPONSIBILITY FOR THE SALES OF FAKE STAMPS ON  
TOKOPEDIA'S DIGITAL MARKETPLACE PLATFORM**

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**Abstract**

Today the internet has dramatically influenced business behavior by offering the opportunity to sell products of daily necessities directly to customers. In its development, the use of this technology sometimes tends to lead to negative things as well. One of them is the factual case of selling fake stamps on the Tokopedia digital platform. Based on this background, this research will discuss about; First, regarding the legal qualifications of selling fake stamps on the Tokopedia digital platform. Second, related to the responsibilities of sellers and platforms regarding the sale of fake stamps on the Tokopedia digital marketplace. Both are based on the ITE Law and the Stamp Duty Law. This study used a normative juridical approach based on law that is conceptualized as a rule or norm that becomes the benchmark for human behavior. The research specification used is descriptive analysis research specification. The data used is in the form of secondary data by reviewing literature and laws and regulations related to the sale of fake stamps and their correlation with the law of information technology and electronic transactions and stamp duty. By offering fake stamps on marketplace platforms, merchants and e-commerce providers, namely the marketplace platform, are in effect breaking the law. Through the existing criminal law provisions, the seller / perpetrator must be held accountable for his mistake in accordance with the applicable sanctions. From the platform side, the various obligations that Tokopedia does not carry out in buying and selling activities cause problems, including the circulation of illegal goods on the platform, so that Tokopedia is obliged to be responsible.

Keywords: E-Commerce; Platform; Information and communication technology; Stamp Duty.

**INTRODUCTION**

Today the internet has dramatically influenced business behavior. Markets, industries and businesses are changing to meet economic and technological demands. The internet offers the opportunity to sell products of daily necessities directly to customers who are in the consumer market or consumers in the industrial market. Direct selling of goods and services over the internet is known as 'electronic commerce' (e-commerce) (Pradana, 2015).

Small and medium enterprises (UKM) can take advantage of the marketplace to sell without having to have large capital to build their shops (Bintoro, 2018; Fillah, 2019). Tokopedia, for example, is a marketplace that provides a place and convenience for sellers to sell their goods.

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Behind the many pleasures that we get from the ease with which we get something on the Internet through the marketplace, in its development the use of this technology sometimes tends to lead to negative things as well. One of them is the factual case of selling fake stamps on the Tokopedia digital platform. (Rahman & Mawardi, 2017; Wicaksono & Aminata, 2018)

To prove this case, researchers opened the Tokopedia digital platform. After that the researchers looked for seal sellers who tried to offer low prices. It is easy for researchers to find a stamp seller who is indicated as being fake because he sells a cheap price that is far below the nominal seal. The seller offers a price of IDR 120,000 for 50 pcs / piece of seal and IDR 1,500,000 for 750 pcs / piece of seal. The researcher did a simple calculation by multiplying 50 pcs / piece for Rp. 6000, - (nominal price issued by the Post Office). The results obtained are IDR 300,000 for 50 pcs / chip and IDR 4,500,000 for 750 pcs / chip. From this it can be seen that the seller is offering a price that is very far from the nominal price of the stamp and indicates that the seller is selling a fake seal. (Hutasoit, 2017)

Stamp duty is also referred to as Stamp Duty, namely indirect and incidental taxes which are used by the public for several documents mentioned by the Law on Stamp Duty, where these documents can be used as evidence in court (Arief, 2013). The current value of stamp duty is Rp. 3,000 and Rp. 6,000, - which is adjusted to the value and use of the document. The function of the seal is based on Article 1 Paragraph (1) of Law no. 13 of 1985 concerning Stamp Duty is a document tax imposed by the state for certain documents (Santoso, 2017). A statement or agreement that is not affixed with a seal does not invalidate the statement or agreement. The seal is often used in the signing of securities. (Kotimah & Santoso, 2018) The seal function is also to assign legal value to a document (Santoso, 2017).

The stamp of the Republic of Indonesia as one of the state security documents that is used as a sign of the legality and legality of the agreement and sale documents, issued by the Directorate General of Taxes of the Republic of Indonesia and the printing was entrusted to the RI Money Printing. The trust given to the Republic of Indonesia Money Printing, considering that the security document products printed by Peruri have so far contained feature security elements, including the use of security holograms and the Intaglio printing technique, as found

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in the banknotes of the Republic of Indonesia. The stamp printed by Peruri on orders from the Directorate General of Taxes of the Republic of Indonesia is currently valued at Rp. 3,000 and Rp. 6,000.(Dzulfikar, 2018)

Stamp Duty is a tax on documents regulated in Law Number 13 Year 1985 concerning Stamp Duty. In accordance with Government Regulation Number 28 of 1986, the management of seal objects is the authority and responsibility of two parties, namely Perum Peruri as the printer of seal objects and PT Pos Indonesia (Persero) as the party that manages and sells stamped objects. Adami Chazawi states in his book that:(Chazawi, 2001)

"Falsification is a crime in which it contains an element of untruth or falsehood on something (object) which is seen from the outside as if it were true, when in fact it is contrary to the truth." Therefore, printing and selling forged seals is an illegal act that can be punishable by crime.

The arrangement regarding this matter is confirmed in Article 13 Point b. Law No. 13 of 1985 concerning Stamp Duty that "To be convicted in accordance with the provisions of the Criminal Code: b. whoever deliberately keeps for the purpose of circulation or imparts to the State of Indonesia a false seal, falsified or that is made against the right ". Perpetrators can also be charged under Article 257 of the Criminal Code (KUHP):

"Whoever deliberately uses, sells, offers, delivers, provides for sale or imparts to the State of Indonesia fake stamps, signs or marks, which are falsified or are made against the rights, or goods that have a stamp or mark that is against their rights, as if the original stamp or mark was not falsified and was not made against the right or not against the right placed on the item, it is punished with the same penalty as specified in articles 253 to 256, according to the differences in the article. "

The formation of stamp duty is motivated by the state's interest in obtaining a source of state revenue from the tax sector, in relation to the validity of the letter as evidence. Since a letter as evidence or used as evidence must be attached to a stamp with a certain value, for this purpose the state intervenes in collecting stamp duty. With the aim of safeguarding legal interests regarding the validity of the seal used by the public in the context of bringing in state revenue

from the tax sector, this stamp crime was formed (Chazawi, 2001). In addition, Article 388 of the RKUHP also explains the criminal reasons for selling fake stamps. It is said that:

"What is meant by "seals" are stamps, postage stamps, television tax stamps and other types of stamps. This provision is intended to protect the seal issued by the government of the Republic of Indonesia so that not imitated or faked. The occurrence of imitation or forgery will cause less trust in the Indonesian seal and reduce state revenue from the issuance of the seal. "

Ratification of the Bill on Information and Electronic Transactions (ITE) by the DPR on 21 April 2008 to become Law No. 11 of 2008 on ITE, at least has provided a fence for the negative excesses of ICT. Therefore, the assessment and socialization of ICT law is urgently needed. Until now, especially in Indonesia, there are no reference source books for the subject of Introduction to Indonesian Law that currently do not include Information and Communication Technology Law material as study material, as a form of socialization as well as legal education for students in particular and society in general. against the ICT law. Even though in reality the use of ICT by students and society in general is so widespread and cultured (Amirulloh, 2016). Moreover, negative ICT as in this case can create losses for the state. Based on the description above, the researcher analyzes and studies how to regulate the sale of fake stamps on digital platforms, to see and find out how the practice fits with existing regulations, with a focus on how the legal qualifications of selling fake stamps on the Tokopedia digital platform and what is the responsibility of sellers and platforms related to the sale of fake stamps on the Tokopedia digital marketplace.

## **METHODOLOGY**

This study uses a descriptive analytical research specification that focuses on the applicable laws and regulations associated with the theories and implementation of positive law or current laws, particularly regulations related to stamp duties and information and transactions. Electronic (Soekanto, 2006).

## RESULT AND DISCUSSION

### 1. Legal Qualification of Fake Seal Sales On The Tokopedia Digital Platform

The marketplace as a place for electronic transactions is obliged to apply several principles as stated in article 3 of the ITE Law, namely legal certainty, benefits, prudence, good faith, and freedom to choose technology or technology neutrality. Currently, there have been many illegal goods being traded on marketplace platforms operating in Indonesia. In everyday life, we can easily find the practice of selling fake seals which are illegal products. The public can access this through e-commerce and marketplaces, so what happens is the stigma that selling fake seals on the marketplace platform is something that is understandable. This assumption arises because the seller is free to offer these illegal products on the marketplace platform.

Researchers easily searched the Tokopedia search page and found sales of fake stamps sold by several sellers claiming to be wholesalers of seals. The seller seems to be a trusted and legitimate agent in distributing the seal. To trick the buyer, the seller offers a seal on a large scale and the price offered is very cheap. The seal, which is a daily formal commodity in people's lives, is a business opportunity for these sellers. The fake seal offered by the seller certainly attracts the attention of people who really need a seal in large quantities and are tempted by the low price offered by the seller. Moreover, the lack of information to the general public about the differences between fake and original seals also contributed to the boom in sales.

According to the Head of Perum Peruri Product Authenticity Inspection Unit, Fuguh Prasetyo one indication that the seal is fake is that it is sold at a low price, below the nominal price written on the seal, which is IDR 3,000 and IDR 6,000. The seller also did not explain in detail regarding the year of production of the seal which made the seals sold by him even more odd. Other information obtained from the product description is that this seal has the characteristics: super quality, bright color, has glue, can appear when touched, and there are worm threads when exposed to UV light. To analyze the indications for a false seal, there are a number of differences between a false seal and a real one.

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The first difference is that the original seal has a Garuda emblem and a flower print that uses discolored or discolored ink. The original seal also had a clearly printed 17 digit serial number. This serial number has a different number on each seal. Forged stamps that are sold usually have the same serial number from one seal to another. The original seal has a security design, which contains the Ministry of Finance logo, DGT text, and nominal figures. There is also a micro-sized text that reads the Directorate General of Taxes. If the banknote has a security thread, then the original seal has a hologram.

Fake seals usually have an unclear image with less solid colors. The 17-digit number on the fake seal is usually the same as the other fake seals. When the image is not clear, it is certain that the seal is fake. If it is indicated that it is fake, the effect of the touch will disappear when you touch it with the fingernail or fingertip because the fake color ink is printed with metallic or glossy colors. If the banknote has a security thread, then the original seal has a hologram. The hologram is silver and the color image, which can be seen from a certain point of view, will change color

How to check the seal uses the same principle when you want to check the authenticity of money, namely 3D (seen, touched, shaken). The original seal has a security design, which contains the Ministry of Finance logo, DGT text, and nominal figures. There is also a micro-sized text that says DG of Taxes which can be checked for authenticity easily. A felt seal is the same as money, the print will feel rough. From the above explanation we will find that the seal is a fake and not a government output.

Article 253. Meanwhile, the provisions in Articles 257, 260, 261, 261 bis are criminal acts related to seals. For the sake of state revenue through taxes, only the Indonesian government is allowed to issue a stamp. Article 7 paragraph (1) Law no. 13 of 1985 concerning Stamp Duty states that "the shape, size, color of the seal, as well as registration, management, sales, and examination of its validity shall be determined by the minister of finance". (Chazawi, 2001)

This case is an anomaly which is very unfortunate, even though the positive law has determined that the activity of selling illegal products is a prohibited act because there are losses to the state there. Therefore, by offering a fake seal on the marketplace platform, merchants and

e-commerce providers, namely the marketplace platform, have violated the law. Although it can also be analyzed whether the marketplace platform has fulfilled its obligations as a digital platform provider.

## **2. Responsibilities of Sellers and Platforms Regarding the Sale of Counterfeit Stamps on the Tokopedia Digital Marketplace**

Responsibility is obligatory, to bear, obliged to bear the burden, obliged to fulfill all consequences arising from actions, willing to serve and willing to sacrifice for the benefit of other parties.(Abdulkadir, 2014) In other words, responsibility is an obligation, fundamental, and always present in carrying out activities or actions, including in violations, such as the sale of illegal goods on the marketplace platform. In this case the researcher sees that there are two parties who can be responsible, namely the seller and the marketplace platform.

The seller is clearly responsible for having committed an illegal act in Indonesia. This form of responsibility can be seen from the sanctions that govern this matter. can be seen in Law Number 13 Year 1985 concerning Stamp Duty (Stamp Duty Law) Chapter V concerning Criminal Provisions Article 13 states that:

"Convicted in accordance with the provisions in the Criminal Code:

- a. whoever imitates or falsifies the stamp and seal paper or imitates and falsifies the signatures necessary to validate the seal;
- b. whoever deliberately keeps with the intention of circulating or importing into the State of Indonesia a false seal, falsified or made against the right;
- c. whoever deliberately uses, sells, offers, delivers, provides for sale or is imported into the State of Indonesia the seal of which the mark, seal, signature, legal mark or time mark for use has been removed as if the seal has not been used and or orders someone else to use it. by fighting rights;
- d. whoever keeps material or utensils known to him as being used to commit one of the crimes to imitate and forge a seal object. "

Judging by the positive law in Indonesia, the activity of selling fake stamps can be



classified as an illegal act, because the marketplace has deliberately and negligently allowed merchants on its platform to sell illegal goods.

This has been stated in various regulations in Indonesia, including in Article 15 paragraph 1 and 2 of Law no. 10 of 2008 concerning Information and First Electronic Transactions, Article 15 Paragraph 1 of Law no. 11 of 2008 concerning Electronic Information and Transactions (ITE) which reads, "Every Electronic System Operator must operate an Electronic System reliably and safely and be responsible for the proper operation of Electronic Systems." Tokopedia does not operate an electronic system, in this case the application is reliable and safe and responsible. Such analysis is based on the omission of selling fake seals on the platform. Tokopedia does not do prevention or filtering at the beginning when merchants register goods to be sold, even though in the policy made by Tokopedia itself, namely point J on "Types of Goods" number 27, which reads:

"The following is a list of the types of goods that are prohibited and / or restricted from being traded by the Seller on the Tokopedia Site: ..... J. Seal. "Then Tokopedia also does not control what items are sold on the platform so that until now illegal items are still found on the platform. Although some merchants argued that the seals they were selling were not fake, in this case the marketplace should take control by not allowing merchants to sell fake stamps on the platform considering that the goods being sold indicate counterfeit goods and are prohibited by the state.

The marketplace is responsible for cracking down on illegal goods by means of filtering, for goods that do not qualify or standard are not allowed to be sold on the platform. The standard of goods that can be sold on the platform has been regulated in several regulations as well as from the marketplace policy itself, but not all merchants comply with these rules and standard policies, so if there is no filtering, merchants will still freely use the platform as a place to sell their goods even though they are classified as on prohibited items. If after taking this action it is still found the sale of goods or products that are prohibited on the platform, then other actions can be taken, namely providing a feature to receive reports from consumers if a sale of prohibited items is found on the platform. The last and final way is to take a takedown. If after implementing



the two previous methods, prohibited goods are still circulating, the marketplace as a form of responsibility can take action by deleting goods from the list on the platform.

The ITE Law is a legal umbrella for the use of electronic information and systems covering issues such as copyright, electronic transactions, disputes, jurisdiction and others. In article 15, the ITE Law regulates the obligations of electronic system providers in general, where each provider is required to run electronic systems in a reliable, secure, and responsible manner. Regarding their responsibilities, this law states that the Electronic System Operator is responsible for all system operations, except in cases of coercion, error and / or negligence by Electronic System users.

The legal relationship that arises between the two parties (Tokopedia and pelapak or merchant) is a one-sided legal relationship, the one in authority is Tokopedia while the one who is obliged is the pelapak. So when the pelapak does not carry out his obligations as appropriate, Tokopedia has the authority to take action against the trafficker. Based on the theory of the principle of responsibility in law, namely the principle of error (liability based on fault) where a person can be held accountable legally if there is an element of error (contrary to the law but not only contrary to law but also decency and decency in society) he does and there is a causal relationship between mistakes and losses, so when the marketplace allows merchants on the platform to sell illegal goods, the marketplace can be held accountable. The error in the case lies in Tokopedia's disobedience with the applicable regulations.

### **3. Limitations and Platform Responsibilities in Indonesia**

The Indonesian Government issued a Circular of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 concerning the Limits and Responsibilities of Platform Providers and Trading Traders through Electronic Made Content. User Generated Content (UGC) or also known as SE Safe Harbor, the provisions of the ITE Law are limitation of responsibility if the electronic system administrator takes preventive steps against a crime. Apart from Indonesia, the safe harbor doctrine has been regulated in the United States copyright law of 1976 which was last updated on June 30, 2016 and the Digital Millenium Copyright Act (DMCA) in 1998. In principle, the provisions of safe harbor regulated in America

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exempt responsibility an electronic system operator if the system has a means of control to anticipate copyright infringement. If the electronic system operator does not have a system (technology control), then the vicarious liability can be imposed on the electronic system operator.

The SE was indeed formed to protect platform providers from merchant actions. As a legal subject of the ITE Law, platform providers are quite vulnerable to abuse by merchants from prohibited activities or activities carried out by merchants or users so that they are perceived as being involved in acts that violate the law. With the presence of SE Safe Harbor, it is hoped that the limitation of responsibility can be firmly implemented so that there is no mistake in delegation or demand for responsibility. However, the existence of a clear separation of responsibilities in SE Safe Harbor does not mean that platform providers only focus on developing the platform (software) without paying attention to what content or goods are sold on the platform.

Problems arise when a Circular Letter is deemed not included in the category of legislation as referred to in Law No. 12 of 2011 concerning the Formation of Laws and Regulations. Bayu Dwi Anggono is of the opinion that the Circular is not a statutory regulation (*regeling*), nor is it a state administration decision (*beschikking*), but a policy regulation (*beleidsregel*) or *pseudowetgeving*. ("Circular, 'Pebbles' in the Legislation," 2015)

SE Safe Harbor was created to respond to the increasing number of internet usage in Indonesia, especially in the field of e-commerce (Pradana, 2017; Suleman, 2018), User Generated Content (UGC) itself is a form of platform that allows users to create or upload their own content to the internet so that it is possible to be accessed by other internet users. (Comminos, 2013) The purpose of this Circular Letter is to support the implementation of electronic systems and provide legal protection for platform providers and traders by ensuring the limits and responsibilities of each in conducting trading activities through electronic systems.

While SE Safe Harbor itself does not set clear boundaries on the accountability of e-commerce platform providers, we must bear the fact that the law also does not protect the obligations of platform providers in general. In fact, the UGC-shaped platform is also widely

used as a means of social media, such as on BlogSpot, Twitter, Facebook, and others. These providers also need legal certainty so that they are not sued by any party for prohibited content which they should not be responsible for if they are protected by regulations such as Circular Letters. (Makarim, 2014)

Although the SE is not a part of statutory regulations, so it is not absolutely binding. SE Safe Harbor is a form of commitment from the government for marketplace activities in Indonesia, so that it should be able to trigger marketplace platform providers to be more careful and careful in running their electronic systems. SE Safe Harbor also shows the law that is bottom-up or from the bottom up following the current development. Ideally, in the future, the government and legislature need to accelerate the plan to make an E-Commerce Law so that it becomes a separate legal umbrella in cyber law enforcement in Indonesia.

## **CONCLUSION**

The legal qualification of selling fake stamps on the Tokopedia digital platform is that the activity of selling fake stamp products is an action that is prohibited because there are state losses there. By offering fake stamps on marketplace platforms, merchants and e-commerce providers, namely the marketplace platform, are in effect breaking the law. This is based on the principle of benefit and good faith as stated in Article 3 of Law No. 11 of 2008 concerning Information and Electronic Transactions and Article 7 paragraph (1) of Law no. 13 of 1985 concerning Stamp Duty, it is stated that "the shape, size, color of the seal, as well as the certificate, arrangement, sale, and examination of its validity shall be stipulated by the Minister of Finance." In this case, the seal which does not comply with these provisions is an invalid seal.

The seller's responsibility for selling fake stamps regarding the provisions is regulated in Law Number 13 of 1985 concerning Stamp Duty Chapter V concerning Criminal Provisions Article 13. Through these provisions, the perpetrator must be held accountable for his mistakes in accordance with the applicable sanctions. Meanwhile, the platform's responsibility regarding the sale of fake seals in the Tokopedia digital marketplace is reviewed from Article 15 paragraphs

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1 and 2 of Law No. 10 of 2008 concerning Information and Electronic Transactions Tokopedia as a marketplace platform in Indonesia does not carry out its obligations as stipulated in laws and regulations.

The government, in this case the Ministry of Finance, must intensify the socialization of the circulation of false seals and their characteristics widely to the public. This is based on the fact that selling fake seals on the marketplace platform is understandable. The responsibility taken by Tokopedia can be in the form of creating a reliability system that is safe, reliable and continues to monitor illegal sales movements on its platform.

It takes legal awareness from society that can be realized from the implementation of law into invisible lines such as the internet. The goal is that the public and the seller realize that the sale of illegal goods on the internet is illegal. Tokopedia must also synergize by not selling illegal goods on the platform which can be done by implementing a filtering system on every item that will be registered for advertising on the platform.

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