



**ROUSE**

IP Guide: Participating  
in Online E-Commerce  
Shopping Platforms  
in South East Asia

**Indonesia**

## TABLE OF CONTENTS

<b>1. Status of online shopping platforms in Indonesia in 2020</b> .....	<b>2</b>
<b>2. Status of Korean companies on the shopping mall and sales status in Indonesia</b> .....	<b>4</b>
2.1 Okpopedia.....	4
2.2 Shopee.....	4
2.3 Bukalapak.....	5
2.4 Bbibli.....	5
2.5 Lazada.....	6
<b>3. IP policies of major online shopping platforms in Indonesia</b> .....	<b>7</b>
3.1 Tokopedia.....	7
3.2 Shopee.....	7
3.3 Bukalapak.....	8
3.4 Lazada (445 million).....	9
3.5 Blibli.....	10
<b>4. IP guide when opening and operating business on online shopping platforms</b> .....	<b>12</b>
4.1 General business set up and operation rules.....	12
4.2 IP protection in Indonesia.....	13
4.3 Special rules for ecommerce trade.....	14
4.4 Ecommerce platform’s own rules for its merchants.....	15
<b>5. IP guide to operating a business on online shopping platforms</b> .....	<b>18</b>
5.1 Introduction to Indonesia’s IP related online rules.....	18
5.2 Summary of Indonesia’s 3 IP related online rules.....	18
5.3 KOMINFO’s systems under the EIT law.....	19
5.4 The Ministry of Trade systems under the Trade Law.....	20
5.5 KOMINFO/DGIP’s system under the Copyright law.....	20
5.6 How IP holders use the three systems.....	21
5.7 Challenges and gaps in the current three systems.....	22
<b>6. Major cases and precedents</b> .....	<b>24</b>

# IP GUIDE: PARTICIPATING IN ONLINE ECOMMERCE SHOPPING PLATFORMS IN SOUTH EAST ASIA - INDONESIA

## 1. Status of online shopping platforms in Indonesia in 2020

Indonesians are among the world's most enthusiastic users of digital technology. The average Indonesian spends four hours a day accessing the Internet on their mobile device — twice the US average.<sup>1</sup> Increasing digital technology enthusiasm has led to a huge growth in ecommerce growth in Indonesia.

Online sales in Indonesia are booming.<sup>2</sup> 30 million Indonesians today transact online, creating a market of at least \$8 billion today which could grow to \$40 billion in the next five years.<sup>3</sup> Indonesia has the largest number of billion-dollar tech start-ups in Southeast Asia - including, most notably, Tokopedia, GO-JEK, Traveloka and Bukalapak.<sup>4</sup> In 2019, Tokopedia had around 75,502,688 monthly visitors.<sup>5</sup>

The current online ecommerce market consists of two main business models:

- e-commerce platforms such as Tokopedia, Shopee, and Lazada which offer an integrated B2C system. Electronics, fashion, health, and beauty products are the top three product categories for online ecommerce platforms and make up 70% of sales.<sup>6</sup>
- social commerce, which involves the buying and selling of physical goods through a social media platform such as BBM, Facebook, Instagram, Line, and WhatsApp. Under social commerce models, goods may be listed for sale, but payment and delivery are handled separately.<sup>7</sup>

60% of ecommerce sales are through online ecommerce platforms with the remainder through social commerce.

<sup>1</sup> [https://www.mckinsey.com/spContent/digital\\_archipelago/index.html](https://www.mckinsey.com/spContent/digital_archipelago/index.html)

<sup>2</sup> <https://www.statista.com/statistics/280925/e-commerce-revenue-forecast-in-indonesia/>

<sup>3</sup> [https://www.mckinsey.com/spContent/digital\\_archipelago/index.html](https://www.mckinsey.com/spContent/digital_archipelago/index.html)

<sup>4</sup> *Idem*

<sup>5</sup> <https://marketinginasia.com/wp-content/uploads/2020/03/2019-Year-End-Report-of-Map-of-E-commerce-iPrice-Group.pdf>

<sup>6</sup> *Idem*

<sup>7</sup> [https://www.mckinsey.com/spContent/digital\\_archipelago/index.html](https://www.mckinsey.com/spContent/digital_archipelago/index.html)

- Indonesia top 10 most visited websites in 2019<sup>8</sup>

Merchant	Monthly Traffic
tokopedia	75,502,688
Shopee	61,669,392
bukalapak	53,862,335
Lazada	28,722,575
blibli.com	24,170,104
JD.ID	7,487,384
sociolla	4,262,023
BHINNEKA	4,164,203
Orami	3,873,176
ZALORA	3,046,010

tokopedia  
 Tokopedia dominated in three quarters and gets the highest traffic in 2019

Shopee  
 Shopee successfully utilized peak sale events like 11.11 and 12.12 to get the highest web visits in Q4

ZALORA  
 E-commerce sites for specific needs, such as Orami, Sociolla, Bhinneka and Zalora, garnered a good number of web visits

5 out of the top 10 most visited e-commerce websites are Indonesian sites.

- Indonesia Top 10 Most Used Mobile Apps in 2019 – Based on Monthly Active Users<sup>9</sup>
- App use is slightly below website use in terms of monthly visitors but increasing fast.

Lazada, Shopee, Bukalapak and Tokopedia share the top 4 spots. JD, Blibli, and Zalora are the next tier.

Product content diversity is the most used strategy to increase user activity in apps during 2019.

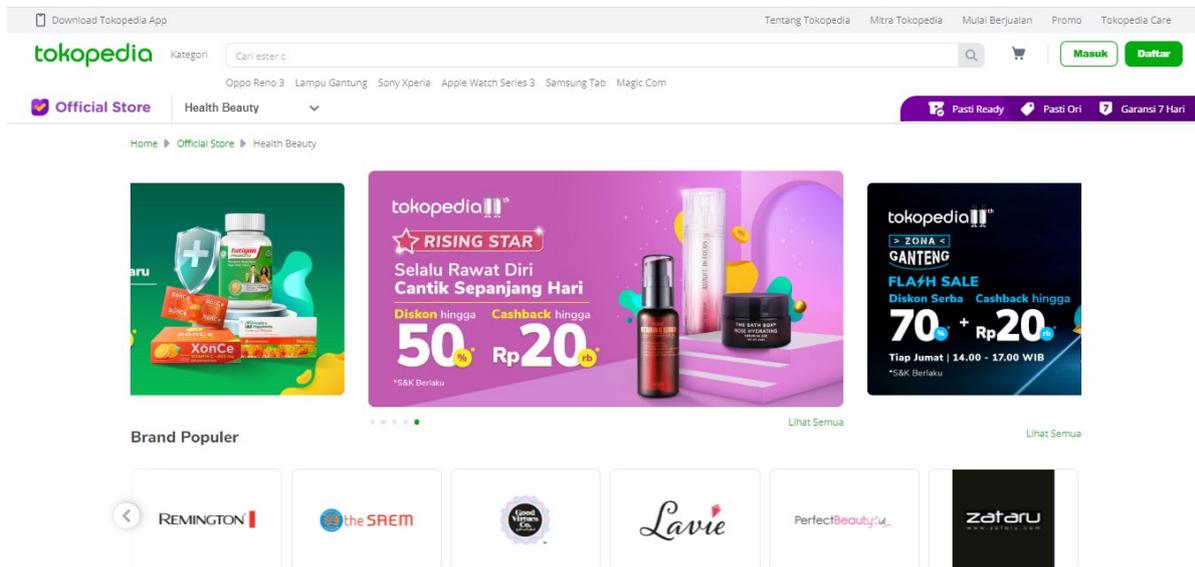
Mobile shopping apps with a centralized product catalogue are most used; top 5 have integrated products from multiple categories.

<sup>8</sup> iPrice Group Year-End Report on Southeast Asia's Map of E-commerce 2019, <https://marketinginasia.com/wp-content/uploads/2020/03/2019-Year-End-Report-of-Map-of-E-commerce-iPrice-Group.pdf>

<sup>9</sup> <https://datareportal.com/reports/digital-2019-e-commerce-in-indonesia>

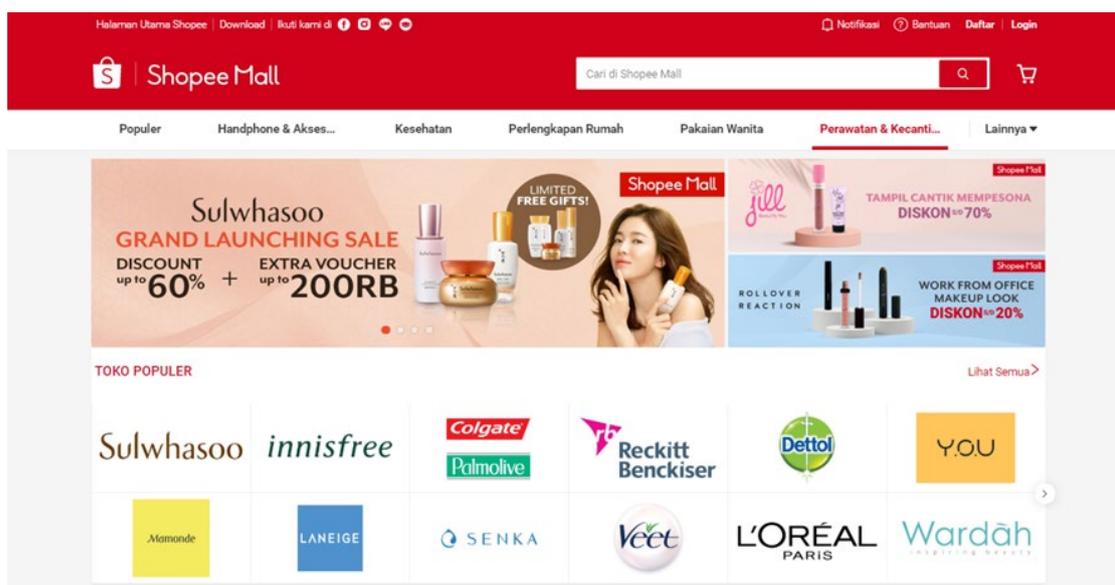
## 2. Status of Korean companies on the shopping mall and sales status in Indonesia

### 2.1 TOKOPEDIA<sup>10</sup>



Tokopedia’s Official Store is a special platform provided for official brands or the rights holder of the brand to sell their products online through the Tokopedia page or the app. It offers a wide range of categories including beauty and wellness products. Korean beauty products are among the popular products sold in the beauty & wellness product section. Some well-known Korean beauty products sold in Tokopedia official store: theSAEM, Daeng Gi Meo Ri, Clio, Innisfree, Dr. Jart+, Holika Holika, and others.

### 2.2 SHOPEE<sup>11</sup>

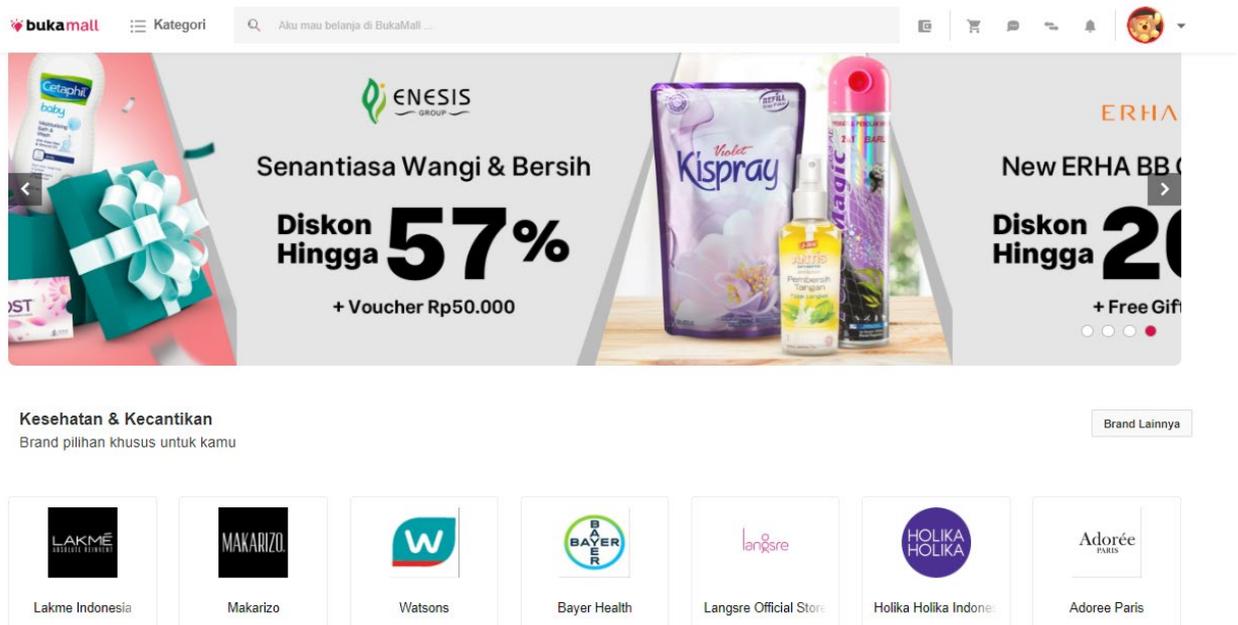


<sup>10</sup> <https://www.tokopedia.com/official-store/cantik-sehat>

<sup>11</sup> <https://shopee.co.id/mall/Perawatan-Kecantikan-cat.14840>

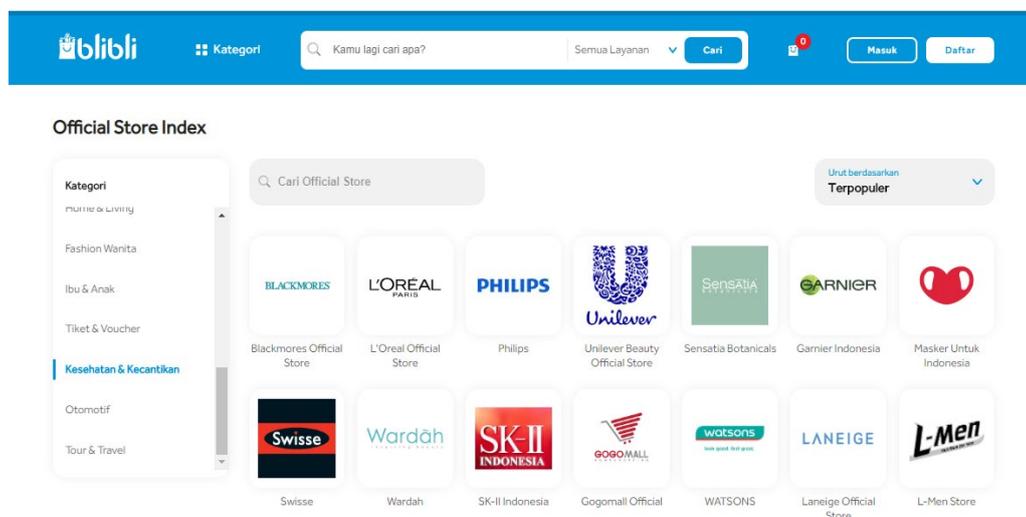
ShopeeMall is a storefront within Shopee for direct well-known brands or rights holders to sell authentic and best quality products. It offers wide range of products including beauty products. Korean beauty products are among the popular products sold in Shopee mall and can be seen placed in the first page of the beauty section. Some well-known Korean beauty products sold in Shopee mall are Sulwhasoo, Innisfree, Mamonde, Laneige, and others.

### 2.3 BUKALAPAK<sup>12</sup>



Buka Mall is Bukalapak 's official store platform that guarantees 100% original products. It offers a wide range of products including beauty & wellness category. Some well-known Korean products are also sold in here including Holika Holika, Daeng Gi Meo Ri and Nature Republic.

### 2.4 BLIBLI<sup>13</sup>

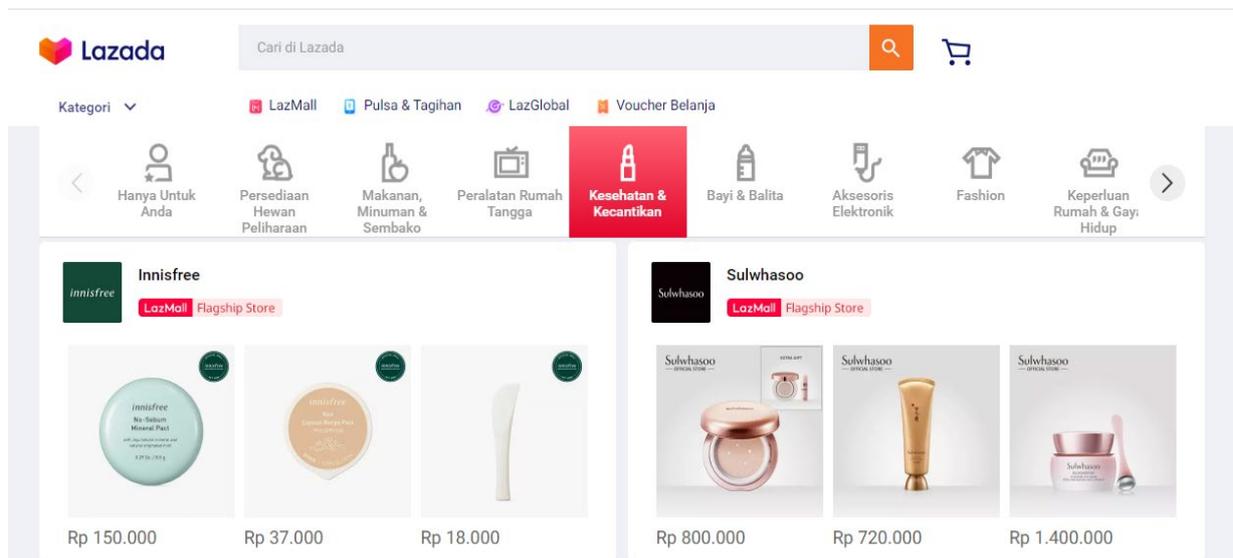


<sup>12</sup> [https://www.bukalapak.com/bukamall/catalog?category\\_id=32&keywords=](https://www.bukalapak.com/bukamall/catalog?category_id=32&keywords=)

<sup>13</sup> <https://www.blibli.com/official-store/stores?sort=popularity%3Adesc&merchantName=&category=KK-1&appsWebview=true>

Blibli Official Store is a page where all official owners of well-known brand or rights owners of the brand can sell their products within Blibli. It offers wide range of product categories including beauty and wellness. Korean beauty products are one of the most popular products sold in beauty & wellness category. Some well-known Korean beauty products sold in Blibli are theSAEM, Laneige, Nature Republic, Holika Holika, and others.

## 2.5 Lazada<sup>14</sup>



LazMall is a platform for flagship stores or official brand owners to sell their products in Lazada. It has a wide range of product categories including beauty and wellness. Korean beauty products are also sold in this category. Some of the well-known brands are: Innisfree and Sulwhasoo.

<sup>14</sup> <https://pages.lazada.co.id/wow/i/id/LandingPage/lazmall>

### 3. IP policies of major online shopping platforms in Indonesia

The Top 5 ecommerce platforms as at 2020 are

- Tokopedia
- Shopee
- Bukalapak
- Lazada
- Blibli

In general most of the top platforms have terms and conditions for their merchants which cover IP violations. Most ecommerce platforms are relatively modern businesses, with venture capital funding and strong management teams. However the rules on what merchant terms must include are not compulsory so there are variations. Generally the more mature, internationally funded and backed and large the platform is the better the terms.

#### 3.1 Tokopedia<sup>15</sup>

Tokopedia has specific IP provisions, which prohibit IP violations. They have an online form submission process. Tokopedia is usually the fastest platform to remove infringing links.

In Tokopedia's Terms & Conditions' content section, IP issues are covered as below:

*"6. When a User uploads to the Tokopedia Site with content or posts content, the User grants Tokopedia non-exclusive rights, throughout the world, continuously, irrevocably, royalty-free, sublicensed (through several levels) the right to exercise any and all copyright, publicity, trademark, database rights and intellectual property rights that Users have in the content, in any media that is known now or in the future. Furthermore, to be fully permitted by applicable law, you waive moral rights and promise not to sue those rights against Tokopedia.*

*7. Users guarantee that they do not violate intellectual property rights in uploading User content to the Tokopedia site. Each User is hereby personally responsible for infringing intellectual property rights in uploading content on the Tokopedia Site."*

#### 3.2 Shopee<sup>16</sup>

Shopee prohibits any activity that violates thirds party owned IP. It has a complaints procedure with submissions through an online form. In Shopee's terms and conditions, IP issues are covered as below:

#### **TERMS OF SERVICE**

##### 6. REQUIREMENTS OF USE

##### 6.2 You agree not to:

<sup>15</sup> <https://m.tokopedia.com/terms/konten>

<sup>16</sup> <https://shopee.co.id/legaldoc/terms>

(z) violates Shopee's rights, including any intellectual property rights and any passing off of said intellectual property rights;

(bb) register items that violate the copyrights, trademarks or other intellectual property rights of third parties or use the services in a manner that would infringe the intellectual property rights of others;

## 8. REPORTING A VIOLATION OF INTELLECTUAL PROPERTY RIGHTS

8.1 Users are independent individuals or businesses and they do not have a relationship with Shopee in any way. Shopee is not an agent or representative of Users and does not hold and/or own the items listed on the site.

8.2 If you are the owner of intellectual property rights ("IPR Owner") or an agent legally authorized by the IPR Owner ("IPR Agent") and you believe that your rights or the rights of the party giving you authority have been violated, please notify us in writing by e-mail to [help@support.shopee.co.id](mailto:help@support.shopee.co.id) and include [legal@shopee.com](mailto:legal@shopee.com) and provide us with the documents required below to support your claim. Please allow time for us to process the information provided. Shopee will respond to your claim as soon as possible.

8.3 Claims under this Section 8 must be submitted in a form specified by Shopee, which can be updated from time to time, and must include at least the following: (a) physical or electronic signature of the IPR Owner or IP Agent (collectively called "Informant"); (b) an explanation of the types and nature of intellectual property rights that are allegedly infringed; (c) details from the list of suspected violations; (d) sufficient information to allow Shopee to contact the informant, such as the informant's physical address, telephone number and e-mail address; (e) a statement from the Informant that the complaint was filed in good faith and that the use of intellectual property rights as identified by the Informant is not permitted by the IPR Owner or the law; (f) a statement by the Informant that the information in the notification is accurate, compensating us for any losses suffered by us as a result of the information provided by and that the Informant has the appropriate right or is authorized to act on behalf of the IPR Owner on the complaint.

## 29. THIRD PARTY CONTRIBUTIONS TO OUTSIDE SERVICES AND LINKS

29.2 In addition, the Services may contain links to third party products, websites, services and offers. These third party links, products, websites and services are not owned or controlled by Shopee. Instead, all of them are operated and owned by the respective third parties and may be protected by copyright or other applicable intellectual property laws and treaties. Shopee has not reviewed and is not responsible for the content, functionality, security, services, privacy policies or other practices of these third parties. You are advised to read the terms and conditions published by such third parties on their websites or elsewhere. By using the Service, you agree that Shopee will not be responsible in any way if you use or cannot use the website or widget. You also acknowledge and agree that Shopee may disable your use or remove any third party links, or applications on the Service if they violate these Terms of Service.

### 3.3 Bukalapak<sup>17</sup>

Bukalapak prohibits any activity that violates IP. It has a complaints procedure with submissions through an online form. Bukalapak is typically slower to respond to complaints than other platforms. We understand that their takedown volumes are increasing. On Bukalapak, IP issues are covered as below:

#### **Bukalapak.com Terms of Use**

Service

---

<sup>17</sup> <https://www.bukalapak.com/terms>

...

#### 5. BukaBantuan/Bukalapak's Help Assistance

BukaBantuan is a service provided by Bukalapak to facilitate problem solving including but not limited to transaction problems between Buyers and Sellers, violations of Intellectual Property Rights, reporting of product violations, and others.

Through the BukaBantuan service, users can ask and submit complaints about all matters related to transactions at Bukalapak that are related to Features/Products, payment methods, delivery services, how to return goods and others.

Through the BukaBantuan service, users can directly contact Bukalapak Customer Service to get information needs and solve problems experienced, both related to transaction problems and those other than transaction problems.

Users can use the BukaBantuan service as a means of complaint against violations of Intellectual Property Rights, duplication of products by other users, duplication of photos/descriptions.

BukaBantuan is a customer service feature consisting of a list of references about the most frequently asked questions as well as omni channel information that can be selected, such as call center numbers, email services, to live chat so that customers can freely ask questions or complaints about products, payment methods, delivery services, how to return goods and so on.

#### User, Account, Security, and Password

Mandatory requirements for Users to access services on the Bukalapak Platform, including:

...

14. Users are required to be responsible for all risks that arise in the future for the information they provide to Bukalapak, including but not limited to matters related to Intellectual Property Rights, namely copyrights, trademarks, patents, trade secrets, industrial designs, and integrated circuit layout design of a product.

#### Prohibited items

Prohibited items are items that are prohibited from being traded on the Bukalapak Platform based on the laws and regulations in force in the Republic of Indonesia, Bukalapak's internal policies, and / or the Application Distribution Platform Policy. These items are goods and / or services that are classified as dangerous, violate the law, threaten, harass, insult, slander, intimidate, invade the privacy of others or other rights that violate the law in any way. Based on these matters, items that are prohibited from being traded on the Bukalapak Platform, include:

...

13. Items that violate the intellectual property rights (IPR) of other parties;

...

### 3.4 Lazada (445 million)<sup>18</sup>

Lazada prohibits any activity that violates IP. It has a complaints procedure with submissions through an online form. IP issues are covered as below:

#### LAZADA'S INTELLECTUAL PROPERTY RIGHTS VIOLATION POLICY

<sup>18</sup> <https://sellercenter.lazada.co.id/seller/helpcenter/kebijakan-hak-kekayaan-intelektual-lazada.html>  
<https://pages.lazada.co.id/wow/i/id/LandingPage/IPR>

Violation of intellectual property rights by Platform users ("Users") is strictly prohibited. Users who upload content, list products or services, or use the Platform in any way that violates intellectual property rights will be subject to steps in accordance with Lazada's policies - including but not limited to issuing non-compliance points, suspension of User accounts, permanent termination from the Platform and/or any action deemed necessary, including but not limited to initiation of civil or criminal proceedings by Lazada independently or together with the rights owners;

- A. The types of intellectual property rights violations prohibited on the Lazada Platform include, but are not limited to:
- I. Registering fake products or services on the Platform;
  - II. Violating Content;
  - III. Other types of intellectual property infringement, including infringement of any other type of intellectual property recognized under the laws of the country in which the notification of infringement is made, including, but not limited to, infringement of patents or registered designs, or any other recognized intellectual property rights by law or a final judgment by a court of final level.
- B. Submitting infringement notifications to Lazada by:

Register an account on the IPP Platform through <https://ipp.alibabagroup.com/register.htm>. – The platform helps Lazada to process deletion notifications quickly and effectively, and for complainant to monitor, track and manage violation notifications, submit replies to responses to notifications and withdraw complaints through the IPP Platform account.

If the notification of violation is approved, Lazada will delete the list of content or products or services from the Platform and make appropriate efforts against the User based on policy. The efforts that will be made against Users are confidential and cannot be disclosed to rights owners or third parties.

If the report is incorrect or fails, Lazada will not delete the list and will not take any action against the User. The complainant will receive a message on the IPP Platform informing the rejection and its reasons;

(2) Submit infringement notification by electronic mail (e-mail) with the address [Trust@lazada.com](mailto:Trust@lazada.com). To file a notification of intellectual property infringement, one must own or hold an exclusive license for the intellectual property that is the subject of the notification of infringement or be an agent with written power signed by the right owner or exclusive license holder to file notification on his behalf.

Complainant are required to submit the required documents by electronic mail (e-mail) to [Trust@lazada.com](mailto:Trust@lazada.com).

### 3.5 Blibli<sup>19</sup>

Blibli prohibits IP violations. No formal IP complaint system exists, but IP complaints can be set to their legal team. Their terms state:

#### 12. INTELLECTUAL PROPERTY RIGHTS

<sup>19</sup> <https://www.blibli.com/faq/tentang-blibli/syarat-ketentuan/>

*12.1 We are the sole owner or legal holder of all rights to and content in the Blibli Site. The Blibli Site and its contents include intellectual property rights protected by copyright laws and laws that protect other intellectual property that apply throughout the world. All property rights and intellectual property rights of the Blibli Site and their contents remain with Us, its affiliates or license owners of the contents of the Blibli Site. All rights not included in this Agreement or by Us hereby protected by law. The Blibli Site, name and related icons and logos are registered trademarks in various jurisdictions and are protected by laws regarding copyright, trademark or other intellectual property rights. It is strictly forbidden to use, change, or install these brands on any media without our consent.*

## 4. IP guide when opening and operating business on online shopping platforms

This section is a guide for Korean companies on opening e-stores on ecommerce platforms. Opening an ecommerce store on a third-party platform requires a businessperson to consider 3 aspects. The first is how to operate as a business at a general level. The second is there are special rules for ecommerce trade. Thirdly the ecommerce store's own rules for its merchants. There are no special IP rules for ecommerce merchants that differ from other businesses, so this guide sets out some of the general rules and explains how IP applies.

### 4.1 General business set up and operation rules

A broad general checklist to operate a business in Indonesia is as follows:

First consider your business model. Foreign investment restrictions and costs may make it impractical to open a full subsidiary company. Many, perhaps most, foreign products are imported and sold through distributors in Indonesia. Some companies may have existing distribution, and the question comes whether a current distributor is suitable to operate ecommerce stores or whether a further specialist distributor is more desirable. Whilst the legal and technical aspects of operating may help guide this question, quite often it is a financial question and a question of how the principal normally operates. There is an issue for foreign merchants hoping to run virtual ecommerce shops in Indonesia without having trading companies in Indonesia. Indonesia is taking various steps to tax and regulate this kind of virtual business. So, whilst it is theoretically possible to operate a business outside Indonesia selling services especially (goods are harder to import as they are taxed) to Indonesia it is getting more difficult.

The first step will be to check foreign investment sector regulations / restrictions (called the negative list<sup>20</sup>), then decide how the business can operate in view of any restrictions. Indonesia operates a set of rules on which sectors are open to the public and which are closed. This is run by the foreign investment board or BKPM<sup>21</sup>. They can be contacted for specific queries. For example, online distribution and retail is a restricted area, and depending on the product area there may be capital limits on ownership.

If you do decide to open a local company, there are many issues to consider. First the type of entity, which in Indonesia for foreign investors can be one of two types. A trading company is called a PMA company, and it can act in full, like a local company. An alternative is a non-trading Representative Office, which is a marketing company that does not trade goods or services. These are rare but there is a specific new category of Representative office for offshore ecommerce merchants trading in Indonesia. It will require decisions on who the shareholders should be (depending who the investor(s) will be) as well as who should be the directors and commissioners (officers in Indonesian companies which oversee the directors).

In almost every case there will need to be contracts to sell goods in Indonesia. You may need to appoint a distributor, or if you open a company with investment there may be a shareholder agreement. Consult Indonesian commercial lawyers to have these drawn up as there are special rules on what must go in a contract with an Indonesian party. Often, they will have an IP component.

There are many practical issues in setting up a company. These include planning financial and tax issues for the business, registering for tax; for all this a business should hire tax and financial advisors. Companies may need to arrange banking, or hire other local agencies, especially for advertising or digital marketing. If you

<sup>20</sup> <https://www.indonesia-investments.com/upload/documents/Negative-Investment-List-May-2016-Indonesia-Investments.pdf>

<sup>21</sup> <https://www.bkpm.go.id/>

are operating as a foreign investor after all the approvals it will be necessary to secure contracts for assets, utilities, equipment, supplies, office lease, insurance, and staff. For staff always carefully check your employment agreements include IP protection clauses.

Next you need to check what permits or licenses the business needs to operate. There will be certain operational permits (for the land or business operation which may be national or local). Beyond that there may be specific product requirements. For example, personal care products require a license from the Ministry of Health BPOM department<sup>22</sup>. Other products e.g. toys require Indonesian national standard compliance. The Indonesian National Standard (abbreviated SNI) is the only national standard that applies in Indonesia and affixing the SNI marking on the product is an indication that it meets the standard requirements to allow it to be sold. Some of these product permits may require you to provide your own any underlying IP for the products.

## 4.2 IP protection in Indonesia

It is critical to plan what Intellectual Property (trademark, copyright, trade secret, design, patent etc.) is needed for your product. In many cases that will be dictated by rules from the IP owning company in Korea. IP is registered at the IP office called the DGIP<sup>23</sup>. Foreign IP owners must file through an accredited Indonesian IP consultant. Indonesia operates a first to file system, which makes early registration of IP critical (before you enter the market). Secondly Indonesia has a well-documented problem with unauthorized registration by local entities of others' IP, especially trademarks and previously copyrights. Thirdly there are very limited unregistered IP rights (e.g. unfair competition rights) so registering is always the priority.

Korean trademark filings in Indonesia are rising as the following table shows:



Patents and designs are typically filed in accordance with timetables dictated by when they were created. However, IP owners often do not extend patents and designs to Indonesia; this can be a mistake if the products will one day be sold in Indonesia given its size as the largest market in SE Asia.

Trademarks need to be registered before you start selling goods. There are several reasons for this. One is that you may need to provide evidence of at least application to import goods, secure the SNI or trade the goods. Secondly it avoids conflicts if have already registered. It is

sometimes possible to start trading before a trademark has been registered if you have a good search opinion that the mark will be registered, and you have made your application. It takes several years to obtain a trademark registration due to delays at the IPO. Indonesia recently joined the Madrid system so international registrations filed by Korean companies which designate Indonesia can be obtained. Companies often register too few trademarks in Indonesia. Products often have a house mark, a product name, a label, a tag line, and graphics. It may be necessary to file all of these in Indonesia to secure sufficient protection for your product, to avoid conflicts with other parties and later stop counterfeit or copy products. As said above there is very limited unregistered rights protection.

<sup>22</sup> <https://cekbpom.pom.go.id/>

<sup>23</sup> <https://www.dgip.go.id/>

Other IP you may need to consider includes Copyright, which applies to graphics, logos, marketing collateral and other creative works. Take advice on what you need to protect and how.

A challenge for foreign IP owners is whether to register licenses for IP. The law technically requires all licenses to be recorded at DGIP. Short form licenses can be sued for this so it is a simple process, but the volume of IPRs to record can make this a very substantial cost. In practice many companies do not do so. It is best to take specific advice on your situation.

Digital handles including domain names, social media handles may be necessary to trade in Indonesia, or at least you may use Indonesian language versions of overseas sites. There is increasing pressure from the government to localize content. There are no special local social media or other content systems, but there are local domains you might want to secure such as .co.id or id.

It is also worth considering your IT requirements. Of course, the business will have hardware and software needs, hosting, website and digital marketing contracts, cloud, and storage needs. However, 2 IP related areas are deeply connected to IT. The first is trade secrets. If there are important business secrets deployed in the business, they must be kept secret to enjoy legal protection. A key component of this is that the IT system be secured, therefore. The second technology related IP issue is data privacy. Indonesia does not have a clear set of data privacy rules that apply to businesses yet. A law was presented to Parliament in 2019 but has not yet passed. Various regulations provide protection for different components of data privacy, but the full unifying law is awaited now. Note that Indonesia as a member of ASEAN may follow ASEAN policy. The ASEAN Framework on Digital Data Governance is the structure under which the 10 ASEAN member states handle cooperation on data issues. Current proposals include a data classification framework and a cross-border data flow mechanism for ASEAN.

### 4.3 Special rules for ecommerce trade.

The boom in ecommerce trade meant that until 2019 merchants themselves were largely unregulated. Anyone could and did sell goods online. However, over the years there have been several regulations enacted which apply to ecommerce merchants operating on platforms.

The most important is Government Regulation No. 80 of 2019 on Trade Through Electronic System and implementing Ministerial Regulation 50 of 2020 on Business Licensing, Advertising, Guidance and Supervision of Businesses Trading Trade through Electronic Systems. These set out provisions on e-commerce practices in Indonesia. They implement provisions of the Trade Law 2014, which technically applied since then, but were not implemented or clarified until now. The new regulations have a transition period so existing traders have 2 years to comply, although new market entrants will need to comply immediately. Although they do not apply specifically to IP, several areas are critical to IP owners.

First the sellers/merchants are now required to secure a business license through the governments new Online Single Submission (OSS) System. Platforms are prohibited from accepting sellers/merchants that do not do so. Foreign merchants that try to trade online in Indonesia must register with the Indonesian government and set up a representative office. This has a function to allow the government to identify traders but has the opposite effect of potentially (although it is not tried in practice yet), to allow IP owners to identify traders with whom they have IP disputes. Secondly another rule prioritizes use of Indonesian domain names. Thirdly there are rules on consumer protection including to allow consumer complaints (this is legal different from IP owner complaints but may overlap because a consumer may complain about an IP violation under the Consumer Protection law), which will involve merchant. Fourthly merchants must keep

data on their sales for long periods (typically 5 years). This data could be relevant to IP owners seeking source or sales information. Fifth, there are rules on digital advertising which merchants must follow.

Another regulation which is peripherally relevant from an IP perspective is Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions. Again, it is not IP specific but contains provisions of relevance to IP owners.

The first is that it ensures that online ecommerce trading platforms operate and keep data in Indonesia or at least be open to supervision. So foreign merchants may no longer operate ecommerce entirely outside the jurisdiction of Indonesia. This can apply to any form of digital traders. The intention is to ensure that the laws of Indonesia apply, including tax collection to those selling goods and services online into Indonesia. There were previously threats to the IP of companies not complying with this rule. Any merchant seeking to operate in Indonesian without a local company should pay close attention to this regulation.

There are also a set of data privacy rules in this regulation which are now going to be replaced by the 2019 draft data privacy law. It is at present unclear how merchants are to comply with this regulation's data rules given the new draft law uses different rules. Advice on data privacy should be taken at the time of market entry.

The main rules applying to IP for merchants are covered in section 4.

## 4.4 Ecommerce platform's own rules for its merchants

Merchants operating on Indonesia's ecommerce platforms must enter contracts with the platforms. These will be on typically standard terms. However, some platforms have different systems for different merchant categories.

### 4.4.1 Tokopedia<sup>24</sup>

Founded in 2009, Tokopedia is an online marketplace that has reached the unicorn status in Indonesia. Tokopedia offers 3 (three) categories of merchants:

- Regular merchant;
- Power Merchant: A merchant membership that offers a variety of exclusive features to help increase sales and increase customer trust; and
- Official Merchant: A merchant service on Tokopedia intended for selected merchant to develop their business exclusively. I.e.: Owner of the Well-known brand, Official Distributors, chosen merchants with gold status for some period of time and has business license, Local sellers with business license.<sup>25</sup>

• It assists merchants with specific guidance as follows:

- Further terms and conditions: <https://www.tokopedia.com/terms#sell>
- How to start selling: <https://seller.tokopedia.com/edu/mulai-berjualan/>
- Forbidden goods: <https://seller.tokopedia.com/edu/produk-yang-dilarang/>

<sup>24</sup> <https://seller.tokopedia.com/edu/mulai-berjualan/>

<sup>25</sup> <https://seller.tokopedia.com/edu/official-store/>

#### 4.4.2 Shopee<sup>26</sup>

Shopee entered the Indonesian market in December 2015 and is now one of the top marketplaces in Indonesia. Shopee has 2 (two) categories of sellers:

- Indonesian Sellers<sup>27</sup>, sellers including regular merchants, official stores and Shopee mall.
- Seller Outside of Indonesia<sup>28</sup>

It assists merchants with specific guidance as follows:

- For the further terms and conditions: <https://shopee.co.id/docs/3001>
- How to start selling: <https://seller.shopee.co.id/edu/article/464>
- Forbidden goods: <https://seller.shopee.co.id/edu/article/371>

#### 4.4.3 Bukalapak

Now an Indonesian unicorn and one of the largest e-commerce companies in Indonesia., it was founded in 2010. Bukalapak has unique merchant levels consisting of 9 (nine) stages of badges. Each merchant badge will be given according to the number of positive feedbacks from sales transactions. The higher the badge level, the better the reputation of the merchant which will boost their business.

It assists merchants with specific guidance as follows:

- For the further terms and conditions: <https://www.bukalapak.com/terms#strict-terms>
- How to start selling: <https://www.bukalapak.com/bantuan/sebagai-pelapak/jual-barang/cara-berjualan-di-bukalapak>
- Forbidden goods: <https://www.bukalapak.com/terms#strict-terms>

#### 4.4.4 Lazada<sup>29</sup>

Now owned by Alibaba, Lazada has 3 categories of sellers:

- Lazada Seller – If the seller is located in the territory of Indonesia;
- LazMall – If the seller is the official owner of the brand or the official distributor of the brand and has offline store;
- LazGlobal – If the seller is located in China/Korea/Japan, has business that is officially registered and can deliver the products to the Foreign Sort Center.

For the complete guidelines and terms and conditions of each categories:

<https://sellercenter.lazada.co.id/seller/helpcenter/lazada-seller-policies/?spm=a2a14.helpcenter-psc.topics-list.7.5f8614e3UWT583>

<sup>26</sup> [https://www.blibli.com/pages/seller-center?utm\\_source=&utm\\_term=&utm\\_medium=&utm\\_content=](https://www.blibli.com/pages/seller-center?utm_source=&utm_term=&utm_medium=&utm_content=)

<sup>27</sup> [https://www.static-src.com/siva/coreasset/07\\_2020//1594616373332//TP\\_Deck\\_for\\_New\\_Seller\\_-\\_Aug\\_2020.pptx](https://www.static-src.com/siva/coreasset/07_2020//1594616373332//TP_Deck_for_New_Seller_-_Aug_2020.pptx)

<sup>28</sup> [https://www.static-src.com/siva/coreasset/07\\_2020//1596090078191//BLIBLI\\_GSP\\_Pitchdeck\\_Final.pdf](https://www.static-src.com/siva/coreasset/07_2020//1596090078191//BLIBLI_GSP_Pitchdeck_Final.pdf)

<sup>29</sup> [https://sellercenter.lazada.co.id/seller/register/registration\\_landing](https://sellercenter.lazada.co.id/seller/register/registration_landing)

#### 4.4.5 Blibli

Founded in 2010, Blibli is operated by PT Global Digital Niaga which is a digital services subsidiary of Djarum, an Indonesian conglomerate which started as a kretek cigarette manufacturer. Blibli divides its merchant into Indonesian sellers and Sellers Outside Indonesia.<sup>30</sup>

It assists merchants with specific guidance as follows:

- Terms and conditions: <https://www.blibli.com/faq/tentang-blibli/syarat-ketentuan/>
- How to start selling:
  - a. Indonesian: [https://www.static-src.com/siva/coreasset/07\\_2020//1594616373332//TP\\_Deck\\_for\\_New\\_Seller\\_-\\_Aug\\_2020.pptx](https://www.static-src.com/siva/coreasset/07_2020//1594616373332//TP_Deck_for_New_Seller_-_Aug_2020.pptx)
  - b. Global Sellers: [https://www.static-src.com/siva/coreasset/07\\_2020//1596090078191//BLIBLI\\_GSP\\_Pitchdeck\\_Final.pdf](https://www.static-src.com/siva/coreasset/07_2020//1596090078191//BLIBLI_GSP_Pitchdeck_Final.pdf)

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<sup>30</sup> <https://www.blibli.com/pages/seller-center>

## 5. IP guide to operating a business on online shopping platforms

### 5.1 Introduction to Indonesia's IP related online rules.

This section addresses the IP conflict rules on ecommerce platforms. Indonesia's online enforcement rules are complicated. There are 3 different laws that may apply to online infringement, each with their own subordinate regulations. They are not consistent; they use different terms and definitions and can be used in different ways. As a result, there is uncertainty over which law applies to a situation, who can make a complaint and what are the precise legal remedies. No cases have been brought probably because of the complexity.

IP owners typically need several solutions. First a clear simple system to require ISPs/Platforms to remove infringing content. Secondly a way to sue ISPs/Platforms when the content is not removed, or when a situation is new, or the ISP/Platform refuses, then to seek a court order/injunction setting out what to do. Thirdly a way to take legal action against an infringing merchant/trader (including finding their identity/business details to bring an action. Fourthly a way to deal with serious IP violations, whether repeat infringers, or mass IP violation.

Indonesia does not define ecommerce platform and ISP liability in the same way as other countries. They do not use the concepts of knowledge or safe harbor. Instead Indonesian laws impose a supervision obligation on ISPs/platforms. Failure to supervise leads to responsibility for illegal acts on the ISPs/platforms' system.

### 5.2 Summary of Indonesia's 3 IP related online rules

The detailed table set out in Annex A sets out a summary of the different regimes and their functions. The legal structure is as follows: there is a law, then under each law implementing regulations and subsidiary legislation, which sets out different systems and remedies which can help IP owners.

Ministry in charge	Ministry of Communications & Informatics (KOMINFO)	Ministry of Trade	Ministry of Law and Human Rights Directorate of Intellectual Property (DGIP) + KOMINFO
<b>Law</b>	Electronic Information and Transactions Law (11 of 2008 as amended by law 19 of 2016) a.k.a. EIT law	Trade Law (7 of 2014)	Copyright Law (28 of 2014)

The sequence of laws and regulations is relevant. The EIT Law and its rules came first and are the most established. Rules under the Trade law all came later. The Trade Law governs ecommerce transactions and related trade and the EIT governs data, registration ISPs etc. IP issues appear mainly in the EIT, but the Trade Law has relevance to two areas: a general requirement for ISPs to manage content legally and new requirements about merchant identities on ISPs/Platforms.

### 5.3 KOMINFO's systems under the EIT law

The first system under KOMINFO (the Ministry of Communications and Informatics) operates under Electronic, Information and Transactions Law (EIT Law). The subsidiary rules are KOMINFO's Circular Letter No. 5 of 2016 ("Circular") on the Limitations and Responsibilities of Platform Providers and Merchants in E-Commerce Using User-Generated Content Platforms. This is a non-binding set of rules, which in practice ecommerce platforms tend to follow. They have never been challenged in court. In addition, there is Government Regulation No. 71 of 2019 Regarding Implementation of Electronic System and Transactions

Article 25 of the EIT Law provides for IP protection by way of protecting electronic information and/or electronic documents that have been created into intellectual works. The Circular implements Articles 15 and 25 of the EIT Law and states the scope of responsibility for an Electronic System or a User-generated Content Platform ("Platform") to implement its system and manage all content ("Content") reliably, safely and responsibly. The Circular in its Part V (B) (1) (e) prohibits Content which infringes other parties' intellectual property rights. Further, Part V (C) (1) (a) of the Circular requires a Platform to set out terms and conditions for its operation and usage which should include:

- obligations and rights of the Sellers/Merchants or Users in using the Platform services;
- obligations and rights in implementing Platform business activities;
- provisions regarding liability for Content uploaded.

Under Part V (C) (1) (c), a Platform can take action on complaints by:

- carrying out the removal and/or block prohibited content
- sending a notice to the Merchant that the uploaded content is prohibited
- providing a means for Merchants to rebut that the uploaded content is not prohibited
- rejecting complaints and / or reporting if the content reported is not prohibited

This in effect creates a structure within which a Notice and Takedown system can work, without specifying a precise Notice and Takedown system. The Circular has a broad definition of a Platform, including any e-commerce platforms like Tokopedia, Lazada etc., and social media including social commerce websites like Facebook, Instagram, and providers of streaming services, like Netflix or YouTube.

The Circular also provides basic guidelines which create a quasi-safe harbor policy (but without specifically using the concept of safe harbor). To limit or exclude liability, Platforms should comply with the obligation to provide terms and conditions/Terms of Services, by clearly stipulating that users are responsible for their uploaded content. The Platforms may be further exempted from liability for failure to comply with the Circular or EIT Law in the event of force majeure, or errors or negligence on the part of the Seller/Merchant or the User.

Article V (C) (1) (e) of the Circular requires active evaluation and / or monitoring of Merchant activities on the Platform but does not provide any clear rules on how a Platform can actively monitor uploaded content.

Lastly the Circular Article V (D) (1) (a) also obliges merchants to provide complete and correct information relating to their contracts. It remains a problem for IP owners to identify traders from websites, since they often hide identity information, addresses, just using instant messenger or email. This provision in the Circular is not widely relied upon but could be. Contracts should after all law identify parties; therefore, IP owners could rely on this to ensure proper identification information is provided by Merchants. However, in practice the separate Ministry of Trade regulations may cover this more effectively.

A separate set of rules in Regulation 71/2019 (unrelated to Circular no 5 of 2016) allows the government to ban prohibited Content. This includes IP, according to the Elucidation which accompanies the regulation. So, in theory this gives anyone, including IP owners the ability to file administrative complaints to KOMINFO for breach of Regulation 71/2019 – including against ISPs. But a further regulation (still in draft) is still required for the complaint procedure. So, this remedy is still theoretical.

## 5.4 The Ministry of Trade systems under the Trade Law

Until recently, the Trade Law remedies were unused for IP issues. The Trade Law does not specifically refer to IP; but it is covered by implication (because it refers to content ‘in compliance with all laws’). Government Regulation No. 80 of 2019 on Commerce through Electronic Systems obliges ISPs to remove illegal content; this should in theory include IP violations. However, this is aimed at the Consumer Protection law principally and so without the specific mention of IP it is unclear if IP owners can benefit from these rules. Overall, the Ministry of Trade rules appear to be aimed protect consumers and may potentially help identify merchants.

The Ministry of Trade issued Regulation No. 50 of 2020 on the Requirements regarding Business Licensing, Advertising, Development, and Supervision of Businesses in Commerce through the Electronic Systems. This regulation is an implementing regulation of Regulation No. 80 of 2019 to clarify unresolved issues in the E-Commerce Regulation. Broadly, the new regulation regulates the appointment of representatives by foreign e-commerce service providers and business licenses for local merchants, e-commerce service providers, and intermediary service providers. Moreover, it also elaborates the requirements for electronic advertisements and the obligation to prioritize local products and services.

Consumer protection complaints, that is complaints by consumers under the Consumer Protection law are governed here; with ISPs/Platforms required to have complaint and takedown systems. This overlaps with IP rules, although the IP holder itself cannot make a complaint as IP holders are not classed as consumers. But a consumer could complain about IP violations (e.g. that they have been sold counterfeit goods) through this system.

A second issue is the requirement that identification details, business licenses etc. be held by ISPs/Platforms. IP Holders are keen to have access to these and secure cooperation from platforms for legal actions against merchants, who currently often hide their identities so that they cannot be pursued by IP owners. Platforms will not disclose merchant details to IP owners for fear of data privacy breach. This new regulation has 2 years to take effect: new parties must observe it immediately, but existing businesses have 2 years. So, it is unclear whether it will result in easy identification of infringing traders so that IP owners can identify and take legal action against them.

Aggrieved persons can file administrative complaints to the Ministry of Trade; this is probably limited to consumer complaints. Criminal remedies under Regulation 80 are not possible. Civil complaints for losses appear to be limited to the parties i.e. a consumer and merchant or ISP.

## 5.5 KOMINFO/DGIP’s system under the Copyright law

Under Articles 55-56 of the Copyright Law, copyright and related rights infringement on the internet is covered. The law provides a system for reporting copyright violations and blocking of internet access to infringing sites by the KOMINFO. It is further regulated by a Joint Regulation of the Ministry of Law and Human Rights and Ministry of Communication and Informatics No. 14 of 2015 / No. 26 of 2015 that implements content or website blocking and/or user’s access right that infringes copyrights and/or related rights in the electronic system. Complaints are reported first to DGIP.

This system, however, does not differentiate small scale/single infringements and large-scale infringements. It empowers DGIP to decide cases (not courts) and KOMINFO to execute them. DGIP complaints can be time consuming and IP holders have expressed concerns about delays and too few officers. It has been successfully used for some large-scale infringements but is too complex and impractical for small ones. And it only covers copyright. There are also criticisms that infringers just domain hop after they have been blocked and change the domain so reopen next day on a new one.

## 5.6 How IP holders use the three systems

IP holders can currently use these three systems in different ways.

- 5.6.1 Complaints by IP owners to platforms. IP owners send Notices of IP infringements and request takedowns under the EIT Law's Circular no 5 of 2016 system. ISPs/Platforms usually comply under their merchant terms and complaints systems. IP owners must review ISP/Platform terms that cover the situation. This will set out a detailed complaint procedure and may allow the merchant to issue a counter notice. Thereafter the ISP/Platform terms will determine what action should be taken. Although Indonesia does not use the common global standard terms - ISP/platform 'knowledge' and 'safe harbor', the position is in practice similar. Although rules do not require ISPs/platforms to have 'knowledge', failure to take a complaint and deal with it creates liability. There are various levels of sophistication of different ISPs/Platforms, so IP owners have different levels of confidence in the different ISPs/Platforms. In general, most Notice complaints are successfully dealt with.
- 5.6.2 Legal actions by IP owners against ISPs/platforms. Technically legal action could be filed by an IP owner against a platform. This would depend on the underlying legal breach complained of. The EIT Law and its regulations contain the most references to IP. The Trade Law contains only general provisions about how platforms must contain legal content. No case has ever been brought by an IP owner against a platform. The EIT law contains administrative (compliant to the KOMINFO Ministry), criminal or civil options, but not all the implementing rules are in place. It is too early to say whether the new Ministry of Trade rules provide any right of action for IP owners. There is no current ISP Injunction system in the civil courts, which other countries typically use to help decide IP owners/IPS/platform disputes, including new issues. In any event there is limited business confidence in the courts of Indonesia<sup>31</sup>. Whilst IP cases are often more reliable than general cases, Ecommerce disputes would (if there were any) be heard in the general courts.
- 5.6.3 Disputes between IP and merchants. When an IP owner wishes to take action against a merchant it has to first identify them. It can do this itself, through investigations, making trap purchases etc. However, this does not always lead to an identifiable business. Then it is possible that IP owners have remedies under the Ministry of Trade's Trade law and its regulations. The regulations do provide potentially a way to identify infringing merchants which IP owners need, to support their own legal actions against infringing merchants. These are new and have not been used yet. Once identified an IP owner can bring an ordinary complaint under the relevant IP law. This can be a civil infringement lawsuit filed in the District Courts. Or a criminal complaint can be filed through the Police or the DGIP office investigation team called the PPNS. After a criminal investigation, the police can instigate a criminal prosecution in the criminal courts.
- 5.6.4 Large scale complaints by IP owners of significant volumes of IP infringements of copyright only, or websites with major copyright infringements can be reported through the DGIP and KOMINFO system under the copyright law. This leads to site blocking. Examples are known about, although cases are not public. Some years ago, the music industry filed complaints about available pirated

<sup>31</sup> <https://www.doingbusiness.org/content/dam/doingBusiness/country/i/indonesia/IDN.pdf>

music links which they removed. More recently a complaint was actioned concerning a pirated movie website<sup>32</sup>. Although a no-fault site blocking or content link removal system can be effective for many infringements, it does not extend to trademark infringements, and it does not lead to any criminal action against the infringer. The lack of any actual cases against IP infringers is indicative of a non-deterrent criminal IP system.

## 5.7 Challenges and gaps in the current three systems

There are clearly legal gaps between Indonesia's rules and how other countries approach it. Some of the areas that are unclear are as follows.

- a. IP owners cannot compel release of data from ISPs/platforms to enable them to act against the merchant. ISPs/platforms view this as a data privacy risk. There is a new data privacy draft law in Parliament, so it is unclear whether there will be any exceptions for law enforcement purposes. The new Ministry of Trade rules in Regulation No. 50 of 2020 may help, but it will take time to know if that will be the case.
- b. Repeat infringement or gross infringement is treated no different from a single infringement. There are no requirements for ISPs/Platforms to have a three-strike rule, expel/blacklist the trader or deny access to services (e.g. payment systems) to repeat infringer traders or traders that sell high volumes of infringing products online.
- c. Infringers can just re-list or adopt a new identity, at least until the arrival of the new regulation on having a business license in 2019. It is not clear if this will lead to increased/more serious action from ISPs/platforms when they know it is the same infringer.
- d. The lack of civil ISP injunctions to help IP owners seek judicial guidance on new situations and recalcitrant ISPs/Platforms is a problem. It also means ISPs cannot seek non infringement declarations to protect themselves.
- e. The lack of clarity about whether the Trade law rules apply to or provide remedies to IP owners.
- f. The different definitions in the three laws and lack of consistency about which IP laws apply (especially the KOMINFO/DGIP no fault site blocking system does not apply to trademarks).
- g. Payments systems and advertising networks – it is not at all clear whether they have liability as supporting actors, for assisting counterfeit/pirated product sales online. It is unclear if they come under the various definitions of ISPs/Platforms.
- h. The legal remedies against ISPs/e-commerce platforms in the Trade Law, EIT Law and the Copyright Law are not the same (the Trademark law has no remedy). At present the laws refer to criminal, civil, and administrative remedies, which are too unclear and complicated. A single legal remedy is needed to solve IP owner and ISP/e-commerce platform disputes. Most countries choose the civil court system against ISPs/e-commerce platforms (not criminal or administrative). If the civil court system is chosen a Supreme Court regulation is needed to create an ISP injunction system – so ISPs/e-commerce platforms can be ordered to stop, take down, block or remove content/items as well as other legal remedies – damages, costs of taking action (if blocking is expensive). The civil courts can then decide complex disputes about knowledge, safe harbor etc. like they do in other

<sup>32</sup> <https://ipkomododragon.blogspot.com/2020/01/major-se-asian-piracy-site-shuts-and.html>

countries. Because these are IP disputes it would be best that they go to the Commercial Courts only since the judges are experts in IP law.

- i. The content blocking system operated by KOMINFO/DGIP needs to be faster, simpler, and more efficient as well as more effective at blocking. KOMINFO also needs more complex technical IT tools to target the content, not the URL (which can change overnight). In many cases infringers just domain hop and opened the next day with a new URL.
- j. The police need to bring some criminal copyright infringement cases against mass infringers to create a deterrent against future illegal acts. At present none take place. This requires cooperation between IP owners and government – for IP owners to file cases with confidence that they will be acted upon.

## 6. Major cases and precedents

There are several possible remedies for illegal IP violations on ISPs/platforms' systems; but they are not always available in every situation:

- a. Administrative action against the ISPs/platforms by a government department in the relevant Ministry responsible for the law. This will usually be for license revocation, fine or some similar sanction. A complaint would likely need to be filed at the relevant ministry. This might perhaps be an option if an ISP/Platform refuses to act on an IP owner complaint, to file a Complaint under the EIT law (But note the regulations say specific complaint procedures will be laid down in a future regulation).
- b. Civil action by a wronged party. Civil cases under the EIT and Trade law would have to be filed at the District court where the defendant is located. In the case of ISPs/platforms usually Jakarta. These are not the specialist IP courts unfortunately (a different section hears IP cases). We have not seen any civil case filed against an ISP/platform for IP violation to date. There is also no specific ISP injunction system, indeed preliminary injunctions in the District courts are not clearly available.
- c. Criminal action. This needs a complaint then a police investigation, the police must transfer the case to a prosecutor, and he files a case in the criminal courts. There are no reports of criminal IP cases against ISPs/platforms. Nor are there examples of cases against online traders (although the police did report one was under way several years ago against traders of illegal vehicle lubricants only; the case never appears to have proceeded to court). Complaints filed under the Copyright law to KOMINFO for site blocking are technically criminal violations. Several examples are known, although cases are not public. Some years ago, the music industry filed complaints about available pirated music links which they removed. More recently a complaint was actioned concerning a pirated movie website<sup>33</sup>. But no criminal case followed. Indeed, it is a major IP industry complaint that the criminal system suffers from corruption and is not widely used for any IP cases at all.

The reasons that there are no cases are as follows. First criminal IP cases are extremely rare in Indonesia. Criminal IP cases must be brought by the police or the IP Office PPNS investigation team. In practice they bring very few IP cases (less than 100 per year). They normally deal with trademark counterfeiting and copyright piracy cases. Of those very few go to criminal trial (maybe 5-10). We are not aware of any involving ecommerce.

Secondly civil cases for IP infringement number about 100 per year. Most (around 90%) are heard in the Commercial Courts and we normally see most of these decisions. We are not aware of any involving ecommerce. Lastly for the reasons above the ISP liability rules are not very clear and not enforced through the civil and criminal systems so this acts as a disincentive. For example, there is no system to obtain an injunction against an ISP.

Practically the best advice for Korean companies is that lawsuits will be rare. The main areas of concern will be for merchants to provide high quality genuine goods and observe platform requirements. Korean IP owners will need to actively use the platform takedown systems and take local IP advice on more complicated issues such as large scale or repeat offenders.

**Rouse**  
**August 2020**

<sup>33</sup> <https://ipkomododragon.blogspot.com/2020/01/major-se-asian-piracy-site-shuts-and.html>

Ministry in charge	Ministry of Communications & Informatics (KOMINFO)	Ministry of Trade	Ministry of Law and Human Rights Directorate of Intellectual Property (DGIP) + KOMINFO
<b>Law</b>	Electronic Information and Transactions Law (11 of 2008 as amended by law 19 of 2016) a.k.a. EIT law	Trade Law (7 of 2014)	Copyright Law (28 of 2014)
<b>Rules/Regs</b>	Government Regulation No. 71 of 2019 Regarding Implementation of Electronic System and Transactions  Circular 5 of 2016 - Limits and responsibility of platform providers and traders through trading electronic systems in the form of user generated content.	Regulation 80 of 2019 on Trading Through Electronic Systems  Regulation No. 50 of 2020 on Business Licensing, Advertising, Development, and Supervision of Businesses in Commerce through the Electronic Systems	Joint Ministry of Law and Human Rights and KOMINFO Regulation 14 of 2015 and 26 of 2015 (Implementation of Closing Down Content and/or a User's Right to Access over Copyright Infringement and/or Related Rights in an Electronic System)
<b>ISP defined</b>	Platforms & Electronic System providers	A. E-commerce operators = marketplaces, platforms B. Intermediary Service Provider = social media, hosting and search	No specific definition for ISP/platform, includes website or content that infringes Copyright.
<b>Requirements</b>	Regulation 71/2019 allows the government to block prohibited (illegal content); the Elucidation includes IP violations.  Circular 05/2016 covers user created content, incl. goods offers ISPs must - manage content - have terms with merchants - have complaints system - act on complaints - remove illegal content/links - act quickly Merchants must provide complete and correct information	Government Regulation 80/2019 and Ministerial Regulation 50/2020. ISPs must - remove illegal content/links - provide terms of use that users - comply with laws and regulations. - operate service for consumer protection law complaints, competent officers, and time frame - ensure e-adverts do not contravene laws	Complaint can be filed at DGIP for copyright infringement (Art. 3 Joint Regulation)
<b>Protected Content</b>	Negative User Generated content is defined in Circular 5/2016 to include IP violations; it cites all IP laws.  Regulation 71/2019 defines prohibited content and includes IP violations.	Regulation requires 'compliance with all laws' – so should include all IP laws	Copyright only

<p><b>Liability</b></p>	<p>Administrative liability – anyone can file complaint to the Ministry for breach of Regulation 71/2019 – against ISPs. But a further regulation (still in draft) is still required for the complaint procedure.</p> <p>Civil liability under Art 38 of EIT law – right to bring lawsuit for loss.</p> <p>Criminal Liability for transmitting negative content – is not clear under EIT law. Art 25 refers to IP protection, but the criminal provisions do not include Art 25.</p>	<p>Administrative liability (e.g. business license removal) for breach of Trade Law exists under Art 80 of regulation 80/2019.</p> <p>Civil remedies under Trade law limited to contract parties – merchant, ISP and consumer.</p> <p>Criminal remedies for prohibited goods are defined but include others made through a Presidential regulation (which is still in draft) and may by implication include IP violations.</p>	<p>Administrative site blocking by KOMINFO under Joint Regulation (Art. 13).</p> <p>Criminal action against infringers unclear?</p>
<p><b>Notes</b></p>	<p>There are two different parallel systems under the EIT Law. One under Regulation 71 allows the government to stop prohibited Content. The other under Circular 5 requires Ecommerce platforms to manage IP violations and IP holder complaint systems. The two systems are not connected.</p>	<p>The Trade Law does not specifically refer to IP.</p> <p>Regulation 80 obliges ISPs to remove illegal content which should include IP violations. This is aimed at the Consumer protection law principally.</p> <p>The new requirement is for merchants to have licenses and provide ID information to platforms. It is not clear if IP owners can obtain this data for legal actions.</p> <p>Regulation in effect for new platforms and new sellers. Pre-existing platforms and sellers have a maximum of 2 years up to 25 November 2021 to comply.</p>	<p>This is a no-fault copyright violation removal system which starts with a complaint under the criminal law to DGIP who can then seek Komnifo’s help to remove the content. Theoretically a criminal case can follow but in practice never does.</p>