

Implementation of TRIPs and Dynamics of Counterfeit Goods Trade in Southeast Asia: Regulations and Practices

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Abstract

Counterfeit goods refer to products that are illegally produced or distributed in violation of intellectual property rights (IPR), such as trademarks, designs, or patents. The trade-in counterfeit goods accounts for up to 10% of global trade and has impacts on global and local economies, including corporate losses, tax cuts, and barriers to innovation. This study uses neorealism theory to analyze the trade in counterfeit goods in Southeast Asia. The focus is on how countries prioritize domestic economic interests amidst pressures from the international system. Using a descriptive qualitative approach, this study explores the political, economic, and socio-cultural factors that support the trade in counterfeit goods, including the role of e-commerce and strategic relations with China. E-commerce accelerates the distribution of illegal goods, while China plays a major role as a producer. The results show that weak regional coordination, imbalances in state capabilities, and the ASEAN principle of non-intervention hinder the enforcement of IPR. To balance economic growth and IPR protection, innovative strategies are needed, such as strengthening national policies, cooperation between countries, and the use of technology in monitoring the trade in counterfeit goods.

Keywords: Counterfeit Goods; Intellectual Property Rights; Southeast Asia; Neorealism; TRIPs

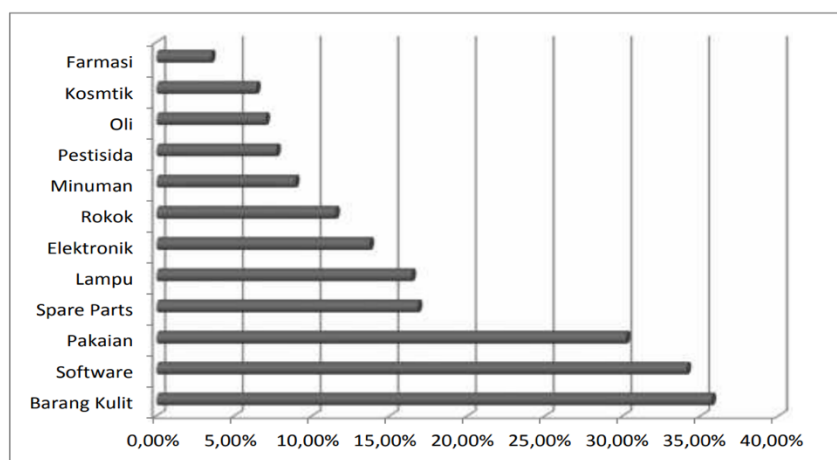
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INTRODUCTION

Counterfeiting has become a serious problem in global trade, with counterfeit goods now accounting for around 10% of total international trade (OECD & EUIPO, 2019). The report shows that the value of international trade in counterfeit and pirated goods reached USD 461 billion, while in the European Union, counterfeit imports reached USD 116 billion, or 5% of total EU imports. Smith & Thomas's (2021) research confirms that this phenomenon has not only spread across sectors but has also increased significantly in the last decade, posing a major challenge to manufacturers, brands, and governments worldwide.

In the Southeast Asian context, the trade in counterfeit goods is increasingly complex with the rise of e-commerce. Hernandez's (2021) study shows that countries such as Indonesia, Thailand, and Vietnam have experienced a surge in online counterfeit sales. A Rakuten survey (2020) revealed that the demand for cheap goods from global platforms has exacerbated the circulation of counterfeit products in the region. China plays a major role as the largest producer of counterfeit goods, which then enter Southeast Asia through formal and informal trade networks (Nguyen & Li, 2020). In some cases, limited supervision of digital transactions allows more counterfeit goods to circulate without strict controls.

The impact of counterfeiting spans a wide range of sectors, from luxury products such as clothing and watches to essential products such as medicines, food, and medical devices. In Indonesia, for example, the Food and Drug Supervisory Agency (BPOM, 2022) reported an increase in illegal pharmaceutical products that endanger public health. Meanwhile, in Vietnam and Thailand, the trade in counterfeit automotive parts has an impact on the safety of vehicle users (Chaudhry & Zimmerman, 2021). A study conducted by Buenastuti (2020) showed that around 30% of drugs circulating in the Southeast Asian market are counterfeit products, which not only harm genuine drug manufacturers but also endanger the lives of consumers.



Graph 1. Percentage of public willingness to buy counterfeit products
Source: LPEM UI 2019

In terms of regulation, many Southeast Asian countries still face challenges in enforcing IPR. A study by Zhang & Kim (2019) found that several countries, especially those still in the industrialization stage, do not yet have adequate legal infrastructure, resulting in inconsistent law enforcement. In addition, the collectivist culture in Asia often conflicts with the more individualistic principles of IPR protection (Chen & Cheung, 2021). A study by Nguyen & Li (2020) also revealed that compliance with international standards is still low in developing countries, with many informal practices hampering regulatory efforts.

As part of a global effort, the TRIPs agreement under the auspices of the World Trade Organization (WTO) aims to harmonize IPR protection standards. However, research by Thompson & Lee (2022) and Patel & Singh (2023) shows that the implementation of TRIPs still

faces obstacles, especially for developing countries that are burdened with technology licensing costs and access to patented products. May & Sell (2006) criticized TRIPs because it benefits developed countries that dominate IPR ownership while developing countries are forced to face high licensing costs.

In Southeast Asia, the circulation of counterfeit goods further emphasizes the major challenges in protecting IPR, especially with the rapid development of e-commerce accelerating the distribution of counterfeit products (Sugandi, 2022). Olivia & Widjaja's (2014) study shows that the lack of coordination between countries in the region has caused IPR enforcement policies to be inconsistent, creating loopholes for illegal trade.

Thailand, as one of the international trade centers in Southeast Asia, faces major challenges in reducing the circulation of counterfeit goods. Chaudhry & Zimmerman's (2021) study shows that although Thailand has strict IPR laws, weak law enforcement has led to high levels of counterfeit goods trade in large shopping malls such as MBK Center in Bangkok. The Philippines, on the other hand, has challenges in cracking down on the counterfeit drug trade, which, according to a WHO report (2020), accounts for nearly 20% of the total drugs in the local market.

In this context, this study aims to analyze the trade of counterfeit goods in Southeast Asia using a political economy approach. Drawing on neorealism theory, this study explores how countries in the region face the challenges of balancing economic growth with IPR protection. The main contribution of this study is to offer an in-depth analysis of the interrelationships between IPR regulation, the digital economy, and global trade dynamics while evaluating the effectiveness of IPR enforcement strategies in Southeast Asian countries.

Specifically, this study will discuss how the trade in counterfeit goods affects economic and social dynamics in Southeast Asia, examine the implementation of IPR regulations in various countries, and explore strategies that can be used to balance economic interests with IPR protection. Thus, this study not only provides theoretical insights but also practical policy recommendations for the government and related stakeholders in tackling the circulation of counterfeit goods more effectively.

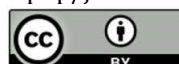
RESEARCH METHODS

This study uses a descriptive qualitative method to analyze the phenomenon of counterfeit goods trade in Southeast Asia through a neorealist perspective. This method was chosen because it is able to explore in depth the relationship between political, economic, and sociocultural factors and international dynamics that influence the phenomenon. This study focuses on collecting secondary data from various reliable sources, including international reports (OECD, UNODC, WTO), case studies of Southeast Asian countries, academic journals, and policy literature related to Intellectual Property Rights (IPR). The data analysis technique used is content analysis of relevant documents and reports, with steps in the form of identifying themes, categorizing information, and interpreting data in accordance with the neorealist theoretical framework.

This study also uses a comparative approach to compare IPR policies, capacities, and enforcement efforts in Southeast Asian countries, such as Singapore, Indonesia, Thailand, and Vietnam. This approach aims to understand how differences in state capabilities and international relations influence responses to counterfeit trade. In doing so, this study seeks to provide a comprehensive picture of the structural challenges and intervention opportunities that exist in addressing the issue of counterfeit trade in the region.

RESULTS AND DISCUSSION

From a neorealist perspective, counterfeit trade in Southeast Asia can be analyzed through the dynamics of the region's political, economic, and socio-cultural structures. The anarchic international system and national interests are the main priorities of Southeast Asian countries, and they create conditions that support the popularity of counterfeit trade. This situation is exacerbated by weak enforcement of cross-border regulations, dependence on strategic trade relations with China, and the rapid development of the digital economy.



Political Factors

The trade-in counterfeit goods in Southeast Asia cannot be separated from the complex dynamics of regional politics. From a neorealist perspective, Southeast Asian countries face a dilemma between domestic economic interests and the enforcement of international regulations. The anarchic international system requires countries to maintain domestic stability so that many policies are more oriented towards economic growth than the enforcement of Intellectual Property Rights (IPR). Although the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC) has existed since 1996 to regulate IPR cooperation, countries in the region still have different regulations, making collective efforts less than optimal.

In addition, the ASEAN Way principle, which emphasizes non-interference and consensus, makes countries more cautious in interfering with the internal regulations of other countries, including in the case of counterfeit goods trade. As a result, there is fragmentation of policies in handling IPR violations. Some countries, such as Singapore, have a more stringent monitoring system, while others, such as Cambodia and Laos, still face limitations in legal and monitoring capacity.

Singapore is an example of an ASEAN country that has successfully implemented strict IPR regulations. Through the Intellectual Property Office of Singapore (IPOS), the country has developed an integrated IPR protection system, including the application of severe penalties for IPR violators, as well as the use of technology to detect counterfeit goods. As one of the world's largest trading centers, Singapore also enforces strict controls at ports and airports, working with the World Customs Organization to prevent the smuggling of counterfeit goods. In contrast, Indonesia and Vietnam face challenges in implementing regulations. Indonesia, for example, has fairly strong IPR regulations, but weak law enforcement and high levels of corruption are major obstacles to eradicating the circulation of counterfeit goods. In Vietnam, the rapidly growing textile industry actually encourages the production of counterfeit goods, as it is seen as an economic opportunity for small and medium industry players.

The balance of power strategy explained by Waltz (1979) is also seen in ASEAN's trade relations with China. China is the world's leading producer of counterfeit goods, with many illegal products entering Southeast Asia through formal and informal trade channels (OECD & EUIPO, 2019). In 2020, ASEAN even became China's largest trading partner, surpassing the European Union (Redfearn, 2022). Countries such as Thailand, Malaysia, and Indonesia receive many imported goods from China, including counterfeit goods that then enter the domestic market or are forwarded to other countries.

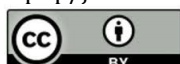
Transit countries such as Singapore and the Philippines play a significant role in distributing counterfeit goods to the global market. Singapore is the largest transshipment hub in the region, with many counterfeit goods being shipped to Europe and America through its ports. Meanwhile, Thailand has illegal markets such as Sampeng Market and Pratunam Market, which are the distribution centers of counterfeit goods in Southeast Asia.

To address this issue, ASEAN countries need to enhance cross-border cooperation and tighten supervision in Free Trade Zones (FTZs), which are often used to distribute counterfeit goods. In addition, more effective mechanisms are needed to enforce IPR regulations, including the use of technologies such as blockchain and AI to monitor supply chains and prevent the circulation of illegal goods more accurately.

In addition, ASEAN countries need to consider harmonizing IPR regulations with international standards such as the TRIPs Agreement under the World Trade Organization (WTO). By improving policy coordination on a global scale, ASEAN countries can suppress the production and distribution of counterfeit goods more effectively. Concrete steps are also needed in the form of economic and trade sanctions for countries or entities proven to facilitate the production or distribution of counterfeit goods.

Economic Factors

In addition to political factors, the trade in counterfeit goods is also driven by economic considerations. Countries in Southeast Asia have a high dependence on international trade, so



overly strict regulations can risk hampering investment and economic growth. Many countries in the region see the trade in counterfeit goods as an informal source of income, especially for people with low incomes. With prices that are lower and in high demand, counterfeit goods remain the primary choice for most consumers.

The role of Free Trade Zones (FTZs) is also of concern in this context. FTZs are designed to increase trade and investment by reducing import duty regulations, but weaknesses in oversight systems mean they are often exploited by criminal networks to smuggle counterfeit goods (UNODC, 2019). Thailand and Malaysia are hubs for repackaging counterfeit goods before being shipped to the global market, while Indonesia has a large domestic market with many counterfeit goods sold through retail and e-commerce networks.

The rise of e-commerce in Southeast Asia has further accelerated the distribution of counterfeit goods. Shopee, Lazada, Tokopedia, and Bukalapak are the main platforms used to sell counterfeit goods online. Data from SimilarWeb (2020) shows that Shopee has more than 281 million average visits per month, making it the largest e-commerce platform in Southeast Asia. With weak supervision, many sellers use this platform to sell counterfeit products without significant obstacles.

In addition, the OECD/EUIPO map shows that Southeast Asia is not only a market but also a major transit for global counterfeit goods. Countries such as Singapore, Malaysia, and Indonesia play key roles in distributing counterfeit products to international markets.

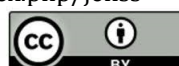


Figure 1. Main producers and transit points for fake goods

Source : (Illicit Trade Group, 2023)



Figure 2. Top 10 Most Visited E-Commerce Websites in Southeast Asia.



To address this problem, ASEAN must strengthen the supervision of digital transactions, apply a stricter product verification system, and encourage collaboration with e-commerce platforms to detect and remove counterfeit goods from the sales list. In addition, tax regulations for products sold on e-commerce need to be tightened to ensure that the products sold are in accordance with legal standards. There needs to be an investment in increasing consumer awareness through education about the risks of using counterfeit goods, especially in the pharmaceuticals and health products sector. The government also needs to strengthen cooperation with technology companies to create counterfeit product detection algorithms in the online marketplace.

Socio-Cultural Factors

Apart from political and economic aspects, socio-cultural factors also play a role in the high demand for counterfeit goods in Southeast Asia. Social status and economic pressure encourage consumers to seek cheaper alternatives to genuine products, especially in the sectors of fashion, cosmetics, and electronics. In some societies, counterfeit goods are considered a symbol of status despite being of lower quality (Mayasari et al., 2022).

In addition, many people in this area still have low awareness of the risks of counterfeit goods, both in terms of health and safety. For example, counterfeit drugs, which are increasing in countries such as Indonesia and the Philippines, can cause serious impacts on public health, but demand remains high due to their lower price compared to the original product (UNODC, 2019).

The role of social media also cannot be ignored. Many counterfeit goods sellers use Facebook, Instagram, and TikTok to market their products without strict supervision. Influencers and digital advertisements often promote counterfeit goods without realizing the negative impacts, so that people are increasingly accustomed to consuming these illegal goods.

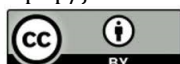
To reduce the demand for counterfeit goods, a broader public awareness campaign is needed. The government and the private sector can work together to implement digital certification for genuine products, as well as strengthen regulations against the promotion of illegal products on social media and e-commerce. In addition, a system of sanctions for influencers or parties who promote counterfeit products can also be an alternative to reduce their circulation online.

CONCLUSION

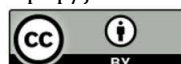
The trade-in counterfeit goods in Southeast Asia presents major challenges in terms of politics, economy, and socio-culture. Lack of harmonization of IPR policies at the ASEAN level, weak law enforcement, and increasing digital trade without strict supervision are major factors in the proliferation of counterfeit goods. Countries like Singapore have demonstrated effectiveness in implementing strong IPR regulations, whereas Indonesia and Vietnam still face structural challenges in enforcement. The solutions discussed in this study highlight the importance of cross-border cooperation, strengthening e-commerce regulations, and utilizing technologies such as blockchain and AI in monitoring the supply chain of counterfeit goods. However, the main challenge in implementing this solution is the economic and capability gap between ASEAN countries, which hinders the adoption of uniform policies. To ensure the effectiveness of this strategy, ASEAN countries need to take concrete steps in strengthening regional coordination, provide incentives for e-commerce platforms to remove counterfeit goods, and raise public awareness of the negative impacts of counterfeit goods on the economy and health. With a more integrated and technology-based approach, it is hoped that the trade in counterfeit goods in the Southeast Asia region can be suppressed without hampering domestic economic growth.

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