



## Legal Analysis of Marketing Using Photos of Other People's Products Perspective of Fatwa Number 1 Of 2005 Concerning Protection of Intellectual Property Rights (Shopee Case Study)

Dinda Febrianti Santoso<sup>1</sup>, Tetty Marlina Tarigan<sup>2</sup>

*Universitas Islam Negeri Sumatera Utara*

Email: Dinda24172120@uinsu.ac.id, tetytarlina@uinsu.ac.id

**Abstract-** This study aims to analyze the legality of marketing using photos of products owned by others from the perspective of MUI Fatwa No. 1 of 2005 on Intellectual Property Rights Protection. The focus is on marketing activities conducted on the Shopee e-commerce platform. The research involves observing several seller accounts on Shopee that use photos of other sellers' products without permission. This practice raises questions about its validity according to Islamic law as regulated by the fatwa related to intellectual property rights. To achieve this objective, the author employed a conceptual approach and field case studies. The results indicate that marketing using other people's product photos without permission violates the principles of intellectual property rights protection as stipulated in MUI Fatwa No. 1 of 2005. Although such practices may be considered valid in terms of the transaction, they fall into the category of fasid (defective) sales, and the perpetrators are deemed sinful.

**Keywords:** Shopee, marketing, product photos, intellectual property rights, Fatwa No. 1 of 2005

### I. INTRODUCTION

In Indonesia, the legal and economic landscape has been significantly influenced by the rapid growth of e-commerce platforms such as Shopee. This growth has facilitated easier and broader access to goods and services, transforming consumer behavior and overall business practices. However, alongside this development, there has been a notable increase in the unauthorized use of product photos as a marketing strategy. In today's era, interactions among individuals are dynamic, evolving with time, place, and human relationships to meet their needs. This dynamism necessitates legal certainty as a form of submission to Allah SWT. (Erick et al., 2019) Islam views individuals as part of society and recognizes humans as inherently social beings. Individuals require others in their lives, just as society needs individuals to sustain its existence. Law and economics are inseparable, complementing each other like two sides of a coin. (Mayce et al., 2023) Economic law studies laws related to economics in an interdisciplinary and multidimensional manner. According to Islamic law, muamalah regulates activities related to human interaction to meet daily life needs. Business growth in Indonesia is rapid, driven by increasingly modern technology. Many businesspeople, from teenagers to the elderly, compete to develop their businesses creatively and innovatively using technology as a business tool. Business operations are governed to ensure smooth, orderly, and safe practices, avoiding harm to any party due to business activities. (Fitriano, 2011)

In this context, online shopping applications like Shopee have become highly popular in Medan city due to their ease of use for transactions and attractive promotional offers.

Shopee is an e-commerce platform offering various products, including the sale of photos of other people's products, which is the focus of this research. Intellectual Property Rights or also known as Intellectual Property Rights (IPR) are defined as the result of thought that produces a product or process that is useful for humans. (Safitri & Izziyana, 2020) The World Intellectual Property Organization (WIPO) provides the equivalent of Intellectual Property as the creation of mind. Article 27 (2) of the 1948 World Declaration of Human Rights states that "Everyone has the right to obtain the protection of moral and material interests derived from the production of scientific and artistic literature in terms of ideas as a creator." (Suadi et al., 2021a) In this case, intellectual property law protects intellectual works produced by creators, designers or investors which are exploited by other parties without permission, protects brands owned by a person or company that represent the reputation or quality of goods or services, protects information that is valued. commercial or business, protects works that arise or are born from human intellectuals which are formed in works of literature, art, science and inventions. In the end, it can be concluded that intellectual property is the right to economically enjoy the results of intellectual creativity. (Rahmawati et al., 2023) Allah SWT says in the Qur'an Surah As Shua'ara Verse 183:

وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تَعْنُوا فِي الْأَرْضِ مُفْسِدِينَ

. you are rampant on the face of the earth by causing mischief" (QS. al-Syu'ara [26]: 183).

The opinions of the ulama during the VII/MUI/5/2005 National Conference regarding creation, copyright, rights and benefits, namely:

الْجُمُحُورُ مِنَ الْمَالِكِيَّةِ وَالشَّافِعِيَّةِ وَالْحَنَابِلَةِ عَلَى أَنَّهَا (الْإِنْتِاجِ الْفِكْرِيِّ الْمُبْتَكَّرِ وَالْمَنَافِعِ أَمْوَالٌ مُتَقَوِّمَةٌ فِي

ذَاتِهَا كَالْأَعْيَانِ سَوَاءٌ بِسَوَاءٍ إِذَا كَانَ مُبَاحًا لِالِانْتِفَاعِ شَرْعًا.

"The majority of scholars from the Maliki, Shafi'i and Hanbali schools of thought are of the opinion that copyright over original and useful works is classified as valuable assets like objects if they can be used legally.

According to Law Number 28 of 2014 concerning Copyright article 1 paragraph 1, Copyright is the exclusive right of the creator which arises automatically based on declarative principles after a work is realized in real form without reducing restrictions in accordance with the provisions of statutory regulations. Indonesia has experienced many changes in the law regarding copyright. (Ridwan, 2021) MUI fatwa provisions no. 1/MUNAS VII/MUI/5/2005 concerning the protection of intellectual property rights, namely, intellectual property rights are seen as *huquq maliyyah* (property rights) which receive legal protection (*ma'sun*) as well as *mal* (wealth), the legal protection given to intellectual property rights, namely which does not conflict with Islamic law, and the provisions of the MUI fatwa state that any form of violation of intellectual property rights is unlawful without permission from the rights owner. (Prawira, 2020) These legal provisions are not very clear if it is considered unlawful to reproduce a work such as a legal book without permission. The legal provisions should explain more about the reproduction of a creation such as a book without permission and without commercializing it. (Kamaluddin, 2022)

The objects of sale and purchase or goods sold are goods without the owner's permission. As in the rules of *fiqh*.

"No one may take legal action on another's property without the permission of the owner of the property."

"You are not permitted to carry out legal actions over (using) other people's property rights" without their permission. (Rusmawati, 2015)

From the background of the problem above, there are several things that need to be formulated as the main problem, namely, Marketing practices at Shopee that use photos of other people's products without permission are quite common. Sellers often engage in this practice to attract potential buyers by utilizing high-quality images that do not belong to them. Some factors that contribute to this behavior include a lack of resources to produce professional product photos, a desire to increase the visual appeal of their product listings, and competitive pressure to stand out among many other sellers. Analysis of MUI Fatwa No. 1/MUNAS VII/MUI/5/2005 shows that this kind of marketing practice violates the principles of protecting intellectual property rights regulated in the fatwa. Even though this transaction can be considered legal, it falls into the category of fake (corrupt) buying and selling and is morally reprehensible, so the perpetrator is considered a sinner according to Islamic law.(Yuswar et al., 2023)

## **II. METHOD**

This thesis adopts an empirical juridical research approach, emphasizing direct experience, observation, and factual data collection. It integrates legal materials with primary data to examine the legality of using photos of others' products on the Shopee platform. The research approach focuses on observing the practice of marketing using photos of other people's products on Shopee.(Hidayah, 2019) The study centers on sellers in Medan City who engage in this practice. Primary data includes interviews with these sellers, conducted through face-to-face meetings or digital communication tools. Legal materials, such as Law No. 28 of 2014 concerning Copyright, provide the legal framework for analyzing issues related to intellectual property rights. Secondary data sources, including books, articles, journals, and internet sources, supplement the theoretical context.(Suadi et al., 2021b) Data collection procedures involved interviewing members of the Shopee seller community in Medan City to gather firsthand insights into their practices and perspectives regarding photo usage. Additionally, documentation studies were conducted to gather evidence such as screenshots and product listings on Shopee, aiding in understanding the extent and nature of unauthorized photo usage. By combining legal analysis with empirical findings, this research aims to offer a comprehensive understanding of the legal ramifications of using photos of others' products on Shopee, particularly under Indonesian copyright law.(Rikmadani, 2021)

## **III. RESULT AND DISCUSSION**

### **a. Marketing Practices Using photos of other people's products**

Based on the observations and interviews conducted, it was found that approximately 30% of sellers engaged in the practice of using photos of other people's products on Shopee without permission. This indicates a significant prevalence of this marketing strategy among sellers, particularly those new to the platform aiming to quickly boost their sales by leveraging attractive product visuals.(Darmayanti et al., 2022)

Shopee enforces a strict policy against the use of photos or videos of products belonging to other sellers without consent. When violations are reported, Shopee takes action by removing the infringing products and may also block the seller's account. Specific cases have shown that Shopee has removed hundreds of products and blocked multiple accounts due to violations related to unauthorized use of product photos. These actions illustrate the severity of consequences for sellers who do not comply with Shopee's policies, underscoring the platform's commitment to protecting intellectual property rights and maintaining trust among users.(Wicaksana Prakasa & Supriyono, 2020)

The marketing practice of using photos of other people's products on Shopee not only violates copyright laws but also has negative impacts on sellers, buyers, and the platform itself. Sellers risk facing sanctions such as account suspension or legal action, buyers may receive products that differ from what was advertised, and Shopee could potentially lose trust and credibility among its user base. These impacts highlight the importance of adhering to

ethical and legal standards in e-commerce marketing practices to foster a fair and trustworthy online marketplace.(Laksana, 2024).

#### **b. Factors that cause the use of other people's product photos**

There are several factors that can cause marketing practices using photos of other people's products on Shopee, including:

Lack of knowledge about copyright. Many sellers don't know that using photos of other people's products without permission is a copyright violation. Desire to increase sales quickly. New sellers who want to quickly increase product sales often use photos of other people's products with the assumption that quality product photos will attract more buyers' attention.(Nur Hayati, 2021)

Ease of getting product photos. Product photos from other sellers can easily be found on the internet, so sellers don't need to spend money or effort to create their own product photos.

##### **a. Lack of knowledge about copyright**

Copyright is the exclusive right owned by the creator of a work to publish or reproduce his work or give permission to do so. Copyright applies to a variety of works, including photographic works.(Anugrah et al., 2023)

Sellers who use photos of other people's products without permission are violating the copyright of the creator of the photo. This can result in sanctions by the photo owner, including legal action.

##### **b. Desire to increase sales quickly**

New sellers who want to quickly increase product sales often use photos of other people's products with the assumption that quality product photos will attract more buyers' attention.(Anjani & Santoso, 2018)

This is true, quality product photos can increase the product's chances of being sold. However, using photos of other people's products without permission is unethical and can cause legal problems.

##### **c. Ease of getting product photos**

Product photos from other sellers can easily be found on the internet, so sellers don't need to spend money or effort to create their own product photos.

This makes things easier for sellers, but it can also cause legal problems. Sellers must be careful when using product photos from the internet, make sure that the photos do not violate copyright.(Purba et al., 2023). To avoid the marketing practice of using photos of other people's products on Shopee, sellers must understand copyright and the importance of making their own product photos. Sellers must also be careful when using product photos from the internet, make sure that the photos do not violate copyright.(Dianta, 2023).

#### **c. Shopee's response to the problem of using other people's photos.**

Shopee provides strict sanctions for fraudulent sellers. Some examples of these sanctions are penalties, where Shopee will impose penalties on sellers who are proven to have committed violations that harm consumers. In addition, Shopee strictly monitors the quality of products sold at Shopee Mall, although fraudulent acts by sellers can still occur and will be a serious concern for Shopee. Shopee also has a policy to assist consumers in the process of returning goods if a problem occurs, by discussing the matter and providing appropriate solutions. Shopee has the right to check and impose sanctions on sellers, including freezing or closing seller accounts either temporarily or permanently. Other policies include imposing penalties on sellers who commit violations, such as using third-party software or services to increase engagement. Content that is indicated to violate or does not comply

with the values and guidelines set out in the Shopee Video community guidelines can also be removed or blocked.(Fista et al., 2023).

#### **d. Analysis of the MUI Fatwa on marketing using other people's photos**

MUI Fatwa Number 1/Munas VII/MUI/5/2005 concerning Protection of Intellectual Property Rights (IPR) states that violation of IPR is tyrannical and the law is haram.(Laksana, 2024)

In the marketing practice of using photos of other people's products on Shopee, sellers use photos of other people's products without permission. This is a violation of the photo creator's copyright.(Rikmadani, 2021)

Based on the MUI fatwa, the marketing practice of using photos of other people's products on Shopee is haram. This is because this practice has harmed photo creators and created injustice.(Marcelia, 2023)

The following is an analysis of the MUI fatwa regarding marketing practices using photos of other people's products on Shopee:

##### **a. Element of cruelty**

In the marketing practice of using photos of other people's products on Shopee, the seller has taken rights that do not belong to him. This right is the copyright of the creator of the photo. Therefore, this practice can be categorized as injustice.

##### **b. Elements of injustice**

In the marketing practice of using photos of other people's products on Shopee, the seller has made a profit without providing fair compensation to the creator of the photo. This is a form of injustice.(Yuswar et al., 2023)

##### **c. Elements of copyright infringement**

In the marketing practice of using photos of other people's products on Shopee, the seller has violated the copyright of the photo creator. Copyright is the exclusive right owned by the creator of a work to publish or reproduce his work or give permission to do so.

Therefore, the marketing practice of using photos of other people's products on Shopee is haram and can be subject to sanctions by the photo owner, including legal action.(Prawira, 2020). To avoid the marketing practice of using photos of other people's products on Shopee, sellers must understand the MUI fatwa and comply with it. Sellers must ask permission from the photo creator before using the photo to market their products.(Hidayah, 2019)

#### **IV. CONCLUSION**

The research findings highlight that using photos of other people's products on Shopee as a marketing strategy constitutes a violation of copyright laws. This practice is predominantly adopted by new sellers seeking rapid sales growth, believing that high-quality product visuals attract more buyers and enhance sales opportunities. Factors contributing to this practice include a lack of awareness about copyright laws, the urge to expedite sales, and the accessibility of product photos.(Mayce et al., 2023)

In accordance with MUI Fatwa Number 1/Munas VII/MUI/5/2005 on the Protection of Intellectual Property Rights (IPR), using photos of other people's products on Shopee is considered haram (forbidden) in Islam due to its detrimental impact on the creators of the photos, leading to injustice and ethical concerns.(Safitri & Izziyana, 2020)

These findings underscore the need for sellers on Shopee and similar platforms to adhere strictly to copyright laws and ethical standards in marketing practices. Awareness-raising efforts and adherence to legal guidelines are crucial to ensuring a fair and respectful digital marketplace environment.(Rahmawati et al., 2023)

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