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Strict Liability of Marketplace Platforms for Consumer Losses Due to the Circulation of Illegal Goods

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ABSTRACT

This article examines the strict liability of marketplace platforms for consumer losses arising from the circulation of illegal goods in electronic transactions. The study uses normative legal research with statutory, conceptual, and prescriptive approaches to consumer protection law, electronic information law, electronic commerce regulations, and platform governance literature. Existing Indonesian rules still rely on fragmented consumer-protection, electronic-commerce, and electronic-system duties, while consumers often face difficulty identifying sellers, proving platform fault, and obtaining timely recovery. The article finds that the relationship between marketplace platforms, sellers, and consumers is not a single ordinary sale contract, but a layered electronic transaction consisting of a consumer-seller sale, a platform-seller intermediation agreement, and a platform-consumer service relationship. This legal configuration makes the platform more than a passive intermediary when it designs the transaction environment, controls seller access, processes payment, ranks listings, stores transaction data, and provides complaint mechanisms. The strict liability principle is therefore justified when illegal goods circulate through a marketplace system and cause consumer losses, especially where the platform failed to prevent, detect, remove, or remedy prohibited products. The article proposes a qualified strict liability model based on platform control, risk creation, statutory duty, causation, and remedial capacity. It concludes that strict liability should strengthen consumer recovery without eliminating the seller's primary responsibility or turning platform responsibility into unlimited liability.

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1. Introduction

Marketplace platforms have become a dominant infrastructure for consumer transactions because they allow sellers and buyers to meet, contract, pay, complain, and review goods within a single digital environment. This development changes the traditional structure of consumer protection. In conventional trade, the consumer normally identifies the merchant, examines the goods, and directs claims to the shop or producer. In marketplace transactions, however, the consumer often relies on the platform brand, platform search results, platform payment system, platform escrow service, platform rating mechanism, and platform complaint channel.[1] The legal question is therefore no longer limited to whether the seller breached the sale contract, but whether the platform that organized the transaction environment must also bear responsibility when illegal goods circulate and cause consumer losses.[2]

The circulation of illegal goods in electronic commerce may include counterfeit products, unsafe cosmetics, unlicensed medicines, food without distribution authorization, electronic devices that do not meet safety standards, products infringing intellectual property rights, prohibited weapons, or other goods whose sale is restricted by statute. Illegal goods harm consumers in at least three ways. First, consumers suffer economic loss because the goods received do not correspond to lawful and expected products. Second, consumers may suffer health, safety, or privacy risks when products contain dangerous substances or are not fit for use. Third, illegal goods undermine market trust because consumers cannot effectively verify the legality of every listing before purchase.[3]

Official Indonesian data strengthen the practical urgency of this problem. BPOM reported findings of illegal and/or dangerous cosmetics worth more than Rp8.91 billion during the October-November 2024 supervision period, and later reported Rp31.7 billion of illegal cosmetics in early 2025, consisting of 205,133 pieces and 4,334 item variants from 91 brands, with many products promoted virally through online channels. At the same time, Ministry of Trade policy materials show that the scale of Indonesian electronic commerce continues to expand rapidly, so unlawful listings in marketplace systems can generate mass consumer harm rather than isolated contractual disputes.[4]

Indonesian consumer protection law already recognizes that consumers have rights to comfort, security, safety, correct information, compensation, and dispute resolution. Business actors are prohibited from producing or trading goods that do not comply with required standards, labels, quality, composition, net quantity, instructions, or lawful promises. When consumers suffer losses because of goods or services traded by business actors, the law provides a basis for compensation. These provisions are important for marketplace transactions because illegal goods usually enter the consumer market through the acts of sellers, but the transaction is made possible and scalable through digital infrastructure.[5]

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[1] Van Loo, "Digital Market Perfection."

[2] Schulte-Nölke et al., "The Rise of the Platform Economy: A New Challenge for EU Consumer Law?" Edited by Christoph Busch; Pradana, "Klasifikasi Bisnis E-Commerce di Indonesia."

[3] Law Number 8 of 1999 concerning Consumer Protection, arts. 4, 7, 8, and 19; Karolina, Priyanto, and Sumadi, "Perlindungan Hukum terhadap Konsumen Pengguna Kosmetik Berbahaya."

[4] Badan Pengawas Obat dan Makanan, "BPOM Temukan Peredaran Kosmetik Ilegal dari 4 Wilayah di Indonesia Senilai Lebih Dari Rp8,91 Miliar"; Badan Pengawas Obat dan Makanan, "BPOM Intensifkan Pengawasan, Rp31,7 Miliar Kosmetik Ilegal Ditemukan, Influencer Diminta Hati-Hati dalam Promosi"; Kementerian Perdagangan Republik Indonesia, *Kinerja Perdagangan Melalui Sistem Elektronik (PMSE) Indonesia Tahun 2025*.

[5] Law Number 8 of 1999 concerning Consumer Protection, arts. 4, 7, 8, and 19; Sudharma, Adi, and Budiartha. "Perlindungan Hukum terhadap Konsumen dalam Transaksi Jual Beli Online."

The electronic transaction framework reinforces this position. Electronic system operators are required to operate reliable, secure, and responsible electronic systems. Trading through electronic systems is also subject to obligations concerning identity, information, business licensing, consumer complaints, supervision, and compliance with restrictions on goods and services. In this regulatory setting, a marketplace platform cannot be treated as a neutral notice board in all circumstances. Its legal status depends on what it does: whether it merely hosts information, or whether it actively structures the transaction, benefits economically from each sale, controls sellers, manages payment, stores data, and provides dispute mechanisms.[6]

The central issue of this article is the proper construction of strict liability for marketplace platforms. Strict liability does not mean that a platform is automatically liable for every unlawful act committed by every seller. It means that, where the law imposes a duty on a business actor or electronic system operator to prevent consumer harm, the consumer should not be forced to prove the platform's subjective fault in every case. The consumer should be able to rely on the platform's objective role, control, statutory duty, and causal contribution to the harmful electronic transaction.[7]

This issue is urgent because marketplace platforms create a scale of risk that individual consumers cannot control. A single illegal seller may reach thousands of consumers through search ranking, recommendation systems, advertising, affiliate links, flash sales, livestream commerce, and cross-border fulfillment. Platform governance literature shows that private digital intermediaries increasingly perform regulatory functions: they set rules, monitor compliance, suspend accounts, design incentives, and resolve disputes. When platforms perform these functions, their responsibility must be analyzed not only as contractual service providers but also as risk organizers in consumer markets.[8]

Previous studies have discussed intermediary liability, consumer protection in electronic commerce, and online platform governance. However, the specific problem of strict liability for consumer losses caused by illegal goods requires sharper normative formulation. The research gap lies in determining when a marketplace platform should remain a limited intermediary and when it should be treated as a responsible electronic system operator whose controlled marketplace environment triggers strict liability. This article answers two research questions: first, how should the relationship between marketplace platforms, sellers, and consumers be legally qualified in electronic transactions? Second, how should the strict liability principle be applied to electronic system operators regarding the sale of illegal goods?[9]

The objective of this article is to formulate a balanced model of platform responsibility. The model must protect consumers without eliminating the seller's primary responsibility and without imposing unlimited liability on platforms. The article argues that strict liability is justified where five elements are present: the platform provides the transaction infrastructure, the goods are illegal under applicable law, the consumer suffers loss, the platform has control or remedial capacity, and there is a causal connection between the platform-based transaction

[6] Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions; Renouw, *Perlindungan Hukum E-Commerce: Perlindungan Hukum Pelaku Usaha dan Konsumen E-Commerce di Indonesia, Singapura, dan Australia.*

[7] Government Regulation Number 80 of 2019 concerning Trade through Electronic Systems; Sinaga, Anita, and Sulisrudatin, "Pelaksanaan Perlindungan Konsumen di Indonesia."

[8] Van Loo, "The New Gatekeepers: Private Firms as Public Enforcers."

[9] Cauffman and Goanta, "A New Order: The Digital Services Act and Consumer Protection"; Pratama and Purwanti, "Tanggung Jawab Hukum Pelaku Usaha *Marketplace* terhadap Konsumen dalam Transaksi Elektronik."

and the consumer's loss. This construction places consumer recovery at the center while preserving legal certainty for digital commerce.[10]

1.1 Concept and Theory

The theoretical framework of this article rests on consumer protection theory, strict liability, platform governance, and electronic transaction law. Consumer protection theory begins from the recognition that consumers are structurally weaker than business actors because of information asymmetry, limited bargaining power, and limited capacity to verify product legality. In digital markets, this asymmetry becomes more complex because consumers interact with sellers through interface design, algorithmic ranking, ratings, reviews, payment systems, and platform assurances. The consumer's reliance is therefore directed not only to the seller but also to the marketplace environment.[11]

Strict liability is a legal technique for allocating risk to the party best positioned to prevent, control, insure, or distribute that risk. In consumer protection, strict liability is used to avoid excessive evidentiary burdens on consumers. A consumer harmed by illegal goods often cannot prove the internal fault of a platform, the identity of a foreign seller, the route of distribution, or the algorithmic reasons why the product appeared in search results. If liability depends only on proving negligence, consumer remedies may become illusory. Strict liability therefore shifts the inquiry from subjective blame to objective responsibility.[12]

Platform governance theory explains why this shift is normatively plausible. Marketplace platforms are not ordinary landlords of digital space. They design admission rules for sellers, determine visibility, set community standards, process payment, collect fees, store transaction records, operate rating systems, and remove prohibited listings. These functions are regulatory in nature because they determine which goods can enter the market and how consumers encounter them. The more a platform controls the transaction architecture, the weaker the argument that it is merely a passive intermediary.[13]

At the same time, platform liability must remain bounded. Intermediary liability regimes in various jurisdictions distinguish between passive hosting, actual knowledge, notice-and-action, seller traceability, and proactive duties for systemic risks. This distinction is useful for Indonesian law because a marketplace should not be liable simply because it exists. Liability should arise when the platform's legally relevant role connects it to the illegal goods and the consumer loss. Thus, strict liability should be qualified by control, statutory duty, causation, and remedial ability.[14]

The relationship among those concepts can be summarized in the following framework. Consumer protection theory identifies the vulnerable position of consumers; strict liability allocates risk to the party best able to control it; platform governance explains the platform's regulatory role; and electronic transaction law supplies the statutory duty of reliable and responsible system operation.[15]

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[10] Frosio, "Reforming Intermediary Liability in the Platform Economy: A European Digital Single Market Strategy."

[11] Helberger, Borgesius, and Reyna, "The Perfect Match? A Closer Look at the Relationship between EU Consumer Law and Data Protection Law"; Rongiyati, "Pelindungan Konsumen dalam Transaksi Dagang Melalui Sistem Elektronik (Consumer Protection in E-Commerce).

[12] Shidarta, *Hukum Perlindungan Konsumen Indonesia*.

[13] Gorwa, "What is Platform Governance?"

[14] Buiten, "The Digital Services Act: From Intermediary Liability to Platform Regulation."

[15] Novita, Dhian, and Santoso, "Urgensi Pembaharuan Regulasi Perlindungan Konsumen di Era Bisnis Digital"; Renouw, *Perlindungan Hukum E-Commerce: Perlindungan Hukum Pelaku Usaha dan Konsumen E-Commerce di*

Table 1. Conceptual Framework for Qualified Strict Liability of Marketplace Platforms

Theory / concept	Function in this article	Contribution to the qualified strict liability model
Consumer protection theory	Explains information asymmetry, weak bargaining power, and consumer reliance on platform assurances.	Justifies shifting unrealistic evidentiary burdens away from consumers.
Strict liability	Allocates risk to the party that can prevent, insure, distribute, and remedy the harm most efficiently.	Supports consumer-facing responsibility without requiring proof of subjective platform fault.
Platform governance	Shows that platforms regulate seller admission, visibility, payment, ratings, complaints, and sanctions.	Links liability to the platform's control over the transaction architecture.
Electronic transaction law	Requires reliable, secure, accountable, and responsible electronic system operation.	Provides the statutory foundation for due diligence, complaint handling, and remedial duties.
Qualified liability output	Combines illegality, loss, platform connection, control capacity, and causation.	Prevents both passive-host immunity and unlimited platform liability.

Source: Author's normative construction, 2026.

The concept of illegal goods in this article refers to goods whose sale is prohibited, restricted, unauthorized, unsafe, counterfeit, misleading, or non-compliant with mandatory standards. The illegality may arise from consumer protection law, trade law, intellectual property law, health law, food and drug regulation, product safety rules, or sectoral licensing. The normative consequence is that the platform cannot treat such goods as ordinary commodities. When an electronic system enables illegal goods to reach consumers, the platform's responsibility should be assessed through a public-interest lens, not merely through private contractual terms.[16]

2. Method and Legal Material

This research uses normative legal research with a prescriptive-analytical character. Normative legal research is appropriate because the object of analysis is the construction of legal responsibility in marketplace transactions, particularly the relation between consumer protection norms, electronic transaction norms, and strict liability. The study does not measure the number of illegal listings or conduct interviews with marketplace users. Instead, it evaluates the coherence of legal norms and formulates a normative model for determining platform liability.[17]

The research applies statutory, conceptual, and prescriptive approaches. The statutory approach examines consumer protection law, electronic information and transaction law, government regulations on electronic system operation and electronic commerce, trade

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Indonesia, Singapura, dan Australia.

[16] Regulation Number 31 of 2023 concerning Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trading through Electronic Systems.

[17] Marzuki, *Penelitian Hukum*.

regulations, and relevant comparative platform governance instruments. The conceptual approach explains the legal meanings of business actor, seller, consumer, electronic system operator, marketplace platform, illegal goods, strict liability, and causation. The prescriptive approach formulates a liability model that can be used by courts, regulators, platforms, and consumer dispute bodies.[18]

Primary legal materials include Indonesian statutes and regulations governing consumer protection, electronic transactions, trading through electronic systems, and electronic system operators. Secondary legal materials include books, journal articles, comparative regulations, and platform governance literature. The materials are analyzed deductively by first identifying general principles of consumer protection and platform responsibility, then applying those principles to the specific problem of consumer losses caused by illegal goods sold through marketplace platforms.[19]

3. Results and Discussion

3.1 Legal Qualification of the Relationship between Marketplace Platforms, Sellers, and Consumers in Electronic Transactions

The legal relationship in marketplace transactions cannot be reduced to a single sale contract between seller and consumer. It is a triangular and layered relationship. The first layer is the sale relationship between seller and consumer, where the seller offers goods and the consumer pays the price. The second layer is the platform-seller relationship, where the platform grants access to listing tools, store pages, advertising features, payment facilities, logistics options, and data dashboards. The third layer is the platform-consumer relationship, where the platform provides account registration, search, recommendation, checkout, payment, complaint, review, and refund mechanisms. These layers operate simultaneously and shape the consumer's legal position.[20]

The seller remains the primary party responsible for the legality, quality, safety, labeling, licensing, and conformity of goods. A seller who lists illegal goods breaches statutory duties and may be liable under consumer protection, trade, intellectual property, health, or criminal law depending on the type of goods. However, the seller's responsibility does not exhaust the analysis. The marketplace platform is the operator of the electronic environment in which the sale takes place. It is the party that determines whether a seller may join, what information must be displayed, how payment is made, whether the listing is visible, and how complaints are handled.[21]

This legal structure makes the platform-consumer relationship independent of the seller-consumer relationship. A consumer does not use the platform merely as a communication tool. The consumer creates an account, accepts platform terms, uses platform-generated information, relies on ratings and badges, pays through platform-supported methods, and seeks remedies through platform procedures. Therefore, when illegal goods circulate, the consumer's claim against the platform may arise not from the sale contract itself but from the platform's own legal duties as a business actor and electronic system operator.[22]

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[18] Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 and Law Number 1 of 2024.

[19] Government Regulation Number 80 of 2019 concerning Trade through Electronic Systems.

[20] Mak, "Private Law Perspectives on Platform Services: Airbnb: Home Rentals between AYOR and NIMBY"; Putra, "Karakteristik Hubungan Hukum Para Pihak dalam Transaksi E-Commerce."

[21] Government Regulation Number 80 of 2019 concerning Trade through Electronic Systems.

[22] Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and

The platform-seller relationship is also legally significant. Marketplace platforms normally impose seller terms that prohibit unlawful goods, counterfeit goods, unsafe goods, misleading information, and violation of third-party rights. These terms prove that the platform has regulatory authority over sellers. A platform that reserves the right to suspend sellers, remove listings, withhold funds, verify products, and decide complaints cannot consistently claim that it has no role in the transaction environment.[23] Such authority creates a legal expectation that the platform will exercise its control to protect consumers from illegal goods.[24]

The classification of the platform as a business actor is important. Indonesian consumer protection law defines business actors broadly, covering persons or entities that conduct activities in the economic field. Marketplace platforms conduct commercial activities by operating transaction systems, charging commissions, selling advertising services, monetizing traffic, collecting service fees, or integrating payment and logistics. Even when the platform does not own the goods, it benefits from the transaction and provides the infrastructure through which goods are traded. This supports the view that the platform may be subject to consumer protection duties.[25]

However, the platform should not always be equated with the seller. In ordinary cases, the seller is the party that owns, supplies, and transfers the goods. The platform may be an intermediary. Yet the legal qualification changes when the platform gives guarantees, labels a store as official, fulfills logistics, stores goods, controls payment, hides seller identity, recommends the product, or fails to remove illegal listings after notice. In such cases, the platform moves closer to the functional position of a distributor or trade organizer because its conduct contributes to consumer reliance and market access.[26]

Comparative law illustrates this functional approach. In some cases, courts have been reluctant to impose liability on online marketplaces where the platform merely provided a venue and lacked specific knowledge of illegal conduct. In other cases, courts and regulators have focused on the platform's control over the transaction, communication, payment, and product presentation. These developments show that the legal qualification of marketplace platforms depends less on formal disclaimers and more on the platform's actual economic and technical role.[27]

The degree of platform control also varies across marketplace models. Shopee and Tokopedia generally operate as multi-seller marketplaces with integrated escrow, seller ratings, official-store labels, advertising tools, and internal complaint channels. TikTok Shop adds a social-commerce layer because product discovery is driven by short videos, livestreaming, creator affiliation, and algorithmic recommendation.[28] Amazon illustrates another comparative model because it may act as a third-party marketplace, logistics and

Transactions.

[23] Lobel, “The Law of the Platform.”

[24] Plantin et al., “Infrastructure Studies Meet Platform Studies in the Age of Google and Facebook”; Rahman, “The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept”; Pasquale, “Two Narratives of Platform Capitalism.”

[25] Law Number 8 of 1999 concerning Consumer Protection, arts. 4, 7, 8, and 19; Yuniarti and Fidiyani, “Perlindungan Hukum Konsumen dalam Perdagangan Melalui Sistem Elektronik Menurut Hukum Positif Indonesia.”

[26] Cohen, “Law for the Platform Economy.”

[27] Tiffany (NJ) Inc. v. eBay Inc., 600 F.3d 93 (2d Cir. 2010).

[28] Helberger, “The Political Power of Platforms: How Current Attempts to Regulate Misinformation Amplify Opinion Power.”

fulfillment provider, or first-party seller. These differences matter legally: the stronger the platform's control over seller verification, product visibility, payment, fulfillment, and consumer remedies, the stronger the basis for qualified strict liability.[29]

A purely contractual disclaimer should not defeat statutory consumer rights. Platforms often state in their terms that they are not the seller and that responsibility rests on merchants. Such clauses may clarify internal allocation of risk between platform and seller, but they cannot eliminate mandatory duties imposed by consumer protection and electronic system regulations. If statutory law requires the platform to provide reliable systems, accurate information, complaint channels, and supervision over electronic commerce activities, the platform cannot contract out of those duties against consumers.[30]

The status of illegal goods also affects contract validity. A sale object must be legally tradable. If the goods are prohibited, unlicensed, counterfeit, dangerous, or non-compliant with mandatory standards, the transaction cannot be treated as an ordinary private bargain. The consumer's payment was made in reliance on the legality of the marketplace offer. The platform is therefore not only facilitating private autonomy; it is enabling access to a regulated market. Where the goods are illegal, public law norms enter the private transaction and justify stronger remedies.[31]

Consumer reliance is an important element. Marketplace platforms build trust through official store labels, verified seller badges, buyer protection programs, refund guarantees, product reviews, escrow payment, and algorithmic ranking. These features reduce consumer suspicion and encourage transaction. If illegal goods appear within this trusted environment, consumers may reasonably believe that the platform has applied at least minimum screening. The platform should therefore bear responsibility when its trust infrastructure materially contributes to the purchase of illegal goods.[32]

The relationship must also be understood through data asymmetry. Platforms possess data that consumers do not have: seller history, complaint frequency, return rates, cancellation patterns, product takedown history, repeated keyword abuse, suspicious pricing, and links between seller accounts. These data allow platforms to detect illegal goods more effectively than consumers. A consumer cannot be expected to audit every product license or verify the legal status of every seller. Because the platform controls the relevant risk information, the legal system may impose a higher duty on it.[33]

The legal qualification proposed in this article is therefore functional and layered. The seller remains the direct trader of goods. The consumer remains the protected party. The marketplace platform is an electronic system operator and commercial intermediary whose liability depends on its control, representations, and statutory duties. This qualification rejects two extremes: it rejects the view that platforms are always mere passive hosts, and it also rejects the view that platforms are automatically producers of every product. The correct classification is that platforms are transaction organizers with duties proportionate to their

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[29] Putra, “Karakteristik Hubungan Hukum Para Pihak dalam Transaksi E-Commerce”; Pratama and Purwanti, “Tanggung Jawab Hukum Pelaku Usaha *Marketplace* terhadap Konsumen dalam Transaksi Elektronik”.

[30] Helberger, Borgesius, and Reyna, “The Perfect Match? A Closer Look at the Relationship between EU Consumer Law and Data Protection Law.”

[31] Regulation Number 31 of 2023 concerning Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trading through Electronic Systems; Afifah et al., "Legal Liability of Marketplace Platform Operators for Product Description Violations Under Indonesian Consumer Protection Law."

[32] Cauffman and Goanta, “A New Order: The Digital Services Act and Consumer Protection.”

[33] Kodate et al., “Detecting Problematic Transactions in a Consumer-to-Consumer E-Commerce Network.”

role.[34]

This qualification provides the foundation for strict liability. If the platform is a transaction organizer that creates, controls, and monetizes the electronic marketplace, then consumer losses caused by illegal goods are not purely external to its legal responsibilities. They are risks arising from the marketplace system. The platform can manage those risks through seller verification, prohibited goods filters, document checks, artificial intelligence moderation, notice-and-action procedures, escrow controls, repeat-offender bans, and cooperation with regulators. Legal responsibility should follow this capacity to prevent and remedy harm.[35]

3.2 *Application of the Strict Liability Principle for Electronic System Operators Regarding the Sale of Illegal Goods*

The strict liability principle should be applied to marketplace platforms as a qualified form of responsibility for risk created and controlled through electronic systems. The principle is qualified because it does not remove seller liability and does not impose unlimited responsibility for all third-party misconduct. It applies when illegal goods are offered, promoted, paid for, or delivered through the marketplace system and the consumer suffers loss as a result. In this situation, the platform's liability is based on objective participation in a regulated electronic transaction, not merely on subjective fault.[36]

The statutory basis for this approach can be built from the combination of consumer protection duties and electronic system duties. Consumer protection law requires business actors to trade lawful, safe, and accurately represented goods and to compensate consumers for losses. Electronic system rules require operators to provide reliable, secure, and responsible systems. Electronic commerce rules impose duties concerning identity, information, complaint handling, and supervision. When these norms are read together, a marketplace platform has a duty to ensure that its system does not become a channel for illegal goods that harm consumers.[37]

Strict liability is justified by the risk-allocation function of marketplace platforms. Illegal goods are not random accidents outside the digital system. They are listed, searched, ranked, displayed, promoted, sold, paid, reviewed, and sometimes shipped through platform architecture. The platform benefits from these interactions and has the technological capacity to reduce the risk. A rule requiring consumers to prove platform negligence would place the evidentiary burden on the weakest party, while the platform possesses the relevant data and prevention tools. Strict liability corrects this imbalance.[38]

The first element is the existence of illegal goods. The consumer must show that the goods were prohibited, restricted without authorization, counterfeit, unsafe, misleading, non-compliant with mandatory standards, or otherwise unlawful. This element prevents strict liability from becoming a general guarantee of consumer satisfaction. The principle is focused on unlawful market circulation, not ordinary disappointment with quality or preference. The illegality may be proven through regulatory rules, official warnings, product testing, expert

[34] Buiten, "The Digital Services Act: From Intermediary Liability to Platform Regulation."
[35] Frosio, "Reforming Intermediary Liability in the Platform Economy: A European Digital Single Market Strategy."
[36] Law Number 8 of 1999 concerning Consumer Protection, arts. 4, 7, 8, and 19; Nurhayati, Ifrani, and Said, "The Issue of Liability in Consumer Protection Law: Strict Liability and Product Liability in Indonesia."
[37] Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions.
[38] Van Loo, "The New Gatekeepers: Private Firms as Public Enforcers."

assessment, intellectual property records, distribution permit databases, or administrative findings.[39]

The second element is consumer loss. Loss may include the purchase price, shipping costs, repair costs, medical expenses, property damage, loss of use, or other legally recognized harm. In strict liability analysis, the consumer should not be required to prove the platform's intention or negligence, but the consumer must still show that a loss occurred. This requirement maintains the compensatory character of liability. The purpose is not to punish the platform in the abstract, but to restore the consumer harmed by the platform-enabled circulation of illegal goods.[40]

The third element is platform connection. The illegal goods must have been offered or transacted through the platform. This includes listing, checkout, payment processing, escrow, order confirmation, seller communication, complaint handling, or promotional display. If the consumer merely saw an advertisement outside the platform and transacted privately outside the marketplace system, platform liability becomes weaker. Conversely, if the entire transaction was completed within the platform environment, the connection is strong. Platform connection is the bridge between consumer loss and electronic system responsibility.[41]

The fourth element is control or remedial capacity. Strict liability is most justified when the platform had the ability to prevent or reduce the risk. Control may be shown by seller onboarding rules, product category restrictions, keyword filters, document verification, payment control, takedown powers, seller sanctions, algorithmic ranking, official store programs, warehouse control, or refund mechanisms. The stronger the control, the stronger the liability. A platform that exercises extensive control for profit should also carry stronger responsibility for consumer harms produced by that controlled environment.[42]

The fifth element is causation. Causation does not require proof that the platform personally manufactured or owned the illegal goods. It is sufficient to show that the marketplace system materially enabled the consumer to encounter, trust, purchase, pay for, and seek delivery of the illegal goods. In electronic commerce, causation is systemic. The platform's search results, rankings, badges, reviews, payment system, and complaint promises may all contribute to the consumer's decision. The law should recognize this systemic causation instead of treating platform involvement as legally invisible.[43]

The application of strict liability should include a burden-shifting mechanism. Once the consumer proves that illegal goods were purchased through the platform and caused loss, the platform should be presumed responsible to provide immediate consumer remedies. The platform may later seek reimbursement from the seller or other responsible parties. This approach is efficient because the platform is easier to identify, more solvent, and better able to manage seller risk. It also encourages platforms to improve seller verification and product screening.[44]

The remedy should not be limited to refund. Depending on the harm, remedies may include refund of price, return of shipping costs, compensation for direct damages, medical

[39] Regulation Number 31 of 2023 concerning Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trading through Electronic Systems.
[40] Law Number 8 of 1999 concerning Consumer Protection, arts. 4, 7, 8, and 19.
[41] Government Regulation Number 80 of 2019 concerning Trade through Electronic Systems.
[42] Gorwa, "What is Platform Governance?"
[43] Cohen, "Law for the Platform Economy."
[44] Cauffman and Goanta, "A New Order: The Digital Services Act and Consumer Protection."

reimbursement, removal of listings, recall notice, warning to other consumers, seller suspension, preservation of evidence, and reporting to regulators. Where the goods are dangerous, the platform should notify consumers who purchased similar products and coordinate with competent authorities. Strict liability therefore functions not only as compensation but also as market correction.[45]

The following table summarizes the proposed model of qualified strict liability for marketplace platforms.

Table 2. Qualified Strict Liability Model for Marketplace Platforms

Element	Legal meaning	Evidence	Legal basis / theoretical foundation	Consequence
Illegal goods	Goods are prohibited, unsafe, counterfeit, unlicensed, or non-compliant	Regulation, test result, official database, complaint record	UUPK arts. 4, 7, 8, 19; PMSE rules; legality and product-safety theory	Strict liability analysis begins
Consumer loss	Consumer suffers economic, safety, health, or property loss	Invoice, medical bill, photos, expert report, complaint file	UUPK compensation norms; risk allocation in strict liability	Compensation becomes available
Platform connection	Transaction occurs through marketplace infrastructure	Order record, payment proof, listing page, chat, tracking	PP 71/2019 and PP 80/2019; electronic system operator responsibility	Platform becomes legally connected to the harm
Control capacity	Platform can prevent, detect, remove, suspend, refund, or warn	Seller terms, moderation logs, takedown policy, account history	Platform governance; due diligence; seller verification and takedown powers	Platform cannot rely on passive-host defense
Causation and remedy	System materially enables the harmful purchase and platform can restore loss	Consumer reliance, ranking, badge, checkout, escrow data	UUPK arts. 19, 23, 28; systemic causation and remedial capacity	Platform pays consumer and may recourse seller

Source: Author's normative construction, 2026.

A key objection is that strict liability may discourage platform innovation. This objection should be answered by distinguishing between unlimited liability and qualified strict liability. The proposed model does not require platforms to guarantee every seller's honesty in every possible circumstance. It requires platforms to bear consumer-facing responsibility when illegal goods circulate through a system they design and monetize. The platform may manage this responsibility through insurance, seller deposits, compliance fees, stronger onboarding,

[45] European Union, *Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on General Product Safety, Amending Regulation (EU) No 1025/2012 and Directive (EU) 2020/1828, and Repealing Directive 2001/95/EC and Council Directive 87/357/EEC (Text with EEA Relevance).*

automated monitoring, and recourse claims against sellers.[46]

Another objection is that sellers, not platforms, are the parties that place illegal goods on the market. This is correct but incomplete. Modern electronic commerce separates the physical source of goods from the digital source of consumer trust. Sellers supply the goods, but platforms supply access, visibility, payment, reputation infrastructure, and dispute procedures. Because consumer reliance is partly produced by the platform, responsibility should also be shared. Strict liability does not absolve sellers; it adds a consumer-protective layer that ensures effective recovery.[47]

The platform should also have defenses, but those defenses must be narrow. A platform may reduce or avoid liability if it proves that the transaction occurred outside its system, the consumer knowingly purchased prohibited goods despite clear warnings, the loss was caused by consumer misuse unrelated to illegality, or the platform had complied with a lawful recall and the consumer ignored the notice. These defenses preserve fairness while maintaining the basic rule that platforms must not externalize the cost of illegal goods onto consumers.[48]

Notice-and-action procedures are necessary but insufficient. A platform that removes illegal goods only after consumer complaints may still allow large-scale harm. Strict liability encourages ex ante compliance, especially for high-risk categories such as medicines, cosmetics, food, baby products, electronics, and restricted tools. Platforms should use seller verification, license checks, prohibited keyword monitoring, image recognition, repeat-offender detection, and authority database integration. Where a product category is legally sensitive, the platform should require proof of authorization before listing, not only after complaint.[49]

The platform's complaint mechanism should operate as an immediate remedial channel. Consumers should not be forced to locate the seller, negotiate privately, or file a civil lawsuit for every illegal goods transaction. The platform has the order record, payment record, seller data, delivery information, and communication logs. It can process refund and compensation more quickly than courts. The platform may then pursue recourse internally against the seller. This division of responsibility is efficient and aligns liability with institutional capacity.[50]

Strict liability also supports regulatory supervision. If platforms are liable for consumer losses, they have incentives to keep accurate seller data, maintain prohibited-goods databases, audit high-risk stores, and cooperate with regulators. Without liability, platforms may treat illegal goods as a cost of doing business and remove listings only after public pressure. A strict liability model internalizes the cost of consumer harm and turns compliance into a rational business priority.[51]

The model should be integrated with administrative sanctions. Compensation to consumers addresses private loss, but illegal goods may also require takedown orders, seller blacklisting, fines, permit suspension, product recall, and reporting to sectoral authorities.

[46] Weber, "Digital Trade and E-Commerce: Challenges and Opportunities of the Asia-Pacific Regionalism."

[47] Oberdorf v. Amazon.com Inc., 930 F.3d 136 (3d Cir. 2019), vacated and rehearing granted, 936 F.3d 182 (3d Cir. 2019).

[48] European Union, *Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act).*

[49] Wu, Sang, Wang, and Lu, "Malicious Selling Strategies in Livestream E-Commerce: A Case Study of Alibaba's Taobao and ByteDance's TikTok."

[50] Van Loo, "The New Gatekeepers: Private Firms as Public Enforcers."

[51] Kaushal et al., "Automated Transparency: A Legal and Empirical Analysis of the Digital Services Act Transparency Database"; Benuf, Mahmudah, and Priyono, "Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology di Indonesia."

Consumer protection agencies, trade regulators, electronic system regulators, intellectual property authorities, and food and drug regulators should be able to exchange information. Platform liability is most effective when private remedies and public enforcement reinforce each other.[52]

The strict liability principle should further account for cross-border sellers. Consumers often purchase goods from sellers whose identity, location, and legal capacity are difficult to verify. In cross-border transactions, the platform may be the only practically reachable party. If the platform invites domestic consumers to transact and processes payment, it should not escape responsibility by pointing to a foreign seller. The platform is the legal and technological gateway to the domestic consumer market. This gateway function justifies a stronger duty to screen illegal goods.[53]

In Indonesia, this approach can be implemented without creating a new category of absolute platform fault. Courts and dispute bodies may combine consumer protection law, electronic transaction law, and electronic commerce regulations to identify the platform's objective responsibility. Regulators may also issue technical guidance requiring high-risk product verification, standard refund procedures, consumer notification, and seller data retention. Such guidance would reduce uncertainty and help platforms understand the minimum compliance measures expected of them.[54]

The final normative position is that strict liability should attach to marketplace platforms when they function as electronic system operators that control the transaction environment and allow illegal goods to reach consumers. This liability is strict in relation to the consumer's burden of proving platform fault, but qualified in relation to its elements and defenses. It protects consumers, encourages platform compliance, and preserves the seller's liability through recourse. The result is a more coherent allocation of risk in digital trade.[55]

4. Conclusion

The relationship between marketplace platforms, sellers, and consumers in electronic transactions is layered and functional. The seller remains the direct trader of goods and bears primary responsibility for product legality. However, the platform is not always a passive intermediary. It operates the electronic system, designs the transaction environment, controls seller access, processes payment, ranks listings, stores data, provides complaint channels, and monetizes the transaction. This position creates an independent platform-consumer relationship and supports the classification of the platform as a commercial electronic system operator with consumer protection duties.

The strict liability principle should apply when illegal goods circulate through a marketplace system and cause consumer losses. The proposed model requires five elements: illegal goods, consumer loss, platform connection, control or remedial capacity, and causation. Once these elements are shown, the platform should provide immediate remedies such as refund, compensation, takedown, warning, and complaint resolution, while retaining the right of recourse against the seller. This model does not create unlimited liability; it creates

[52] Government Regulation Number 80 of 2019 concerning Trade through Electronic Systems.

[53] European Union, *Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on General Product Safety, Amending Regulation (EU) No 1025/2012 and Directive (EU) 2020/1828, and Repealing Directive 2001/95/EC and Council Directive 87/357/EEC (Text with EEA Relevance).*

[54] Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 and Law Number 1 of 2024.

[55] Cauffman and Goanta, "A New Order: The Digital Services Act and Consumer Protection."

qualified strict liability based on risk control and consumer protection.

The policy implication is that Indonesia should not rely only on general clauses in consumer protection and electronic transaction law. Revision of the Consumer Protection Law or a specific implementing regulation on marketplace liability should expressly define the marketplace or PPMSE as a consumer-facing electronic system operator, require high-risk product verification before listing, standardize notice-and-action procedures, impose seller identity retention and repeat-offender controls, regulate refund and compensation deadlines, and clarify the platform's right of recourse against sellers. Courts and consumer dispute bodies should also be guided to apply burden shifting once consumers prove illegal goods, loss, and platform connection.

The contribution of this article lies in constructing strict liability as a balanced legal instrument for digital consumer protection. It protects consumers from evidentiary burdens that are unrealistic in electronic commerce, while giving platforms clear incentives to prevent illegal goods from entering their systems. The limitation of this article is its normative character: the proposed model has not yet been validated through empirical marketplace complaint data, interviews with regulators and platform operators, or systematic analysis of judicial and consumer-dispute decisions. Future research should test the practical effectiveness of the model by examining platform moderation practices, BPOM and Ministry of Trade enforcement data, BPSK decisions, court cases, and consumer recovery outcomes.

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Authors' contribution
Ditya Putri Wulansari: Conceptualization, Data curation, Formal analysis, Writing – original draft, Writing – review & editing.
Fuji Cantika: Formal analysis, Funding acquisition, Investigation, Methodology, Project administration, Resources.
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