

ONLINE BUSINESS REGULATIONS POLICY AS A PROTECTION EFFORT FOR CUNSUMERS

Siti Mariyam

ABSTRACT

The presence of information society is believed to be one of an important agenda of the third millennium world community, among others, marked by the utilization of information technology including the management of information systems, communication systems, and electronic transaction systems that are increasingly widespread in various activities of human life, not only in developed countries but also in developing countries including Indonesia. An online business is different to conventional business. In conventional business, the parties meet and interact directly somewhere in the real world. While in online business, the parties meet and interact in cyberspace through the internet based on trust. This given that seller and buyer do not meet directly which separated by distance and time. The development of online business is very rapid along with internet development in society. Online business agreement has been modern trends nowadays. In one side it gives advantages, while on the other side it's not promising on guarantee and rights protection for consumers. Consumer rights is to get real information and get the appropriate things which had already negotiated. While the seller obligation is to give complete information and fulfil the negotiation. So, to give protection for all parties, especially consumers from unfair business competition so it needs to make comprehensive regulations. Not spread in any regulations like nowadays that is on Law Number 11 of 2008 about Information and Electronic Transaction and Law Number 7 of 2014 about Trading.

Keywords: Regulation Policy, Online business, Consumer Protection

INTRODUCTION

The presence of information society is believed to be one of an important agenda of the third millennium world community, among others, marked by the utilization of information technology including the management of information systems, communication systems, and electronic transaction systems that are increasingly widespread in various activities of human life, not only in developed countries but also in developing countries including Indonesia. This phenomena placed an information as a very important and profitable economic commodity. To respond these developments in some countries as a pioneer in the utilization of the internet has changed the paradigm of the economy from a manufacturing-based economy to a service-based economy.¹

Internet has a very high economic value. Every world in this country is competing to provide an easily accessible Internet infrastructure at a high speed so that the penetration of Internet usage in the country concerned is also high. This will be an additional value for economic growth in the country. Based on data that released by internetworldstats.com, it shows that until March 31, 2017 the number of internet users around the world as much as 3,731,973,423 users of the world population number 7,519,028,970 means 49.6% of the worldwide population using the internet until 2017. This figure is impossible to keep up from year to year. China got the first rank as the country with the highest number of internet users in the world with the number of users as much as 731,434,547 users, the number is about 52.7% of the total population in China. While India got the second rank with 462,124,989 internet users, that number is about 34.4% of India's total population. While the third rank is the United States with Internet users reach 286,942,362 users or 87.9% of the total population in the United States. So what about Indonesia, Indonesia got the fifth rank as the world's highest internet user with 132,700,000 users, or about 50.4% of all population in Indonesia. It is under Brazil which got the fourth ranks of internet user in the world with the number 139,111,185 users.²

¹ Abdul Halim Barakatullah dan Teguh Prasetyo, *Bisnis E-commerce Studi Sistem Keamanan dan Hukum Di Indonesia*, Yogyakarta, Pustaka Pelajar, 2006, page 250.

² Admin, Daftar 20 Negara dengan Jumlah Pengguna Internet Tertinggi Tahun 2017” <https://artikel.co.id/2017/08/22>, downloaded on 27 October 2017.

The growth of online business in Indonesia is in line with the high level of internet usage. With the various conveniences offered in online business. Online business becomes a big business opportunity because there is no market limit. Everyone around the world can access the online business. The market becomes bigger. This business opens for 24 hours and does not have time limit. Online business is not only through online shopping sites, but also can take advantage from social media, such as Facebook, Instagram, or Twitter so that online business needs to be arranged and supervised its implementation in order to provide protection for consumers.

In Indonesia, according to Social Research and Monitoring Soclab.com shows, in 2015 internet users in Indonesia are 93,4 millions which 77 percent looking information for product and online shopping. In 2016, online shopper are 8,7 millions which transaction value around US 4,89 billion dollars.³

Online business has grown very rapidly. The development of this online business need supervision from the government in order to avoid a fraudulent competition that resulted in harm to consumers. Therefore it is necessary to create regulations that can regulate this online business comprehensively. Based on that background, the issues that will be discussed is how the policy of online business regulations as an effort to protect the consumer?

DISCUSSION

1. Online Business Regulations Policy

a. Business Explanation

Historically business comes from the English language "business" from the word "busy". While in the meaning of etymology means the situation where a person or group busy doing activities and jobs that bring profits.

The word business has three usages, those are:

1. The use of singular word "business" which refers to a business entity, that is juridical (legal), technical and economic unit which aims to find profit.
2. Broader usage that refers to a particular market, for example in the television business.
3. The most widespread use refers to all activities carried out by the community of providers of goods and services.⁴

The current reality shows that any activity in the economic field is undertaken by a business entity. Otherwise, it is just a mere job.⁵

Every company has a legal form that is recognized by the Law which also shows the legality of the company as a business entity. According to Abdulkadir Muhammad, the term company refers to a business entity and the deed of a business entity that runs its business. The act of the business entity shall include commercial economic act, which is aimed at obtaining profit. The economic act consists of trade, service and industry activities. So in terms of the company it is concluded two things, about concerning business entities and business activities.⁶

b. Kinds of Business

Business consists of various types, and grouped in different ways. The following are business classifications, among others:⁷

1. Manufacturing is a business that produces goods derived from raw materials or components, then sold for profit. For examples the companies that produce physical goods such as pipes or cars.
2. Service business that produce intangible goods and earn profits by charging for services that have been given.
3. Retailer or distributor is a party that act as an intermediary between producers and consumers.
4. Mining and agriculture is a company that produces raw goods such as plants or minerals.
5. Financial business is a business that benefits from investation and capital management.
6. Information business is a business that benefits from the resale of intellectual property.

³ Tribun News, Transaksi E-commerce Di Indonesia Pada 2016 Mencapai 48,9 Miliar Dolar AS, <http://www.tribunnews.com>, downloaded on 08 November 2017.

⁴ Mas Min, 13 Pengertian Bisnis dan Klasifikasi Bisnis Menurut Para Ahli, www.pelajaran.co.id/2016/10/Makalah, downloaded on 27 October 2017.

⁵ Abdulkadir Muhamad dalam bukunya H.R Daeng Naja, *Pengantar Hukum Bisnis Indonesia*, Yogyakarta, Pustaka Yustisia, 2009, page. 1.

⁶ Ibid, page 1-2.

⁷ Mas Min. Op Cit. page 5

7. Utilities is a business that runs public services, such as electricity and water that are normally funded by the government.
8. Real estate business is a profitable business by selling, renting and developing property, house or building.
9. Transportation business is a business that benefits by delivering goods or individuals from one place to another.
10. Online business is a business that is done online by utilizing technological advances.

From the ten classifications above, online business is a very rapidly growing trade. These developments are in line with the increasingly internet usage in society.

c. Online business/E-commerce

1. E-commerce definition

Electronic commerce or e-commerce is business activities involving consumers, manufacturers, service providers, and intermediaries by using computer networks namely internet. E-commerce is the purchase and sale of goods and services by using online consumer services on the internet. This transaction model is known as electronic transaction.

2. E-commerce scope

The scope of E-commerce includes 3 (three) sides, namely E-commerce business to business, E-commerce business to consumer, and E-commerce consumer business to consumers.

3. E-commerce business to business

E-commerce business to business is a business communication system between business actors. In other words, inter-company electronic transactions are conducted on a regular basis and in the capacity or volume of large products. Within this scope, e-commerce activity is shown to support the activities of the business actors themselves.

4. E-commerce business to consumer

E-commerce business to the consumer is an electronic business transactions conducted by business actors and the consumer to fulfil a particular need. The development of e-commerce segmentation in business to consumer brings profit, not only on the business actor, the consumer also gets the same benefits. So that in e-commerce business to consumers is expected to have a balance between rights and obligations between business actors and consumers.

5. E-commerce consumers to consumers

E-commerce consumers to consumers is an electronic business transactions conducted between consumers to meet a particular need. The consumer segmentation to the consumer is more specific because the transaction is done by the consumer to the consumer who needs the transaction.

d. The advantages and disadvantages of internet in online business

The Internet offers a million expectations in the economic field, almost all trading activity easily done by some people connected to the World Wide Web.

Here are some advantages and disadvantages of internet in online trading:

1. Advantages:
 - a. The potential of a wide niche market.
 - b. Operational costs can be saved.
 - c. Able to operate 24 hours.
 - d. Ease of service to consumers.
 - e. Capital is relatively small.
 - f. There is no need for warehouses and venues for stock items.
 - g. Effective promotional media.
2. Disadvantages:
 - a. The threat of virus.
 - b. Internet crime (cybercrime).
 - c. Dependency on telephone network, satellite.

e. Agreement

1. Definition of Agreement

The agreement comes from the word "agree" which means approval. Agreement between two parties (each expresses a willingness and ability to do something). The definition of the agreement based on Article 1313 of the Civil Code is: "An agreement is an action by one or more persons commit themselves to one or more persons".

The bachelors of civil law generally argue that the definition of agreement contained in the provisions of Article 1313 of the Civil Code is incomplete and too broad. The notion of agreement is still general. Performed by one or more persons who commit themselves to one or more persons.

The following understanding of the agreement according to bachelors.⁸ Subekti gives the definition of the agreement as follows: "An event in which a person promises to another or where the two men promise to do something".

R Setiawan gives definition of the agreement: "The act of law, in which one or more persons commit themselves or bind themselves to one or more persons."The agreement is always a legal act. Legal acts of a rectangular or plural in which for it required the agreement of the parties. However, not all multilateral legal acts are agreement, for example is general elections.

In the agreement there is a thing that is promised to do that is known by the term "achievement". Achievements may include:

- Gives something;
- Do something; or
- Do nothing.

In the relationship between the seller and the consumer in the sale and purchase agreement, the contract law plays an important role in consumer and seller relations. It is to provide the certainty, stability, and security necessary to ensure the smoothness and execution of various transactions.

2. Principles of Agreement

Book III of the Civil Code recognizes three basic principles in making and executing agreements. The three principles are:

1. The principle of freedom of contract or open system.

One of the principles of the treaty law is the principle of freedom of contract. It means that the parties freely make an agreement and self-regulate the contents of the agreement. The contents of the agreement are permitted to the extent that they comply with the following conditions:

- a. Eligible as a treaty;
- b. Not prohibited by law;
- c. In accordance with the prevailing habits;
- d. Throughout the agreement is executed in good faith.

The principle of freedom of contract is a reflection of the open system of the treaty law. The principle of open systems in the agreement contains a principle of freedom of contract. In the Civil Code is usually inferred in Article 1338 paragraph 1 which reads: "All legally-made agreements act as laws for those who create".

From the definition of the article can be interpreted by the free community to make an agreement. The public is allowed to enter into agreements in the form and contain anything (or about anything). The treaty binds those who make it like a law.

2. The principle of Consensualism.

The principle of consensualism is essentially agreement and engagement. The principle of consensualism was born from the moment the agreement was reached. The principle of consensualism is usually inferred from Article 1320 of the Civil Code which states: A legally created agreement is required four conditions:

- a. Their agreement which binds themselves
- b. The ability to make an agreement
- c. A certain thing
- d. A lawful cause

3. The principle of good faith.

The principle of good faith dictates that an agreement is carried out honestly. It is by heeding the norms of decency. This principle is one of the most important joints of the law of agreement.

⁸ Abdul halim barakatullah dan Teguh Prasetyo, *Bisnis E-commerce, Studi Sistem Keamanan dan Hukum Di Indonesia*, Yogyakarta, Pustaka Pelajar, 2006, page 77

3. Terms of validity of the agreement.

The validity of the agreement is governed by the Civil Code. In Article 1320 of the Civil Code is a provision regulating the terms of the validity of the agreement. The terms of the validity of the agreement are:

- a. they agree to bind themselves;
- b. the ability to make an engagement;
- c. a certain right;
- d. a lawful cause.

Of these four conditions, it is a common criterion for the birth of an agreement and covers the subject and object of the agreement. The first and second terms concern the subject, while the third and fourth terms concern the object of the agreement. An agreement containing the defect on the subject, then the agreement may be cancelled, while an agreement containing the defect on the object, the agreement is null and void.

In view of the terms of the validity of the agreement, Asser distinguishes the part of the covenant, the core part (weezenlijk oordeel) called *essensalia*, and the non-core (non weezenlijk oordeel) part of the *naturalia* and accidental.⁹ First, *essensalia* is an absolute element that must exist, so that the agreement is valid is a condition of validity of the agreement. Second, *naturalia* is an element typically attached to the agreement that is an element which is not specifically agreed upon in the covenant by itself is considered to exist in the covenant, guarantees against the existence of hidden defects. Third, accidentals are elements that must be agreed upon, contained in the agreement on the chosen place of residence. These three elements are generally present in every agreement made.

f. Online Business Regulations

1. Law Number 11 Year 2008 regarding Information and Electronic Transactions

In the Law of Information and Electronic Transactions, the definition of electronic transactions can be seen in Article 1 number 4 are: "Legal acts committed by using computers, computer networks, and / or other electronic media.

Within the provisions of Article 9 of the Information and Transaction Act, there is an acknowledgment that: "Business actors offering products through electronic systems must provide complete information and are fully relevant to the terms of the contract, the manufacturer, and the products offered.

The parties conducting electronic transactions shall have good faith in conducting transactions and / or electronic information and / or electronic documents during the transactions. Electronic transactions set forth in electronic contracts bind the parties.

Thus the Information and Electronic Transactions Act already regulates the protection for consumers who transact electronically.

2. Law Number 7 Year 2014 on Trade

Law No. 7 of 2014 on Trade applies to the international scale as the legal basis for the conduct of trade through electronic and consumer systems in trading activities through electronic systems.

Law No. 7 of 2014 on Trade defines trade through electronic systems as trade in which transactions are carried out by a series of electronic devices or procedures. Included in trading through electronic systems are:

- a. Merchants
- b. Electronic Trade Organizer, such as electronic communication organizer, electronic advertisement, application system provider, electronic payment system, as well as service provider and application delivery system.

In the Trade Law, trading through electronic system is regulated in Article 65 which regulates among others for business actors who trade goods and/or services using electronic system shall provide complete and correct data or information, including: the identity and legality of business actors as a manufacturer or distributor, the technical requirements of the offered goods, technical requirements or qualifications of services offered, the price and manner of payment of goods and/or services, and the manner in which goods are delivered.

The above provisions are intended to protect the rights of consumers in electronic transactions.

⁹ Mariam Darus Badruzaman, *Perlindungan Hukum Terhadap Konsumen Dilihat dari Sudut Perjanjian Baku (Standar)*, (BPPN, Bina Cipta Bandung, 1983), page 99.

2. Online Business Regulation Policy as an Effort to Provide Consumer Protection for Consumers

a. Consumer Protection

In Article 1 paragraph 2 of Law No. 8 of 1999 on Consumer Protection defines consumer understanding that is: "Any person wearing goods and / or services available in the community, whether for self-interest, family, other people, or other living beings and not for trading."

From this understanding that the consumer is the end user (user last), without the consumer is a buyer of goods and / or services.

b. Consumer rights and obligations

1. Consumer Rights

- Article 4 of the Consumer Protection Law regulates the rights of consumers among others as follows:
- Right to comfort, safety and safety in consuming goods and or services;
- The right to choose goods and or services and obtain the goods and or services in accordance with the exchange rate and the conditions and promised warranties;
- The right to correct, clear and honest information about the condition and guarantee of goods and or services;
- The right to be heard by the complainant and his or her complaint over the goods and / or services used;
- The right to appropriate advocacy, protection, and dispute resolution efforts of consumer protection;
- The right to receive coaching and consumer education;
- The right to be treated or served properly and honestly and not discriminatively;
- Right to compensation, indemnity and / or reimbursement, if the goods and or services received are not in accordance with the agreement or not as they should be.

2. Consumer Obligations

Article 5 on Consumer Protection Law are:

- Read and follow instructions on information and procedures on the use of goods and or services, for security and safety;
- Good faith in making purchases of goods and / or services;
- Paying in accordance with the agreed exchange rate;
- Following the legal settlement efforts of consumer protection disputes.

In consumer e-commerce transactions the rights of consumers to obtain information about goods and or services remain protected.

c. Online Business Regulations Policy

Understanding policy according to some degree:¹⁰

a. Hogwood and Gun.

Policies as a brand for a certain field of activity (policy form a label as a field of activity).

- Policy as a statement about general purpose or specific desired state (u.s. policy anexpression of general purpose or diserid state of affairs).
- The policy as a special proposal-proposal (u.s. spesiffic policy proposals).
 - Policies as the Government's decision (u.s. policy decisions of government).
- The policy as a form of endorsement formal (formal u.s. authorization policy).
 - As the program policies (policy the US programme).
- Output Policy (policy u.s. output).
 - Policies as the final results (u.s. policy outcomes).
 - Policies as a theory/model (policy as a theory or model).
 - Policies as a process (policy as a process).

b. Thomas R Dye

Public policy is whatever the government choose to do or not to do (whatever tha is selected by the Government to do or not to do).

c. Edwards and Sharkansky.

Public policy that can be clearly defined in regulations in the form of speeches of government officials or also in the form of programmes and actions undertaken by the Government.

¹⁰ Jamal Wiwoho, *Hukum dan Kebijakan Publik*, www.jamalwiwoho.com, downloaded 10 November 2017.

d. Parker.

Public policy is a specific goal or a series of principles or the actions of a Government at a certain period in connection with a subject or a response to a crisis, or in other definitions put forth a specific area of activity of the Government as a subject of study and critical studies comparisons that include actions and different principles and analyzing the possibilities the causes and its results in the context of something specific like mind discipline of Economics, science, or politics.

Online business is a new type of business. Online business is different from conventional business. In online business sellers and buyers are not really meet but using internet. According to the Director General of Domestic Trade Sri Agustina, there are several points to be considered in the regulation of online business / e-commerce that must be considered by the business:¹¹

1. All online trading sites must be registered. In the future, online entrepreneurs can no longer conduct free buying and selling activities online. In addition, online businesses must also declare their own business ethics. Online entrepreneurs are prohibited to require consumers to pay for products sent without prior agreement.
2. Businesses must also prepare data and proof of transaction correctly. Transaction data is used as evidence and has legal force.
3. Online business is a global trade. If a business dispute can be resolved by using international trade law. In order to protect consumers, online trading sites online from domestic and overseas are required to comply with existing consumer protection laws in Indonesia.
4. The contract of trade in an online business must continue to include information relating to identity, goods specifications, legality of goods, transaction value, payment terms and conditions, retrieval procedures, and delivery procedures. Online trading contacts must be made in the Indonesian language. The contract must be kept for a certain period of time and may use electronic signatures as a contract complement.
5. An online trading site must have a trustmark, With an international trustmark, consumers will be safe when shopping at online sites.
6. Online trading sites that violate the rules will be blacklisted.

The above mentioned online business management policy aims to provide consumer protection. The policy of this rule can also provide legal certainty to the parties that transact online business. For online businesses will be protected from fraudulent business competition.

CONCLUSIONS

1. Online business regulatory policy is currently scattered in several legislations. First is contained in Article 9 of Law Number 11 Year 2008 regarding Information and Electronic Transactions. Second, the online business arrangement is Article 65 of Law No. 7 of 2014 on Trade.
2. The legal policy of online business arrangement as an effort to provide protection for the consumer is ideally contained in a regulation that regulates online business comprehensively so that parties transacting in online business can be protected from fraudulent business competition.

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¹¹ Risky Widia Puspitasari, Widyasari Ginting, Ini Aturan yang Harus Dicermati Pebisnis Online, www/kompas.com/2014/08/artikel, downloaded on 27 October 2017.

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Siti Mariyam

Law Faculty University of 17 Agustus 1945 Semarang

Email: mariyamst_66@yahoo.co.id