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# THE FUTURE DEVELOPMENT OF CONSUMER PROTECTION IN E-COMMERCE IN NATIONAL LEGAL SYSTEM

By: Erna Priliasari

## *Abstract*

*Consumer is the weakest party in electronic transaction. The current legal system protects consumer in variety of ways. Specific legislation has been passed and institutions have been created to implement regulation. But these measures cannot sufficiently provide one-for-all protection to consumers. This paper endeavour to propose several principles to guide and assist government/policymaker to formulate a regulation on consumer protection in e-commerce or to amend existing regulations.*

*Keyword: e-commerce, consumer protection*

### **A. Introduction**

Since popularity of internet for commercial transaction grow very fast, the way of doing business was changed forever. In a new business environment where electronic transactions have become the norm, the use of paper to document business transactions is becoming less important. In fact, one of the benefits of conducting business by using digitized information is that it obviates the need to transmit and store paper.

The key distinguishing feature between e-commerce and other commercial transactions is the electronic element involved. With the development of information technologies as alternatives to paper based businesses, new types of contracts and goods were created such as virtual goods, digital contracts, online transactions etc. As a result, certain considerations lost their relevance such as the medium of the transaction or the geographic location of the parties. It also raised

unsettling implications for tax, conflict of law, etc. In spite of the wide difference between online and offline transactions, the basic idea of contracts apply equally to both. What is needed is an adaption of laws governing commerce to accommodate electronic/internet infrastructure.<sup>1</sup>

But e-commerce requires confidence and trust; the satisfaction that transmitted orders or invoices has not been altered and emanate from whoever they appear to be from. There is need for a guaranteed level of privacy/confidentiality with respect to information. In an electronic transaction, the original of a data message is almost indistinguishable from a copy and bears no handwritten signature. This increases the incidence of fraud due to the relative ease in distorting or altering electronic information without being detected.

The need for consumer protection in e-commerce has become necessary because of the

misuse of aspects peculiar to electronic-commerce. Consumers have been cautious to make use of e-commerce as they are uncertain about the consequences that their action might have. Consumers will only utilise e-commerce if they have confidence in the legal system regulating it; therefore, legislation was needed to regulate their e-commerce activities.

## B. Definition E-commerce

Before analysing the legal tools governing e-commerce, it is interesting to note that the term 'e-commerce' has no widely accepted definition.

Nowadays, the definition of e-commerce is very diverse. Any observers and practitioners tend to have a different emphasis, since e-commerce has complex problems in terms of technology, social cultural, economic, legal and other perspectives.

The Seventh Edition of the Black's Law Dictionary defines e-commerce as:

"The Practice of buying and selling of goods and services through online consumer services on the Internet -- 'e' for short -- has changed from a popular prefix to those associated with electronic transactions. We can freely interpret that e-commerce is the sale and purchase of goods and services using internet services which is better known as electronic transactions.

Chissick and Kelmn provide a quite global definition of e-commerce, namely: "A Broad term describing business activities and associated technical data that are conducted electronically"<sup>2</sup> (It is said

that e-commerce is a term that describes business activities using technical data that is associated through electronic media.

## C. Overview Consumer Protection Law in Indonesia

In Indonesia, Regulations regarding consumer protection have been arranged in several regulations i.e Law No. 8 of 1999 concerning Consumer Protection (CPL), Law No. 11 of 2008 regarding Information and Electronic Transaction and Transaction Law, Law No. 21 of 2011 regarding the Financial Services Authority and the Government Regulation Number 82 of 2012 concerning Electronic System and Transaction Operation (GRESTO).

### a. Law No 8 of 1999 concerning Protection Consumer Law (CPL)

CPL states the rights and obligations of consumers, so it is clear what the rights and obligations of consumers are.

The aim of the Law, as described in Article 3 are:<sup>3</sup>

- 1) To increase awareness, ability and independence of consumers;
- 2) To increase the dignity of consumers;
- 3) To enhance the empowerment of consumers in selecting, determining and demanding their rights as consumers;
- 4) To create a consumer protection system which contains elements of legal certainty and transparency of information;
- 5) To grow awareness of entrepreneurs regarding the

- importance of the consumer protection;
- 6) To improve the quality of goods and or services

In electronic transactions, the consumer is in a vulnerable position and there are many problem such as the existence of default of the seller, transaction security, the standard clause adopted by the sellers and the choice of law in case of dispute. Within the context of customer protection in E-commerce, Article 4 of CPL regulate of costumer's rights as follow:<sup>4</sup>

- a. the right to comfort, security and safety in using goods and/or services;
- b. the right of choosing goods and/or services and obtaining the said goods and/or services in accordance with the exchange value and condition and guarantee of the goods and/or service;
- c. the right to correct, clear and honest information about the condition and guarantee of the goods and/or services;
- d. the rights that their opinion and complaints about good and/or services used should be listened consumers protection;
- e. the rights to obtain protection and mediation in handling and solving frauds.

In resolving faced by consumer in e-commerce, the CPL does not differentiate the dispute resolution procedure for e-commerce transaction with the procedure for conventional commercial transactions such as taking into consideration in inability for consumers do

directly, see or touch the goods that they are ordering through electronic means. CPL is not expressly designed to regulate e-commerce. However CPL is an umbrella Law for consumer protection.

**b. Law no 11 of 2008 concerning Electronic Information and Transaction (EITL)**

Law No 11 of 2008 applies to everyone (individuals or legal entities whether Indonesian or foreign) conducting legal actions regulated under Law 11 of 2008 in the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia to the extent such legal actions have legal consequences in the territory of the Republic of Indonesia and/or outside the territory of the Republic Indonesia and cause a loss to Indonesia.

Law No. 11 of 2008 regulates, among other things:

- (1) the use of electronic documents and/or information as evidence before Indonesian Courts;
- (2) electronic signatures;
- (3) electronic transactions;
- (4) domain name, intellectual properties, and protection of personal rights; and
- (5) the illegal actions and criminal penalties may be imposed by GOI.

EITL largely reflected the model law on e-commerce issued by the United Nations Commission on International Trade Law and dealt with cybercrime and data security as well as recognising the

legitimacy of electronic transactions.

In this Law, Electronic transaction are regulated in Chapter 5 within the Article 17-22. However, this regulation is not specific to give protection for customer on e-commerce.

To begin with, Article 17 elucidates that parties conducting electronic transaction must be in good faith in making interaction and/or exchange of electronic information and/or electronic record during the transaction.<sup>5</sup>

Electronic transaction that are stated in Electronic Contract shall bind on parties.<sup>6</sup> Article 18 section (2) stating that the parties have the authority to make choice of law applicable to their international electronic transaction. Article 19, EITL stated that parties that conduct electronic transaction must adopt agreed-on electronic systems.

The principle of freedom of contract is strongly upheld by the Law when it stipulates the freedom of contracting parties as to which law to govern, and in which forum to hear the disputes. Elucidation of Article 20 section (1)<sup>7</sup> stated that electronic transaction shall occur at the time of the arrangement between parties, which can be in the form of, inter alia, verification of data, identify, personal identification number. In this respect, alternative dispute resolution is also available for the contracting parties to opt. With regards to the settlement of dispute that might arise from e-commerce, Article 39<sup>8</sup> stipulates that consumer may resolve disputes

through arbitration or other alternative dispute resolution institutions in accordance with provisions of laws and regulations.

As stated at article 21 (2) parties responsible for any legal effect in the conduct of Electronic Transactions as follows:<sup>9</sup>

- (a) if conducted in person, any legal effect in the conduct of Electronic Transaction shall become the responsibility of parties to a transaction;
- (b) if conducted by proxy, any legal effect in the conduct of Electronic Transaction shall become the responsibility of the grantors of proxy; or
- (c) if conducted by Electronic Agents, any legal effect in the conduct of Electronic Transactions shall become the responsibility of Electronic Agent providers.

#### c. Law No. 21 of 2011 concerning Financial Services Authority

Law No. 21 of 2011 concerning Financial Services Authority is also giving a protection for consumer. But Consumer protection in this regulation is addressed only for a financial consumer. With regard to Consumer protection are regulated in Chapter 6, Article 28-31 of Law Number 21 of 2011. As a implementing article 31 of Law no. 21 of 2011, Otoritas Jasa Keuangan has issued Regulation Number 1/POJK.07/2013 (OJK Regulation No. 1) which are applies to Financial Services Business Actors, which include, among others, commercial banks, securities companies, insurance companies,

reinsurance companies, and financial institutions, and consumers of the Financial Services Business Actors (defined as parties who place their funds with and/or utilize services provided by the Financial Services Institutions). This regulation mainly defines, among other things, the obligations of Financial Services Business Actors in relation to consumer protection, attending to complaints and their settlement mechanism, as well as the supervisory role of the OJK in consumer protection.

**d. Law Number 7 of 2014 concerning Trade**

The Trade Law contains subject materials with a scope of provisions which includes Domestic Trade, International Trade, Border Trade, Standardization, Trade via Electronic System, Trade protection and safeguard, cooperative and micro, small and medium enterprises empowerment, Export development, International Trade Cooperation, Trade Information System, the Government's duties and authorities in Trade sector, National Trade Committee, monitoring and investigation.

Law 7/2014 requires e-commerce sellers to provide detailed information that at a minimum includes (i) the identity of the company and proof that the company is legally allowed to act as a producer or distributor, (ii) technical requirements of the goods or services offered through an electronic system, (iii) price information and payment

methods, and (iv) delivery methods.

**e. Government Regulation Number 82 of 2012 concerning Electronic System and Transaction Operation (GRESTO)**

As mandated by Law No. 11 of 2008, Government of Indonesia issued Government Regulation No. 82 of 2012 regarding the Implementation of Electronic System and Electronic Transactions for Law No 11 of 2008. Regulation 82 sets out significant requirements in relation to electronic registration/certification, electronic systems, electronic transactions, electronics agents, electronic signatures and domain names. The new regulation applies broadly to individuals, government bodies and companies which, in order to provide services to users, provide and/or operate devices and electronic procedures used for preparing, collating, processing, analyzing, storing, displaying and disseminating electronic data capable of being understood by any relevant person.

GESTRO provides two categories of services which may be provided by Electronic Systems Providers: (i) services for public use and (ii) services for non-public use. "Services for public use" means those governed under the relevant laws and regulations which is a very broad definition. Electronic Systems Providers providing services for public use are required under GESTRO to register with Menkominfo

(Minister of Communication and Information). In addition, they must also (a) obtain a certificate of reliability; and (b) register the software they use to deliver the services. Electronic agents (providers of systems designated to carry out certain automated functions in relations to electronic information) are also required to register with Menkominfo.<sup>10</sup>

GRESTO does not specifically address to consumer rights protection. However GRESTO provides the minimum requirements for conducting electronic transactions in Indonesia as follows: (i) consideration of security, reliability and efficiency of the electronic system; (ii) storing the transaction data in the country; (iii) utilization of a national gateway if the operation involves more than one electronic system operator; and (iv) utilization of a domestic electronic system network.<sup>11</sup>

GRESTO also provides certain protections for consumers by, among other steps, requiring sellers to provide complete and correct information on the contract, the offered products and the producers of such products. It also requires contracts to be made in the Indonesian language and to contain at least the following: (i) identity of the party; (ii) object of the transaction and specifications; (iii) requirements of the electronic transaction; (iv) prices and costs; (v) procedures in case of cancellation by the parties; (vi) right to return the goods and/or demand

replacement goods (within a certain period of time) in the event of hidden damage to the goods that are the object of the contract; and (vii) choice of governing law.<sup>12</sup>

#### f. Draft of Government Regulation on Consumers Protection in E-Commerce

At present, The Government of Indonesia is drafting a government regulation concerning online businesses based on the Law Number 7 of 2004.

Major issues to be governed in the regulation include the necessary information to be delivered to consumers in the initial offering and the requirements and the timing of the commercial contracts. In addition, the regulation will encompass the rights and responsibilities of involved parties in the e-commerce, the obligation to use standards and electronic certification systems based on the constitution. The regulation will also stipulate procedures and mechanisms of online business supervision and dispute settlements.

Unfortunately, the list of 2014 Government Legislation Program (Proleg-PP) does not include Draft Regulation on E-commerce. It shows that the existence of E-Commerce received less attention in the framework of national law reform.

The current legal system protects consumer in variety of ways. Specific legislation has been passed and institutions have been created to implement regulation. But these measures

cannot sufficiently provide one-for-all protection to e-commerce consumers.

#### **D. Development of Consumer Protection in E-commerce in National Legal System**

Development planning should always pay attention to various aspects of development. On one hand, development serves to improve the quality of life; on the other hand, there are groups of people whose quality of life or moral behavior will suffer as a result. Therefore, it can be said that development positively contributes to change, but it can also adversely affect certain groups. Thus, development planning must carefully calculate risk and how to overcome the negative effects of development. Development and law reform must be viewed holistically, systematically and sustainably to create a safer and more peaceful, advanced and prosperous life of the state, nation and society in the framework and foundations of a just law: one that allows a gradual development of society as a whole.

The development and reform of the legal process is closely related to (i) the process of establishing the rule of law, including laws, institutions and procedures, (ii) infrastructure, (iii) human resource development, and (iv) the improvement and modernization of legal institutions that are necessary to the abovementioned goals. Thus, legal development and reform should not only consist of changes in norms, but also in changes in the educational process of law, bureaucratic reform, improvement of the political and administrative system of the country as well as

implementing improvements in law enforcement that would result in a national legal system that has a practical function (a living law in action). Legal Development further requires dissemination of the law, meaning the process of the formation and development of legal awareness of the public, state officials and public authorities in order to foster legal culture and awareness.

To determine the stages of preparation of advance planning requires an inventory of actual problems that will be encountered. In the meantime, the development of national and global law is growing rapidly in the 21<sup>st</sup> century, and today's mission is to become a vehicle for social change and the improvement of people's lives. In other words, the law in the 21<sup>st</sup> century has the potential to improve people's lives (law enforcement can prevent asocial behavior). Conversely, the law can also damage people's lives when social change cannot be anticipated and the law is unable to accommodate such change.

Formulation of national law can be interpreted as a process or a way to establish legal Indonesia completely new, improving an existing Indonesian law so that it looks new or repeat existing Indonesian laws in harmony with the goals and national interests as the embodiment of the ideals of Indonesia's independence proclamation.

The legal basis to formulate of law and regulation in Indonesia is Law 12 of 2011 concerning Formulation of Legislation. Based on that law, the process of legislation begins with planning

which is through the Legislation Program (both National and Local). Therefore, Prolegnas and Prolegda are expected to guide and control the preparation of Regulations. Prolegnas is interpreted as instruments to draft laws that are planned, integrated and systematic. Thus, national legislation is a process that is fully implemented before the formulation of legislation.<sup>13</sup>

Legal planning is an important factor and therefore, drafting legislation must be planned, integrated and systematically supported by methods that are well defined and which use standards that bind all authorized agencies when making regulations.

The planning stage will begin by conducting studies, legal research and the preparation of academic draft. The academic draft is the result of legal research or studies or other research on a particular issue that can be held accountable scientifically, regarding the regulation of such problem in a Law draft, Provincial Regulation draft or Regency/City Regulation draft, as a solution to the problem and the legal needs of society.<sup>14</sup> To draft Academic draft that can be held accountable scientifically and comprehensive towards the regulated substance, several important activities should be first carried out, among others, legal study and research, and other activities such as Scientific Meetings in the form of Symposiums, Seminars or workshops.

After the drafting of academic drafts, a law draft shall be made. This law draft shall later be incorporated into the

national/regional legislation program (Prolegnas/Prolegda) along with the academic draft. As the planning instrument for the establishment of Law, Prolegnas was arranged in a planned, integrated, and systematic fashion. The management of Prolegnas is directed so that the law establishment program can be conducted in accordance with a priority scale and in order to foster the national legal system. Therefore, the preparation of Prolegnas is not only a request for what is required for each agency and later incorporated into a list. Prolegnas is the elaboration of legal politics to achieve national goals in a certain period of time. Thus, Prolegnas is a portrayal or national legal political substance for the achievement of national objectives, either in form of the establishment of new laws or in the form of a replacement of old laws. Prolegnas not only consists of legal planning for what will be established, but it will also act as a guideline or mechanism for the establishment of a legally binding Law. The preparation of the National Legislation Program was arranged in a coordinated, focused, and unified fashion which was jointly planned by the People Representative Council (DPR) and the Government. Based on Article 20 Paragraph (3) Law No. 12 of 2012, regarding the Formulation of Legislation, Prolegnas was set up for mid and annual terms.<sup>15</sup> The results of Prolegnas preparation between the DPR and the Government was approved and shall become Prolegnas and shall be set in the DPR Plenary Meeting.



In regard to Consumer Protection in E-commerce as mentioned above that existing regulations do not properly cover the issue of consumer protection in e-commerce activities, it is a necessity that Indonesia must formulate a regulation which cover consumer protection on e-commerce activities.

Considering the existing regulations and without ignoring other stipulations, there are fundamental principles that can be related to give consumer protection in e-commerce as follows:

**Principle 1: Information Provision**

Consumers should be provided with clear and sufficient information to make an informed choice about whether and how to make a purchase.<sup>16</sup> Information should be provided in a form that is clear and understandable to the consumer.

Consumer Protection in E-commerce regulation must require e-retailers to provide at least the information regarding the e-retailer's identity, the e-retailer's place of registration, the e-retailer's physical location and the e-retailer, contact details including physical address, postal address, email address and telephone number. The regulation also should require e-retailers to provide information about applicable dispute resolution process at least, limitations to the consumer's legal rights such as lawful exclusion or limitation of the seller's liability, limitation to the consumer's avenue for redress, such as binding choice of forum clauses, applicable choice of law clauses, arbitration clauses, option for mediation, applicable internal

complaint systems and applicable external complaints system, etc.

**Principle 2: Transparent and Effective Protection**

Consumers who participate in e-commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.<sup>17</sup>

**Principle 3: Privacy Protection**

Vendors and intermediaries should respect the privacy principles. The OECD Guideline set out in eight (8) principles:<sup>18</sup>

- a) Collection limitation principle
- b) Data quality principle
- c) Purpose specification principle
- d) Security safeguards principle
- e) Openness principle
- f) Individual participation principle
- g) Accountability principle

**Principle 4: Contract Terms and Condition**

Vendors should take reasonable steps to ensure that the consumer's agreement to contract is fully informed and intentional.

**Principle 5: Confirmation Process**

To avoid ambiguity concerning the consumer's intent to make a purchase, the consumer should be able, before concluding the purchase, to identify precisely the goods or services he or she wishes to purchase; identify and correct any errors or modify the order; express an informed and deliberate consent to the purchase; and retain a complete and accurate record of the transaction.<sup>19</sup>

### **Principle 6: Dispute Resolution and Redress**

Consumers should have access to fair, timely, effective and affordable means for resolving problems with any transaction.

Vendors should provide adequate resources to handle consumer complaints efficiently and effectively. When internal mechanisms have failed to resolve a dispute, vendors should make use of accessible, available, affordable and impartial third-party processes for resolving disputes with consumers. However, vendors should not require consumers to submit to such processes. Governments, businesses and consumer groups should work together to develop appropriate standards for dispute resolution mechanisms. The provision for ADR system should be encouraged by legislation protection e-consumers right. For an alternative dispute resolution mechanism to be adequate, it must be cost-effective, easy to understand, accessible, credible, timely, transparent to the parties, fair and capable of providing effective remedies. Further, a consumer must have the right to be represented, and or assisted, by a third party.

### **Principle 7: A secure method of payment, minimizing the risk of financial lost**

Payment systems need to be secure and easy to use.<sup>20</sup> Consumers should not be held liable for amounts billed to them for "unauthorized transactions." Vendors should promptly refund consumer payments for unauthorized transactions or sales transactions in which consumers

did not receive what they paid for. Credit card issuers should make reasonable efforts to help consumers resolve complaints with vendors in the event of non-delivery or unauthorized transactions.

### **Principle 8: Consumer Awareness**

Government, business and consumer groups should promote consumer awareness about the safe use of e-commerce. Consumer education and awareness initiatives should highlight those circumstances in the use of electronic commerce in which consumers are most vulnerable. Consumers should be provided with advice on how to minimize the risks associated with electronic commerce. Consumers should be made aware of their rights and obligations with respect to vendors. Consumers should take reasonable steps to inform themselves about how to conduct transactions safely and securely. Consumers should have access to information identifying disreputable electronic commerce practices. Consumers should have access to information identifying those convicted of illegal electronic commerce practices.

### **E. Conclusions & recommendations**

Approaching the end of the twentieth century, people witnessed the rapid development of a digital economy, which overturned normal commercial transactions. To fully appreciate the legal complexities of regulating this economy, one must first understand the magnitude and nature of the Internet, which justify the policy of regulation.

There are various legal system in place to protect consumer in

Indonesia. However consumer still face a variety of problem. New threats to consumer protection call for new protective rules and measure.

The issues of consumer protection in e-commerce have gained a considerable amount of attention from government. Some of those instruments deal with consumer protection are not specifically to regulate e-commerce. In spite of this attention,

a review of existing legal framework shows that they have failed e-commerce needs.

Indonesia has lots of fragmented laws to cope up the challenges for consumer in e-commerce. But we need a consolidated law to deal with all above mentioned situations so that the consumers in e-commerce right can be protected properly.



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- 14 *Ibid*, Article 1 paragraph (11).
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