

# E-COMMERCE IS PARALYZING DISTRIBUTION COOPERATION IN INDONESIA

**Risza Fransiscus**

SRF Lawyers Partnership, Solicitor, Attorney, Administrator & Receiver  
[Frans0274@gmail.com](mailto:Frans0274@gmail.com)

## Abstract

The rapid development of digital technology has boosted the growth of trading systems in the world through the internet (e-commerce). The proliferation of this technology is always faster than the availability of laws and regulations governing its implementation. Although a bit late, the Government of the Republic of Indonesia finally made regulations for the implementation of e-commerce through the issuance of Government Regulation 80 /2019 on Trading Through Electronic Systems dated November 25, 2019 (“**GR 80/2019**”)<sup>1</sup>. This GR 80/2019 provides a wide space for individuals or companies desiring to become e-commerce players. However, the definition of the e-commerce business actor does not provide any limitation for a distribution business actor<sup>2</sup> selling its products directly to customers through e-commerce platform providers. The absence of restrictions for the distribution business actors to be the e-commerce players can create unfair competition for the Indonesian trade, particularly against the distribution channels in Indonesia. The writing of this journal aims to describe and analyze the great difficulties and challenges of the distribution of goods in Indonesia in the midst of the proliferation of e-commerce, and the disharmony of GR 80/2019 with the distribution regulations in Indonesia.

**Keywords:** *e-commerce, GR 80/2019, Distribution, conflicting regulations*

## 1. INTRODUCTION

Since the enactment of the GR 80/2019 on Trading Through Electronic System (“**GR 80/2019**”), customers in Indonesia may breathe the air of internet-based transactions more easily and securely. This regulation governs rules, rights, and obligations for contracting parties and administrative sanctions imposed for their infringements to which it is aimed at doing legal and fair-trading activities under the principle of fair business competition to respect and protect consumer rights.

E-commerce accelerates the sale and delivery of goods between seller and buyer to the most mutually acceptable extent. It puts cuts on long-route-order mechanisms and deliveries between the manufacturer (or supplier principal) with consumers as direct-transacting

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<sup>1</sup> Press Conference of Public Relations of Ministry of Trade, “PP No.80 Tahun 2019: Pemerintah Lahirkan Peraturan Pemerintah tentang Perdagangan Melalui Sistem Elektronik”, 10 of December 2019, officially published at [https://kemendag.go.id>article\\_uploads](https://kemendag.go.id>article_uploads).

<sup>2</sup> Distribution Business Actors defined in this journal are (i) foreign principals (principal producers or principal suppliers) having registered addresses in other countries or Direct Investment Companies in Indonesia (PMA); and (ii) distribution business channels in Indonesia in the form of distributors, sub-distributors, agents, and sub-agents, each of them is legally domiciled in Indonesia.

parties. In a short, the consumer is the most-benefiting party in terms of time, delivery cost, and mainly, price of the goods in e-commerce activities.

The COVID-19 pandemic has turned out to be a boon for e-commerce in Indonesia. The Indonesian e-commerce sector remains the star of the digital economy and is expected to record a growth in market value from US\$ 21 billion in 2019 up to \$ 83 billion by 2025 according to Bain & Temasek. In southeast Asia, Indonesia is set to become the largest digital economy with approximately 40% of the total regional market share<sup>3</sup>.

The proliferation of e-commerce is boosted by the disruption of internet-based technology impacting multi-socio-economic in the countries. Thus conceived, this new regime of internet-based transactions is unlikely to be halted. While e-commerce issues already existed in Chapter VIII of Law 7/2014 concerning Trade, the Indonesian government needs to prepare a road map of e-commerce before the Issuance of GR 80/2019 which almost coincided with the first outbreak of COVID-19 in December 2019 in Wuhan, China. Since then, the enforcement of social distancing, lockdowns, and other measures in response to the COVID-19 pandemic has led consumers to ramp up online shopping, social media use, internet telephony and teleconferencing, and streaming of videos and films<sup>4</sup>. Indonesia is noted to have large-scale e-commerce with the potential to approach South Korea and China. According to the Technology-empowered Digital Trade in the Asia Pacific report from Deloitte, the total size of the e-commerce market in Indonesia was recorded at US\$ 43.351 billion in 2021<sup>5</sup>. This figure has shown how the E-commerce trend is in great demand and influences the growth of the economy in Indonesia.

E-commerce is always connected with the distribution. Distribution is the movement of products from manufacturers to sales outlets to customers<sup>6</sup>. All e-commerce players do distribution of goods by conducting direct selling and instant delivery to their customers, but they are not included as ordinary distribution business actors. The method of distribution distinguishes e-commerce players and distribution business actors. E-commerce players may directly distribute products to customers as end users, while ordinary distribution business actors must deliver products through market intermediaries as their distribution channels. This happens because the e-commerce players may do direct selling and instant delivery to their sellers buying their products while ordinary distribution business actors are strictly prohibited by laws. In Indonesia, business actors who engage in distribution domestically and abroad are known as distributors, agents, exporters, importers, manufacturers, suppliers, sub-distributors, sub-agents, and retailers<sup>7</sup>. The picture below shows the difference in the method of distribution between E-commerce and ordinary distribution.

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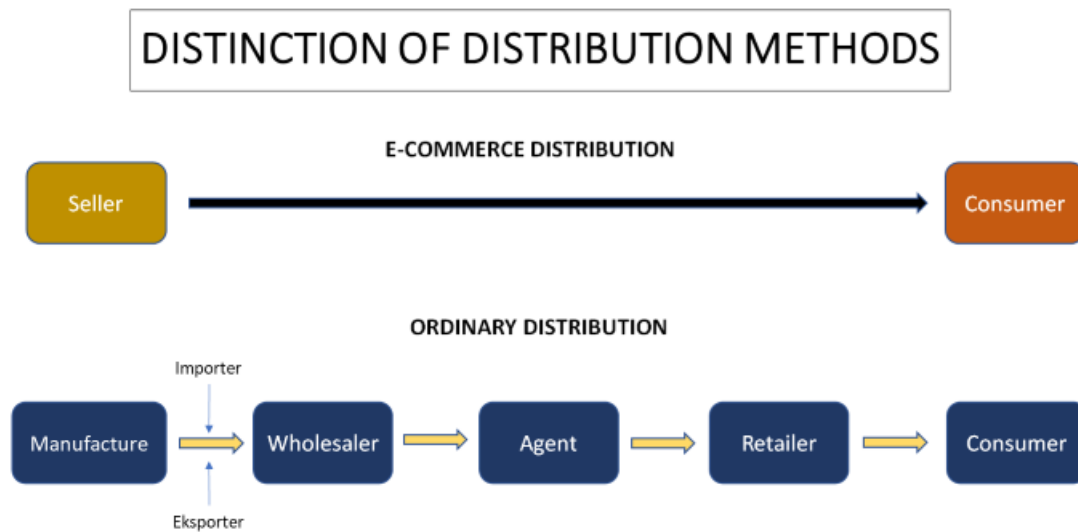
<sup>3</sup> Deutsche-Indonesische Industrie-Uns Handeiskammer, (Nov 2021), “Unlocking the Potential of Unlocking Indonesia E-commerce”, accessed on 16 o Jan 2022 from [Unlocking the potential of Indonesia’s e-commerce \(ahk.de\)](#)

<sup>4</sup> World Trade Center, (2020), “E-Commerce, Trade, and the COVID-19 Pandemic-Information Note”, [ecommerce\\_report\\_e.pdf \(wto.org\)](#), P.1.

<sup>5</sup> CNBC news Online, “Market E-Commerce di RI tembus US\$ 43,35 M di Indonesia”, accessed on 30 of Jan 2022 from [Market E-Commerce di RI Tembus US\\$ 43.35 M di 2021 \(cnbcindonesia.com\)](#).

<sup>6</sup> Encyclopedia dictionary online.

<sup>7</sup> Elucidation section of Article 7 of Law 7/2004 on trade.



Picture 1  
Distinction of Distribution Methods

Prior to the emerging e-commerce activities, there exist regulations governing the distribution of goods and services in Indonesia updated from time to time. This regulation was initially established as derivative rules of Law 1/1967 on Foreign Direct Investment. One of its provisions specified that foreign companies in Indonesia were allowed to sell their products to the Indonesian market through local companies as retailers<sup>8</sup>. Following the enactment of Law 11/2020 on Job Creation Law, the Indonesian Government has then promulgated 51 implementing regulations consisting of 47 government regulations and 4 presidential regulations. One of the 47 is Government Regulation 29/2021 concerning Implementation of Trade Sector (“GR 29/2021”) having 28 provisions for the distribution of goods in Indonesia.

Further to the distribution, the government then issued the Minister of Trade Regulation 24/2021 on Agreement for Goods Distribution by Distributor or Agent (“MTR 24/2021”) 2 months after the promulgation of GR 29/2021. This MTR 24/2021 is composed to implement provisions of Article 35 of GR 29/2021 declaring that further provisions about the Agreement for Distributor or Agent are Regulated by Ministerial Regulation. Up to this point, we see the Indonesian government takes a high attention to managing and regulating distribution issues in Indonesia.

## 2. RESEARCH METHODS

According to Soerjono Soekanto, Legal research is a scientific event, based on certain methods, systematics, and thoughts, which aims to study one or several certain legal

<sup>8</sup> Art.3 GR 36/1977 concerning Termination of Foreign Business Activities in Trade Sector in conjunction with Art.1 of GR 35/1996 concerning Amendment to GR No.36 of 1977.

symptoms. Legal research is conducted to gain a deeper comprehension of certain legal symptoms<sup>9</sup>. Meanwhile, Moris L. Cohen said, “legal research is the process of finding the law that governs activities in human society”. Through research, lawyers found important resources required to predict what will be done by the court, and therefore, they may take specific measures<sup>10</sup>. The use of legal research is to give a clear understanding of how e-commerce may (gravely) paralyze distribution contracts in Indonesia since no restriction for merchants to be e-commerce players. The normative-empirical method (category of non-Judicial Case Study)<sup>11</sup> is used in this legal research with a descriptive analysis of the collected data and information

### 3. ANALYSIS AND DISCUSSION

#### 3.1. Distribution Cooperation has long time been the Backbone of the Development of the Economy in Indonesia.

The Indonesian people have been so familiar with and engaged in the cooperation of goods distribution since ancient times. It is recorded that from the 7th century until 500 years later, the great kingdom in the archipelago that took part in the international trade was the Srivijaya Kingdom. At that time, the Srivijaya played an important role in Asian trade<sup>12</sup>. Furthermore, the 10th century to the 14th century was the golden age of Hindu-Buddhist kingdoms on the island of Java in which international trade was in demand<sup>13</sup>.

The Dutch colonial period did not directly begin when Dutch people set their foot in the archipelago in the 16th century. In contrast, the process of Dutch colonization was a slow and gradual process of political expansion that lasted for several centuries before reaching the boundaries of Indonesia as it is today. On 20 March 1602, the Dutch government established a union of trading enterprises called Vereenigde Oost-Indische Compagnie (VOC) which distributed natural resources from East-Indies and India to Europe.

Upon obtaining 20 years of independence, Indonesia commenced embracing international cooperation through Law No.1 of 1967 concerning Foreign Direct Investment. Under Law No.1 of 1967, distribution Cooperation has started supporting the growth of the economy in Indonesia since 1977 when the government enacted a

<sup>9</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, cetakan 3, Universitas Indonesia, UI Pres, 2007, P.43.

<sup>10</sup> Morris L. Cohen & Kent. C. Olson, *Legal Research*, 1992, (West Publishing Company, St. Paul. Minn): P.1 as quoted by Peter Mahmud, *Penelitian Hukum*, Revised Edition, 2005, Prenata Media Group, Surabaya, P. 56.

<sup>11</sup> Normative-empirical method is a combination of normative legal research and empirical legal research. This research is carried out on the implementation of normative legal rules (in this case is the laws and regulations) in its action to each specific legal event occurring in society. Non-Judicial Case Study means the legal research was made on no conflict, thus, no court (decision) interference (see Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI Press Publishing, Jakarta, 2005, P. 51).

<sup>12</sup> Wolters, O. W., 1967, *Early Indonesian Commerce: A Study of the Origins of Srivijaya*, Valley Offset, Inc., New York, hlm.15

<sup>13</sup> Wikipedia, [https://id.wikipedia.org/wiki/Perdagangan\\_internasional\\_zaman\\_Jawa\\_Kuno](https://id.wikipedia.org/wiki/Perdagangan_internasional_zaman_Jawa_Kuno) accessed on 15th of April 2020 at 10:10 a.m. West Indonesian Time.

regulation on the termination of foreign business activities<sup>14</sup>. It was said that foreign companies were allowed to market and sell their products in Indonesia only if they appointed national companies as their distributors/agents. Since then, the distributors and other intermediaries become distribution channels for principal products to customers in Indonesia. The principal selling products in Indonesia is not allowed by laws and regulations without using distribution channels. In general, most of the commercial transactions are supported by distribution companies in providing raw and supporting materials, either or not technology-based products in the sector of building construction, banking digitalization technology devices, communication devices, transportation equipment, household appliances, modern educational equipment, oil and coal exploration tools, entertainment products, machinery, health equipment, chemicals, and many others are marketed and sold through distribution channels. Moreover, most of our day-to-day simple products are acquired from the retailers (the lowest distribution channel), who are legally entitled to distribute/sell the products to the end-users. In a nutshell, most of the products are supplied by using distribution channels.

Along with times, some products are excluded from the obligation to be governed by the distribution regulations. These products are considerably understandable i.e., government procurement of goods<sup>15</sup>, health products, and medicines<sup>16</sup>. Each of the matters is governed by specific regulations to be complied with. Since the Establishment of Law No.11 of 2020 on Job Creation (“Omnibus Law”), the government has upgraded the regulation for the distribution of goods and services by issuing the GR 29/2021 and MTR 24/2021 as the implementing rules. These new regime regulations are issued amid the proliferation of e-commerce. The government looks at the importance of the distribution of goods to support and sustain commercial transactions in Indonesia either internationally or locally. Besides that, all companies engaging in distribution channels have been supporting the government in embodying social welfare and generating tax incomes for the country<sup>17</sup>.

### **3.2. Disharmony of Regulations**

Five years after the establishment of Law 7/2014 on Trade, Indonesia issued GR 80/2019 on Trading Through Electronic System (e-commerce). This GR 80/2019 provides a broad definition for e-commerce players i.e., every individual or business entity whether in the form of a legal entity or not, domestic business actors or foreign business actors, conducting business activities in the e-commerce sector<sup>18</sup> while PP

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<sup>14</sup> Art.3 GR 36/1977 on Termination of Foreign Business Activities in Trade Sector.

<sup>15</sup> See Article 24 (a) of Minister of Trade Regulation 66/2019 concerning the Amendment to General Terms of Goods Distribution.

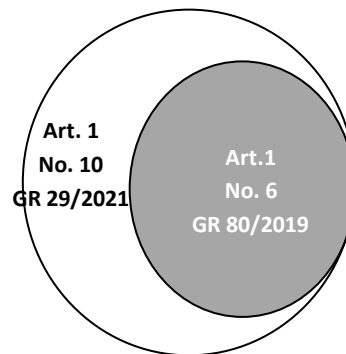
<sup>16</sup> Paragraph (2) Art.10 of MTR 24/2021

<sup>17</sup> See Article 27 Paragraph (2), Article 28 C, and Article 28 D of the 1945 Constitution of the Republic of Indonesia and Article 4, 5,6 of Law No.11 of 2019 concerning Social Welfare.

<sup>18</sup> See. Art.1 Number 6 of GR 80/2019 on Trading Through Electronic System

29/2021 defines distribution business actors as those carrying out goods distribution activities in the country<sup>19</sup>.

In practice, every e-commerce activity leads to the distribution of the goods after the sale-purchase deal is achieved. Thus, there is a clear correlation in the understanding of business actors defined by GR 80/2021 and PP 29/2021 as described below:



Picture 2  
**Linkage of Business Actors' activities**

Remarks:

- The shaded part of the picture above illustrates that all e-commerce players distribute goods or services but not all Distribution Business Actors carry out e-commerce activities.
- The non-shaded part of the picture illustrates some Distribution Business Actors do not conduct e-commerce but remain to carry out ordinary sale-purchase of the goods to their distribution channels.
- There is no e-commerce player who does not distribute goods and services in carrying out their activities.

Conclusion:

Every e-commerce player conducts distribution activities for goods and services. It means every Distribution Business Actor may act as an e-commerce player as long as the distribution of goods or services is carried out using electronic devices.

Given the understanding shown in the Picture 2 above, disharmony emerges conflicting legal issue in which everybody (including an entity) can be an e-commerce player, and consumers (end-user) become its direct-target sale. Conversely, the Distribution Business Actor is legally prohibited to do direct distribution (sale) of the goods to consumers without using its intermediaries in Indonesia.

<sup>19</sup> See Art. 1 Number 10 of GR 29/2021 on Agreements for Distribution Goods made by Distributor or Agent.

The disharmony of regulations governing e-commerce and distribution of goods is followed by 2 (two) critical issues as follows:

**(i) No Certain Restrictions to be E-commerce Player**

As introductorily explained above, the Indonesian e-commerce sector remains the star of the digital economy in the time of the pandemic COVID-19. The rapid and continuous growth of e-commerce may be supported by informal and official marketing officers offering products with various attractive strategies for sales. Especially in terms of generating profits, is very likely to encourage the Distribution Business Actor to take part in e-commerce activities by becoming the e-commerce player since GR 80/2019 provides no restriction for anybody conducting e-commerce business activities as long as he adheres to and complies with provisions contained in GR 80/2019. Moreover, there is no clear obligation to expressly comply with Indonesian laws and regulations governing the distribution of goods in Indonesia stated in GR 80/2019.

In the sale of goods carried out through the e-commerce platform providers, we can find some sellers have sold a certain type of goods until thousand times when the sales are unlikely to do by ordinary sellers instead of manufacturers or distributors (wholesalers). Thus, if it is proven, then foreign Distribution Business Actors either domiciling in Indonesia or abroad allegedly infringe the restriction according to the Indonesian laws and regulations related to the distribution of goods<sup>20</sup>.

Article 1 Paragraph (6) and Article 4 of GR 80/2019<sup>21</sup> implicitly provide opportunities for any Distribution Business Actors to infringe the signed distribution agreement by selling products on e-commerce (direct selling to customers). Consequently, these provisions may create irregularities and disharmony in the regulation of goods and services in Indonesia. Moreover, it may encourage Distribution Business Actors to injure the implementation of the distribution contract through e-commerce as this cannot be categorized as a violation under GR 80/2019.

**(ii). Representative of E-commerce Platform Providers Act as and on behalf of E-commerce Players**

Overseas e-commerce platform providers who actively offer or conduct e-commerce to Indonesian consumers and they meet certain criteria (total transactions, value of transactions, deliveries, and/or traffics or accessors) are

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<sup>20</sup> See. Art.3 Paragraph (2) of GR 36/1977 as duly amended by Art 1 of GR 19/88 as duly amended by Art.1 of GR 41/1977 as duly amended by Art.1 of GR 41 of 1997 and Art.19 Minister of Trade Regulation No.22/M-DAG/PER/3/2016 as duly amended by Art.1 Number 3 Minister of Trade Regulation No.66/2019 in conjunction with Art.33 and Art.35 Paragraph (1) of GR 29/2021 concerning Implementation of Trade Sector.

<sup>21</sup> Article 1 Paragraph (6) of GR 80/2019:

taken as having a physical presence in Indonesia and doing a permanent business in the legal territory of the Republic of Indonesia<sup>22</sup>. These overseas e-commerce platform providers are obliged to appoint representatives domiciling in the legal territory of the Republic of Indonesia to act for and on behalf of the E-commerce Players concerned<sup>23</sup>.

If we observe to the Indonesian regulation, there are 4 models of representative offices permitted to operate di Indonesia as defined in the BKPM Regulation No.13 of 2017:

1. License for a Representative Office of Foreign Company (RO-FC or KPPA), office presided by an individual Indonesian citizen, or a foreign citizen appointed by a foreign company or a union of foreign companies abroad as its representative in Indonesia.
2. License for a Representative Office of Foreign Trading Company (RO-FTC or KP3A), office presided by an individual Indonesian citizen, or a foreign citizen appointed by a foreign trading company or a union of foreign trading companies aboard as its presentative in Indonesia.
3. License for a Representative Office of Foreign Constructions Company (RO-FCC or BUJKA), a business entity established under foreign laws and domiciled in abroad, having its representative office in Indonesia, and is equal to an Indonesian private limited company engaging in construction services.
4. License for ROFC of Oil and Natural Gas (RO-FCOG or KPPA Migas), office presided by an Individual Indonesian citizen, or a foreign citizen appointed by a foreign company or a union of foreign companies aboard as its representative in Indonesia in the subsector of oil and gas.

In mere view of the definitions above, only the models of RO-FC and RO-FTC are suited to be the representatives of Overseas E-Commerce Platform Providers. Models of RO-FCC and RO-FCOG are not able to do transactions presently through the e-commerce platform providers. However, if we observe the regulation deeper, the Model of RO-FTC is the most possible to apply because RO-FC's activities are limited to being a supervisor, liaison, coordinator, and handling the company's interest or the affiliates<sup>24</sup> whereas the model of RO-FTC is entitled to be a selling agent, manufactures agent and/or buying agent<sup>25</sup>. Unfortunately, this RO-FTC is prohibited to do trading activities and sales

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<sup>22</sup> See Art 5 and Art.7 Paragraph (1) of GR 80/2019 concerning Trading Through Electronic System.

<sup>23</sup> See Paragraph (3) Art.7 of GR 80/2019

<sup>24</sup> See Art. 37 Paragraph (1) of BKPM Regulation No.13/2017 concerning Guidelines and Procedures for Investment Licensing and Facilities and Art.9 Paragraph 10 in conjunction with Art.16 Paragraph (3) of BKPM Regulation No.4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing and Investment.

<sup>25</sup> See Art.38 Paragraph (1) of BKPM Regulation No.13/2017 concerning Guidelines and Procedures for Licensing and Investment Facilities.



transactions, either started from the initial stage to completion such as tender submission, contract signing, claim settlement, and the like.

An E-commerce platform provider is not a direct-selling party but provides an e-commerce platform for trading then the meaning of the “representative domiciling in the legal territory of the Republic of Indonesia” is emphasized by the wording” who can act as and on behalf of the business actor concerned”. This means the e-commerce platform provider is identical to the Representative Office of Foreign Trading Company (KP3A) because the providers cannot do the selling, yet it acts as if the sales agent of e-commerce players.

In an effort to harmonize the use of the term “agent” defined for the representative of e-commerce platform providers, then the definition of the agent is made after the issuance of GR 29/2021:

Agent is a Distribution Business Actor who acts as an intermediary for and on behalf of the party who appointed him under an agreement in exchange for a commission to do marketing activities for the goods without having ownership or control of the marketed goods<sup>26</sup>.

This new definition changed the Indonesian old-fashioned terminology of an agent. Prior to the new definition, the agent was limited to:<sup>27</sup>

- (a) national trading company
- (b) acted for and on behalf of the principal
- (c) under an agreement for marketing without transferring rights
- (d) goods and/or services owned/controlled by principal appointing it.

This old definition is very limited and does not support the disruption of e-commerce, consequently, the new terminology of the agent is no longer defined as a national trading company but a distribution business actor, and he may act for and on behalf of any party, not just the principal. The agreement is no longer limited to marketing contracts but any agreement which gives the commission to do marketing activities. This new definition is also stressed down onto the intermediary as the one who does not own or control the goods or services in e-commerce. It is more reasonably acceptable instead of limiting the principal as a party who owns or controls it because an agent can represent any merchant in e-commerce (not just a principal/manufacturer). In a nutshell, the new definition of Agent is being prepared to support the representatives of e-commerce platform providers who act as an agent of selling should the government use the RO-FTC (KP3A) model.

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<sup>26</sup> See Article 1 Number 6 of MTR 24/2021 concerning Agreement for Distribution of Goods by Distributor or Agent.

<sup>27</sup> See Article 1 Number 6 of Minister of Trade Regulation 11/M-DAG/PER/3/2006 on Terms and Procedures for Issuance of Registration of Agent or Distributor of Goods or Services.

Let us take a look into the terminology of Distribution Business Actor defined in the Elucidation section of Article 7 of Law No.7 of 2014 concerning Trade:

Distribution Business Actor who carries out goods distribution activities domestically and abroad, including distributors, agents, exporters, importers, manufacturers, suppliers, sub-distributors, sub-agents, and retailers.

Meanwhile, Art.1 Number 10 of GR 29/2021 concerning Implementation of Trade Sector says;

Distribution Business Actor who carries out goods distribution activities domestically.

Law 11/ 2020 concerning Job Creation as this omnibus law mandating the issuance of GR 20/2021 does not change the definition of Distribution Business Actors set out in Law 7/2014. Accordingly, this terminology may raise confusion in the Indonesian trade since the formulation in GR 29/2021 has squeezed the understanding of distribution activities domestically.

This conflicting terminology continues to parties confusingly categorized as the Distribution Business Actors as mentioned below:

- a) Article 2 Paragraph (2) of MTR 24/2021;  
the Distribution Business Actors are distributor, sole distributor, agent, sole agent.
- b) Article 33 Paragraph (1), (2), and (3) of GR 29/2021;
  - indirect distribution (distributor and its channels, agent, and its channels), and franchise,
  - direct distribution (single-level direct selling and multi-level direct selling)
- c) Elucidation section of Article 7 of Law 7/2014;  
distributor, agent, exporter, importer, principal supplier, sub-distributor, sub-agent, and retailer.

The government needs to stipulate which terminology of the Distribution Business Actor applies to all distribution business sectors either in traditional trade or e-commerce throughout the territory of the Republic of Indonesia.

Following all the discussions about being representative of e-commerce players above, the government must also emphasize the enforcement of the same legal treatments for agents associated with product liability issues if the overseas merchants refuse their responsibilities for the losses suffered by consumers attributable to merchants' violations. These violations are, among others, the goods do not match the descriptions, late deliveries, lower quality of goods, broken goods, loss of goods, etc.

According to Article 1 Paragraph (3) of Law 8/1999 on Consumer Protection clearly states that the business actor is any individual or business entity whether or not in the form of a legal entity established and domiciled or carries out activities in the territory of the Republic of Indonesia severally or jointly through agreement to carry out business activities in various economic sectors. This means the agent includes a business actor who is obliged to give compensation and/or replacement for damage as a result of the use, and utilization of the traded goods and/or services or the goods and/or services received or utilized not conform to the agreement<sup>28</sup>. In conclusion, a business actor must be liable to compensate for damage, pollution, and/or customer losses because of consuming the traded goods and/or services<sup>29</sup>.

As far as the researcher is concerned, each problem associated with goods or services traded through e-commerce platform providers is mostly resolved prior to the e-commerce platform providers forwarding the customer's payment to the merchant (after the customer has confirmed receiving the goods or services completely). However, if it is received after a few days, the customer will have great difficulty in demanding the merchant's responsibility. The problem escalates when the merchant refused to accept liability, and neither do the e-commerce platform providers. It is indeed formidable to the customer especially when the goods were bought at an expensive price from an overseas merchant. Again, the implication of the merchant's responsibilities as defined in Law 8/1999 has not yet been implemented properly as it is carried out in traditional trading (on-site). However, this treatment for this case is different if the transaction is carried out through the Distribution Business Actors, then they should be liable to take responsibility under Indonesian law.

### **3.3. Loss of competitive advantages in Distribution Cooperation.**

The legal relationship between principal<sup>30</sup> and distributor arises from the establishment of a contractual deal to distribute goods and/or services containing terms and conditions for the principal and the distributor. After doing the research, at least 7 (seven) benefits the distributor expects from the principal under distribution cooperation:

- 1) The principal sells and distributes goods at a certain price which is relatively much cheaper than the market price, so the distributor receives a margin of profit.

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<sup>28</sup> Point f and g of Article 7 of Law No.8 of 1999 concerning Consumer Protection

<sup>29</sup> Paragraph (1) Article 19 of Law No. 8 of 1999 concerning Consumer Protection

<sup>30</sup> Principal is defined as an entity (manufacturer or supplier) having shares wholly or partially owned by at least 1 foreign citizen and/or 1 foreign corporation, domiciling in the Republic of Indonesia or overseas.

- 2) The Distributor reserves the right for a guarantee of obtaining the latest principal's goods earlier or since the goods are marketed.
- 3) The Distributor provides more confidence to customers since the sale of goods is under well-support of the principal.
- 4) After-sales guarantee support in the form of repair services to the original condition of the goods if found damaged after purchase within a certain period or replacement if the goods have a factory defect.
- 5) Principal's guarantee of the authenticity of the goods and legal support for intellectual rights attached to the goods:
- 6) Principal's guarantee for the sustainable procurement of spare parts excludes goods sold in discontinued condition (no further development)
- 7) Minimum total expenditures related to goods because the distributor does not need research and development (R&D) program on renewal of the goods, costs of capital goods for production, especially purchase/lease of land, factory construction, and its installation as well skillful labors.

The strengths of the distribution cooperation as explained above should have been competitive advantages under a distribution contract. Unfortunately, since the rapid e-commerce activities, the legal relationship arising from the distribution contract seems to no avail causing all the strengths to become gravely paralyzed, except the distributor's obligation to satisfy the minimum purchase and sales target. Presently, there is almost no benefit obtained from the principal due to the proliferation of E-Commerce activities may lead to the following:

- a) The sale price of goods offered by merchants is relatively lower than the basic price given by the principal when the goods were bought by the distributor at the very first time. This sale price is devastatingly unable to be completed by the distributor, albeit no margin added to it.
- b) Lots of similar goods having identical forms, shapes, logos, and materials to the original goods legally distributed by the principal are sold at low prices in the electronic market<sup>31</sup>. Due to the swift flow of supply and demand through e-commerce, it is difficult for the distributor to request the principal to take legal action over the alleged infringements of intellectual property rights. These alleged infringements tend to be ignored by the principal because the number is many, and litigation costs, as well as lengthy legal processes, may drain mind and energy.

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<sup>31</sup> Public Relation Report of Directorate of Intellectual Property, "Pemerintah Gelar Rapat Bersama *E-Commerce* untuk Meminimalisir Pembajakan dan Penjualan Barang Palsu di Marketplace", accessed from <https://www.dgip.go.id/artikel/detail-artikel/pemerintah-gelar-rapat-bersama-ecommerce-untuk-meminimalisir-pembajakan-dan-penjualan-barang-palsu-di-marketplace> [Liputan Humas \(dgip.go.id\)](https://www.dgip.go.id).

- c) E-commerce makes the offer of the distribution goods competes with the same goods marketed by other merchants to Indonesian customers. This competition is considered commercially fair in the ordinary course of business. Tellingly, those same goods are produced by the same principals but originally intended for sale in other countries where the goods have a lower price than the basic price specified by the principal to the authorized distributor in the territory of the Republic of Indonesia. The distributor must sell the products not under the basic price otherwise, it will lead to a category of (material) breach of contract.
- d) E-commerce which is carried out through electronic system services in Indonesia (called as e-commerce platform providers for instance: Tokopedia, Shopee, Lazada, JD, Bukalapak, etc) provides some merchants as “official stores”. These stores offer and sell original products only (presently limited to principals and distributors)<sup>32</sup>. Consequently, these official stores can be suspected of potentially infringing the distribution regulations in Indonesia in which Distributors Business Actors are strictly prohibited to do direct sale to end-user (consumers), and if so allowed, then principal and distributor (including sub-distributor, agent, sub-agent) become direct competitors each other. Unsurprisingly, the distributor is not in demand by consumers because commercial dealing with the principal is more advantageous (instead of going to the distributor) in terms of product novelty, price, guarantee of authenticity, guarantee for repairs, and level of public trust. Legally, all Distribution Business Actors are not allowed to sell or distribute goods to customers as end-users. However, this prohibition does not apply to (i) micro and small-scale enterprises<sup>33</sup>; (ii) importers who also engage as distributors<sup>34</sup>; (iii) manufacturers producing raw materials, supporting materials, or capital goods to other manufacturers<sup>35</sup>; (iv) goods for government procurement<sup>36</sup>; and (v) corporation distributing medicines and health products<sup>37</sup>.
- e) Distributors are constantly obliged to comply with minimum purchase and sales targets of which amounts are increased from time to time

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<sup>32</sup> Definition of Official Store as accessed on 1<sup>st</sup> of February 2022 at (i) <https://www.tokopedia.com/help/article/bagaimana-cara-menjadi-official-store>, (ii) <https://www.lazada.co.id/helpcenter/apakah-maksud-dari-lambang-official-store.html>, (iii) <https://seller.shopee.co.id/edu/article/6875> (Mengenal Shopee Mall | Pusat Edukasi Penjual Shopee Indonesia),

<sup>33</sup> See Art.23 of Minister of Trade Regulation No.22/M-DAG/PER/3/2016 concerning General Terms of Distribution of Goods.

<sup>34</sup> See Art.1 Number 3 of Minister of Trade Regulation No.66 of 2019 concerning Amendment to Minister of Trade Regulation.

<sup>35</sup> See Ibid., Art. 1 Number 5

<sup>36</sup> See Ibid, Art. 1 Number 6

<sup>37</sup> See Art.10 of MTR No.24 of 2021.

amidst higher competition over sale price for similar goods in the electronic market. Globally, the goods produced by the principals indicate customers' great demand. This condition drives the principals to specify the higher minimum purchase of the goods and sales targets to be reasonably achievable by distributors. In the electronic market supported by e-commerce platform providers, as we know, an individual or entity (principal, distributor, sub-distributor, agent, sub-agent, merchant) is possible to be a seller or reseller. Consequently, there are many sellers (or resellers) who market/offer the same goods in e-commerce. Most of the sellers are not bound by specific requirements under distribution agreements, yet they are ready to market and sell the goods and then hand over all the arising problems to the principals. It is likely the customers' great demand is caused by the external massive unofficial marketing efforts, not distributors' sales performance.

### **3.4. Electronic Contract is an Absolute Adhesion Contract having disadvantageous clauses yet barely rejected in e-commerce.**

An electronic contract is an underlying binding agreement to an e-commerce transaction. As we know, electronic contracts are provided "one-sided protection" merely for the seller's importance instead of the buyer (customer). This type of contract is generally known as take-it-or-leave-it contracts or Adhesion Contracts. This electronic contract is not entirely subject to change and agreeable by the seller with only a 1-clicking button "I agree", then the contract is valid and enforceable. Up to this point, the customer is bound by the whole clauses stated therein, including the alien matters for a layman such as choice of law and choice of a forum solely determined by Sellers, mostly beyond sufficient consumer's knowledge. This "take-it-or-leave-it condition is also felt by distributors, yet some minor clauses are likely to be negotiable, but the choice of law and the choice of jurisdiction remain vested in the seller's sole decision. An electronic contract is an adhesion contract containing standardized clauses; therefore, it must comply with the Indonesian regulation governing the standardized clauses<sup>38</sup>, specifically, Art. 18 of Law 8/1999 on Consumer Protection Law as described below:

## **PROVISIONS OF INCLUSION OF THE STANDARDIZED CLAUSES**

### **Article 18**

- (1) Business actors who offer goods and/or services for trade are prohibited from making or inserting standardized clauses to each document and/or contract if:
  - a. Declaring the transfer of business actor's responsibility;
  - b. Declaring that the business actor has the right to reject the return of the goods bought by the consumer;

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<sup>38</sup> See Article 47 Paragraph (2) of GR 71/2019 on Organizations of Electronic System dan Transactions in conjunction with Art.53 Paragraph (2) of GR 80/2021 on Trading Through Electronic System.

- c. Declaring that the business actor has the right to refuse the return of money paid on the goods and/or services bought by the consumer;
  - d. Declaring the granting of power from the consumer to the business actor either directly or indirectly to do one-sided actions associated with the goods bought by the consumer in installments;
  - e. Regulating matters of proving on the loss of the use of goods or services bought by the consumer.
  - f. Giving rights to the business actor reduces benefits of services or assets of the consumer which are the object of the service sale-purchase.
  - g. Declaring that the consumer is subject to regulations in the form of new, additional, continuation, and/or revised continuation made unilaterally by the business actors while the customer is using the services he pays.
  - h. Declaring that the consumer authorizes the business actor to impose mortgage, lien, or security rights over the goods paid by the consumer in installments.
- (2) The business actor is prohibited from incorporating the standardized clauses whose positions or forms are hardly seen or non-clearly readable or the meaning is difficult to understand.
  - (3) Every standardized clause specified by the Business Actor to the document or contract meets provisions as meant in the Paragraph (1) and Paragraph (2), is declared null and void,
  - (4) The Business Actor must adjust the standardized clauses contradicting this Law (consumer protection).

The most dangerous is, the low price highly drives e-commerce customers to accept a non-changeable electronic contract. Thus, they completely bind themselves to all risked-clauses for e-commerce without prior-matured consideration. Virtually all of the ill-fitting clauses in the electronic contracts (e-commerce) are disadvantageous to the Indonesian customers but easily understandable and acceptable to them holding the principle of buying “pay first, think later”. This fact is non-avoidable and not subject to business competition for the Distribution Business Actors due to the regulations strictly prohibiting them and the lowest price (below the basic price determined by principal) is at the priority to buying for e-commerce consumers.

#### **4. CONCLUSION**

The rapid advancement of digital technology in business competition has been very well realized by the Distribution Business Actors. The strength and competitive advantage of the business actors to survive in the midst of digital technology globalization is the readiness of business actors to constantly innovate, become creative with distinguishing characteristics and utilize the technology of digital marketing as a forum to promote the business internationally. The customer is becoming non-compromising with his/her preferences. It has become imperative for the business to cater to individual customers' preferences. The technology today and its evolution facilitate customer preference-centric commerce. Catering to the individual customer's preferences would be a critical survival factor for the enterprises.

The government's efforts to prepare legal institutions and regulations to support the proliferation of e-commerce in Indonesia are paces we should appreciate. However, if we observe it deeper, there is a conflict of regulations occurring between GR 80/2019

concerning Transactions Through Electronic Systems and Chapter IV Articles 32-59 - GR 29/2021 concerning the Implementation of the Trade Sector.

The definition of the e-commerce players in GR 80/2019 provides opportunities for all parties, including not limiting parties who have been bound in a distribution contract between foreign principal and distributor. Therefore, it is reasonable to assume that the implementation of e-commerce can drive the Distribution Business Actors to infringe the distribution contracts and regulations by participating in direct sales (e-commerce), causing unfair competition among Distribution Business Actors themselves, even with resellers. A reseller is a party legally entitled to make direct sales to consumers as the lowest distribution channel. Slowly but surely, the implementation of the provisions of GR 80/2019 will extremely erode distribution businesses protected by GR 29/2021 provided that, the government stays silent on this issue (of distributorship). Likewise, legal protection in the distribution business does not effectively protect any Distribution Business Factors who carry out its business in good faith from the dominating principals under the Indonesian laws and regulations (Principal-supplied contract entirely). Correspondingly, in terms of e-commerce proliferation, the government is expected to issue amendments or other legal instruments lest the implementation of GR 80/2019 is not (gravely) paralyzing the distribution contracts between foreign principals and distributors in Indonesia.

The disharmony that occurs between regulations on e-commerce and regulations for the distribution of goods should be immediately addressed and mitigated by the government. It is good to show the government attempts to create a friendly and orderly business ecosystem as well as provide sustainable welfare for every business actor in Indonesia by making mutually supportive regulations in their implementations.

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