

REGULATION FOR E-COMMERCE PLATFORM PROVIDERS IN INDONESIA: IMPORTANCE AND EFFECTIVENESS

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Abstract

Indonesia is a country with the largest digital economy potential in Southeast Asia as indicated by number of its internet user especially through mobile access. This huge potential begins to realize with the presence of electronic commerce (e-Commerce) services which grow very fast and very vastly. The presence of e-Commerce has stimulated many new social phenomena, which are mainly triggered by e-Commerce platform providers who intensively perform marketing activities. This situation will become the real law (das sein) if it is not governed by law.

The purpose of this research is to analyze the importance and effectiveness of existing regulations regarding e-Commerce platform providers in Indonesia. The research applies normative juridical method that uses applicable laws and regulations relevant to the issues as the primary sources supported by empirical cases as the secondary sources. From theoretical perspective, responsive law theory and the principle of *lex specialis derogat legi generali* are applied in this research. The applied positive laws must be assured for their responsiveness toward social needs while the specific characteristics of e-Commerce are entirely considered. Legal comparisons with international laws and other countries are also included to enrich the analysis.

The research concludes that the Government Regulation Number 80 of year 2019 regarding Trading through Electronic System is very important to regulate e-Commerce environment in Indonesia. However, the enforcement of this regulation is not fully effective. The government of Indonesia could apply the regulation to facilitate healthy e-Commerce growth with comprehension towards business perspective and building trust to stimulate expected responses. Effective implementation of comprehensive e-Commerce regulation will strengthen the nation's digital economy and overall economic resilience. Specific legal arrangements for e-Commerce platform providers should not paralyze the business. Instead, more persuasive approaches with good communication and trust will stimulate positive benefits to all related parties.

Abstrak

Indonesia merupakan negara dengan potensi ekonomi digital terbesar di Asia Tenggara sebagaimana diindikasikan oleh jumlah pengguna internet khususnya yang menggunakan akses seluler. Potensi yang besar ini mulai terwujud menjadi nyata dengan kehadiran layanan perdagangan elektronik atau e-Commerce yang tumbuh secara cepat dan besar. Kehadiran e-Commerce

telah memicu fenomena-fenomena sosial yang utamanya didorong oleh penyedia layanan platform e-Commerce yang secara intensif melakukan aktivitas pemasaran. Situasi ini akan menjadi hukum yang digunakan (das sein) jika tidak ditata oleh regulasi hukum.

Tujuan dari penelitian ini adalah untuk menganalisa pentingnya dan keefektifan dari regulasi yang sudah ada mengenai penyedia platform e-Commerce di Indonesia. Penelitian ini menggunakan metode yuridis normatif yang bertumpu kepada hukum dan regulasi yang diberlakukan sesuai dengan isu tersebut sebagai sumber utama dengan didukung kasus-kasus empiris sebagai sumber pelengkap. Dari sudut pandang teoritis, teori hukum responsif dan asas *lex specialis derogat legi generali* digunakan sebagai alat analisis dalam penelitian ini. Hukum positif yang diberlakukan harus dipastikan bersifat responsif terhadap kebutuhan masyarakat sedangkan karakteristik khusus dari e-Commerce harus seluruhnya dipertimbangkan. Perbandingan dengan hukum internasional dan negara-negara lain juga digunakan untuk memperkaya analisis.

Penelitian ini menyimpulkan bahwa Peraturan Pemerintah Nomor 80 Tahun 2019 tentang Perdagangan Melalui Sistem Elektronik sangatlah penting untuk mengatur lingkungan e-Commerce di Indonesia. Namun demikian, penegakan dari peraturan ini tidak sepenuhnya efektif. Pemerintah Indonesia bisa menerapkan peraturan ini untuk memfasilitasi pertumbuhan e-Commerce yang sehat dengan pemahaman terhadap perspektif bisnis dan pembentukan kepercayaan untuk merangsang response yang diharapkan. Implementasi yang efektif dari peraturan e-Commerce yang komprehensif akan memperkuat ekonomi digital dan keseluruhan daya tahan ekonomi nasional. Pengaturan khusus terhadap penyedia platform e-Commerce seyogyanya tidak melumpuhkan bisnis. Sebaliknya, pendekatan yang lebih persuasif dengan komunikasi yang baik dan kepercayaan akan mendorong manfaat positif baik semua pihak terkait.

1. INTRODUCTION

The Broadband Commission for Digital Development reported in 2018 that number of internet users had reached 3.77 billion or more than half of the world population.¹ The same report also states that the number of mobile broadband users had reached 4.63 billion worldwide. While according to the recent report, percentage of Internet users have grown from 54% of the world population in 2019 to 66% in 2022.² According to Indonesia Internet Service Providers Association (APJII), in 2017, out of total 262 million of Indonesia population, 143.26 million or 54.68% of them are already Internet users.³ Later survey from Hootsuite states that in 2019, there are 355.5 million mobile cellular subscribers, which means mobile phone penetration in Indonesia has reached 133%.⁴ The latest survey from APJII in March 2023 states that 215 million of Indonesia population have Internet access.⁵

¹ Broadband Commission for Sustainable Development, "The State of Broadband 2018: Broadband Catalyzing Sustainable Development," *Broadband Commission for Sustainable Development*, 11 September 2018, <https://www.broadbandcommission.org/publication/the-state-of-broadband-2018/>.

² Broadband Commission for Sustainable Development, *The State of Broadband 2018: Accelerating Broadband for New Realities* (International Telecommunication Union and United Nations Educational, Scientific and Cultural Organization, 2022), <https://unesdoc.unesco.org/ark:/48223/pf0000383330>.

³ Asosiasi Penyelenggara Jasa Internet Indonesia (APJII), "Infografis Penetrasi & Perilaku Pengguna Internet Indonesia 2017," <https://apjii.or.id/gudang-data/hasil-survei>.

⁴ Andi Dwi Riyanto, "Hootsuite (We are Social): Indonesian Digital Report 2019," *Andi.link*, 9 February 2019, <https://andi.link/hootsuite-we-are-social-indonesian-digital-report-2019/>.

⁵ Sarnita Sadya, "APJII: Pengguna Internet Indonesia 215.63 Juta pada 2022-2023," *DataIndonesia.id*, March 9, 2023, <https://dataindonesia.id/digital/detail/apjii-pengguna-internet-indonesia-21563-juta-pada-20222023>.

These indicators are aligned with the mission of the Indonesia's government to facilitate the people's needs in all aspects including telecommunication and informatics.⁶

With this massive and rapid Internet development and penetration, various Internet services are also blooming, including e-Commerce services.⁷ Frost and Sullivan estimates Indonesia will become the country with the highest e-Commerce growth in Southeast Asia in 2019. The country is predicted to reach 31% growth per annum with total transaction reaches USD 3.8 billion.⁸ In the latest report from Bank Indonesia (the Indonesian central bank), e-Commerce transaction volume in Indonesia has reached 3.49 billion times while the value of the transaction has reached 476.3 trillion rupiah in 2022. This financial figure increased 18.8% from 401 trillion rupiah in the previous year.⁹

While Internet content is growing and advancing, the regulations to rule it are still left behind. In 2013, according to the International Telecommunication Union (ITU), there are seven aspects of Internet which have to be regulated: license, price, spectrum, access and universal services, broadcasting content, internet content and information technology. Among those aspects, Internet content is an aspect with the largest unregulated portion, which is 40%.¹⁰

According to the ITU, there are three parties who are involved in regulation of information technology and communication, they are: regulator, related ministries, and other sector ministries or government organizations.¹¹ The government of Indonesia has issued Law Number 11 of 2008 regarding Information and Electronic Transaction. Article 4 paragraph b, c, d, and e of this law governs the use of information technology and electronic transaction for: developing trade and national economy, increasing effectiveness and efficiency of public services, opening widest opportunities to everyone for knowledge and skills development in information technology, providing security, justice and legal certainty for users and providers of information technology. Also, this law article 9 rules that businessmen who offer products through electronic system must provide complete and accurate information pertaining to contract terms and conditions, producer and product specification.

Earlier, Indonesia government had also introduced Law Number 8 of 1999 regarding Customer Protection. Article 2 of this law explains that customer protection must be conducted based on benefits, justice, balance, security and customer safety, and legal certainty. However, this law has not properly provided protection for customers performing e-Commerce transactions. This law has not regulated legal issues on jurisdictions which can go across country boundaries (cross-border). Referring to these two regulations, there is an opportunity to simultaneously apply Law Number 11 of 2008 on Information and Electronic Transaction and Law Number 8 of 1999 on Customer Protection to anticipate legal issues which are triggered by e-Commerce activities. Nevertheless, the presence of e-Commerce

⁶ Edmon Makarim, *Kompilasi Hukum Telematika* (Jakarta: Raja Grafindo Persada, 2003), 6.

⁷ Klaus Schwab, *Shaping the Future of the Fourth Industrial Revolution* (Portfolio Penguin, 2018), 7.

⁸ Verdict, "Indonesia E-Commerce to Hit 38 Billion in 2019," *Verdict*, 2 February 2016, <https://www.verdict.co.uk/electronic-payments-international/news/frost-sullivan-indonesia-e-commerce-to-hit-38-billion-in-2019-4798832/>.

⁹ Monavia Ayu Rizaty, "Transaksi e-Commerce RI Tak Capai Target pada 2022," *DataIndonesia.id*, January 24, 2023, <https://dataindonesia.id/digital/detail/transaksi-ecommerce-ri-tak-capai-target-pada-2022>.

¹⁰ The Broadband Commission for Digital Development, "The State of Broadband 2014: Broadband for All, A Report by The Broadband Commission," *Broadband Commission for Sustainable Development*, September 21, 2014. <https://www.broadbandcommission.org/publication/the-state-of-broadband-2014-broadband-for-all/>.

¹¹ *Ibid.*

has created a new order which intersects with the old order.^{12,13} This situation requires deliberate application of law to ensure that the new order will be placed equivalently with the pre-existed order in accordance with the principle of equality before the law.

Existing Indonesia legal system in protecting customers or other parties performing activities in the cyber world which is very different from the real world has triggered pros and cons pertaining should or should not the conventional legal system be applied.¹⁴ One characteristic of Internet activities is cross-border while conventional legal system still relies on jurisdictions territorial boundaries. This issue can further be categorized into the following e-Commerce practical problems: privacy problems, intellectual property rights, freedom of speech, taxation, customer protection, electronic payment, law of contract and proof, liabilities and responsibilities, international civil law, and the absence of law.¹⁵

The difference between cyber world and the real world will consequently lead to specific regulation of cyber world which could very much be different from the regulation of the real world. Similarly, due to its difference from the real-world regulation, cyber laws and their respective sectors including e-Commerce could comply with the *lex specialis* principle.^{16,17,18}

2. METHOD

In the effort to solve e-Commerce situation in Indonesia as explained above and to understand legal and social phenomena pertaining to e-Commerce environment, perspective of phenomenology and social construction are applied in this research.¹⁹ Phenomenology perspective tries to comprehend meaning of various occurrences and human interactions in special situation according to real facts.²⁰ Social construction, legal and technology perspective are not neutral subjects, but they are results of human creation, including human efforts to regulate activities in e-Commerce field.^{21,22}

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- ¹² Efraim Turban, Jon Outland, David King, Jae Kyu Lee, Ting-Peng Liang, and Deborrah C. Turban, "Overview of Electronic Commerce," in *Springer Texts in Business and Economics* (2015).
- ¹³ Efraim Turban, Jon Outland, David King, Jae Kyu Lee, Ting-Peng Liang, and Deborrah C. Turban, *Electronic Commerce – A Managerial and Social Networks Perspective* (New York, London: Springer, 2002).
- ¹⁴ Hikmahanto Juwana, "Aspek Penting Pembentukan Hukum Teknologi Informasi di Indonesia," *Jurnal Hukum Bisnis* 18 (2002).
- ¹⁵ Séverine Dusollier, "Legal Issue of Electronic Commerce," *Ercim.eu*, 30 July 1997, https://www.ercim.eu/publication/Ercim_News/enw30/dusollier.html.
- ¹⁶ Nurfaqih Irfani, "Asas Lex Superior, Lex Specialis, dan Lex Posterior: Pemaknaan, Problematika, dan Penggunaannya dalam Penalaran dan Argumentasi Hukum," *Jurnal Legislasi Indonesia* 16, no. 3 (September 2020): 313, <https://e-jurnal.peraturan.go.id/index.php/jli/article/view/711>.
- ¹⁷ James Crawford, *The International Law Commission's Articles on State Responsibility* (Cambridge: Cambridge University Press, 2002), 55–56.
- ¹⁸ James Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford University Press, 2007), 29–31.
- ¹⁹ O. Hasbiansyah, "Pendekatan Fenomenologi: Pengantar Praktik Penelitian dalam Ilmu Sosial dan Komunikasi," *Mediator: Jurnal Komunikasi* 9, no. 1 (2017), <https://ejournal.unisba.ac.id/index.php/mediator/article/view/1146>.
- ²⁰ John D. DeLamater and Janet Shibley Hyde, "Essentialism vs Social Constructionism in the Study of Human Sexuality," *The Journal of Sex Research* 35, no. 1 (1998): 10–18. <https://www.jstor.org/stable/3813161>.
- ²¹ Charles R. Ngangi, "Konstruksi Sosial dalam Realitas Sosial," *AGRI-SOSIOEKONOMI* 7, no. 2 (2011). <https://ejournal.unsrat.ac.id/index.php/jisep/article/view/85>.
- ²² Ian Rory, *Pendekatan Konstruksi Sosial* (Jakarta: PT. Raja Grafindo Persada, 1997).

This research combines two approaches which are ideal law (law in book) and real law (law in society).²³ The ideal law approach is performed to review the existence and scope of the applied laws pertaining to e-Commerce implementation. The real law approach considers psychological and behavioral aspects which occur in the e-Commerce development. For the ideal law approach, normative legal research is conducted by reviewing current laws applied toward legal problems according to the positivism paradigm. Comparative legal research is also performed to compare laws from different jurisdictions, family of law, or tradition of law, with special attention toward similarities and differences according to constructivism paradigm.²⁴

From initial normative legal research, it can be appraised that not all e-Commerce norms have been legally regulated. This real law situation provides some room for psychological and society behavior development toward e-Commerce acceptance. Several developed countries even apply independent regulation according to responsive law.²⁵ Legal approach should not be separately perceived, instead it should be proportionally combined to seek for answers toward problems and objectives of the research.²⁶ With this perspective, this research combine the normative legal approach and social empirical approach including data analysis and interview.

The importance of e-Commerce law should support the nation's economic resilience, long-term and short-term economic objectives, and interests of the e-Commerce players. With these considerations, the research formulates three questions:

1. How is the availability of e-Commerce laws that regulates e-Commerce practices in Indonesia?
2. How is the implementation of e-Commerce laws specially to support long-term and short-term goals of Indonesia's digital economy development?
3. How should e-Commerce regulation be suitably applied to support the nation's economic resilience?

This research is expected to deliver the following three objectives which are to analyze the available e-Commerce laws in Indonesia, to review the implementation of laws in e-Commerce activities both through fixed or mobile Internet, and to provide recommendation on both regulation and application of e-Commerce laws toward the players involved in the environment with intention to form governance that satisfies criteria of fairness, order, security, comfort, and productivity which in turn will bring positive impact towards Indonesia's digital economy and economic resilience. The research scope is limited to elaborate law protection and certainty for e-Commerce platform providers, sellers, buyers, payment or transaction service providers, delivery and logistic service providers, and the government as regulator.

²³ Sabian Utsman, *Metodologi Penelitian Hukum Progresif* (Yogyakarta: Pustaka Pelajar, 2014).

²⁴ Muhammad Imran Ali, "Comparative Legal Research-building A Legal Attitude For Transnational World," *Journal of Legal Studies* 26, no. 40 (2020): 67, <https://publicatii.uvvg.ro/index.php/jls/article/view/626>.

²⁵ Philippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (Harper and Row Publisher, 2011).

²⁶ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2006).

3. DISCUSSION

The research conducts normative legal approach and uses associated legal materials from the applied laws and regulations in various aspects pertaining to e-Commerce such as telecommunication and multimedia services, trade, customer protection, intellectual property rights, and electronic information and transaction. Laws and regulations being reviewed in this research are listed and explained as follows:

- **Telecommunication and Multimedia Service Laws**
 1. Law Number 36 of year 1999 regarding Organizing Telecommunication, Internet and Multimedia Services in Indonesia.²⁷
 2. Decree of Ministry of Transportation Number KM. 21 of year 2001 regarding Operation of Telecommunication Services.²⁸
 3. Decree of Ministry of Transportation Number KM. 30 of year 2004 regarding amendment on Decree of Ministry of Transportation Number: KM. 21 of year 2001 regarding Operation of Telecommunication Services.²⁹
 4. Decree of Communication and Informatics Ministry Number 07/PM.KOMINFO/04/2008 regarding the second amendment on Decree of Ministry of Transportation Number: KM. 21 of year 2001 regarding Operation of Telecommunication Services.³⁰
 5. Decree of Communication and Informatics Ministry Number 31/PER/M.KOMINFO/09/2008 regarding the third amendment on Decree of Ministry of Transportation Number: KM. 21 of year 2001 regarding Operation of Telecommunication Services.³¹
 6. Decree of Communication and Informatics Ministry Number 8 of year 2015 regarding the fourth amendment on Decree of Ministry of Transportation Number: KM. 21 of year 2001 regarding Operation of Telecommunication Services.³²
- **Trade Laws**
 1. Law Number 7 of year 2014 regarding Trade.³³
 2. Regulation of Trade Ministry Number 77 of year 2018 regarding Services of Integrated Business Permits in Trading through Electronic Means.³⁴
 3. Government Regulation Number 80 of year 2019 regarding Trading through Electronic System.³⁵
- **Customer Protection Laws**
 1. Law Number 8 of year 1999 regarding Protection of Consumers in Indonesia.³⁶

²⁷ Undang-undang Nomor 36 Tahun 1999 tentang Telekomunikasi.

²⁸ Keputusan Menteri Perhubungan Nomor KM. 21 Tahun 2001 tentang Penyelenggaraan Jasa Telekomunikasi.

²⁹ Keputusan Menteri Perhubungan Nomor KM. 30 Tahun 2004 tentang Perubahan atas Keputusan Menteri Perhubungan Nomor KM.21 Tahun 2001 tentang Penyelenggaraan Jasa Telekomunikasi.

³⁰ Peraturan Menteri Komunikasi dan Informatika Nomor 07/PM.KOMINFO/04/2008 tentang Perubahan Kedua atas Keputusan Menteri Perhubungan Nomor KM.21 Tahun 2001 Tentang Penyelenggaraan Jasa Telekomunikasi.

³¹ Peraturan Menteri Komunikasi dan Informatika Nomor 31/PER/M.KOMINFO/09/2008 tentang Perubahan Ketiga atas Keputusan Menteri Perhubungan Nomor KM.21 Tahun 2001 Tentang Penyelenggaraan Jasa Telekomunikasi.

³² Peraturan Menteri Komunikasi dan Informasi Nomor 8 Tahun 2015 tentang Perubahan Keempat atas Keputusan Menteri Perhubungan Nomor KM.21 Tahun 2001 tentang Penyelenggaraan Jasa Telekomunikasi.

³³ Undang-Undang Nomor 7 Tahun 2014 tentang Perdagangan.

³⁴ Peraturan Menteri Perdagangan Nomor 77 Tahun 2018 tentang Pelayanan Perizinan Berusaha Terintegrasi Secara Elektronik di Bidang Perdagangan.

³⁵ Peraturan Pemerintah Nomor 80 Tahun 2019 tentang Perdagangan Melalui Sistem Elektronik.

³⁶ Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.

- **Intellectual Property Rights Laws**

1. Law Number 13 of year 2016 regarding Patent.³⁷
2. Law Number 28 of year 2014 regarding Copy Right.³⁸
3. Law Number 20 of year 2016 regarding Brand and Geographic Indication.³⁹
4. Law Number 30 of year 2000 regarding Trade Secret.⁴⁰
5. Law Number 31 of year 2000 regarding Industrial Design.⁴¹
6. Law Number 32 of year 2000 regarding Integrated Circuit Layout Design.⁴²

- **Electronic Information and Transaction Laws**

1. Law Number 11 of year 2008 regarding Electronic Information and Transaction.⁴³
2. Law Number 19 of year 2016 regarding Amendment on Law Number 11 of year 2008.⁴⁴
3. Circular Letter of Communication and Information Ministry number 5 of 2016 regarding Scope and Responsibilities of Platform Providers and Trader (Merchant) Trading on Electronic System (Electronic Commerce) in the form of User Generated Content.⁴⁵
4. Government Regulation Number 71 of year 2019 regarding Implementation of Electronic System and Transaction.⁴⁶

The Indonesian Civil Code (KUH Perdata) only regulates purchase transaction in general.⁴⁷ It does not specifically regulate transaction in cyberspace in particular. To overcome this situation, in 2008, the government of Indonesia issued Law Number 11 of 2008, which now has been amended to become Law Number 19 of 2016 regarding Electronic Information and Transaction, widely known as UU ITE or ITE Law. Due to the rapid development of technology, the UU ITE has not anticipated current and latest development of e-Commerce technology and business and still focuses on element per element of electronic transaction such as electronic contract, electronic transaction, electronic document, and electronic signature. The position of e-Commerce platform providers is not fully regulated in specific and firm ways such as aspects related to their rights and obligations and their associated consequences and sanctions.

In response to the situation, interpretation on the UU ITE has been broadened by applying norms pertaining to e-Commerce practice as it is cited in the Circular Letter of Communication and Information Ministry number 5 of 2016, which still conforms to the existing regulations and more functioning as a guidance than a rule.⁴⁸ Many aspects pertaining to the e-Commerce practice in Indonesia are still softly regulated and refer to the

³⁷ Undang-Undang Nomor 13 Tahun 2016 tentang Paten.

³⁸ Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta.

³⁹ Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis.

⁴⁰ Undang-Undang Nomor 30 Tahun 2000 tentang Rahasia Dagang.

⁴¹ Undang-Undang Nomor 31 Tahun 2000 tentang Desain Industri.

⁴² Undang-Undang Nomor 32 Tahun 2000 tentang Desain Tata Letak Sirkuit Terpadu.

⁴³ Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.

⁴⁴ Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.

⁴⁵ Surat Edaran Menteri Komunikasi dan Informasi Nomor 5 Tahun 2016 tentang Batasan dan Tanggung Jawab Penyedia Platform dan Pedagang (Merchant) Perdagangan Melalui Sistem Elektronik (Electronic Commerce) yang Berbentuk User Generated Content.

⁴⁶ Peraturan Pemerintah Nomor 71 Tahun 2019 tentang Penyelenggaraan Sistem dan Transaksi Elektronik.

⁴⁷ Kitab Undang-Undang Hukum Perdata.

⁴⁸ Surat Edaran Menteri Komunikasi dan Informasi Nomor 5 Tahun 2016 tentang Batasan dan Tanggung Jawab Penyedia Platform dan Pedagang (Merchant) Perdagangan Melalui Sistem Elektronik (Electronic Commerce) yang Berbentuk User Generated Content.

existing laws considered relevant such as the Law of Electronic Information and Transaction including the choice of law and forum, the Law of Trading, the Law of Customer Protection including personal data protection, the Law of Intellectual Property Rights and the Indonesian Civil Code. Inclusion of these laws into the e-Commerce practice is still weak and only takes place whenever there are cases or whenever necessary. Those regulations were already available prior to the e-Commerce era and are intended to serve separately on a per subject basis towards e-Commerce activities. While nowadays, the e-Commerce environment must be perceived in a comprehensive way in which many players perform their activities on top of a common platform.

More than a decade ago, e-Commerce transactions were mostly performed in the form of electronic transaction as anticipated in the existing laws. Transactions took place directly among buyers and sellers by means of electronic media. There are global e-Commerce platforms such as Amazon and eBay, but in Indonesia, there was no famous platform performing e-Commerce transactions in a large scale back then. **Figure 1** below depicts this situation.

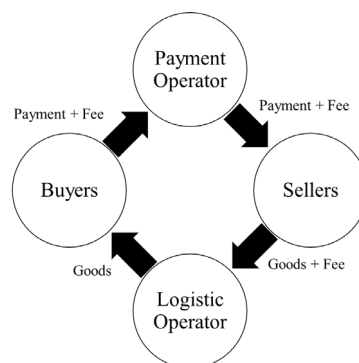


Figure 1. E-Commerce transaction without platform

However, within the last ten years, e-Commerce transactions through platform begun to gain tremendous popularity and even more popular during the Covid-19 pandemic. Many e-Commerce platforms emerged either locally initiated or involving some global or regional players and accordingly transactions started to shift from offline conventional and direct electronic ways to the e-Commerce platform as depicted in **Figure 2**. This phenomenon not only strengthens the position of e-Commerce platform providers in the landscape but also entitles them with a lot of power to control everything on the platform. The e-Commerce platforms possess strategic roles to invites buyers, sellers, payment service providers, and logistic service providers, become a mediator to sellers and buyers, become a mediator to buyers and payment service providers, become a mediator to sellers and logistic service providers, become a mediator to payment service providers and logistic service providers, and become a mediator to payment service providers and sellers. With such strong roles that possess a lot of power, e-Commerce platform providers could apply their own regulation and therefore they must be treated specifically to establish *lex specialis* laws in which the conventional laws are ineffective.^{49,50,51}

⁴⁹ Nurfaqih Irfani, *Op. Cit.*, 314, 316.

⁵⁰ Adolfo Esteban-Guitart and Juan Diego Posada, "Lex Specialis for Over-The-Top Services: Towards a Comprehensive Regulatory Framework for Emerging Services," *Journal of Information Policy* 8 (2018): 92–94.

⁵¹ Camila Riberio Pinheiro and Rafael Marques Carneiro, "The Interaction Between Over-The-Top Services and Traditional Regulation: The Need for a Lex Specialis," *Revista de Direito, Estado e Telecomunicações* 10, no. 2 (2018): 101–103.

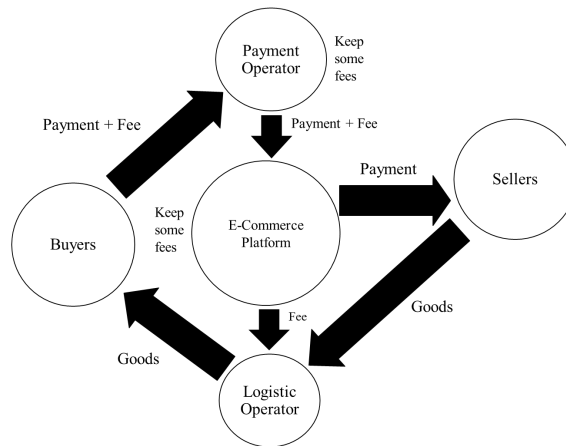


Figure 2. E-Commerce transaction through platform

Given those strategic roles, the e-Commerce platforms must maintain their function to accommodate and control the following: ensure that the buyers create correct purchase order and perform necessary payment according to the agreed upon price and other additional costs including tax and shipping cost using the agreed payment method, hold the money received from the payment until the purchased items are received by the buyers (escrow), ensure that sellers receive purchase orders from the buyers, ensure that sellers deliver the ordered products timely (through the selected logistic service providers), ensure that the delivered products comply to what have been promised by the sellers, ensure that the delivered products are received by the buyers timely and in good condition (not broken), release the payment from the buyers to the sellers according to the agreed upon price, time and method, release the shipping fee to the logistic service providers (upon completing their tasks to deliver the products) according to the agreed upon amount, time and method, ensure that amount of payment is returned to the buyers and the products to the sellers in case the transaction is cancelled for some reasons, ensure that all obligations to the government (as regulator) such as tax and other duties are fulfilled, and ensure that there is no violation of law during the transaction process either performed by the related parties (sellers, buyers, payment service providers, and logistic service providers) or any other parties.

Those functions could be directly or indirectly associated with risks which must be anticipated, such as: sellers offer illegal products, sellers send products with different quality or quantity than the ordered products, sellers send product untimely, sellers use others' brand or promotion material without consent or knowledge of the lawful owner, sellers apply irrational price, sellers offer illegal product or perform sales activity illegally, buyers do not have capacity or capability to perform the purchase as it is regulated by law, buyers use illegal payment tools or methods which are not in possession of their own, buyers delay or fail to perform payment, buyers purchase products which are not for the rightful purpose or prohibited by law, payment service providers do not process transaction properly, logistic service providers make mistakes in performing product delivery, and logistic service providers do not deliver products on time. On top of those risks, there are also possibilities that the involved players ignore the regulation or choose not to comply. For instance, if the platform providers enforce tax collection as an extension of the government's arm, the sellers will choose to perform transactions on other platforms.

With so many potential risks associated with e-Commerce transaction and customer protection, the government of Indonesia applies Law Number 19 of 2016 regarding

Amendment on Electronic Information and Transaction Law Number 11 of 2008, the Indonesian Civil Code, Law Number 8 of 1999 regarding Consumer Protection, and Law Number 7 of 2014 regarding Trading. There are two forms of legal protection applied toward the transacting parties which are preventive and repressive legal protections.^{52,53} The application of those laws and legal protections are still using either conventional laws or direct electronic transaction and disregard the specific nature of e-Commerce platform as suggested by the *lex specialis* principle.^{54,55}

3.1. International Laws on e-Commerce

After reviewing available Indonesian e-Commerce regulations, it would also be important to examine how the international laws are applied onto e-Commerce to broaden analysis perspective of the research to international level. In its development, Indonesian law of economy and international trade law have become inseparable. The latter has developed rapidly and spread widely especially because of the development of technology. The presence of technology services facilitates faster transactions through e-Commerce platforms across the globe. However, in practices, there are many potential threats from various possible occurrences that could endanger not only valuable assets but also safety. Legally, all Internet or cyber activities cannot apply only conventional law or otherwise it will face many difficulties.

Internationally, organizations which have already become reference in the international laws of conventional trade have also become reference in the e-Commerce regulation. Among those organizations are: United Nations Commission on International Trade Law (UNCITRAL), United Nations Conference on Trade and Development (UNCTAD), and World Trade Organization (WTO). Also, specific regional organizations such as the Association of Southeast Asia Nations (ASEAN) and European Union Directive on E-Commerce have gained influence in the global e-Commerce environment. Similarly, specific purpose organizations such as Organization for Economic Co-operation and Development (OECD) have been recognized for international e-Commerce regulation.

In more specific, international contract law has been regulated by the United Nations Convention on the Use of Electronic Communication in International Contracts (UNCITRAL) which has issued one of most important instruments in international contract law by electronic mean (e-contract) in The Convention on the Use of Electronic Communication in International Contracting.⁵⁶ This convention was opened for participating countries to join from January 16th, 2006, until January 16th, 2008. However, the participating countries are still allowed to apply different rules in accordance with their national regulation such issuing Electronic Transaction Act.

International laws in general can be categorized into hard laws and soft laws. Hard laws are legally mandatory which uphold precision and delegated to the authorized bodies

⁵² Didik Kusuma Yadi, Muhammad Sood, and Dwi Martini, "Perlindungan Hukum Bagi Para Pihak Dalam Transaksi E-Commerce Menurut Tata Hukum Indonesia," *Jurnal Commerce Law* 2, no. 1 (June 2022): 151. <https://journal.unram.ac.id/index.php/commercelaw/article/view/1368>.

⁵³ Dewi Setyowati, Candra Pratama Putra, and Ramdhan Dwi Saputro, "Perlindungan Hukum Pada Tindak Pidana E-Commerce," *Perspektive Hukum* 18, no. 2 (November 2018): 244, <https://perspektif-hukum.hangtuah.ac.id/index.php/jurnal/article/view/147>.

⁵⁴ Adolfo Esteban-Guitart and Juan Diego Posada, *Op. Cit.*

⁵⁵ Camila Riberio Pinheiro and Rafael Marques Carneiro, *Op. Cit.*

⁵⁶ "United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005)," United Nations, accessed on April 23, 2023, https://uncitral.un.org/en/texts/ecommerce/conventions/electronic_communications.

to interpret and apply them. International trade laws are categorized as hard laws, but recently they are weakening in several areas.⁵⁷ Among international conventions in trade area which are hard laws in nature are:⁵⁸

1. UN Convention on the Use of E-Communication in International Contract (2005).⁵⁹ This convention anticipates various legal barriers related to electronic communication which takes place during international contracting process.
2. Convention on the Unification of Certain Rules related to International Carriage by Air (1999).⁶⁰ This so-called Montreal convention, among other things, regulates the use of air transportation documents including electronic ticket and waybills.
3. UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (2008).⁶¹ This Rotterdam convention regulates various aspects related to contract and communication for the purpose of sea transportation including electronic communication, electronic transport record, and negotiable electronic transport record.

Soft laws can be perceived as left-over power from an effort to uphold laws in a situation where the law is getting weakened in one out of these three dimensions: obligation, precision, or delegation.⁶² That means, if one agreement is not formally binding, then this agreement is soft in one out of the three dimensions. Several examples of soft laws in e-Commerce related fields which have become reference for many countries are:⁶³

1. UNCITRAL Model Law on E-Commerce of 1996 with Guide to Enactment, with Additional Article 5 Bis as adopted in 1998.⁶⁴ This model law believes that application of e-Commerce facilitating model law will significantly contribute to the development of harmonious international economy relationship. This model law applies to all information in any data message form used for commercial activities. Information cannot be denied for its legal power, validity, or enforcement just because it is in data message form.
2. UNCITRAL Model Law on Electronic Signature with Guide to Enactment 2001.⁶⁵ This model law concerns the huge benefits resulted from application of new technologies for personal identification purpose in e-Commerce, commonly known as electronic signature.
3. UNCITRAL, Promoting Confidence: Legal Issues on International Use of Electronic Authentication and Signature Method 2007.⁶⁶ UNCITRAL realizes that the idea of signature and authentication are not only heterogeneously understood, but also

⁵⁷ Gregory Shaffer and Mark A. Pollack, "Hard vs. Soft Law: Alternatives, Complements and Antagonists in International Governance," *Minnesota Law Review* 94 (2010), <https://ssrn.com/abstract=1426123>.

⁵⁸ Ida Bagus Rahmadi Supancana, *Rezim Pengaturan Kontrak Komersial Internasional (Kontribusinya Bagi Modernisasi)* (Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI, 2016).

⁵⁹ United Nations, *United Nations Convention on the Use of Electronic Communications in International Contracts* (New York: United Nations Publication, 2007).

⁶⁰ *Convention for the Unification of Certain Rules related to International Carriage by Air Done at Montreal on 28 May 1999*.

⁶¹ United Nations, *United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea* (Vienna: United Nations Publication, 2014).

⁶² Gregory Shaffer and Mark A. Pollack, *Op. Cit.*

⁶³ *Ibid.*

⁶⁴ United Nations, *UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 bis as adopted in 1998* (New York: United Nations Publication, 1999).

⁶⁵ United Nations, *UNCITRAL Model Law on Electronic Signatures with Guide to Enactment 2001* (New York: United Nations Publication, 2002).

⁶⁶ United Nations, *Promoting Confidence in Electronic Commerce: Legal Issues on International Use of Electronic Authentication and Signature Methods* (Vienna: United Nations Publication, 2009).

application of the functions could be very much different among various legal system. Therefore, UNCITRAL intends to balance between the effort to promote security in electronic communication exchange and the challenge to provide easier ways for sellers to face worse scenario of rejection against the applied law.

4. UNIDROIT Principles of International Commercial Contract 2010.⁶⁷ The principles explain that writing is not only limited by telegram or telex but also other forms including electronic communication that preserves notes which could be reconstructed into tangible form.
5. ICC E-Term 2004.⁶⁸ ICC E-Terms 2004 is started with a proposition that each party agree to use electronic messages has power to make binding contract. The term also regulates that as long as it is allowed by law, electronic message can be used as evidence as long as the message is sent using pre-approved format.

According to the discussion above, it can be concluded that both the international hard laws and soft laws pay great attention toward legality, validity, and security of electronic contracts and transactions. However, those laws seemingly do not provide specific details toward the presence of e-Commerce platforms, which is becoming today and future trends.

3.2 E-Commerce Laws in Other Countries

Upon reviewing international laws on e-Commerce, it would be important and interesting to learn from several specific countries regarding their approaches in implementing e-Commerce regulations. This comparison could provide important lessons which may address critical aspects of the implementation of e-Commerce regulation given a specific country's situation. Among those countries to benchmark are the United Kingdom (UK), the United States (US), Netherlands, China, India, Philippines, and Singapore. The UK and the US are selected because they applied common law and have become pioneers in e-Commerce activities. Netherland is selected to represent civic law nation which are not a pioneer in e-Commerce activities. China and India are selected because they both are relatively new to e-Commerce activities but exhibit extreme growth while India is also adopting the common law system. And finally, Philippines and Singapore are geographically very close to Indonesia with Singapore is more advanced in digital development and also applies common law while Philippines holds similar characteristics to Indonesia. Findings on each of these nations are summarized in the following paragraph.

The UK government has applied various e-Commerce-related regulations including the Electronic Communications Act 2000, the Data Protection Act 1998, the Consumer Protection (Distance Selling) Regulations 2000, and the E-Commerce Regulations 2002.⁶⁹ The E-Commerce Regulations 2002 address that electronic contracts are legally binding, and all sellers are required to register for membership, pay tax, conform pricing regulation, and comply to other provisions. UK regulations face several issues regarding e-Commerce such as applicable law, cross-border and the need for greater cooperation among national and international regulatory bodies. There is no specific law to regulate e-Commerce platforms,

⁶⁷ International Institute for the Unification of Private Law (UNITDROIT), *UNIDROIT Principles of International Commercial Contracts* (Rome: UNIDROIT, 2010).

⁶⁸ ICCWBO, "ICC Guide for e-Contracting," last modified November 2016, <https://iccwbo.org/content/uploads/sites/3/2016/11/ICC-Guide-for-e-contracting.pdf>.

⁶⁹ Andrew Charlesworth, "E-Commerce and the Law in the United Kingdom: A Review," *The Journal of Information, Law and Technology* 2001, no. 1 (2001): 1-19.

but the government applies the balance between self-regulation and government intervention through effective enforcement such as mandatory registration.⁷⁰

The US government has applied several laws related to electronic transaction and electronic signature, they are Government Paperwork Elimination Act 1999, Uniform Electronic Transaction Act (UETA), Uniform Computer Information Transaction Act (UCITA), Electronic Signature in Global and National Commerce Act (ESIGN), Uniform Commercial Code and the Children's Online Privacy Protection Act (COPPA). The government experiences challenges of regulating e-commerce regarding jurisdiction in determining which laws apply to online transactions. In the absence of comprehensive e-Commerce regulation, especially pertaining to platform providers, the existing legal framework for e-commerce regulation becomes very complicated. The potential impact of international agreements and treaties on e-Commerce regulation in the US also remains unclear.⁷¹ A greater international cooperation is needed to solve cross-border issues between the US and other countries. With the arising concerns such as the role of the government in promoting competition, consumer protection, and innovation in the digital marketplace, the US government carefully intervenes e-Commerce market.⁷² Similar to the UK, the US applies effective law enforcement to hinder the nation from major difficulties in operating e-Commerce.

Netherlands is quite unique pertaining to e-Commerce regulation. The country adopts *Principles of European Contract Law* which do not force legal binding power. The Dutch Civil Code does not specifically regulate *Online Dispute Resolution* and arbitration as ruled in the Civil Code article 1020-1076. To ensure e-Commerce activities can function properly, the Netherlands government applies consumer protection laws, data protection laws and intellectual property laws.⁷³ On top of the Dutch Civil Code, the Netherlands government add more related regulations such as the Distance Selling Act and the Dutch Data Protection Act. The role of self-regulation and industry codes of conduct are also being considered in the context of e-Commerce in Netherlands.⁷⁴ Some challenges arise regarding e-Commerce regulation in Netherlands, such as jurisdiction issues, cross-border disputes, and the needs for greater cooperation with national and international regulatory bodies.

E-Commerce is growing very rapidly in China for the last decade. With the presence of e-Commerce giants such as Alibaba and Tencent, the country's transaction value has rocketed to become the largest in the world. China's main sources of regulation for e-commerce comes from consumer protection laws, data protection laws, and intellectual property laws.⁷⁵ However, many issues occur due to the acceleration of e-Commerce such as counterfeit products, among other things. Given this circumstance, the government identifies the needs for legislation interventions, including the Electronic Signature Law, the

⁷⁰ Olivier R. A. Oullier and Sara Degli Esposti, "The Regulation of E-Commerce in the UK: Between Self-Regulation and the Need for Government Intervention," *Journal of Business Law* 3 (2018): 207–227.

⁷¹ Pamela Samuelson, "Internet Jurisdiction and E-Commerce Regulation in the United States," *Berkeley Technology Law Journal* 14, no. 4 (1999): 1290–1306.

⁷² Christopher S. Yoo, "The Regulation of E-commerce: Perspectives from the United States," *Journal of International Economic Law* 20, no. 3 (September 2017): 469–487.

⁷³ Martijn Pols, "Regulating E-commerce in the Netherlands: An Overview of Current Issues and Challenges," *European Journal of Consumer Law* 9, no. 1 (2020): 29–47.

⁷⁴ Gijs van Dijck, "Legal Aspects of E-commerce in the Netherlands: An Overview," *Computer Law & Security Review* 28, no. 2 (2012): 131–140.

⁷⁵ Yan Liang, "E-Commerce Regulation in China: Current Developments and Future Prospects," *Journal of Internet Law* 22, no. 10 (October 2019): 3–14.

Consumer Protection Law, and the E-Commerce Law.⁷⁶ Even with those legislative interventions, some challenges still arise, including issues of enforcement, cross-border e-Commerce, the role of self-regulation in promoting responsible e-Commerce, and the need to balance consumer protection.⁷⁷ To overcome these issues, the government of China realizes the importance of comprehensive e-Commerce law to be applied in the market. After the legal document passed the test in August 2018, the government put the law into effective application on January 1st, 2019. Even though China regulatory environment is relatively mature, there are some concerns regarding transparency and consistency.⁷⁸

India constitutes the second largest e-Commerce market in Asia and has several main sources of regulation for e-Commerce, including consumer protection laws, data protection laws, and intellectual property laws.⁷⁹ The country has applied Indian Contract Act 1872, Consumer Protection Act 1986, Foreign Exchange Management Act 1999 and Information Technology Act 2000. Many occurrences such as distribution of junk, illegal or harmful products have brought concerns to the government and parliament for immediate response to make safer India e-Commerce industry. Recently, the government of India applies more specific e-commerce regulations, such as new rules on online marketplaces and the regulation of online payment systems. Even though awareness towards comprehensive e-Commerce regulation has risen, the government still faces many challenges regarding e-Commerce regulations, including issues of enforcement and the need to balance consumer protection with the promotion of innovation and growth.⁸⁰ The challenges posed by cross-border e-Commerce and the role of self-regulation in promoting responsible e-Commerce practices are also brought into consideration. For the nation which is still categorized as still evolving in terms of e-Commerce regulatory environment, the Indian government needs to bring clarity and consistency in the application of e-Commerce regulations.⁸¹

There are several Singaporean legislations relevant to e-commerce, including the Electronic Transactions Act 1998, the Personal Data Protection Act, and the Consumer Protection (Fair Trading) Act.⁸² The government of Singapore also exercises role of self-regulation and industry codes of conduct in the context of e-Commerce in Singapore. There are some challenges arise regarding e-Commerce regulation in Singapore, including issues of jurisdiction and the need to balance consumer protection with the promotion of innovation and growth. To overcome customer protection issues, the government of Singapore requires online retailers to provide clear and accurate information about their products and services and establishes an alternative dispute resolution process.⁸³ Further issues regarding the taxation of e-commerce transactions, the protection of intellectual property rights, and the role of government agencies in regulating e-commerce are also important to address in the Singaporean regulatory framework.⁸⁴ However, while the country does not apply comprehensive e-Commerce law, e-Commerce operation in

⁷⁶ Haochen Sun, "E-Commerce Regulation in China: Current Developments and Future Challenges," *Journal of Business Law* 2016, no. 6 (2016): 500-521.

⁷⁷ Yan Liang, *Op. Cit.*

⁷⁸ *Ibid.*

⁷⁹ Anjali Sharma and Kshitij Purohit, "E-commerce Regulation in India: Issues and Challenges," *Indian Journal of Law and Technology* 15, no. 2 (July 2019): 157-177.

⁸⁰ R. N. Dubey, "E-commerce Regulation in India: A Critical Analysis," *International Journal of Law and Management* 57, no. 1 (2015): 60-76.

⁸¹ Anjali Sharma and Kshitij Purohit, *Op. Cit.*

⁸² Heng Cho Choon, "Regulating E-Commerce in Singapore: A Comprehensive Overview," *Singapore Academy of Law Journal* 30, no. 1 (2018): 131-159.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

Singapore can operate well. This benefit is partly caused by strong law enforcement and Singaporean culture. Until recently, there is no urgent call to implement comprehensive e-Commerce law in Singapore.⁸⁵

The government of Philippines has applied Electronic Commerce Act 8792 which later became Republic Act 8792 and also known as E-Commerce Act 2000 (the Act) and Consumer Act of the Philippines. The existing regulations have addressed the importance of consumer protection, fair competition, and fraud prevention in e-Commerce practices.⁸⁶ The government of Philippines also exercises self-regulation and industry codes of conduct in the context of e-Commerce. Some challenges arise regarding e-Commerce regulation in Philippines, including issues of jurisdiction, fast-paced nature of technological advancements, and the need for greater coordination between government agencies and private sector stakeholders.⁸⁷ While the current legal framework has already provided a solid foundation for regulating e-Commerce, the Philippines still needs to continuously improve to address emerging issues.⁸⁸

From legal comparison of those countries, it can be observed that there are two legal frameworks to approach e-Commerce situation which are separated laws with strong enforcement supported by confirming culture like the UK, the US, Netherlands, and Singapore or a comprehensive law equipped with sufficient controls like China, India, and the Philippines. The government of Indonesia must choose which legal framework to apply given its specific demography. Indonesian e-Commerce legal framework has some similarities with the UK, the US, Netherlands, Singapore and previously China and India which provides several main sources of regulation for e-Commerce.⁸⁹ Compared to the UK, the US and Singaporean e-Commerce laws, Indonesian e-Commerce laws have a lot of aspects to improve such as effectiveness of the implementation of Indonesian regulation across jurisdiction, consumer trust in settling their disputes, and the use of technology in e-Commerce legal processes.⁹⁰ Indonesia could consider to apply a comprehensive e-Commerce law such as in China, India and the Philippines and to exercise e-Commerce self-regulation and industry codes of conduct such as in the UK, Netherlands and India.

3.3 Analysis on Indonesian E-Commerce Regulations

With so many laws involved in Indonesian e-Commerce regulatory framework, the application of the laws will be very complex. In turn, the purpose to empower e-Commerce players to ignite Indonesia digital economy and to strengthen the nation economy resilience will be very harder to achieve. The government of Indonesia should take strategic actions to establish economic benefit from this opportunity that in turn will be enjoyed by Indonesian people. For that purpose and given the fact that in the development of nation laws, common understanding towards the intended objectives is very critical and

⁸⁵ Warren Chik, "E-Commerce Regulation in Singapore: An Overview," *International Journal of Law and Information Technology* 17, no. 2 (2009): 153–167.

⁸⁶ Arvy C. Tejada, "Regulating E-Commerce in the Philippines," *Philippine Journal of Public Administration* 60, no. 2 (2016): 97–122.

⁸⁷ Lynette Lopez, "Legal and Regulatory Framework for E-Commerce in the Philippines," *Philippine Journal of Public Administration* 56, no. 1/2 (2012): 75–110.

⁸⁸ Arvy C. Tejada, *Op. Cit.*

⁸⁹ Edy Santoso, "Opportunities and Challenges: E-Commerce in Indonesia From Legal Perspective," *Jurnal Penelitian Hukum De Jure* 22, no. 3 (September 2022): 400, 407, <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/2957>.

⁹⁰ Felix Pratama Tjipto, "Comparative Law Analysis of Consumer Protection Law in E-Commerce Transaction between Indonesia and United States," *UIR Law Review* 15, no. 2 (2021): 22. <https://journal.uir.ac.id/index.php/uirlawreview/article/view/7456>.

consequently the law making should be collaboratively conducted by all concerned parties. Economic development is attributable to the development of law. Both cannot function properly without a strong legal foundation and therefore any aspects of economic creation must be protected regardless of its form.⁹¹

In Indonesia, e-Commerce practices have evolved uniquely influenced by the nation's demography and sociography. Weak law enforcement and lack of discipline in the previous stage of e-Commerce environment have now brought Indonesia to face serious issues. The research has studied thirty legal cases related to e-Commerce and categorized them into twelve categories. Among them, 9 cases fall into fraud, 5 cases fall into customer scam, 5 cases are caused by weak customer protection, 2 cases fall into deception, 2 cases involve illegal goods, 1 case falls into false investment, 1 case falls into public courtesy, 1 case falls into discrimination, 1 case falls into operation permit, 1 case is pertaining taxation, 1 case is pertaining tariff, and 1 case is pertaining black market.

For many times, practitioners, experts and concerned parties have persuaded and called the government to make systematic and immediate actions to prevent Indonesia e-Commerce market from abusive attempts made by irresponsible parties. Specific and comprehensive e-Commerce law, especially to regulate platform providers, operators and players is very much expected to anticipate the *lex specialis* nature of Over The Top (OTT) service such as e-Commerce and distinguish it from the conventional laws.^{92,93}

Indonesia's aspiration to become a strong digital economy nation requires legal system arrangement which must be optimally applied to all stakeholders including e-Commerce platform providers, sellers, buyers, logistic service providers, payment service providers, advertisers and regulator. Each stakeholder should receive sufficient attention and opportunity to ensure maximum e-Commerce growth in Indonesia. This could mean that for a certain period, some players will enjoy only minimum benefits while others receive more. To secure this objective, the government of Indonesia must keep the balance of e-Commerce law application due to its specific characteristics such as dispute settlement in which for e-Commerce situation is required to be performed promptly, cheaply and in avoidance of unnecessary formalities.⁹⁴

The government of Indonesia also must arrange the achievement of short-term e-Commerce objectives such as tax collection against long-term objectives such as increasing level of competitiveness of certain e-Commerce players which are still categorized as micro, small, and medium enterprises (MSME). If the government is too aggressive in achieving short-term goals, then e-Commerce entrepreneurs will experience difficulties and could cause the whole environment to collapse. On the other hand, if the government is ignorant towards short-term objectives, then benefits which could have been capitalized would have been missing and the opportunity to prepare infrastructure and supra-structure to secure the e-Commerce growth in the long run could also diminish. The government should also

⁹¹ Edmon Makarim, *Tanggung Jawab Hukum Penyelenggara Sistem Elektronik* (Jakarta: Rajawali Pers, 2010), 287-288.

⁹² Andrea Manfredi, "The Future of Lex Specialis in the Regulation of Over-The-Top Services," *European Journal of Law and Technology* 9, no. 1 (2018): 3-4.

⁹³ Silvia Zorzetto, "The Lex Specialis Principle and Its Uses in Legal Argumentation: An Analytical Inquire," *Eunomia: Revista en Cultura de la Legalidad*, no. 3 (September 2012 - February 2013): 76.

⁹⁴ Ghansham Anand, Lintang Yudhantaka, and Manik Lingkar Katulistiwa, "The Perspective of Indonesian Law on E-Commerce: Validity, Liability and Dispute Settlement," *Padjadjaran Jurnal Ilmu Hukum* 7, no. 3 (2020): 350, <https://scholar.unair.ac.id/en/publications/e-commerce-dalam-perspektif-hukum-indonesia-keabsahan-tanggung-gu>.

consider the nation's economic resilience as the foundation for the growth of conventional economy and digital economy.

Fortunately, in response to suggestions and critiques from various parties such as corporations, investors, agencies, legislative and media, the government of Indonesia finally released the Government Regulation Number 80 of 2019 regarding Trading through Electronic System.⁹⁵ This regulation pays strong attention toward the role of e-Commerce platform providers and other involved parties in the e-Commerce transactions. It also comprehensively covers anticipate e-Commerce activities including the rights and obligations of all parties. However, the implementation of this regulation still needs a lot of encouragement while the government's enforcement is not effective. The regulation relies on the seller's willingness to register for the business identification number or Nomor Induk Berusaha (NIB) that will allow the government to intervene the platform providers and to monitor e-Commerce activities which mainly involving the sellers and the buyers. In practice, the sellers tend to avoid registration because it will enable the government to apply taxation. Several online sellers indicate that symptom during interview sessions conducted for this research. The government cannot persuade the platform providers to apply strict policy to the sellers because the sellers will switch to other platforms which provide less pressure for the registration as confirmed by a C-level of one well-known e-Commerce platform. Even under specific circumstances, the sellers could just directly sell to the buyers to avoid taxation and other unwanted expenses. This lower registration rate is explained by the Deputy Assistant of Micro Business Protection and Facilitation of the Ministry of Cooperation and Small Medium Enterprises which stated that only 1.9% out of 64 million businesses have registered for the NIB. Among those, only 16% have connected to digital.⁹⁶ If the online sellers follow this registration rate, then the portion of the registered online sellers is still less than 2%. Even if the registration rate for online business is assumed five times higher due to enforcement, the percentage is still lower than 10%. Similar indications have also been explained by an officer from the Ministry of Trade which was interviewed for the purpose of this research.

Furthermore, the less online sellers are willing to register, the harder the platform providers or the government to force or persuade them and even less online sellers will be willing to register in the future. The bottom line is, if the sellers do not see any significant benefits for them that can motivate them to register their businesses, then they will not register themselves. Even worse, if the sellers perceive the registration as something that will negatively impact their business, they will avoid the registration. At this point, it would be interesting to consider the sociological impact of a law as suggested by Soetandyo Wignjosoebroto.⁹⁷

4. CONCLUSION

E-Commerce platform providers play significant roles in the e-Commerce environment and need to be comprehensively and specifically regulated, not only referring to the existing regulations which were intended to regulate conventional or direct electronic transaction activities. After solely relying on the existing laws pertaining to information and

⁹⁵ *Peraturan Pemerintah Nomor 80 Tahun 2019 tentang Perdagangan Melalui Sistem Elektronik.*

⁹⁶ CNN Indonesia, "Baru 1,9 Persen UMKM yang Punya Nomor Induk Usaha," *CNN Indonesia*, May 20, 2021, <https://www.cnnindonesia.com/ekonomi/20210519153513-92-644306/baru-19-persen-umkm-yang-punya-nomor-induk-usaha>.

⁹⁷ Soetandyo Wignjosoebroto, *Hukum Paradigma, Metode dan Dinamika Masalahnya* (Jakarta: Gramedia, 1992).

electronic transactions, eventually the government of Indonesia has realized the importance of a comprehensive e-Commerce regulation which also specifically pay great attention to the role of e-Commerce platforms. However, the law enforcement of the Government Regulation Number 80 of 2019 regarding Trading through Electronic System is still ineffective. The e-Commerce players, mainly the platform providers and the sellers, do not see any significant benefit for them to comply with the regulation. Learning from the international laws with their hard laws and soft laws which are more concerned with facilitating proper and safe e-Commerce activities, the government of Indonesia could start with applying the e-Commerce regulation as a mean to facilitate healthy e-Commerce growth. On the other hand, learning from various countries which either applies separated laws with strong enforcement supported by conforming culture or comprehensively integrating e-Commerce law with sufficient control, the government of Indonesia must choose which mode will fit to the country's situation. With the release of this comprehensive e-Commerce regulation, the government has to make this law into effective implementation by comprehending the business perspective, building trust to allow the government to intervene e-Commerce activities to achieve the common goals, and put aside or, at least, minimize short-term orientation such as taxation while providing incentive to the e-Commerce players that in turn will strengthen the nation's digital economy and overall economic resilience.

With broader education and encouragement, more as a soft law with incentive, the Government Regulation Number 80 of 2019 could serve as a foundation to embrace common understanding and stimulate expected responses from the e-Commerce business players accordingly. Specific legal design for e-Commerce platform providers such as the arrangement of rights and obligations should not paralyze the business. Instead, more persuasive approaches such as information and incentives equipped with good communication and trust building will stimulate positive benefits to all related parties.

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