

INSUFFICIENT CONSUMER PROTECTION IN E-COMMERCE UNDER INDONESIAN LEGAL SYSTEM

Jeannie Connie Rotinsulu¹

¹ Faculty of Law, Sam Ratulangi University, Indonesia. E-mail: connie_jeannie@yahoo.com

Abstract: Despite relevant laws and regulations being in force for years, it has been argued that Indonesian legal system is not sufficient to protect consumers on e-commerce transactions. This article seeks to prove this premise by demonstrating insufficiency of Indonesian Consumer Law and Electronic Information and Transaction Law as well as other relevant regulations in addressing e-commerce issues on consumer protection.

The Indonesian legal system does not adequately protect e-commerce consumers particularly because of three main factors. Firstly, the absence of the personal data protection law has been considered as to be a significant issue of security measures on electronic commerce transactions. Secondly, it is attributed to the fact that the Consumer Protection Law has a little effect in enforcing rights of e-commerce users. Thirdly, the Electronic Information and Transaction Law and other relevant regulations that govern digital information and electronic commerce grant insufficient legal protection effect for on-line consumers. Significant consumer rights of privacy, security of on-line property, secure on-line payments platform, accuracy information and accessibility have not been protected effectively. The Law also tends to be used as to address the violation of distribution of electronic information and rights to freedom of expression issues. The universal model law of UNCITRAL and the OECD guidelines for consumer protection and personal data protection in e-commerce may be embraced to improve the protection of e-commerce users in Indonesia.

.Keywords: Consumer Protection, E-Commerce, Indonesia Legal system

1. Introduction

The global reach of the internet as a media business has seen the widespread use of electronic commerce or e-commerce. In a wide sense, e-commerce may demote to all commercial activities using electronic means such telephone, telex or fax machine.¹ Louis Grestner introduced similar claim that 'e-commerce will be a prime commercial force in the 21th century and it is imperative that the legislative framework for e-commerce takes account of – or its at least able to adjust to – the technology used to effect commercial transactions via electronic means'.² This claim has been further proven recently. Nowadays, the Covid-19 pandemic has significantly increased e-

¹ Patrick Quirk & Jay Forder, *Electronic Commerce and the Law*, 2003, 4.

² Louis Grestner in Fitzgerald, A, Fitzgerald, B, Cifuentes, C, Cook, P. (1999). *Going digital 2000: Legal issues for e-commerce, software and the internet*. 2nd Edition. Australia: Prospect Media Pty Ltd, p. 191.

commerce transactions around the world including Indonesia. The Organisation for Economic Co-operation and Development (OECD) has acknowledged that the Covid 19 crisis has been influencing an expansion of e-commerce transactions reaching out everyday necessities.³ The United Nations Conference on Trade and Development (UNCTAD) has also similar notion that 'Covid-19 has led to a surge in e-commerce and accelerated digital transformation'.⁴ The Covid-19 crisis has attributed to the boom of digital and e-commerce sector. A new report on Covid-19 and E-Commerce: A Global Review by UNCTAD demonstrates the powerful global and regional industry transformation in 2020. Businesses and consumers have increasingly provided and purchased more goods and services online.⁵ This phenomenon has also been occurring in Indonesia.

Considering the nature of the Covid-19 pandemic, it is predicted that e-commerce will be a common and a long term business transaction landscape.⁶ A legal system, in fact, needs to adapt the e-commerce introducing regulations that are able to address legal issues on e-commerce transactions. . This also reflects the principle that it is often necessary to create a legal umbrella for new activities as a part of coping with the acceleration of social, economic and associated technological changes. In these circumstances, the law will not be left behind when faced with a convergence in information technology. This notion is seen as a widespread need around the globe including Indonesia. Among other significant legal issues on e-commerce to be addressed is the consumer legal protection as it will be discussed in this article .

The fact that Indonesia has relevant laws including a law on consumer protection – Law No. 8 of 1999 and, a law on electronic information and transaction – Law No. 19 of 2016 on the Amendment to Law No.11 of 2008 concerning Electronic Information and Transactions which took effect on 25 November 2016 11 of 2008. There are also some other relevant regulations including Government Regulations and a Ministerial Regulation that govern e-commerce. In fact, Indonesian legal system is arguably still insufficient in protecting consumers on internet transactions.

2. E-Commerce Transactions in Indonesia

Indonesia has been identified as one among the world's most on-line users. McKinsey, for example, on the 2018 report demonstrated that digital technology has widely been used among Indonesians as to be among the most avid users in the world including on-line commerce. ⁷ Current data demonstrates that e-commerce has been growing significantly in Indonesia. The Indonesia Central Bank [Bank Indonesia] data has recorded IDR 13 trillion on-line transactions in 2019. The data has met a previous

³ OECD, E-Commerce in the time of COVID-19, www.oecd.org

⁴ UNCTAD, How COVID-19 triggered the digital and e-commerce turning point, <www.unctad.org>, 15 March 2021

⁵ Ibid

⁶ OECD, above n 3.

⁷ McKinsey&Company, 'The digital archipelago: How online commerce is driving Indonesia's economic development'

<https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Asia%20Pacific/The%20digital%20archipelago%20How%20online%20commerce%20is%20driving%20Indonesias%20economic%20development/FINAL_The-digital-archipelago-How-online-commerce-is-driving-Indonesias-economic-development.pdf>

prediction of McKinsey that Indonesia has recorded eight times increased value of e-commerce transactions from US\$8 billion in 2017 to US\$55 billion in 2018 and reached US\$65 billion in 2020.⁸ A current forecast shows that the digital transaction will increase double-digit in 2021. This is attributed to the Covid-19 pandemic which digital platforms have been widely used by consumers in Indonesia. Indonesia Central Bank has predicted that electronic commerce transactions are estimated to grow by 33.2 percent this year from IDR 253 trillion in 2020 to IDR 337 trillion (US\$ 24 billion) in 2021.⁹

Several factors have contributed to a growing number of e-commerce in Indonesia. The Covid-19 crisis is a significant contributing factor to the growth of e-commerce transactions. The fact that Covid-19 pandemic has contributed to the escalation on-line transactions due to physical restriction measures and forced temporary closure of most businesses. E-commerce has been seen as an efficient business form addressing those conditions. Other factor is also attributed to the growth of e-commerce Indonesia's geography – spread out across thousands of islands – its huge population and the global market trend would appear to be a natural area of potential growth for e-commerce in the country. E-commerce allows easy transactions through internet to be concluded without the need to meet each other.

This kind of on-line transaction offers economic benefits such as efficiency time, money and via global network as it can conduct business in real time, 24-hours-a-day, seven-days-a-week with any place or country, with no physical meeting necessary. As Timothy P. Lester states that:

E-commerce presents an unlimited geographic market, reduction of economic burden on expertise and capital, low cost as an effective and efficient marketing under the condition: reach consumers with greater speed at lower cost in higher volume.¹⁰

In addition, Richard Alston believes that:

E-commerce is helping people around the world operate smarter and faster and also creates a powerful capacity to open up new markets and unprecedented efficiencies. Information exchange, business transactions, deals and discussions are happening online.¹¹

All these benefits may be reflected as to a definition proposed by Organization for Economic Cooperation and Development (OECD) which refers to:

⁸ Linda Hasibuan, 'CBNC Indonesia, 'Gilaak! Tahun 2020 Belanja Online Bisa Tembus Rp 980 T' <<https://www.cnbcindonesia.com/tech/20190126113134-37-52477/gilaak-tahun-2020-belanja-online-bisa-tembus-rp-910-t>>

⁹ Dzulfiqar Fathur Rahman, The Jakarta Post, February 8 2021, 'Indonesia aims for double-digit growth in online transactions' <<https://www.thejakartapost.com/paper/2021/02/07/indonesia-aims-for-double-digit-growth-in-online-transactions.html>>

¹⁰ Timothy P. Lester, 'Globalized Automatic Choice of Forum: Where Do Internet Consumers Sue? Proposed article 7 of the Hague Convention on International Jurisdiction & Foreign Judgment in Civil & Commercial Matters and Its Possible Effects on e-Commerce' (2003) 9(2) New England Journal of International & Comparative Law <<http://www.nesl.edu/intljournal/vol9no2indx.cfm>>

¹¹ The National Office for the Information Economy report, E-Commerce Across Australia (2000) iii.

All forms of commercial transactions involving both organizations and individuals, that are based upon the electronic processing and transmission of data, including text, sound and visual images. It also refers to the effects that the electronic exchange of commercial information may have on the institutions and process that support and govern commercial activities.¹²

3. Indonesian Legal system on Consumer Protection and It issues on E-Commerce Transactions

Under the Indonesian legal system, e-commerce consumers have basically been protected by the Law and regulations. The Law on Consumer Protection and the Law on Electronic Information and Transactions are the main laws that relevant to govern e-commerce users in Indonesia. Several relevant regulations are also attributed to them, however this legal framework is still considered insufficient to protect e-commerce users.

a. Indonesia's Law on Consumer Protection

Basically, consumer protection law is 'designed to protect consumer interests in trade and commerce, which aims to prevent consumers from being misled or deceived by traders'.¹³

In general, the protection of Indonesian consumers is widely known to be at a low level. It is rare to find a successful consumer cases in court. Most Indonesian consumer are reluctant to bring their cases to courts due to their distrust of the effectiveness of the consumer protection law, skepticism about the legal system, and also because it is costly. There is a common perception among Indonesians that if you bring the case court, it is like buying a chicken but having to pay for a cow.

Indonesia has applicable laws on legal protection of consumer. They are the Consumer Protection Law [*Undang-Undang Perlindungan Konsumen*] No. 8 of 1999 and the Civil Code [*Kitab Undang-Undang Hukum Perdata*]. However, these existing laws are insufficient to protect consumers who conduct on-line transaction or e-commerce. The Consumer Protection Law is only intended to govern transactions within Indonesia, and is therefore inapplicable to overseas transactions. The general provisions of the Consumer Protection Law in Article 1 (3) states that it applies to entrepreneur who are:

an individual person or a company, in the form of a legal or non-legal entity, established and domiciled or engaged in activities within the legal territory of the Republic of Indonesia, conducting various kinds of business activities in the economic sector through contracts, both individually or collectively.¹⁴

The Law is intended to be a legal instrument enabling consumers to take legal actions against businesses which break the Law. Nevertheless, the Law seems to be unproductive tool just providing the appearance of protection particularly to consumers in e-commerce transactions. It is also identified that vital institutions, ie; Badan Perlindungan Konsumen Nasional - BPKN [National Consumer Protection Agency] and

¹² John Dickie, *Producers and Consumers in EU E-Commerce Law* (2005), 2.

¹³ Quirk & Forder, above n 1, 300.

¹⁴ CYBERconsult, *Law of the Republic of Indonesia No. 8 of 1999 on Consumer Protection (with elucidations as sidenotes)* (Human Resources & Business Services trans, 1999 ed) 8

Badan Penyelesaian Sengketa Konsumen [Consumer Dispute Resolution Body] at the district and municipal level which are mandated to provide effective protection work have not yet been established.¹⁵ Although the Law has been in force for more than twenty years, the Law has not been amended as to adapt the significant changes on the expansion of the use of on-line transactions.

In general, the Law's provisions protect consumer rights to correct information, to the quality of the goods and products, to service warranties and also to remedies – or redress. In fact that even though the Consumer Protection Law mandates to protect consumer rights, it is not able to enforce certain important rights because of the nature of e-commerce, for example, Article 5 stipulated the following rights:

- 1) right for convenience, security and safety in consuming goods and/or services;
- 2) right to choose goods and/or services and to obtain such goods and/or services in accordance with the agreed exchange value, conditions and guarantee;
- 3) right to obtain true, clear and honest information about the condition and guarantee goods and/or services;
- 4) right to be heard in expressing opinion and complaints in respect of the goods and/or services used;
- 5) right to obtain representation, protection and consumer protection dispute settlement remedies in an appropriate manner;
- 6) right to obtain consumer guidance and education; right to be treated or served properly and fairly without discrimination;
- 7) right to receive compensation, indemnity and/or replacement if the goods and/or services received do not comply with the agreement or are not appropriate;
- 8) rights set forth in the provisions of other laws and regulations.¹⁶

Those rights do not reflect a right to express and a lack of satisfaction of consumer protection in e-commerce. It can be seen the absence of the main significant rights regarding to the right of privacy, property and accessibility. Even if several rights seem deal with the rights of security and accuracy information, but these are irrelevant as they just related to consumption of goods, or services. They do not address the security for on-line payment issues. The only issue that may addressed is the rights to get an accurate, transparent and trustworthy information. An important right of privacy has not been addressed at all. As a result, this shows the insufficiency of the Consumer Protection Law coping with the protection of e-commerce users. As it was ascertained that 'without privacy, consumer protection cannot be guaranteed, and without authentication, neither the merchant nor the consumer can be sure that valid transactions are being made'.¹⁷

Ifransah has also claimed that Indonesian consumers have not been protected in e-commerce transactions because of the lack of clarity in how the Law governs the

¹⁵ Farid Wadji, *Repotnya Jadi Konsumen: Percikan Pemikiran Seputar Persoalan Konsumen* [Difficulties being a consumer: The Sprinkling of Thinking around the Problem of the Consumer] (1st ed, 2003) 5.

¹⁶ Consumer International Asia Pacific Office, *Indonesian Consumer Protection Law No. 8 Year 1999* <http://www.ciroap.org/apcl/statutes_content.php?id=34&cid=48>

¹⁷ David H. Reilly, *Secure Electronic Transaction: An Overview* <http://www.davidreilly.com/topics/electronic_commerce/essays/secure_electronic_transactions.html>

relationships of e-commerce users.¹⁸ This is also recognized by the Jakarta law firm: 'the Consumer Protection law does not provide specific reference of its applicability for transactions that are concluded as e-commerce'.¹⁹

The main issues relating to consumer rights in e-commerce transactions such as 'privacy (identity), security (on-line payment/credit card security), accuracy (information), property (preventing from tapping, duplication, stealing), and accessibility (transaction processes)'²⁰ are not governed effectively. This is a reminder that Indonesia has no current data protection legislation like western countries such as Australia: rights cannot be enforced if there is no legal framework to protect them. Wibowo et al identifies these rights as playing a significant role in the protection of e-commerce consumers.²¹ This is also confirmed by the finding of an empirical survey conducted by the United Kingdom's National Consumer Council for E-Commerce and Consumer Protection which cited lack of privacy as one of the main disadvantages of on-line shopping. Most consumers believe that the internet is a most unsecure medium for all forms of commerce.²² A similar survey conducted by Bertlesmann in Germany also found that privacy is perceived by consumer to be the major risk in using the internet.²³ These demonstrate that personal data protection law has been considered to be an urgent need regarding e-commerce transactions.

It seems that Indonesia has no strong concern about the privacy protection issue. It may be seen on a Bill of Personal Data Protection Law since 2012 but it has not been promulgated yet after eight years. Indonesia Minister of Communication and Informatics, Johnny G. Plate, claims that Indonesia shall have the Data Protection Law. He believed that the Bill was expected to finalize in 2020.²⁴ In fact, it has still not been finalized yet.

The fact that there is the Minister of Communication and Informatics Regulation No. 20 of 2016 regarding the Protection of Personal Data in an Electronic System, however there is no specific law on data protection yet in Indonesia.²⁵ The Law on Electronic Information and Transaction has also included data protection provision in Article 26, however the provision governs away too general. It is insufficient of consumer protection in e-commerce transactions.

b. Indonesian Law on Electronic Information and Transactions

Indonesia has remarkably established a specific law addressing electronic commerce transactions. There is the Law No. 19 of 2016 on the Amendment to Law No.11 of 2008 concerning Electronic Information and Transactions [*Undang-Undang Informasi dan*

¹⁸ M. Ifransah, Hubungan Hukum Antara Pelaku E-Commerce Harus Diperjelas (Legal Relationship between E-commerce perpetrators must be clarified) < www.free.vlsm.org/v17/com/ictwatch/paper/paper027.htm>

¹⁹ Mutia R. Hadiputranto and Hadinoto & Partners in Dennis Campbell (ed), E-Commerce and the Law of Digital Signatures (2005) 329

²⁰ A.M. Wibowo et al, Kerangka Hukum Digital Signature dalam E-Commerce (Legal Framework on Digital Signature in E-Commerce) (1998) <http://www.geocities.com/amwibowo/resource/hukum_ttd/hukum_ttd.html>

²¹ Ibid.

²² Dickie, above n 12, 11.

²³ Ibid.

²⁴ Portal Informasi Indonesia, ;Menunggu UU Perlindungan Data Pribadi' <<https://www.indonesia.go.id/narasi/indonesia-dalam-angka/sosial/menunggu-uu-perlindungan-data-pribadi>>i

²⁵ Kementerian Komunikasi dan Informatika Republik Indonesia, 'Indonesia sudah miliki aturan soal perlindungan Data Pribadi' < https://www.kominfo.go.id/content/detail/8621/indonesia-sudah-miliki-aturan-soal-perlindungan-data-pribadi/0/sorotan_media>

Transaksi Elektronik] which took effect on 25 November 2016 . The new Law has introduced a number of significant provisions covering evidential difficulties in providing proof of on-line transactions which are paperless in nature. Among other provisions, the Law accepts electronic evidence, electronic signatures and other electronic data and information. In simply, Indonesian legal system is now acknowledged an electronic document.

Prior the introduction of this Law, written documents are the main form of evidence in civil cases as stipulated in Article 1866 of the Indonesia Civil Code [Kitab Undang-Undang Hukum Perdata]. Under the Civil Code, there is not acknowledge any electronic documents. It also requires a signature – usually handwritten – and a duty stamp (if the party is a company) on any document evidencing transaction to give its legal effect and validating as evidence.²⁶ This is difficult to apply to on-line contracts where ‘the consumer completes and submits an electronic order form to mean an offer to purchase goods and – if accepted by the supplier – becomes a binding contract’.²⁷ The absence of paper documents within signature and stamp is a cause of problems in proving the validity of on-line contracts and e-commerce when seeking to enforce them.

There are also jurisdictional issues particularly in regards to the choice of law and forum. There have been identified several legal problems regarding the e-commerce transactions and online contract formation : which laws should govern the transaction when it is conducted by the parties between different jurisdictions or legal systems, where and when the contract was created or formed, and whether the online communication used to enter the agreement can be recognized,²⁸ or used as admissible evidence.

Many of those issues have been addressed in the Indonesia’s Law on Electronic Information and Transactions as previously mentioned above. There is also Government Regulation No. 80 of 2019 concerning Trading Through Electronic System [*Peraturan Pemerintah tentang Perdagangan Melalui Sistem Elektronik (PMSE)*]. The regulation has been introduced to fulfil the consumer protection program. This is in line with a mandate of Presidential Regulation No. 74 of 2017 on the National E-Commerce Road Map 2017-2019. The regulation has intended to govern e-commerce which has been rapidly growing in Indonesia.²⁹ Other relevant regulation is the Government Regulation No. 71 on the Implementation of Electronic Systems and Transactions. The regulation stipulates that electronic contracts can be used in an e-commerce transaction. A validity of an electronic contract refers to: the fulfilment of the terms and conditions of the relevant electronic offer; similar information with the relevant electronic offer; the fulfillment of the general requirements of a contract under the Indonesian Civil Code including consent, competent legal subject, specific object, and permissible cause.

²⁶ Kementerian Tenaga Kerja, Kitab Undang-Undang Hukum Perdata <https://jdih.kemnaker.go.id/data_puu/peraturan_file_kuhperdata.pdf>

²⁷ International Law Firm Pinsent Masons, Selling Online: Structuring your e-Commerce Process <http://out-law.com/page_426>

²⁸ Lilian Edwards & Charlotte Waelde, Law & the Internet: Regulating Cyberspace (1999) 104-105.

²⁹ McKenzie, ‘Indonesia Now Has Specific E-Commerce Regulation’ <<https://www.bakermckenzie.com/en/insight/publications/2019/12/indonesia-specific-e-commerce-regulation>>

Electronic signature and electronic evidence are also accepted. Indonesian language is required to an electronic contract addressing an Indonesian consumer.³⁰

In fact, the Law has little effect to protect privacy, security on-line properties, on-line payments platform, accuracy information and accessibility. The Law has also arguably been widely used to address a distribution of electronic information leading up to defamation and rights to freedom of expression issues and cases rather than to address consumer protection specifically. For instance, cited data from SAFEnet (Southeast Asia Freedom of Expression Network) show that there were 285 cases on violations to freedom of expression rights from 2008 to 2019 in Indonesia.³¹

4. International Legal Framework on E-Commerce and Consumer Protection Issues

Not only Indonesia but also all countries is considered as to need to establish a Law on E-Commerce in accommodating and addressing the borderless nature of the on-line transactions. The need for universal rules is seen as a critical because of the increasing economic interdependency between countries. Adediran, for example, proposes the imposition of domestic laws which are harmonized across jurisdictions as an essential instrument for creating consumer confidence in doing on-line transactions through the internet.³²

The significant example of universal e-commerce regulations is the Model Law on E-commerce (1996) of the United Nations Commission on International Trade Law (UNCITRAL). This model facilitates a fundamental global legal framework for e-commerce, which treated paper-based documents and electronic documents as legal equivalent. By enacting legislation reflecting the procedures and provisions prescribed in the Model law, an enacting state would establish these principles in national law. This will provide legal recognition for electronic, or digital – paperless – evidence including a provision on the non-repudiation evidence (Article 5); equal treatment for written and electronic documents (Article 6); the use of digital signatures as a method to recognize and identify a person (Article 7); the admissibility of electronic evidence (Article 9) and the formation and validity of on-line contract (Article 11).³³

This model has been supplemented by the Model Law on Electronic Signatures with Guide to Enactment 2001. This UNCITRAL Model Law provides a legal framework for the use of electronic signatures in commercial contexts to reduce any uncertainty about the legal effects of e-signature complying with requirements for a signature (Article 6); and the recognition foreign – outside the enacting State – certificates and electronic signatures (Article 12). The Model Law provides uniform rules for treating electronic

³⁰ Ibid.

³¹ Rifa Yusya Adilah, Muhamad Agil Aliasyah, 'Terjerat Pasal Karet UU ITE' <<https://www.merdeka.com/khas/terjerat-pasal-karet-uu-ite-midreport.html>>

³² Peter Adediran, *A Practical Guide to Business, Law & the Internet* (2002).

³³ United Nations Commission on International Trade Law (UNCITRAL), *Model Law on Electronic Commerce with additional article bis as adopted in 1998 & Guide to Enactment (1998)* <www.uncitral.org/uncitral/en/commission/working_groups/4Electronic_Commerce.html - 27k>.

signatures as the functional equivalents of handwritten signatures and other kinds of mechanism for authentication mechanics in an electronic commerce environment³⁴.

Moreover, another model of guiding principles specifically concerned with consumer protection in e-commerce is found in the 1999 Guidelines for Consumer Protection in the context of Electronic Commerce of Organization for Economic Co-operation and Development (OECD).³⁵ This model assists member states to establish appropriate consumer protection in e-commerce transactions. The OECD's Guidelines construct the essential features of effective consumer protection for on-line business to consumer transactions.

Asher has shown that the OECD's guidelines provide a pattern of mechanisms to protect consumer rights in e-commerce. It also recognizes the need for co-operation among governments, businesses and consumers in the interest of fair business, advertising and marketing practices; clear information about an online business's identity, the goods or services it offers and the terms and conditions of any transaction; a transparent process for the confirmation of transactions; secure payment mechanisms; fair, timely and affordable dispute resolution and redress; privacy protection; and consumer and business education.³⁶ As Allan Asher stated that

the Guidelines set out the core characteristics of effective consumer protection for on-line business-to-consumer transactions. These Guidelines are proving helpful to governments, business, and consumers in very practical ways in trying to deal with this new environment as they provide instructive principles for both applying existing laws and developing new ones if necessary as they work to establish consumer protection mechanisms for e-commerce.

There are eight recommendations that any countries, in particular Indonesia, may adopt, which includes:

- 1) transparent and effective protection;
- 2) fair business, advertising & marketing practices;
- 3) online Disclosures – information about the business, information about the goods or services, information about the transaction;
- 4) Confirmation Process;
- 5) Payment – secure payment mechanism & information on the level of security;
- 6) Dispute Resolution and Redress – applicable law & jurisdiction and Alternative Dispute Resolution & Redress;

³⁴ United Nations Commission on International Trade Law, 2001 – UNCITRAL Model Law on Electronic Signatures with Guides Enactment, <http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2001Model_signatures.html>

³⁵ Organization for Economic Cooperation and Development, OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, <http://www.oecd.org/departement/0,3355,en_2649_34487_1_1_1_1_1,00.html>

³⁶ Allan Asher, Consumer Protection in E-Commerce Report on OECD Guidelines for Consumer Protection in the context of Electronic Commerce: Consumer Protection in E-Commerce (2000) <www.accc.gov.au/content/item.php?itemId=255556&nodeId=f5b89249a984cd8e54dff6e697d2b5b3&fn=Asia.doc>

- 7) Privacy; and
- 8) Education and Awareness.

Those guidelines are arguably considered as a reflection of comprehensive legal protection to e-commerce consumers at the moment and importantly addressed the basic rights of e-commerce users, which promote key issues of consumer protection, which includes fair, clear, transparent, secure and privacy protection.

The Guidelines substantively assist governments, business, and consumers in very practical ways, as they provide instructive principles for both applying existing laws and establishing consumer protection mechanisms for e-commerce.³⁷

These UNCITRAL model laws and the OECD Guidelines show consumer laws that aim to be a prevention tool to curb misleading and deceptive conduct by traders in establishing stronger bargaining positions for consumers and a facility for providing suitable remedies for breaches of consumer protection.³⁸ In addition the Distance Selling Directive of the European Union (1997), it was identified the five main areas for consumer protection in e-commerce. These include: the provision of information about the contract and its terms (Articles 4 & 5), the right of withdrawal (Article 6), the obligations to perform by the supplier (Article 7); payment by credit card (Article 8) and inertia selling (Article 9).³⁹

Some western countries have established e-commerce and consumer protection legal frameworks on a regional basis. The Australian Guidelines (1999) for consumer protection on cross-border transaction conducted through the internet are based on a number of principles. They require: the representation for e-business not hiding their identities, to fulfill consumer protection standards, protecting consumers from receiving unsolicited e-mail, awareness of advertising to children, concern of a variety of regulations typical of targeted market, designated the site of service of legal process and information accessibility. There is also a recommendation to use Alternative Dispute Resolution (ADR) to cope with jurisdictional problems arising from e-commerce disputes. Another country, the United States has the Consumer provisions that requires accessibility of information under principle "clear and conspicuous statement", consumer rights to get non-electronic form record and withdraw consent in any conditions.⁴⁰

Indonesia has partially or wholly accommodated the universal models on e-commerce and its protection for consumers, in which also require to conform Indonesian condition such as social and cultural concerns.

Furthermore, UNCITRAL was also introduced Model Law on E-Signature in 2001. Adopted by UNCITRAL on 5 July 2001, the Model Law aims at bringing additional legal certainty to the use of electronic signatures. Building on the flexible principle contained in Article 7 of the UNCITRAL Model Law on Electronic Commerce, it establishes criteria of technical reliability for the equivalence between electronic and hand-written

³⁷ Ibid.

³⁸ Quirk & Forder, above n 1.

³⁹ Adediran, above n 32.

⁴⁰ Dennis Campbell, *E-Commerce and the Law of Digital Signatures* (2005).

signatures. The Model Law follows a technology-neutral approach, which avoids favouring the use of any specific technical product. The Model Law further establishes basic rules of conduct that may serve as guidelines for assessing possible responsibilities and liabilities for the signatory, the relying party and trusted third parties intervening in the signature process.

At the beginning, UNCITRAL had already introduced Recommendations on the legal value of computer records in 1985 which proposed to Governments 'to review the legal rules affecting the use of records as evidence in litigation in order to eliminate unnecessary obstacle to their admission, to be assured that the rules are consistent with developments in technology....'⁴¹

As the convergence of technology information has been growing rapidly, at present, there is a new global standards proposed by the United Nations Convention on the Use of Electronic Communications in International Contract which was adopted by the General Assembly in 2005 regarding to 'enhance legal certainty and commercial predictability where electronic communications are used in relation to international contracts'.⁴² It deals with 'the determination of a party's location in an electronic environment; the time and place of dispatch and receipt of electronic communications; the use of automated message systems for contract formation; and the criteria to be used for establishing functional equivalence between electronic communications and paper documents – including "original" paper documents – as well as between electronic authentication methods and hand-written'.⁴³ This model has been adopted by the Indonesian legal system coping the problem of requiring hand-written signature under the Indonesian legal tradition.

In addition, the International Chamber of Commerce (ICC) advocates comprehension of the use of e-commerce system in which proposed General Usage for International Digitally Ensured Commerce (GUIDEC). The balance of the treatment for different legal systems covering both the civil and common-law, and international principles are the objective of the GUIDEC recommending best practices for a global infrastructure.⁴⁴ It was expanded to 'the potential of additional technologies such as biometrics in establishing trustworthy digital transactions as well as taking cognizance of policy developments such as the United Nations Commission on International Trade Law (UNCITRAL) model laws and the European Union Directives'.⁴⁵

The GUIDEC maintains 'a framework to assign risks and liability equitably between transacting parties in accordance with existing business practice, and includes a clear description of the rights and responsibilities of subscribers, certifiers, and relying parties'.⁴⁶ It proposed 'the improvement of the ability of the international business community to execute trustworthy digital transactions utilizing legal principles that

⁴¹ UNCITRAL, Recommendations on the legal value of computer records <<http://www.uncitral.org/pdf/english/texts/electcom/computerrecords-e.pdf>>

⁴² United Nations Commission on International Trade Law (UNCITRAL), above n, 33.

⁴³ Ibid.

⁴⁴ International Chamber of Commerce (ICC) , General Usage for International Digitally Ensured Commerce (GUIDEC) <<http://www.internetpolicy.net/e-commerce/guidec2001.pdf>>

⁴⁵ Ibid.

⁴⁶ Ibid.

promote reliable digital authentication and certification practices.⁴⁷The GUIDEC may also give some considerations in establishing legal framework in e-commerce reflecting those principles offered.

5. Conclusion

The characteristic of on-line transactions demonstrates the complexity and difficulty of regulating e-commerce to properly protect consumers. Indonesia is likely to find it as challenging as to deal with consumer protection in electronic commerce. The rate of economic convergence and technological change also make it difficult for the law to keep up. Indonesia displays insufficiency in protecting e-commerce users.

The absence of personal data protection law is considered as a significant factor since this data protection is seen as a crucial need to protect e-commerce consumers. Another factor is attributed to a poor scheme of consumer protection system embedded to the existing Consumer Protection Law No. 8 of 1999 and the Civil Code. The Laws do not specifically address the protection of consumer rights and electronic documents as a valid evidence on electronic commerce transactions. Lack of trust of the effectiveness of the Law, scepticism of law enforcement and high cost on consumer cases have also been contributed to a low level protection of Indonesian consumers in general.

A significant advantage of the Law on Electronic Information and Transactions – Law No. 19 of 2016 on the Amendment to Law No.11 of 2008 concerning Electronic Information and Transactions and Government Regulations and Ministerial Regulations have addressed the recognition of electronic document as a valid evidence and other relevant electronic transactions issues. However, the Law stipulates the data protection in a common sense in which the security of e-commerce consumers data and information is fragile due to the characteristic of on-line nature required specific technical protection measures. Other significant rights including security of on-line payment platforms, accurate on-line information and accessibility are also not be properly addressed. It is also the fact that is reflected by the data of case that the use of the Law tends to address violation of distribution of electronic information and rights to freedom of expression. It is still hardly to find successful consumer cases in Indonesia.

To address the insufficiency of legal protection on e-commerce consumers, Indonesia may adopt relevant provisions on the universal model law on e-commerce introduced by the UNCITRAL and OECD. The personal data protection and other consumer rights in e-commerce need to be included effectively in a specific law. It is also the need to establish a national specific infrastructure of digital platform on e-commerce user protection including data protection and security of on-line payment.

References

Adediran, Peter, *A Practical Guide to Business, Law & the Internet* (2002)

⁴⁷ Ibid.

- Adilah, Rifa Yusya and Aliasyah, Muhamad Agil, 'Terjerat Pasal Karet UU ITE' <<https://www.merdeka.com/khas/terjerat-pasal-karet-uu-ite-midreport.html>>
- Asher, Allan, Consumer Protection in E-Commerce Report on OECD Guidelines for Consumer Protection in the context of Electronic Commerce: Consumer Protection in E-Commerce (2000) <www.accc.gov.au/content/item.phtml?itemId=255556&nodeId=f5b89249a984cd8e54dff6e697d2b5b3&fn=Asia.doc>
- Campbell, Dennis, E-Commerce and the Law of Digital Signatures (2005)
- Consumer International Asia Pacific Office, Indonesian Consumer Protection Law No. 8 Year 1999 <http://www.ciroap.org/apcl/statutes_content.php?id=34&cid=48>
- CYBERconsult, Law of the Republic of Indonesia No. 8 of 1999 on Consumer Protection (with elucidations as sidenotes) (Human Resources & Business Services trans, 1999 ed)
- Dickie, John, Producers and Consumers in EU E-Commerce Law (2005)
- Edwards, Lilian & Waelde, Charlotte, Law & the Internet: Regulating Cyberspace (1999)
- Grestner, Louis in Fitzgerald, A, Fitzgerald, B, Cifuentes, C, Cook, P, 1999, going digital 2000: Legal issues for e-commerce, software and the internet, 2nd Edition, Prospect Media Pty Ltd, Australia
- Hadiputranto, Mutia R. and Hadinoto & Partners in Dennis Campbell (ed), E-Commerce and the Law of Digital Signatures (2005)
- Hasibuan, Linda, CNBC Indonesia, 'Gilaak! Tahun 2020 Belanja Online Bisa Tembus Rp 980 T' <<https://www.cnbcindonesia.com/tech/20190126113134-37-52477/gilaak-tahun-2020-belanja-online-bisa-tembus-rp-910-t>>
- Ifransah, M, Hubungan Hukum Antara Pelaku E-Commerce Harus Diperjelas (Legal Relationship between E-commerce perpetrators must be clarified) <www.free.vlsm.org/v17/com/ictwatch/paper/paper027.htm>
- International Chamber of Commerce (ICC), General Usage for International Digitally Ensured Commerce (GUIDEC) <<http://www.internetpolicy.net/e-commerce/guidec2001.pdf>>
- Kementerian Komunikasi dan Informatika Republik Indonesia, 'Indonesia sudah miliki aturan soal perlindungan Data Pribadi' <https://www.kominfo.go.id/content/detail/8621/indonesia-sudah-miliki-aturan-soal-perlindungan-data-pribadi/0/sorotan_media>
- Kementerian Tenaga Kerja, Kitab Undang-Undang Hukum Perdata <https://jdih.kemnaker.go.id/data_puu/peraturan_file_kuhperdata.pdf>
- Lester, Timothy P, 'Globalized Automatic Choice of Forum: Where Do Internet Consumers Sue? Proposed article 7 of the Hague Convention on International Jurisdiction & Foreign Judgment in Civil & Commercial Matters and Its Possible

- Effects on e-Commerce' (2003) 9(2) New England Journal of International & Comparative Law <<http://www.nesl.edu/intljournal/vol9no2indx.cfm>>
- McKenzie, 'Indonesia Now Has Specific E-Commerce Regulation' <<https://www.bakermckenzie.com/en/insight/publications/2019/12/indonesia-specific-e-commerce-regulation>>
- McKinsey&Company, 'The digital archipelago: How online commerce is driving Indonesia's economic development' <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Asia%20Pacific/The%20digital%20archipelago%20How%20online%20commerce%20is%20driving%20Indonesias%20economic%20development/FINAL_The-digital-archipelago-How-online-commerce-is-driving-Indonesias-economic-development.pdf>
- OECD, E-Commerce in the time of COVID-19, www.oecd.org
- Organization for Economic Cooperation and Development, OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, <http://www.oecd.org/department/0,3355,en_2649_34487_1_1_1_1_1,00.html>
- Portal Informasi Indonesia, 'Menunggu UU Perlindungan Data Pribadi' <<https://www.indonesia.go.id/narasi/indonesia-dalam-angka/sosial/menunggu-uu-perlindungan-data-pribad>>
- Quirk, Patrick & Forder, Jay, 2003, Electronic Commerce and the Law, 2nd Edition, John Wiley & Sons Australia, Ltd
- Rahman, Dzulfikar Fathur, The Jakarta Post, February 8 2021, 'Indonesia aims for double-digit growth in online transactions' <<https://www.thejakartapost.com/paper/2021/02/07/indonesia-aims-for-double-digit-growth-in-online-transactions.html>>
- Reilly, David H, Secure Electronic Transaction: An Overview <http://www.davidreilly.com/topics/electronic_commerce/essays/secure_electronic_transactions.html>
- UNCTAD, How COVID-19 triggered the digital and e-commerce turning point, <www.unctad.org>
- United Nations Commission on International Trade Law (UNCITRAL), Model Law on Electronic Commerce with additional article bis as adopted in 1998 & Guide to Enactment (1998) <www.uncitral.org/uncitral/en/commission/working_groups/4Electronic_Commerce.html - 27k>.
- United Nations Commission on International Trade Law, 2001 – UNCITRAL Model Law on Electronic Signatures with Guides Enactment, <http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2001Model_signatures.html>
- UNCITRAL, Recommendations on the legal value of computer records <<http://www.uncitral.org/pdf/english/texts/electcom/computerrecords-e.pdf>>
- The National Office for the Information Economy report, E-Commerce Across Australia (2000)

Wadji, Farid, Repotnya Jadi Konsumen: Percikan Pemikiran Seputar Persoalan Konsumen [Difficulties being a consumer: The Sprinkling of Thinking around the Problem of the Consumer] (1st ed, 2003)

Wibowo, A.M., Kerangka Hukum Digital Signature dalam E-Commerce (Legal Framework on Digital Signature in E-Commerce) (1998)
<http://www.geocities.com/amwibowo/resource/hukum_ttd/hukum_ttd.html>