



Legal Protection of MSMEs in the Digitalisation Era According to the Minister of Trade Regulation No. 31 of 2023

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Abstract—This study discussed the regulatory policy implemented through the tiktokshop application, which was previously temporarily deactivated due to a conflict between MSME players and business actors in the marketplace. Previously, this feature in tiktokshop had been running for quite some time, but due to conditions that caused MSME players to experience a decrease in turnover, the application with the tiktokshop feature was temporarily closed. A few months later, the feature reappeared, and the government issued a new policy listed in Ministerial Regulation Number 31 of 2023. However, what is currently problematic is that this policy has failed to protect business actors, and as a result of this policy, the TikTok application has migrated and begun cooperating with Tokopedia, which is inconsistent with the spirit of the new policy. TikTok is a social ecommerce platform that has not been registered as a marketplace, hence it is subject to government laws. The government should separate social e-commerce from the marketplace to ensure legal protection for both consumers and commercial operators. This study applied a normative legal method with a statutory approach, which was then analyzed qualitatively. The novelty in this research was that there were new regulations governing the licensing of electronic trading systems that migrated from tiktok to tiktokshop in collaboration with Tokopedia.

Keywords—Regulation; E-commerce; Legal Protection.

I. INTRODUCTION

In the current development, the emergence of information technology law that has been supported by the approach and unification efforts between telecommunications technology and informatics is one of them in order to bring up another method for procuring trade activities that are better known by the public as trade through electronics (hereinafter referred to as e-commerce). Electronic transactions, often known as E-Commerce, are a result of the development of information technology, which is rapidly evolving toward the exchange of goods, services, and information via electronic systems.

Basically, electronic transactions, or E-Commerce, are the result of the expanding scope of information and telecommunications technologies. As a result, it changes the way humans interact with their surroundings, including the mechanism of the trade system. Then, the rapid advancement of information technology has resulted in the world being borderless, which has an impact on social changes that occur rapidly.

Furthermore, the General Elucidation of Law Number 11 of 2008 (ITE Law) explains how the use of information technology, media, and communication has affected both people's behaviour and human civilisation around the world. The advancement of information and communication technology has also resulted in borderless global contacts and rapid social, economic, and cultural change. Information technology is currently a double-edged sword because, while it contributes to the improvement of human welfare, progress, and civilization, it is also a technology that is very vulnerable to criminal and unlawful acts committed by people who master information technology.[1]

In Indonesia, there are several markets that are popular with the public and are frequently used, in addition to the products offered at various prices. The digital platform marketplace differs from a site where consumers and sellers gather in one location; for example, the social media platforms Tiktok Shop, Shoppe, Facebook, and

Instagram should have various operating licenses by default. According to the February 2024 edition of GOTO's Incidental Public Expose, Tokopedia now has approximately 18 million monthly active users. Meanwhile, the number of monthly active TikTok Shop users in Indonesia has reached 125 million.[2]

TikTok is one of the most popular markets among the public today is TikTok, and the TikTok function has innovated into TikTokShop. The platform is more than just a social media platform for developing applications; it has also permeated the marketplace. In the TikTok application, sellers can carry out selling activities directly or live so that buyers can interact through the comments column provided and there is a yellow basket to facilitate transactions between sellers and buyers. So that business actors are not restricted from conducting trade in electronic media in order to enhance income while also providing customers with the comfort and convenience of making transactions via smartphones, computers, and other electronic media.[3]

However, the existence of TikTok Shop also raises concerns for major e-commerce businesses in Southeast Asia, including Shopee and Lazada. TikTok Shop is considered to pose a challenge to Southeast Asia's big e-commerce firms. According to a report conducted by research firm Cube Asia, users' spending on TikTok Shop led to lower spending on Shopee and Lazada. In Indonesia, Thailand, and the Philippines, users' spending on Shopee decreased by 51% as their allocation shifted to TikTok Shop. Meanwhile, spending on Lazada decreased by 45%, while spending on offline stores fell by 38%. The Indonesian government prohibits the existence of social commerce such as TikTok Shop. The modification intends to make it easy to select between social networking and e-commerce. This is done to distinguish between the functions of social media and e-commerce. As a result, no single platform can perform two functions simultaneously. However, TikTok Shop still has a lot of potential in Indonesia, where TikTok users total 99 million.[4]

On 4 October 2023 at 17:00 WIB TikTok Shop was officially closed. This was due to Indonesian regulations prohibiting TikTok Shop from holding a commercial permit as an e-commerce site. Furthermore, the merger of TikTok as social media and TikTok Shop as e-commerce has the potential to create monopolistic practices, according to Fiki Satari, Special Staff of the Minister of Cooperatives and SMEs (MenKopUKM) for Creative Economy Empowerment, who stated that there are four reasons why social media and e-commerce should be separated.[5]

However, the TikTok Shop feature is not licensed to function as an e-commerce platform. This is because TikTok started off as an entertainment app rather than an e-commerce site. Furthermore, TikTokShop sellers frequently set cheaper pricing than prices on other e-commerce platforms or in offline markets. The company also frequently offers discounts to vendors who promote their products via TikTok Live Streaming. Although this method initially results in highly competitive prices, the company does not always earn a profit and may even lose money. However, this can damage the price structure in the market, causing other businesses to lose out and struggle. As a result of the TikTok Shop case, the Minister of Trade (Permendag) issued Regulation Number 31 of 2023, and TikTok was officially closed since it did not comply with existing legal regulations. The Minister of Trade (Permendag) issued Regulation Number 31 of 2023.[6]

The government must strengthen the role of the ministry of trade and the business competition monitoring commission (KPPU) in overseeing trade flows, particularly those using electronic media. Because of the rise of numerous applications in Indonesia, strong laws are required to categorize the type of application, and each application should have a clear business license to ensure a healthy and fair trade for all business actors, both offline and online. The current regulations are deemed less assertive at this time, with the exception of barring social media providers (social commerce) from supporting electronic transactions. In fact, many social media applications still support this, such as TikTok Shop, which serves both as a social media platform and a marketplace. The application threatens local actors, specifically micro, small and medium-sized enterprises, by introducing predatory pricing practices, which are efforts made by companies to kill other competing businesses by selling prices below the cost of production, which are then raised again once other competing businesses have closed. This has resulted in unfair business competition in the trading ecosystem, thus it is critical to understand how to conduct good business ethics for business players in accordance with the principles of fairness in the business world.[3]

II. LITERATURE REVIEW

A. *The Development of E-Commerce in Indonesia in the Digitalisation Era*

Indonesia, the most developed economy in Southeast Asia with over 270 million people, is currently undergoing a digital transition in the commerce sector. The introduction of digital technology and the internet has led to substantial growth in the e-commerce sector. Recent study shows that e-commerce business in Indonesia is growing year after year, driven by reasons such as rising internet consumption, the emergence of mobile commerce, and increased customer confidence in online shopping. These trends are likely to influence the attention of business owners, investors, and regulatory bodies. The components of Indonesia's e-commerce

ecosystem includes marketplaces, retailers, and delivery services. Some well-known platforms, such Tokopedia, Shopee, and Bukalapak, have emerged as marketplaces. [7]

This is related to the mindset and behavior of people who are more likely to transact business online; it is also related to the covid-19 virus outbreak in 2020-2023, which prevents sellers from conducting direct transactions. This is backed by the facts below, which show that Indonesia will have 196.47 million e-commerce consumers in 2023. Shows an increase over the previous year, which was 178.94 million in 2021 and 178.94 million in 2022. This also shows that using social media to make online sales is more convenient and safer. One of the social media platforms that can be used to support the online sales process and the most popular with the public is TikTokshop. The reason for this increase in TikTok users is the many features offered by this application, from the convenience of self expression through engaging and instructive content to the opportunity to make purchases anywhere and at any time using TikTok Shop.[8]

B. Aspects of Consumer Protection

The Regulation of Consumer safety in E-Commerce takes a number of strategic actions to improve consumer safety in Indonesia's e-commerce sector. The following provisions have been finalised: 1) Consumer Protection Law: Indonesia has a Consumer Protection Law No. 8 Year 1999, which provides legal protection for consumer rights including E-commerce transactions. Although consumer protection measures have been taken, there are still some issues that need to be addressed.

This includes the need for stronger legal protection and more consumer awareness while purchasing on e-commerce platforms. However, comprehensive and well-integrated e-commerce rules can give significant economic benefits as well as serenity to business owners and general public customers who frequently do online transactions. Overall, the Indonesian government's efforts to strengthen consumer protection in the e-commerce sector have resulted in a commitment to protect consumer rights while also developing a trustworthy and secure e-commerce ecosystem.[9]

III. METHOD

This research applied normative legal research (doctrinal legal research), which focused on law as a norm and reality (behaviour), or as something to strive for and as a reality or living law. Legal disciplines related to this type of research had both general and specific aspects.[10] The strategy adopted in this study was a combination of law and analytical methods. This research's legal content were obtained from both primary and secondary sources. Primary legal information was in the form of law, and the reference utilized in this research was the Regulation of the Minister of Trade (Permendag) Number 31 of 2023. Secondary legal materials used included textbooks and scientific journal related to the research study, as well as non-legal items relevant to the research issue. The technique of obtaining legal materials was conducted through literature study (library research)

IV. RESULT AND DISCUSSION

A. Legal Protection for MSME Actors

The protection of MSMEs in online business is very important because MSMEs are the pillars of the Indonesian economy. Here are some of the reasons why MSME protection is critical: MSME protection can boost the community's economic welfare and help reduce poverty; and MSME protection can help improve MSMEs' competitiveness in trade through electronic systems (PMSE) in Indonesia. With protection, MSMEs can compete fairly with other businesses, MSME protection can help improve the quality of products and services offered by MSMEs. This can boost consumer confidence in MSME products and services, while MSME protection can assist MSME enterprises innovate and be more creative. This can assist MSMEs in continuing to grow and compete in the market, MSME Protection can help increase compliance with applicable regulations in trade through electronic systems (PMSE) in Indonesia. This can help to foster a healthy and equitable business climate for all parties.

In the context of online commerce, the protection of MSMEs is very important to preventing monopolies on business flows that can harm MSME participants. As a result, the Indonesian government enacted Minister of Trade Regulation (MOT) No. 31/2023, which focuses on business licensing, advertising, guidance, and supervision of business actors in e-commerce. MOT 31/2023 seeks to protect MSMEs and foster a healthy and equitable e-commerce ecosystem for all parties. [4]

Electronic transactions between domestic and foreign enterprises that make Indonesia a market must adhere to the e-commerce laws outlined in the Trade Law and implementing regulations. In this Trade Law the government controls how business actors can account for electronic transactions and online enterprises while also protecting consumers. The goal of regulating e-commerce under Trade Law to provide protection to consumers and also for business actors.

Article 65 of the Trade Law requires e-commerce enterprises to furnish complete and accurate data and/or information in order to trace their legality. This is very good in terms of consumer protection, however, enforcing this clause will be problematic if the implementing laws are not quickly provided by the government, because e-commerce itself is very complex and occurs across countries.

Currently, the Ministry of Trade (MoT) is working with relevant stakeholders to create implementing regulations in the form of a create Government Regulation applicable to e-commerce trade to carry out the mandate of Article 66 of the Trade Law. This is a positive start because Indonesia now has a legal framework for regulating electronic transaction trade. This e-commerce rule will undoubtedly give clarity for e-commerce organizations and consumers who frequently perform internet-based commercial transactions. As explained earlier, Indonesia has the largest e-commerce market share in ASEAN, and it is predicted to expand to approximately US\$ 25-30 billion.[11]

The competitiveness of Micro, Small, and Medium Enterprises (MSMEs) and domestic products remains low, hence measures are needed to strengthen the MSME sector and promote local businesses or products. Furthermore, fair competition in e-commerce has yet to be fully realized, and efforts are required to ensure a level playing field for all enterprises. One of the reasons for revising the MOT Regulation is the introduction of new economic models that have the potential to disrupt the e-commerce ecosystem. The goal of developing MOT 31/2023 is to build a sustainable and balanced e-commerce environment that can support ongoing and evolving technology innovations. In addition, another goal is to provide support for MSMEs and domestic enterprises enhance their competitiveness and strengthen consumer protection.[12]

In this sense, the TikTok app also does not have a clear complaint and consumer protection mechanism, causing concern in the community, particularly among those who feel aggrieved. If TikTok had an e-commerce license, there should be a mechanism to safeguard consumers, such as a return policy or complaint processing; however, because the TikTok Shop feature does not currently have an e-commerce license, consumers do not get sufficient protection. Furthermore, TikTok Shop's lack of a clear licence has an impact on business ethics violations, as unlawful or unlicensed business activities can generate inequality in competition with other businesses that operate in compliance with regulations. [8]

B. Analysis of Minister of Trade Regulation No. 31 of 2023

In normative juridical terms, Minister of Trade Regulation No. 31 of 2023 is a reference to the development of social commerce. From the seller's perspective, this regulation is enough to provide opportunities to allow Micro, Small, and Medium Enterprises (MSMEs) to promote their items in the market without fear of competition from specific products that might affect market prices, particularly those offered through social commerce. Based on this, the normative juridical outcomes show that the Minister of trade regulation No. 31 of 2023 has regulated several things, namely

Article 2 paragraph (3) clearly governs numerous business models for trading through electronic networks, such as online classifieds, price comparison platforms, online retail daily deals, marketplaces, and social commerce. The restrictions outlined in Minister of Trade Regulation No. 31 of 2023 address business license, advertising, training, and monitoring of business actors trading through electronic platforms. This rule has an influence on social commerce actors, who are now compelled to comply with license requirements and are subject to government supervision. For example, GroupMeta, which comprises platforms such as Facebook, Instagram, and WhatsApp, was required to apply for a social commerce license. Previously, they were solely registered for web sites and social media. This highlights the need of complying with newly established licences in response to government rules. Noncompliance with licensing requirements can be a severe issue for e-commerce enterprises. As an example, TikTok Shop was closed for failing to obtain the requisite licenses, resulting in a violation of the rules and a prohibition on operating in Indonesia.[13]

Actually, the stipulation of the Minister of Trade Regulation is beneficial for the business climate in Indonesia, particularly for local MSME business actors, and the government is responding quickly to business actors' complaints by issuing new policies. However, the way the government issued this policy was not proper and appeared hurried by passing the Minister of Trade Regulation because, according to the current new findings, TikTok Shop is still operating as usual and has not been completely closed. If the government truly wants to limit the scale of distributing imported goods in the TikTok Shop application while increasing the scale of local goods from MSMEs, it must communicate with the TikTok company about restrictions on distributing imported goods to Indonesia through TikTok Shop. This will allow local MSMEs to survive and compete fairly in an increasingly competitive economic environment. The TikTok company must adapt to economic climate in Indonesia by reorganizing the Standard Operating Procedures for sellers in TikTokShop Indonesia. Furthermore, the government, under the authority of the minister of trade, must establish supervisory officers for economic activities on social-commerce platforms such as TikTok Shop in order to optimize them under Minister of Trade Regulation Number 31 of 2023 which has been in effect since 26 September 2023.[14]

Basically, the government should consider not immediately eliminating social commerce because the emergence of these platforms has benefited many MSMEs. On the other side, the government is concerned

about dumping politics, which occurs when a country sells a product at a cheaper price than it charges locally. The advantage is that the country earns more profits than it does outside. In fact, the product is not good, and it is discarded in Indonesia. When viewed positively, social commerce has the potential to benefit Indonesian MSMEs. And, so far, social commerce has helped the development of relatively new MSMEs in Indonesia to develop their products.[15]

V. CONCLUSION

TikTok Shop is not authorized to function as an e-commerce site. This is because TikTok started off as an entertainment app rather than an e-commerce site. Furthermore, sellers on TikTokShop frequently set cheaper pricing than prices on other e-commerce platforms or in offline markets. In fact, there are still several social media organizer apps that make this easier, such as TikTok Shop, which serves two functions at once, namely social media and marketplace. The application threatens local actors, specifically micro, small, and medium enterprises, by introducing predatory pricing practices, which are efforts by companies to kill other competing businesses by selling prices below the cost of production, which are then raised again once other competing businesses have been killed. The government, through the power of the minister of trade, must appoint supervisory officers for economic activities on social-commerce platforms such as TikTok Shop in order to optimize them under Regulation of the Minister of Trade Number 31 of 2023, which went into force on 26 September 2023. This rule has an influence on social commerce actors, who are now compelled to comply with license requirements and are subject to government supervision.

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