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## Indonesian Legal Protection for Consumers on the Validity of Electronic Contracts in the E-Commerce Transactions

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### Abstract

Currently, internet development grows rapidly which facilitates and eases various economic activities, especially e-commerce transactions, on a global scale. In 1996, the UNCITRAL regulated the e-commerce transactions, including e-contracts. The e-contract is one of the most relevant matters in e-commerce transactions, especially it is of importance for the consumers to avoid any unwanted situations. However, several problems arise for consumers in conducting e-commerce transactions, such as the asymmetrical bargaining power of the parties involved. In this sense, there is an urgency for the legal protections for consumers. The objective of this article is to understand the connection between consumers' legal protection and e-contracts validity in e-commerce transactions. The research method used is the legal descriptive analysis through statutory and conceptual approach. This study analyzes the legal relationship between the legislations related to the e-contracts within e-commerce transaction in Indonesia, which are the Indonesian Civil Code, Law Number 8 of 1999 concerning Consumer Protection, and Law Number 19 of 2008 on Information and Electronic Transactions. Through a systematic appraisal, it argues that the current legal framework does not fully guarantee legal certainty for consumers in e-commerce transactions, such as on the obligations of producers and distributors to customers in the e-commerce transactions.

**Keywords:** E-Commerce; Consumers Protection; E-Contracts.

### Introduction

Economic dynamics cannot be separated from the development and progress of technology, infrastructure, productivity, and innovation. In every decade, science continues to develop and has an impact on increasingly sophisticated technological advances. Innovations that arise from technology provide convenience and benefits for humans in their activities. Technological developments are also accompanied by developments in how to convey information in communication.

This term is called Information and Communication Technology (also known as “ICT”). Therefore, in this modern era, society is facilitated by various forms of technology and innovation that enable them to carry out economic activities as well as internet communication networks on a global scale. This leads to the absence of limited facilities, time, and distance.<sup>1</sup>

These circumstances are also applied to Indonesian economic cultures and changes in society behavior or adaptation. In which the cultural shift from the traditional transaction culture (i.e., traditional markets, meaning local scale) into an online buying and selling transaction that can reach global scale. In this modern era, the ICT is one of the media used by society in conducting communication and business. By emphasizing the current development of cyberspace business, there is a great demand of online shops or online buying and selling transactions (also known as “e-commerce”) by the public.

“E-commerce” is a buying and selling transaction using the internet, where technological developments such as smartphones are one of the supports in online business development. In addition, according to Momentum Works in 2021, Tokopedia and Shopee are the most used e-commerce transactions, leading the market share with the gross merchandise value (also known as “GMV”) of approximately US\$ 40, 1 billion. This has grown rapidly, namely 91 percent, if compared by the previous year.<sup>2</sup> Basically, Indonesian e-commerce has entered a rapid leap of growth. In 2012, some Indonesian e-commerce was established by Foreign Direct Investment (FDI) from multinational companies.<sup>3</sup>

Furthermore, the development of ICT enables Small and Medium Enterprises (SMEs) to compete in developing their businesses, thus, increasing their competitiveness in doing business. In this sense, the utilization of ICT has great

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<sup>1</sup> Eri Yanti Nasution and others, ‘Perkembangan Transaksi Bisnis E-Commerce Terhadap Pertumbuhan Ekonomi Di Indonesia’ (2020) 3 *Jesya (Jurnal Ekonomi dan Ekonomi Syariah)*. [506].

<sup>2</sup> Ilham Unggara and others, ‘The Productivity Of Indonesian E-Commerce: Evidence From A Digital Merchant Survey’ (2021) 5 *International Journal of Economics, Business and Accounting Research (IJEBAR)*. [224].

<sup>3</sup> Dwitya Aribawa, ‘E-Commerce Strategic Business Environment Analysis in Indonesia’ (2016) 6 *International Journal of Economics and Financial Issues*. [130].

potential in increasing people's income, and if it reaches international markets, it can increase the national economy's added value and improve the national economy.<sup>4</sup>

However, in e-commerce, the contract is usually called electronic contracts (also known as "e-contracts"). E-contracts are one of the new variations in business agreements, both for buying and selling transaction and business-related matters. Furthermore, in each e-commerce transaction, Indonesian people who act as economic actors, both consumers, producers and/or distributors should at least know that the e-commerce transaction is a non-face and non-sign form of business. However, in general, these economic actors are not aware that the action of buying and selling transactions through an electronic system is included as a business agreement.

Furthermore, the existence of a new variation of ICT, in this case, e-commerce must be followed by the existence of law in Indonesia. According to Articles 1320 and 1338 of the Civil Code, the contract form is both in a written contract and oral contract. Basically, the preparation of a business agreement contract in Indonesia is a conventional contract, namely done by signature and face-to-face meeting, with all its own advantages and disadvantages in the preparation. However, the legal developments of e-commerce transactions that have been adapted to the development of technological civilization are not well recognized by Indonesian society, specifically the consumers.

In correlation to that situation, the consumers who carry out the e-commerce transactions should understand the legal protection surrounding the consumers itself, and the factors and problems of e-commerce transactions in order to avoid any unwanted situation arise in the future. Before going further into the legal protection for consumers, there should be an understanding on the term of "legal protection." "Legal protection" is a protection given to legal subjects in the form of tools, both preventive and repressive, in which is both verbal and written. The function of legal protection is to fulfill justice, order, certainty, benefit, and peace. In order to perform

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<sup>4</sup>Prasetyo Budi Widagdo, 'Perkembangan Electronic Commerce (e-Commerce) Di Indonesia' (2016) Researchgate Article.

and provide the legal protection, there should be the means of legal protection, either in the form of preventive or repressive.

Furthermore, the factors that encourage producers and/or distributors to conduct e-commerce, as following: to reduce marketing, distribution, and other costs in order to run their business with a relatively small amount of capital. Meanwhile, the factors that encourage consumers to do e-commerce transactions, as following: can choose a variety of desired goods where it is easy to compare the quality and price of the desired goods, no need to go to the offline store where it could save their time and seen as much more practical and economical in some ways.

However, e-commerce transactions have their own negative effects on consumers due to the transaction between producers and/or distributors and consumers is done neither through meeting face to face nor knowing each other, in other words it is based on the trust of the parties. Therefore, the problems that can occur, including: (1) producers and/or distributors; (2) The delivery time is not in accordance with the agreed time; (3) In the process of sending goods, it is prone to damage; and (4) The goods that have been ordered and paid by consumers, in this case are not sent by the producers and/or distributors.

By seeing these problems, the e-commerce transactions that are practiced have given rise to unequal bargaining power between producers and/or distributors and consumers. In fact, producers and/or distributors who sell their goods and/or services online often include standard contracts, thus creating asymmetrical bargaining power. Therefore, the weak position of consumers and producers and/or distributors in conducting e-commerce transactions is certainly very detrimental to consumers and has violated consumer rights that are regulated under Article 4 of Law Number 8 of 1999 concerning Consumer Protection.<sup>5</sup>

Furthermore, Law Number 8 of 1999 concerning Consumer Protection functioned to protect e-commerce consumers directly. Therefore, as the legal basis for protecting the rights and obligations of e-commerce consumers. In discussing

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<sup>5</sup> Rifan Adi Nugraha and HF Jamaluddin Mukhtar, 'Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Online' (2014) 8 Jurnal Serambi Hukum.[93].

the legal protection surrounding the consumers, there are no specific regulations on e-commerce transactions. However, the legal protection for e-commerce consumers is sought from various regulations.

In correlation to the statement above, disadvantaged e-commerce consumers can seek protection from: (1) Law No. 19 of 2008 on Information and Electronic Transactions; (2) Law Number 8 of 1999 concerning Consumer Protection, the Civil Code, and even the Criminal Code. However, these laws have not provided legal protection for e-commerce consumers effectively due to the design formulation is not specifically for e-commerce, in other words a law specifically for e-commerce transactions. In this sense, there is an urgency for the Indonesian Government to enact a legal protection specifically for e-commerce transactions.

Based on the description above, the legal protection for consumers on e-commerce transactions and the validity of e-contracts in the e-commerce transactions is very necessary. Because it is known that not only the fact that consumers' rights or legal protection must be enforced, but also to raise awareness of producers and/or distributors regarding the importance of consumer legal protection in order to run an honest and responsible attitude in doing business. Therefore, this journal aims to understand the importance of consumer legal protection and the validity of electronic contracts in the e-commerce transactions in Indonesia, and the connection surrounding these two issues.

### **Indonesian Consumers' Legal Protection**

The efforts to maintain the consumers' dignity need to be supported by the improvement of consumer behavior itself (ie, increasing awareness, knowledge, concern, ability, and independence), in order to protect themselves and develop the attitude of responsible producers and/or distributors. Therefore, there should be an understanding of the consumers' legal protection, in this case emphasizing on Indonesian consumers legal protection. The following is the Indonesian legal basis

for consumers' protection:<sup>6</sup>

1. Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as "CP Law").<sup>7</sup>  
The consumer rights encompass (a) comfort rights, security rights and safety rights, in consuming the goods and/or services. In which, the right to choose and obtain the goods and/or services must be in accordance with the exchange rate and the promised conditions and guarantees; (b) the right to be treated or served correctly and honestly and not discriminatory; and (c) the right to obtain compensation, indemnity, and/or replacement. In cases where the goods and/or services that were received are not in accordance with the agreement or not proper.
2. Law Number 5 of 1999 concerning Monopolistic Practices Prohibition and Unfair Business Competition (hereinafter referred to as "MPPUBC Law").  
In which it regulates the following:
  - a. Monopoly is an action of control over the production and/or marketing of goods and/or the use of certain services either by a producer and/or distributor or group of producers and/or distributors.
  - b. Monopoly practice is the concentration of economic power by either one or more producers and/or distributors, which resulted in the control over the production and/or marketing of goods and/or the use of certain services. Thus, it does create unfair business competition and may harm the public interest.
  - c. Economic power concentration is the real control over a relevant market by one or more producers and/or distributors, in order to determine the price of goods and/or services.
3. Government Regulation Number 58 of 2001 concerning Supervision and Consumer Protection Implementation (hereinafter referred to as "SCPI Government Regulation").
4. Director General of Domestic Trade Circular Number 235/DJPDN/VII/2001 concerning Consumer Complaints Handling addressed to all Prov/Kab/City Industry and Trade Offices.
5. Director General of Domestic Trade Circular Number 795/DJPDN/SE/12/2005 concerning Consumer Complaint Service Guidelines.

Furthermore, in order to understand the legal protection over the consumers, there should be further understanding on the rights and obligations of the consumers who act in the purchasing of goods and/or services. The rights of consumers are regulated in Article 4 of the CP Law, while the obligations of consumers are regulated in Article 5 of the CP Law.

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<sup>6</sup> Wahyu Simon Tampubolon, 'Upaya Perlindungan Hukum Bagi Konsumen Ditinjau Dari Undang Undang Perlindungan Konsumen' (2016) 4 Jurnal Ilmiah Advokasi.[56].

<sup>7</sup> Law Number 8 of 1999 concerning Consumer Protection.

According to Article 4 of the CP Law, the following is the consumers' rights:

1. Comfort rights, security rights and safety rights, in consuming the goods and/or services;
2. The right to choose and obtain the goods and/or services must be in accordance with the exchange rate and the promised conditions and guarantees;
3. The right to correct, clear and honest information about the conditions and guarantees of the goods and/or services;
4. The right to have their opinions and complaints heard on the goods and/or services used;
5. The right to get advocacy, protection and efforts to resolve consumer protection disputes appropriately;
6. The right to receive consumer guidance and education;
7. The right to be treated or served correctly and honestly and not discriminatory;
8. The right to obtain compensation, indemnity, and/or replacement. In cases where the goods and/or services that were received are not in accordance with the agreement or not appropriate;
9. The rights regulated in the provisions of other laws and regulations.

According to Article 5 of the CP Law, the following are the consumers' obligations:

1. Read or follow the information instructions and procedures for the use or utilization of goods and/or services, for security and safety;
2. Have a good faith in making transactions to purchase goods and/or services;
3. Pay according to the agreed exchange rate;
4. Follow the legal efforts to settle consumer protection disputes appropriately.

Furthermore, according to Article 2 of the CP Law, there are five principles of consumer protection:

1. **Benefit Principle**  
The implementation of the CP Law must provide the greatest benefit to both parties, namely the consumers and producers and/or distributors. Therefore, no one party has a higher position than the other party and must obtain their rights.
2. **Justice Principle**  
The implementation of the justice principle can be seen in Article 4 to Article 7 of the CP Law that regulates the rights and obligations of the consumers and producers and/or distributors. In which there is an expectation for the consumers and producers and/or distributors to obtain their rights and fulfill their obligations in a balanced way.
3. **Balance Principle**  
By implementing the balance principle, there is an expectation for the balanced realization of interests, both from the consumers, producers and/or distributors and government. Therefore, no party is more protected than another.
4. **Consumer Safety and Security Principles**

By implementing the CP Law, there is an expectation to provide guarantees for the consumers' safety and security, both in the function, use and utilization of the goods and/or services that are consumed or used.

#### 5. Legal Certainty Principle

By implementing the legal certainty principle, the law should be obeyed by both consumers and producers and/or distributors in order to obtain justice in the implementation of consumer protection, in which the state guarantees legal certainty for it.

Furthermore, according to Article 3 of the CP Law, there are six purposes of consumer protection:

1. Increasing consumers' awareness, ability and independence to protect themselves;
2. Raising consumers' dignity by avoiding them from negative access to the use of the goods and/or services;
3. Increasing consumers' empowerment in choosing, determining and demanding their rights as consumers;
4. Creating a consumers' protection system that contains elements of legal certainty and information disclosure as well as access to information;
5. Growing producers' and/or distributors' awareness regarding the importance of consumer protection in order for an honest and responsible attitude in doing business;
6. Improving the quality of the goods and/or services that ensure the continuity of the business of producing the goods and/or services, comfort, and consumers' safety.

Furthermore, the provisions of the CP Law appear more specific in comparison with the general provisions in the Civil Code. Because it expressly explains that producers and/or distributors must not only carry out business activities in good faith, but also create a conducive business climate without unfair competition between these economic actors.

### **Validity of Electronic Contracts**

As a modern society, people should at least have an understanding on the technology improvements, including changes in contract law. In this case the "e-contracts" created across electronic devices networks. The emergence of "e-contracts," were introduced through the United Nation Commission International Trade Law (hereinafter referred to as "UNCITRAL"), which was ratified in 1996. In Indonesia, it was ratified and enacted in the Law Number 11 of 2008 concerning



Electronic Information and Transactions (hereinafter referred to as “ITE Law”), which was subsequently updated into Law No. 19 of 2008 on Information and Electronic Transactions (hereinafter referred to as “ITE Law”).<sup>8</sup> This is one of the examples of the growing development of treaty law in Indonesia. However, when closely seen between the explanation of e-contracts in the UNCITRAL and the ITE Law, neither explains in detail what an e-contract is and how it forms. As a result, e-contracts are interpreted differently and some are even mistaken.

In general, e-contracts are defined as an internal contract made in electronic form. Electronic transaction activities result in an electronic legal relationship or agreement by combining a computer-based network with a communication system that further is facilitated by the internet network or global network.<sup>9</sup> In correlation to this, digitized agreements such as agreement letters, whether scanned or typed as soft copies, may be considered as forms of e-contracts. Therefore, misconceptions about e-contract are common in today’s digital age. In addition, Article 4 of the UNCITRAL, states that: “As between parties involved in generating, sending, receiving, storing or otherwise processing data messages, and except as otherwise provided, the provisions of chapter III may be varied by agreement.”

Based on Article 4 of the UNCITRAL above, it does not mention the contract form directly, but rather gives guidance on how valid a contract agreement is. Although the principle of all agreements is the same, namely “agreement,” the form of e-contracts can vary according to the developing media. This term is called “variation by agreement.” In e-contracts, electronic networks are used in the stage of offer and acceptance. This term is called electronic data interchange (also known as “EDI”). Therefore, with a different or rather new form of offer and acceptance, it is reasonable for UNCITRAL to name it as the “variation by agreement”.

Furthermore, according to the ITE Law, specifically Article 1 point 17 of the ITE Law states that an “Electronic contract is an agreement between the parties made

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<sup>8</sup> ‘Law Number 11 of 2008 Concerning Information and Electronic Transactions’.

<sup>9</sup> David Herianto Sinaga and I Wayan Wiryawan, ‘Keabsahan Kontrak Elektronik (E-Contract) Dalam Perjanjian Bisnis’ (2020) 8 Kertha Semaya: Journal Ilmu Hukum.[1338].

through the Electronic System.” In correlation to that article of law, it can be seen that the “e-contract” is a type of contract that receives special protection. An “e-contract” is a contract that is created electronically between two parties. In its process, the electronic system is composed of a variation of electronic tools and processes (ie, process to prepare, gather, process, analyze, store, display, announce, transmit, and/or distribute electronic information). In addition, e-contracts are included in the type of anonymous agreement, because e-contracts are not regulated in the Civil Code.

Therefore, by seeing the explanation of e-contracts above, it can be understood that e-contracts are a network combination of computer-based information systems with an electronic system carried out by two or more individuals using a computer or internet-based network. In addition, Kantaatmaja argued that e-contracts may be in any form. In correlation to this, electronic transactions between consumers and producers and/or distributors that take place across electronic devices networks may be included as creating e-contracts. For example, through a chat online of two or more people, in a certain application, which results in an agreement that is considered valid legally and has legal force.

Furthermore, there should be an understanding on the requirements for the validity of contracts in general. The legal requirements of a contract must be fulfilled by the agreement in order to offer certainty and binding to each party who agrees to it. Thus, it is considered valid legally and has legal force. However, the agreement can be terminated if the subjective requirements are not met, but, as long as the court has not terminated the agreement or taken that action, the agreement remains in effect.

According to Article 1320 of the Civil Code, there are four requirements for the validity of an agreement:<sup>10</sup>

1. Agreement between parties

The agreement refers to the conformity of the statement of will between one or more people with another party. In this sense, it is considered that these people have given their permission or consent to the agreement that was agreed upon

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<sup>10</sup> Retna Gumanti, ‘Syarat Sahnya Perjanjian (Ditinjau Dari KUHPerdara)’ (2012) 5 Jurnal Pelangi Ilmu.

(*toestemming*). Therefore, it ensures that there was no coercion, mistake, or fraud in the implementation of the agreement between parties.

2. The ability to conduct agreement

According to Article 1320 of the Civil Code, it refers to the ability to conduct agreement (*om eene verbintenis aan te gaan*). According to Article 1329 of the Civil Code, it refers to the certain capabilities acquired by everyone. While, Article 1330 of the Civil Code, it refers to people who are not eligible to conduct an agreement, as following: (a) minors, meaning people who are not 18 years old in referring to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as “Marriage Law”); (b) a person under custody, meaning a person who is an adult, 21 years old but not capable to conduct an agreement (ie, people with mental disabilities, insane, and eye pain); and (c) married women, meaning a married woman does not have an ability to conduct agreement; however, after the enactment of Marriage Law, specifically Article 31 paragraph (2) of the Marriage Law, it regulated that married women are considered legally competent.

3. A certain thing

According to Article 1333 of the Civil Code, an agreement must contain a certain thing or object of contract that is clear and the type can be identified/recognized. In this case, a contract must have a specific goal (*zaak*). The “certain thing” refers to the rights and obligations that have been decided upon for both parties, which results in the measurement of the parties’ performance.

4. Halal legal cause

Cause can be interpreted as the objective basis behind the occurrence of the contract’s provisions (ie, the content and purpose of an agreement that causes the agreement). Thus, the cause is considered valid in the agreement. In addition, the requirements of the agreement must not go against the law, morals, or the preferences of the people in majority. According to Articles 1335 and 1337 of the Civil Code, a cause is considered as being unlawful if it goes against the law (ie, violates the law that was in effect at the time), public morals, or the order of public affairs (ie, administrative matters).

Furthermore, there are two factors that affect the validity of a contract in general:

1. Destructive Factors

Which consists of six factors:

- a. When an element of the agreement is defective or damaged due to:
  - (i) Mistakes, meaning that over time either one of the parties or both parties when entered into a contract; however, in this case, with a wrong understanding;
  - (ii) Misrepresentation, meaning when one of the parties is encouraged to enter into an agreement partly because of a fallacious or incorrect representation (ie, description and initial description) of the other party. In which the misrepresentation was not one of the contract provisions; and
  - (iii) Unexpected pressure or influence or inappropriate influence, meaning direct pressure or subtle pressure received from the

party who binds the contract.

- b. When one or more of the parties bound by the contract does not have the full capacity to enter into a contract.
- c. When the contract is illegal.
- d. When the contract is partially or completely does not exist/absent or empty or void by law.
- e. When the contract is partially or completely void according to civil law because it is contrary to the public policy.
- f. When the contract is included in the category that requires a number of formalities, while those formalities do not exist.

## 2. Broken Contract

When a contract contains a destructive factor, the legal consequences will vary according to the situation. The following are the legal consequences, in which the contract may be:

- a. Null or non-existent or empty, meaning a contract that is absolutely void and has no meaning at all.
- b. Can be null, meaning a contract that has legal consequences, but may be set aside or ignored.
- c. Illegal, meaning a contract that cannot be challenged except in special circumstances.
- d. Unenforceable, meaning a good contract; however, the plaintiff cannot file a lawsuit before the law because there is neither written evidence when needed nor there is a defect or lack of capacity of the defendant to enter into a contract.

### **Indonesian Consumers Legal Protection Indonesian in the Context of the Validity of Electronic Contracts for E-Commerce Transactions**

As explained by the previous results and discussion sections, the requirements on the validity of the e-contracts applied to Article 1320 of the Civil Code. Basically, e-contracts are created by the producers and/or distributors using a standard contract form, thus, the consumer does not have any authority to modify the standard contract's terms. These e-contracts are simply reviewed by the consumer and do not require the consumer to sign it, in the event the concerned consumer does not agree with the terms. Standard contracts are common in business because of the considerations of necessity and practicality. However, the standard contract must

not conflict with the Civil Code and the CP Law.<sup>11</sup>

Furthermore, the contract makers are prohibited from including standard clauses whose position or form is difficult to see or cannot be read clearly by the eye, or whose disclosure is difficult to understand. Every standard clause that violates the prohibition is declared null and void.<sup>12</sup> Therefore, the selling and buying transactions are considered to occur between the two parties as soon as they reach an agreement on the goods and prices, even though in a situation where the goods have not been delivered or the price has not been paid. In addition, Article 12 paragraph (1) of the IET Law, states that “Everyone involved in Electronic Signatures is obliged to provide security for the Electronic Signatures they use.” On viewing this article of law, it can be understood that, generally, the electronic information and/or electronic documents and/or their printouts are valid legal evidence.

In correlation with e-commerce transactions, consumers tend to have a greater risk due to the characteristics of the e-commerce transaction itself, namely e-commerce transactions have no physical meetings between the consumer and the producer and/or distributor of the goods and/or services. Therefore, protection for consumers is regulated under the CP Law. However, the CP Law has not specifically regulated the development of information technology. Furthermore, at the international level, international trade law on the UNCITRAL is specifically used to give legal protection to consumers in e-commerce transactions. The UNCITRAL has a mandate for progress toward harmonization and unification of international trade law in the interests of all parties, even though it was not specifically designed to provide protection to consumers in e-commerce transactions.<sup>13</sup>

Furthermore, at the national level, even though the legal protection for consumers in e-commerce transactions is not specifically enacted in specific

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<sup>11</sup> Cita Yustisia Serfiani, SD Purnomo and Iswi Hariyani, *Buku Pintar Bisnis Online Dan Transaksi Elektronik* (Gramedia Pustaka Utama 2013).

<sup>12</sup> Fitriah Fitriah, ‘Perlindungan Hukum Bagi Konsumen Dalam Transaksi Jual Beli Melalui Media Sosial’ (2020) 18 Solusi.[373].

<sup>13</sup> Yudha Sri Wulandari, ‘Perlindungan Hukum Bagi Konsumen Terhadap Transaksi Jual Beli E-Commerce’ (2018) 2 AJUDIKASI: Jurnal Ilmu Hukum.[200].

regulations of e-commerce transactions, it does give legal protection for consumers through the CP Law. In addition, the Indonesian Government also provides protection for intellectual property rights, such as Copyrights, Patents and Brands, including ratifying the CP Law.

Furthermore, in correlation with the rights and obligations of each party (producers and/or distributors and consumer) in the CP Law, it does regulate them fairly. On one hand, there are the obligations of the producers and/or distributors, such as surrendering ownership rights to the goods being traded, bearing the pleasures of peace and the hidden defects (*vrijwaring*, warranty). Meanwhile, the rights of the producers and/or distributors are generally to determine the price of payment for the sale of goods from consumers, the right to receive payments in accordance with the agreement regarding the conditions and exchange rates of traded goods and/or services, and the right to obtain legal protection from the actions of consumers in good faith.

Furthermore, the criminal sanctions of the producers and/or distributors are regulated under Article 62 paragraph (1) of the CP Law, in which those who transgress the prohibition on trading goods and/or services that do not live up to the promises in labels, etiquette, information, advertisements, or promotions can be punished with a maximum prison sentence of five years or a maximum fine of Rp 2 billion. While, as for those goods and/or services received or used by the consumers that do not adhere to the agreement, producers and/or distributors must offer compensation, compensation, and/or replacement.

On the other hand, the rights of the consumer, specifically in the buying and selling process are generally divided into two types: (a) Transfer of rights to certain goods. The rights to certain goods move depending on the wishes of the parties based on an agreement made; and (b) The rights given to consumers must be balanced with the obligations given to consumers so that consumers do not act arbitrarily. In this case, their rights are being limited. Meanwhile, obligations of the consumer are regulated in Article 5 of the CP Law, which states that: "Read or follow directions information and procedures for the use or utilization of goods and/or services, for the sake of security and safety; Have good faith in making

transactions for the purchase of goods and/or services; Pay according to the agreed exchange rate; Follow legal efforts to settle consumer protection disputes properly”.

Therefore, in implementation of the contract transactions, the existence of good faith must be owned by both parties. The validity of a contract, especially e-contracts in the e-commerce transaction generally, is still a relatively new juridical phenomenon for Indonesian positive law. Furthermore, according to Law Number 19 of 2016 concerning Information and Electronic Transactions, the signature of e-contracts does not apply to the testament letters, securities other than shares on the stock exchange, agreements relating to immovable property, and other documents that require the approval of a notary or authorized official. These circumstances mean there is an authentic deed that cannot be made in electronic form.<sup>14</sup>

Based on this discussion section, these issues surrounding the consumer legal protection and the validity of e-contracts in the e-commerce transactions in Indonesia, and its connection should be studied further on the legal aspects of the evidence.

## **Conclusion**

Due to the development of the internet that is facilitated by various forms of technology and innovation, modern society is able to carry out economic activities as well as internet communication networks on a global scale in a situation where the limited facilities, time and distance are absent. On emphasizing the business transaction, there is a cultural shift from traditional transaction culture into an online business transaction globally. The Information and Communication Technology (ICT) is usually used in conducting business transaction, especially for the online business transaction, or usually called as “e-commerce”.

Furthermore, as the technology has advanced, so have the contracts. In this instance, electronic device networks created “e-contracts.” In 1996, the UNCITRAL was created as the international trade law, and credited by introducing

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<sup>14</sup>Yapiter Marpi and S Kom, *Perlindungan Hukum Terhadap Konsumen Atas Keabsahan Kontrak Elektronik Dalam Transaksi E-Commerce* (PT Zona Media Mandiri 2020).

the e-contracts. Thus, the economic actors at least should understand it in order to avoid any unwanted situation or problems, especially the consumers in carrying out their e-commerce transactions. In that sense, the consumers should maintain their dignity in the e-commerce transaction through their behavior improvement in order to protect themselves and develop the attitude of responsible economic actors.

Furthermore, the Indonesian Government has regulated the Law Number 8 of 1999 concerning Consumer Protection (CP Law). In comparing the provisions of the CP Law with the general provisions of Civil Code, it seems more specific. Because it explicitly states that producers and/or distributors must not only conduct their operations in good faith, but also foster an environment free from unfair competition among them. In addition, Article 1320 of the Civil Code is still in effect if it refers to the validity of an e-contract, in a form of a standard contract. However, the Civil Code and the CP Law must not conflict with the concerned standard contract.

Furthermore, neither the CPLaw nor the ITE Law generally regulate producers and/or distributors' obligations to customers in the e-commerce transactions. It is understood that the ITE Law governs all electronic transactions, while the CP Law regulates conventional buying and selling. In correlation to the obligations of the producers and/or distributors, the criminal sanctions are regulated under Article 62 paragraph (1) of the CP Law.

Furthermore, to eliminate the current legal uncertainty, the Indonesian Government is required to create and disseminate legal regulations that are binding on producers and/or distributors and consumers in the e-commerce procurement system. It is also applied for the producers and/or distributors in that holding its business should not violate any business transaction agreement with the customers, especially e-commerce customers. As well as the e-commerce, consumers should not be tempted by cheap prices, but rather be more observant, thorough and understand how the e-commerce transaction system is, in order to maintain and enforce their rights as the product users.



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